12-006.04C2a Registered Nurse Waiver in a Nursing Facility: The Department may waive the requirement that a nursing facility certified under Title XIX of the federal Social Security Act, as amended, use the services of a registered nurse for at least eight consecutive hours per day, seven days per week, if:

1. The facility demonstrates to the satisfaction of the Department that it has been unable despite diligent efforts, including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel;
2. The Department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; and
3. The Department finds that, for any periods in which a registered nurse is not available, a registered nurse or physician is obligated to respond immediately to telephone calls from the facility; or
4. The Department of Health and Human Services Finance and Support has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions of 12-006.04C2a, items 1-3, have been met.

A waiver granted under this section is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified personnel. The Department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-006.04C2b Registered Nurse Waiver in a Skilled Nursing Facility: The Department may waive, for up to one year, the requirement that a skilled nursing facility certified under Title XVIII of the Federal Social Security Act, as amended, use the services of a registered nurse for more than 40 hours per week if:

1. The facility is located in a non-urban area where the supply of skilled nursing facility services is not sufficient to meet the needs of individuals residing in the area;
2. The facility has one full-time registered nurse who is regularly on duty at the facility 40 hours per week; and
3. The facility has:
   a. Only residents whose physician has indicated through orders or admission or progress notes that the residents do not require the services of a registered nurse or a physician for more than 40 hours per week; and
b. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide the necessary services on days when the regular, full-time registered nurse is not on duty.

A waiver granted under this subsection is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel.

12-006.04C4 24-Hour Nurse Staffing Waiver in a Nursing Facility: The Department may waive the requirement that a nursing facility certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed nurse on a 24-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

1. The facility demonstrates to the satisfaction of the Department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel;
2. The Department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; and
3. The Department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or
4. The Department of Health and Human Services Finance and Support has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of 175 NAC 12-006. 04C4, items 1-3 have been met.

A waiver granted under this section is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel. The Department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-006.04C5 24-Hour Nurse Staffing Waiver in a Skilled Nursing Facility: The Department may waive the requirement that a skilled nursing facility use licensed nurses on a 24-hour basis, seven days a week, including the requirement for a charge nurse each tour of duty, if:

1. The facility demonstrates to the satisfaction of the Department that it has been unable, despite diligent efforts including but not limited to offering wages equal to or greater than the community prevailing wage rate being paid nurses at nursing facilities, to hire enough licensed nurses to fulfill such requirements;
2. The Department determines that a waiver of the requirement will not endanger the health or safety of residents of the facility; and,
3. The Department finds that, for any period in which staffing requirements cannot be met, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility.
A waiver granted under this subsection is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel.

12-006.04C6 Notification of Waiver

12-006.04C6a The Department will provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation.

12-006.04C6b The skilled nursing facility or nursing facility granted a waiver must provide written notification to each resident of the facility or, if appropriate, to the guardian, designee, or immediate family of the resident.

12-007 PHYSICAL PLANT STANDARDS: The facility must be designed, constructed and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The physical plant standards for facilities, which include support services, care and treatment areas, construction standards, building systems and waivers, are set forth below.

12-007.05 Waivers: The Department may waive any provision of 175 NAC 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.

12-007.05A 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 increase 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.