"WAIVE/WAIVERS" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the Licensing Authority.

[7-1-60, 5-2-89, 10-31-96, 6-15-98; 7.9.2.7 NMAC – Rn, 7 NMAC 9.2.7, 8-31-00]

7. 9.2.21 WAIVERS AND VARIANCES:

A. DEFINITIONS: As used in this section:
(1) Waiver: means the grant of an exemption from a requirement of these regulations.
(2) Variance: means the granting of an alternate requirement in place of a requirement of these regulations.

B. REQUIREMENTS FOR WAIVERS AND VARIANCES: A waiver or variance may be granted if the Department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:
(1) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident.
(2) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interest of better care or management.

C. APPLICATIONS:
(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the Department, specifying the following:
   (a) The rule from which the waiver or variance is requested;
   (b) The time period for which the waiver or variance is requested;
   (c) If the request is for a variance, the specific alternative action which the facility proposes;
   (d) The reasons for the request; and
   (e) Justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.
(3) The Department may require additional information from the facility prior to acting on the request.

D. GRANTS AND DENIALS:
(1) The Department at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denials shall contain the reasons for denial.
(2) The terms of a requested variance may be modified upon agreement between the Department and a facility.
(3) The Department may impose such conditions on the granting of a waiver or variance which it deems necessary.
(4) The Department may limit the duration of any waiver or variance.
(5) The Department’s action on a request for a waiver is not subject to administrative appeal.

E. REVOCATION: The Department may revoke a waiver or variance if:
(1) It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident’s; or
(2) The facility has failed to comply with the variance as granted; or
(3) The licensee notifies the Department in writing that it wishes to relinquish the waiver or variance and be
subject to the rule previously waived or varied;

(4) Required by a change in law.

[5-2-89; 7.9.2.21 NMAC – Rn, 7 NMAC 9.2.21, 8-31-00]

7.9.2.71 PHYSICAL ENVIRONMENT:

A. GENERAL: The buildings of the nursing facility shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery services appropriate to the needs of the community and with due for protecting the health and safety of the patients. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted. Existing waivers at the time these regulations are enacted would continue to be accepted unless it is determined that the facility is unable to protect the health and safety of the resident.

D. FIRE PROTECTION:

(1) Basic responsibility: The facility shall provide fire protection adequate to ensure the safety of patients, staff and others on the premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed to ensure rapid and effective fire and smoke control.


(3) Existing facilities: Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.

(4) Equivalent Compliance: An existing facility that does not meet all requirements of the applicable Life Safety Code may be considered in compliance with it if it achieves a passing score on the Fire Safety Evaluation System (FSES) developed by the U.S. Department of Commerce National Bureau of Standard, to establish safety equivalencies under the Life Safety Code.