

Kentucky SA CMS Life Safety Code Waiver Process

Background: The authority to grant waivers of life safety code provisions is found at § 1819(d) (2) (B) (I) (http://www.socialsecurity.gov/OP_Home/ssact/title18/1819.htm#act-1819-b-4-c-ii) of the Social Security Act and states, “The secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of the residents or personnel,...” *The facility must document to the survey agency that there will be no adverse effect on health and safety of the residents and employees of the facility for each specific provision recommended for a waiver.*

Procedures:

1. This process only applies to surveys conducted by the State Agency (SA) at certified facilities. The SA is responsible for receiving, evaluating and deciding if waivers are to be granted. Waivers can only be requested for a deficiency that has been cited during a SA survey. There are no provisions to grant waivers for conditions that have not been identified as a deficiency during the survey process.
 - Exception – Refer to #3 below regarding recent categorical LSC waivers addressed in Survey & Certification Memorandums (S&C's) 12-21-LSC and 13-58-LSC
- A. The facility submits a Plan of Correction (POC) and letter to SA requesting a waiver for one or more cited deficiencies.
- B. The SA reviews the POC, ensuring that the facility has included the following information:
 1. Why a waiver is needed;
 2. How they will ensure the health and safety of the residents and employees will not be adversely affected;
 3. A detailed time table/plan including project milestones for mitigation; and
 4. List of person(s) responsible for overseeing the project to completion.
- C. Waivers are time limited and are granted according to the time required to correct the deficiency. The project completion date must be included in the facility's POC.
- D. If the waiver request is approved by the SA, the Life Safety Code Coordinator will send the waiver package which includes the CMS 2567 (<http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms2567.pdf>), project specifics (if applicable), justification to include that the waiver will not adversely affect the residents or employees health and safety, and justification for unreasonable hardship (if applicable) to the CMS Regional Safety Engineer for final approval. The CMS waiver review process can take up to 2 weeks.

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- E. CMS will return their waiver decision to the SA Life Safety Code Coordinator who in turn informs the appropriate enforcement branch in the Office of Inspector General/Division of Health Care of their decision.
 - F. The enforcement branch will inform the facility in writing of the CMS Regional Office (RO) decision.
 - G. The SA Life Safety Code Coordinator will mark the tag(s) as waived in the survey data base which will place the facility back in compliance for the deficiency.
2. If a facility determines that it is not going to meet the POC completion date, a waiver extension is required to remain in compliance. LSC waiver extension requests must be made prior to the expiration date listed on the original POC/LSC waiver request. The waiver extension request process is the same as a standard waiver process.
- A. Waiver extensions are not granted to circumvent the enforcement process.
 - B. Since a waiver extension is requested to increase the time needed to complete the LSC project, the facility must provide a project progress timeline based on the previously submitted POC.
3. Categorical waivers addressed in S&C's 12-21-LSC and 13-58-LSC follow the process below:
- https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter12_21.pdf
- <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-58.pdf>
- A. A provider must formally elect to use one or more of the waivers and must document their election decision.
 - B. If the provider conforms to the requirements identified for each categorical waiver elected, it will not need to apply specifically to CMS for the waiver, nor will it need to wait until being cited for a deficiency in order to use this waiver.
 - C. At the entrance conference for any survey assessing LSC compliance, the provider that has elected to use a categorical waiver must notify the survey team/LSC surveyor of this fact, and that it meets the applicable waiver provisions.
 - 1. It is not acceptable for a healthcare facility to first notify surveyors of categorical waiver election after a LSC citation has been issued.
 - D. The waiver(s) elected by the provider must be described under Tag K000.
 - 1. Categorical waivers do not need to be cited as deficiencies nor do they require CMS approval.
 - E. If the survey team/LSC surveyor determines that the waiver provisions are not being met, the provider will be cited a deficiency under §483.70(a) (2) (<http://www.gpo.gov/fdsys/pkg/CFR-2005-title42-vol3/pdf/CFR-2005-title42-vol3-chapIV.pdf>.)