



**Center for Health Care Facility Planning, Licensure, and Finance  
Bureau of Architecture & Engineering Review (BAER)  
Submission Guidelines for Waiver Requests DSG-06**

The Department is authorized to approve and issue construction waivers in accordance with State Hospital Code (SHC). Submitted waiver requests shall be compliant with NYCRR Title 10, Part 711.9 and Parts 711-717. The pertinent regulatory standards, codes and edition for which the waiver is sought as indicated in 10NYCRR: 711.2.

In addition, the Federal Center for Medicare & Medicaid Services (CMS) is authorized to process Life Safety Codes (LSC) waiver approvals. Federal Register, Volume 68, No. 7, dated 1/10/03, Rules and Regulations should be referenced for LSC.

The following components and/or elements are required to process waivers including LSC waivers:

- A written waiver request by the facility with sufficient information to justify a determination.
- The determination by the Department of either approval or disapproval of the waiver based upon a recommendation by BAER.
- Life Safety Code waivers must be forwarded by BAER to CMS for review and final approval. Categorical waivers are exempt.

**INSTRUCTIONS FOR SUBMISSION OF WAIVER REQUESTS TO BAER**

- Only one waiver item or condition shall be requested per waiver request form that is submitted. Multiple waivers from a survey will require separate waiver request forms.
- Waiver request forms can be e-mailed to [doh.sm.BAERWAIVERS1861@health.ny.gov](mailto:doh.sm.BAERWAIVERS1861@health.ny.gov)
- Hardcopy waiver request forms and supporting documentation are mandatory and shall be sent directly to BAER to the following address:

Center for Health Care Facility Planning, Licensure and Finance  
Bureau of Architecture & Engineering Review  
Empire State Plaza, Corning Tower, Room 1861  
Albany, New York 12237

- Please ensure the following are indicated clearly on the waiver request form.
  - Medicare Provider Number
  - Operator Certificate Number
  - PFI Number
  - County Name
  - CON Number if waiver request is associated with CON Administrative/Limited and or Full Review.
- Properly indicate the pertinent regulatory standards, codes and edition for which the waiver is sought as indicated in 10NYCRR: 711.2. (example: NFPA 99- 1999 edition, 3-4.2.2.2)
- Waiver Number is assigned by BAER. No action is required by the applicant.

- Please attach a copy of the Survey Statement of Deficiencies/Plan of Corrections with the Waiver Request Form.

## **TYPES OF WAIVERS**

- **Permanent waivers** are granted when a deficiency is determined not to be detrimental to the health and safety of the occupants. Permanent waivers do not require CMS approval. Permanent waivers are typically used for FGI and ADAAG compliance.
- Provide the following information when applicable to provide sufficient documentation to the existing conditions of the deficiency.
  - Photographs
    - Interior (where applicable.)
    - Exterior (where applicable.)
  - Floor plans to scale and highlight area of deficiency (with dimensions, where applicable.)
  - Building elevations and building sections (where applicable.)
  - Wall sections (where applicable.)
  - Technical investigation of as-built conditions and preparation of supporting documentation (such as calculations) by a licensed design professional to provide verification that the code has been met.
- **Categorical waivers** are established by CMS.
  - CMS issues Survey & Certification (S&C) memos to allow facilities to use specified portions of a later edition of the Life Safety Code.
  - Provide the following for a Categorical waiver:
    - Survey and Certification Letter from CMS.
    - Plans, including but not limited to LSC drawings.
    - Photographs
- **Time-limited waivers.**
  - Determinations of waiver approval may be 'time limited' or temporary. The specified period of approval is to allow the facility sufficient time to implement a strategy to correct the deficiency.
  - Time Limited waivers can be applied for the following:
    - Life Safety Code deficiencies (Requires CMS approval.)
    - FGI deficiencies (Generally, do not require CMS approval, exceptions do apply to certain facility types)
    - ADAAG deficiencies (Do not require CMS approval.)
  - The Bureau requires facilities to establish a schedule of interim submissions and reviews to be conducted by BAER. These corrections will establish interim requirements such as milestones over an extended period of time for all major components requiring corrective action.
  - The following is typically required for a time limited waiver submission.
    - Proposed project schedule:
      - The schedule indicates the dates by which applicable project milestones will occur, and may include the following:

- Planning and investigation phase (may include a feasibility study to identify work)
  - Start and completion of Design (schematic, preliminary and final construction documents)
  - Bidding and Award phase (for construction projects). This may not be required for minor projects when the facility assigns directly to a contractor.
  - Consider and include the time frame for securing local approvals such as building permits.
  - Consider and include the time frame for securing financing if applicable.
  - Start and completion dates of Construction
  - Final signoff by Authorities Having Jurisdiction (AHJ) and start up and commissioning related work (including testing).
- At the completion of all project milestones and construction related plan of corrections approved with a time limited waiver request, the following information shall be required:
    - Mandatory notification to BAER that the work has been completed at each milestone. Documentation shall be provided at each milestone for verification purposes and notification to the regional offices for action.
    - Certification by a licensed Design professional is **required only** when design and construction documents are prepared for construction, bidding and permitting by the local jurisdiction; or the AHJ is requiring building permits to be issued for any type of work associated with a time limited waiver for the following:
      - Site Work/Civil Engineering
      - Site Work related to Mechanical, Electrical and Plumbing
      - General Construction
      - Mechanical
      - Plumbing
      - Electrical
      - Fire protection
    - When the construction work has been completed for the Time Limited Waiver (TLW), the licensed design professional is required to complete the Certificate of Completion of a Time Limited Waiver, and submit to BAER electronically through e-mail and a mandatory hard copy shall be sent to BAER. (Please refer to the link on the website for the documentation required for submission.)

**LSC WAIVER REQUESTS SHALL INDICATE THE FOLLOWING INFORMATION FOR JUSTIFICATION .**

- The ‘alternative’ provision must afford a substantially similar level of safety as compared to the following but not limited to:
  - Fire Load
  - Fire Containment
  - Fire Extinguishments
  - Evacuation
  - Operating Features

○ **Life Safety Code Waivers**

- Exceptions to the LSC provision are considered only and if it would impose an unreasonable hardship to an existing facility.
  - The following would be considered in making a determination for a waiver request based on unreasonable hardship:
    - Estimated cost of installation; (The applicant is required to demonstrate the costs involved by either submitting actual cost estimates from a contractor or a cost opinion from a design professional. Stating it will cost too much is not an acceptable response.)
    - Extent and duration of the disruption of normal use of patient areas resulting from construction work;
      - Description of the disruption to the areas involved may include floors above and below the areas in question.
  - Estimated period over which cost would be recovered through reduced insurance premiums and increased payment related to cost;
    - Provide applicable documentation and information.
  - Availability of financing; and
  - Remaining useful life of the building.
- Life Safety Codes waivers that reference life safety issues and other mandated regulations by CMS will require a recommendation of approval by BAER and the Division Director. The waiver is then forwarded to CMS for additional review and approval.
- In the event that CMS denies the State's decision on a waiver determination, the facility is subsequently notified of the decision and it may be necessary to revise the terms.
- Provide the following information when applicable to provide sufficient documentation to the existing conditions of the deficiency.
  - As-Built Drawings accurately reflecting existing conditions.
  - Photographs
  - Interior (where applicable.)
  - Exterior (where applicable.)
  - Floor Plans to scale and highlight area of deficiency (with dimensions, where applicable.)
  - Building elevations and building sections (where applicable.)
  - Wall Sections (where applicable.)
  - Technical investigation of as-built conditions and preparation of supporting documentation (such as calculations) by a licensed design professional to provide verification that the code has been met.