

WAIVER PETITION PROTOCOL

A. Introduction

A provider (public or private) may, at any time, petition the Department for a waiver of any DDS regulation. The waiver process described below outlines the method for the provider to propose a substitute or alternative standard in place of the cited DDS regulation. The substituted standard is as binding on the provider as was the waived regulation. If needed, providers are encouraged to contact the Regional QE Office for technical assistance and information about the waiver process.

B. Types of situations requiring waiver petitions, include but are not limited to:

- ☐ Evacuation from the home
- ☐ Bedroom size
- ☐ HRC composition or geographical responsibility

C. Criteria for the Substitute Standard

1. The substitute standard(s) will not adversely affect the life, health, safety, or welfare of individuals served and staff.
2. The substitute standard(s) will not adversely affect the quality or quantity of service to individuals.
3. The substitute standard(s) will not contradict any other applicable regulation(s).

D. Scope and Duration

1. Waivers may be granted for the duration of a certification period or for a shorter or longer period of time, and waivers may be renewed at the discretion of the Department.
2. A waiver that is granted for one location or one individual cannot be transferred. Any waiver which is for one location or for one individual will not be accepted for any other location or individual of the same agency.
3. If a provider petitions for a waiver of a requirement that is agency-wide (as opposed to location-specific or for one individual), that waiver may apply to all or a portion of the agency's services and supports.

D. Waiver Procedures

1. The **Petition for Waiver (Form A)** is submitted by the provider to the Regional OQE Director. **Within 5 days** of receipt, the Regional OQE Director assigns a QE Specialist to review the waiver and oversee the approval process.
2. The Petition for Waiver must include the following information:

- a. the regulation (in complete text) upon which the waiver is based;
 - b. the alternative standard that the provider is requesting to adopt in place of the original regulation;
 - c. a justification for the newly-written standard; and
 - d. signature of the person authorized to sign legal documents for the provider.
3. The QE Specialist reviews the waiver petition to ensure that the waiver is properly written and meets all criteria for a waiver. If the criteria are not met, the waiver is returned to the provider for revision. Using the **Waiver Petition Coversheet (Form B)**, the QE Specialist recommends whether the waiver should be approved or disapproved and may attach conditions to the waiver approval.
4. If the waiver has an impact on individual rights, then the QE Specialist seeks consultation from the HR Specialist. Consultation from the Human Rights Specialist must be sought for all waivers cited under 115 CMR 3.09, 115 CMR 5.00 (with the exception of 5.15 - Medication), or any other regulation that has an impact on the rights of individuals. The HR Specialist recommends whether the waiver should be approved or disapproved and may attach conditions to the waiver approval.
5. **Within ten days** of receipt of the waiver petition from the provider, the QE Specialist and HR Specialist (where applicable) completes their review and recommendation. The packet is then forwarded to the Area Director for his or her review.
6. The Area Director has **five days** to review and forward the waiver petition to the Regional Director. The Area Director either recommends that the waiver be approved or disapproved and may attach conditions to the waiver approval.
7. The Regional Director has **five days** to complete the review and return the waiver to the Regional QE Director. The Regional Director either recommends that the waiver be approved or disapproved and may attach conditions to the waiver approval.
8. The Regional QE Director has **five days** to review and forward the waiver petition, with completed cover sheet, to the Director of Survey and Certification for final disposition. The Regional QE Director either approves or disapproves the waiver and may attach conditions to the waiver approval.
9. Within **five days**, the Director of Survey and Certification informs the provider in writing if the waiver has been approved and of any conditions attached to the waiver. The Director of Survey and Certification may consult with other Central Office, Regional or Area staff prior to making a decision. If there are any conditions to the waiver request, it is returned to the Regional QE Director to review before it is sent to the provider.
10. The provider is required to adhere to the cited regulations while the waiver review is underway. At the completion of the process, if the waiver is denied, the provider will need to comply with the cited regulation.

E. Alternatives to Specific Requirements in Chapter 7.00 of the DMR Regulations

The process for proposing alternatives with respect to *fire drills, certain environmental requirements*, and for *individuals to remain at home without staff supervision* is different than the waiver process outlined above and is described in the DMR Chapter 7.00 regulations and in the "Safety Plan Handbook." Please refer to the attached chart depicting the regulatory reference and the authority for granting alternatives to the DMR regulations (**Form C**).

F. Waiver Petitions of the 2 1/2 Minute Evacuation Requirement in Homes

The following protocol applies to a request for a waiver of the requirement to evacuate a home in 2 1/2 minutes [115 CMR 7.08(3)(b)6.a.] NOTE: Such waivers will not be considered prior to initial occupancy. (At the time individuals are moving into the home, the staffing pattern should be sufficient for evacuation to occur within 2.5 minutes).

