

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-160
HOUSE BILL 1777**

AN ACT TO DELAY THE EFFECTIVE DATE OF CERTAIN ADMINISTRATIVE RULES GOVERNING SANITATION OF HOSPITALS, NURSING HOMES, REST HOMES, AND OTHER INSTITUTIONS; TO PROVIDE FOR A FIELD TEST OF THOSE RULES; TO AUTHORIZE THE COMMISSION FOR HEALTH SERVICES TO ADOPT TEMPORARY AND PERMANENT RULES TO AMEND THOSE RULES; TO AUTHORIZE THE MEDICAL CARE COMMISSION TO ADOPT TEMPORARY AND PERMANENT RULES GOVERNING LICENSING OF FAMILY CARE HOMES AND HOMES FOR THE AGED AND INFIRM; AND TO REQUIRE THE SECRETARY OF HEALTH AND HUMAN SERVICES AND THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO DEVELOP A PROCESS FOR EXPEDITING REVIEW OF REQUESTS FOR WAIVERS FROM RULES PERTAINING TO MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 150B-21.3(b), amendments to the following rules governing sanitation of hospitals, nursing homes, rest homes, and other institutions, adopted by the Commission for Health Services and approved by the Rules Review Commission on 18 October 2001, become effective 1 March 2003: 15A NCAC 18A .1301 (Definitions), 15A NCAC 18A .1302 (Approval of Plans), 15A NCAC 18A .1304 (Inspections), 15A NCAC 18A .1305 (Grading Residential Care Facilities in Institutions), 15A NCAC 18A .1306 (Public Display of Grade Card), 15A NCAC 18A .1307 (Reinspections), 15A NCAC 18A .1308 (Approved Institutions), 15A NCAC 18A .1309 (Floors), 15A NCAC 18A .1310 (Walls and Ceilings), 15A NCAC 18A .1312 (Toilet: Handwashing: Laundry: and Bathing Facilities), 15A NCAC 18A .1313 (Water Supply), 15A NCAC 18A .1314 (Drinking Water Facilities: Ice Handling), 15A NCAC 18A .1315 (Liquid Wastes), 15A NCAC 18A .1316 (Solid Wastes), 15A NCAC 18A .1317 (Vermin Control: Premises: Animal Maintenance), 15A NCAC 18A .1318 (Miscellaneous), 15A NCAC 18A .1319 (Furnishings and Patient Contact Items), 15A NCAC 18A .1320 (Food Service Utensils and Equipment), 15A NCAC 18A .1322 (Milk and Milk Products), 15A NCAC 18A .1323 (Food Protection), and 15A NCAC 18A .1324 (Employees).

SECTION 2. Notwithstanding G.S. 150B-21.3(b), 15A NCAC 18A .1327 (Incorporated Rules) adopted by the Commission for Health Services and approved by the Rules Review Commission on 18 October 2001 becomes effective 1 March 2003.

SECTION 3. Notwithstanding G.S. 150B-21.3(b), amendments to 15A NCAC 18A .1311 (Lighting, Ventilation and Moisture Control) and 15A NCAC 18A .1321 (Food Supplies) adopted by the Commission for Health Services and approved by the Rules Review Commission on 15 November 2001 become effective 1 March 2003.

SECTION 4. The Division of Environmental Health of the Department of Environment and Natural Resources, with the assistance of local health departments, shall field test the amended rules listed in Sections 1 through 3 of this act by conducting trial inspections of a representative sample of facilities subject to the amended rules throughout the State. Trial inspections under the amended rules shall be performed

during the period 1 October 2002 through 1 February 2003 in conjunction with the regular inspection of the representative sample of facilities under rules in effect during the field test period. A facility that is subject to a trial inspection shall not be liable for an enforcement action for any violation of an amended rule that is observed during a trial inspection but may be liable for an enforcement action under rules in effect during the field test period. The purposes of the field test shall be to determine what expenditures, if any, will be required of facilities in order to comply with the amended rules and whether the amended rules will result in lower inspection grades for facilities. As a part of the field test, the Division shall also review the amended rules, giving particular attention to applicable federal regulations and to the incorporation by reference of any other rules or standards in the amended rules, to determine whether the amended rules will result in any duplication or conflict in applicable requirements or standards and whether the amended rules will result in duplicative or conflicting inspection or enforcement policies or procedures. The Division of Environmental Health shall compile and analyze field test data to determine whether any of the amended rules should be revised. The Division shall report the results of the field test required by this section, any recommendations to the Commission for Health Services regarding revisions to the amended rules, and the status of any recommended rule revisions to the Environmental Review Commission on or before 1 March 2003.

