



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

MEMORANDUM

DATE: May 28, 2021

TO: Rulemaking Interested Persons

FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and Director of Regulatory and Legal Affairs, Division of Public Health

RE: Notification of Proposed Permanent Rule Amendment: 10A NCAC 41A .0212

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Commission for Public Health (CPH) is proposing to permanently amend rule 10A NCAC 41A .0212 to set out the proper precautions to prevent infection in the handling and transportation of the bodies of persons infected with COVID-19 and require notification of those precautions. These changes were previously made under emergency and temporary rulemaking. However, a permanent amendment is needed to ensure that these changes do not expire from the administrative code. CPH has submitted notice of its intent to amend this rule to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for the proposed rule and approved by CPH. The proposed rule is expected to have an impact on state funds and the private sector, but little to no impact on local government. The fiscal note was approved by the NC Office of State Budget and Management (OSBM) on April 20, 2021.

The notice of text that will be published in the NC Register on June 1, 2021 is attached to this memorandum and may be found on or after June 1, 2021 at OAH's website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rule and fiscal note may be found on the CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on the rule is scheduled for Wednesday, June 30, 2021 at 10:00 am. The public hearing will be held by teleconference. You may participate in the public hearing by dialing 919-715-0769. No access code is required.

CPH is accepting public comments on the proposed rule and fiscal note from June 1, 2021 through August 2, 2021. You may submit comments by email to cphcomment@lists.ncmail.net or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of this rule is October 1, 2021.

Should you have questions related to this memorandum, the proposed rule, or the fiscal note, please contact Dr. Zack Moore, Epidemiology Section Chief, Division of Public Health at 919-546-1725.

Attachment

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

LOCATION: 5605 Six Forks Road, Building 3, Raleigh, NC 27609
MAILING ADDRESS: 1931 Mail Service Center, Raleigh, NC 27699-1931
www.ncdhhs.gov • TEL: 919-707-5000 • FAX: 919-870-4829

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

cc:

Dr. Ronald May, Chair, Commission for Public Health

Mr. Mark Benton, Assistant Secretary for Public Health, Division of Public Health

Dr. Zack Moore, Section Chief, Epidemiology, Division of Public Health

Dr. Jean-Marie Maillard, Medical Director, Communicable Disease Branch, Division of Public Health

Dr. Michelle Aurelius, Chief Medical Examiner, Division of Public Health

Ms. Kirsten Leloudis, Program Manager, Regulatory and Legal Affairs, Division of Public Health

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0212.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://cph.publichealth.nc.gov/>

Proposed Effective Date: *October 1, 2021*

Public Hearing:

Date: *June 30, 2021*

Time: *10:00 a.m.*

Location: *This public hearing will be held by teleconference at (919) 715-0769 (no access code).*

Reason for Proposed Action: *COVID-19, a novel coronavirus, was identified as the cause of an emerging infectious disease outbreak in December 2019 in Wuhan, Hubei Province, China. This novel coronavirus causes respiratory illness ranging in severity from mild illness to death. The North Carolina Division of Public Health is working closely with the Centers for Disease Control and Prevention (CDC) to monitor and respond to this pandemic in North Carolina.*

On June 18, 2020, the North Carolina Commission for Public Health (CPH) received a petition for rulemaking from the North Carolina Board of Funeral Service, requesting that CPH consider amending rule 10A NCAC 41A .0212 to set out the proper precautions to prevent infection in the handling and transportation of the bodies of persons infected with COVID-19 and require notification of those precautions. Pursuant to G.S. 150B-20, CPH fully considered and granted the petition at its meeting on August 5, 2020. At a special meeting on September 15, 2020, CPH adopted an amendment to 10A NCAC 41A .0212 under emergency procedures and simultaneously proposed to amend 10A NCAC 41A .0212 under temporary procedures. The temporary amendment was adopted on November 4, 2020. This proposed permanent amendment would ensure that these changes do not expire from the Administrative Code.

Comments may be submitted to: *Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net*

Comment period ends: *August 2, 2021*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected**
- Local funds affected**
- Substantial economic impact (\geq \$1,000,000)**
- Approved by OSBM**
- No fiscal note required**

CHAPTER 41 - EPIDEMIOLOGY HEALTH

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

10A NCAC 41A .0212 HANDLING AND TRANSPORTATION OF BODIES

(a) Persons handling the body of any person who has died shall comply with the standard precautions for all patient care published by the United States Centers for Disease Control and Prevention, which are hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: <https://www.cdc.gov/infectioncontrol/basics/standard-precautions.html>.

~~(b)~~ (b) It shall be the duty of the physician, physician assistant, or nurse practitioner attending to any person who dies and is known to be infected with HIV, plague, or hepatitis B, or COVID-19 or any person who dies and is known or reasonably suspected to be infected with smallpox, rabies, severe acute respiratory syndrome (SARS), or Jakob-Creutzfeldt to provide written, verbal, or electronic notification to all individuals handling the body of the proper precautions to prevent infection, as set forth in Paragraphs (d), (e), and (f) of this Rule. This written, verbal, or electronic notification shall be provided to the funeral service

~~director, funeral service worker, or body transporter personnel~~ at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the ~~attending physician~~ physician, physician assistant, or nurse practitioner shall notify the funeral service ~~director, funeral service worker, or body transporter personnel verbally~~ of the precautions required as soon as the ~~physician~~ physician, physician assistant, or nurse practitioner becomes aware of the death. These precautions are noted in Paragraphs ~~(b)(d), (e), and (e)~~ (f) of this Rule. The duty to notify shall be considered met if performed by one of the following individuals:

- (1) the physician, physician assistant, or nurse practitioner attending to the person who died; or
- (2) a designated representative of the physician, physician assistant, or nurse practitioner.

(c) It shall also be the duty of a medical examiner with jurisdiction pursuant to G.S. 130A-383 over the body of any person who dies and is known to be infected with COVID-19 to provide written, verbal, or electronic notification to the funeral service director, funeral service worker, or body transporter at the time the body is removed from medical examiner custody of the proper precautions to prevent ~~infection~~ infection, as set forth in Paragraph (f) of this Rule. These precautions are noted in Paragraph (f) of this Rule. The duty to notify shall be considered met if performed by a designated representative of the medical examiner.

~~(b)(d)~~ The body of any person who died and is known or reasonably suspected to be infected with smallpox or severe acute respiratory syndrome (SARS) or any person who died and is known to be infected with plague shall not be embalmed. The body shall be enclosed in a ~~strong, tightly~~ sealed outer case ~~which that~~ will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director. Nothing in this Paragraph shall prohibit cremation.

~~(e)(e)~~ Persons handling the body of any person who died and is known to be infected with HIV or hepatitis B or any person who died and is known or reasonably suspected to be infected with Jakob-Creutzfeldt or rabies shall be provided ~~written~~ written, verbal, or electronic notification to observe blood and body fluid precautions.

(f) Persons handling the body of any person who died and is known to be infected with COVID-19 shall be provided written, verbal, or electronic notification to observe the COVID-19 guidance for funeral home workers published by the United States Centers for Disease Control and Prevention, which is hereby incorporated by reference, including any subsequent amendments or editions, and available free of charge at: <https://www.cdc.gov/coronavirus/2019-ncov/community/funeral-faqs.html>.

*History Note: Authority G.S. 130A-144; 130A-146;
Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;
Eff. March 1, 1988;
Recodified from 15A NCAC 19A .0204 Eff. June 11, 1991;
Temporary Amendment Eff. November 1, 2003;
Amended Eff. April 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Emergency Amendment Eff. September 25, 2020;
Temporary Amendment Eff. December 1, 2020.*