

Client Alert: The N.J. Department of Health Issues Guidance on Health Care Facility Renovation Procedures

On August 3, 2018, the New Jersey Department of Health issued a memo to all licensed health care facilities throughout the state to reinforce the requirements for facilities to submit construction plans for review prior to initiating renovation work to both the Department of Health ("NJDOH") as well as the New Jersey Department of Community Affairs ("NJDOCA"). The memo from the NJDOH Certificate of Need and Healthcare Facility Licensure Program warned that facilities are too frequently assuming that planned renovations are "cosmetic" in nature, believing therefore that no state approvals are necessary.

In this memorandum, the NJDOH advised that licensed facilities should not make such assumptions, and instead, seek guidance from the Department in advance of instituting any renovation projects in which it is questionable whether work is "cosmetic" in nature. Facilities were warned that violations of this policy have, and would continue to result in NJDOH enforcement actions. These can include civil monetary penalties and curtailments on admissions, or prohibitions on the use of the rooms or areas affected by the project until plans are submitted, reviewed, and inspected.

The NJDOH memorandum did not provide any specific guidance on the meaning of the word "cosmetic." The term is not defined in either the NJDOH licensing regulations or the Uniform Construction Code ("UCC"), so the memo is likely to engender many inquiries to the Department. Health, which alone could take significant time in order to receive clearance. Licensed providers may want to review, in evaluating whether or not to seek a determination, the thresholds contained in the UCC at N.J.A.C. 5:23-2.7. This rule provides a detailed list of renovation work that would be exempt from DCA review. While this is not a rule promulgated by the NJDOH, it may provide baseline guidance as to the types of minor projects that may be deemed "cosmetic". Exempt projects under the UCC are termed "minor work" or "ordinary maintenance". The rules include examples of construction activities that are exempt from review, which are excerpted below:

- "Minor work" includes the following
 - "replacement of any existing plumbing piping work with new and approved material of like capacity";
 - the installation of "drinking fountains and condensate drains in existing structures";
 - the replacement of "existing water heaters with new ones of like capacity";
 - the "replacement of existing boilers, warm air furnaces, air conditioning units, and air conditioning condensing units with new appliances of like capacity."
- "Ordinary maintenance", also exempt, include projects such as:
 - exterior and interior painting, or refinishes involving new wall covering or wall papering;
 - the replacement of "glass in any window or door", or
 - the "repair, replacement, or installation of any flooring material with a new material";
 - replacement windows or doors in the same frame; and
 - the repair, replacement, or installation of any non-structural elements, such as cabinets; trim, molding, etc.

- Exclusions to "ordinary maintenance" include the
 - cutting away of any wall, partition or portion thereof;
 - the removal or cutting of any structural beam or bearing support;
 - the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exit way requirements;
 - any work affecting structural or fire safety;
 - any work that will "increase the nonconformity of any existing building or structure with the requirements of the regulations";
 - any addition to, or alteration, replacement or relocation of any standpipe; water supply, sewer, drainage, gas, soil, waste, vent or similar piping, or electrical wiring, except certain communications wiring.

These exemptions from DCA/DOH review are obviously limited in scope. Any project under consideration with components of work that deviate from the specific language of the rules should be confirmed before you proceed. As noted above, it is our belief that the UCC exemptions for review would apply to the Department of Health. We have requested that Department issue further guidance to confirm these thresholds, and will update you if such guidance is received.

To the extent you have any questions concerning whether a project you are planning requires state review and approval, and the attached guidance is not clear, you may, of course, submit a request for guidance directly to the Department of Health. However, we anticipate that such determinations may involve a significant delay.

If you are interested in obtaining guidance on any proposed renovation or cosmetic updates to a health care facility, or have other health care regulatory or licensing matters, please feel free to contact [Robert J. Fogg](#), [Lisa S. Albright](#), or [Jessica Perl](#) of the Archer [Health Care Group](#) in Princeton, NJ, at (609) 580-3700.

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