

DHHS Directive Number II-24

Title: Delegation of Authority to Director, Division of Health Service Regulation
Effective Date: November 3, 2008
Revision History: July 11, 2007; January 1, 2002
Authority: G.S. 143B-10; 143B-137.1

Purpose

The purpose of this directive is to delegate, clarify and specifically confirm certain authorities of the Secretary of the North Carolina Department of Health and Human Services (NC DHHS) to the Director of the Division of Health Service Regulation.

Delegation of Authority

As provided in G.S. 143B-10(a), the Secretary of the DHHS delegates the following functions concerning management and administration to the Director of the Division of Health Service Regulation, subject to state and departmental policy:

1. The functions of management, related to the Division of Health Service Regulation, as defined in G.S. 143B-10, which include: planning, organizing, staffing, directing, coordinating, reporting and budgeting.
2. The management authority to develop and carry out procedures and programs, including, but not limited to:
 - A. Purchasing and contracting, subject to the state purchasing and contract rules and DHHS Directives(s);
 - B. Programs for which the Director has rule-making or enforcement authority or supports the rule-making or enforcement authority of a commission;
 - C. Certification of health care facilities and services for Medicare and Medicaid reimbursement, Titles XVIII and XIX of the Social Security Act;

- D. Serve as the primary licensing and certification unit within the department and work with other divisions and commissions having rule-making authority over facilities and services subject to licensure or certification by the division; and
 - E. Determine if any person, program or facility is subject to licensure by the division and seek legal remedies to restrain persons from operating a facility without a license or in a manner that threatens the health, safety or welfare of individuals in the facility.
3. Rule-making authority (in coordination with the Office of the General Counsel) for the following:
- A. Satellite jail/work release units (G.S. 153A-230.4);
 - B. Certificate of Need (G.S. 131E, Article 9);
 - C. Procedures for termination of clinical hospital services by a for-profit corporation assuming ownership through lease or sale of a public hospital (G.S. 131E, Article 2);
 - D. Cardiac Rehabilitation licensing (G.S. 131E, Article 8);
 - E. Certification of Abortion Clinics (G.S. 14-45.1);
 - F. Suspension of Admissions for Adult Care Homes {G.S. 131D-2(h)};
 - G. Medical Facilities Planning Program, to include the State Medical Facilities Plan (G.S. 131E, Article 4 and Article 9);
 - H. Certificate of Public Advantage Programs (G.S. 131E, Article 9A and G.S. 90, Article 1E);
 - I. Exceptions for Underserved Areas (G.S. 90-408);
 - J. Certification of statewide data processors (G.S. 131E, Article 11A); and
 - K. Adverse action against hospitals and freestanding ambulatory surgical centers for violations under the Medical Care Data Act (G.S. 131E, Article 11A).
4. Unless otherwise specified by statute or rule, the authority to issue declaratory rulings:
- A. As to the validity or applicability of any rule which has been adopted by the division or the Medical Care Commission;
 - B. As to the validity or applicability of any rule which has been adopted by the Social Services Commission relating to local confinement facilities (G.S. 153A-220); or
 - C. As to the applicability of any statute, rule or order administered by the division to a given set of facts (G.S. 150B-4).
5. The management functions of a commission, as defined in G.S. 143B-14(d), which include planning, organizing, staffing, directing, coordinating, reporting and budgeting for those commissions assigned to the division. In particular, the

- Director shall provide staff support to:
- A. The Emergency Medical Services Advisory Council established by G.S. 143-510;
 - B. The NC State Health Coordinating Council, established by NC Governor's Executive Order;
 - C. The Medical Care Commission to facilitate its rule-making and advisory and other actions as specified in General Statutes; and
 - D. The Penalty Review Committee established by G.S. 131D-34(h).
6. The Director shall provide staffing for enforcement and implementation of the Medical Care Commission's rules, including but not limited to:
- A. Rules for the licensure of hospitals (G.S. 131E, Article 5);
 - B. Rules for the licensure of nursing homes (G.S. 131E, Article 6, Part A);
 - C. Rules for the implementation and enforcement of the Nursing Home Patient's Bill of Rights (G.S. 131E, Article 6, Part B);
 - D. Rules for the implementation, establishment and maintenance of a statewide trauma system; licensure of ambulance providers, certification of emergency medical personnel, the permitting and inspection of ambulances, and carry out the purposes of Article 56 of Chapter 143 of the G.S. (G.S. 131E, Article 7 and Article 7A; G.S. 143, Article 56);
 - E. Rules governing the issuance of bonds under the Health Care Facilities Finance Act (G.S. 131A);
 - F. Rules for the licensure of ambulatory surgical (operating room) facilities (G.S. 131E, Article 6, Part D);
 - G. Rules for the licensure of nursing pools (G.S. 131E, Article 6, Part E);
 - H. Rules for the licensure of hospices (G.S. 131E, Article 10);
 - I. Rules for the licensure of home care agencies (G.S. 131E, Article 6, Part C);
 - J. Rules for the licensure of adult care homes (G.S. 131D);
 - K. Rules necessary to carry out a program for the construction and enlargement of local hospitals (G.S. 131E-Article 4); and
 - L. Rules for the implementation, establishment and maintenance of health care personnel registries (G.S. 131E-256, Article 15 and 42 CFR 483).
7. The management authority to develop and carry out programs under the rule-making authority of commissions not staffed by the division and to develop rules under G.S. 150B for such programs, not inconsistent with law, including, but not limited to the Local Confinement Facilities (G.S. 153A-220) and Licensed Mental Health Facilities (G.S. 122C, Article 2).
8. In connection with appeals of an administrative decision regarding any law, rule or policy adopted by the Director or the Medical Care Commission or regarding any permit or license issued, penalty imposed or other action taken by the division

- or other action within the responsibility of the division that may be appealed, the authority to ensure compliance with all applicable provisions of the Administrative Procedure Act, G.S., Chapter 150B, including specifically the authority to issue a final agency decision in contested cases unless otherwise specified by statute or rule (G.S. 150B-36). If the initial administrative decision which is the subject matter of the appeal was made by the Director, the Director shall so advise the Secretary, and the Secretary shall ensure compliance with the laws, rules, and make (or designate an appropriate designee to make) the final agency decision. The Director shall be the “head of agency” under Rule 18 of the NC Rules of Appellate Procedure with regard to settling the record on appeal.
9. Develop and approve a portable Do Not Resuscitate (DNR) order form as required by G.S. 90-21.16(c).
 10. The Director may serve as the Secretary of the Medical Care Commission at its discretion.
 11. The Director shall be responsible for coordinating the division’s monitoring functions with other divisions and local partners to ensure compliance with state and federal requirements.
 12. The Director shall be responsible for ensuring that the division is familiar with and adheres to the department’s policy and procedures manual.

This delegation of authority shall not deprive the Secretary from performing, in lieu of the Director of the Division of Health Service Regulation, any of the acts set forth above. This delegation of authority may be amended or withdrawn by the Secretary at any time without notice. This delegation of authority shall not apply to any actions which by law, state policy, or NC Governor’s Executive Order, may only be executed by the Secretary.

APPROVED

Dempsey Benton, Secretary
Department of Health and Human Services