

# **Divisions of Health Facilities and Life Safety and Construction ND Department of Health**

## **POLICY & PROCEDURE MANUAL**

### **EFFECTIVE:**

### **SECTION: LICENSING**

### **SUBJECT: WAIVER PROCESS FOR BASIC CARE FACILITY**

#### **PURPOSE:**

This policy applies to basic care facilities licensed by the Division of Health Facilities. Consistent with North Dakota Century Code (NDCC) 23-09.3-04 (1), "The department may waive all or a portion of a licensure standard if the department determines the lack of compliance does not adversely affect health or safety of residents."

#### **POLICY:**

This policy and procedure provide a review process for waivers submitted to the State Department of Health by a basic care facility requesting the department to waive all or a portion of a licensure standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.

This waiver process applies to licensure standards only.

#### **PROCEDURE:**

1. The basic care facility licensed by the Division of Health Facilities must submit the request for a waiver to all or a portion of a health care or service licensure standard to the Division of Health Facilities for review, or a request for a waiver to a construction standard to the Division of Life Safety and Construction for review.
2. The basic care facility seeking to request a waiver must fully complete and submit the Basic Care Facility Waiver Request Form to the Division of Health Facilities or the Division of Life Safety and Construction dependent upon the licensure standard requested to be waived. Only complete waiver requests will be reviewed. A separate waiver request form for each licensure standard requested to be waived is required.

3. The waiver request must include the following:
  - a. Identify the licensure standard or portion of the licensure standard that is requested to be waived.
  - b. Documentation from the Department of Human Services that verifies the waiver will not result in the facility being noncompliant with the home and community-based setting requirements.
  - c. A description of actions taken by the facility to meet the licensure standard and why the waiver is being requested.
  - d. A description of any unreasonable hardship (including financial and work force) caused by not granting the waiver to the basic care facility.
  - e. Evidence to support why the requested waiver will not adversely affect the health and safety of the basic care residents.
  - f. A description of how the waiver would benefit the basic care facility, residents, and community.
  - g. A description regarding actions that will be taken by the facility to monitor and assure the health and safety of residents are not adversely affected if the request for a waiver is approved.
  - h. Other information as requested by the State Department of Health.
  - i. Signature of authorized representative and date.
4. The request for a waiver will be reviewed, research completed, and additional information gathered by the Division of Health Facilities and/or the Division of Life Safety & Construction as needed to complete the review within 45 days.
5. A meeting will be scheduled with the State Health Officer or designee of the State Department of Health to discuss the recommendations resulting from the review.
6. The State Health Officer or designee will make the final determination related to the approval or denial of the waiver within 60 days of when the complete waiver request was received. The final decision by the State Health Officer designee is not appealable.
  - a. If denied, a letter will be sent from the State Health Officer or designee to the basic care facility stating the request has been denied, and the rationale.

- b. If approved, a letter will be sent from the State Health Officer or designee to the basic care facility indicating that the waiver request has been approved contingent upon the facility signing an agreement with the State Department of Health. The agreement will identify the basic care facility's responsibility to monitor to ensure that the lack of compliance does not adversely impact health and safety, their understanding that the waiver will be monitored by the department onsite periodically to ensure that lack of compliance has not resulted in an adverse impact on health or safety, and that if an adverse impact on health or safety is identified, the waiver may be rescinded and the facility would be expected to meet the requirement waived.
  - c. The State Department of Health reserves the right to limit the period the waiver is in effect.
  - d. The State Department of Health reserves the right to withdraw or modify the waiver if it is determined information submitted by the basic care facility has been misrepresented or the basic care facility fails to comply with their responsibilities to monitor the impacts of the waiver.
7. Time frames identified above may vary dependent upon receipt of a complete waiver request from the basic care facility, the time it takes to complete additional research, and the availability of department staff to complete the steps outlined in this procedure. The basic care facility would be notified five days in advance if an extension on review of the waiver is needed.
8. The waiver request to all or a portion of a basic care licensure standard becomes effective on the date the agreement is signed by both the basic care facility authorized representative and the State Health Officer or designee.
9. All final decisions and agreements will be documented in writing and a copy placed in the facility file.
10. All basic care waiver requests and their disposition will be logged on the division waiver log.
11. A final decision on a waiver of all or a portion of a basic care licensure standard applies to that basic care facility only and should not be construed to apply to other basic care facilities.

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**Chief, Health Resources Section**

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**Date**