



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Medical Care Commission

2. Rule citation & name: 10A NCAC 13F .1801 INFECTION PREVENTION AND CONTROL POLICIES AND PROCEDURES

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 10/23/20

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/15/20
- b. Proposed Temporary Rule published on the OAH website: 10/22/20
- c. Public Hearing date: 11/04/20
- d. Comment Period: 10/23/20 – 11/16/20
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/15/20
- f. Adoption by agency on: 12/09/20
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Emergency rule Eff. 10/23/20

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of SARS-CoV-2, commonly known as COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention (CDC), and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In order to protect the health and safety of citizens residing in adult care homes and the healthcare workforce employed in these facilities, the N.C. Medical Care Commission seeks to adopt 10A NCAC 13F .1801 under temporary procedures. This regulation is needed to save lives in adult care homes and protect the health of the residents and staff.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's licensed adult care homes and family care homes, commonly known as "assisted living facilities," serve a population consisting predominantly of individuals in the age range most at risk of contracting COVID-19 (65+), and individuals with one or more of the underlying health conditions that put them at even greater risk. To date, there have been 191 COVID-19 outbreaks in these facilities, including 3,152 reported COVID-19 cases and 330 resident deaths. Currently, there are no rules governing the infection control procedures in facilities to prevent, report, and manage the spread of communicable diseases such as COVID-19. Over the past few years, the population of residents in adult care homes has not only increased in age, but also in acuity of health status and medical conditions. Where facilities have historically been considered "residential" facilities providing room and board and assistance with activities of daily living, facilities now provide more health care type services to an older and sicker population. Though extensive guidance has been issued by the CDC, N.C. DHHS, and local health departments to assist facilities in preventing and controlling the spread of COVID-19, many facilities have proven to be unprepared to handle the challenges of this pandemic. Additionally, many providers will not implement the guidance provided by infectious disease experts, putting the lives and safety of their residents, staff, and the general public at risk, citing that there is no regulatory requirement for the facility to do so. This life-threatening pandemic, unforeseen by any agency or provider, has put the lives of thousands of residents in North Carolina's adult care homes and family care homes in jeopardy. As North Carolina enters "flu season," it is critically important that facilities are prepared and staff are trained to understand the basic infection prevention practices needed to protect residents from the double impact of COVID-19 and influenza. Reducing the spread of respiratory illnesses, like influenza, is critical because of COVID 19. Therefore, the agency seeks to adopt this rule under temporary procedures to ensure that adult care homes are prepared for and adequately respond to COVID-19 and influenza by requiring infection prevention and control policies and procedures, reporting of suspected communicable disease cases, and staff training to ensure safe care of residents and protection of facility staff.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nadine Pfeiffer

Phone: 919-855-3811

E-Mail: Nadine.pfeiffer@dhhs.nc.gov

Agency contact, if any: Megan Lamphere

Phone: 919-855-3784

E-Mail: megan.lamphere@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: John Meier, IV, M.D.

Title: Chairman, N.C. Medical Care Commission

E-Mail: JJMIV1964@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13F .1801

DEADLINE FOR RECEIPT: Tuesday, December 15, 2020

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the Temporary Rule-making Finding of Need Form, Box 2, the rule name on the form does not match the rule name on the Rule. Please change one or the other to ensure the names match.

In the Rule, Paragraph (a), line 6, delete "13F" since you refer to "this Subchapter"

On line 6, I don't understand the cross-reference to Rule 13F .1211. What part of that Rule are you referring to – (a)(4) for infection control?

Also on line 6, I do not fully understand the citation to G.S. 131D-4.4A(b)(1), as that refers to bloodborne pathogens. Is what is in the Rule in addition to that statutorily required plan?

On line 7, what is "comprehensive" here?

On line 8, I recommend incorporating the CDC standards by reference here, using G.S. 150B-21.6.

In (b)(1), line 14, I take it that you are using "standard" and "transmission-based" precautions to mirror the language used in the CDC website?

Please end (b)(1)(E), line 20, with an "and" after "(PPE);"

In (b)(1)(F), line 21, and elsewhere the term is used, what do you mean by "where indicated"? Does your regulated public know?

