

NC Legislative Update: April 14, 2020

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The General Assembly is set to return to Raleigh for the Short Legislative Session on April 28. Leadership has indicated that the session will focus on passing legislation to deal with the COVID-19 crisis, and controversial issues are expected to be put off until later in the year. The House has been holding committee meetings to hear from groups responding to the COVID-19 crisis, and is working on developing draft legislation. The House Select Committee on COVID-19 Economic Support Working Group has released two bill drafts. The first draft, Small Business Emergency Loans, would appropriate \$25 million to the Golden L.E.A.F. Foundation to be used for bridge loans to small businesses adversely affected by the COVID-19 pandemic. The second draft, the COVID-19 Response Act, would waive the interest on taxes paid after the April 15, 2020 due date until July 15, 2020. The draft also affirms several executive orders pertaining to unemployment insurance, and creates a tax credit for employers based on their contributions payable for the April State Unemployment Tax Act (SUTA) report. The draft also contains language to allow individuals claiming unemployment insurance to satisfy the weekly job contacts requirement by attending a reemployment activity, allow employers to initiate claims for employees during declared emergencies, and specifies that a lien for property taxes does not take priority over a previously filed lien for past due contributions.

Due to the pandemic, legislators are expected to hold virtual committee meetings when they return, but will have to vote in-person when bills get to the floor. Many of the other logistics are being worked out to allow members to safely gather and vote. We anticipate this session will last three days with the vote for the legislation almost unanimous. We anticipate the legislature will reconvene later in the summer to address the budget and other issues that cannot be fully anticipated at this time, along with issues subject to the adjournment resolution. However, always remember that the legislature is subject to be reconvened at any time upon the call of the Governor.

WRAL: <https://www.wral.com/coronavirus/nc-house-moving-toward-april-28-session-april-30-covid-19-votes/19049650/>

The Governor has issued two additional Executive Orders since our last newsletter. The first, E.O. 130 focuses on Department of Health and Human Services needs, and the second, E.O. 131, puts mandatory policies in place for retail establishments, tightens safety protocols at nursing facilities, and takes steps to expedite unemployment insurance application approvals. See summaries of both orders below.

Executive Order No. 130: Health and Human Services Needs – April 8, 2020

- Section 1A: Authorizes the Department of Health and Human Services (DHHS) Secretary to waive or modify regulatory or legal constraints to allow health care providers increase bed capacity, relocate beds, add or relocate dialysis stations, and allow ambulatory surgical care facilities to operate as temporary hospitals.
- Section 1B: States that this Section is temporary and lasts for 30 days after the State of Emergency has ended.
- Section 1C: Affirms previous Division of Health Services Regulation (DHSR) actions to temporarily increase hospital and nursing home bed capacity.
- Section 1D: States that before bed capacity is increased or beds are relocated, a request must be submitted and approved by DHSR. The request must include the number of new beds, and, for relocations, specify from what location the beds are being taken and what location they are going. The application is also required to certify that the request is in public health interest.
- Section 1E: Outlines the requirements for adding or relocating dialysis stations.
- Section 1F: Outlines the process for requests to acquiring medical imaging equipment.
- Section 1G: Outlines the process for requests from ambulatory surgical care facilities to operate as temporary hospitals.
- Section 1H: Temporarily waives the requirements to obtain a Certificate of Need in the applicable above provisions.
- Section 2A: Allows DHHS to waive or modify childcare facility regulations and staffing requirements.
- Section 2B: Requires DHHS to establish Emergency Facility Guild lines for childcare facilities.
- Section 2C: Defines children eligible to be served at approved childcare facilities as children of employees of COVID-19 Essential Businesses and Operations, children receiving child welfare services, or children who are homeless or in unsafe living arrangements.
- Section 2D: States that child care facilities that open or reopen must sign the Emergency Child Care Provider Application approved by DHHS.
- Section 2E: States that child care facilities must close unless approved under this section.
- Section 2F: Requires DHHS to develop a process to implement this Section and maintain a registry of available child care.
- Section 2G: States that this Section is temporary and only effective as long as this Executive Order.
- Section 2H: States that this Section supplements, rather than restrict, the authority granted in Section 1 of Executive Order 119.

