

Not All Waivers are Categorical

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Not All Waivers are Categorical

Learning Objectives

- Learn what happened to the Categorical Waivers
- Understand the new Waiver Process
- Identify a Time-Limited Waiver
- Know when to use an Equivalency
- Joint Commission issues

The New Life Safety Code

By now you should know that CMS has adopted the new 2012 Life Safety Code, effective July 5, 2016, although healthcare organizations will not have to comply with the new requirements of the code until November 1, 2016.

During the 5 years leading up to this momentous event, CMS issued proclamations allowing healthcare organizations to comply with certain (limited) sections of the 2012 LSC while they were still enforcing compliance with the 2000 LSC.

The New Life Safety Code

These were called 'Categorical Waivers' and they were very popular as they saved healthcare organizations much time and resources allowing them to use sections of the new code that worked to their advantage.

Now that the new code is here and adopted, these Categorical Waivers are complete... finished... done. There is no further need for them at this time.

The New Life Safety Code

But the basic waiver and equivalency request process is still very much alive and used as much now if not more than ever.

The following presentation will describe the options the healthcare organizations will have regarding waivers, and the procedures they must follow to utilize them.

Life Safety Code Compliance

The Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (Conditions for Compliance for ASC) requires all healthcare organizations certified by them to meet the applicable provisions of the 2012 edition of the NFPA 101 *Life Safety Code*® (LSC).

Life Safety Code Compliance

If there is a particular life safety deficiency at your facility that was cited during a survey, and you are unable to resolve it, then CMS does allow the organization to submit a request for a waiver or an equivalency, **provided** if the LSC was rigidly applied it would result in an unreasonable hardship **and** the life safety deficiency does not adversely affect the health and safety of the patients.

Life Safety Code Compliance

Your accreditation organization or state agency surveying on behalf of CMS will accept for consideration a waiver request or an equivalency request for deficiencies on features of life safety, only after each deficiency has been cited during a survey.

Life Safety Code Compliance

No longer can the request be submitted prior to a survey. If the deficiency was not cited during a survey, then the organization cannot submit a waiver or an equivalency request.

So if you have an issue that you want to request a waiver or an equivalency request, then review the issue with the surveyor for inclusion in the survey deficiency report.

Life Safety Code Compliance

If the accreditor agrees with your waiver request or your equivalency request, then they will submit it to the appropriate CMS Regional Office along with their recommendation for approval.

Only the CMS regional office can approve a waiver request or an equivalency request.

Life Safety Code Compliance

If the accreditor does not agree with your waiver request or equivalency request, they will not send it to the CMS regional office, but will contact you to discuss options in resolving the deficiency.

Life Safety Code Compliance

Waivers and equivalencies approved by CMS are only valid until the next survey (no more than 3 years), then the deficiency must be cited again during the survey, and the organization must choose to either resolve the deficiency, or submit a new waiver or equivalency request again.

Waiver vs. Equivalency

For facilities participating in the Medicare & Medicaid programs, CMS has the authority to waive a specific provision in the LSC which, if rigidly applied, would result in unreasonable hardship, but only if the waiver or equivalency request does not adversely affect the health and safety of the patient.

Waiver vs. Equivalency

To be sure... waiver and equivalency requests are only appropriate for Life Safety Code deficiencies. If your deficiency is not identified in the LSC or one of the referenced standards (and then it still may not be accepted) , then it is not eligible for a waiver or equivalency.

Waiver vs. Equivalency

Technically, even deficiencies with referenced NFPA standards are not eligible for waivers & equivalencies.

But this has been overlooked in the past by CMS and they have approved certain deficiencies that are governed by other NFPA standards

Waiver vs. Equivalency

Understand... The decision by CMS to approve a waiver or an equivalency request is made by an individual. There is no guarantee that the same decision will be made again by the same individual, or another in the same position.

Decisions vary depending on the regional office.

Waiver vs. Equivalency

Waivers and equivalencies must be viewed as a temporary measure.

They do expire by the next survey, but it is best that the organization make long-term plans to resolve the deficiency since there is no guarantee that the same request will be approved in the future.

Waiver vs. Equivalency

Waivers and equivalencies are not to be used for minor deficiencies that can be and should be resolved.

Reserve the use of waiver requests or equivalency requests to issues that are truly a hardship to resolve. Hardships can be financial or operational.

Waiver vs. Equivalency

Most healthcare organizations choose to submit a waiver rather than an equivalency, because of cost.

The costs to submit a waiver is negligible... only the time needed to write a cover letter and assemble some supporting documents.

