

Legislative and Regulatory Update

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NCPHA Legal Pre-Conference
April 2022

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2021-2022 Legislative Sessions

- **Biennium – two-year term of legislative activity**
 - Long Session (odd numbered years)
 - Short Session (even numbered years)

- **2021 Session**
 - *Longest in the State's history!*

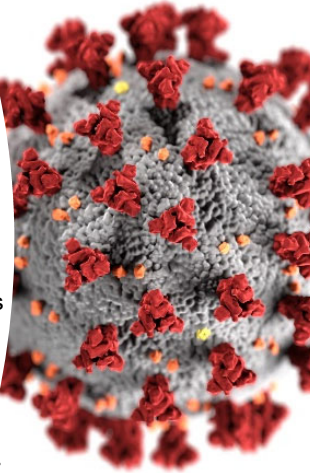


- **Short Session convenes: May 18**

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Budget Highlights (S.L. 2021-180)

- **Support for communicable disease activities and COVID-19 response**
 - **\$36M (NR)** over two years for local health departments to expand capacity for communicable disease detection and response (Sec. 9G.11.)
 - **\$62M (NR)** to expand and sustain public health workforce (25% to go to school-based health services personnel, Sec. 9G.13.)
 - **\$27M (NR)** for disease intervention workforce & technology to support response
 - **\$102M (NR)** to support statewide vaccination efforts
 - **\$14M (NR)** for Nursing Home & Long-Term Care Facility Strike Team
 - **\$1.4M (NR)** for detection and mitigation of COVID-19 in homeless populations
 - **\$20.2M (NR)** for detection and mitigation of COVID-19 in confinement facilities




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Budget Highlights (S.L. 2021-180)

Juul Settlement (Sec. 9G.10.)

- Appropriates funds received by the State as a beneficiary of the final consent judgment resolving *State of North Carolina, ex rel. Joshua H. Stein, Attorney General v. Juul Labs, Inc.*
- Creates Youth Electronic Nicotine Dependence Abatement Fund
- \$13M (NR) in FY 21-22 and \$8M in FY 22-23 allocated to Division of Public Health for tobacco and nicotine dependence prevention activities targeted at youth and young adults
 - \$2M to be transferred to NC DOJ



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Budget Highlights (S.L. 2021-180)

- **Medicaid coverage for pregnant women extended 12 months postpartum** (Sec. 9D.13.; effective 4/1/22 – 3/31/27)



- **Creation of Joint Legislative Committee on Access to Healthcare and Medicaid Expansion** (Sec. 5.13)

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Changes to Minor's Consent

G.S. 90-21.5(a): An unemancipated minor with decisional capacity may give effective consent for medical health services for the prevention, diagnosis, or treatment of:

- Venereal disease and other reportable communicable diseases/conditions
- Pregnancy (includes family planning, except for sterilization; does not include abortion, which falls under G.S. 90-21.7)
- Abuse of alcohol or controlled substances
- Emotional disturbance

S.L. 2021-110, sec. 9, effective 8/20/21, added a new subsection (a1), requiring the written consent of a parent or legal guardian for administration of a vaccine that is under an emergency use authorization to an unemancipated minor.

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Expanded Authority for Immunizing Pharmacists

G.S. 90-85-15B: Allows immunizing pharmacists to administer certain vaccinations and long-acting injectable medications

S.L. 2021-110, sec. 1, effective 2/1/22, expands this authority to allow an immunizing pharmacist to dispense, deliver, or administer the following medications without a prescription, subject to certain conditions and requirements:

- Nicotine replacement therapy
 - Self-administered oral or transdermal contraceptives
 - Prenatal vitamins
 - Post-exposure prophylaxis for prevention of HIV
 - Glucagon for the treatment of hypoglycemia
- NCMB and NCBOP are directed to develop protocols to implement this new authority.
- State Health Director to issue standing orders authorizing this expanded authority until protocols are in place.

