

Fiscal Note for Readoption and Permanent Amendment of 15A NCAC 18A .2901

Agency: North Carolina Commission for Public Health
Department of Health and Human Services
Environmental Health Section
Food Protection and Facilities Branch

Rule Citation: 15A NCAC 18A .2901, Disbursement of Funds

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Rulemaking Authority: N.C.G.S. 130A-9, 130A-248, 130A-249

Impact Summary: State Government: Yes
Local Government: Yes
Private Sector: No
Substantial Impact: No

Introduction

Rule 15A NCAC 18A .2901 establishes the method for distributing restaurant and lodging permitting fees that are collected by the state pursuant to G.S. 130A-248(d) to local health departments (LHDs) for the support of local public health programs and activities, which is called the “aid-to-county” funding model. The aid-to-county funding model has been used to distribute funds to LHDs since codified in 1991 and is based on each LHD’s rate of compliance. The “rate of compliance” is the number of inspections for food and lodging establishments conducted by the LHD during the previous state fiscal year (SFY), divided by the number of inspections that the LHD is required to conduct under G.S. 130A-249 and 10A NCAC 46 .0213.

In accordance with G.S. 130A-248, food and lodging establishments are billed an annual fee of \$120 for each permit that is issued. No more than \$50 of this \$120 fee may be used to support state programs and the remaining \$70 is therefore allocated for distribution to LHDs. The amount of fees collected and distributed to LHDs for this purpose is approximately \$2 million annually. LHDs include this aid-to-county funding in their budgets each fiscal year.

Rule .2901 is proposed for re-adoption in accordance with G.S. 150B-21.3A and, as part of that process, is being updated to clarify existing language and add new language that establishes a method for distributing funds to LHDs impacted by certain disasters, emergencies, or events. Please see the Appendix for the proposed rule language.

Description of Proposed Rule

Definitions

Paragraph (a) of Rule .2901 has been added to the Rule to clarify existing language in Paragraph (b) by defining the term “Rate of compliance.” This new paragraph also defines terms that are used in the newly proposed Paragraph (c), including Department, disaster, emergency, and event.

Clarification of Fund Distribution Formula

In Paragraph (b) of Rule .2901, changes are proposed to clarify existing language that sets out the standard formula for distributing fees collected by the state pursuant to G.S. 130A-248(d). The formulas themselves remain unchanged. In accordance with the Rule, counties receive \$750.00 in funds and then the remaining funds are distributed based on the number of required food and lodging inspections that each LHD conducted in the county or counties that the LHD serves.

Addition of Fund Distribution Option Following a Disaster, Emergency, or Event

The proposed language of Paragraph (c) provides a process for distributing funds to each county affected by a declared disaster or emergency (e.g., hurricane, flooding) or an event (defined as a National Special Security Event) such that the county does not lose important public health funding when diverting resources to prepare for or respond to a disaster, emergency, or event.

During times of natural disasters and declared emergencies, LHDs’ environmental health staff resources are often shifted from routine food and lodging inspections to emergency response work, such as assessing damaged or flooded facilities, evaluating food safety after loss of power or flooding, and assessing and sampling private drinking water wells. Such emergency response work can take days, weeks, or months to complete depending on the severity of the disaster or emergency, resulting in a decreased rate of compliance. Similarly, when a county hosts an event that is a National Special Security Event, the LHD’s environmental health staff may provide support to the event organizer or state and federal entities with work related to the prevention of outbreaks of foodborne illness and bioterrorism.

In these situations where LHDs’ environmental health staff are responding to a disaster, emergency, or event, it may be challenging to conduct regular inspections of food and lodging establishments, which can result in a lower rate of compliance and lower amount of funding distributed to the LHD in the following SFY. LHDs rely on aid-to county funds for the operation of their environmental health programs. A lack of flexibility to adjust the distribution of funds to counties can cause a hardship for LHDs that are already experiencing stress related to disaster, emergency, or event response work. In the past, flexibility has been pursued through executive order (EO) during the COVID-19 pandemic. In March of 2020, Governor Cooper issued EO 116, which granted the Secretary of NC DHHS authority to waive the formula requirements of Rule

.2901 and adjust aid-to-county funding if a LHD's resources were diverted in response to COVID-19.¹

The proposed amendment to Rule .2901 captures a similar approach and will create a uniform process that can be used to ensure that LHDs impacted by disasters, emergencies, and events can respond to those incidents without fear of losing important public health funding. Under the proposed Rule, to qualify for an adjusted distribution of funds, the county or counties served by the LHD must have been named in a disaster or emergency declaration or in an event designation. Further, the LHD director is required to submit a written attestation to the State Environmental Health Director that speaks to the disruption caused by the disaster, emergency, or event; explains how it is disrupting regular inspections of food and lodging establishments; and states that an anticipated decrease in the LHD's rate of compliance is expected to result in financial hardship to the LHD's environmental health program.

