



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

MEMORANDUM

TO: Nursing Home Administrators

FROM: Mark Payne, Director *MP*

DATE: April 27, 2020

RE: 10A NCAC Subchapter 13D Waiver for Temporary Nurse Aide Services

Governor Cooper issued Executive Order 116 declaring a State of Emergency to coordinate response to the spread of COVID-19. Pursuant to his Executive Order and General Statute 131E-112, the North Carolina Emergency Management Director, Mike Sprayberry, and Department of Health and Human Services Secretary Dr. Mandy Cohen have directed the Division of Health Service Regulation (DHSR) to temporarily waive certain nursing home rules approved by the North Carolina Medical Care Commission to the extent necessary to allow the nursing home or combination home (facility/facilities) to provide temporary shelter and temporary services to adequately care for residents that may be stricken by COVID-19.

DHSR is exercising this delegated authority in line with the guidance provided by the Center for Medicare and Medicaid Services (CMS) to help facilities achieve necessary nurse aide staffing levels during the COVID-19 pandemic. DHSR is temporarily waiving certain regulatory requirements so they do not present barriers for facilities to hire staff to provide temporary nurse aide services during of the Declaration of the State of Emergency.

In response to the COVID-19 pandemic, CMS waived the requirements at 42 CFR §483.35(d), (except for 42 CFR §483.35(d)(1)(i)), which require that a facility may not employ anyone for longer than four months unless they met the training and certification requirements under §483.35(d). To ensure the health and safety of nursing home residents, CMS has not waived §483.35(d)(1)(i), which requires facilities to not use any individual working as a nurse aide for more than four months, on a full-time basis, unless that individual is competent to provide nursing and nursing related services. Further, CMS has not waived §483.35(c), which requires facilities to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

Pursuant to the DHSR delegated authority, DHSR is waiving the regulatory requirements contained in this memorandum for the remainder of the State of Emergency. As a condition of the

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701
www.ncdhhs.gov/dhsr • TEL: 919-855-3750 • FAX: 919-733-2757

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rule waivers for temporary nurse aides to provide nursing and nursing related services, in line with the CMS waivers, facilities are required to do the following:

1. Facilities must document competencies for temporary nurse aides in the same manner that competencies are documented for full time employee nurse aides and maintain this documentation in the temporary nurse aides personnel file;
2. A Registered Nurse must validate the competencies of the temporary nurse aide prior to delegating tasks; and
3. Temporary nurse aides may not provide nursing and nursing related services after the Declaration of the State of Emergency is rescinded.

10A NCAC 13D Waivers

Rule 10A NCAC 13D .2001(23), Definitions, defines a Nurse Aide as a person listed on the N.C. Nurse Aide Registry and provides nursing or nursing-related services to patients in a nursing home. In order to remove barriers for temporary nurse aides to be readily hired from the community so a facility can expand its workforce to provide temporary services in response to the COVID-19 pandemic, the portion of 10A NCAC 13D .2001(23) requiring a Nurse Aide to be listed on the N.C. Nurse Aide Registry is waived so long as the facility can verify the temporary nurse aide is competent to provide nursing and nursing related services, consistent with the CMS waiver of requirements in § 483.35(d) and the conditions required above.

Rule 10A NCAC 13D .2304(a), Nurse Aides, requires a facility to employ or contract individuals as nurse aides that have met requirements in compliance with N.C. General Statute 131E, Article 15 and for facilities certified for Medicare or Medicaid participation in compliance with 42 CFR Part 483.35(d). In order to remove barriers for nurse aides to be readily hired from the community so a facility can expand its workforce to provide temporary services in response to the COVID-19 pandemic, 10A NCAC 13D .2304(a) is waived to allow for employment of a temporary nurse aide who is not listed on the Nurse Aide Registry during the Declaration of the State of Emergency so long as the facility can verify the temporary nurse aide is competent to provide nursing and nursing related services, consistent with the CMS waiver of requirements in § 483.35(d) and the conditions required above.

The waivers contained in this memorandum are retroactive to April 2, 2020. A waiver may be revoked if DHSR determines that conditions are not met or safeguards are not adequate to protect the health and safety of residents.

Should you have any questions about this memorandum or need additional information, please contact Becky Wertz, Section Chief of the Nursing Home Licensure and Certification Section.

cc:

Lisa Corbett
Bethany Burgon
Becky Wertz
Beverly Speroff
Cindy Deporter
Jana Busick
Rita Horton