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SHD SOs for Immunizing Pharmacists

- The State Health Director has now issued a statewide standing ordering covering each of these medications.
- These standing orders are to remain in effect until the *later* of the development of the protocols described in Section 4(a) of this act or January 1, 2023.
- Available here: <https://publichealth.nc.gov/HDSO-pharmacists.htm>



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

North Carolina State Health Director's Standing Order for Oral and Transdermal Self-Administered Combined Hormonal and Progestin-Only Contraceptives

3.14.22 FINAL

Pursuant to S.L. 2021-110, this standing order, and its required appendices (Appendix A: Minimum Pharmacist-Initiated Oral and Transdermal Self-Administered Combined Hormonal and Progestin-Only Contraceptives Patient Questionnaire and Appendix B: Pharmacist-Initiated Hormonal Contraception Assessment and Treatment Care Pathway), signed by the North Carolina State Health Director, authorizes immunizing pharmacists practicing in the state of North Carolina and licensed by the North Carolina Board of

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Expanded Authority for Immunizing Pharmacists, S.L. 2021-110, Sec. 1-8

- *Effective 2/1/2022*: Permits **immunizing pharmacists** to administer FDA-approved vaccines in accordance with ACIP recommendations to persons age 6+ pursuant to a prescription
- *Effective 9/1/2021*: Permits **immunizing pharmacists** to administer a **COVID-19 vaccine** approved or authorized under EUA by the FDA
 - to persons age 10+ pursuant to protocol
 - to persons age 6+ pursuant to a prescription
- *Effective 9/1/2021*: Under supervision, **permits pharmacy technicians** to administer a **flu vaccine or COVID-19 vaccine** approved or authorized under EUA by the FDA to persons at least 10 years of age, subject to certain requirements
 - *Caveat: Requires NCMB and NCBOP to adopt rules to implement; still in process*



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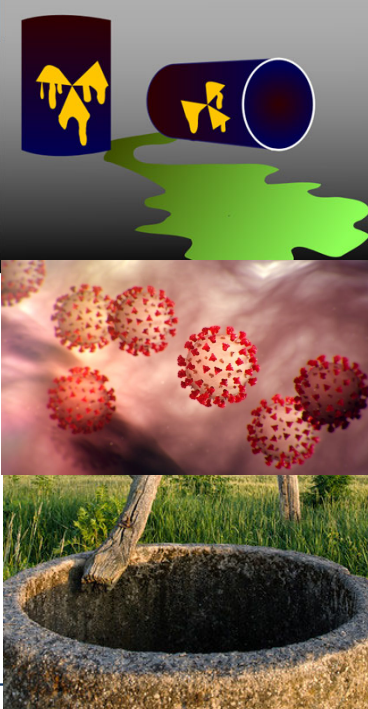
Public Health and Emergency Management Authorities

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Imminent Hazard Authority

Definition: “a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.” G.S. 130A-2.

Authority: Secretary of NCDHHS or a local health director may order the owner, lessee, operator, or other person in control of the property to abatement the imminent hazard. G.S. 130A-20.



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Changes to Imminent Hazard Authority (S.L. 2021-180, sec. 19E.6(d), effective 1/1/23)

Local Imminent Hazards

- Local health director may order abatement of an imminent hazard only on a “specific identified” property.

Statewide Imminent Hazards (2/3 or more counties)

- Secretary of NCDHHS may determine that a class or category of property uses present a statewide imminent hazard and order owners, operators, or other persons in control of such properties to abate the hazard for a period of up to 7 calendar days.
- May be extended for up to 30 days at a time with notice to Governor and concurrence of Council of State.

Use of imminent hazard authority by Secretary of DEQ

- State Secretary of Environmental Quality may use imminent hazard authority to enforce the provisions of Ch. 130A Art. 9 (Solid Waste Management) and Art. 10 (NC Drinking Water Act) in accordance with the provisions that apply to the HHS Secretary’s authority.