- Section 3A: Allows professional care licensure boards to waive or modify regulatory constraints to allow individuals to provide care if they meet any of the following requirements:
 - Licensed in another state
 - Retired or have an inactive license
 - A student at an appropriately advanced level of professional study
 - Licensing boards shall document their waivers and modifications, as well as, issue guidance on training and qualifications. These waivers and modifications are temporary and only apply while this Executive Order is in effect.
- Section 3B: Requires the Director of Emergency Management to identify resources available for response through the Emergency Management Assistance Compact (EMAC). EMAC requests are to be coordinated and authorized by the Emergency Management Director. This Section also allows out-of-state licensed health care providers to apply to a North Carolina licensure board for permission to practice via telehealth. The Section also specifies that when North Carolina requests assistance through the EMAC, then individuals licensed in another state for professional or mechanical skills is deemed to be licensed in North Carolina. Employees and emergency management workers responding to an EMAC request for aid are given tort liability immunity for actions as a result of rendering aid.
- Section 3C: Insulates from civil liability those providing emergency management services and those performing health care services.
- Section 4A: Allows the Secretary of DHHS to waive the expiration of permits for restaurants transferring ownership, and to extend the expiration of breath alcohol tests by 12 months.
- Section 4B: States that the waivers and modifications of this Section are temporary.
- Section 5A: Allows the Secretary of DHHS to waive or modify the enforcement of regulatory constraints that restrict or prevent the access to treatment for mental health, intellectual/ developmental disabilities, or substance abuse (MH/DD/SAS). This includes waving regulations on retraining, teaching, supervision plans, minimum hours per week, direct supervision ratios, annual exams, staffing levels, drug screenings, and in-home rules.
- Section 5B: States that this Section is temporary.
- Section 6A: Allows the DHHS Secretary to waive or modify legal or regulatory constraints to allow the Program of All Inclusive Care of for the Elderly (PACE) to provide in-home care.
- Section 6B: Allows the DHHS Secretary to waive or modify enforcement of regulations that would prevent in-home assessments or supervisory visits from being done remotely.
- Section 6C: Grants additional time for background checks for private health care facilities serving at-risk populations, provided that certain conditions are met.
- Section 6D: States that this Section is temporary and is only effective while this Executive Order is in place.
- Section 7A: Allows the DHHS Secretary to waive the requirement that Special Assistance Program (SAP) applications have to be submitted in-person. Also allows the Secretary to waive the requirement that SAP eligibility be reviewed every 12 months, but does require eligibility to be reviewed 90 days after this Executive Order ends. This Section also allows criteria for loss of benefits to be waived and allows certain assessments and reassessments to be done remotely. The Secretary also has the authority under this Section to waive fire and

building inspection requirements for foster homes, as long as the homes have passed inspection in the last 30 months.

- Section 7B: States that this Section is temporary and is only effective while this Executive Order is in place.
- Section 8: States that this Executive Order does not create a private right of action any individual against the State of North Carolina or its subdivisions.
- Section 9: States that if any portion of this Executive Order is held invalid, then it does not invalidate the other portions of the Order.
- Section 10: Directs this Executive order to be distributed to news outlets, filed with the DPS Secretary, Secretary of State, and Clerks of Superior Court, and the Order be distributed to others as necessary.
- Section 11: Unless stated elsewhere, the Order became effective immediately and remains in effect for 60 days, unless rescinded or replaced by another executive order.

Executive Order No. 131: Retail Establishment and Long Term Care Facility Rules, and Unemployment Insurance Changes – April 9, 2020

- Section 1A: Limits the maximum capacity for retail establishments to 20% of their fire capacity or five customers per 1,000 square feet.
- Section 1B: Mandates that retail establishments must enact social distancing measures, including lines at registers and other high-traffic areas.
- Section 1C: States that retail establishments must perform routine cleaning and disinfecting.
- Section 1D: Specifies that businesses allowed to stay open under previous executive orders must comply with these new policies.
- Section 1E: States that this Executive Order does not allow any business previously ordered to close to reopen.
- Section 1F: Preempts local orders that set different occupancy standards for retail establishments.
- Section 1G: States that this Section became effective April 13, 2020, and is in effect for 30 days.
- Section 2A: Encourages retail establishments to educate employees on face covering and social distancing.
- Section 2B: Encourages retail establishments to place hand sanitizer around their facility and to have employees wash hands frequently.
- Section 2C: Encourages retail establishments to have designated shopping times for at-risk populations.
- Section 2D: Encourages retail establishments to place social distancing signs around their facility.
- Section 2F: Encourages retail establishments to utilize remote ordering and curbside pickup methods, and to contact-free checkouts.
- Section 2G: Encourages retail establishments with high volume to take additional steps, such as plastic shields at registers.

- Section 3A: States that the provisions of this section are mandatory for skilled nursing facilities and is encouraged for other long term care facilities.
- Section 3B: Skilled nursing facilities are required to remind staff to stay at home when sick, screen staff before shifts, cancel group dining and activities, implement universal face masks for all staff (if supplies allow), monitor new residents for symptoms, and to notify the local health department of any COVID-19 confirmed or suspected cases for staff and residents.
- Section 3C: Encourages other care facilities to take the steps listed above.
- Section 3D: States that this Section is effective April 10, 2020 and remains in effect until changed by an Executive Order.
- Section 4A: Allows the Department of Commerce to take steps to expedite the processing of unemployment insurance claims.
- Section 4: The Department is allowed to waive requirements that employers prepay the Division of Employment Security and requirements that employers have a positive balance with the Division. The Division will also be allowed to accept attached claims filed by employers on behalf of employees. The Division is also allowed to accept claims exceeding six weeks for partial unemployment. This Section is effective retroactively to April 1, 2020 and remains in effect for 60 days.
- Section 5: States that this Executive Order does not create a private right of action any individual against the State of North Carolina or its subdivisions.
- Section 6: States that if any portion of this Executive Order is held invalid, then it does not invalidate the other portions of the Order.
- Section 7: Directs this Executive order to be distributed to news outlets, filed with the DPS Secretary, Secretary of State, and Clerks of Superior Court, and the Order be distributed to others as necessary.
- Section 8: States that this Executive Order will be enforced by local and state law enforcement officers, and that a violation of this Order is punishable as a Class 2 misdemeanor. Also states that this Order does not preempt any court orders.
- Section 9: Unless stated elsewhere, the Order became effective immediately and remains in effect for 60 days, unless rescinded or replaced by another executive order.

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