Waiver vs. Equivalency

However... the cost to submit an equivalency is considerable, as most healthcare organizations need to contract with an experienced consultant to conduct the engineering study required for an equivalency request.

It has been reported that some equivalencies cost the healthcare organizations anywhere from \$5,000 to \$30,000, and there is no guarantee that CMS will accept it.

Waiver vs. Equivalency

However, there have been situations where CMS will prefer an equivalency rather than a waiver to be submitted, because of the need for the engineering study.

This usually involves issues such as non-compliant construction type and the lack of fire-protection sprinklers in older buildings

Waivers

Let's transition now to examine what a waiver is....

Waivers

A waiver is a decision by CMS based on information provided by the organization, that you do not have to comply with a specific provision of the LSC.

The organization does not have to prove other LSC measures exist to compensate for the deficiency.

Waivers

The CMS decision to approve a waiver request is subjective, and is made by an individual.

There is no science involved in the decision; it is a judgment. The better an organization can state their request in their cover letter, the better their chances that the request will be approved.

Waivers

A waiver request starts with the accreditation survey process:

1. A LSC deficiency is identified on the survey deficiency report.
2. The organization submits a Plan of Correction (PoC) within 10 days of receiving the survey deficiency report.
3. If they decided to do so, they state they will submit a waiver request as part of their Plan of Correction.

Waivers

You do not submit your waiver request as part of your PoC. It is submitted separately, and at a later date.

It takes time for you to properly assess the LSC deficiency for a waiver request and provide the support documentation.

Waivers

The waiver request is required to be submitted to the CMS Regional Office within 60 days of the end of the survey.

The accreditor needs time to process the request and ensure it includes all of the required information, so they need it sooner than that.

Waivers

For the most part, there is no predetermined template or form to use for a waiver request, so the request is made on the organization's company letterhead.

Waivers

The written request for a waiver must include a cover letter with the following information:

1. The name of the organization, address and CCN;
2. The contact information (name, title, telephone number and email address) of the organization's representative;
3. Describe in detail what the LSC deficiency is, and include the respective LSC section number that is deficient;

Waivers

4. Explain why the organization cannot resolve the deficiency;
5. Explain if the hardship is financial or operational. If financial, provide a budget figure to resolve the deficiency to demonstrate the hardship;
6. Identify which occupancy classification you are requesting the waiver for (i.e. Healthcare; Ambulatory Health Care; Business);

Waivers

In addition to the cover letter, you need to provide the following documentation:

- Copies of the Alternative (Interim) Life Safety Measures documentation demonstrating the LSC deficiency was assessed for ALSM;

Waivers

Additional documentation:

- Supporting documentation that you want to submit to substantiate your request for the waiver:
 - Photos
 - Plan, sketches
 - Reports
 - Estimates

Waivers

Some accreditation organizations require the waiver must be signed by a senior leader in your organization:

- CEO
- COO
- VP Operations
- Senior VP
- Etc.

Waivers

You submit the waiver request electronically to your accreditor, in accordance with their procedures. Paper copies will not be accepted.

Do not send the waiver request to the CMS regional office. They will only return it to you.

Waivers

You can only have one waiver request per submission.

You can have multiple submissions, but they must have their separate cover letters and support documents.

Waivers

If the accreditor does not agree with your waiver request, they will not send it to the CMS regional office, but will contact you to discuss why they do not agree.

Other options to deal with the LSC deficiency will be discussed.

Waivers

Reasons why waivers have not been accepted:

- Waiver request was for a deficiency that was not identified on the survey deficiency report;
- Waiver request was not submitted on company letterhead;
- Waiver request did not include budget amounts for financial hardship;
- Waiver request deficiency qualified for categorical waivers which do not have to be formally requested;
- Waiver request did not demonstrate a unreasonable hardship;

Waivers

CMS will take anywhere from 3 weeks to 9 months, perhaps more, to review your waiver request and make a decision.

Once they made their decision, they will send an approval or a denial letter to your organization and copy your accreditor. Usually, they will explain why the waiver request was denied.

Waivers

If after 3 months you have not heard from CMS and you are anxious and want to know the status of your waiver request: ***Do not contact CMS***, but instead contact your account representative at your accreditation organization who will investigate on your behalf.

Time-Limited Waivers

Now let's look at a slightly different type of waiver, called a Time-Limited Waiver, that is increasing in popularity....

Time-Limited Waivers

Often times a surveyor will identify a LSC deficiency that the healthcare organization wants to resolve, but is unable to do so in a timely manner.

CMS requires all LSC deficiencies resolved within 60 days of the end of the survey.