1. The provider may apply for a waiver when:
 - a. the ISP team identifies through the Individual Safety Assessment(s) that it is not in the best interest of an individual(s) to evacuate the home within the 2 1/2 minutes due to medical and/or physical issues; and
 - b. environmental features are in place to support more time and/or environmental features may substitute for staffing and
 - c. the individual's performance during fire drills consistently demonstrates an inability to evacuate the home within the prescribed time limit and the situation is unlikely to change over time; and
 - d. the issuance of the waiver will not present safety hazards for individuals living in the home.
2. The provider may not apply for a waiver when:
 - a. it is a substitute for adequate staffing;
 - b. the situation is temporary (e.g., temporary medical condition, behavior episode) and/or is a training need and evacuation within 2 1/2 minutes will be achieved with practice; and/or
 - c. the situation can be remedied through training and practice.
3. The waiver petition procedures are as follows:
 - a. The provider completes the **Petition for Waiver of CMR 7.08 (3)(b)6.a. (Form A)** NOTE: It is recommended that the provider call the Regional QE Director before completing the form so that technical assistance can be provided in completing the waiver process.
 - b. The provider sends the Waiver Petition Form to the Regional QE Director.
 - c. The Regional QE Director assigns a QE Specialist to complete a **Fire Safety Equivalency Systems (FSSES) assessment (Form D)**. As a pre-requisite for

completing the FSES, the provider must have the following documentation available for review:

- 1) Individual safety assessments;
 - 2) Location-specific Safety Plan;
 - 3) Documentation of training to individuals and staff on the evacuation plan; and
 - 4) Record of fire drills for the past year.
4. Decisions based on results of the FSES Assessment.
- a. Recommendation to Approve - If the home passes the FSES, the QE Specialist may recommend that the waiver be approved (**Form E**). The provider completes section #4 and #5 of the Waiver Petition Form and sends it to the QE Specialist. The QE Specialist completes the Waiver Petition Coversheet, attaches the Waiver Petition Form, and the FSES Assessment report and follows the routine procedures for review and approval of waivers described in Section D. (5-9) of this protocol.
 - b. Recommendation to Approve with Conditions - If the home does not pass the FSES, the QE Specialist may recommend "Approval with Conditions" for a designated period of time that would allow the provider to complete specified changes to ensure that individuals are safe. As part of Approval with Conditions, the QE Specialist specifies what changes are needed (**Form F**). The QE Specialist may also attach interim requirements such as additional staffing to ensure individuals' safety while the changes are being made. If the provider agrees to make the changes and adhere to the interim requirements, it completes Sections #4 and #5 of the Waiver Petition Form and sends it to the QE Specialist. The QE Specialist completes the Waiver Petition Coversheet and follows the routine procedures for review and approval described in Section B of this protocol D (5-9) to process the Waiver.

Once the improvements are made, the QE Specialist verifies that the changes have been made and re-administers applicable portions of the FSES. NOTE: If needed, the provider's Safety Plan must be modified to reflect any changes that result from the FSES assessment. The revised Safety Plan is subject to review and approval by the DDS Area Director.
 - c. Recommendation Not to Approve - The QE Specialist may recommend that the waiver not be granted because the individual(s) is at risk and changes are not feasible in the current living situation.
5. Using the **Waiver Petition Coversheet (Form B)**, each person reviews the attached materials and recommends whether the waiver should be approved or disapproved and may attach conditions to the waiver approval.
6. If any conditions change with respect to the individual capabilities, and/or physical features of the home, then the provider must re-apply for the waiver.

DEPARTMENT OF DEVELOPMENTAL SERVICES
A. PETITION FOR WAIVER

Applicant's Legal Name

Type of Service

Address of the Service

INSTRUCTIONS: Fill out completely, using additional pages as necessary and attaching any documentation that would support the granting of this Waiver.

1. Cite the regulation that the Waiver is based upon; include the **complete** text of the regulation.

2. Is this a request for a Renewal of a Waiver previously granted? Yes ___ No

If yes, attach a copy of the previous Petition for Waiver; and attach a copy of the previously granted Waiver.

3. Write the substitute standard that you are requesting to adopt in place of the regulation to be waived, and with which the service will comply.

4. Write a justification for the newly written standard.

5. If this petition is approved, I agree to be held accountable to the substituted standard in the same degree and manner as any other regulation.

Signature

Title

Date

Must be signed by person authorized to sign legal documents on behalf of the Agency.

For additional information on the Waiver process, please contact your Regional OQE Director.

