



# **How to Submit Waivers and Equivalencies**

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Presented by:

Alise Howlett, Assoc. AIA, CFPE, CHFM  
Standards Advisor, EM/PE/LS



# HFAP What We Will Cover Today...

1. Identify waivers and equivalencies, including their relationship to the Life Safety Code.
2. Identify the difference between a waiver request and an equivalency request.
3. Understand the process to submit a waiver or equivalency request.



# WAIVER & EQUIVALENCY BACKGROUND

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# Waiver & Equivalency Background

Effective July 5, 2016, CMS adopted the 2012 edition of NFPA 101, also called the Life Safety Code. (Previously on the 2000 edition)

During the 5 years prior to this, CMS issued allowances for healthcare organizations to comply with specific sections of the 2012 LSC before the entire code document was adopted. These were Categorical Waivers.



# Waiver & Equivalency Background

Categorical Waivers did not require a healthcare organization to make a formal request to CMS to utilize these waivers.

The Categorical Waivers that are directly tied to specific sections of the 2012 edition of NFPA 101 are no longer needed as this edition is the governing code.



# Waiver & Equivalency Background

Individual organizations may still have the need for waivers or equivalencies specific to their facility because of individual hardship and special circumstances.

We are going to discuss available options regarding waivers, time-limited waivers, equivalencies, and the procedures required to utilize them.



# Waiver & Equivalency Background

CMS mandates all LSC deficiencies are resolved within 60 days of the end of the survey UNLESS there is a waiver or equivalency to cover the issue.

While most LSC deficiencies can be resolved quickly (i.e. removing door wedges; relocating items cluttering a corridor), some cannot.

Examples of LSC deficiencies that take more than 60 days to resolve are:

- Completing sprinkler installation for delayed egress locks
- Installing new fire rated door assemblies
- Two-hour rated generator room enclosures



# **Waiver & Equivalency Background**

Let's talk about the difference between

**Waivers  
and  
Equivalencies.**





# WAIVER DEFINITION

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# HFAP Waiver Definition

A waiver is a decision by CMS that you do not have to comply with a specific provision of the LSC.

Their decision is based on information provided by the organization.

The organization does not have to prove other Life Safety Code measures exist to compensate for the deficiency.



# HFAP Waiver Definition

When a healthcare organization wants to resolve a deficiency in a timely manner and the 60-day correction window cannot be met, CMS requires the healthcare organization to submit a special waiver request, called a Time-Limited Waiver request.

Essentially, this is a request for an extension date to complete the issue.



# EQUIVALENCY DEFINITION

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# HFAP Equivalency Definition

An equivalency is a decision by CMS to allow an equivalent level of safety to be provided to meet code requirements.

Their decision is based on information provided by the organization in their equivalency request.

The organization is required to prove other Life Safety Code measures exist to compensate for the deficiency.



# HFAP Equivalency Definition

An equivalency request is an NFPA document that scientifically demonstrates an equivalent level of safety through assessing the remaining features of life safety using a predetermined mathematical scale.

If the equivalency request demonstrates an equivalent level of safety, and CMS approves the request, then the deficiency does not have to be resolved, but is only valid until the next survey.



# HFAP Equivalency Definition

The equivalency request must be made using NFPA 101A *Guide on Alternative Approaches to Life Safety*, (2013 edition) worksheets.

The document itself is called the Fire Safety Evaluation System (FSES).

It takes time to properly assess the LSC deficiency for an equivalency request and provide the support documentation.



# HFAP Equivalency Definition

The FSES equivalency request is an empirical approach in that it relies on mathematical formulas to compare life safety features to then make a final determination.

Building elements and systems demonstrate an equivalent level of safety when judged against the normal code requirements.

Not all LSC deficiencies will qualify for a FSES equivalency request due to the final scoring not meeting the pre-set minimum values.





# HFAP Equivalency Definition

There are no specific qualifications for the individual assigned to complete the FSES worksheets. However, this person shall be competent in understanding the elements required to be evaluated by the FSES and under the Life Safety Code.

The FSES, when submitted, is a legal document which declares that the facility shall have compliant systems and components for all elements claimed on the FSES.



# Waiver & Equivalencies

Let's talk about the

**PROCESS**

for

**Requesting a Waiver or Equivalency**



# WAIVER & EQUIVALENCY PROCESS

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# Waiver & Equivalency Process

The Centers for Medicare and Medicaid Services (CMS) have statutory Conditions of Participation (Conditions for Compliance for ASC) which require all healthcare organizations to meet the applicable provisions of the 2012 edition of the NFPA 101 *Life Safety Code*® (LSC) for participation in their reimbursement program.

