



Center for Clinical Standards and Quality /Survey & Certification Group

Ref: S&C: 13-58-LSC

DATE: August 30, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: 2000 Edition National Fire Protection Association (NFPA) 101® Life Safety Code (LSC) Waivers

Memorandum Summary

- ***Several Categorical LSC Waivers Permitted:*** The Centers for Medicare & Medicaid Services (CMS) has identified several areas of the 2000 edition of the LSC and 1999 edition of NFPA 99 that may result in unreasonable hardship on a large number of certified providers/suppliers and for which there are alternative approaches that provide an equal level of protection. This memorandum specifies the provisions that are available for waiver, including the conditions for the alternative approaches.
- ***Providers and Suppliers Must Elect to Use the Waiver:*** Individual waiver applications are not required, but providers and suppliers are expected to have written documentation that they have elected to use a waiver and must notify the survey team at the entrance conference for any survey assessing LSC compliance that it has elected the use of a waiver permitted under this guidance and that it meets the applicable waiver requirements. The survey team will review the information and confirm they are meeting the circumstances for the waiver.

Various regulations governing certain certified providers and suppliers require compliance with the 2000 edition of the NFPA 101: LSC. The LSC establishes minimum requirements for the design, operation, and maintenance of buildings and structures to protect individuals from fire and related hazards.

As allowed by the regulations at §482.41(b)(2), §485.623(d)(3), §483.70(a)(2), §416.44(b)(2), and §418.110(d)(2), CMS may waive specific provisions of the 2000 edition of the LSC in hospitals, critical access hospitals, long-term care facilities, ambulatory surgical centers, and inpatient hospice, which, if rigidly applied, would result in unreasonable hardship upon a provider or supplier, but only if the waiver does not adversely affect the health and safety of patients or residents. CMS has determined that the 2000 edition of the LSC contains several provisions that may result in unreasonable hardship for providers/suppliers, for which an adequate alternative level of protection may be achieved. Accordingly, CMS is making available several categorical waivers to new and existing providers and suppliers subject to the LSC.

Waiver Process

Providers and suppliers that want to take advantage of one or more of the categorical waivers identified below must formally elect to use one or more of the waivers and must document their election decision. If a provider/supplier 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. At the entrance conference for any survey assessing LSC compliance, a provider/supplier that has elected to use a categorical waiver must notify the survey team of this fact, and that it meets the applicable waiver provisions. It is not acceptable for a healthcare facility to first notify surveyors of waiver election after a LSC citation has been issued.

The survey team will review the provider's/supplier's documentation electing to use one or more of the categorical waivers and confirm it is meeting all applicable categorical waiver provisions. This will ensure an adequate level of protection is afforded. The waiver(s) elected by the provider/supplier must be described under Tag K000. Categorical waivers do not need to be cited as deficiencies nor do they require Regional Office approval. Therefore the applicable field on the Form CMS-2786 should be marked as "Facility Meets, Based Upon, 3. Waivers." If the survey team determines that the waiver provisions are not being met, the provider/supplier will be cited as a deficiency under §482.41(b)(2), §485.623(d)(3), §483.70(a)(2), §416.44(b)(2), or §418.110(d)(2), as appropriate.

Categorical Waivers Available:

1. Medical Gas Master Alarms

The 1999 NFPA 99, *Health Care Facilities Code* is cross-referenced in the 2000 LSC and, as a result, it contains requirements applicable to providers and suppliers who must meet the 2000 edition of the LSC under our regulations. The 1999 NFPA 99, sections 4-3.1.2.2(b)(2) requires medical gas master alarms to be located in two separate locations and section 4-3.1.2.2(a)(9) does not allow a centralized computer as a substitute for any medical gas alarm panel. The use of computers to continuously monitor critical signals has increased in health care facilities and the use of computers to monitor medical gas can improve surveillance and shorten response time. As a result, the 1999 NFPA 99 provision required under the 2000 LSC is not only outmoded and unduly burdensome to providers and suppliers, but also arguably less efficient in promoting fire safety. As a result, in the 2005 edition of NFPA 99, the NFPA began to permit a centralized computer system to be substituted for one of the master alarms, and this policy is continued in section 5.1.9.4 of the 2012 NFPA 99. Accordingly, we are permitting a waiver to allow a centralized computer system to substitute for one of the Category 1 medical gas master alarms, but only if the provider/supplier is in compliance with all other applicable 1999 NFPA medical gas master alarm provisions, as well as with section 5.1.9.4 of the 2012 NFPA 99.

