

Smoking Regulations

Introduction

Improper use of smoking materials (e.g. cigarettes, matches, lighters, etc), either intentional or otherwise, has led to a number of fires in health care facilities over the years – fires that have resulted in serious injury and even death. For that reason, it is important to tightly control not only **where** smoking is allowed at your facility, but also **who** is allowed to smoke and under what circumstances. Many facilities address this by prohibiting all smoking or use of tobacco products in or on their buildings and grounds.

In order to meet federal certification requirements, health care facilities are required to adopt regulations for the safe use of smoking materials [see NFPA 101(12), Sec. 18.7.4/19.7.4]. The 2020 Minnesota State Fire Code (MSFC) also contains provisions that give the fire code official broad authority to prohibit smoking where conditions are such that it would create a hazard [see MSFC (20), Sec. 310]. Additional requirements applicable to smoking can be found in NFPA 99, *Health Care Facilities Code*. Both NFPA 101(12), Sec. 2.2 and MSFC (20), Chapter 80 reference the 2012 edition of NFPA 99.

This guide is mainly directed toward facilities that allow smoking somewhere in their building(s) and/or elsewhere on their facility grounds. Even those who prohibit all smoking need to take certain precautions, however, as it is not uncommon for smoking materials to be brought into a facility unnoticed and/or for people to miss or ignore prohibitions against smoking.

Smoking Regulations – the Basics

At a minimum, smoking regulations need to address the following points:

1. Smoking must be prohibited in any location where oxygen, flammable or combustible liquids or gases, or combustible materials are stored or used. Please note that the Authority Having Jurisdiction (AHJ) may designate other hazardous locations where smoking must be prohibited.
 - No one using oxygen should be allowed to smoke. NFPA 99(12), Sec. 11.5.1.1.1 requires that smoking materials (e.g. matches, cigarettes, lighters, lighter fluid, tobacco in any form) be removed from patients receiving respiratory therapy.
 - Smokers must remain at least 5 feet away from oxygen in use [see also: NFPA 99(12), Sec. 11.5.2.3.1].
 - NFPA 99(12), Sec. 11.5.1.1.2 prohibits all sources of open flame in the “area of administration”. *Area of administration* is defined in NFPA 99(12), Sec. 3.3.13 as follows: Any point within a room within 15 ft of oxygen equipment or an enclosure containing or intended to contain an oxygen-enriched atmosphere.
2. Smoking by residents/patients deemed unsafe to smoke independently must be prohibited, unless those persons are under direct supervision (a number of Minnesota nursing home residents have died or been very seriously injured over the years as a result of fires related to misuse of smoking materials).
 - Your policy should require an assessment of persons allowed to smoke to include the person’s ability to light a cigarette, smoke it safely, handle the ashes and put the cigarette out safely. It is also important that the policy include provisions for proper and safe storage of smoking materials for those persons deemed unsafe to smoke independently without staff supervision.
 - Where nursing home residents are allowed to smoke, your policy should include procedures for extinguishing clothing fires. You will want to make sure that, whatever procedure is chosen for your facility – e.g. Stop, Drop & Roll; fire blanket; or pressurized water or water mist type portable fire extinguishers (dry powder type extinguishers are not recommended as the powder can be easily inhaled and potentially cause immediate breathing and/or long term lung problems), the proper equipment, if any, is immediately available in smoking area(s) and staff are properly trained on an on-going basis on how to extinguish clothing fires.

3. A suitable number of noncombustible ashtrays must be provided in areas where smoking is allowed.
Note: These ashtrays must be of a “safe design”, which has been interpreted to mean ashtrays designed so that cigarettes **cannot** be placed on the outer edge of the ashtray (as it burns down, a cigarette placed on the outer edge of an ashtray can fall out of the ashtray, potentially falling on something combustible and resulting in a fire).
4. Smoking areas must be provided with metal containers equipped with self-closing covers for the disposal of cigarette butts and ashes. These containers should not have combustible (e.g. plastic or paper) liners in them.

Electronic cigarettes (e-cigarettes)

You will want to make sure that your smoking policy covers the use of e-cigarettes. NFPA 101(12), Sec. 18.7.4/19.7.4 has been interpreted to include **all** smoking, regardless of the type – tobacco, electronic or otherwise. MN state law also addresses the issue. In accordance with MN Statutes, Sec. 144.414, subd. 3(c), the definition of smoking includes the use of electronic cigarettes.

