State Regulations Pertaining to Waivers

Note: This document is arranged alphabetically by State. To move easily from State to State, click the "Bookmark" tab on the Acrobat navigation column to the left of the PDF document. This will open a Table of Contents for the document. The relevant federal regulations are at the end of the PDF.

ALABAMA

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Waiver process not addressed in state regulations

ALASKA

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Article 5. General Variance Procedures.

7 AAC 10.9500. Purpose and applicability. (a) Except as provided in (b)(2) and (3) of this section, the purpose of 7 AAC 10.9500 - 7 AAC 10.9535 is to provide a process for determining whether a general variance, if requested, should be granted for a requirement of

(1) AS 47.32;

(2) this chapter; or

(3) another regulation applicable to an entity referred to in 7 AAC 10.015.

(b) The provisions of 7 AAC 10.9500 - 7 AAC 10.9535

(1) apply to the entities referred to in 7 AAC 10.015;

(2) do not apply to a temporary variance to admit a child for care in an assisted living home under 7 AAC 75.415; and

(3) do not apply to a request for a variance from a provision of 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), 7 AAC 41.205 (Child Protection and Criminal History Check Requirements), or 7 AAC 57.315 (Child Protection and Criminal History Check Requirements).

7 AAC 10.9505. General variance. (a) Subject to 7 AAC 10.9500(b)(2) and (3), and (b) of this section, the department may grant a general variance if

(1) the applicable requirements of 7 AAC 10.9500 - 7 AAC 10.9515 are met;
(2) an alternative means, acceptable to the department, satisfies the purpose of the requirement for
which the variance is sought; and

(3) the health, safety, and welfare of recipients of services are protected.

(b) The department may grant an assisted living home a general variance from a requirement of AS
47.32, 7 AAC 75, or this chapter to allow the home to

(1) meet the goals of AS 47.32, 7 AAC 75, and this chapter in a way that differs from the methods set
out in AS 47.32, 7 AAC 75, or this chapter;

(2) promote aging in place to minimize the need for a resident to move from the home; or

(3) integrate mentally, developmentally, and physically disabled residents into the community to
reach their highest level of functioning.

7 AAC 10.9510. Request for a general variance. An entity seeking a general variance under 7
AAC 10.9500 - 7 AAC 10.9535 must submit to the department, on a form supplied by the
department, a request for a general variance as required by this section. A request must contain the
following:

(1) the requirement from which the variance is sought;

(2) the reasons why the entity is unable to comply with the requirement, a description of how the
entity is not in compliance, and the extent to which compliance with the requirement will impose
any substantial economic, technological, programmatic, legal, or medical hardship on the entity or
recipients of services;

(3) the period of time for which the variance is requested;

(4) the proposed alternative means of satisfying the purpose of the requirement for which the
variance is sought;

(5) a statement as to how the health, safety, and welfare of recipients of services will be protected
during the period of the variance;

(6) the plan for achieving compliance before the variance expires;

(7) assurance that the conditions at the entity do not present an imminent danger to the health,
safety, or welfare of recipients of services;

(8) if the request for a variance involves fire safety or another state or municipal requirement,
evidence that the request has been reviewed by the appropriate authority;

(9) for a licensed entity, the names of the recipients of services who would be affected by the
variance, and the names and addresses of any representatives of those recipients of services; the
requirements of this paragraph do not apply to a child care facility subject to 7 AAC 57 unless this
information is requested by the department;

(10) for an assisted living home, assurance that the notice requirements of 7 AAC 10.9515 will be
met;
(11) any additional information requested by the department to determine the effect of a variance on the health, safety, and welfare of recipients of services.

7 AAC 10.9520. Evaluation of a request for a general variance. The department will evaluate a request for a general variance by

(1) investigating the statements in the request form;
(2) inspecting the entity, if appropriate; and
(3) taking one or both of the following actions:
   (A) conferring with the applicant or licensee regarding the request;
   (B) discussing the request with the affected recipients of services or their representatives, as appropriate, to determine whether they support granting the variance.

7 AAC 10.9525. Grant or denial of a general variance. (a) The department's decision to grant or deny a request for a general variance will be issued in writing and will be delivered to the person who made the request.

(b) Subject to (c) of this section, the department may grant a general variance, for a period that does not exceed one year, if the department determines that the entity

(1) is unable to comply with the requirement from which the variance is sought;

(2) has an effective plan for achieving compliance during the term of the variance; and

(3) is able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance.

(c) The department may grant a general variance for a longer period than allowed under (b) of this section if the department determines

(1) that
   (A) strict compliance with the requirement from which the variance is sought cannot be accomplished without a substantial economic, technological, programmatic, legal, or medical hardship; or
   (B) the variance will maintain or improve the quality of services for recipients of services; and

(2) that the entity has an effective plan for meeting the goal of the requirement from which the variance is sought, and that the plan adequately protects the health, safety, and welfare of recipients of services and otherwise meets all applicable statutory or regulatory standards.

(d) A decision to grant a request for a general variance will identify the statutory or regulatory requirement involved by section number and subject matter and state the duration, terms, and conditions of the variance, including the steps the entity must take to achieve compliance before the variance expires.

(e) A decision to deny a request for a general variance will be in writing and will state the reasons for the denial. The entity may reapply for a variance, addressing the department's stated reasons for the denial or may request reconsideration under 7 AAC 10.9535.

(f) If an entity violates a condition of a general variance granted under this section, the department will send written notice to the entity that the variance is revoked. The notice will advise that the entity may request reconsideration under 7 AAC 10.9535.
7 AAC 10.9530. Posting of a general variance. (a) If the department grants a request for a general variance, the entity shall post a copy of the general variance decision in a conspicuous place, with the entity's license as required by AS 47.32.080, during the period the variance is in effect, and shall make it available to any person who wishes to review it. A general variance remains in effect for the duration stated, unless the department revokes the variance under (b) of this section.

(b) The department will revoke a general variance if the department finds that the entity is not following its plan for achieving compliance, or is no longer able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance. If the department decides to revoke a variance, it will provide written notice of revocation to the entity, setting out the reasons for the department’s decision. The department will advise the entity of its right to request reconsideration under 7 AAC 10.9535. A notice of revocation issued under this subsection is effective 30 days after it is received by the entity unless a request for reconsideration is submitted. Nothing in this subsection precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of recipients of services is threatened.

7 AAC 10.9535. Request for reconsideration of denial or revocation of a general variance. (a) If the department denies or revokes a variance subject to 7 AAC 10.9500 - 7 AAC 10.9535, the entity may submit a written request to the department for reconsideration of that decision.

(b) A request under (a) of this section must be submitted within 30 days after the entity receives the denial or notice of revocation, and must include

1. the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;
2. a summary of the department's decision to be reviewed; and
3. a clear and concise statement of the reason for the request, including
   A. a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;
   B. the contested terms and conditions of the department's decision, and proposed alternatives; and
   C. copies of any documents or data that would assist the department in its review.

(c) After reviewing a request for reconsideration, the department will notify the entity in writing within 30 days after receiving the request, and will state the reasons for the department's final decision.
Waiver process not addressed in state regulations

**CALIFORNIA**

Program Flex section from Title 22: 72213-Program Flexibility for Skilled Nursing Facilities of the California Regulatory Code.

(a) All skilled nursing facilities shall maintain compliance with the licensing requirements. These requirements do not prohibit the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects, provided such exceptions are carried out with the provisions for safe and adequate care and with the prior written approval of the department. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the Department.

(b) Any approval of the Department granted under this Section, or a true copy thereof, shall be posted immediately adjacent to the facility’s license.

**COLORADO**

Part 4. WAIVER OF REGULATIONS FOR HEALTH CARE ENTITIES

4.101 Statutory Authority, Applicability and Scope

(1) This Part 4 is promulgated by the State Board of Health pursuant to Section 25-1-108(l)(c), C.R.S., in accordance with the general licensing authority of the Department as set forth in Section 25-1.5-103, C.R.S.

(2) This Part 4 applies to health facilities licensed by the Department and establishes procedures with respect to waiver of regulations relating to state licensing and federal certification of health facilities.

(3) Nothing contained in these provisions abrogates the Applicant’s obligation to meet minimum requirements under local safety, fire, electrical, building, zoning, and similar codes.

(4) Nothing herein shall be deemed to authorize a waiver of any statutory requirement under state or federal law, except to the extent permitted therein.

(5) It is the policy of the State Board of Health and the Department that every licensed health care entity complies in all respects with applicable regulations. Upon application to the Department, a waiver may be granted in accordance with this Part 4, generally for a limited term. Absent the existence of a current waiver issued pursuant to this part, health care entities are expected to comply at all times with all applicable regulations.

4.102 Definitions For This Part 4

(1) “Applicant” means a current health care entity licensee, or an applicant for federal certification or for an initial license to operate a health care entity in the state of Colorado.
(2) "Board" means the State Board of Health.

(3) "Department" means the Colorado Department of Public Health and Environment.

(4) "Health Care Entity" means a health facility or agency licensed pursuant to Sections 25-1.5-103 and 25-3-102, C.R.S., and/or certified pursuant to federal regulations to participate in a federally funded health care program.

(5) "Regulation(s)" means:
   (a) Any state regulation promulgated by the Board relating to standards for operation or licensure of a health care entity, or
   (b) Any federal regulation pertaining to certification of a care entity, but only when final authority for waiver of such federal regulation is vested in the Department. "Regulation(s)" includes the terms "standard(s)" and "rule(s)."

4.103 Application Procedure

(1) General Waiver applications shall be submitted to the Department on the form and in the manner required by the Department.
   (a) Only one Regulation per waiver application will be considered.
   (b) The Applicant shall provide the Department such information and documentation as the Department may require to validate the conditions under which the waiver is being sought.
   (c) The application must include the Applicant’s name and specify the Regulation that is the subject of the application, identified by its citation.
   (d) The application must be signed by an authorized representative of the Applicant, who shall be the primary contact person for the Department and the individual responsible for ensuring that accurate and complete information is provided to the Department.

(2) At a minimum, each waiver application shall include the following:
   (a) A copy of the notice required to be posted pursuant to Section 4.103(4);
   (b) If the waiver application pertains to building requirements, schematic drawings of the areas affected and a description of the effect of the requested waiver on the total health care entity;
   (c) A description of the programs or services offered by the health care entity that are anticipated to be affected by the waiver;
   (d) A description of the number of residents or patients in the health care entity and the level of care they require;
   (e) A description of the nature and extent of the Applicant's efforts to comply with the Regulation;
   (f) An explanation of the Applicant’s proposed alternative(s) to meet the intent of the Regulation that is the subject of the waiver application;
   (g) An explanation of why granting the waiver would not adversely affect the health, safety or welfare of the health care entity's residents or patients;
   (h) If the waiver is being sought for state Regulation, a description of how any applicable federal Regulation similar to the state Regulation for which the waiver is sought (if any) is being met.

(3) A waiver application shall address the following matters, to the extent applicable or relevant:
   (a) Staffing considerations, such as staff/resident or patient ratios, staffing patterns, scope of staff training, and cost of extra or alternate staffing;
   (b) The location and number of ambulatory and non-ambulatory residents or patients;
   (c) The decision-making capacity of the residents or patients;
   (d) Recommendations of attending physicians and other care-givers;
   (e) The extent and duration of the disruption of normal use of resident or patient areas to bring the health care entity into compliance with the Regulation;
   (f) Life safety code factors, including but not limited to:
(i) The availability and adequacy of areas safe from fire and smoke to hold residents or patients during a fire emergency;
(ii) Smoking regulations;
(iii) Fire emergency plan;
(iv) The availability, extent and types of automatic fire detection and fire extinguishment systems provided in the health care entity;
(v) The ability to promptly notify, and availability of, the fire department;

(g) Financial factors, including but not limited to:
(i) The estimated cost of complying with the Regulation, including capital expenditures and any other associated costs, such as moving residents or patients;
(ii) How application of the Regulation would create a demonstrated financial hardship on the health care entity that would jeopardize its ability to deliver necessary health care services to residents or patients;
(iii) The availability of financing to implement the Regulation, including financing costs, repayment requirements, if any, and any financing or operating restrictions that may impede delivery of health care to residents or patients; and
(iv) The potential increase in the cost of care to residents or patients as a result of implementation of the Regulation.