2. Openings in Exit Enclosures

The 2000 LSC limits opening in exit enclosures (e.g., stairwells) to doors from normally occupied spaces and corridor, and doors for egress from the enclosure, with a few exceptions. Existing health care facilities often have unoccupied mechanical equipment spaces that have an exit access door to

an exit enclosure. Providing an alternative exit access to these areas is typically impractical and unduly burdensome with respect to the cost of the reconstruction that would be required. With the 2003 LSC, the NFPA began to permit existing unoccupied openings to mechanical equipment spaces with fire-rated doors to open into exit enclosures, and continuation of this policy is reflected in section 7.1.3.2(9)(c) of the 2012 LSC. Accordingly, we are permitting a waiver to allow existing openings in exit enclosures to mechanical equipment spaces that are protected by fire-rated door assemblies. These mechanical equipment spaces must be used only for non-fuel-fired mechanical equipment, must contain no storage of combustibles, and must be located in sprinklered buildings. This waiver allowance will be permitted only if the provider/supplier is in compliance with all other applicable 2000 LSC exit provisions, as well as with section 7.1.3.2.1(9)(c) of the 2012 LSC.

3. Emergency Generators and Standby Power Systems

Section 9.1.3 of the 2000 LSC requires emergency generators and standby power systems to be installed, tested, and maintained in accordance with 1999 NFPA 110, *Standard for Emergency and Standby Power Systems*. Section 6-4.2.2 of the 1999 NFPA 110 requires diesel-powered generators that do not meet the monthly testing requirements under section 6-4.2 to be run annually with various loads for a total of two (2) continuous hours. Shorter generator run times will reduce undue cost burden and negative environmental impacts. In the 2010 NFPA 110, the NFPA began to allow for total test duration of one hour and 30 minutes (1-1/2 continuous hours). Accordingly, we are permitting a waiver to allow for a reduction in the annual diesel-powered generator exercising requirement from two (2) continuous hours to one hour and 30 minutes (1-1/2 continuous hours), but only if the provider/supplier is in compliance with all other applicable 1999 NFPA 110 operational inspection and testing provisions, as well as with section 8.4.2.3 of the 2010 NFPA 110.

4. Doors

Section 18/19.2.2.2.2 through 18/19.2.2.2.5 of the 2000 LSC permits door locking arrangements where the clinical needs (e.g., psychiatric units, Alzheimer units, dementia units) of the patients require specialized security measures for their safety, provided adequate provisions are made for the rapid removal of occupants by means such as remote control locks or keys carried by staff at all times. The need for door locking arrangements may extend to other circumstances, such as instances when patients pose a security risk (e.g., some patients in emergency departments) or when a patient requires specialized protective measures for safety (e.g., pediatric units, newborn nurseries). In the 2009 LSC, the NFPA recognized this and began to allow for door locking arrangements when patients pose a security risk or when patients require specialized protective measures for safety, and continuation of this policy is reflected in the 2012 LSC, in sections 18/19.2.2.2.2 through 18/19.2.2.2.6. Accordingly, we are permitting a waiver to allow door locking arrangements where there are clinical needs justifying them, patients pose a security risk, or where patients require specialized protective measures for their safety, but only if the provider/supplier is in compliance with all other applicable 2000 LSC door provisions, as well as with sections 18/19.2.2.2.2 through 18/19.2.2.2.6 of the 2012 LSC.

Section 19.2.2.2.4 of the 2000 LSC permits delayed-egress locks in the means of egress, provided not more than one such device is located in an egress path. However, where the clinical needs (e.g., psychiatric units, Alzheimer units, dementia units) of the patients require specialized security measures for their safety, or where patients pose a security risk (e.g., some patients in emergency departments) or when a patient requires specialized protective measures for safety (e.g., pediatric

units, newborn nurseries), more than one delayed egress lock may be required along the path of egress in order to accommodate the clinical, security, and other special needs of patients. In the 2009 LSC, NFPA began to allow for more than one delayed-egress lock in an egress path, and continuation of this policy is reflected in sections 18/19.2.2.2.4 of the 2012 LSC, provided that the facility also employs the compensating safety measures specified in those sections which facilitate rapid removal of occupants. Accordingly, we are permitting a waiver to allow more than one delayed-egress lock in the egress path, but only if the provider/supplier is in compliance with all other applicable 2000 LSC door provisions, as well as with sections 18/19.2.2.2.4 of the 2012 LSC.