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Isolation and Quarantine Authority (G.S. 130A-145)

COVID-19 (Coronavirus Disease 2019) ISOLATION ORDER

COVID-19 is a respiratory virus that can cause illness including fever, cough, shortness of breath, chills, muscle pain, sore throat, new loss of taste or smell, or other symptoms listed here: <https://www.cdc.gov/coronavirus/2019-nCoV/symptoms.html>.

<https://www.cdc.gov/coronavirus/2019-nCoV/about.html> In some patients COVID-19 causes severe illness and death. It is passed from person to person, including by coughing or sneezing. On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020 the U.S. Department of Health and Human Services declared a public health emergency in the United States for COVID-19. On March 10, 2020, Governor Cooper declared a state of emergency in North Carolina due to COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 12, 2020 the President of the United States declared that the COVID-19 pandemic in the United States constitutes a national emergency. The primary mode of transmission of COVID-19 in the community is from person to person. Preventing the spread of COVID-19 is critical to protecting the public's health. The further spread of COVID-19 in the community could have severe public health consequences.

You have been diagnosed or are reasonably suspected to be infected with the virus that causes COVID-19. Your infection requires public health restrictions under this order to prevent further spread of infection. You must comply with this order until you meet the requirements for discontinuation of isolation, outlined below, that indicate you are no longer at risk for spreading the virus to others.

I, _____, Health Director of _____, Local Health Department, pursuant to authority vested in me by North Carolina General Statute (G.S.) 130A-145, issue this isolation order to: _____ (Person's name) (Date of Birth: ____/____/____).

REQUIREMENTS OF THIS ORDER

Restrictions of Movement:

Remain at (address) _____ until the following conditions for discontinuation of isolation are met, as provided in guidance from the Centers for Disease Control and Prevention (available at <https://www.cdc.gov/coronavirus/2019-nCoV/about/changes/isolation-guidance.html>). At least 5 days (10 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath), AND EITHER:

1. At least 10 days have passed since symptoms first appeared; OR

2. You have received two negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from two consecutive respiratory specimens collected 24 hours apart.

If you plan to move to a new address or leave the county, you are required to obtain approval from the _____ Local Health Department at: _____.

Required Action:

Contact the health department immediately if you develop new or worsening symptoms like fever, cough, or shortness of breath.

If medical evaluation is needed, seek medical care. Before seeking medical care, call ahead and get instructions from the provider before arriving at the medical office, clinic or hospital. If EMS response is indicated, it should occur with pre-notification to Emergency Medical Services (EMS) and with all recommended infection control precautions in place. Next notify the _____ Local Health Department at: _____.

If a medical emergency arises and you need to call 911, inform the First Responders that you have or are suspected of having COVID-19. Next notify the _____ Local Health Department at: _____.

Adhere to all guidance from the Center for Disease Control and Prevention for persons with suspected or confirmed COVID-19 that is provided with this isolation order and found at: <https://www.cdc.gov/coronavirus/2019-nCoV/about/changes/isolation-guidance.html> and <https://www.cdc.gov/coronavirus/2019-nCoV/about/changes/isolation-guidance.html>.

Keep a log of visitors to your home using the form provided. Notify any visitors to your home of your isolation status.

Other requirements: _____

4 June 2020

- **Who may order:** Local health director or State Health Director
- **When order is authorized:** when and so long as public health is endangered, all other reasonable means for correcting the problem exhausted, and no less restrictive alternative exists
- **Time limit on orders limiting freedom of movement:** 30 calendar days maximum. If longer period needed to protect public health, health director must institute action in Superior Court seeking extension.
- **Person subject to order limiting freedom of movement may seek court review by instituting action in Superior Court:**
 - Hearing within 72 hours (excluding Saturday & Sunday)
 - Person entitled to appointed counsel if indigent
 - Court shall reduce or terminate unless it determines by preponderance of evidence that limitation is reasonably necessary to prevent or limit spread of disease