In (b)(2), line 25, please delete "13F"

In (b)(3), line 28, so that I'm clear – I take it "as tolerated" will be determined by the facility?

In (b)(7), line 37, will the determination of "as necessary" will be by the facility?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 11, 2020

In (d), Page 2, line 10, strike "13F"

On 12, what do you mean by "trained" instructor? Is there a specific requirement for who does the training? Will this be the training pursuant to G.S. 131D-4.5C?

In (e), line 15, is "proper" mean "consistent with the manufacturer's specifications"?

In the History Note, line 25, why are you citing to G.S. 131D-4.5?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 11, 2020

10A NCAC 13F .1801 is adopted under temporary procedures with changes as follows:

SECTION .1800 - INFECTION PREVENTION AND CONTROL

10A NCAC 13F .1801 INFECTION PREVENTION AND CONTROL PROGRAM

(a) In accordance with Rule 13F .1211 of this Subchapter and G.S. 131D-4.4A(b)(1), the facility shall establish and implement a comprehensive infection prevention and control program (IPCP) consistent with the federal Centers for Disease Control and Prevention (CDC) published guidelines on infection prevention and control.

~~(b) The facility shall ensure implementation of the facility's IPCP, related policies and procedures, and guidance or directives issued by the CDC, the local health department, and/or the North Carolina Department of Health and Human Services.~~

~~(c)~~ (b) The facility shall assure the following policies and procedures are established and implemented consistent with the federal CDC published guidelines on infection control and addresses ~~at least~~ the following:

- (1) Standard and transmission-based precautions, for which guidance can be found on the CDC website at <https://www.cdc.gov/infectioncontrol/basics>, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE);
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;
- (2) When and how to report to the local health department when there is a suspected or confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule 13F .1802 of this Section:
- (3) Resident care when there is suspected or confirmed communicable disease in the facility, including, when indicated, isolation of infected residents, limiting or stopping group activities and communal dining, and based on the mode of transmission, use of source control as tolerated by the residents. Source control includes the use of face coverings for residents when the mode of transmission is through a respiratory pathogen:
- (4) Procedures for screening visitors to the facility and criteria for restricting visitors who exhibit signs of illness, as well as posting signage for visitors regarding screening and restriction procedures;
- (5) Procedures for screening facility staff and criteria for restricting staff who exhibit signs of illness from working;
- (6) Procedures and strategies for addressing staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak;
- (7) The annual review of the facility's IPCP and update of the IPCP as necessary; and

(8) a process for updating policies and procedures to reflect guidelines and recommendations by the CDC, local health department, and North Carolina Department of Health and Human Services (NCDHHS) during a public health emergency as declared by the United States and that applies to North Carolina or a public health emergency declared by the State of North Carolina.

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's IPCP, related policies and procedures, and published guidance issued by the CDC; however, if guidance or directives specific to the communicable disease outbreak or emerging infectious disease threat have been issued in writing by the NCDHHS or local health department, the specific guidance or directives shall be implemented by the facility.

(d) In accordance with Rule 13F .1211 of this Subchapter, the facility shall ensure all staff are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs ~~(e)(1)~~ (b)(1) through (5) of this Rule. Training on Parts ~~(e)(1)(D)~~ (b)(1)(D) and (E) of this Rule shall include hands-on demonstration by a trained instructor and return demonstration by the staff person.

(e) The facility shall ensure that, prior to administration, all staff responsible for administering tests to residents for the diagnosis of a communicable disease or condition shall be trained on the proper use of testing devices and materials consistent with manufacturer's specifications.

(f) The facility shall ensure staff employed in a management or supervisory role in the facility are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs ~~(e)(1)~~ (b)(1) through (6) of this Rule.

(g) The policies and procedures listed in Paragraph ~~(e)~~ (b) of this Rule shall be maintained in the facility and accessible to staff working at the facility.

~~(h) The facility shall ensure that the IPCP is incorporated into the facility's emergency preparedness disaster plan and updated as needed to~~ shall address any emerging infectious disease threats to protect the residents during a shelter-in-place or emergency evacuation event.

