



# Summary of the North Carolina Department of Health and Human Services Memorandum:

*Requests for Temporary Waivers or Modifications of Enforcement of the Construction, Design, and Physical Plant Requirements of Adult Care Homes*

On June 11, 2020, the North Carolina Department of Health and Human Services (“DHHS”) issued a Memorandum regarding Requests for Temporary Waivers or Modifications of Enforcement of the Construction, Design, and Physical Plant Requirements of Adult Care Homes Pursuant to 10A NCAC Subchapter 13F (“June 11 Memorandum”). The purpose of the June 11 Memorandum is to address requests for the temporary waiver or modification of requirements by adult care homes (“ACH”) regarding the use of identified space to accommodate an increase in bed capacity or a relocation of beds during the State of Emergency. The rules subject to waiver or modification are: Application of Physical Plant Requirements; Design and Construction; Physical Environment; and Special Care Unit Building Requirements.

## Process

To receive a waiver or modification of a rule subject to the June 11 Memorandum, an ACH must submit a request to the Division of Health Service Regulation (“DHSR”) for approval before using the space for an increase in beds or relocation of beds. DHSR will review the requests submitted by an ACH to determine whether they: will endanger the health, safety, or welfare of residents and visitors; and will provide necessary relief to the ACH provider responding to the COVID-19 pandemic. The ACH must receive approval of its request for it to be effective. (Please note that this is different than the blanket waivers issued by DHHS on April 24, 2020 which were applicable to ACHs without the need for providers to make individual requests.)

## Waiver or Modification Request

A provider’s request for a temporary waiver or rule modification must meet several procedural and substantive criteria. DHSR is requiring that a waiver or modification request must be:

- In writing;
- Submitted to DHSR prior to using the identified space;
- Include a floor plan (can be a photo of the evacuation plan posted in the facility);
- Describe the location where the residents will be relocated;
- Include a detailed narrative of how the new space will be utilized; and
- Identify the name and telephone number of the primary contact person.

## Rules Subject to Waiver or Modification

When submitting a request, an ACH provider may request a waiver or modification of enforcement of the following rule areas:

### 1. Application of Physical Plant Requirements

An ACH provider may request that the following provisions of 10A NCAC 13 .0301 be waived. Specifically, a provider can request a waiver of:

- The requirement that resident bedrooms and resident services are not permitted on the second floor of an ACH (10A NCAC 13F .0301(4)).
- The requirement that licensed bed capacity be in compliance with a Certificate of Need (10A NCAC 13F .0301(6)).

### 2. Design and Construction

In this section, an ACH provider can request that the following provisions of 10A NCAC 13F .0302 be waived.

- The requirement that an existing building converted from another use to an ACH shall meet all requirements of a new facility. (10A NCAC 13F .0302(c)).
- The requirement that any licensed facility that is closed or vacant for more than one year shall meet all requirements of a new facility. (10A NCAC 13F .0302(d)).



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## 3. Physical Environment

10A NCAC 13F .0305 requires that an ACH provide living arrangements that meet the needs of the residents, live-in staff, and other live-in persons. Specifically, living rooms, recreational areas, dining rooms, bedrooms, bathrooms, and storage rooms have certain space requirements and require certain amenities to function properly. In order to allow for the emergency use of space, certain space requirements for these living arrangements can be waived.

- 10A NCAC 13F .0305(b)(1)-(4).
- 10A NCAC 13F .0305(c)(1)-(4).
- 10A NCAC 13F .0305(d)(1), (5)-(7), and (10).
- 10A NCAC 13F .0305(e)(1) and (8).
- 10A NCAC 13F .0305(f)(1) and (4)(a).

## 4. Special Care Unit Building Requirements

An ACH provider with a Special Care Unit (“SCU”) may request that the following provisions of 10A NCAC 13F .1304 be waived.

- The requirements that living and dining space shall be required within the unit at a total rate of 30 square feet per resident. (10A NCAC 13F .1304(7)).
- The requirement that a toilet and hand lavatory shall be provided within the unit for every five residents. (10A NCAC 13F .1304(9)).

### Duration

A waiver or modification approved by DHSR in accordance with the June 11 Memorandum will be valid during the Governor’s declared State of Emergency.



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