



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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MEMO 23-06

TO: Administrator, DON, Director of Building Services, & QA Committee Members

FROM: Mary Gracey- White RN, BSN, QCP Director of Regulatory Compliance and John Kerney, Life Safety Consultant

DATE: May 11, 2023

RE: NYSDOH NH DAL 23-04: Waiver and Equivalency Submission Guidelines

As you may be aware NYSDOH released DAL 23-04 “Waiver and Equivalency Submission Guidelines.” Please see attached. The DAL outlines the changes to the process for submitting a waiver request to DOH for Federal and/or State fire safety and environmental regulations.

With the adoption of the 2012 NFPA 101 Life Safety Code, in November of 2016, there were compliance issues which caused significant facility citations whereas corrections could not be completed timely (within 90 days). According to established regulations there is an alternative approach to meeting the requirements of the Life Safety code NFPA 101. The DAL provides the information and procedure to complete this alternative approach after a facility has been cited for such an issue.

The FSES is the tool utilized to show the alternative equal compliance. This tool grades the building on different aspects of life safety based upon the actual structure, resident population, and other fire safety aspects. There is a passing score for each part of the FSES and when all areas are graded as passing the building is considered compliant.

Although this system is allowed by regulation the final approval still lies with CMS. The FSES must first be approved by the NYSDOH and then submitted to CMS for final approval.

Many older facilities cannot attain a passing score on the current 2013 FSES. A facility can request a waiver to the actual code violation. compliance for a specific citation to either complete the required repairs or to complete the repairs/upgrades to attain a passing score on the FSES.

These items all take time and may cause the facility to enter a Denial of payment (DOPNA) due to a delay in approvals from both federal and state authorities. For this reason, any facility cited has the possibility of exceeding the allotted 90 days should start this process ASAP.

Facilities must be aware of the scoring changes associated with the update to the 2013 FSES. If a facility has been utilizing an FSES for compliance before July 5, 2016, then they are allowed to continue with the scoring for structure based on the 2001 FSES. This was amended last year and helps facilities who have been utilizing the 2001 FSES to continue in compliance. If this is the first time applying for an FSES or have an approved FSES after July 5, 2016, then all scoring must be from 2013 FSES.

A webinar on this topic is scheduled for May 31 at 1:00pm. To register, please go to:
<https://meetny.webex.com/weblink/register/ra4ce254a27f8c99ea21deef4006fd449>.

Do not hesitate to contact the Association with any questions.

Thank you.