History Note: Authority G.S. 131D-2.16; 131D-4.4A; 131D-4.5; 143B-165;

Emergency Adoption Eff. October 23, 2020; 2020;

Temporary Adoption Eff. December 30, 2020.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Medical Care Commission

2. Rule citation & name: 10A NCAC 13F .1802 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED COMMUNICABLE DISEASE OUTBREAK

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 10/23/20

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/15/20
- b. Proposed Temporary Rule published on the OAH website: 10/22/20
- c. Public Hearing date: 11/04/20
- d. Comment Period: 10/23/20 – 11/16/20
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/15/20
- f. Adoption by agency on: 12/09/20
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Emergency rule Eff. 10/23/20

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of SARS-CoV-2, commonly known as COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention (CDC), and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In order to protect the health and safety of citizens residing in adult care homes and the healthcare workforce employed in these facilities, the N.C. Medical Care Commission seeks to adopt 10A NCAC 13F .1802 under temporary procedures. This regulation is needed to save lives in adult care homes and protect the health of the residents and staff.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's licensed adult care homes and family care homes, commonly known as "assisted living facilities," serve a population consisting predominantly of individuals in the age range most at risk of contracting COVID-19 (65+), and individuals with one or more of the underlying health conditions that put them at even greater risk. To date, there have been 191 COVID-19 outbreaks in these facilities, including 3,152 reported COVID-19 cases and 330 resident deaths. Currently, there are no rules governing the infection control procedures in facilities to prevent, report, and manage the spread of communicable diseases such as COVID-19. Over the past few years, the population of residents in adult care homes has not only increased in age, but also in acuity of health status and medical conditions. Where facilities have historically been considered "residential" facilities providing room and board and assistance with activities of daily living, facilities now provide more health care type services to an older and sicker population. Though extensive guidance has been issued by the CDC, N.C. DHHS, and local health departments to assist facilities in preventing and controlling the spread of COVID-19, many facilities have proven to be unprepared to handle the challenges of this pandemic. Additionally, many providers will not implement the guidance provided by infectious disease experts, putting the lives and safety of their residents, staff, and the general public at risk, citing that there is no regulatory requirement for the facility to do so. This life-threatening pandemic, unforeseen by any agency or provider, has put the lives of thousands of residents in North Carolina's adult care homes and family care homes in jeopardy. As North Carolina enters "flu season," it is critically important that facilities are prepared and staff are trained to understand the basic infection prevention practices needed to protect residents from the double impact of COVID-19 and influenza. Reducing the spread of respiratory illnesses, like influenza, is critical because of COVID 19. Therefore, the agency seeks to adopt this rule under temporary procedures to ensure that adult care homes are prepared for and adequately respond to COVID-19 and influenza by requiring infection prevention and control policies and procedures, reporting of suspected communicable disease cases, and staff training to ensure safe care of residents and protection of facility staff.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nadine Pfeiffer

Phone: 919-855-3811

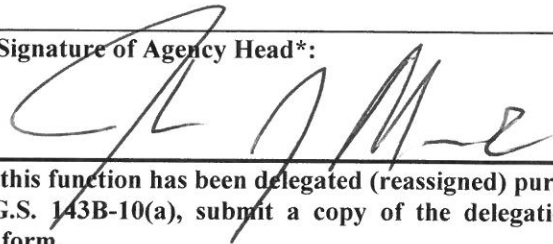
E-Mail: Nadine.pfeiffer@dhhs.nc.gov

Agency contact, if any: Megan Lamphere

Phone: 919-855-3784

E-Mail: megan.lamphere@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: John Meier, IV, M.D.

Title: Chairman, N.C. Medical Care Commission

E-Mail: JJMIV1964@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13F .1802

DEADLINE FOR RECEIPT: Tuesday, December 15, 2020

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, please state "which are hereby incorporated by reference, including subsequent amendments."