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Changes to Isolation & Quarantine Authority (S.L. 2021-180, sec. 19E.6(e), effective 1/1/23)

- Amends G.S. 130A-145 to authorize State Health Director to order isolation or quarantine for a class or category of persons for up to 7 calendar days to protect the public health.
- The period may be extended for up to 30 days at a time under the following circumstances:
 - **Statewide (defined as 2/3 or more counties):** State Health Director must notify Governor, Governor must obtain concurrence of Council of State, and Superior Court must approve the extension.
 - **Less than Statewide:** Superior Court must approve the extension

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Changes to Emergency Management Authority (S.L. 2021-180, sec. 19E.6(a)-(c), effective 1/1/23)

- Limits Governor's authority to declare a statewide state of emergency (defined as 2/3 or more of counties) to 30 calendar days
- With concurrence of Council of State, this may be extended for an additional 30 calendar days (60 calendar days total)
- Beyond 60 calendar days, requires action by the General Assembly to enact a law extending the state of emergency
- Also:
 - Requires concurrence of Council of State for emergency orders issued by the Governor to impose prohibitions and restrictions in a local emergency area
 - Requires Council of State concurrence responses to be published online

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Looking Ahead...

- Preserving and strengthening public health authority
- Medicaid Expansion
- Medical Cannabis (S711)



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References and Resources

- Appropriations Act of 2021, [SL 2021-180](#)
- [Conference Committee Report](#) on Appropriations Act of 2021
- Adjournment Resolution, [Resolution 2022-2](#)
- [Joint Legislative Committee on Access to Healthcare and Medicaid Expansion](#)
- Kaiser Family Foundation, [Medicaid Postpartum Coverage Extension Tracker](#) (April 15, 2022)
- Immunizing Pharmacists, Minor Consent Changes, [SL 2021-110](#)
- Immunizing Pharmacists Statute, [G.S. 90-85B.15B](#)
- Minor's Consent Statute, [G.S. 90-21.5](#)
- NCBOP, [Guidance on SL 2021-110](#) (Updated April 11, 2022)
- Network for Public Health Law, [Webinar: Ensuring Changes in Emergency Powers and Public Health Authority Will Protect Public Health](#) (April 15, 2021)
- Network for Public Health Law, [Webinar: Recent State Legislation to Limit Public Health Authority](#) (June 8, 2021)
- Kaiser Health News, [Over Half of States Have Rolled Back Public Health Powers In Pandemic](#) (September 15, 2021)

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References and Resources

- ASTHO, [Legislative Prospectus: Maintaining Public Health's Legal Authority to Prevent Disease Spread](#) (2022)
- ASTHO, [Blog: Isolation, Quarantine, and Public Health Authority Beyond the Pandemic](#) (April 19, 2022)
- National Conference of State Legislators, [Legislative Oversight of Emergency Executive Powers](#) (April 22, 2022)
- Network for Public Health Law, [Proposed Limits on Public Health Authority: Dangerous for Public Health](#) (May 2021)
- Network for Public Health, [Public Health Authority: 50-State Legislative Bill Survey](#) (April 6, 2022)
- The Policy Surveillance Program, Law Atlas, [Sentinel Surveillance of Emerging Laws Limiting Public Health Emergency Orders](#)
- Abatement of an Imminent Hazard, [G.S. 130A-20](#)
- Quarantine and Isolation Authority, [G.S. 130A-145](#)
- Emergency Management Act, [G.S. Chapter 166A, Article 1A](#)
- NC Compassionate Care Act (Medical Cannabis), [S711](#)

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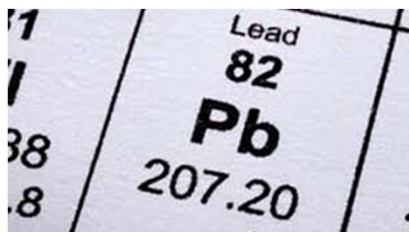
Environmental Health Legislative and Rule Highlights