Impact Analysis

The proposed language in Paragraphs (a) and (b) of the Rule, as described above, are not expected to result in an economic impact. The proposed language in Paragraph (c) of the Rule is expected to result in an economic impact to local government and state government. No impact is expected on the private sector.

State Government Impact

The proposed Rule is expected to have a small impact on state government. This impact will be limited to assessing the written attestation submitted by the LHD director to confirm that it meets the requirements of the Rule and finding a previous year's rate of compliance to include in the LHD's fund distribution calculation for the current SFY. This will require only a few minutes of time by state-level staff and the DPH Environmental Health Section's budget officer, who calculates each county's compliance rate annually and maintains compliance rate records. This is expected to be an opportunity cost, as it is not anticipated that the state will hire additional staff to assist with this work.

The source for aid-to-county funding is relatively stable and yields approximately \$2 million for LHDs every year. The proposed amendments to the Rule will have no impact on the total funds available.

Local Government Impact

The proposed Rule is expected to impact local government in times when the process set forth in Paragraph (c) of the Rule is utilized. LHDs that utilize this process will benefit from receiving critical public health funding that they may have otherwise lost due to the disaster, emergency, or event. Other LHDs may see a reduction in the amount of funding that they receive when their fellow LHDs that were affected by a disaster, emergency, or event utilize the process set out in Paragraph (c) of the proposed Rule.

Hurricanes are an example of a natural disaster that could prompt the use of the process described in the proposed Rule. On average, North Carolina is affected by 2.26 hurricanes per

¹ Executive Order No. 116, Sec. 18, available at: <https://governor.nc.gov/media/1750/open>.

year.² Based on past events and expected trends related to severe weather events affecting North Carolina, and for the purposes of this fiscal note, Hurricane Mathew is a recent representative model of a natural disaster's potential impact on North Carolina and LHD operations. Hurricane Matthew was the most powerful storm (Category 5) of the 2016 hurricane season, leading to wind damage, widespread power outages, and record flooding in North Carolina, damaging approximately 100,000 structures and leaving 900,000 people without power.³

The total aid-to-county distribution for all LHDs during SFY '16-'17 when Hurricane Matthew hit North Carolina was \$2,144,091. After the storm, FEMA identified 49 counties in North Carolina as designated disaster areas in need of public assistance.⁴ Upon review of the compliance rates for SFY '16-'17, we found that of those 49 designated counties, 16 had a lower rate of compliance in the SFY when Hurricane Matthew struck than in the previous SFY. Under the proposed Rule, impacted counties could pursue using the previous SFY's rate of compliance for their aid-to-county fund distribution calculation, which would help ensure that those LHDs receive critical funding for their public health programs.

While counties that are impacted by a disaster, emergency, or event may experience a benefit from an adjusted funding distribution under the Rule's proposed framework, counties that are not impacted by the disaster, emergency, or event would be expected to experience a decrease in the funding that they receive; however, we expect that this difference in funding will be small. Counties' rates of compliance do not typically deviate significantly from year to year. LHDs often base the next year's budget on the previous year's distribution since the rate of compliance is relatively stable for each county. When the process outlined in the proposed Rule is utilized, counties that are not impacted by the disaster, emergency, or event will receive their funding based on the rate of compliance for the previous SFY, as expected. Any adjustments that benefit counties affected by a disaster, emergency, or event has a negligible impact to the *expected* distribution for LHDs since the previous SFY's percentage will be used for the affected counties.

For example, County A's rate of compliance for the last SFY was 97%. This year, County A expects to complete a similar percentage of inspections and budgets for a funding distribution that is calculated using that 97% compliance rate. County A experiences a hurricane and flooding event and is only able to complete 75% of inspections. If County A utilizes the process set forth in the proposed Rule, then the state would calculate County A's aid-to-county distribution based on the previous SFY's rate of compliance of 97%, which maintains the expected distribution of funding to all LHDs.

If a county utilizes the process set out in Paragraph (c) of the proposed Rule, then there will also be a small cost associated with the time spent by the LHD director to write the attestation and submit it to the State Environmental Health Director. It is challenging to estimate how much time it will take a LHD director to complete this task, but we expect that it will require no more than 30 minutes of time and will be an opportunity cost for the LHD.

² NC State University, North Carolina State Climate Office, "Hurricane Statistics," available at: <https://products.climate.ncsu.edu/weather/hurricanes/statistics/>.

³ United States Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, "National Hurricane Center Tropical Cyclone Report: Hurricane Matthew," available at: https://www.nhc.noaa.gov/data/tcr/AL142016_Matthew.pdf.

⁴ NC Department of Public Safety, "49 North Carolina Counties Eligible for FEMA Public Assistance Grants," available at: <https://www.ncdps.gov/news/news-release/2016/11/25/49-north-carolina-counties-eligible-fema-public-assistance-grants>.

Private Sector

There is no expected impact to the private sector as a result of the proposed Rule language.