(h) Why waiver of the Regulation is necessary for specific health care entity programs to meet specific patient or resident needs, and why other patient or resident needs are not thereby jeopardized.

(4) Notice and Opportunity to Comment on Application

(a) No later than the date of submitting the waiver application to the Department, the applicant shall post written notice of the application for thirty (30) days at all public entrances to the health care entity, as well as in at least one area commonly used by patients or residents, such as a waiting room, lounge, or dining room. Applicants that do not provide services on their own licensed premises, such as home care agencies and hospices, shall instead provide such written notice directly to patients. The notice shall be dated and include that an application for a waiver has been made, a meaningful description of the substance of the waiver, and that a copy of the waiver shall be provided by the health care entity upon request.

(b) The notice must also indicate that any person interested in commenting on the waiver application may forward written comments directly to the Department at the following address:

CDPHE - HFD, A2 - Waiver Program
4300 Cherry Creek Drive South
Denver, CO 80246.

(c) The notice must specify that written comments from interested persons must be submitted to the Department within thirty (30) calendar days of the date the notice is posted by the Applicant, and that persons wishing to be notified of the Department’s action on the waiver application may submit to the Department at the above address a written request for notification and a self-addressed stamped envelope.

4.104 Department Action Regarding Waiver Application

(1) General. Upon an Applicant’s submission of a completed waiver application to the Department, a waiver of a particular Regulation with respect to a health care entity may be granted in accordance with this Part 4.

(2) Decision on Waiver Application

(a) In acting on a waiver application, the Department shall consider:
   (i) The information submitted by the Applicant;
   (ii) The information timely submitted by interested persons, pursuant to Section 4.103 (4); and
   (iii) Whether granting the waiver would adversely affect the health safety or welfare of the health care entity’s residents or patients.
(b) In making its determination, the Department may also consider any other information it deems relevant, including but not limited to occurrence and complaint investigation reports, and licensure or certification survey reports and findings related to the health care entity and/or the operator or owner thereof.
(c) The Department shall act on a waiver application within ninety (90) calendar days of receipt of the completed application. An application shall not be deemed complete until such time as the Applicant has provided all information and documentation requested by the Department.

(3) Terms and conditions of the waiver. The Department may specify terms and conditions under which any waiver is granted, which terms and conditions must be met in order for the waiver to remain effective.

4.105 Termination, Expiration and Revocation of Waiver

(1) General. The term for which each waiver granted will remain effective shall be specified at the time of issuance.
(a) The term of any waiver shall not exceed any time limit set forth in applicable state or federal law.
(b) At any time, upon reasonable cause, the Department may review any existing waiver to ensure that the terms and conditions of the waiver are being observed, and/or that the continued existence of the waiver is otherwise appropriate.
(c) Within thirty (30) calendar days of the termination, expiration or revocation of a waiver, the Applicant shall submit to the Department an attestation, in the form required by the Department, of compliance with the Regulation to which the waiver pertained.

(2) Termination
(a) Change of Ownership. A waiver shall automatically terminate upon a change of ownership of the health care entity, as defined in Section 2.7 of Part 2, Chapter II of these Regulations. However, to prevent such automatic termination, the prospective new owner may submit a waiver application to the Department prior to the effective date of the change of ownership. Provided the Department receives the new application by this date, the waiver will be deemed to remain effective until such time as the Department acts on the application.

(3) Expiration
(a) Except as otherwise provided in this Part 4, no waiver shall be granted for a term that exceeds one year from the date of issuance.
(b) A waiver with a term in excess of one year may be granted for Regulations pertaining to state building or fire safety Regulations, or in other specific cases where it is determined a longer term is appropriate.
(c) If an Applicant wishes to maintain a waiver beyond the stated term, it must submit a new waiver application to the Department not less than ninety (90) calendar days prior to the expiration of the current term of the waiver.

(4) Revocation
(a) Notwithstanding anything in this Part 4 to the contrary, the Department may revoke a waiver if it determines that:
   (i) The waiver’s continuation jeopardizes the health, safety, or welfare of residents or patients;
   (ii) The Applicant has provided false or misleading information in the waiver application;
   (iii) The Applicant has failed to comply with the terms and conditions of the waiver;
   (iv) The conditions under which a waiver was granted no longer exist or have changed materially; or
   (v) A change in a federal or state law or Regulation prohibits, or is inconsistent with, the continuation of the waiver.
(b) Notice of the revocation of a waiver shall be provided to the Applicant in accordance with the Colorado Administrative Procedures Act, Section 24-4-101 et seq., C.R.S.

4.106 Waiver of Building and Fire Safety Regulations for Skilled and Intermediate Health Facilities
(1) Notwithstanding anything in this Part 4 to the contrary, an application for waiver of building or fire safety Regulations promulgated by the Board that is submitted with respect to a health care entity that is a skilled or intermediate health care facility shall be reviewed and acted upon in accordance with this Section 4.106. To the extent they do not conflict with the express provisions of this Section 4.106, the remaining provisions of this Part 4 shall also apply to this type of waiver application.

(2) A waiver application described in Section 4.106(1) shall be submitted to the Department and notice thereof shall be posted in accordance with Section 4.103. The application must address those matters set forth in Section 4.103(2) and Sections 4.103(3) (f) and (g). Other matters described in Section 4.103(3) may also be addressed, as appropriate.

(3) The Department shall review the application in accordance with Section 4.104(2), and shall make a recommendation to the Board within ninety (90) calendar days of receipt of the complete application as to whether or not the requested waiver should be granted.

(a) The Department may recommend granting a waiver only upon finding that:
   (i) Rigid application of the Regulation would result in demonstrated financial hardship to the health care entity, and
   (ii) Granting the requested waiver would not adversely affect the health and safety of the health care entity’s residents or patients.

(b) The Department’s recommendation shall include the term of the waiver and any terms and conditions for issuance thereof.

(4) The Department’s recommendation to the Board on any waiver application subject to this Section 4.106 shall be in writing and shall include the following:

(a) A statement of the Department’s recommendation, including the required findings described in Section 4.106(3)(a) and a general statement of the basis for the recommendation; and

(b) A list of the documents and other information reviewed by the Department in preparing its recommendation, which documents shall be made available to the Board for review upon request.

(5) The Board shall review and act upon the Department’s recommendation at its next regularly scheduled meeting, or as soon as reasonably possible thereafter. The Department shall provide the Applicant notice of the Board’s action, and if the waiver is approved, shall issue the waiver in accordance with the direction of the Board.

(6) The Department shall be responsible for monitoring any waiver approved by the Board pursuant to this Section 4.106 and, at the Board’s request, shall provide periodic reports to the Board concerning the status thereof. Such waivers shall be subject to the provisions of Section 4.105 concerning termination, expiration and revocation; provided, however, that the Department’s action to revoke a waiver pursuant to Section 4.105(4)(a) shall be subject to the Board’s prior approval.

4.107 Appeal Rights

(1) An Applicant may appeal the decision of the Department or the Board regarding a waiver application or revocation as provided in the Colorado Administrative Procedures Act, Section 24-4-101 et seq., C.R.S
(c) Waiver.

(1) The commissioner or his/her designee, in accordance with the general purpose and intent of these regulations, may waive provisions of these regulations if the commissioner determines that such waiver would not endanger the life, safety or health of any patient. The commissioner shall have the power to impose conditions which assure the health, safety and welfare of patients upon the grant of such waiver, or to revoke such waiver upon a finding that the health, safety, or welfare of any patient has been jeopardized.

(2) Any facility requesting a waiver shall apply in writing to the department. Such application shall include:
(A) The specific regulations for which the waiver is requested;
(B) Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon enforcement of the regulations;
(C) The specific relief requested; and
(D) Any documentation which supports the application for waiver.

(3) In consideration of any application for waiver, the commissioner or his/her designee may consider the following:
(A) The level of care provided;
(B) The maximum patient capacity;
(C) The impact of a waiver on care provided;
(D) Alternative policies or procedures proposed.

(4) The Department reserves the right to request additional information before processing an application for waiver.

(5) Any hearing which may be held in conjunction with an application for waiver shall be held in conformance with Chapter 54 of the Connecticut General Statutes and department regulations.

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DELWARE

11.0 Waivers and Severability

11.1 Waivers may be granted by the Division of Long Term Care Residents Protection for good cause.
11.2 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**DISTRICT OF COLUMBIA**

**22 DCMR B3106. APPROVAL OF VARIANCES.**

3106.1 The Director may grant a variance from any of the requirements of the Act and the rules of this chapter, if the applicant can show undue hardship and the variance can satisfy the following conditions:
   (a) It is not inconsistent with other provisions of the Act;
   (b) It is not deleterious to the public health and safety; and
   (c) It would not have the effect of permitting a violation of other laws or regulations of the District of Columbia.

3106.2 A facility requesting a variance shall submit in writing to the Director the following:
   (a) The regulatory requirement(s) for which a variance from strict compliance is being requested;
   (b) Specific justification as to why the facility cannot meet the requirement(s); and
   (c) Alternative measures provided to ensure quality care and services consistent with the Act and this chapter.

3106.3 The Director shall grant a variance only to the extent necessary to ameliorate an undue hardship and only when compensating factors are present to give adequate protection to the public health without impairing the intent and purpose of the Act or the rules of this chapter.

3106.4 If the Director believes that the conditions in § 3106.1 are not met, the Director shall issue a written proposed denial together with advice to the applicant as to his or her right to a hearing on the matter which shall be conducted by the Director in accordance with §§ 3107.3 and 3110.

3106.5 The Director shall maintain a record, open to inspection by the public, of all variances granted. The record shall contain a complete written explanation of the basis for each variance.

3106.6 If a variance is requested from standards established pursuant to §§ 5(a) (3) or (4) of the Act, the Director shall provide the Director, Department of Human Services, with notice and an opportunity to comment before a decision is made.

**FLORIDA**

**Not in regulations but in Statutes**
Waiver

290-5-8-.17 Patient Capacity.

(1) The number of beds provided shall be indicated on each permit and provisional permit.
(2) The number of patients receiving care within the home shall not exceed the number of beds shown on the permit. In exceptional cases, temporary waivers, not to exceed thirty (30) days, may be granted by the Department.


Variance

290-5-8-.18 Physical Plant Standards.

(1) Requirements under this rule "Physical Plant Standards" will be enforced with the effective date of these regulations EXCEPT that homes holding a valid permit prior to the effective date of these regulations, shall comply with the regulations in effect at the time the home was issued a permit or the plans were approved. Provided however, that any such homes which hold a valid permit prior to the effective date of these regulations must comply with these regulations when improvements or modifications are made within any twelve (12) month period and the cost of such improvements or modifications exceeds a total of twenty percent (20%) of the fair market value of the home. If no such improvements are made, the homes holding a valid permit prior to the effective date of these regulations must then comply with these regulations within fifteen (15) years of the effective date of these regulations. In exceptional cases and upon application to the Department by the governing body of the home, variances may be granted at the discretion of the Department (if it determines that these requirements will place an undue burden or extreme hardship on the home or its occupants), provided that the health and safety of the patients is not jeopardized.
"Waiver" means an exemption from a specific rule or regulation which may be granted to a facility for a specified period of time at the discretion of the director. No waiver shall be for duration longer than one year.

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Waiver" means an exemption from a specific rule or regulation which may be granted to a facility for a specified period of time at the discretion of the director. No waiver shall be for duration longer than one year.

11-94-3 Licensing (e) the director shall prescribe the content and form of the license, and may authorize a waiver or waivers for a particular facility.