Larry Michael

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S.L. 2021-69 Revise Health Standard for Lead

- “Lead Poisoning Hazard”
 - Drinking Water = 10 ppb (from 15 ppb)
 - Also required for remediation
 - Effective December 1, 2021
- Lead dust standards
- CDC BLRV = 3.5 ug/dL

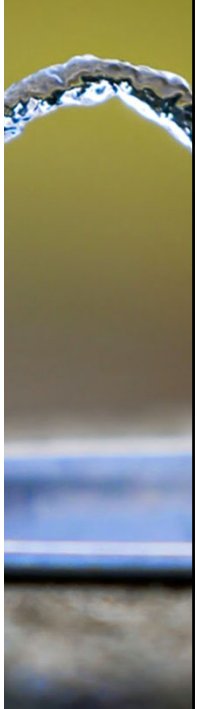


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S.L. 2021-180 2021 Appropriations Act

Detection and Remediation of Lead and Asbestos in Public Schools and Child Care Facilities (Sec. 9G.8)

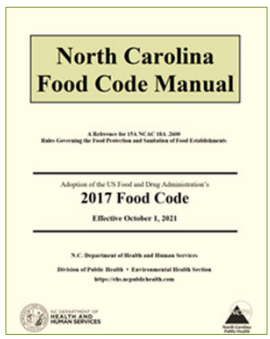
- Requires public schools to test for lead in drinking water
- Requires public schools and licensed child care facilities inspect for lead-based paint and asbestos hazards
- Allocates \$32.8M (NR) for testing and remediation of lead in drinking water
- Allocates \$117.2M (NR) for inspection and abatement of lead-based paint and asbestos hazards
- CPH temporary rules 10A NCAC 41C .1001-.1007



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S.L. 2021-77 DHHS Revisions

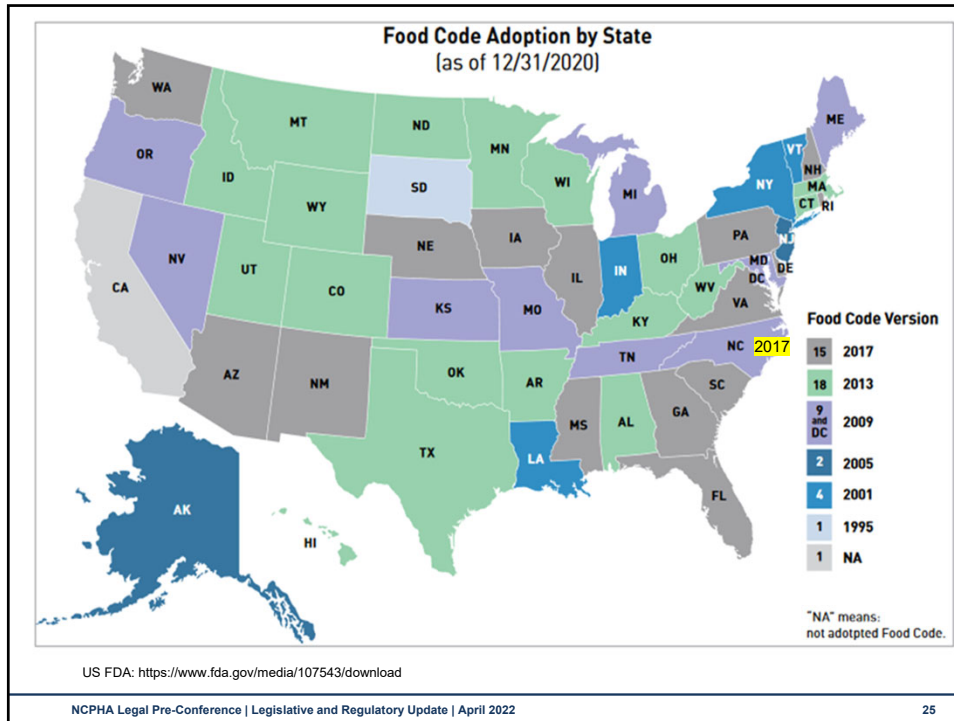
- **Sec. 7 Technical correction to statute governing transitional permits for food establishments**
- **2017 Food Code – Effective October 1, 2021**



