

Introduction

A provider may, at any time, petition the Department for a waiver of a DDS regulation. The waiver process involves the provider developing a proposed 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 can contact the Regional QE Office for technical assistance and information about the waiver process.

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

- Extending the evacuation time in homes (FSSES)
- Bedroom size
- HRC (Human Rights Committee) composition or geographical responsibility
- **Temporary increase in residential capacity from 5 to a maximum of 8 (issued 4/2020 during the state of emergency)**

** A waiver is not needed to substitute standards such as:

- Altering the number of evacuation drills,
- Certain environmental requirements
- Individuals' to remain at home without staff supervision.

This is a different process which is described in the DDS Chapter 7.00 regulations and in the "Emergency Evacuation Safety Plan Handbook."

- Please refer to the attached chart depicting the regulatory reference and the authority for granting alternatives to the DDS regulations (**Form 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).

Scope and Duration

1. A Waiver may be granted for any duration, but no longer than the duration of the licensure period. Waivers may be granted of a certification period for a shorter longer period of time. All waivers may be renewed at the discretion of the Department. **Waivers for capacity during COVID19 are temporary for the duration of the state of emergency.**
2. A waiver that is granted for one location or a specific individual / location cannot be transferred to any other location or individual.

3. If a provider petitions for a waiver of a requirement that is agency-wide (such as Human Rights Committee), that waiver may apply to all or a portion of the providers' services and supports.

Waiver Procedures

1. The **Petition for Waiver (Form A)** is submitted by the provider to the Regional OQE Director. The Regional OQE Director may assign a QE Specialist to review the waiver and oversee the approval process. *The provider is required to adhere to the cited regulations while the waiver review process is underway.*
 - **New Waiver or Waiver Renewal DURING the licensure and certification review:**
 - The 45-day notification of the providers' upcoming licensure and certification includes a list of all expiring waivers, if applicable. The team leader will assign a QE Specialist to review any site based waiver renewals as applicable.
 - The provider should submit all requests for new or renewal of waivers by Day One of the survey to the team leader. The team leader will review and oversee the approval process.
 - **New Waiver or waiver renewal OUTSIDE of licensure and certification review:** Within **5 days** of receipt, the Regional OQE Director assigns a QE Specialist to review the waiver and oversee the approval process.
- a. **The Petition for Waiver (Form A) must include the following information:**
 - The regulation (in complete text) upon which the waiver is based;
 - The alternative standard that the provider is requesting to adopt in place of the original regulation;
 - A justification for the newly-written standard; and
 - Signature of the person authorized to sign legal documents for the provider.
2. The QE Specialist reviews the waiver petition to ensure that the waiver is properly written and meets all criteria. If the criteria are not met, the waiver is returned to the provider for revision.
3. Once the Waiver Petition information is complete, the QE Specialist enters the information into the QE 5 and creates the **Waiver Petition Coversheet (Form B)**.
4. The QE Specialist recommends whether the waiver should be approved or disapproved and may attach conditions to the waiver approval.
 - i. If the waiver has an impact on individual rights, then the QE Specialist seeks consultation from the Human Rights Specialist (HRS). Consultation from the HRS 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. **(not required for temporary capacity waivers)**
 - ii. The HRS recommends whether the waiver should be approved or disapproved and may attach conditions to the waiver approval.

Within ten days of receipt of the waiver petition from the provider, the QE Specialist and HRS (where applicable) completes their review and recommendation. The packet is then forwarded to the Area Director for his or her review.

5. The Area Director has **five days** to review, recommend approval or disapproval, add any recommended conditions and forward the waiver petition to the Regional Director.
6. The Regional Director has **five days** to review, recommend approval or disapproval, add any recommended conditions and forward the waiver petition to the Regional QE Director.
7. The Regional QE Director has **five days** to review, recommend approval or disapproval, add any recommended conditions and forward the waiver petition to the Director of Licensure and Certification for final disposition.
8. Within **five days**, the Director of Licensure and Certification informs the QE region in writing if the waiver has been approved and of any conditions attached to the waiver. The Regional QE Office coordinates distribution of the waiver decision letter to the provider and other parties. The Director of Licensure and Certification may consult with other Central Office, Regional or Area staff prior to making a decision. **With the temporary capacity waivers, the Director of Licensure and Certification consults with the Assistant Commissioners of Quality Management and Field Operations prior to rendering a decision.** If there are any changes to any conditions to the waiver request or if it is not approved, it is returned to the Regional QE Director to review before it is sent to the provider.
9. 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.