ILLINOIS

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Section 300.288 Reduction or Waiver of Penalties

a) Reductions for all types of violations subject to penalties.

1) The Director or his designee shall consider the factors contained in Section 300.286(a) in determining whether to reduce the amount of the penalty to be assessed from the amount calculated pursuant to Section 300.284 and in determining the amount of such reduction.
2) When the Director or his designee finds that correction of a violation required capital improvements or repairs in the physical plant of the facility and the facility has a history of compliance with physical plant requirements, the penalty will be reduced by the amount of the cost of the improvements or repairs. This reduction, however, shall not reduce the penalty for a level A violation to an amount less than $1000.

b) Reductions and waivers for level B violations.

1) Penalties resulting from level B violations may be reduced or waived only under one of the following conditions:
A) The facility submits a report of correction within ten days after the notice of violation is received, and the report is subsequently verified by the Department.
B) The facility submits a plan of correction within ten days after the notice of violation is received, the plan is approved by the Department, the facility submits a report of correction within 15 days after submission of the plan or correction, and the report is subsequently verified by the Department.
C) *The facility submits a plan of correction within ten days* after the notice of violation is received, *the plan provides for correction within not more than 30 days* after submission of the plan of correction, and *the plan is approved by the Department.*

D) *Correction of the violation requires substantial capital improvements or repairs in the physical plant of the facility, the facility submits a plan or correction involving substantial capital costs, the plan of correction provides completion of the corrective action within 90 days* after submission of the plan, and the plan is approved by the Department. (Section 3-308 of the Act)

2) Under these conditions, the Director or his designee shall consider the factors outlined in Section 300.286(a) in determining whether to reduce or waive the penalty and in setting the amount of any reduction.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

**Section 300.320 Waivers**

a) *Upon application by a facility, the Director may grant or renew the waiver of the facility’s compliance with a rule or standard for a period not to exceed the duration of the current license or, in the case of an application for license renewal, the duration of the renewal period.* (Section 3-303.1 of the Act)

b) *The waiver may be conditioned upon the facility taking action prescribed by the Director as a measure equivalent to compliance.* (Section 3-303.1 of the Act)

c) *In determining whether to grant or renew a waiver, the Director shall consider:*

1) *the duration and basis for any current waiver with respect to the same rule or standard;*

2) *the continued validity of extending the waiver on the same basis;*

3) *the effect upon the health and safety of residents;*

4) *the quality of resident care* (whether the waiver would reduce the overall quality of the resident care below that required by the Act or this Part);

5) *the facility’s history of compliance with the Act and this Part* (the existence of a consistent pattern of violation of the Act or this Part); and

6) *the facility’s attempts to comply with the particular rule or standard in question.* (Section 3-303.1 of the Act)

d) *The Department shall renew waivers relating to physical plant standards issued pursuant to this Section at the time of the indicated reviews, unless it can show why such waivers should not be extended for the following reasons:*

1) *the condition of the physical plant has deteriorated or its use substantially changed so that the basis upon which the waiver was issued is materially different; or*

2) *the facility is renovated or substantially remodeled in such a way as to permit compliance with the applicable rules and standards without substantial increase in cost.* (Section 3-303.1 of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

b) Resident Bedroom.

**Section 300.3060 Nursing Unit**
1) Single resident bedrooms shall contain at least 100 square feet of usable floor area. Multiple resident bedrooms shall contain at least 80 square feet per bed of usable floor area. Minimum usable floor area shall be exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, vestibules, or clearly definable entryways. Those bedrooms for which facilities had waivers to this subsection (b)(1) on (and continuously since) December 24, 1987, and which have at least 90 square feet for single bedrooms and 70 square feet per bed for multi-bedrooms are exempt from this subsection (b)(1). Those bedrooms for which facilities had waivers to this subsection (b)(1) on (and continuously since) December 24, 1987, but which have less than 90 square feet for single bedrooms and 70 square feet per bed multi-bedrooms, continue to be subject to waiver procedures on an annual basis (See Section 300.320).

3) Soiled Utility Room

A) The soiled utility room shall be large enough to contain:
   i) a two compartment sink with drainboards;
   ii) ample storage cabinets;
   iii) a clinical rim flush sink for: rinsing bed pans, urinals, and linen soiled by solid materials, and similar type procedures; and
   iv) equipment and facilities for sanitizing bed pans, emesis basins, urine bottles, and other utensils, which meet accepted methods and procedures for such sanitation.

B) Based upon approval of the program narrative, the Department will consider a waiver of this subsection for Intermediate Care Facilities.

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**INDIANA**

410 IAC 16.2-3.1-2 Licenses

(k) For a good cause shown, waiver of any non-statutory provisions of this rule may be granted by the executive board for a specified period in accordance with IC16-28-1-10.

**IC 16-28-1-10 Waiver of rules by executive board**

Sec. 10. (a) Except as specifically provided, the executive board may, upon recommendation by the commissioner and for good cause shown, waive for a specified time any rule that may be waived under the following for a health facility:

(1) This article.
(2) IC 16-29.
(3) IC 16-30.

(b) Disapproval of a waiver request requires executive board
481—58.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual nursing facility. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a variance, the licensee must:
- a. Apply for variance in writing on a form provided by the department;
- b. Cite the rule or rules from which a variance is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the variance;
- e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance, the director of inspections and appeals will:
- a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;
- b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

481—61.2(135C) Variances. Procedures for requesting a variance in rules 481—58.2(135C) and 481—59.2(135C) are incorporated by reference as part of this chapter. Certain resident populations, conditions in the area, or the site may justify variances. In specific cases, variances to the rules may be granted by the director after the following conditions are met:
1. The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;
2. Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;
3. The health, safety or welfare of any resident shall not be endangered;
4. Variations are limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;
5. Occupancy and function of the building shall be considered; and
6. Type of licensing shall be considered.

481—61.7(135C) Service area.

m. The food service area shall be at least 10 square feet per resident bed. Variances to this rule may be granted on the basis of equipment and serving methods used. (III) (Exception 4)
Section 1. Definitions.

(1) "Accredited hospital" means a hospital accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JACACHO) or the American Osteopathic Association (AOA).
(2) "Adverse action" means action taken by the Cabinet for Health Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.
(3) "Cabinet" is defined by KRS 216B.015(5).
(4) "Inspecting agency" means the Office of the Inspector General, Cabinet for Health Services.
(5) "Inspector General" means the Inspector General or designee.
(6) "Variance" means the written approval of the Inspector General authorizing a health care facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses.

(1) The license required by KRS 216B.105(1) shall be conspicuously posted in a public area of the facility.

(2) An applicant for licensure shall file with the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, the appropriate application for licensure, as follows:
(a) Application for License to Operate a Family Care Home;
(b) Application for License to Operate a Long-term Care Facility;
(c) Application for License to Operate a Hospital;
(d) Application for License to Operate a Home Health Agency;
(e) Application for License to Operate a Special Health Clinic or Service;
(f) Application for License to Operate a Health Facility or Service;
(g) Application for Initial License to Operate a Critical Access Hospital (CAH);
(h) Application for Relicensure to Operate a Critical Access Hospital (CAH); or
(i) Application for a License to Operate a Residential Hospice Facility.

(3) An applicant for an initial license shall, as a condition precedent to licensure be in compliance
with the administrative regulations applicable to the license requested, which shall be determined
through an on-site inspection of the health facility.

(4) Licensure inspections.
(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.
(b) A representative of the inspecting agency shall have access to the health facility and pertinent
facility records.

(5) Violations.

(a) The inspecting agency shall notify the health facility in writing of a regulatory violation
identified during an inspection.
(b) The health facility shall submit to the inspecting agency, within ten (10) days of the notice, a
written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility’s administrator, the licensee, or a person designated by the
licensee and shall specify:
   a. The date by which the violation shall be corrected.
   b. The specific measures utilized to correct the violation; and
   c. The specific measures utilized to ensure the violation will not recur.

2. The inspecting agency shall review the plan and notify the facility of the decision to:
   a. Accept the plan;
   b. Not accept the plan; or
   c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS
      216B.105(2).

3. The notice specified in subparagraph 2b of this paragraph shall:
   a. State the specific reasons the plan is unacceptable; and
   b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The inspecting agency shall review the amended plan of correction and notify the facility in
writing of the decision to:
   a. Accept the plan;
   b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with
      KRS 216B.105(2); or
   c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction may be notified that the
license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).
(6) A license shall:
(a) Expire one (1) year from the date of issuance, unless otherwise expressly provided in the license certificate; and
(b) Be renewed if the licensee:
1. Submits a completed licensure application;
2. Pays the prescribed fee;
3. Has no pending adverse action and
4. Unless exempted, has responded to requests from the Cabinet for Health Services, Department of Public Health for:
   a. Annual utilization surveys; and
   b. Requests for information regarding health services provided.

(7) Except for a psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 2(1)(b), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(8) A new application shall be filed in the event of a change of ownership. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(9) The licensee shall fully disclose to the cabinet the name and address, or a change in the name or address, of:
(a) Each person having an ownership interest of twenty-five (25) percent or more in the facility; and
(b) 1. Each officer or director of the corporation, if a facility is organized as a corporation; or 2. Each partner, if a facility is organized as a partnership.

(10) An unannounced inspection shall be conducted:
(a) In response to a credible, relevant complaint or allegation; and
(b) According to procedures established in subsection (4) of this section.

(11) A facility, that does not have a pending adverse action, which has failed to renew its license on or before the expiration date shall cease operating the health facility unless:
(a) The items required under subsection (6)(b) of this section have been tendered; and
(b) The inspecting agency has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.

Section 3. Fee Schedule. (1) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

<table>
<thead>
<tr>
<th>License Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Hospitals plans and specifications review</td>
<td>$.05 per sq. ft.</td>
</tr>
<tr>
<td>(initial through final)</td>
<td>$100 minimum</td>
</tr>
<tr>
<td>(b) All other health facilities plans and</td>
<td>$.05 per sq. ft.</td>
</tr>
<tr>
<td>specifications review</td>
<td></td>
</tr>
<tr>
<td>(initial through final)</td>
<td>$100 minimum</td>
</tr>
</tbody>
</table>
(2) Annual fees. The annual licensure fee, including a renewal, for health facilities and services shall be as follows:

<table>
<thead>
<tr>
<th>License Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Alternative birth center</td>
<td>$155</td>
</tr>
<tr>
<td>(b) Alzheimer's nursing home</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(c) Ambulatory surgical center</td>
<td>$270</td>
</tr>
<tr>
<td>(d) Chemical dependency treatment service</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(e) Community mental health and mental retardation center</td>
<td>$1,300</td>
</tr>
<tr>
<td>(f) Day health care</td>
<td>$140</td>
</tr>
<tr>
<td>(g) Family care home</td>
<td>$40</td>
</tr>
<tr>
<td>(h) Group homes for the mentally retarded/developmentally disabled</td>
<td>$80</td>
</tr>
<tr>
<td>(i) Health maintenance organization</td>
<td>$10 per 100 patients</td>
</tr>
<tr>
<td>(j) Home health agency</td>
<td>$140</td>
</tr>
<tr>
<td>(k) Hospice</td>
<td>$35</td>
</tr>
<tr>
<td>(l) Hospital</td>
<td></td>
</tr>
<tr>
<td>1. Accredited hospital</td>
<td>$10 per bed $155/minimum</td>
</tr>
<tr>
<td>2. Nonaccredited hospital</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(m) Intermediate care facility</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(n) ICF/MR facility</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(o) Network</td>
<td>$270</td>
</tr>
<tr>
<td>(p) Nursing facility</td>
<td>$15 per bed $155/minimum</td>
</tr>
<tr>
<td>(q) Nursing home</td>
<td>$15 per bed</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>(r) Ambulatory care clinic</td>
<td>$270</td>
</tr>
<tr>
<td>(s) Personal care home</td>
<td>$4 per bed</td>
</tr>
<tr>
<td></td>
<td>$80/minimum</td>
</tr>
<tr>
<td>(t) Primary care center</td>
<td>$270</td>
</tr>
<tr>
<td></td>
<td>$25 per satellite</td>
</tr>
<tr>
<td>(u) Psychiatric hospital</td>
<td></td>
</tr>
<tr>
<td>1. Accredited hospital</td>
<td>$10 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>2. Nonaccredited hospital</td>
<td>$15 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>(v) Psychiatric residential treatment facility</td>
<td>$270</td>
</tr>
<tr>
<td>(w) Rehabilitation agency</td>
<td>$140</td>
</tr>
<tr>
<td>(x) Renal dialysis facility</td>
<td>$35 per station</td>
</tr>
<tr>
<td>(y) Rural health clinic</td>
<td>$140</td>
</tr>
<tr>
<td>(z) Skilled nursing facility</td>
<td>$15 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>(aa) Special health clinic</td>
<td>$270</td>
</tr>
<tr>
<td>(bb) Specialized medical technology service</td>
<td>$270</td>
</tr>
<tr>
<td>(cc) Mobile health service</td>
<td>$270</td>
</tr>
<tr>
<td>(dd) Comprehensive physical rehabilitation hospital</td>
<td></td>
</tr>
<tr>
<td>1. Accredited hospital</td>
<td>$10 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>2. Nonaccredited</td>
<td>$15 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>(ee) Critical access hospital</td>
<td>$15 per bed</td>
</tr>
<tr>
<td></td>
<td>$155/minimum</td>
</tr>
<tr>
<td>(ff) Private duty nursing agency</td>
<td>$140</td>
</tr>
</tbody>
</table>
Section 4. Existing Facilities With Waivers.

