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New York Adult Care Facilities: How to Obtain Medical Equipment Waivers

Presenter:

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Introduction

The New Waiver Submission Process

The New York State Department of Health (DOH) revised the submission process for Medical Equipment Waivers in order to make it more efficient for both providers and the Department.

This new process was implemented to “streamline the medical equipment waiver review process and minimize time needed to successfully submit and process requests” DAL #22-34.

Medical Equipment Waiver requests, unlike in the past, are to be **resident-specific**, not facility-wide.

Waivers vs. Equivalencies

WAIVERS

New York State regulations allow DOH to waive non-statutory requirements upon the request of an operator. The most common waiver sought by operators is the medical equipment waiver.

EQUIVALENCIES

An equivalency allows operators to adopt an alternative method of compliance with a regulation. However, an equivalency still requires a submission to DOH notifying them that the facility is using such alternative method. DOH approval is required.

- DOH publishes an ACF Equivalency List describing available equivalencies and conditions for equivalency approval.



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Medical Equipment Waivers

Who Can Submit a Waiver

- *Adult Homes*
- *Enriched Housing Providers*
- *Residences for Adults*

Medical Equipment Waivers can also be submitted for residents receiving *SNALR, EARL, ALR, and ALP* services. **However**, these requests may require special consideration by DOH and additional information should be submitted with the waiver request such as:

- Attestation to resident's capacity to understand need for equipment and use of equipment;
- How much assistance will be needed and who is responsible for that assistance; and
- Staff training re: equipment and assistance guidelines.

When Do You Need a Medical Equipment Waiver?

Medical Equipment Waivers are [required](#) for the following:

- Hospital, hi/low, height adjustable beds;
- 1/2 side rail;
- Enabling devices (including med.poles); and
- Trapeze devices.

Instances in Which You Do NOT Need a Waiver/Equivalency

Medical Equipment Waivers are **not required** for:

- Non-hospital electric beds (such as TempurPedic beds)
 - * However, keep in mind that an **equivalency** will be needed.

Items that **do not** require a waiver **or** an equivalency:

- Oxygen concentrators or orthopedic shoes with braces
 - * However, keep in mind that certain documentation must be kept on file at the facility (we will discuss recordkeeping requirements later).

The Waiver Submission Process

Medical Equipment Waivers are no longer submitted through the Regional Office.

Rather, such waivers are to be submitted through a “[drupal survey](#)” (link provided in DAL 22-34) containing the Medical Equipment Waiver Request Form.

Non-medical equipment waivers should still be submitted through the Regional Office

Selecting the Type of Waiver

Adult Care Facility Medical Equipment Waiver Request

[Click here](#) for guidance on submitting the Adult Care Facility medical equipment waiver request

[Click here](#) for Adult Care Facility medical equipment waiver questions and answers

Facility Name *

Operating Certificate #:*

Base Licensure (AH/EHP)*

DOH Regional Office *

Resident Name: Last Name, First *

Type of Waiver (select all that apply)*

- Hospital bed
- Hospital bed with ½ side rail
- Enabling device
- Trapeze

Drupal Survey – Documents Required to be Attached

Medical Equipment Waiver Request Form DOH 4235*

No file chosen

<https://health.ny.gov/forms/doh-4235.pdf>

Medical Equipment Waiver Checklist DOH 4235A*

No file chosen

<https://health.ny.gov/forms/doh-4235a.pdf>

Proof of Justification/Need-Required Documents *

No file chosen

<https://health.ny.gov/forms/doh-4235b.pdf>

Evaluation of Safe and Independent Use-Required Documents*

No file chosen

Policies & Procedures-Required Documents*

No file chosen

Disaster Plan Roster-Required Documents*

No file chosen

Trapeze Waiver-Daily Safety Check Required Documents

No file chosen

Submitter's Email

Submitter's Email *

Confirm email*

Drupal Survey Waiver Request Submissions

Requires that operators attach the following documentation:

- Medical Equipment Waiver Request Form DOH 4235;
- Completed Medical Equipment Waiver Checklist DOH 4235A (this checklist will assist you in preparing your waiver request); and
- Proof of Justification/Need-Required Evaluation of Safe and Independent Use;
 - Either a DOH 4235b signed by physician OR, if ordered by the physician, a PT/OT assessment.

Drupal Survey Waiver Request Submissions (continued)

- Policies & Procedures:
 - Policies should include certain provisions relating to (but not limited to):
 - renewing the DOH 4235b annually;
 - maintaining the DOH 4235b in the resident's file; and
 - routinely assessing and evaluating the patient's need for the equipment and ability to use the equipment safely and independently.
- Disaster Plan Roster:
 - You need to include **all** facility residents on this roster, not just the resident for whom you are making a waiver request.
 - Specify which residents require assistance with evacuation.
- Trapeze Waiver – Daily Safety check (if applicable)

Completing the DOH 4235 Form

Complete Part I for Equivalencies. Complete Part II for Waivers.

I. Equivalency: Yes No Approved equivalency regulation citation:

Briefly state the equivalency issue:

II. Waivers

A. Type of Waiver

1. Application Pending:

a) Renewal Yes No

b) New facility Yes No

c) Change of Operator Yes No

2. Programmatic: Yes No

3. Physical Plant: Yes No

Regulation for which waiver is sought:

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As discussed earlier, the DOH 4235 Medical Equipment Waiver Request Form is required to be submitted with the Drupal survey.