Summary

The proposed amendments to Rule .2901 are intended to clarify existing language and establish a process to help ensure that LHDs do not face financial hardship in the SFY following a disaster, emergency, or event due to a reduced rate of compliance for food and lodging inspections. The proposed language is expected to have a minor impact on state government that will be an opportunity cost in the form of staff time. The proposed Rule is also expected to impact local government, with a benefit and small opportunity cost for LHDs that are impacted by disasters, emergencies, and events and that utilize the process set out in the Rule, and a small economic impact for LHDs that are not impacted by the disaster, emergency, or event or that elect to not utilize the process established under the proposed Rule. There is no expected impact to the private sector.

Appendix

15A NCAC 18A .2901 is proposed for reoption with substantive changes as follows:

15A NCAC 18A .2901 DISBURSEMENT OF FUNDS

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) “Department” means the North Carolina Department of Health and Human Services.
- (2) “Disaster” means when a declaration has been made by the President of the United States under 44 C.F.R. Part 206, Subpart B, which is hereby incorporated by reference, including any subsequent editions or amendments, or by the Governor of North Carolina under G.S. 166A-19.3(3);
- (3) “Emergency” means when a state of emergency declaration has been issued under G.S. 166A-19.3(19).
- (4) “Event” means a National Special Security Event designated by the President of the United States under 18 U.S.C. 3056(e)(1), which is hereby incorporated by reference, including any subsequent editions or amendments.
- (5) “Rate of compliance” means the number of inspections for food and lodging establishments conducted by the local health department during the previous state fiscal year divided by the number of inspections mandated to be conducted by the local health department per state fiscal year pursuant to G.S. 130A-249 and 10A NCAC 46 .0213, not to exceed a value of 1.

(b) Fees collected pursuant to G.S. 130A-248(d), minus state expenses budgeted for the collection and inventory program, shall be distributed to local health departments for the support of local public health programs and activities as follows:

- (1) Seven-seven hundred and fifty dollars (\$750.00) to each county; and
- (2) the remaining balance of funds that remain after the distribution described in Subparagraph (b)(1) of this Rule shall be distributed to each county in accordance with the following formula: formula provided in Subparagraph (b)(2)(A) of this

Rule. After the distribution of funds pursuant to Subparagraph (b)(2)(A) of this Rule, the balance of any funds that remain shall be distributed in accordance with the formula provided in Subparagraph (b)(2)(B) of this Rule to the counties that have one hundred percent compliance with the inspection requirements for food and lodging establishments as set out in G.S. 130A-249 and 10A NCAC 46 .0213 in the immediately preceding state fiscal year:

~~(a)(A) [the remaining balance of funds after distribution in Paragraph (1)Subparagraph (b)(1) of this Rule] multiplied by (the number of facilities in the county divided by the number of facilities in the state) multiplied by (the (the county's percentage rate of compliance—compliance) with mandatory inspection requirements for food and lodging establishments in G.S. 130A-249 and 15A NCAC 25 .0213 for the previous fiscal year, not to exceed 100 percent) equals the allocation to the county; and~~

~~(b)(B) distribution of remaining funds to counties with 100 percent compliance with mandatory inspection requirements for food and lodging establishments in G.S. 130A-249 and 15A NCAC 25 .0213 during the previous fiscal year shall be made in accordance with the following: [total amount of remaining funds after distribution in Paragraph Subparagraph (b)(2)(A)] (2)(a) multiplied by (the number of facilities in the county divided by the number of facilities in all counties with 100 percent compliance with mandatory inspection requirements for food and lodging establishments as set forth in G.S. 130A-249 and 15A10A NCAC 2546 .0213 during the previous fiscal year) equals the additional allocation to the county.~~

(c) Notwithstanding the definition of rate of compliance in Paragraph (a) of this Rule, the total amount of funds distributed to a local health department shall be calculated in accordance with Paragraph (b) of this Rule, but using the local health department's rate of compliance from the last state fiscal year that was completed immediately prior to a disaster, emergency, or event, when:

(1) one or more counties served by the local health department is named in a disaster or emergency declaration or in an event designation;

(2) the local health director or the local health director's designee submits a written attestation to the State Environmental Health Director that includes the following:

(A) an explanation of how disruption caused by the disaster, emergency, or event is such that inspections that are required pursuant to G.S. 130A-249 and 10A NCAC 46 .0213 for food and lodging establishments cannot be carried out as planned because of the local health department's involvement in the response to the disaster, emergency, or event; and

(B) a statement that the loss of funds as a result of the local health department's decreased rate of compliance is expected to result in a financial hardship to the local health department's environmental health program; and

(3) the Department determines that sufficient funds are available to make a disbursement to the local health department in accordance with this Paragraph.

(d) Attestations written pursuant to Paragraph (c) of this Rule shall be submitted to the State Environmental Health Director by mail at 5605 Six Forks Road, 1632 Mail Service Center, Raleigh, NC 27699-1632.

*History Note: Authority G.S. 130A-9; 130A-248; 130A-249;
Eff. May 1, 1991.*