Posting of signs

1. NO SMOKING signs (and/or the international symbol for no smoking), readable from a distance of 5 ft, need to be posted wherever supplemental oxygen is in use and in aisles and walkways leading to such area(s) [see NFPA 99(12), Sec. 11.5.3.2.1] and are also required to be posted at such locations deemed appropriate by facility management and/or as designated by the AHJ. At a minimum, this must include locations where:
 - a. Oxygen is being transferred, stored or used
 - b. Flammable or combustible liquids (e.g. gasoline) or gases (e.g. acetylene) are stored or used – examples of such locations would be the facility maintenance shop or a hospital laboratory
 - c. Combustible materials are stored or used – examples of such locations would include combustible storage rooms, record storage rooms, linen rooms, and trash collection rooms
2. There are some exceptions to this signage requirement in smoke-free buildings:
 - a. NFPA 101(12), Sec. 18.7.4.(2)/19.7.4(2) states, “In health care occupancies where smoking is prohibited and signs are prominently placed at all major entrances, secondary signs with no-smoking language shall not be required.”
 - b. NFPA 99(12), Sec. 11.5.3.2.3, which deals with administration of medical gases, has similar language that reads, “In health care facilities where smoking is prohibited and signs are prominently (strategically) placed at all major entrances, secondary signs with no-smoking language are not required. The nonsmoking policies shall be strictly enforced.”
 - **CAUTION:** These exceptions do not apply to areas where oxygen is being **stored** or **transferred**. NFPA 99(12), Sec. 11.3.4 requires signage prohibiting smoking on each door or gate of a medical gas storage room or enclosure. NFPA 99(12), Sec. 11.5.2.3.1(3) requires signage prohibiting smoking in transfer locations.

Oxygen in smoking areas

While it would seem obvious, oxygen should simply not be allowed in smoking lounges/rooms. This would include:

- Oxygen concentrators, even if they’re shut off
- Compressed gas oxygen cylinders, even if the cylinder valve is closed, and
- Liquid oxygen containers, even if the container’s flow control valve is set at zero

Problems can arise even in closely supervised rooms. Oxygen concentrators can inadvertently or intentionally be turned on. Cylinders and containers with valves closed still constitute “storage”, which triggers the smoking prohibition in NFPA 101(12), Sec. 18.7.4/19.7.4.

Indoor smoking

Pursuant to the Freedom to Breathe provisions of the Minnesota Clean Indoor Air Act, nursing homes are allowed to be either “smoking-permitted” or “smoke-free”. These provisions, which became effective on October 1, 2007, dictate that where smoking is permitted, smoking must be restricted to a designated room. While such rooms, or lounges, are not considered hazardous areas and, therefore, do not fall under the provisions of NFPA 101(12), Sec. 18.3.2/19.3.2, they must be properly:

1. Ventilated in accordance with the requirements of the Minnesota Department of Health [see MN. Rules 4658.4515 and 4658.4520] – Smoking rooms are required to:
 - Have a negative pressure relationship relative to adjacent rooms,
 - Have a minimum of 2 air changes per hour of outdoor air,
 - Have a total of 10 air changes per hour, and
 - Exhaust all air directly to the outside (recirculating air from the smoke room to the rest of the building is prohibited).
2. Separated from the corridor as required by NFPA 101(12), Sec. 18.3.6/19.3.6 (such a space would not meet the exceptions in the code for spaces allowed to be open to the corridor, because the presence of the automatic smoke detection required to meet the exceptions would very likely lead to false alarms).

Outdoor smoking areas

1. Even outdoor smoking areas must meet the basic requirements outlined earlier in this guide (see “Smoking Regulations – the Basics”). An incident that occurred in Ohio back in October, 2004 serves as an example of why this is the case. In that incident, a discarded cigarette ignited a Halloween display that included corn stalks. The resulting fire extended into a combustible soffit and from there to the roof causing over \$1.0 million in damage.
2. Some facilities construct smoking enclosures (affectionately known as “butt huts”) where persons can smoke and be at least somewhat protected from the weather, while others use prefabricated enclosures similar to those commonly found at bus stops (i.e. rigid plastic walls and roof supported by a metal frame).
 - a. When smoking enclosures are constructed of combustible materials, care must be taken to ensure that they are located far enough away from your building to avoid being considered an exposure fire hazard. When located too close, such enclosures can also cause your facility’s construction type to be downgraded.
 - b. As a general rule of thumb, it’s best to locate smoking enclosures at least 20 feet away from your facility. This should reduce the potential for them to be considered either an exposure hazard and/or to affect the construction type of your building.

Note: The AHJ may allow lesser separation distances depending upon exterior wall construction and level of protection provided for any openings (e.g. windows and doors).

Developing your policy...

It goes without saying that each facility is unique. While it is certainly acceptable to base your smoking policy on another facility’s policy, a template developed by someone else or an organization-wide policy, you want to make sure your policy is specifically tailored to the individual characteristics of your facility. Using a generic or “boiler plate” policy rather than one specifically tailored to your facility could result in a federal deficiency.

At time of survey

Your facility's smoking policy must be available for review at the time of survey. It is important that at least two people in your facility know where your smoking policy is kept to increase the likelihood that it can be readily provided if requested during an inspection or federal survey.