For Medical Equipment Waivers, “Programmatic” should be marked as Yes.

I've Submitted a Waiver But Have Not Heard From DOH...

Do not submit another request! **Instead**, reach out to the Regional Office for information regarding your submission.

Side Note: Will you ever hear back from DOH regarding an **equivalency** notification you submitted? Maybe, maybe not.

How should you proceed after you've submitted a request or notified DOH that you are utilizing an approved equivalency but have not yet heard back from DOH?

- The DOH 4235 form says: “The operator must have written approval or be following an approved equivalency **prior to instituting any alternative to regulatory standards**. Noncompliance with a Department regulation prior to a waiver being requested and approved may result in the imposition of a penalty. Similarly, if an operator is noncompliant with an approved equivalency, this may result in a penalty.
 - Equivalency vs. waiver

Do I Need to Apply for a New Waiver Each Year?

NO.

After you receive an approval of your waiver, you **do not need** to submit a new request annually **EXCEPT** if there are changes that would warrant a new waiver.

However, there are still things you need to do:

1. Complete a DOH 4235b Form (the physician's order) each year and keep it in the resident's record;
2. Continue to have and adhere to policies and procedures;
3. Routinely assess and evaluate (1) the resident's ability to safely and independently use the medical equipment; and (2) resident's need for the equipment. **At least annually, upon a change in condition*, and with each new medical evaluation;** and
4. Keep the original waiver approval on file!

*Referrals to the resident's primary care physician need to be made if a change is identified.

Do I Need to Apply for a New Waiver Each Year? (continued)

As previously mentioned, you must complete a DOH 4235b Form (the physician's order) each year and keep it in the resident's record and routinely assess and evaluate:

- 1) the resident's ability to safely and independently use the medical equipment; and
- 2) resident's need for the equipment. **At least annually, upon a change in condition*, and with each new medical evaluation.**

Do I Need to Apply for a New Waiver Each Year? (continued)

Question: Do the annual assessments/evaluations need to be done by a PT/OT, like the initial assessments do?

- Proof of Justification/Need:**
 - A copy of the order from the resident's primary care physician indicating medical need for the specific medical equipment for which the waiver is sought.
Please note, such order must be renewed not less than annually, upon change in condition and with each new medical evaluation. The order must be present in the resident's medical record and available upon request by the Department.
 - **Statement of Need/Medical Justification**
 - DOH-4235B ACF Medical Equipment Waiver Addendum.
 - OR
 - If ordered by the resident's primary care physician, a copy of the physical therapist or occupational therapist assessment for the specific medical equipment for which the waiver is sought.
- Evaluation of Safe and Independent Use:**
 - A note in the resident's record confirming the resident was initially evaluated by a registered nurse, physical therapist or occupational therapist, indicating performance of an evaluation and the resident's ability to safely and independently** self-manage and use the specific medical equipment for which the waiver is sought. The statement must be present in the resident's medical record and available upon request by the Department.

Prospective Residents/New Move-Ins

DOH's position is that **there is no waiver-dependent admission requirement** and a waiver being a factor in an admission decision concerns DOH.

Accordingly, a facility needs to decide whether they can meet the prospective resident's needs on admission "including if the facility determines it can submit a successful waiver request."

But if a resident is on hospice and requires a hospital bed, for example, the facility can notify the Regional Office upon submission of a waiver request to help expedite the review.

Things to Keep in Mind

- Be sure to specify the regulation for which a waiver is being sought. DOH reports that this section on the DOH 4235 Form is **commonly left blank and could hold up your request**.
 - *For example*, if you are requesting a waiver for a hospital bed, you need to specify you are seeking a waiver from 487.11(i)(4)(i)(a) and (b).
- Other waiver requests (outside of Medical Equipment Waivers) should still be submitted through the Regional Office, not the drupal survey. For example: WanderGuard waiver requests.

Things to Keep in Mind (continued)

- Ensure that the information you submit is consistent.
- If an assessment determines that the equipment is no longer needed, then you must ensure the equipment is removed properly and promptly.
- Each waiver request is **resident-specific** and thus, **fact-specific**.
- This training is broad and before submitting a waiver request it is important to consult with your attorney.



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Questions?

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Colleen R. Pierson joined Garfunkel Wild, P.C. in 2023. Colleen is a member of the firm's Investigations, Audits, and Regulatory Compliance Practice Group. Colleen's practice includes representation of skilled nursing facilities, assisted living facilities, physicians and other health care industry-related clients (both for profit and not-for-profit) in the area of health care compliance, with a specific focus on regulatory compliance, fraud, and abuse laws. She has particular expertise assisting clients with matters before the New York State Department of Health, the New York State Department of Education, and other state agencies. Colleen also serves as Assistant Town Attorney to the Town of Glenville. Colleen brings over a decade of New York State government experience, having worked in several roles for the New York State Legislature and the New York State Division of Budget.

Prior to joining the firm, Colleen was with a Capital District law firm in their Health Law Group where she worked on a wide range of state and federal civil litigations, including Article 78 actions, transactional work, and other advisory services on behalf of skilled nursing facilities, physicians, and assisted living facilities. During her law school career, Colleen continued her work at the New York State Division of Budget in their Legal and Procurement Unit and participated in externships with the Honorable Mae D'Agostino of the United States District Court for the Northern District of New York and the New York State Attorney General's Litigation Bureau.

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