In (b), so that I'm clear – on line 12, you refer to a "communicable disease outbreak" and then on line 13, you separate COVID-19. Is this not also a communicable disease? I also note that novel coronavirus is a reportable disease pursuant to Rule 10A NCAC 41A .0101. Or do you want to particularly draw attention to COVID-19?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 11, 2020

10A NCAC 13F .1802 is adopted under temporary procedures with changes as follows:

**10A NCAC 13F .1802 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED
COMMUNICABLE DISEASE OUTBREAK**

(a) The facility shall report suspected or confirmed communicable diseases and conditions within the time period and in the manner determined by the Commission for Public Health as specified in Rules 10A NCAC 41A .0101 and 10A NCAC 41A .0102(a)(1) through (a)(3), including subsequent amendments and editions.

~~(b) The facility shall implement recommendations to the greatest extent practicable provided by the local health department in response to a suspected or confirmed communicable disease case or condition or communicable disease outbreak.~~

~~(e)~~ (b) The facility shall inform the residents and their representative(s) and staff within 24 hours following confirmation by the local health department of a communicable disease outbreak, or one or more confirmed cases of COVID-19 among any resident or staff person. The facility, in its notification to residents and their representative(s), shall:

- (1) not disclose any personally identifiable information of the residents or staff;
- (2) provide information on the measures the facility is taking to prevent or reduce the risk of transmission, including whether normal operations of the facility will change;
- (3) provide weekly updates until the communicable illness within the facility has resolved, as determined by the local health department; and
- (4) provide education to the resident(s) concerning measures they can take to reduce the risk of spread or transmission of infection.

History Note: Authority G.S. 131D-2.16; 131D-4.4B; 131D-4.5; 143B-165;

Emergency Adoption Eff. October 23, ~~2020~~ 2020;

Temporary Adoption Eff. December 30, 2020.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Medical Care Commission

2. Rule citation & name: 10A NCAC 13G .1701 INFECTION PREVENTION AND CONTROL POLICIES AND PROCEDURES

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 10/23/20

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/15/20
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7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

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☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nadine Pfeiffer

Phone: 919-855-3811

E-Mail: Nadine.pfeiffer@dhhs.nc.gov

Agency contact, if any: Megan Lamphere

Phone: 919-855-3784

E-Mail: megan.lamphere@dhhs.nc.gov

10. Signature of Agency Head:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: John Meier, IV, M.D.

Title: Chairman, N.C. Medical Care Commission

E-Mail: JJMIV1964@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13G .1701

DEADLINE FOR RECEIPT: Tuesday, December 15, 2020

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In Box 6, you have a minor typographical error where you refer to Rule 13G .1801. Please correct the citation.

In the Rule, Paragraph (a), line 6, delete "13G" since you refer to "this Subchapter"

On line 6, I don't understand the cross-reference to Rule 13G .1211. What part of that Rule are you referring to – (a)(4) for infection control?

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In (b)(1), line 14, I take it that you are using "standard" and "transmission-based" precautions to mirror the language used in the CDC website?

Please end (b)(1)(E), line 20, with an "and" after "(PPE);"

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Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 11, 2020

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Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 11, 2020

10A NCAC 13G .1701 is adopted under temporary procedures with changes as follows:

SECTION .1700 - INFECTION PREVENTION AND CONTROL

10A NCAC 13G .1701 INFECTION PREVENTION AND CONTROL PROGRAM

(a) In accordance with Rule 13G .1211 of this Subchapter and G.S. 131D-4.4A(b)(1), the facility shall establish and implement a comprehensive infection prevention and control program (IPCP) consistent with the federal Centers for Disease Control and Prevention (CDC) published guidelines on infection prevention and control.

~~(b) The facility shall ensure implementation of the facility's IPCP, related policies and procedures, and guidance or directives issued by the CDC, the local health department, and/or the North Carolina Department of Health and Human Services.~~

~~(c)~~ (b) The facility shall assure the following policies and procedures are established and implemented consistent with the federal CDC published guidelines on infection control and addresses ~~at least~~ the following:

- (1) Standard and transmission-based precautions, for which guidance can be found on the CDC website at <https://www.cdc.gov/infectioncontrol/basics>, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE);
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;
- (2) When and how to report to the local health department when there is a suspected or confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule 13G .1702 of this Section:
- (3) Resident care when there is suspected or confirmed communicable disease in the facility, including, when indicated, isolation of infected residents, limiting or stopping group activities and communal dining, and based on the mode of transmission, use of source control as tolerated by the residents. Source control includes the use of face coverings for residents when the mode of transmission is through a respiratory pathogen:
- (4) Procedures for screening visitors to the facility and criteria for restricting visitors who exhibit signs of illness, as well as posting signage for visitors regarding screening and restriction procedures;
- (5) Procedures for screening facility staff and criteria for restricting staff who exhibit signs of illness from working;
- (6) Procedures and strategies for addressing staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak;
- (7) The annual review of the facility's IPCP and update of the IPCP as necessary; and

(8) a process for updating policies and procedures to reflect guidelines and recommendations by the CDC, local health department, and North Carolina Department of Health and Human Services (NCDHHS) during a public health emergency as declared by the United States and that applies to North Carolina or a public health emergency declared by the State of North Carolina.

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's IPCP, related policies and procedures, and published guidance issued by the CDC; however, if guidance or directives specific to the communicable disease outbreak or emerging infectious disease threat have been issued in writing by the NCDHHS or local health department, the specific guidance or directives shall be implemented by the facility.

(d) In accordance with Rule 13G .1211 of this Subchapter, the facility shall ensure all staff are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs ~~(e)(1)~~ (b)(1) through (5) of this Rule. Training on Parts ~~(e)(1)(D)~~ (b)(1)(D) and (E) of this Rule shall include hands-on demonstration by a trained instructor and return demonstration by the staff person.

(e) The facility shall ensure that, prior to administration, all staff responsible for administering tests to residents for the diagnosis of a communicable disease or condition shall be trained on the proper use of testing devices and materials consistent with manufacturer's specifications.

(f) The facility shall ensure staff employed in a management or supervisory role in the facility are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs ~~(e)(1)~~ (b)(1) through (6) of this Rule.

(g) The policies and procedures listed in Paragraph ~~(e)~~ (b) of this Rule shall be maintained in the facility and accessible to staff working at the facility.

~~(h) The facility shall ensure that the IPCP is incorporated into the facility's emergency preparedness disaster plan and updated as needed to~~ shall address any emerging infectious disease threats to protect the residents during a shelter-in-place or emergency evacuation event.

History Note: Authority G.S. 131D-2.16; 131D-4.4A; 131D-4.5; 143B-165;

Emergency Adoption Eff. October 23, 2020; 2020;

Temporary Adoption Eff. December 30, 2020.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Medical Care Commission

2. Rule citation & name: 10A NCAC 13G .1702 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED COMMUNICABLE DISEASE OUTBREAK

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 10/23/20

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 10/15/20
- b. Proposed Temporary Rule published on the OAH website: 10/22/20
- c. Public Hearing date: 11/04/20
- d. Comment Period: 10/23/20 – 11/16/20
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/15/20
- f. Adoption by agency on: 12/09/20
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Emergency rule Eff. 10/23/20

Explain: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of SARS-CoV-2, commonly known as COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention (CDC), and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In order to protect the health and safety of citizens residing in family care homes and the healthcare workforce employed in these facilities, the N.C. Medical Care Commission seeks to adopt 10A NCAC 13G .1802 under temporary procedures. This regulation is needed to save lives in family care homes and protect the health of the residents and staff.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's licensed adult care homes and family care homes, commonly known as "assisted living facilities," serve a population consisting predominantly of individuals in the age range most at risk of contracting COVID-19 (65+), and individuals with one or more of the underlying health conditions that put them at even greater risk. To date, there have been 191 COVID-19 outbreaks in these facilities, including 3,152 reported COVID-19 cases and 330 resident deaths. Currently, there are no rules governing the infection control procedures in facilities to prevent, report, and manage the spread of communicable diseases such as COVID-19. Over the past few years, the population of residents in adult care homes has not only increased in age, but also in acuity of health status and medical conditions. Where facilities have historically been considered "residential" facilities providing room and board and assistance with activities of daily living, facilities now provide more health care type services to an older and sicker population. Though extensive guidance has been issued by the CDC, N.C. DHHS, and local health departments to assist facilities in preventing and controlling the spread of COVID-19, many facilities have proven to be unprepared to handle the challenges of this pandemic. Additionally, many providers will not implement the guidance provided by infectious disease experts, putting the lives and safety of their residents, staff, and the general public at risk, citing that there is no regulatory requirement for the facility to do so. This life-threatening pandemic, unforeseen by any agency or provider, has put the lives of thousands of residents in North Carolina's adult care homes and family care homes in jeopardy. As North Carolina enters "flu season," it is critically important that facilities are prepared and staff are trained to understand the basic infection prevention practices needed to protect residents from the double impact of COVID-19 and influenza. Reducing the spread of respiratory illnesses, like influenza, is critical because of COVID 19. Therefore, the agency seeks to adopt this rule under temporary procedures to ensure that family care homes are prepared for and adequately respond to COVID-19 and influenza by requiring infection prevention and control policies and procedures, reporting of suspected communicable disease cases, and staff training to ensure safe care of residents and protection of facility staff.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Nadine Pfeiffer