Time-Limited Waivers

While most LSC deficiencies can be resolve quickly (i.e. removing door wedges), some cannot.

Examples of LSC deficiencies that take more than 60 days to resolve are:

- Completing sprinkler installation for delayed egress locks
- Installing new fire rated door assemblies
- Apply fire-proofing to comply with construction type requirements

Time-Limited Waivers

If a resolution to a LSC deficiency takes more than 60 days (after the end of the survey), then CMS requires the healthcare organization to submit a special waiver request, called a Time-Limited Waiver request.

Essentially, this is a request for an extension date to complete the issue.

Time-Limited Waivers

The Time-Limited Waiver request is essentially the same as a Waiver request, but with the following modifications:

- In the cover letter, instead of identifying the hardship in resolving the LSC deficiency, explain what modifications or actions are required to resolve the deficiency

Time-Limited Waivers

- You must include copies of the following to prove action is underway:
 - A contract with a vendor
 - Building permits
 - Construction schedules

Time-Limited Waivers

All of the other items required for a standard Waiver request must be included (i.e. ALSM assessment, photos, drawings, reports, etc.) with a Time-Limited Waiver request.

If it is agreeable to the accreditor, then it will be forwarded to the CMS Regional Office for review and approval.

Time-Limited Waivers

Time-Limited Waiver requests are typically only valid for a short period of time... no more than 1-year.

CMS Regional Offices are much more likely to approve a Time-Limited Waiver request over a standard Waiver request, because the healthcare organization is working to resolve a deficiency.

Equivalency

Now let's look at the equivalency request process and see what's different from the waiver request process....

Equivalency

An equivalency request starts with the accreditation survey process:

1. A LSC deficiency is identified on the survey deficiency report.
2. The organization submits a Plan of Correction (PoC) within 10 days of receiving the survey deficiency report.
3. If they decided to do so, they state they will submit a waiver request as part of their Plan of Correction.

Equivalency

Just like the waiver process, you do not submit your equivalency request as part of your PoC. It is submitted separately, and at a later date.

It takes time to properly assess the LSC deficiency for an equivalency request and provide the support documentation.

Equivalency

An equivalency request is an NFPA document that scientifically demonstrates an equivalent level of safety, by assessing the remaining features of life safety through a mathematical formula.

If the equivalency request demonstrates an equivalent level of safety, and CMS approves the request, then the deficiency does not have to be resolved, but is only valid until the next survey.

Equivalency

The equivalency request must be made using NFPA 101A *Guide on Alternative Approaches to Life Safety*, (2010 edition) worksheets.

The document itself is called the Fire Safety Evaluation System (FSES).

Equivalency

The FSES equivalency request is a scientific approach to demonstrate an equivalent level of safety. It is not subjective and relies on mathematical formulas to make that determination.

Not all LSC deficiencies will qualify for a FSES equivalency request due to the mathematical equations not meeting the minimum values.

Equivalency

There are no specific qualifications, certifications or requirements that one must meet in order to complete the FSES worksheets... however, the person doing so must be competent in understanding the process and be familiar with the Life Safety Code.

Equivalency

The person conducting the FSES equivalency request must be able to understand the FSES instructions found in NFPA 101A.

It is not uncommon that hospitals will hire a consultant to conduct the FSES equivalency request.

(If you've never completed a FSES equivalency before, this is not the time to try to do it for the first time.)

Equivalency

First, a cover letter must be created on company letterhead, similar to the letter for a waiver request.

The cover letter must have the following information included:

Equivalency

Cover letter:

1. The name of the organization, address and CCN;
2. The contact information (telephone number and email address) of the organization's representative;
3. Describe in detail what the LSC deficiency is, and include the respective non-compliant LSC section;
4. Explain why the organization cannot resolve the deficiency;

Equivalency

Cover letter (cont'd):

5. Explain if the hardship is financial or operational. If financial, provide a budget figure to resolve the deficiency;
6. Identify which occupancy classification you are requesting the equivalency for (i.e. Healthcare; Business); (Unfortunately, there is no FSES for Ambulatory Care)
7. If additional features of life safety need to be installed to make the equivalency valid, then identify those added features in detail;

Equivalency

In addition to the cover letter, you must provide these additional documents:

1. Copies of the Alternative (Interim) Life Safety Measures (ALSM) document showing that the LSC deficiency has been assessed for ALSM;
2. Life Safety drawings that clearly identifies the following details:

Equivalency

- The location of all rated walls and barriers in all zones. Indicate the fire rating and purpose of each barrier;
- Identify the LSC deficiency being evaluated for the equivalency;
- Identify suites-of-rooms and their boundaries;
- Identify the location of all hazardous rooms;
- Identify the level of exit discharge for each building;
- Identify the location of all smoke compartment barriers;
- List the furthest travel distance to the closest smoke compartment barrier door for each smoke compartment;
- Provide an overview drawing of each floor showing all smoke compartments.

