



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**  
Division of Health Service Regulation

ROY COOPER • Governor  
MANDY COHEN, MD, MPH • Secretary  
MARK PAYNE • Director

MEMORANDUM

TO: North Carolina Hospital CEOs

FROM: Mark Payne *Mark*

DATE: March 12, 2020

RE: Requests for Temporary Waiver of 10A NCAC 13B.3111 to Provide Services to Patients That May Be Stricken by COVID-19

On Tuesday, March 10<sup>th</sup>, Governor Cooper issued an Executive Order declaring a State of Emergency to coordinate response to the spread of COVID-19. Pursuant to his Executive Order and General Statute 131E-84, the North Carolina Emergency Management Director, Mike Sprayberry, and Department of Health and Human Services (DHHS) Secretary Dr. Mandy Cohen have directed the Division of Health Service Regulation (DHSR) to temporarily waive certain hospital rules approved by the North Carolina Medical Care Commission to the extent necessary to allow the hospital to provide temporary shelter and temporary services to adequately care for patients that may be stricken by COVID-19.

At this time, DHSR will waive the limitations found in 10A NCAC 13B.3111 (for example, the limitation on increasing beds to 10% above licensed bed capacity when census exceeds 90%, the limitation on utilization of observation beds only, and the limitation for a period not greater than 60 consecutive days) to the extent necessary to allow a hospital to provide temporary services to adequately care for patients that may be stricken by COVID-19 based on the following parameters:

1. A hospital may temporarily increase its acute care bed capacity over its licensed bed capacity and temporarily relocate existing licensed acute care beds into physical space that meets federal life safety requirements, unless any of those requirements are waived by the Centers for Medicare and Medicaid Services (CMS) for inpatients, for the purposes of accommodating patients:
  - a. receiving treatment for COVID-19;
  - b. awaiting results of testing for COVID-19; or
  - c. relocated to accommodate other patients treated for COVID-19 elsewhere in the facility or community;

for the period of consecutive days specified in the approval of the DHSR. Such physical space may include clinical or non-clinical space within the hospital facility, including space used for other categories of licensed beds, or in other facilities or space operated as a campus of the hospital.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION  
OFFICE OF THE DIRECTOR

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2. DHSR may approve a temporary increase in licensed bed capacity or temporary relocation of inpatient beds if:
  - a. the hospital has submitted such request in writing, including, but not limited to, the number of additional beds, description of the physical space to be utilized and how it will be utilized, and the anticipated duration;
  - b. DHSR has determined that the request has met the requirements of paragraph 1 above; and
  - c. the hospital administrator provides an explanation and certifies that:
    - i. the increase in bed capacity is necessary for public health and safety in the geographic area served;
    - ii. physical facilities to be used are adequate to safeguard the health and safety of patients and will be operated in accordance with CMS hospital conditions of participation and any applicable temporary CMS requirements for inpatient care; and
    - iii. all hospital patients will receive appropriate care and their health and safety safeguarded.

This approval will be revoked if DHSR determines that these conditions are not met or safeguards are not adequate to safeguard the health and safety of patients.

A hospital may address its request to temporarily increase its acute care bed capacity to adequately care for patients that may be stricken by COVID-19 to DHSR's Acute and Home Care Licensure and Certification Section Chief, Azzie Conley, via email ([azzie.conley@dhhs.nc.gov](mailto:azzie.conley@dhhs.nc.gov)).

Cc: NC Hospital Director of Facility Plant Engineering