Therefore...

Healthcare organizations **must** comply with **all** applicable LSC requirements.



# Waiver & Equivalency Process

A waiver or equivalency request starts with a finding of Life Safety Code (LSC) non-compliance during the accreditation survey process.

If compliance cannot be accomplished in 60 days, the decision to apply for a waiver or equivalency must be made by the organization.



# Waiver & Equivalency Process

Waivers and equivalencies are not to be used for minor deficiencies that can be and should be resolved.

Reserve the use of waiver requests or equivalency requests to issues that are truly a hardship to resolve. Hardships can be financial or operational.



# Waiver & Equivalency Process

A deficiency MUST be cited on survey.

As a deemed accrediting authority by CMS, Healthcare Facilities Accreditation Program (HFAP) will accept for consideration a waiver request or an equivalency request for deficiencies on features of life safety, only after each deficiency has been cited during a survey.



# Waiver & Equivalency Process

If the deficiency was not cited during a survey, then the organization cannot submit a waiver or an equivalency request.

So...if you have an issue that you want to request a waiver or an equivalency request, then review the issue with the surveyor for inclusion in the survey deficiency report.





# Waiver & Equivalency Process

The organization then submits a Plan of Correction (PoC) within 10 days of receiving the survey deficiency report, stating they will submit a waiver or equivalency request on a specific date, normally within 7 days.

*(HFAP will work with the organization on an equivalency date or other issues).*



# Waiver & Equivalency Process

The formal request is then submitted as follows:

## Waiver & Time-limited Waiver:

- Within 7 days unless a timeframe as accepted within the PoC.

## Equivalency :

- Timeframe as accepted within the PoC.

It takes time to for you to properly assess the LSC deficiency for a these requests and provide the support documentation.



# HFAP Waiver Letter

**WAIVER** Preliminary factors – **all** are required:

1. A deficiency **MUST** be cited on survey.
2. Rigidly applying the LSC would result in an unreasonable hardship **and**
3. The life safety deficiency does not adversely affect the health and safety of the patients.



# HFAP Waiver Letter

Rigidly applying the LSC would result in an unreasonable hardship.

Explain in detail why the organization cannot resolve the deficiency.

Also explain if the hardship is financial or operational. If financial, provide a budget figure to resolve the deficiency to demonstrate the hardship;



# HFAP Waiver Letter

The life safety deficiency does not adversely affect the health and safety of the patients.

Explain in detail why this specific deficiency does not adversely affect the health and safety of the patients.



# HFAP Waiver Letter

## FOR A WAIVER-

The written request must include a cover letter with the following information:

1. The name of the organization, address and CCN;
2. The contact information (name, title, telephone number and email address) of the organization's representative;
3. Describe in detail what the LSC deficiency is, and include the respective LSC section number that is deficient;



# HFAP Waiver Letter

4. Explain why the organization cannot resolve the deficiency;
5. Explain if the hardship is financial or operational. If financial, provide a budget figure to resolve the deficiency to demonstrate the hardship;
6. Identify which occupancy classification you are requesting the waiver for (i.e. Healthcare; Ambulatory Health Care; Business);



# HFAP Waiver Letter

In addition to the cover letter, you need to provide the following documentation:

- Copies of the Alternative Life Safety Measures documentation demonstrating the LSC deficiency was assessed for ALSM;

Additional documentation:

- Supporting documentation that you want to submit to substantiate your request for the waiver:
  - ✦ Photos
  - ✦ Plan, sketches
  - ✦ Reports
  - ✦ Estimates





# HFAP Waiver Letter

You can only have one waiver request per submission.

You can have multiple submissions, but they must have their separate cover letters and support documents.



# HFAP Time-Limited Waiver Letter

A special Time-Limited Waiver request requires the following modifications:

- In the cover letter, instead of identifying the hardship in resolving the LSC deficiency, explain what modifications or actions are required to resolve the deficiency
- You must include copies of the following to prove action is underway:
  - ✦ A contract with a vendor
  - ✦ Building permits
  - ✦ Construction schedules



# **HFAP Time-Limited Waiver Letter**

All of the other items required for a standard Waiver request must be included (i.e. ALSM assessment, photos, drawings, reports, etc.) with a Time-Limited Waiver request, and submitted to HFAP.



# HFAP Equivalency Letter

Equivalency preliminary factors – **all** are required:

1. A deficiency **MUST** be cited on survey.
2. Rigidly applying the LSC would result in an unreasonable hardship **and**
3. An FSES evaluation will prove equivalent compliance.



