

Hospital Waiver Request—Process for the Regulatory Services Division

Purpose:

To establish a process for a general or special hospital to request and submit a formal written request for a waiver or exception from complying with a provision of Texas Health and Safety Code, Subchapter B. Licensing of Health Facilities, Chapter 241 and/or a rule found at Title 25, Texas Administrative Code, Chapter 133. A general or special hospital may not request a waiver of a fire safety requirement mandated by the National Fire Protection Association. Each waiver request is given full consideration by the department and will be issued a formal written order either granting or denying the waiver request from the Assistant Commissioner of the Regulatory Services Division.

Procedures and Criteria for Issuance of a Waiver:

1. Request for a wavier - A written waiver request must specify the provisions of the Texas Health and Safety Code, Subchapter B. Licensing of Health Facilities, Chapter 241 and/ or specific rule at Title 25, Texas Administrative Code, Chapter 133 for which a waiver is requested.

- a. The hospital must address the following five criteria and provide documentation as necessary to support its position:
 - (1) provide evidence to support why the requested waiver will not adversely affect the health and safety of the hospital patients, employees, or the general public;
 - (2) indicate how it was determined that granting of the waiver would not adversely impact the hospital's participation in the federal Medicare program or accreditation by a Centers for Medicare and Medicaid Services-approved organization;
 - (3) describe how not granting the waiver would impose an unreasonable hardship on the hospital in providing adequate care for patients;
 - (4) describe how the waiver would facilitate the creation or operation of the hospital; and
 - (5) explain how the wavier would be appropriate when balanced against the best interests of the individuals served or to be served by the hospital.
- b. A waiver request is submitted to the DSHS, Regulatory Licensing Unit – Facility Licensing Group Manager, 1100 W. 49th Street, Austin, Texas 78756.

2. Review process - The waiver request and supporting documentation is given full consideration by the department through the following process.

- a. The Facility Licensing Group Manager reviews the request for compliance with the licensing requirements and ensures that the facility has submitted all required information. Additional information may be requested from the hospital to support the waiver.
- b. The Health Facility Compliance Group Manager in the zone office where the facility is located reviews the waiver request and supporting documentation and prepares an initial recommendation for approval or denial.

- c. The Regulatory Division Cross-Functional Health Facility Team considers the waiver request and supporting documentation. The team reviews all evidence and documentation submitted by the facility and considers each of the five criteria addressed by the facility in the waiver request (see 1. a. above). Additional information may be requested from the hospital to support the waiver.

The Cross- Functional Health Facility Team is composed of the Health Care Quality Section Director, Regulatory Licensing Unit Manager, Patient Quality Care Unit Manager, Enforcement Unit Manager, Facility Licensing Group Manager, Architectural Review Group Manager, Austin Health Facility Compliance Group Manager, Enforcement Consumer Safety Group Manager, Medicare Compliance Officer, Quality Assurance Program Specialist and Assistant General Counsel.

- d. The Cross-Functional Health Facility Team reaches a consensus decision to deny or approve the waiver request after giving due consideration to historical data such as previous decisions the department has made on similar requests. The Facility Licensing Group Manager prepares a memorandum for review by the Assistant General Counsel for Enforcement, which specifies the regulatory and/or public policy reasons for the recommendation. The Office of General Counsel prepares the Order that states the final disposition of the waiver request.

3. Final Review and Consideration – The final authority for granting or denying waivers has been delegated from the Commissioner of the Department of State Health Services to the Assistant Commissioner of the Regulatory Services Division.

- a. The Assistant Commissioner of the Regulatory Services Division gives full consideration to the waiver request and the supporting documentation provided by the facility and to the consensus decision of the Cross- Functional Health Facility Team. The Assistant Commissioner for Regulatory Services issues the final written order granting or denying the waiver.
- b. The department will notify the facility by letter that the requested waiver is either approved or denied. The facility maintains the order in its permanent records.
- c. Waivers are authorized by Texas Health and Safety Code, Subchapter B, Licensing of Health Facilities, Section 241.026(c) and Title 25, Texas Administrative Code, Section 133.81.