DEPARTMENT OF DEVELOPMENTAL SERVICES
B. WAIVER PETITION COVER SHEET

Date Submitted _____

Waiver ID: _____

Provider Name: _____

The number (-1) will show if Renewal: _____

Address of the Service: _____

Regulation Number for which the Waiver is Requested: _____

Waiver Type: _____

Waiver Description: _____

OQE Specialist's Recommendations:

Approve ☐ Disapprove ☐

Comments: _____

Signature: _____ Date: _____

Date Received: _____ Date Forwarded: _____

Human Rights Specialist's Comments: (where applicable):

Approve ☐ Disapprove ☐

Comments: _____

Signature: _____ Date: _____

Date Received: _____ Date Forwarded: _____

Area Director's Recommendations: Approve ☐ Disapprove ☐ Date Received: _____ Date Forwarded: _____

Comments: _____

Signature: _____ Date: _____

Regional Director's Recommendations: Approve ☐ Disapprove ☐ Date Received: _____ Date Forwarded: _____

Comments: _____

Signature: _____ Date: _____

Regional OE Director's Recommendations: Approve ☐ Disapprove ☐ Date Received: _____ Date Forwarded: _____

Comments: _____

Signature: _____ Date: _____

Decision of Survey and Certification Director: Date Received: _____ Date Forwarded: _____

Approved ☐ Denied ☐

Signature: _____ Date: _____

☐ See attached letter ☐ Note special conditions

C. AUTHORITIES FOR GRANTING REGULATORY ALTERNATIVES/WAIVERS
115 CMR 7.00

TYPE OF REGULATION	OFFICE OF QUALITY ENHANCEMENT	SAFETY PLAN/AREA DIRECTOR	ISP TEAM	OTHER AUTHORITIES/ AGENCIES
STAFFING AND TRAINING	115 CMR 7.06(1)(e) Staff Training 115 CMR 7.10(3)(a) Home Provider Training		115 CMR 7.06(5)(a)-(e) Remain Home Alone	
ENVIRONMENTAL REQUIREMENTS	115 CMR 7.07(5)&(6) Environment 115 CMR 7.07(7) Environmental (for site-based respite only)	115 CMR 7.07(7) Environmental		115 CMR and 7.07(1)(4) Environmental (only Waived or granted Variance by BBRS)
SAFETY PLAN RELATED REQUIREMENTS	115 CMR 7.08(3)(b)(6)a. Safety (2 1/2 Min. Evacuation)	115 CMR 7.08(3)(b)7. Fire Drills		

D. FIRE SAFETY EQUIVALENCY SYSTEM ASSESSMENT (FSES) REPORT

Provider:

Address of the Home:

Assessment Date:

Report Date:

QE Specialist:

Report

1. Fire Safety Equivalency Prequalification (Form A – Individual Safety Assessments; Location-specific Safety Plan; staff/individual training in the Safety Plan; Fire Drills;
2. Evacuation Assistance Scores (Forms 1,2,3 – Summary of Individual Evacuation Scores, abilities and needs of individuals; Total Evacuation Assistance Score for all individuals in the home;
3. Staff Shift Evaluation (Forms 4, 5 – Summary of the staffing ratios across all shifts; staff responsiveness; availability of staff;
4. Vertical Egress Capability (Form 6 – Summary of the distance individuals travel from their bedrooms to an exit);
5. Evacuation Capability (Form 7 – Total Evacuation Capability Score and if category is prompt, slow or impractical);
6. Fire Safety Evaluation of the Home (Forms 8,9,10) – Summary of Safety Parameters; Mandatory Safety Requirements; final Equivalency Evaluation Results);
7. Results (Conclusions of the assessment; recommendations, if any):

E. SAMPLE FSES ASSESSMENT RESULTS LETTER
(Recommendation to Approve)

TO: _____ (Provider)

FROM: _____ (QE Specialist)

RE: Waiver Petition of 115 CMR 7.08(3)(b)6.a.
2 ½ Minute Evacuation time at _____ (address)

On _____ (Date) I conducted a Fire Safety Equivalency System (FSES) assessment pursuant to your petition to waive the 2 ½ minute evacuation requirement at the above mentioned home.

I am recommending Approval of this Waiver with your assurance that the following conditions will be maintained at the home:

- 1) Staffing;
- 2) Egress Capability;
- 3) Safety Parameters.

If you have any questions about any of the above, please call me at _____ (telephone)_____.

cc: Regional OQE Director

F. SAMPLE FSES ASSESSMENT RESULTS LETTER
(Recommendation to Approve with Conditions)

TO: _____ (Provider)

FROM: _____ (QE Specialist)

RE: Waiver Petition of 115 CMR 7.08(3)(b)6.a.
2 1/2 Minute Evacuation time at _____ (address)

On _____ (Date) I conducted a Fire Safety Equivalency System (FSES) assessment pursuant to your petition to waive the 2 1/2 minute evacuation requirement at the above mentioned home.

I am recommending Approval with Conditions with the stipulation that the following changes are made in the home:

- 1) Staffing;
- 2) Egress Capability;
- 3) Safety Parameters.

The above changes must be made by _____ (Date). At that time I will verify that the changes have been made and re-administer the applicable portions of the FSES.

In the interim, in order to ensure the safety of the individuals living in the home you are required to:

- 1)
- 2)
- 3)

If you agree to make the changes and to the interim requirements described above, and send it to me by _____ (Date). I will then complete the remaining portions of the Waiver Review and Approval Process.

If you have any questions about any of the above, please call me at _____ (telephone).

cc: Regional OQE Director

FLOW CHART
Waiver Petition of the 2 ½ Minute Evacuation Requirement from the Home

