MISSOURI DEPARTMENT OF
HEALTH &
SENIOR SERVICES
Exceptions & Second Businesses
Answering the Who, What, When, Why, and How?
Melissa Korsmeyer
Exceptions & Second Business Committee Chairperson

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Objectives
for today's presentation
Understand
the regulatory requirements and SLCR authority for granting approvals of Exceptions & Second Businesses.
Review
examples of when an Exception or Second Business approval is required.
Discuss
the process of Exceptions & Second Business requests from start to finish.

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Exceptions

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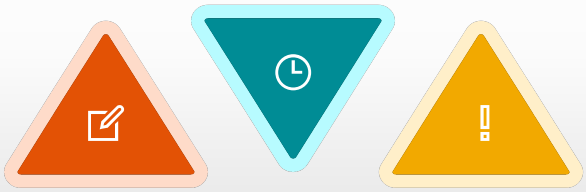
Exceptions

The WHAT

Exceptions are time-limited. Each exception is approved with a set of conditions or "stipulations" for which the approval is contingent upon.



The Exception process is an internal approval process through which the Section for Long-term Care Regulation (SLCR) determines that a facility may not comply with certain regulatory requirements.

Exceptions granted apply only to STATE regulations. This process does not apply to any statutory or Federal requirements per 19 CSR 30-82.010 (4)(C).

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Exceptions

The WHY

19 CSR 30-82.010 (4):
The department may grant exceptions for specified periods of time to any rule imposed by the department if the department has determined that the exception to the rule would not potentially jeopardize the health, safety, or welfare of any residents of a long-term care facility.

A facility can request an exception for various reasons. Typically the rationale is that compliance would create an undue financial or structural hardship; and/or the facility wants to create a more homelike environment for residents

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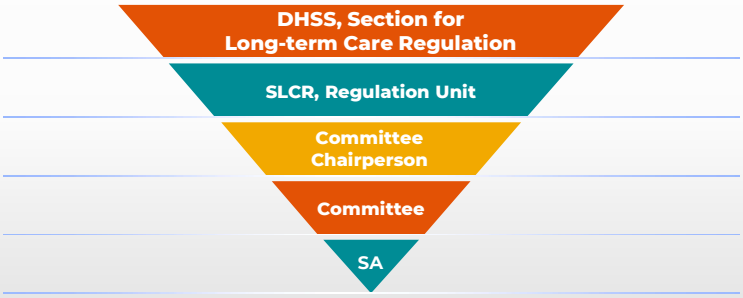
Exceptions

The WHO



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Exceptions

The WHEN

- **85.012 (124)** – Nurse call system (omission of indicator lights or other required elements) in SNF/ICF
- **85.012 (52)** – Separate bathrooms for each sex, for each nursing unit (omission of a central bathroom) in SNF/ICF
- **85.012 (65)** – Drinking fountains (use of plumbed/bottled water dispensers instead of traditional fountains) in SNF/ICF
- **86.022 (10)(A) & 87.030 (7)** – "Open" kitchens in ALF/RCF

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Exceptions

The HOW

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MEMO

Instructions for Exceptions Request

Mail: **Department of Health & Senior Services**
Section for Long-Term Care Regulation
Attn: Regulation Unit
P.O. Box 570
Jefferson City, MO 65102

Email: Regulation.Unit@health.mo.gov **Fax: (573) 526-8797 (Attn: Regulation Unit)**
Phone: (573) 526-8524 – Regulation Unit

The Regulation Unit issues approval letters/certificates, reminder letters, and any other correspondence related to the exceptions and second business process via email to the facility Administrator/designee. Please provide a valid email address for the Administrator/designee in order to receive correspondence.

The owner/operator or administrator of the facility must submit a signed written request and provide the following information.

1. Include the section number and text of the rule for the exception request. Please note if the request is being made as a result of a deficiency issued during an inspection.
2. Specific reasons why compliance with the rule would impose an undue hardship on the operator. A financial or structural hardship reason must include a cost estimate from architect, contractor, a professional estimator, or supplier (if appropriate).
3. Explanation of any extenuating factors that may be relevant to the exceptions request.
4. If applicable, provide a facility layout and/or pictures with a complete description of the individual characteristics of the area affected by the exception request.
5. Explanation of how you will safeguard the health, safety, and welfare of the residents if the exception were granted.

