

Indiana State Department of Health  
Health Care Quality and Regulatory Services  
Division of Acute Care

**Standing Waiver for Use of NFPA 101 and NFPA 99 2012 Edition  
(as adopted by the Centers for Medicare and Medicaid Services)**

ISDH CSHCR: Program Advisory Letter

Number: **AC-2019-01-ASC**

Effective Date: July 1, 2019

Created: May 07, 2019

Cancel: None

Reviewed: n/a

Revised: n/a

**PROGRAM ADVISORY SUMMARY**

- ***Effective Date: July 1, 2019***
- ***A standing waiver regarding the use of the 2012 edition of NFPA 101 and NFPA 99 as adopted by the Centers for Medicare and Medicaid Services (CMS). Facilities and design firms will not be required to submit waiver requests for 410 IAC 15-2.7-1 which effective July 1, 2019 would require designs to meet the 2018 edition of both NFPA publications. The ISDH hereby issues a standing waiver applicable to all projects subject to requirements set forth in federal regulation by CMS.***

**Background:**

The Indiana State Department of Health (ISDH), Acute Care Division, recognizes that state rules and federal regulations may at times differ. This is often caused by a rule change by one or the other regulatory bodies after rule sets have been established to mirror one another. When a state rule and a federal regulation differ, providers are often confused as to whether the state rule or the federal regulation is applicable. This confusion often extends to accrediting organizations that are charged with making determinations as to provider compliance with the Conditions of Participation issued under the authority of the Centers for Medicare and Medicaid.

**Design Requirements:**

During the 2019 session of the Indiana General Assembly, legislation was enacted via Senate Enrolled Act 575 and House Enrolled Act 1542 that directed the ISDH to amend the ASC rules regarding design standards for ASCs. The directive to amend the rules states,

(b) Notwithstanding 410 IAC15-2.7-1, the following apply to a publication that is referred to in 410 IAC 15:

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(1) The Guidelines for Design and Construction of Outpatient Facilities refers to the 2018 edition or most recent publication.

(2) The National Fire Protection Association 99, Health Care Facilities publication refers to the 2018 edition or most recent publication.

(3) A publication incorporated by reference is not effective until one hundred eighty (180) days after the date of publication.

The executive board shall amend 410 IAC 15-1.7-1 to reflect the requirements in this subsection.

This subsection expires July 1, 2021.

However, CMS previously adopted NFPA 101 and NFPA 99 using the 2012 edition in part. CMS did not adopt the 2012 version of NFPA in its entirety.

**Analysis:**

Pursuant to Indiana Code 16-21-1-9, the state health commissioner may, for good cause shown, waive a rule when the waiver does not adversely affect the health, safety, and welfare of the residents or patients. Upon review of the federal requirement, the ISDH did not find any data or statistical analysis to indicate that the 2012 edition(s) posed any significant negative patient consequences or outcomes than the requirements found in the 2018 editions.

Therefore, the ISDH concludes that the granting of a waiver allowing ASCs to follow the federal regulation and accrediting bodies to survey ASCs pursuant to the federal conditions of participation in lieu of state rule does not adversely affect the health, safety and welfare of Indiana residents or patients and herein grants a waiver at 410 IAC 15-2.7-1 to all Indiana licensed ASCs subject to Indiana Code 16-21 and the rules under 410 IAC 15.

**Policy:**

1. A standing waiver regarding the use of NFPA 101 and NFPA 99, 2012 editions as adopted by CMS is issued for the design of ASC facilities licensed in the State of Indiana.
2. Facilities will not be required to submit waiver requests for 410 IAC 15-2.7-1 if the facility follows federal requirements.

**Questions:**

Questions about this program advisory letter may be addressed to Todd Hite, Program Director, Health Care Engineering (317) 233-7166, email: [thite@isdh.in.gov](mailto:thite@isdh.in.gov) or Randy Snyder, Division Director, (317) 233-1286, email: [rsnyder1@isdh.in.gov](mailto:rsnyder1@isdh.in.gov).

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Approved by:

/s/

Matthew Foster, Assistant Commissioner  
Consumer Services and Health Care Regulation Commission  
Indiana State Department of Health