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S.L. 2021-77 NCDHHS Revisions

- **Sec. 8 Regulation of Temporary Display Spas**
 - “Public Swimming Pool” means “spas operating for display at temporary events
 - Effective July 1, 2022
- **Rules to regulate spas**
 - 15A NCAC 18A .2508, .2545

NATIONAL
N.C. Officials Trace 124 Legionnaires' Disease Cases To Hot Tub At A Fair

OCTOBER 4, 2019 - 1:00 PM ET

BILL CHARPELL

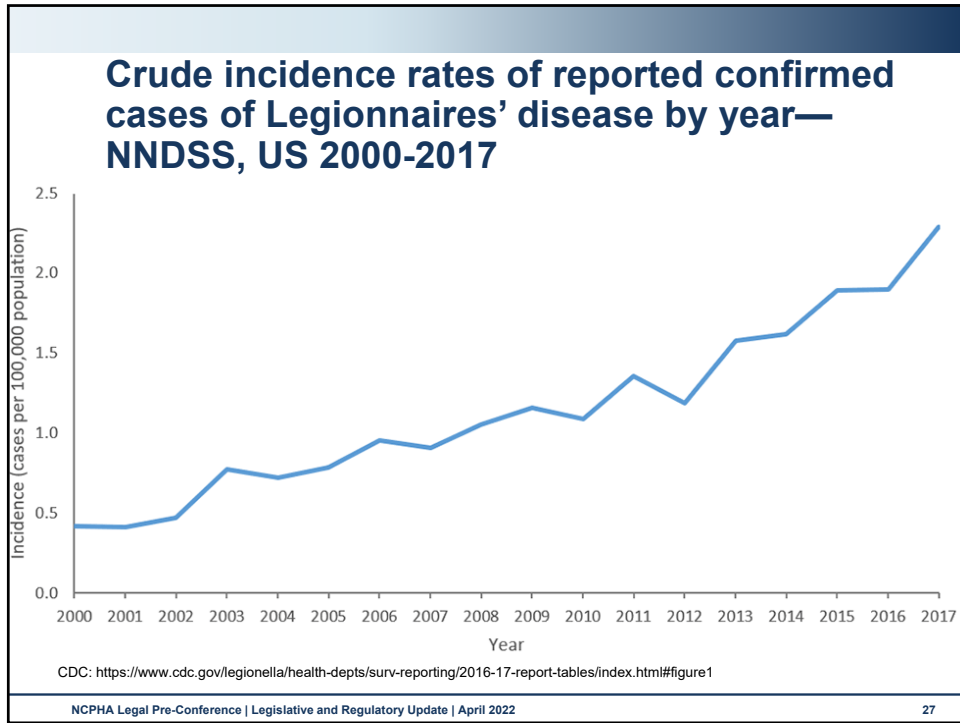
The Danc Event Center at the N.C. Mecklenburg State Fair housed a hot tub display that is suspected to be the source of an outbreak of Legionnaires' disease. The outbreak was traced to the large agricultural fair that was held through the middle of September in Charlotte, N.C.

• Photo: <https://www.npr.org/2019/10/04/767210215/n-c-officials-trace-124-legionnaires-disease-cases-to-hot-tub-at-a-fair>