The Exceptions and Second Business Chairperson will contact you if additional information is necessary.

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(updated 02/02/23)

SLCR Authority for granting exceptions (19 CSR 30-82.010)

(4) The department may grant exceptions for specified periods of time to any rule imposed by the department if the department has determined that the exception to the rule would not potentially jeopardize the health, safety, or welfare of any residents of a long-term care facility.

(A) The owner or operator of the facility shall make requests for exceptions in writing to the director of the department. These requests shall contain—

1. A copy of the latest Statement of Deficiencies which shows a violation of the rule being cited, if the exception request is being made as a result of a deficiency issued during an inspection of the facility;
2. The section number and text of the rule being cited;
3. If applicable, specific reasons why compliance with the rule would impose an undue hardship on the operator, including an estimate of any additional cost that might be involved;
4. An explanation of any extenuating factors that may be relevant; and
5. A complete description of the individual characteristics of the facility or residents, or of any other factors that would safeguard the health, safety, and welfare of the residents if the exception were granted.

Look Familiar?

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Exceptions

The things to keep in mind…

Exceptions are always evaluated on a case-by-case basis. They are time-limited and must be renewed periodically during the duration for which they are needed. Complete information must be submitted at each renewal process.

Exceptions are not guaranteed to be re-approved based solely on the history of "it's always been approved in the past," especially if during the review process it is determined that the stipulations were not followed, and/or substantial changes have been made…

ANY physical plant changes (even "minor" changes such as re-installing corridor lights) should first be discussed with Engineering Consultation Unit (ECU) to ensure compliance will be met with the change.

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Second Businesses

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Second Business

The WHAT

The Second Business process is an internal approval process through which the SLCR determines that a related business or activity can be conducted within a licensed facility.

Second Business approvals are time-limited. Each exception is approved with a set of conditions or "stipulations" for which the approval is contingent upon.

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Second Business

The WHY

Intermediate Care & Skilled Nursing Facilities:
19 CSR 30-85.032 (48): Only activities necessary to the administration of the facility shall be contained in any building used as a long-term care facility except as follows:

(A) Related activities may be conducted in buildings subject to prior written approval of these activities by the department. Examples of these activities are home health agencies, physician's office, pharmacy, ambulance service, child day care, food service, and outpatient therapy for the elderly or disabled in the community;

Assisted Living and Residential Care Facilities
19 CSR 30-86.032 (3): Only activities necessary to the administration of the facility shall be contained in any building used as a long-term care facility except as follows:

(A) Related activities may be conducted in buildings subject to prior written approval of these activities by the Department of Health and Senior Services (hereinafter—the department). Examples of these activities are Home Health Agencies, physician's office, pharmacy, ambulance service, child day care and food service for the elderly in the community;

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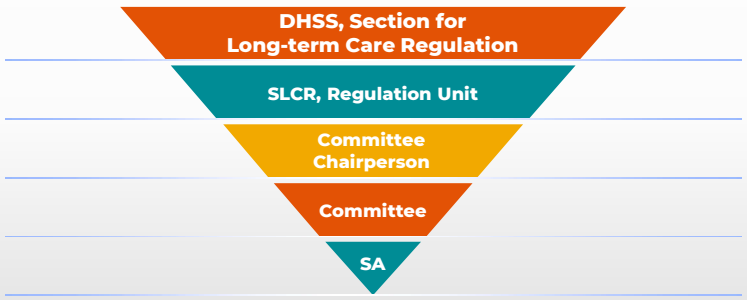
Second Business

The WHO



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Exceptions

The WHEN

- **Therapy Services** – in ALF/RCF (or outpatient services provided from within the SNF to non-SNF residents)
- **Independent Living/Ancillary Services** – we are seeing more CCRCs being constructed (licensed ALF and/or SNF + unlicensed "independent living/senior apartments") in which the licensed facility is preparing meals, providing housekeeping, etc.
- **Salon** – in ALF or RCF, or the SNF salon is being utilized by non-SNF residents and/or the public.
- **Other amenities** – including clinics or physicians office, hospice, restaurant/café/coffee shop, etc.