Phone: 919-855-3811

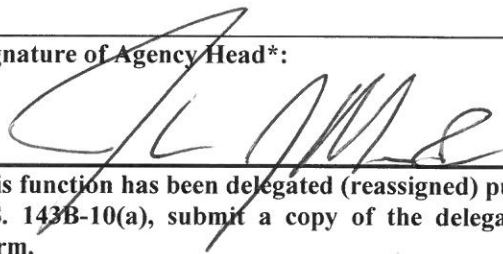
E-Mail: Nadine.pfeiffer@dhhs.nc.gov

Agency contact, if any: Megan Lamphere

Phone: 919-855-3784

E-Mail: megan.lamphere@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: John Meier, IV, M.D.

Title: Chairman, N.C. Medical Care Commission

E-Mail: JJMIV1964@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 13G .1702

DEADLINE FOR RECEIPT: Tuesday, December 15, 2020

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, please state “which are hereby incorporated by reference, including subsequent amendments.”

In (b), so that I’m clear – on line 12, you refer to a “communicable disease outbreak” and then on line 13, you separate COVID-19. Is this not also a communicable disease? I also note that novel coronavirus is a reportable disease pursuant to Rule 10A NCAC 41A .0101. Or do you want to particularly draw attention to COVID-19?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 11, 2020

1 10A NCAC 13G .1702 is adopted under temporary procedures with changes as follows:

2
3 **10A NCAC 13G .1702 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED**
4 **COMMUNICABLE DISEASE OUTBREAK**

5 (a) The facility shall report suspected or confirmed communicable diseases and conditions within the time period and
6 in the manner determined by the Commission for Public Health as specified in Rules 10A NCAC 41A .0101 and 10A
7 NCAC 41A .0102(a)(1) through (a)(3), including subsequent amendments and editions.

8 ~~(b) The facility shall implement recommendations to the greatest extent practicable provided by the local health~~
9 ~~department in response to a suspected or confirmed communicable disease case or condition or communicable disease~~
10 ~~outbreak.~~

11 ~~(e)~~ (b) The facility shall inform the residents and their representative(s) and staff within 24 hours following
12 confirmation by the local health department of a communicable disease outbreak, or one or more confirmed cases of
13 COVID-19 among any resident or staff person. The facility, in its notification to residents and their representative(s),
14 shall:

- 15 (1) not disclose any personally identifiable information of the residents or staff;
- 16 (2) provide information on the measures the facility is taking to prevent or reduce the risk of
17 transmission, including whether normal operations of the facility will change;
- 18 (3) provide weekly updates until the communicable illness within the facility has resolved, as
19 determined by the local health department; and
- 20 (4) provide education to the resident(s) concerning measures they can take to reduce the risk of spread
21 or transmission of infection.

22
23 *History Note: Authority G.S. 131D-2.16; 131D-4.4B; 131D-4.5; 143B-165;*

24 *Emergency Adoption Eff. October 23, ~~2020~~ 2020;*

25 *Temporary Adoption Eff. December 30, 2020.*