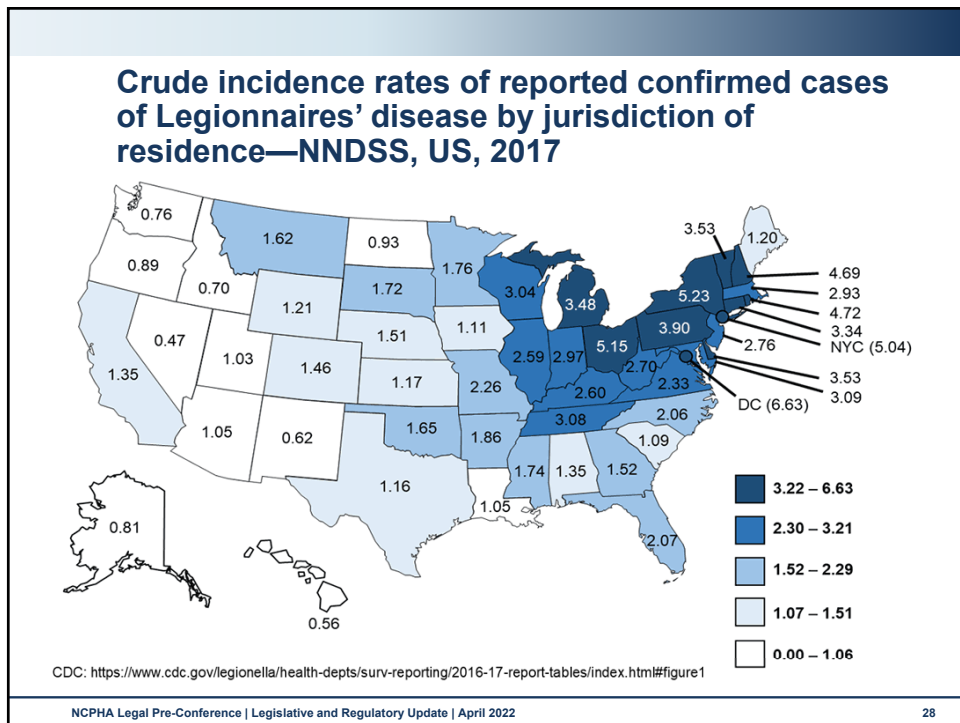
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15A NCAC 18E—Wastewater Rules

- **August 4, 2021—18E rules adopted and the .1900 rules repealed by the CPH**
- **September 16, 2021—The RRC approved the 36 repeals and 99 new rules.**
- **Related to Session Law requirements and letters of objection, 44 of the rules are subject to legislative review.**
- **What will happen in the short session?**

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15A NCAC 18A Readoption Update

- **Phase 1 (complete)**
 - Began October 2019
 - Food, Private Well, and Childhood Lead Poisoning Prevention Rules
- **Phase 2 (in process)**
 - Institution, Child Care, and Inspection Fee Rules
- **Phase 3 (beginning stages)**
 - Camp, Local Confinement, Public Swimming Pool, and Residential Care Rules
 - Complete by March 2024

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EH-Related Rules

- **15A NCAC 18A .2901 Inspection Fee Rules**
 - Existing funding formula maintained
 - Provides process for distributing funds to a LHD affected by a declared disaster or emergency
 - Proposed effective July 1, 2022
- **15A NCAC 01O .0100 Delegation of Authority**

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NCALHD EH Workgroup

- **EH Recruitment and Retention**
- **Members:**
 - Cris Harrelson (Brunswick--Chair)
 - Lillian Koontz (Davidson)
 - Joshua Kennedy (Polk)
 - Brady Freeman (Iredell)
 - Joe Johnson (Guilford)
 - Sloan Griffin (Moore)
 - Jon Fowlkes (DPH)
 - Larry Michael (DPH)

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To Watch

- **Requirements to practice as an Environmental Health Specialist in NC**
- **S711 (Medical Cannabis)**
 - Requires rules and inspection for sanitation and workplace safety



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EH References and Resources

Revise Health Standard for Lead [SL 2021-69](#)

Lead Dust Standards Sec. 12.(a) [H911](#)

[CDC Blood Lead Reference Value](#)

Food Establishment Technical Changes Sec. 7 [SL 2021-77](#)

Temporary Display Spas Sec. 8 SL [2021-77](#)

Medical Cannabis [S711](#)

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