5. Suites

Sections 18/19.2.5 of the 2000 LSC requires every habitable room to have an exit access door leading directly to an exit access corridor; allows for exit access from a suite to include intervening rooms only under certain circumstances; requires suites of certain size to have two exit access doors remotely located from one another; and limits the size of sleeping room suites to 5,000 ft². Suites are used to create groupings of rooms and spaces that can function more efficiently than individual rooms located off of a corridor. The specific limitations on suite size and design in the 2000 LSC limit their efficiency and the ability for facilities to accommodate suites in their building space, which results in undue burden. In the 2006 LSC, NFPA began to include additional provisions to further accommodate the use of suites, and continue to be reflected in sections 18/19.2.5.7 of the 2012 LSC. Accordingly, we are permitting a waiver to further accommodate the use of suites by allowing: (1) one of the required means of egress from sleeping and non-sleeping suites to be through another suite, provided adequate separation exists between suites; (2) one of the two required exit access doors from sleeping and non-sleeping suites to be into an exit stair, exit passageway, or exit door to the exterior; and (3) an increase in sleeping room suite size up to 10,000 ft². This waiver allowance will be permitted only if the provider/supplier is in compliance with all other applicable 2000 LSC suite provisions, as well as with sections 18/19.2.5.7 of the 2012 LSC.

6. Extinguishing Requirements

Section 9.7.5 of the 2000 LSC requires all automatic sprinkler and standpipe systems to be inspected, tested, and maintained in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems*. Sections 2-3.3 and 5-3.2 of the 1998 NFPA 25 require the quarterly testing of vane-type and pressure switch type waterflow alarm devices, and weekly testing of electric motor-driven pump assemblies. Reducing the frequency of testing requirements will reduce cost burden. In the 2011 NFPA 25, the NFPA began allowing for the testing of vane-type and pressure switch type waterflow alarm semiannually and electric motor-driven pump assemblies monthly. Accordingly, we are permitting a waiver to allow for the reduction in the testing frequencies for sprinkler system vane-type and pressure switch type waterflow alarm devices to semiannual, and electric motor-driven pump assemblies to monthly. This waiver allowance will be permitted only if the provider/supplier is in compliance with all other applicable 1998 NFPA 25 (as referenced in section 9.7.5 of the 2000 LSC) testing provisions, as well as with sections 5.3 and 8.3 of the 2011 NFPA 25.

7. Clean Waste & Patient Record Recycling Containers

Sections 18/19.7.5.7 of the 2000 LSC limit the size of trash collection containers to 32-gallons when located outside of a hazardous storage area and not attended. Recycling containers used for clean waste (e.g., bottles, cans, paper) pose a lower fire risk than trash containing grease, oil, or flammable

liquids. Allowing the size of container used for recycling to increase will reduce the number of trash receptacles and hazardous storage areas required, which will reduce undue cost burden. In the 2012 LSC, the NFPA began allowing containers used solely for recycling clean waste or for patient records awaiting destruction outside a hazardous storage area to be a maximum capacity of 96-gallons. Accordingly, we are permitting a waiver to allow the increase in size of containers used solely for recycling clean waste or for patient records awaiting destruction outside of a hazardous storage area to be a maximum of 96-gallons, but only if the provider/supplier is in compliance with sections 18/19.7.5.7.2 of the 2012 LSC.

8. Clarification of Process for LSC Waivers permitted under S&C-12-21

CMS memorandum S&C-12-21-LSC, dated March 9, 2012, also provided for categorical waivers of several provisions of the 2000 LSC, but required each provider/supplier waiver to be evaluated separately before a survey was to be conducted, with final approval by the CMS Regional Office. Providers/suppliers seeking to take advantage of these categorical waivers may now use the categorical waiver process described above, so long as they are in compliance with all other requirements identified in S&C-12-21-LSC.

Questions: If you have questions regarding this memorandum please contact Lieutenant Commander Martin Casey at Martin.Casey@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management