(1) The Inspector General shall deem an existing health care facility to be in compliance with a facility specification requirement, even though the facility does not meet fully the applicable requirement, if:
(a) The Inspector General has previously granted, to the facility, a waiver for the requirement;
(b) The facility is licensed by the cabinet;
(c) The facility is in good standing as of the effective date of this administrative regulation; and
(d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:
(a) The Inspector General shall notify the facility by certified mail of the findings and the need to comply with the applicable administrative regulations; and
(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 5. Variances.

(1) The Inspector General may grant a health care facility a variance from a facility specification requirement if the facility establishes that the variance will:
(a) Improve the health, safety, or welfare of a resident or patient; or
(b) Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.

(2) A facility shall submit a request for a variance, in writing, to the Office of the Inspector General, Cabinet for Health Services. The request shall include:
(a) All pertinent information about the facility;
(b) The specific provision of the administrative regulation affected;
(c) The specific reason for the request; and
(d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:
(a) Improved the health, safety, or welfare of a patient or resident; or
(b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail, of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 6. Variance Hearings.

(1) A health care facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health Services. The request shall be received by the secretary of the cabinet within twenty (20) days of the date the health care facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures.

(1) A facility that has received a preliminary order to close or other notice of adverse action:
(a) Shall receive a duplicate license from the Office of Inspector General indicating that the facility has adverse action pending;
(b) Shall post the duplicate license in place of the original license;
(c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and
(d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals of the pending adverse action have been exhausted, the facility shall not have its:
(a) License renewed; or
(b) Duplicate license replaced.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:
(a) Application for License to Operate a Family Care Home, OIG 4 (10/2002);
(b) Application for License to Operate a Long-term Care Facility, OIG 5 (10/2002);
(c) Application for License to Operate a Hospital, OIG 140 (10/2002);
(d) Application for License to Operate a Home Health Agency, OIG 141(10/2002);
(e) Application for License to Operate a Special Health Clinic or Service, OIG 142 (10/2002);
(f) Application for License to Operate a Health Facility or Service, OIG 144 (10/2002);
(g) Application for Initial License to Operate A Critical Access Hospital (CAH), OIG 242 (10/2002);
(h) Application for Relicensure to Operate A Critical Access Hospital (CAH), OIG 242A (10/2002);
and
(i) Application for a License to Operate a Residential Hospice Facility, OIG 155 (10/2002).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (8 Ky.R. 218; Am. 493; eff. 2-1-82; 9 Ky.R. 61; eff. 8-11-82; 745; eff. 1-6-83; 1055; eff. 4-6-83; 1325; eff. 7-6-83; 11 Ky.R. 465; Am. 730; eff. 12-11-84; 13 Ky.R. 1131; eff. 2-10-87; 14 Ky.R. 1870; 2031; eff. 4-14-88; 17 Ky.R. 133; eff. 9-13-90; 3536; eff. 7-17-91; 23 Ky.R. 3624; 4135; eff. 6-16-97; 24 Ky.R. 1786; 2378; eff. 5-18-98; 27 Ky.R. 3166; 28 Ky.R. 90; eff. 7-16-2001; 29 Ky.R. 1896; 2471; eff. 4-11-03; 30 Ky.R. 434; 868; eff. 10-15-03.)

LOUISIANA

§9919. Other Environmental Conditions

F. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This requirement is minimum and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

§9703. Licensing Process

M. Exceptions to these Licensing Requirements

1. Where any requirement on an existing nursing home would impose a financial hardship but would not adversely affect the health and safety of any resident, the existing nursing home may submit a request for exception (waiver) to the department.
2. Where a more stringent requirement on an existing nursing home would impose an unreasonable hardship, the existing nursing home may submit a written request for exception, along with supporting documentation, to the department.

MAINE

2.I. Waiver Provisions

Where structural changes in an existing facility are necessary for such facility to comply with the provisions of these regulations and the change would result in an unreasonable hardship to the owners or operators, the Department may grant a waiver of one or more of the specific provisions of these regulations to an operator or owner, in accordance with the following requirements:
2.I.1. Prior to the issuance or renewal of any license, the facility must make written application requesting a waiver to the Department. Such application shall contain a written justification for the request and shall state the specific provisions of these regulations for which a waiver is being requested, and shall document what steps the facility is taking or will take to bring such facility into compliance with those provisions of these regulations, for which a waiver is requested.

2.I.2. The Department may request additional information before making a decision as to granting or denying an application for a waiver.

2.I.3. No waiver shall extend beyond the term of the license and a new waiver shall be required when the license of the facility is renewed. Failure of a facility to implement reasonable steps in order to bring the facility into conformance with these regulations shall be grounds for the denial of a waiver.

2.I.4. No waiver or waivers shall be granted if there would be an adverse effect to the health or safety of the residents of a facility.

2.I.5. The facility will be notified in writing when a waiver is granted, and the specific area for which a waiver has been granted shall be noted on the license.

20.A. Structure

20.A.1. Requirements for Each Facility

u. Be accessible to and functional for residents, personnel and the public. All facilities shall comply with all Federal and State regulations regarding access and usability by the physically handicapped. At the discretion of the Department, time-limited waivers for existing facilities may be requested.

20.A.2. Elevators and Dumbwaiters

Each facility shall:

a. Have an elevator if beds are located on floors above street level;

b. Have the installation and maintenance of elevators, chair glides, and dumbwaiters comply with all applicable codes;

c. Assure that elevators are of sufficient size to accommodate a wheeled stretcher.

At the discretion of the Department, time-limited waivers for existing facilities may be requested.

ALZHEIMER’S/DEMENTIA CARE UNITS

d. Waivers

1. All physical plant construction or conversion waivers for existing Alzheimer’s/Dementia Care Units are to be submitted in accordance with Chapter 2.I. of these regulations.

2. Any new construction or bed conversions for Alzheimer’s/Dementia Care Units approved after the effective date of these regulations are not eligible for waivers.
MARYLAND

Agency Note: In existing structures, the Department will entertain requests for waivers on items which will not endanger the health and safety of persons using the facility; patients and visitors; and for those items, if corrected, which will result in an unreasonable hardship upon the facility, that is, cause substantial financial burden.

G. Waiver of Provisions. If a facility experiences practical difficulties or unnecessary hardships in complying with the provisions of this chapter, and can demonstrate that granting a waiver will not adversely affect the health and safety of its residents, the Secretary may waive any provision of this chapter. A waiver granted to a facility is effective for the period specified in the waiver. A waiver may be revoked at any time if a facility violates a condition of the waiver or if it appears to the Secretary that the health or safety of residents residing in the facility would be adversely affected by the continuation of the waiver.

MASSACHUSETTS

150.015: (C) Safety and Personal Protection.

(10) There shall be at least one functioning telephone on each floor or in each unit where patients, residents or personnel reside. These telephones shall be free of locks and shall be available for use in emergency for both incoming and outgoing calls. In addition, all facilities shall provide at least one telephone for patient or resident use, which may be coin operated, that is located so as to assure privacy during use; is a single line without an extension; is placed and positioned at a height so that the equipment is fully accessible to individuals in wheelchairs; is equipped with sound amplification for those with hearing disabilities and so identified with instructions for use. For existing facilities, the Division may grant a waiver of 105 CMR 150.015(C)(10) if it is demonstrated that enforcement would result in unreasonable hardship upon the facility. All facilities shall comply with the provisions of 105 CMR 150.015(C)(10) by December 23, 1983 except that it the facility demonstrates that major structural changes are necessary, compliance shall be achieved by June 23, 1984.
153.031: Special Projects and Waivers

(A) Proposals for special projects for innovative delivery of services related to long-term care facilities will be considered. However, no such plan shall be implemented without prior written approval of the Department. Such plans shall be implemented only on an experimental basis and subject to renewal of approval by the Department at such time periods as the Department shall fix.

(B) The Commissioner or his designee may waive the applicability to a particular facility of one or more of the requirements imposed by 105 CMR 153.000, 105 CMR 150.000: Licensing of Long-Term Care Facilities and 105 CMR 151.000: General Standards of Construction: Long-Term Care Facilities upon finding that:

1. the facility's non-compliance does not affect the health or safety of its residents and does not limit the facility's capacity to give adequate care; and

2. the facility has instituted compensating features or has undertaken a special project under 105 CMR 153.030(A) acceptable to the Department; and

3. the facility provides to the Commissioner or his designee written documentation supporting its request for a waiver.

333.20144 Licensing on basis of approved building program.

Sec. 20144. A health facility or agency not meeting statutory and regulatory requirements for its physical plant and equipment may be licensed by the department on the basis of a building program approved by the department which:

(a) Sets forth a plan and timetable for correction of physical plant or equipment deficiencies and items of noncompliance.
(b) Includes documented evidence of the availability and commitment of money for carrying out the approved building program.
(c) Includes other documentation the department reasonably requires to assure compliance with the plan and timetable.


Popular name: Act 368

333.20145 Construction permit; certificate of need as condition of issuance; rules; information required for project not requiring certificate of need; review and approval of architectural plans and narrative; rules; waiver; fee; "capital expenditure" defined.
Sec. 20145. (1) Before contracting for and initiating a construction project involving new
construction, additions, modernizations, or conversions of a health facility or agency with a capital
expenditure of $1,000,000.00 or more, a person shall obtain a construction permit from the
department. The department shall not issue the permit under this subsection unless the applicant
holds a valid certificate of need if a certificate of need is required for the project pursuant to part
222.

(2) To protect the public health, safety, and welfare, the department may promulgate rules to
require construction permits for projects other than those described in subsection (1) and the
submission of plans for other construction projects to expand or change service areas and services
provided.

(3) If a construction project requires a construction permit under subsection (1) or (2), but does
not require a certificate of need under part 222, the department shall require the applicant to
submit information considered necessary by the department to assure that the capital expenditure
for the project is not a covered capital expenditure as defined in section 22203(9).

(4) If a construction project requires a construction permit under subsection (1), but does not
require a certificate of need under part 222, the department shall require the applicant to submit
information on a 1-page sheet, along with the application for a construction permit, consisting of all
of the following:
(a) A short description of the reason for the project and the funding source.
(b) A contact person for further information, including address and phone number.
(c) The estimated resulting increase or decrease in annual operating costs.
(d) The current governing board membership of the applicant.
(e) The entity, if any, that owns the applicant.

