

HEALTH FACILITY CONSTRUCTION AND RENOVATION STUDY - BACKGROUND MEMORANDUM

INTRODUCTION

Section 3 of Senate Bill No. 2317 (2019) ([Appendix A](#)) provides for a study of the State Department of Health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the department.

LEGISLATIVE HISTORY

Senate Bill No. 2317, as introduced, provided for State Department of Health licensure of pediatric subacute care facilities. The bill, as passed, addresses State Department of Health life safety survey determinations for construction and renovation of health facilities licensed by the State Department of Health Division of Health Facilities and department licensure standards for basic care facilities. Additionally, the bill provides for the Legislative Management study and an interim report to the Legislative Management by the State Department of Health regarding the implementation of the new law.

Health Facility Construction and Renovation Project Timelines and Innovation Waivers

Section 1 of Senate Bill No. 2317 amends North Dakota Century Code Section 23-01-37, the law directing the State Department of Health to conduct a life safety survey for all health facilities licensed by the Division of Health Facilities. The law requires the department to conduct the survey during and at the conclusion of a construction, renovation, or construction and renovation project and allows the department to charge a reasonable fee based on the size of the project. The 2019 legislation requires determinations of projects that do not exceed \$1 million to be made within 60 days of receipt of a complete application. Additionally, the department may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety. The department's survey program may not violate the federal Medicare-certified life safety surveys.

Section 23-01-37 History

During the 2007-08 interim, the Long-Term Care Committee received a report from the State Department of Health on the status of the department's 2007-09 biennium demonstration project involving voluntary life safety surveys for basic care facilities and long-term care facilities during and at the conclusion of construction or renovation projects that cost more than \$3 million, and on whether the program should be made permanent.

The 2-year demonstration project resulted from the passage of Section 12 of House Bill No. 1004 (2007). Legislative history indicates the intent of the demonstration project was to address what can be done to address the issue of large construction and renovation projects that are out of compliance with life safety requirements at the completion of the construction or renovation, at which time correction is expensive. The demonstration project allowed for plan review and approval at the outset of the project as well as during and at completion of the project, to address possible compliance issues early in the process. Testimony indicated the State Department of Health has been in charge of establishing life safety compliance since approximately 1995.

Section 23-01-37 was enacted in 2009 with the passage of Senate Bill No. 2046. The bill, which was recommended by the interim Long-Term Care Committee, codified the demonstration project for all projects.

2019 Changes

The testimony in support of Section 1 of Senate Bill No. 2317 indicated with limited department resources for inspection and project plan approval, small projects are being delayed and in some instances losing access to grant funds due to the delays in having project plans approved. The testimony recognized there is a balance between the value of having authorization to avoid expensive and timely noncompliance issues discovered at the completion of a project and the delays in initiating small projects. Additionally, testimony raised the concern it may not be appropriate to have the State Department of Health conducting these project reviews.

Testimony in support of the innovation waiver language indicated the department would like flexibility to approve projects that may not meet the letter of the law, but do not adversely affect health or safety and do not violate federal requirements.

Basic Care Facility Licensure Waivers

Section 2 of Senate Bill No. 2317 amends Section 23-09.3-04, the law directing the State Department of Health to establish standards for basic care facilities. Under this section the department is required to inspect all places and grant an annual license to basic care facilities that comply with the standards established and rules adopted.

The 2019 legislation provides the department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.

Chapter 23-09.3 History

Chapter 23-09.3 was enacted in 1989 with the passage of House Bill No. 1197, which was introduced at the request of the Office of Management and Budget. The substance of Section 23-09.3-04, as this law relates to State Department of Health's duty to regulate basic care facilities and to inspect and grant annual licenses, has not changed since enactment.

2019 Changes

The testimony in support of Section 2 of Senate Bill No. 2317 indicated because basic care facilities are a creation of state law and are not required to follow the federal life safety survey requirements, the state has more flexibility than it does in conducting Medicare-certified life safety surveys of facilities. Testimony further indicated the State Department of Health seeks flexibility in licensing basic care facilities that seek to implement elements that do not strictly comply with state requirements but at the same time do not adversely affect the health or safety of residents.

STATE DEPARTMENT OF HEALTH

The State Department of Health's Division of Life Safety Code and Construction reviews construction and renovation plans and specification for licensed health care facilities for compliance with licensing and construction standards and ensures health care facilities meet specific construction and life safety code requirements in order to be licensed and participate in the Medicare and Medicaid programs.

Construction and Renovation Plans

The Division of Life Safety Code and Construction reviews health facility construction and renovation projects and project plans under the authority of Chapter 23-16, which provides for the licensure of hospital and nursing facilities; Section 23-01-37, which provides for review of health facility construction and renovation plans; and Chapter 23-09.3, which regulates basic care facilities.

The administrative rules regarding hospital construction and equipment are contained in North Dakota Administrative Code Chapter 33-07-02.1; rules regarding nursing facility construction and equipment are contained in Chapter 33-07-04.2; and rules regarding basic care facility construction and equipment are contained in Chapter 33-03-24.2.

Life Safety Code

The State Department of Health serves as the Centers for Medicare and Medicaid Services state survey agency for maintaining compliance with the Medicare health and safety standards acute and continuing care providers. The department conducts life safety code surveys to ensure health care facilities comply with federally required construction and life safety code requirements.

STUDY APPROACH

The committee can separate this study to focus on three elements:

1. The timeliness of department determinations on health facility construction and renovation projects;
2. The ability of the department to flexibly address innovations implemented by health facilities; and
3. Whether the department is the appropriate entity to conduct life safety surveys and construction and renovation project reviews. The Centers for Medicare and Medicaid Services *State Survey Agency Directory - February 2019* ([Appendix B](#)) allows the committee to compare and contrast North Dakota to other states in determining the state entity to ensure health facility compliance with the life safety code.

Stakeholders

Stakeholders from which the committee may wish to seek assistance in conducting the study include the State Department of Health, North Dakota Long-Term Care Association, and North Dakota Hospital Association, as well as individual health facilities that have experience with the department's licensing process for health facility construction and renovation projects.

Related Studies

Section 4 of Senate Bill No. 2317 also directs the State Department of Health to report to this committee before July 1, 2020, on the implementation of the bill.

ATTACH:2