# HFAP Equivalency Letter

## FOR AN EQUIVALENCY-

First, a cover letter must be created on company letterhead, similar to the letter for a waiver request. [See sample provided on HFAP website.]

The cover letter must have the following information included:



# HFAP Equivalency Letter

## Cover letter:

1. The name of the organization, address and CCN;
2. The contact information (telephone number and email address) of the organization's representative;
3. Describe in detail what the LSC deficiency is, and include the respective non-compliant LSC section;
4. Explain why the organization cannot resolve the deficiency;



# HFAP Equivalency Letter

## Cover letter (cont'd):

5. Explain if the hardship is financial or operational. If financial, provide a budget figure to resolve the deficiency;
6. Identify which occupancy classification you are requesting the equivalency for (i.e. Healthcare; Business); (Unfortunately, there is no FSES for Ambulatory Care)
7. If additional features of life safety need to be installed to make the equivalency valid, then identify those added features in detail;



# HFAP Equivalency Letter

In addition to the cover letter, you must provide these additional documents:

1. Copies of the Alternative Life Safety Measures (ALSM) document showing that the LSC deficiency has been assessed for ALSM;
2. Life Safety drawings that clearly identifies the following details:





# HFAP Equivalency Letter

- ✦ The location of all rated walls and barriers in all zones. Indicate the fire rating and purpose of each barrier;
- ✦ Identify the LSC deficiency being evaluated for the equivalency;
- ✦ Identify suites-of-rooms and their boundaries;
- ✦ Identify the location of all hazardous rooms;
- ✦ Identify the level of exit discharge for each building;
- ✦ Identify the location of all smoke compartment barriers;
- ✦ List the furthest travel distance to the closest smoke compartment barrier door for each smoke compartment;
- ✦ Provide an overview drawing of each floor showing all smoke compartments.



# HFAP Equivalency Letter

3. Provide FSES worksheets that evaluates every zone (smoke compartment) on every story of the facility. Use the respective occupancy chapter in the NFPA 101A for different occupancies;
4. Provide a summary page outlining the parameters of each zone evaluated;
5. If additional features of life safety must be installed in order to make the FSES worksheets valid, provide a **before** and **after** Individual Safety Evaluation summary worksheet for each affected zone.



# HFAP Equivalency Letter

You can have multiple requests for each FSES equivalency submissions, and can share the same cover letters and support documents.



# HFAP Equivalency Letter

The person conducting the FSES equivalency request must be able to understand the FSES instructions found in NFPA 101A.

It is not uncommon that hospitals will hire a consultant to conduct the FSES equivalency **request**. (If you've never completed a FSES equivalency before, this is not the time to try to do it for the first time.)



# Waiver & Equivalency Process

All waiver and equivalency request letters must be signed by a senior leader in your organization:

- CEO
- COO
- VP Operations
- Senior VP
- Etc.



# Waiver & Equivalency Process

You address the request on company letterhead to:

Healthcare Facilities Accreditation Program  
Attn: Engineering Department  
142 E. Ontario Street  
Chicago, IL 60611

But you send it electronically with the support documentation to: [reports@hfap.org](mailto:reports@hfap.org)

Paper copies will not be accepted.



# Waiver & Equivalency Process

Do not send the request to the CMS regional office. They will only return it to you.

HFAP will review your request, and if we agree with your request, we will write a summary letter recommending CMS approve your request; then we send that with your request to the appropriate CMS regional office.



# Waiver & Equivalency Process

HFAP will also include a copy of your survey deficiency report and your Plan of Correction along with the HFAP summary letter and your request package to the CMS regional office.

*Only the CMS regional office can approve a waiver request or an equivalency request.*





# Waiver & Equivalency Process

CMS will take anywhere from 2 weeks to 9 months to review your request and make a decision.

Once they made their decision, they will send an approval or a denial letter to your organization and copy HFAP. Usually, they will explain why the request was denied.



# Waiver & Equivalency Process

If after 3 months you have not heard from CMS and you are anxious and want to know the status of your waiver request: ***Do not contact CMS***, but instead contact your account representative at HFAP who will investigate on your behalf.



# Waiver & Equivalency Process

If HFAP does not agree with your request, we will not send it to the CMS regional office, but will contact you to discuss why we do not agree.

Other options to deal with the LSC deficiency will be discussed.