(5) The information filed under subsection (4) shall be made publicly available by the department
by the same methods used to make information about certificate of need applications publicly
available.

(6) The review and approval of architectural plans and narrative shall require that the proposed
construction project is designed and constructed in accord with applicable statutory and other
regulatory requirements. In performing a construction permit review for a health facility or agency
under this section, the department shall, at a minimum, apply the standards contained in the
document entitled "Minimum Design Standards for Health Care Facilities in Michigan" published by
the department and dated March 1998. The standards are incorporated by reference for purposes
of this subsection. The department may promulgate rules that are more stringent than the
standards if necessary to protect the public health, safety, and welfare.

(7) The department shall promulgate rules to further prescribe the scope of construction projects
and other alterations subject to review under this section.

(8) The department may waive the applicability of this section to a construction project or
alteration if the waiver will not affect the public health, safety, and welfare.

(9) Upon request by the person initiating a construction project, the department may review and
issue a construction permit to a construction project that is not subject to subsection (1) or (2) if
the department determines that the review will promote the public health, safety, and welfare.

(10) The department shall assess a fee for each review conducted under this section. The fee is .5%
of the first $1,000,000.00 of capital expenditure and .85% of any amount over $1,000,000.00 of
capital expenditure, up to a maximum of $60,000.00.

(11) As used in this section, "capital expenditure" means that term as defined in section 22203(2),
except that it does not include the cost of equipment that is not fixed equipment.
333.20162 License; receipt of completed application; issuance of license within certain period of time; nonrenewable temporary permit; provisional license; procedure for closing facility; order to licensee upon finding of noncompliance; notice, hearing, and status requirements; report; “completed application” defined.

Sec. 20162. (1) Beginning on the effective date of the amendatory act that added section 20935, upon a determination that a health facility or agency is in compliance with this article and the rules promulgated under this article, the department shall issue an initial license within 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make the notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.
(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(2) The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(3) Except as otherwise provided in this subsection, if the department fails to issue or deny a license within the time period required by this section, the department shall return the license fee and shall reduce the license fee for the applicant’s next licensure application, if any, by 15%. Failure to issue or deny a license within the time period required under this section does not allow the department to otherwise delay processing an application. The completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the application fee was refunded or discounted under this subsection. The department may issue a nonrenewable temporary permit for not more than 6 months if additional time is needed to make a proper investigation or to permit the applicant to undertake remedial action related to operational or procedural deficiencies or items of noncompliance. A temporary permit shall not be issued to cover deficiencies in physical plant requirements.

(4) Except as provided in part 217, the department may issue a provisional license for not more than 3 consecutive years to an applicant who temporarily is unable to comply with the rules as to the physical plant owned, maintained, or operated by a health facility or agency except as otherwise provided in this article. A provisional license shall not be issued to a new health facility or agency or a facility or agency whose ownership is transferred after September 30, 1978, unless the facility or agency was licensed and operating under this article or a prior law for not less than 5 years. Provisional licensure under acts repealed by this code shall be counted against the 3-year
(5) The department, in order to protect the people of this state, shall provide a procedure for the orderly closing of a facility if it is unable to maintain its license under this section.

(6) Except as provided in part 217, the department, upon finding that a health facility or agency is not operating in accord with the requirements of its license, may:

(a) Issue an order directing the licensee to:
   (i) Discontinue admissions.
   (ii) Transfer selected patients out of the facility.
   (iii) Reduce its licensed capacity.
   (iv) Comply with specific requirements for licensure or certification as appropriate.

(b) Through the office of the attorney general, initiate misdemeanor proceedings against the licensee as provided in section 20199(1).

(7) An order issued under subsection (6) shall be governed by the notice and hearing requirements of section 20168(1) and the status requirements of section 20168(2).

(8) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with public health issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial applications the department received and completed within the 6-month time period required under subsection (1).

(b) The number of applications requiring a request for additional information.

(c) The number of applications denied.

(d) The average processing time for initial licenses granted after the 6-month period.

(e) The number of temporary permits issued under subsection (3).

(f) The number of initial license applications not issued within the 6-month period and the amount of money returned to applicants under subsection (3).

(9) As used in this section, “completed application” means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.


### 333.21757 Provisional license.

Sec. 21757. (1) The department may issue a 1-year provisional license, renewable for not more than 1 additional year, to an applicant whose services are needed in the community but who is temporarily unable to comply with the rules related to the physical plant of the facilities, excluding maintenance problems. At the time a provisional license is granted, specific deadlines for the correction of each physical plant violation shall be established.

(2) A provisional license shall not be issued for a nursing home constructed, established, or changing corporate ownership or management after the effective date of this section unless it is shown that unusual hardship would result to the public or to the applicant for the provisional
license and the nursing home was licensed and operating under a prior licensing act for not less than 5 years.

**History:** Add. 1978, Act 493,

### 333.21711 License required; prohibited terms or abbreviations; license for formal or informal nursing care services; exception.

Sec. 21711. (1) A nursing home shall be licensed under this article.

(2) “Nursing home”, “nursing center”, “convalescent center”, “extended care facility”, or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a nursing home by the department under this article.

(3) A person shall not purport to provide formal or informal nursing care services of the kind normally provided in a nursing home without obtaining a license as provided in this article. This subsection does not apply to a hospital or a facility created by Act No. 152 of the Public Acts of 1885, as amended, being sections 36.1 to 36.12 of the Michigan Compiled Laws.

**History:** 1978, Act 368, Eff. Sept. 30, 1978; Am. 1978, Act

### 333.21717 Individuals excluded from nursing home; exception; approval of area and program.

Sec. 21717. An individual shall not be admitted or retained for care in a nursing home who requires special medical or surgical treatment, or treatment for acute mental illness, mental retardation, communicable tuberculosis, or a communicable disease, unless the home is able to provide an area and a program for the care. The department shall approve both the area and the program, except for the programs providing treatment for mental illness and mental retardation which shall be approved by the department of mental health.


**Popular name:** Act 368

### 333.21718 Conditions of skilled nursing facility certification and participation in title 19 program; exception; exemption.

Sec. 21718. (1) Except as provided in subsections (3) and (4), as a condition of skilled nursing facility certification and participation in the title 19 program of the social security act, 42 U.S.C. 1396 to 1396k, a nursing home shall be concurrently certified for and give evidence of active participation in the title 18 program of the social security act, 42 U.S.C. 1395 to 1395qq. A nursing facility that is not concurrently certified for the title 18 program on the effective date of this section shall make application for concurrent certification not later than its next application for licensure and certification. A failure to make application shall result in the skilled nursing facility being decertified or refused certification as a provider in the title 19 program. Nursing home or nursing care facility participation in the title 18 program under the requirements for concurrent certification shall be effective not later than the beginning of the first accounting year following the home’s or facility’s title 18 certification.

(2) As a condition of skilled nursing facility certification, a nursing home shall obtain concurrent certification under title 19 of the social security act, 42 U.S.C. 1396 to 1396k, for each bed which is
certified to provide skilled care under title 18 of the social security act, 42 U.S.C. 1395 to 1395qq. Skilled care certification shall not be renewed unless the requirements of this subsection are met. (3) An exception may be made from the requirements of subsection (1) for a nursing facility that is currently certified as a skilled nursing facility by the director for title 19 participation but has been determined, after making application, to be ineligible for title 18 certification by the secretary of the United States department of health, education, and welfare. (4) A home or facility, or a distinct part of a home or facility, certified by the director as a special mental retardation or special mental illness nursing home or nursing care facility shall be exempt from the requirements of subsection (1).


Popular name:

R 325.20213 Construction and major alterations of nursing homes.

Rule 213. (1) A home shall not contract for or initiate either of the following projects without first obtaining a construction permit from the department: (a) A project for which a construction permit is required by section 20145 of the code. (b) A project to expand or change service areas for services provided which involves major alterations.

(2) The owner or governing body of a home or proposed home shall submit plans for projects described in subrule (1) of this rule to the department for review and approval before contracting for and initiating such projects. The department shall approve the plans if it determines that the project is designed and constructed in accord with applicable statutory and regulatory requirements.

(3) A major alteration is deemed to be any extensive structural alteration of an existing building area involving significant changes in the interior configurations or intended use by the moving of partitions of a number of rooms and involving an expenditure in an amount in excess of $25,000.00. Removal of a partition between 2 adjacent rooms to provide additional room space is not deemed to be a major alteration, unless it exceeds $25,000.00 in cost or unless multiple changes are to be made for a changed use of an entire wing or area and extensive plumbing or electrical wiring changes are required. (4) The department may waive the applicability of this rule if it determines the waiver will not affect the public health, safety, and welfare.

4658.0040 VARIANCE AND WAIVER.

Subpart 1. Request for variance or waiver. A nursing home may request that the department grant a variance or waiver from the provisions of this chapter. A request for a variance or waiver must be submitted to the department in writing. Each request must contain:
A. the specific part or parts for which the variance or waiver is requested;
B. the reasons for the request;
C. the alternative measures that will be taken if a variance or waiver is granted;
D. the length of time for which the variance or waiver is requested; and
E. other relevant information necessary to properly evaluate the request for the variance or waiver.

Subp. 2. **Criteria for evaluation.** The decision to grant or deny a variance or waiver must be based on the department's evaluation of the following criteria:
A. whether the variance or waiver adversely affects the health, treatment, comfort, safety, or well-being of a resident;
B. whether the alternative measures to be taken, if any, are equivalent to or superior to those prescribed in this chapter; and
C. whether compliance with the part or parts would impose an undue burden upon the applicant.

Subp. 3. **Notification of variance.** The department must notify the applicant in writing of its decision. If a variance or waiver is granted, the notification must specify the period of time for which the variance or waiver is effective and the alternative measures or conditions, if any, to be met by the applicant.

Subp. 4. **Effect of alternative measures or conditions.** Alternative measures or conditions attached to a variance or waiver have the force and effect of this chapter and are subject to the issuance of correction orders and penalty assessments in accordance with Minnesota Statutes, section 144A.10. The amount of fines for a violation of this part is that specified for the particular rule for which the variance or waiver was requested.

Subp. 5. **Renewal.** A request for the renewal of a variance or waiver must be submitted in writing at least 45 days before its expiration date. Renewal requests must contain the information specified in subpart 1. A variance or waiver must be renewed by the department if the applicant continues to satisfy the criteria in subparts 2 and 3, and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance or waiver was granted.

Subp. 6. **Denial, revocation, or refusal to renew.** The department must deny, revoke, or refuse to renew a variance or waiver if it is determined that the criteria in subparts 2 and 3 are not met. The applicant must be notified in writing of the reasons for the decision and informed of the right to appeal the decision.

Subp. 7. **Appeal procedure.** An applicant may contest the denial, revocation, or refusal to renew a variance or waiver by requesting a contested case hearing under Minnesota Statutes, chapter 14. The applicant must submit, within 15 days of the receipt of the department's decision, a written request for a hearing. The request for hearing must set forth in detail the reasons why the applicant contends the decision of the department should be reversed or modified. At the hearing, the applicant has the burden of proving that it satisfied the criteria specified in subparts 2 and 3, except in a proceeding challenging the revocation of a variance or waiver.

STAT AUTH: MS s 144A.04; 144A.08; 256B.431
HIST: 20 SR 303
MISSOURI

19CSR30-82.010(4)

(4) The department may grant exceptions for specified periods of time to any rule imposed by the department if the department has determined that the exception to the rule would not potentially jeopardize the health, safety or welfare of any residents of a long-term care facility.
(A) The owner or operator of the facility shall make requests for exceptions in writing to the director of the department. These requests shall contain—
1. A copy of the latest Statement of Deficiencies which shows a violation of the rule being cited, if the exception request is being made as a result of a deficiency issued during an inspection of the facility;
2. The section number and text of the rule being cited;
3. If applicable, specific reasons why compliance with the rule would impose an undue hardship on the operator, including an estimate of any additional cost that might be involved;
4. An explanation of any extenuating factors that may be relevant; and
5. A complete description of the individual characteristics of the facility or residents, or of any other factors that would safeguard the health, safety and welfare of the residents if the exception were granted.

