



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



January 06, 2014

AFL 14-01

TO: All Hospitals
 Intermediate Care Facilities
 Intermediate Care Facilities/ Developmentally Disabled
 Skilled Nursing Facilities

SUBJECT: CMS Categorical Waivers

AUTHORITY: Health & Safety Code (HSC) Section 1276(b), 41514.1; Title 22, California Code of Regulations (CCR) Sections 70811(e) and (f), 71611(e), 72609 (b) and (c), 73611(d) and (e) and 76611(d)

In August 2013, the Centers for Medicare & Medicaid Services (CMS) released a Survey & Certification (S&C) letter 13-58-LSC regarding the availability of several categorical waivers to providers and suppliers which allow providers to waive specific provisions of the 2000 edition of the Life Safety Code (LSC) and the 1999 edition of the National Fire Protection Association (NFPA). The purpose of this All Facilities Letter (AFL) is to provide clarification of California state law which prohibits the application of some of these waivers.

Diesel Generator Testing

Health & Safety Code (HSC) Section 41514.1 requires health facilities to test each of its diesel backup generators 12 times a year with testing intervals of not less than 20 days and not more than 40 days. Diesel backup generators that do not meet the monthly testing requirements of HSC Section 41514.1(a)(1) and (2) are to be tested annually with various supplemental loads for a total of two continuous hours. Even though CMS permits a waiver to allow for a reduction in the annual diesel generator exercising requirement from two continuous hours to one hour and 30 minutes, the California Department of Public Health will continue to require diesel backup generators to be tested as required by HSC Section 41514.1.

Doors

Title 22 CCR Sections 70811(e) and (f), 71611(e), 72609 (b) and (c), 73611(d) and (e), and 76611(d), require patients' rooms to remain unlocked when occupied except in rooms approved by the Department for detention and for psychiatric patients. In addition, any exit door, corridor or perimeter fence may be locked for egress only upon the written approval of the Department. Even though CMS is permitting a categorical waiver to allow for different door locking arrangements, facilities are still required to apply for and receive program flexibility from CDPH for these purposes.

While Title 42 of the Code of Federal Regulations (CFR) Sections 482.41(b)(2), 485.623(d)(3), 483.70(a)(2), 416.44(b)(2), and 418.110(d)(2) allows CMS to waive specific provisions of the LSC, HSC Section 1276(b) grants CDPH the authority to approve the use of alternate concepts, methods, procedures, techniques, equipment, through the use of program flexibility, as long as statutory requirements are met and the health facility has received prior written approval from the Department. Prior to electing to use one or more of the categorical waivers permitted by CMS, please check state law to ensure the waiver requested is not in conflict with current statutory requirements.

If you have any questions regarding this AFL, please contact your local District Office.

Sincerely,

Original signed by Debby Rogers

Debby Rogers, RN, MS, FAEN

Deputy Director

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