WAIVER PETITIONS OF THE 2 1/2 MINUTE EVACUATION REQUIREMENT IN HOMES

NOTE: Such waivers will not be considered when a new home is being developed; the staffing pattern should be sufficient for evacuation to occur within 2½ minutes.

The following protocol applies to a request for **and** renewal of a waiver of the requirement to evacuate a home in 2 1/2 minutes (**two minutes thirty seconds**) [115 CMR 7.06(3)(b)6.a.]

- If any conditions change after such waiver is approved, such as individual capabilities, who lives in the home, and/or physical features of the home, then the provider must re-apply for the waiver.

The provider may apply for a waiver when:

1. 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**
2. environmental features such as sprinkler system must be in place to extend evacuation time and /or environmental features may substitute for staffing **and**
3. 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**
4. the issuance of the waiver will not present safety hazards for individuals living in the home.

The provider may not apply for a waiver when:

- it is a substitute for adequate staffing;

- 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
- the situation can be remedied through training and practice.

THE FSES WAIVER PETITION PROCEDURES ARE AS FOLLOWS:

1. The provider completes the **Petition for Waiver (Form A) of CMR (7.06 (3)(b)6.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.
2. The Provider sends the Waiver Petition form to the Regional QE Director.

The Regional QE Director assigns a QE Specialist to complete a Fire Safety Equivalency Systems (FSES) assessment and complete Form D. As a pre-requisite for completing the FSES, the provider must have the following documentation available for review:

- Individual safety assessments;
- Location-specific Emergency Evacuation Safety Plan (EESP);
- Documentation of training to individuals and staff on the evacuation plan; and
- Record of fire drills for the past year.
- Documentation of Inspections – Heating, Sprinkler, Generator, Smoke Detection System if connected to fire department/monitoring company.

Decisions based on results of the FSES assessment.

Recommendation to Approve (with or without conditions)- If the home meets the FSES standards, the QE Specialist may recommend that the waiver be approved. The QE Specialist completes the Waiver Petition Coversheet (Form B), attaches the Waiver Petition Form (Form A), and the FSES Assessment report and follows the [waiver procedures](#) noted above.

Recommendation to Approve With Required Corrections - If the home does not pass the FSES, the QE Specialist may recommend "Approval with Required Corrections" for a designated short term period of time that would allow the provider to complete specified changes to ensure that individuals are safe needed to extend the evacuation time.

- As part of Approval with Required Corrections, the QE Specialist specifies what changes are needed (**Form E**).
- If the provider agrees to make the changes and adhere to the interim requirements, **Form F** is signed and sent to the QE Specialist. The QE Specialist completes the Waiver Petition Coversheet and follows the routine procedures for review and approval 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.

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.

2. The QE Specialist completes the Waiver Petition Coversheet (Form B), attaches the Waiver Petition Form (Form A), and the FSES Assessment report and follows the [waiver procedures](#) noted above.

**DEPARTMENT OF DEVELOPMENTAL SERVICES
OFFICE OF QUALITY MANAGEMENT
WAIVER PETITION**

**Appendix U
Form A
2021**

Applicant's Legal Name	
Type of Service	
Address of the Service	

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.

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 requesting to Waiver; include the complete text of the regulation.

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2. Write the substitute standard to be adopted in place of the regulation to be waived.

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3. Write a justification for the substitute standard.

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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 a person authorized to sign legal documents on behalf of the Provider.

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

**DEPARTMENT OF DEVELOPMENTAL SERVICES
OFFICE OF QUALITY MANAGEMENT
SAMPLE WAIVER PETITION COVER SHEET**

**Appendix U
Form B
2021**

*** This form is computer generated by QE.

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:

OOE 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 QE Director's Recommendations: Approve ☐ Disapprove ☐ Date Received: _____ Date

Forwarded: _____

Comments: _____

Signature: _____ Date: _____

Decision of Licensure 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
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 7.06(3)(b)(6)a. Safety (2 1/2 Min. Evacuation)	115 CMR 7.06(3)(b)7. Evacuation Drills		

DEPARTMENT OF DEVELOPMENTAL SERVICES
OFFICE OF QUALITY MANAGEMENT
SAMPLE FIRE SAFETY EQUIVALENCY SYSTEM ASSESSMENT (FSES) REPORT

Appendix U
Form D
revision
2021

Provider:		Assessment Date:	
Address of the Home:		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 7.06(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 Corrections)

TO: _____ (Provider)

FROM: _____ (QE Specialist)

RE: Waiver Petition of 115 CMR 7.06(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 Corrections with the stipulation that the following requirements 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 (two minutes and thirty seconds) Evacuation Requirement from the Home