SECTION 5. The Division of Environmental Health of the Department of Environment and Natural Resources shall offer training to staff of facilities that are subject to the amended rules listed in Sections 1 through 3 of this act. Training shall be offered in the various regions of the State as appropriate and shall include information on the requirements of the amended rules, enforcement policies and procedures, and updated information as to any revisions to the amended rules that may be recommended as a result of the field test of the amended rules required by Section 4 of this act.

SECTION 6.(a) This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a).

SECTION 6.(b) Notwithstanding Sections 1 through 3 of this act, the Commission for Health Services may adopt temporary and permanent rules to further delay the effective date of any of the rules listed in Sections 1 through 3 of this act. The Commission for Health Services may adopt temporary and permanent rules to revise any of the rules listed in Sections 1 through 3 of this act.

SECTION 6.(c) The Medical Care Commission may adopt temporary and permanent rules to amend Subchapter 42C (Licensing of Family Care Homes) and Subchapter 42D (Licensing of Homes for the Aged and Infirm) of Chapter 42 (Individual and Family Support) of Title 10 (Department of Health and Human Services) of the North Carolina Administrative Code. Prior to the adoption of temporary rules under this subsection, the Commission shall:

- (1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.
- (2) Notify persons on the mailing list that the Commission maintains pursuant to G.S. 150B-21.2(d) of its intent to adopt a temporary rule.
- (3) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.
- (4) Hold at least one public hearing on the proposed temporary rule.

SECTION 6.(d) Notwithstanding 26 NCAC 2C .0102(11), the Commission for Health Services and the Medical Care Commission may adopt temporary rules as provided in this section until 1 July 2003.

SECTION 7.(a) For the purpose of promoting innovation and efficiency and improving quality of care in the implementation of mental health system reform, the Secretary of Health and Human Services, and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall expedite the process for waiver of rules authorized under G.S. 122C-112.1 and G.S. 122C-114 as provided in this section.

SECTION 7.(b) If an area authority or county program requests a waiver of one or more rules adopted by the Secretary of Health and Human Services or by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in order to implement its business plan developed under G.S. 122C-115.2, then the Secretary shall review and approve or deny the request for waiver of one or more rules adopted by the Secretary within 10 days of receipt of the request for waiver. The Commission shall review and approve or deny the request for waiver of one or more rules adopted by the Commission not later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with this section and with rules governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-114, except that if under the rules the time for review of the waiver is longer than the time required under this section, then this section applies. If the request for waiver is denied, the denial shall be in writing and shall state the grounds on which the denial is based. Appeals of denial of the waiver shall be in accordance with applicable rules adopted pursuant to G.S. 122C-112.1 and G.S. 122C-114. If the request for waiver is approved, the waiver shall be in effect for a period not to exceed three years or the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Prior to considering, or presenting to the Commission for consideration, a request for waiver submitted pursuant to this section, the Secretary shall review the request to ensure that the waiver furthers the purposes of mental health reform, does not compromise quality of care, effectiveness, and efficiency in program administration and service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding by the Secretary that the request for waiver complies with this section, the request for waiver shall be reviewed in accordance with this section.

SECTION 7.(c) The Secretary shall report on the Department's activities under this section to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report shall be submitted by 1 October 2002 and annually thereafter.

SECTION 8. This act is effective when it becomes law. Section 7 of this act expires 1 July 2005.

In the General Assembly read three times and ratified this the 26th day of September, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:00 a.m. this 17th day of October, 2002