(B) With the advice of the division’s licensure inspection field staff, the department will consider any requests that contain all the information required in subsection (4)(A). The department shall notify the operator, in writing, of the decision on any request for an exception, stating the reason(s) for acceptance or denial, and, if granted, the length of time the exception is to be in effect and any additional corrective factors upon which acceptance may be conditioned.

(C) The department shall only grant exceptions to licensure requirements set out in rules imposed by the department and cannot grant exceptions to requirements established by state statute or federal regulations. Operators wishing to obtain waivers of regulations under Title XVIII or Title XIX of the Social Security Act shall follow procedures established by the Centers for Medicare and Medicaid (CMS).

Chapter 85—Intermediate Care and Skilled Nursing Facility

(79) All facilities with plans approved between June 10, 1981 and December 31, 1998, shall comply with the 1985 edition of the Life Safety Code, and all new facilities with plans approved on or after
January 1, 1999, shall comply with the 1997 edition of the Life Safety Code (National Fire Protection Association NFPA 101), which are incorporated by reference in this rule. No provision of the 1997 code will be enforced if it is more restrictive than the code of original plan approval. Facilities may only use the fire safety evaluation system found in the 1995 NFPA 101A, incorporated by reference in this rule, if necessary to justify variance from the text of the Life Safety Code and not as a guide for the total design of a new facility. II

MONTANA

(78) "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this subchapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

37.106.311 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: FOOD SERVICE ESTABLISHMENTS (1) A health care facility which serves food or beverage to patients or residents shall comply with the food service establishment act, Title 50, chapter 50, MCA, and food service establishments rules, ARM Title 37, chapter 110, subchapter 2.

37.110.253 VARIANCES

(1) A food service establishment may request a variance to waive or modify requirements of this subchapter by petitioning the local health authority.

(2) The local health authority may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the local health authority a health hazard will not result from the variance.

(3) If a variance is granted, the local health authority may require any of the following information for its records on the food establishment:
   (a) a statement by the petitioner of the proposed variance from this subchapter’s requirements, citing the relevant rule numbers;
   (b) a rationale by the petitioner explaining how the potential public health hazards addressed by the relevant rules will be alternatively addressed by the proposal; and
   (c) a hazard analysis and critical control point plan (HACCP) from the petitioner requesting the variance that includes the information required for a HACCP plan and its relevance to the variance requested.

(4) The petitioner may ask for approval from the department if the local health authority denies the variance, or the local health authority does not exist or is absent. For department approval, the petitioner shall submit the information required in (3)(a) through (c) of this rule.

(5) The recipient of a variance must demonstrate to the regulatory authority conformance with approved procedures through compliance with the HACCP plan, if one is required, or procedures
that are submitted and approved as a basis for the variance. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR.

12-007.05 Waivers

The Department may waive any provision of 175NAC 12 relating to construction or physical plant requirements of a licensed facility upon proof by the licensee satisfactory to the Department that:

1. The waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in the facility;
2. The provision would create an unreasonable hardship for the facility; and
3. The waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-007.5A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

1. The estimated cost of the modification or installation;
2. The extent and duration of the disruption of the normal use of areas used by persons residing in the facility resulting from construction work;
3. The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to costs;
4. The availability of financing; and
5. The remaining useful life of the building.

12-007.05B Waiver Terms and Conditions: A waiver may be granted under terms and conditions and for a period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of a resident remain in effect as long as required by the resident;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit a facility time to come into compliance with the physical plant standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and
4. An applicant or licensee must submit any request for waiver of any construction or physical plant requirements set forth in 175 NAC 12. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.
12-007.05C Denial of Waiver: If the Department denies a facility's request for waiver, the facility may request an administrative hearing as provided in the Administrative Procedure Act and the Department’s rules and regulations adopted and promulgated under the APA.

NEVADA

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No regulations within state rules for waivers/variance

NEW HAMPSHIRE

Downloaded 01.15.11

No regulations within state rules for waivers/variance

NEW JERSEY

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8:39-2.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the facility’s residents or the public.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Long-Term Care Licensing and Certification Program of the Department.

(c) A written application for waiver shall include at least the following:
1. The nature of the waiver requested;
2. The specific standards for which a waiver is requested;
3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility or any individual upon full compliance;
4. An alternative proposal which would ensure resident safety; and
5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

(e) The Department shall issue to the facility written confirmation of either a grant or denial of any waiver request.
8:39-2.9 Chronic hemodialysis services

(a) If a facility provides hemodialysis services to its own long-term care residents only, the following conditions shall be met:

1. The facility shall be authorized to provide the service by the Long-Term Care Licensing and Certification Program of the Department subsequent to the submission and review of the information contained in this subchapter. The application shall describe how the standards in (a)2 through 4 below will be met. The facility shall comply with ambulatory care requirements for a chronic dialysis provider, in accordance with N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved. Waivers from the nine station minimum requirement at N.J.A.C. 8:43A-24.2 shall be considered on an individual basis;

NEW MEXICO

JJ. "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. REVOCAITION: 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.
No regulations within state rules for waiver/variance

NORTH CAROLINA

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No regulations within state rules for waiver/variance

NORTH DAKOTA

Downloaded 01.15.11

33-07-03.2-04. Waiver provision. Any provisions of this chapter or chapter 33-07-04.2 may be waived by the department for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the residents and would result in unreasonable hardship upon the facility. A waiver may be granted for a specific period of time not to exceed one year and shall expire on December thirty-first of the year issued.

History: Effective July 1, 1996.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 28-32-02

OHIO

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3701-17-26 Variances.

(A) The director may grant a variance from the requirements of rules 3701-17-01 to 3701-17-26 of the Administrative Code as will not be contrary to the public interest, where the operator shows that because of practical difficulties or other special conditions, their strict application will cause unusual and unnecessary hardship. However, no variance shall be granted:
(1) That will defeat the spirit and general intent of these rules, adversely affect the health or safety of the residents, or otherwise not be in the public interest; or
(2) For a requirement that is mandated by statute.

(B) A request for a variance from the requirements of rules 3701-17-01 to 3701-17-26 of the Administrative Code shall be made in writing to the director, specifying the following:
(1) The rule requirement for which the variance is requested;
(2) The time period for which the variance is requested;
(3) The specific alternative action which the nursing home proposes;
(4) The reason for the request; and
(5) An explanation of the anticipated effect granting of the variance will have on residents.

(C) The director shall notify the operator, in writing, of the director's determination regarding a variance request and of a revocation of a granted variance. The director may establish conditions that the nursing home shall meet for a variance to be operative and a time frame for which the variance will be effective. The director shall provide the nursing home with an opportunity for an informal hearing concerning the denial of a variance request or a revocation of a granted variance, if requested by the operator within thirty days of the mailing of the notice of denial or revocation, but the nursing home shall not be entitled to a hearing under Chapter 119. of the Revised Code. The informal hearing shall be held within thirty days of the request unless both parties agree otherwise. If the director proposes to deny or revoke a license because the nursing home is in violation of a rule for which a variance was denied or revoked, the director shall afford the nursing home a hearing in accordance with Chapter 119. of the Revised Code.

(D) The director may revoke a variance if the director determines that:
(1) The variance is adversely affecting the health and safety of the residents;
(2) The nursing home has failed to comply with the variance as granted;
(3) The operator or administrator notified the department that the owner or administrator wishes to relinquish the variance; or
(4) The variance conflicts with a statutory change thus rendering the variance invalid.

Replaces: 3701-17-34

3701-17-26 2

Effective Date: October 20, 2001
R.C. 119.032 Review Date: 9/1/00; 10/1/06

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OKLAHOMA

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No reference in regulations to waiver/variance

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OREGON

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411-085-0040 Alternative Methods, Waivers

(Effective 08/01/2004)
(1) **APPLICATION.** While all nursing facilities are required to maintain compliance with The Department’s rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:
(a) Be submitted to The Department in writing;
(b) Identify the specific rule for which a waiver is requested;
(c) Describe the special circumstances relied upon to justify the waiver;
(d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;
(e) Demonstrate that the proposed waiver is desirable to maintain or improve the quality of care for the residents, will maintain or improve resident potential for self-direction and self-care, and will not jeopardize resident health and safety; and
(f) Identify the proposed duration of the waiver.

(2) **APPROVAL PERIOD.** Upon finding that the licensee has satisfied the conditions of this rule, The Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) **REVOCATION.** The Department may revoke any waiver or variance issued by The Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued would endanger, the health or safety of one or more residents.

(4) **IMPLEMENTATION.** The facility may implement a waiver only after written approval from The Department.

*Stat. Auth.: ORS 410 & ORS 441*
*Stats. Implemented: ORS 441.055 & ORS 441.615*

411-087-0030 Waivers for Physical Environment Requirements *(Effective 1/1/92)*

(1) **REQUEST.** Any request for a waiver of these building requirements (OAR Chapter 411, Division 087) shall comply with OAR 411-085-0040 (general waiver requirements), except as otherwise provided by this rule.

(2) **DURATION.** The Division may grant waivers for building requirements for a period not to exceed ten years; however, such waiver may be rescinded if the Division determines continuance of the waiver has a potential adverse impact on resident well-being, privacy or dignity.

*Stat. Auth.: ORS 410*
*Stats. Implemented: ORS 441.055 & 441.615*

411-087-0030 Waiver of Physical Environment Requirements *(Effective 1/1/92)*

(4) **BATHTUBS and SHOWERS.**
(a) Number. Bathtubs or showers shall be provided at the rate of one for every 25 beds which are not otherwise served by bathing facilities within the residents' rooms.
(b) Whirlpool Tubs. In addition to the requirements listed in subsection (4)(a) of this rule, at least one therapeutic whirlpool tub designed for disabled assist shall be provided on each floor. The facility shall have at least one therapeutic whirlpool-type tub for every 60 beds.
(c) Privacy. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture, for drying and dressing, and for a wheelchair and an attendant.
(d) Shower Dimensions.  
(A) Each facility shall have at least one shower that is a minimum of 4 feet square, without curbs, and designed to permit use by a wheelchair resident with an assisting attendant.  
(B) Showers for ambulatory residents shall be not less than 4 feet by 3 feet.

(e) Non-slip Surface. Shower bases and tubs shall provide non-slip surfaces.  
(f) Toilet/sink access. A toilet and handwash sink shall be accessible to each bathtub/shower without going through the central corridor.

(5) EXCEPTIONS.  
(a) Whirlpool Tubs. The number of whirlpool tubs in facilities which have been continuously licensed since January 1, 1992 without modification of number or type of bathtubs/showers shall be considered to be in compliance with subsection (4)(b) of this rule unless otherwise provided by OAR 411-087-0010. Facilities which lack the required number of therapeutic tubs shall have a hospital-type tub on each floor which does not have a therapeutic whirlpool tub. As of January 1, 2000, all facilities shall have at least one therapeutic whirlpool tub (waivers may be provided on a case-by-case basis).  
(b) Showers. Facilities which have been continuously licensed since January 1, 1992 shall not be required to meet the dimensions or design criteria defined in subsection (4)(d) of this rule or requirements for dressing and drying areas adjacent showers and tubs.  
(c) Toilets. Facilities continuously licensed since January 1, 1992 shall be exempt from section (2) of this rule unless otherwise provided by OAR 411-087-0010.  
(d) Handwash Sinks. In facilities with rooms continuously licensed since January 1, 1992, without meeting subsection (3)(a) of this rule, such rooms shall be exempt from this requirement unless otherwise provided by OAR 411-087-0010.  
(e) Spouts, Faucet Handles. Facilities continuously licensed since January 1, 1992 without meeting paragraph (3)(a)(E)) of this rule shall be exempt from such paragraph unless the spouts/faucets are replaced or otherwise provided by OAR 411-087-0010.  
(f) Accessibility. Facilities continuously licensed since January 1, 1992 without meeting subsection (3)(a) of this rule shall be exempt from such subsection unless the spouts/faucets are replaced or otherwise provided by OAR 411-087-0010.