# Waiver & Equivalency Process

Reasons HFAP have not agreed with recent waiver requests:

- Waiver request was for a deficiency that was not identified on the survey deficiency report;
- Waiver request was not submitted on company letterhead;
- Waiver request did not include budget amounts for financial hardship;
- Waiver request did not demonstrate a unreasonable hardship;



# Waiver & Equivalency Process

Reasons HFAP has not agreed with recent equivalency requests:

- Equivalency request was for a deficiency that was not identified on the survey deficiency report;
- Cover letter was not submitted on company letterhead;
- Equivalency request did not include budget amounts for financial hardship;



# Waiver & Equivalency Process

- Equivalency request did not demonstrate a unreasonable hardship;
- Equivalency request FSES worksheets did not demonstrate an acceptable numerical value
- Mathematical errors on the FSES worksheets
- Inadequate Life Safety drawings
- Not all zone (smoke compartments) were evaluated with the FSES worksheets



# Waiver & Equivalency Process

If CMS denies your request, HFAP will contact you to discuss other options. Perhaps the request was denied on a technicality, which can be resolved.

It may be necessary to submit a revised PoC describing alternate options to resolve the deficiency or alternate options to resolve the deficiency.



# Waiver & Equivalency Process

Waivers and equivalencies approved by CMS are only valid until the next survey (no more than 3 years), then the deficiency must be cited again during the survey, and the organization must choose to either resolve the deficiency, or submit a new waiver or equivalency request again.





# HFAP Waiver & Equivalency Notes

**IMPORTANT!!!**

Waiver and equivalency requests are only appropriate for Life Safety Code deficiencies. If your deficiency is not identified in the LSC or one of the referenced standards (and then it still may not be accepted) , then it is not eligible for a waiver or equivalency.



# HFAP Waiver & Equivalency Notes

Technically, even deficiencies with referenced NFPA standards are not eligible for waivers & equivalencies.

But this has been overlooked in the past by CMS and they have approved certain deficiencies that are governed by other NFPA standards.

Decisions are specific to each facility and each request and do not create a precedent for automatic acceptance.



# HFAP Waiver & Equivalency Notes

Waivers and equivalencies must be viewed as a temporary measure.

They do expire by the next survey, but it is best that the organization make long-term plans to resolve the deficiency since there is no guarantee that the same request will be approved in the future.



# HFAP Waiver & Equivalency Notes

The CMS decision to approve a waiver request is subjective, and is made by an individual.

There is no science involved in the decision; it is a judgment. The better an organization can state their request in their cover letter, the better their chances that the request will be approved.



# HFAP Waiver & Equivalency Notes

Most healthcare organizations choose to submit a waiver rather than an equivalency, because of cost.

The costs to submit a waiver is negligible... only the time needed to write a cover letter and assemble some supporting documents.



# HFAP Waiver & Equivalency Notes

However... the cost to submit an equivalency is considerable, as most healthcare organizations need to contract with an experienced consultant to conduct the engineering study required for an equivalency request.

It has been reported that some equivalencies cost the healthcare organizations from \$5,000 to \$30,000, and there is no guarantee that CMS will accept it.



# HFAP Waiver & Equivalency Notes

A Time-Limited Waiver request is more likely to be approved over a standard Waiver request because the healthcare organization is working to resolve a deficiency.

There have been situations where CMS prefers an equivalency over a waiver because of the need for the engineering study as evidence of safety levels.



# Waiver & Equivalency Resources

Look on the [www.HFAP.org](http://www.HFAP.org) website... under 'Resources' and then 'Tools' for instructions on how to complete a Waiver or Equivalency requests.

This can be a confusing process...PLEASE call the HFAP office for any assistance with making these requests.





# What is HFAP ACADEMY LIVE?

HFAP Academy Live is an educational program to prepare new or currently accredited healthcare organizations for a Medicare survey performed by either HFAP or their state agency.

There are separate tracks for:

- acute care hospital clinical or administrative staff
- hospital facilities directors
- for ambulatory surgery center leaders.

Each track covers the major requirements for Medicare participation with plenty of opportunity for participant interaction with peers and faculty.



# What is HFAP ACADEMY LIVE?

Thursday and Friday  
October 11-12, 2018.

The Westin O'Hare,  
6100 N River Road,  
Rosemont, IL 60018

A discounted room rate of \$149/night is guaranteed until October 5, but the room block may sell out before that date. A reservation link will be sent with your registration confirmation.



# THANK YOU

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Questions?

Contact Alise Howlett by  
Email: [ahowlett@hfap.org](mailto:ahowlett@hfap.org)  
Phone: 815/ 713.8144