



DIVISION OF QUALITY ASSURANCE

Scott Walker
Governor

1 WEST WILSON STREET
P O BOX 2969
MADISON WI 53701-2969

Dennis G. Smith
Secretary

State of Wisconsin
Department of Health Services

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 888-241-9432
dhs.wisconsin.gov

Date: May 24, 2011

DQA Memo 11-015

To:	Ambulatory Surgery Centers	ASC 05
	End-Stage Renal Disease Facilities	ESRD 05
	Facilities for the Developmentally Disabled	FDD 05
	Hospices	HSPC 05
	Hospitals	HOSP 05
	Nursing Homes	NH 10

From: David Soens, Director
Office of Plan Review and Inspections

cc: Otis Woods, Administrator
Division of Quality Assurance

Life Safety Code Waiver Requests

The purpose of this memorandum is to clarify how Life Safety Code NFPA 101 (LSC) waiver requests should be developed by Medicare and Medicaid participating health care providers. Overall, the number of denied requests has resulted in a significant increase in work for all parties involved.

The Wisconsin Department of Health Services (DHS) is attempting to address any misunderstandings by proactively notifying all providers that are regulated by the Life Safety Code.

The need for a waiver occurs for a variety of reasons including when a provider is unable to correct a deficiency and requests an exception in lieu of strict compliance.

After receiving a DHS Statement of Deficiencies (SOD),for instance, the provider requests a waiver within their Plan of Correction (POC). DHS will make a recommendation. Favorable recommendations will be forwarded to the Centers for Medicare and Medicaid Services (CMS) Chicago Regional Office for adjudication.

Waivers to the LSC are permissible if:

- I The waiver does not adversely affect patient / resident health and safety; and
- II strict compliance would impose an unreasonable hardship on the facility.

Approval is not automatic yet is favorable if the following justification is provided:

1. FLOOR PLAN (recommended)

Provider indicates the location of the LSC deficiency on a simplified floor plan showing the floor, wing, and room names affected.

2. COST ESTIMATE (required)

Provider analyzes a range of cost alternatives to correct the deficiency, then forwards a reasonable cost estimate from a reputable third party, that is two years or less in age. Costs can include relocation of residents / patients during construction and disruption of services (IE food service). Provider must ensure that the scope of work is identified within the cost estimate.

3. FINANCIAL HARDSHIP (required)

Provider explains how strict compliance would pose a financial hardship to the facility's viability:

- simplified fiscal year 'profit & loss' statement,
- availability of financing,
- payback period if deficiency is corrected, or
- remaining useful life of the building.

4. PATIENT/RESIDENT HEALTH & SAFETY (required)

Provider evidence that the LSC deficiency does not pose a hazard to occupants by detailing compensating safeguards that exceed code-minimum, for example:

- additional staffing, fire training, safety rounds, or fire watches,
- certified training or competency skill documentation of physical plant staff,
- additional detectors, fire extinguishers, or fire extinguisher hands-on training,
- additional means of notifying emergency responders or staff in neighboring buildings,
- additional inspections (building, equipment, or fire department)
- additional fire barriers, smoke compartments, or exits,
- additional preventative maintenance or housekeeping that minimize hazards,

- fire protection professional who develops a plan of action,
- extraordinary local fire department response (e.g. response time, equipment available, number of personnel that respond, and distance to the fire station).

Summary:

This memorandum is motivated by the mutual concern of the Department and providers for compliance with the requirements, and to maximize safety for all occupants. All ongoing LSC deficiencies are recited at each survey, and no waiver should be assumed to be absolute. CMS reserves the right to review or revoke any and all waivers at any time. Providing the above-listed items does not guarantee an approved waiver. Failure to follow the conditions agreed to within a waiver request may result in waiver revocation, retroactive physical plant impacts or CMS enforcement actions.

Please direct all questions about the content of this memo to David Soens, Director, Office of Plan Review and Inspection at (608) 266-9675.