Stat. Auth.: ORS 410  
Stats. Implemented: ORS 441.055 & 441.615 411-

Pennsylvania

§ 51.31. Principle.  
The Department may grant exceptions to this part when the policy and objectives contained therein are otherwise met, or when compliance would create an unreasonable hardship and an exception would not impair or endanger the health, safety or welfare of a patient or resident. NO EXCEPTIONS OR DEPARTURES FROM THIS PART WILL BE GRANTED IF COMPLIANCE WITH THE REQUIREMENT IS PROVIDED FOR BY STATUTE.
§ 51.32. Exceptions for innovative programs.
This part is not intended to restrict the efforts of a health care facility to develop innovative and improved programs of management, clinical practice, physical renovation or structural design. Whenever this part appears to preclude any program which may improve the capacity of the health care facility to deliver higher quality care and services or to operate more efficiently without compromising patient or resident care, the Department encourages the health care facility to request appropriate exceptions under this chapter.

§ 51.33. Requests for exceptions.
(a) A health care facility shall make requests for exceptions to the Department in writing.
(b) The Department will retain the requests on file and document whether they have been approved or disapproved. (c) If the Department proposes to approve an exception, it may request public comment on the exception by notice in the Pennsylvania Bulletin. Upon receipt of a request for exceptions, said request will be published in the Pennsylvania Bulletin with a public comment period. The Department will publish requests for exceptions in emergency situations, but will not include a public comment period. (D) The Department will publish notice of all approved exceptions in the Pennsylvania Bulletin on a periodic basis.
(d) (E) The health care facility shall retain approved requests on file during the period the exception remains in effect.

§ 51.34. Revocation of exceptions.
(a) An exception granted under this chapter may be revoked by the Department for justifiable reason. The Department will provide notice of the revocation in writing and will include the reason for the revocation and the date upon which the exception will be terminated.
(b) In revoking an exception, the Department will provide for a reasonable period of time between the date of written notice of the revocation and the date of termination of an exception to afford the health care facility an opportunity to come into compliance with the applicable regulations.
(c) If a health care facility wishes to request a reconsideration of a denial or revocation of an exception, it shall do so in writing to the director of the appropriate division within 30 days after service of the adverse notification.

New Construction: The licensee or prospective licensee shall have the opportunity to present and discuss purposes and plans concerning the requested changes indicated on the architectural plans with the Department. If differences occur and cannot be resolved, administrative hearings may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure.)
54.2 A request for a variance shall be filed by an applicant in writing, setting forth in detail the basis upon which the request is made.

a) Upon the filing of each request for variance with the licensing agency, and within a reasonable time thereafter, the licensing agency shall notify the applicant by certified mail of its approval or in the case of a denial, a hearing date, time and place may be scheduled if the facility appeals the denial.

54.3 At a hearing held in furtherance of an appeal from a denial for a variance in accordance with section 54.2 (a) above, the applicant shall present his case to the Director or his designee for quasi-judicial matters, and shall have the burden of persuading the Director or his designee as aforesaid, through the introduction of clear and convincing evidence, that a literal enforcement of the rules will result in unnecessary hardship, and that a variance will not be contrary to the public interest, public health and/or health and safety of residents.

54.4 Nursing facilities that provide care in accordance with alternative service delivery models may be eligible for a variance in accordance with the requirements contained herein.

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**SOUTH CAROLINA**

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**203. Exceptions to Licensing Standards**

The Department may make exception(s) to these standards, providing an option for compliance, when it is determined that the health and safety of residents are not compromised and provided the standard(s) is not specifically required by statute. In the event of a licensee change, exceptions are not transferable to the new licensee unless approved by the Department.

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**SOUTH DAKOTA**

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**44:04:08:07. Stock of legend drugs prohibited in nursing facilities -- Exception.** Legend drugs or medications may not be stocked in bulk form in nursing facilities except in nursing facilities which employ a licensed pharmacist full or part time to supervise, within the facility, the procurement, storage, and dispensing of such drugs and medications. Nursing facilities without a pharmacy shall use the emergency drug box kept on the premises pursuant to § 44:04:08:07.01 or obtain emergency medications from a pharmacy licensed to distribute to outpatients.

**Source:** SL 1975, ch 16, § 1; 6 SDR 93, effective July 1, 1980; 14 SDR 81, effective December 10, 1987; 22 SDR 70, effective November 19, 1995.
General Authority: SDCL 34-12-13.  
Law Implemented: SDCL 34-12-13.

44:04:18:03. Exception for employment of unqualified nurse aides. A nursing facility may employ for a maximum of four months an individual to provide nurse aide duties who has not met the qualifications of § 44:04:18:02 if the individual is enrolled in a training and competency evaluation program approved by the department pursuant to §§ 44:04:18:07 and 44:04:18:17 or if the individual can prove that approved training and competency evaluation has been completed and the individual has not yet been included on the registry. The nursing facility must ensure that such an individual actually obtains registry status within the four-month period.

General Authority: SDCL 34-12-29.  
Law Implemented: SDCL 34-12-29.

TENNESSEE

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1200-8-6-.09 LIFE SAFETY.

(1) Any nursing home which complies with the required applicable building and fire safety rules at the time the board adopts new codes or rules will, so long as such compliance is maintained either with or without waivers of specific provisions, be considered to be in compliance with the requirements of the new codes or rules.

(2) The nursing home shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan.

TEXAS

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SUBCHAPTER D - FACILITY CONSTRUCTION

Rules

§19.300 General Requirements

§19.301 Applicable Codes and Standards
§19.302 Waivers

SUBCHAPTER D FACILITY CONSTRUCTION

RULE §19.302 Waivers

The Texas Department of Human Services (DHS) may grant a waiver for certain provisions of the physical plant and environment which, in DHS’s opinion, would be impractical for the facility to meet. In granting the waiver, DHS will determine that there will be no adverse effect on resident health and safety and the requirement, if not waived, would impose an unreasonable waiver.

RULE §19.344 Plans, Approvals, and Construction Procedures

hardship on the facility. DHS may require offsetting or equivalent provisions in granting a

SUBCHAPTER D FACILITY CONSTRUCTION

At the option of the applicant, the Texas Department of Human Services (DHS) will review plans for new buildings, additions, conversion of buildings not licensed by DHS, or remodeling of existing licensed facilities. DHS will, within 30 days, inform the applicant in writing of the results of the review. If the plans comply with DHS's architectural requirements, DHS may not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within two years. DHS may grant a waiver of this two-year period for delays due to unusual circumstances. There is no time limit to complete a project, only a time limit for completing a project using requirements that have been revised after the project was reviewed.

(1) Submittal of plans.

(A) For review of plans, submit one copy of working drawings and specifications (contract documents) before construction begins. Documents must be in sufficient detail to interpret compliance with these standards and assure proper construction. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.
(B) Final copies of plans must have (in the reproduction process by which plans are reproduced) a title block that shows name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition will connect. North direction must be shown. The entire basic layout usually can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested.

(F) The review of plans and specifications by DHS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §19.219 of this title (relating to Plan Review Fees).

(2) Contract documents.

(A) Site plan documents must include:
(i) grade contours;
(ii) streets (with names);
(iii) north arrow;
(iv) fire hydrants;
(v) fire lanes;
(vi) utilities, public or private;
(vii) fences; and
(viii) unusual site conditions, such as
(I) ditches;
(II) low water levels;
(III) other buildings on-site; and
(IV) indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include:
(i) room names, numbers, and usages;
(ii) doors (numbered), including swing;
(iii) windows;
(iv) legend or clarification of wall types;
(v) dimensions;
(vi) fixed equipment;
(vii) plumbing fixtures;
(viii) kitchen basic layout; and
(ix) identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2-inch by 11-inch sheet.

(E) Schedules must include:
(i) door materials, widths, and types;
(ii) window materials, sizes, and types;
(iii) room finishes; and
(iv) special hardware.

(F) Elevations and roof plan must include:
(i) exterior elevations, including
(I) material note indications; and
(II) any rooftop equipment;
(ii) roof slopes;
(iii) drains;
(iv) gas piping, etc.; and
(v) interior elevations where needed for special conditions.

(G) Details must include:
(i) wall sections as needed, especially for special conditions;
(ii) cabinet and built-in work, basic design only;
(iii) cross sections through buildings as needed; and
(iv) miscellaneous details and enlargements as needed.

(H) Building structure documents must include:
(i) structural framing layout and details (primarily for column, beam, joist, and structural building);
(ii) roof framing layout (when it cannot be adequately shown on cross section); and
(iii) cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include:
(i) electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices;
(ii) service, circuiting, distribution, and panel diagrams;
(iii) exit light system (exit signs and emergency egress lighting);
(iv) emergency electrical provisions (such as generators and panels);
(v) staff communication system;
(vi) fire alarm and similar systems (such as control panel, devices, and alarms); and
(vii) sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include:
(i) plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems;
(ii) water systems;
(iii) sanitary systems;
(iv) gas systems; and
(v) other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating, and air-conditioning systems (HVAC) documents must include:
(i) sufficient details of HVAC systems and components to assure a safe and properly operating installation, including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and
(ii) equipment types, sizes, and locations.

(L) Sprinkler system documents must include:
(i) plans and details of National Fire Protection Association (NFPA) designed systems;
(ii) plans and details of partial systems provided only for hazardous areas; and
(iii) electrical devices interconnected to the alarm system.

(M) Specifications must include:
(i) installation techniques;
(ii) quality standards and/or manufacturers;
(iii) references to specific codes and standards;
(iv) design criteria;
(v) special equipment;
(vi) hardware;
(vii) finishes; and
(viii) any others as needed to amplify drawings and notes.

(N) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction.

(3) Construction phase.

(A) DHS must be notified in writing before construction starts.

(B) All construction not done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility must be performed by DHS before admitting residents. An initial architectural inspection will be scheduled after DHS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of their knowledge the facility meets the architectural requirements for licensure.

(B) After the completed construction has been surveyed by DHS and found acceptable, this information will be forwarded to the DHS Facility Enrollment Section as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. The building, including basic furnishings and operational needs, grades, drives, and parking, must essentially be 100% complete at the time of this initial visit for occupancy approval and licensing. A facility may accept up to three residents between the time it receives initial approval from DHS and the time the license is issued.
(C) The following documents must be available to DHS's architectural inspecting surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required in subparagraph (A) of this paragraph;
(ii) written certification of the fire alarm system by the installing agency (the Texas State Fire Marshal's Fire Alarm Installation Certificate);
(iii) documentation of materials used in the building that are required to have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc., and, in the case of carpeting, a signed letter from the installer verifying that the carpeting installed is named in the laboratory test document;
(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or designing engineer. A copy of the material list and test certification must be available;
(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;
(vi) a copy of gas test results of the facility's gas lines from the meter;
(vii) a written statement from an architect/engineer stating, to the best of his knowledge, the building was constructed in substantial compliance with the construction documents, the Life Safety Code, DHS licensure standards, and local codes; and
(viii) any other such documentation as needed.

(5) Nonapproval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, DHS may recommend the facility not be licensed and approved for occupancy. Such items may include the following:

(i) substantial changes made during construction that were not submitted to DHS for review and that may require revised "as-built" drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items as specified in paragraph (3)(B) of this section;
(ii) construction that does not meet minimum code or licensure standards, such as corridors that are less than required width, ceilings installed at less than the minimum seven-foot, six-inch height, resident bedroom dimensions less than required, and other such features that would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) no written approval by local authorities;

(iv) fire protection systems, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;

(v) required exits not all usable according to National Fire Protection Association (NFPA) 101 requirements;

(vi) telephone not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment not installed or not functioning; and

(viii) any other basic operational or safety feature that would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility’s administrator.