Equivalency

3. Provide FSES worksheets that evaluates every zone (smoke compartment) on every story of the facility. Use the respective occupancy chapter in the NFPA 101A for different occupancies;
4. Provide a summary page outlining the parameters of each zone evaluated;
5. If additional features of life safety must be installed in order to make the FSES worksheets valid, provide a **before** and **after** Individual Safety Evaluation summary worksheet for each affected zone.

Equivalency

Transmit the FSES equivalency request electronically to your accreditor. Do not send paper copies of the equivalency request.

You can have multiple requests for each FSES equivalency submissions, and can share the same cover letters and support documents.

Equivalency

Do not send the equivalency request to the CMS regional office. They will only return it to you.

The accreditor will review your equivalency request, and if they agree with your request, they will write a cover letter recommending CMS approve your request; then they send that along with your request to the appropriate CMS regional office.

Equivalency

If the accreditor does not agree with your equivalency request, they will not send it to the CMS regional office, but will contact you to discuss why we do not agree.

Other options to deal with the LSC deficiency will be discussed.

Equivalency

Reasons why an equivalency request was not passed on to the CMS Regional Office:

- Equivalency request was for a deficiency that was not identified on the survey deficiency report;
- Cover letter was not submitted on company letterhead;
- Equivalency request did not include budget amounts for financial hardship;

Equivalency

- Equivalency request did not demonstrate a unreasonable hardship;
- Equivalency request FSES worksheets did not demonstrate an acceptable numerical value
- Mathematical errors on the FSES worksheets
- Inadequate Life Safety drawings
- Not all zone (smoke compartments) were evaluated with the FSES worksheets

Equivalency

CMS will take anywhere from 3 weeks to 9 months, perhaps more, to review your equivalency request and make a decision.

Once they made their decision, they will send an approval or a denial letter to your organization and copy your accreditor. Usually, they will explain why the equivalency request was denied.

Equivalency

If after 3 months you have not heard from CMS and you are anxious and want to know the status of your equivalency request: ***Do not contact CMS***, but instead contact your account representative at your accreditor who will investigate on your behalf.

Equivalency

If denied, the accreditor will contact you to discuss other options. Perhaps the equivalency request was denied on a technicality, which can be resolved.

It may be necessary to submit a revised PoC describing alternate options to resolve the deficiency.

Joint Commission

Here are some Joint Commission specific issues:

- What Joint Commission calls a “Traditional Equivalency” is actually just a standard waiver request
- They have a special form to complete called “The Joint Commission Equivalency Request Form”

Joint Commission

Joint Commission specific issues:

- They require the “Traditional Equivalency” (AKA a standard waiver) to be accompanied with a certified letter from one of the following, agreeing with the request, and verifying they examined the issue in the field:
 - Registered architect
 - Licensed PE
 - Certified Fire Protection Specialist (CFPS)
 - Local AHJ (i.e. fire marshal, building official)

Joint Commission

Joint Commission specific issues:

- If the healthcare organization has a survey deficiency that requires more than 60 days to resolve, then the organization must use the Survey Plan For Improvement (SPFI) found in the Statement of Condition, which includes the Time-Limited Waiver request.

Joint Commission

Joint Commission specific issues:

- The organization submits the SPFI to The Joint Commission within 45 days of the end of the survey, and receives notification that their submittal has been received.
- Joint Commission uses the remaining 15 days to ensure the submittal is acceptable and forwards it on to the CMS Regional Office

Joint Commission

Joint Commission specific issues:

- Once the CMS Regional Office approves the request, Joint Commission will update the SPFI date of completion and the History Audit trail.
- Failure to complete the corrective action on time will result in a follow-up survey.
- There will no longer be any extensions granted by Joint Commission on waiver requests... no more 'automatic' extensions

Joint Commission

Joint Commission specific issues:

- If the RO denies the waiver request, then the hospital must resolve the deficiency within 60 days, and follow the directions provided by the RO.
- Joint Commission no longer processes waiver or equivalencies for deficiencies that are not identified in the survey report

Free Downloads...

To download your free sample of a cover letter to request an Equivalency or a Waiver, go to:

www.keyeslifesafety.com

Click on Tools, and scroll down to “Waivers & Equivalencies”

Questions...?

If you have questions later,
contact me...

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