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Second Business

The HOW

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MEMO

Instructions for Second Business Request

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Section for Long-Term Care Regulation
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P.O. Box 570
Jefferson City, MO 65102

Email: RegulationUnit@health.mo.gov **Fax: (573) 526-8797 (Attn: Regulation Unit)**
Phone: (573) 526-8524 – Regulation Unit

The Regulation Unit issues approval letters/certificates, reminder letters, and any other correspondence related to the exceptions and second businesses process via email to the facility Administrator/designee. Please provide a valid email address for the Administrator/designee in order to receive correspondence.

The Exceptions and Second Business Chairperson will contact you if additional information is necessary.

The owner/operator or administrator of the facility must submit a signed written request for each business. Please provide the following information:

1. Describe the specific type and nature of the business.
2. Whom the business will serve (e.g., facility residents, elderly or disabled in the community, etc.).
3. Who or what will occupy the area? Specify if the facility will share or utilize any resources in common with the additional business (e.g., staff, space, equipment, storage, etc.).
4. What affect the business may have on the facility's ability to provide care and services to its residents?
5. A floor plan, if applicable of the facility which shows the following: location, entrance, exit, parking, room size, and restroom(s) designated for the second business.

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6. The legal name of the entity that will be operating the business. Provide a copy of any written agreements between the business entity and the licensed operator of the facility. *(Please clarify the legal name of the facility operator and the legal name of the entity that will operate the second business entity).*
7. Any document/instrument memorializing an agreement executed between the facility operator and the second business entity concerning property or use rights of the premises.

NOTE: An agreement between a second business entity that will operate on the premises and the licensed operator of the facility that constitutes a lease to that business entity violates state law. Specifically, leasing space on the premises deprives the facility operator of the present exclusive right to possession of the entire premises, one of the requirements for licensure. See 19 CSR 30-82.010 (1) (L) 7 and 19 CSR 30-83.010 (35). Unlike a lease, a license to utilize space between the second business entity and the facility operator does not deprive the facility operator of the present exclusive right to possession. Whether to enter into an agreement granting such a license is a legal decision that the facility operator must make independent from the Department.

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Look Familiar?

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Second Business

The things to keep in mind...

Second Business requests are always evaluated on a case-by-case basis. They are time-limited and must be renewed periodically during the duration for which they are needed. Complete information must be submitted at each renewal process, regardless of if no known changes have occurred since the previous approval.

Second Businesses are not guaranteed to be re-approved based solely on the history of "it's always been approved in the past," especially if during the review process it is determined that the stipulations were not followed, and/or substantial changes have been made...

ANY physical plant changes (even "minor" changes such as relocating the therapy room) should first be discussed with Engineering Consultation Unit to ensure compliance will be met with the change.

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The other "why"…why your request might get sent back or closed out

- The top reason we say we cannot process a request is because the information is incomplete. Each request letter must have all instructions questions copied and pasted, and a response provided. Each request must also include the most current and applicable supporting information as outlined in the instructions template.
- If we determine changes were made such as removal of drinking fountains, installation of a new call system, relocation of the salon or therapy room, or any other physical plant changes *without prior conversations with the ECU,* we cannot accept the request and will refer you back to the ECU so they can review the changes. This includes renewals and new requests alike.
- If Second Business agreements/providers have changed, and the new agreement contains prohibited language or does not include specific required language.

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Final Thoughts

It's very important that the Regulation Unit receives complete, detailed information regarding the Second Business or Exception, in order to adequately allow the Committee, Region, & Section Administrator to make their recommendations.

The health, safety, and welfare of the residents is our top priority.

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MISSOURI DEPARTMENT OF
HEALTH &
SENIOR SERVICES
QUESTIONS?
If in doubt, give us a shout.
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Melissa.Korsmeyer@health.mo.gov
573-751-9227
Health.Mo.Gov

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