(C) Copies of reduced-size floor plans on an 8 1/2-inch by 11-inch sheet must be submitted in duplicate to DHS for record/file use and for the facility's use for evacuation plan, fire alarm zone identification, etc. The plan must contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

Source Note: The provisions of this §19.344 adopted to be effective April 1, 2002, 27 T
may be obtained from the NFPA, Batterymarch Park, Quincy, Massachusetts 02200. The New Health Care Occupancies chapter of the Life Safety Code is applicable to new construction, conversions of existing unlicensed buildings, remodeling, and additions. The Existing Health Care Occupancies chapter of the Life Safety Code is applicable to existing nursing homes.

(B) After consideration of the findings of the Texas Department of Human Services (DHS) for Medicare/Medicaid certified facilities, the Health Care Financing Administration (HCFA) may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship on the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

RULE §19.1001 Nursing Services

The facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. Nursing services to children must be provided by staff who have been instructed and have demonstrated competence in the care of children. Care and services are to be provided as specified in §19.901 of this title (relating to Quality of Care).

(1) Sufficient staff.

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) except when waived under paragraph (3) of this section, licensed nurses; and

(ii) other nursing personnel.

(B) Except when waived under paragraph (3) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(A) Except when waived under paragraph (3) or (4) of this section, the facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week.
(B) Except when waived under paragraph (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week.

(C) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(3) Waiver of requirement to provide licensed nurses on a 24-hour basis.

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this section, the state may waive these requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of the Texas Department of Human Services (DHS) that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(ii) DHS determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and

(iv) the waivered facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.

(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

(D) The state agency granting a waiver of these requirements provides notice of the waiver to the state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the state for the mentally ill and mentally retarded.

(E) The nursing facility that is granted a waiver by the state notifies residents of the facility
(or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(4) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in a Medicare skilled nursing facility (SNF).

(A) The secretary of the U.S. Department of Health and Human Services (secretary) may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this section, if the secretary finds that:

(i) the facility is located in a rural area and the supply of Medicare SNF services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) the facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) the facility either has:

(I) only residents whose physicians have indicated (through physician's orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(II) made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(B) The secretary provides notice of the waiver to the state long term care ombudsman (established under §307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the state for the mentally ill and mentally retarded.

(C) The SNF that is granted a waiver by the state notifies residents of the facility (or, when appropriate, the guardians or legal representatives of the residents) and members of their immediate families of the waiver.

(D) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.
(5) Request for waiver concerning staffing levels. The facility must request a waiver through the local DHS Long Term Care-Regulatory unit, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this section for a period of 30 days or more out of any 45 days.

(A) The following information must be included in the request/notification:

(i) beginning date when facility was/is unable to meet staffing requirements;
(ii) type waiver requested (24-hour licensed nurse or seven-day-per-week RN);
(iii) projected number of hours per month staffing reduced for 24-hour licensed nurse waiver or seven-day-per-week RN waiver; and
(iv) staffing adjustments made due to inability to meet staffing requirements.

(B) Waivers for licensed-only or certified facilities will be granted by Long Term Care-Regulatory staff. Waivers for a Medicare SNF receive final approval from the Health Care Financing Administration.

(C) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this section, Long Term Care-Regulatory staff must be notified, in writing, of the effective date that staffing meets requirements.

(D) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Amounts paid to Medicaid-certified facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this section may be adjusted if staffing requirements are not met.

(6) Duration of waiver. Approved waivers are valid throughout the facility licensure or certification period, unless approval is withdrawn. During the relicensure or recertification survey, the determination is made for approval or denial for the next facility licensure or certification period if a waiver continues to be necessary. The facility requests a redetermination for a waiver from the Long Term Care-Regulatory staff at the time the survey is scheduled. At other times if a request is made, the Long Term Care-Regulatory staff may schedule a visit for
(7) Requirements for waiver approval. To be approved for a waiver, the nursing facility must meet all of the requirements stated in this subchapter and the requirements specified throughout this chapter. In some instances, the survey agency may require additional conditions or arrangements such as:

(A) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;

(B) modification of nursing services operations; and

(C) modification of the physical environment relating to nursing services.

(8) Denial or withdrawal of a waiver. Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(A) requirements for a waiver are not met on a continuing basis;

(B) the quality of resident care is not acceptable; or

(C) justified complaints are found in areas affecting resident care.

(9) Requirement that SNFs be in a rural area. A SNF (Medicare) must be in a rural area for waiver consideration, as specified in paragraph (4) of this section. A rural area is any area outside the boundaries of a standard metropolitan statistical area. Rural areas are defined and designated by the federal Office of Management and Budget; are determined by population, economic, and social requirements; and are subject to revisions.

**UTAH**


(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.
(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

**R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.**

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

**R432-6-208. Special Design Features.**

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bathroom or toilet room;
(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off only at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.


(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.
Building Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

1.5 Variances from these Rules

(a) In accordance with 33 V.S.A. §7106, the department may grant a variance from any provision of these rules if it determines that:

(1) strict compliance would impose substantial hardship on the licensee;

(2) the licensee will otherwise meet the goal of the rule; and

(3) a variance will not result in less protections of the health, safety and welfare of the residents.

(b) A variance will not be granted from a rule pertaining to residents’ rights.

(c) Separate federal variance procedures may apply for provisions of these rules also contained in federal nursing facility regulations.

(d) Variances from requirements related to fire safety and building construction standards regulated by the Vermont Department of Labor and Industry must be requested from that Department.

VIRGINIA

12VAC5-371-80. Variances.

A. The center can authorize variances only to its own licensing standards, not to regulations of another agency or to any requirements in federal, state, or local laws.

B. A nursing facility may request a variance to a particular standard or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of residents, employees, or the public.
C. Upon finding that the enforcement of one or more of the standards would be clearly impractical, the center shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these standards, provided safety, resident care and services are not adversely affected.

D. The center may rescind or modify a variance if (i) conditions change; (ii) additional information becomes known which alters the basis for the original decision; (iii) the facility fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of residents, employees and the public.

E. Consideration of a variance is initiated when a written request is submitted to the Director of the Center for Quality Health Care Services and Consumer Protection. The center may provide consultation in the development of the written request and throughout the variance process.

F. The request for a variance must describe the special hardship to the existing program or to a planned innovative or pilot program caused by the enforcement of the requirements. When possible, the request should include proposed alternatives to meet the purpose of the requirements which will ensure the protection and well-being of residents, employees, and the public.

G. The center shall notify the facility of the receipt of the request for a variance. The center may attach conditions to the granting of the variance in order to protect persons in care.

H. When the decision is to deny a request for a variance, the reason shall be provided in writing to the licensee.

I. When a variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed. The nursing facility may at any time withdraw a request for a variance.
388-97-33050 Resident room size variance.

**WAC 388-97-33050 Resident room size variance.** The director of residential care services, aging and adult services administration, or their designee, may permit exceptions to WAC 388-97-33010 (1)(a) and 388-97-33020(1) when the nursing home demonstrates in writing that the exception:

1. Is in accordance with the special needs of the resident; and
2. Will not adversely affect any resident's health or safety.

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1. Scope. -- It is the purpose of this rule to implement state and federal law governing the licensing, operation, and standard of care in nursing homes located in the State of West Virginia. Compliance with this rule will help each resident attain or maintain the highest practicable physical, mental and psychosocial wellbeing in accordance with a comprehensive assessment and plan of care and prevailing standards of care, and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident's ability is diminished solely as a result of a change in the resident's clinical condition.


5. Repeal of Former Rule. -- This legislative rule repeals and replaces ANursing Home Licensure Rule@ W. Va. 64CSR13, effective August 1, 1997.

6. Application. -- This rule applies to nursing home residents and their legal representatives as well as
every individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state that operates or applies to operate a nursing home as defined in this rule and W. Va. '16-5C-2(c).

1.7. Variances From This Rule.

1.7.a. The department may grant a variance from any provision of this rule if it determines that:
1.7.a.1. Strict compliance would impose a substantial hardship on the licensee;
1.7.a.2. The licensee will otherwise meet the goal of the rule; and
1.7.a.3. A variance will not result in less protection of the health, safety and welfare of the residents.

1.7.b. A variance shall not be granted from a provision pertaining to residents’ rights.
1.7.b.1. Separate federal variance procedures may apply for provisions of this rule and are contained in the federal nursing home regulations.
1.7.b.2. Requests for variances from West Virginia fire safety and building construction requirements shall be addressed to the appropriate authorities.

1.8. Enforcement. -- This rule is enforced by the secretary of the Department of Health and Human
Subchapter II — Enforcement

HFS 132.21 Waivers and variances.

Revised Code of Wisconsin 2003

Subchapter II — Enforcement

HFS 132.21 Waivers and variances. (1) DEFINITIONS.

As used in this section:

(a) "Waiver" means the grant of an exemption from a requirement of this chapter.

(b) “Variance” means the granting of an alternate requirement in place of a requirement of this chapter.

(2) REQUIREMENTS FOR WAIVERS OR 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:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interests of better care or management.

(3) PROCEDURES. (a) Applications. 1. All applications for waiver or variance from the requirements of this chapter 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 sub. (2) 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.
(b) **Grants and denials.** 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

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.

(c) **Hearings.** 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats.

2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) **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 residents; 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; or

4. Required by a change in law.

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**WYOMING**

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Nothing in state regulations on waiver/variance. Located in construction regulations under variance.

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**FEDERAL REGULATIONS**

§ 483.70  **Physical environment.**
The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* (1) Except as otherwise provided in this section—


(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to long-term care facilities.

(2) After consideration of State survey agency findings, CMS may waive specific provisions of the Life Safety code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of the patients.

(3) The provisions of the Life safety Code do not apply in a State where CMS finds, in accordance with applicable provisions of sections 1819(d)(2)(B)(ii) and 1919(d)(2)(B)(ii) of the Act, that a fire and safety code imposed by State law adequately protects patients, residents and personnel in long term care facilities.

(4) Beginning March 13, 2006, a long-term care facility must be in compliance with Chapter 19.2.9, Emergency Lighting.

(5) Beginning March 13, 2006, Chapter 19.3.6.3.2, exception number 2 does not apply to long-term care facilities.
(6) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a long-term care facility may install alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against inappropriate access;

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269; and

(v) The dispensers are maintained in accordance with dispenser manufacturer guidelines.

(7) A long term care facility must:

(i) Install, at least, battery-operated single station smoke alarms in accordance with the manufacturer's recommendations in resident sleeping rooms and common areas.

(ii) Have a program for inspection, testing, maintenance, and battery replacement that conforms to the manufacturer's recommendations and that verifies correct operation of the smoke alarms.

(iii) Exception:
(A) The facility has system-based smoke detectors in patient rooms and common areas that are installed, tested, and maintained in accordance with NFPA 72, *National Fire Alarm Code*, for system-based smoke detectors; or

(B) The facility is fully sprinklered in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*.

(8) A long term care facility must:


(b) Emergency power. (1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to
maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(c) Space and equipment. The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) Resident rooms. Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.

(1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms;

(iii) Have direct access to an exit corridor;

(iv) Be designed or equipped to assure full visual privacy for each resident;

(v) In facilities initially certified after March 31, 1992, except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

(vi) Have at least one window to the outside; and

(vii) Have a floor at or above grade level.

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and
(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) CMS, or in the case of a nursing facility the survey agency, may permit variations in requirements specified in paragraphs (d)(1) (i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(i) Are in accordance with the special needs of the residents; and

(ii) Will not adversely affect residents' health and safety.

(e) Toilet facilities. Each resident room must be equipped with or located near toilet and bathing facilities.

(f) Resident call system. The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) Dining and resident activities. The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated, with nonsmoking areas identified;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) Other environmental conditions. The facility must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
(3) Equip corridors with firmly secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.