



State of California—Health and Human
Services Agency
**California Department of
Public Health**



June 30, 2022

AFL 21-36.3

TO: Skilled Nursing Facilities

SUBJECT: Suspension of Regulatory Enforcement of Specified Skilled Nursing Facility Requirements
(This AFL supersedes AFL 21-36.2)

AUTHORITY: Proclamation of a State of Emergency (PDF)
Executive Orders N-39-20 (PDF), N-08-21 (PDF), N-12-21, N-21-21 (PDF), N-04-22 (PDF), and N-11-22
(PDF)

All Facilities Letter (AFL) Summary

- This AFL notifies skilled nursing facilities (SNFs) of a temporary waiver of specified regulatory requirements due to the state of emergency related to the Coronavirus Disease 2019 (COVID-19) outbreak.
- In accordance with Executive Order N-11-22 (PDF), issued June 17, 2022, this AFL extends the temporary waiver of specified space conversion requirements until the end of the declared COVID-19 emergency.

Background

Pursuant to the Governor's Executive Orders N-39-20 (PDF), N-08-21 (PDF), N-12-21 (PDF), N-21-21 (PDF), N-04-22 (PDF), and N-11-22 (PDF), related to the COVID-19 state of emergency, the Director of the California Department of Public Health (CDPH) may waive any of the licensing and staffing requirements of Chapter 2 and Chapter 2.4 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250.

Due to ongoing circulation of more transmissible variants of the SARS-CoV-2 virus and the continuing incidence of COVID-19 in California, CDPH is temporarily waiving and suspending regulatory enforcement of the following space conversion requirements. The temporary waiver of specified space conversion requirements contained in this AFL has been extended until the end of the declared COVID-19 emergency.

Space Conversion

1. Title 22 CCR section 72607 (a), (b) and (c)

(a) A facility shall not have more patients or beds set up for use than the number for which it is licensed except in case of emergency when temporary permission may be granted by the Director or designee.

(b) Patients shall not be housed in areas which have not been approved by the Department for patient housing and which have not been given a fire clearance by the State Fire Marshal except as provided in (a) above.

(c) The number of licensed beds shown on a license shall not exceed the number of beds for which the facility meets applicable construction and operational requirements.

2. Title 22 CCR section 72603

- Spaces approved for specific uses at the time of licensure shall not be converted to other uses without the approval of the Department.
- Any additional beds added for temporary use, shall ensure patient privacy and shall be placed six feet apart in accordance with CDC guidance to prevent the spread of COVID-19. This includes beds temporarily set up in areas previously used for group activities including dining rooms or activity space.

Certified SNFs that wish to implement alternative space arrangements as specified in this waiver will need to apply for an 1135 waiver from the Centers for Medicare and Medicaid Services (CMS) as the blanket space waiver previously issued by CMS is now expired. SNFs seeking a CMS waiver should apply through the CMS portal.

This statewide waiver is approved under the following conditions:

- SNFs shall continue to comply with unusual occurrence reporting requirements specified in Title 22 of the California Code of Regulations section 72541.
- SNFs shall report any substantial staffing or supply shortages that jeopardize resident care or disrupt operations.
- SNFs shall continue to provide necessary care in accordance with residents' needs and make all reasonable efforts to act in the best interest of residents.
- SNFs shall not discriminate admits or readmits, nor transfer or discharge residents based on their status as a suspected or confirmed COVID-19 case.
- SNFs shall institute appropriate precautions to prevent the spread of infection to health care personnel and other residents as specified in AFL 20-25.2 and in their Mitigation plan as specified in AFL 20-52.
- SNFs shall follow their disaster response plan.
- SNFs shall follow infection control guidelines from the Centers for Medicare and Medicaid Services (CMS) and the CDC related to COVID-19.
- SNFs shall comply with directives from their local public health department, to the extent that there is no conflict with federal or state law or directives or CDPH AFLs.

CDPH understands the importance of ensuring the health and safety of all Californians and maintaining vital access to skilled nursing services. CDPH encourages facilities to implement contingency plans to address staff absenteeism and the rapid influx of residents. CDPH is taking this unprecedented action due to the significant challenges California's health care system is facing as a result of the COVID-19 pandemic. As a result of this temporary waiver, SNFs do not need to submit individual program flexibility requests for the requirements specified above.

This waiver is valid until the end of the declared COVID-19 emergency.

If you have any questions about this AFL, please contact your local district office.

Sincerely,

Original signed by Cassie Dunham

Cassie Dunham

Deputy Director

Resources:

- Proclamation of Emergency (PDF)
- Executive Order N-39-20 (PDF)
- Executive Order N-08-21 (PDF)
- Executive Order N-12-21 (PDF)
- Executive Order N-21-21 (PDF)
- Executive Order N-04-22 (PDF)
- Executive Order N-11-22 (PDF)

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Page Last Updated : June 30, 2022