

# Wyoming Legislative Service Office Program Evaluation Report



## Wyoming Department of Health Office of Healthcare Licensing and Surveys

Management Audit Committee  
August 21, 2009

# Office of Healthcare Licensing & Surveys | August 2009

As they work to allocate tax dollars effectively and make government more efficient, legislators and administrators need objective information. Program evaluation reports from the Legislative Service Office (LSO) are a source for timely, accurate, and unbiased information on state government performance. These reports assist the Legislature in performing its function of oversight: decisionmakers need to understand the operations of state government in order to make informed decisions on the laws they pass and the financial decisions they make.

Wyoming's legislative evaluation activities began in 1971 with the creation of LSO and establishment of the legislative auditor to examine agencies' accounts and operations. In subsequent years, the Legislature changed the section's orientation from financial to sunset auditing, and then to program evaluation. These reviews compare what a program is accomplishing to what the Legislature intended the program to accomplish. W.S. 28-8-107 through 113 authorizes the program evaluation function.

The Management Audit Committee chooses state government programs for review and approves the final reports for release. An eleven-member bi-partisan committee, it has representation from the Senate and the House of Representatives.

LSO program evaluators research, analyze, and write reports on the assigned topics. The reports assess effectiveness and efficiency, examine whether intended results are being achieved, and include non-binding recommendations for change in administrative policies as well as for statutory changes.

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# Executive Summary

## Purpose

On September 12, 2008, the Management Audit Committee directed staff to undertake a review of the Wyoming Department of Health's (WDH) Office of Healthcare Licensing and Surveys (Office). The objective of this review is to evaluate the plan review and inspection process for healthcare facility construction throughout the state.

Generally, the Committee expressed concern over the timeliness of the Office's work. Additionally, since meeting the process and building code requirements is necessary for state licensure, the Committee requested clarification on how this process impacts healthcare facilities overall.

In short, while the Office has taken actions during the past few years to improve the process, it has much to do in order to ensure those changes translate into consistent and transparent actions, that are communicated effectively to local governments and facilities. It also has work to do with respect to simplifying and retooling its processes in order to work deliberately and more efficiently. These improvements will go a long way toward re-building relationships with stakeholders.

Finally, we suggest throughout our report that the Department of Fire Prevention and Electrical Safety (DFPES) is a logical benchmark agency, as another state-level building office, to consider and possibly borrow ideas related to interaction with local authorities and facilities; application of code requirements; data management; and appeals procedures.

## Background

As with other construction in the state, healthcare facility construction has increased in recent years; the Office received 123 projects for review in 2006, while generally receiving only about 60 projects annually in previous years. The current agency budget is about \$4.6 million, with only three of the 21 Office staff dedicated to conducting the plan reviews and inspections on projects.

Two different statutes define the Office's construction oversight authority:

1. W.S. 35-2-906 requires proposed facility construction projects be reviewed and approved prior to commencing with construction; and
2. W.S. 35-9-121.1 (passed in 2003) gives the Office broad jurisdiction over "all aspects" of construction, except for electrical installations (where jurisdiction resides with the DFPES or delegated local government). This statute also requires the Office to adopt certain construction codes and it allows the Office to delegate plan review and inspection responsibilities to local governments.

Pursuant to these statutory provisions, the Office has promulgated its Chapter 3 Construction Rules detailing the overall plan review and inspection process and a dozen construction code requirements. The plan review and inspection process has three phases:

- **Pre-Construction:** Including *preliminary plan and final plan* reviews;

- **Construction:** Including *interim inspections* of the project as it is being built; and
- **Post-Construction:** Including the *final construction inspection* and provisional licensure for facilities to begin using the construction space for rendering services. Upon gaining state licensure, some facilities choose to become certified for federal Medicare and Medicaid service reimbursement. However, we did not focus on this area during our review.

## Results in Brief

Prior to 2003 the Office did not oversee all portions of facility construction projects. Since 2003 however, when the Office gained explicit control over all aspects of facility construction, it expanded its role and worked to develop a regulatory framework from which local governments and facilities operate.

With the expansion, the Office was not able to consistently translate its regulatory vision into clear and decisive procedures. The Office's perceived haphazard and confusing implementation of its rules continues to cause problems. These problems translate into distrust and difficulty for the Office in establishing and maintaining workable and long-lasting relationships with local governments and facilities.

Furthermore, most surrounding states have a more decentralized facility construction oversight structure; Wyoming is the outlier with respect to State control over fire safety and construction codes. As a result, other states do not lend themselves to direct one-to-one comparisons for Wyoming.

There are two main areas of concern for the Office's administration of the plan review and inspection program: 1) the lack of a consistent, fair, timely, transparent, and effective process; and 2) inadequate coordination with other state and local agencies.

## Principal Findings

There are seven significant findings on the Office's project processing:

1. Timeliness of the Office's work has significantly decreased in recent years.
2. Preliminary plan reviews do not assist in quicker or easier final plan reviews.
3. Combining code requirements with process criteria in rules with frequent promulgations causes confusion for Office staff and other stakeholders.
4. Office's application of project process waivers is inconsistent and does not help manage project workload.
5. There is no clear or consistent appeals process for facilities to check the Office's code application or interpretation decisions prior to final licensure.
6. The Office's paper and electronic project tracking systems are cumbersome and ineffective for review and oversight.



7. The Office lacks formal internal policies to provide guidance and assist staff in consistently implementing its work processes.

There are two significant findings on the Office's coordination with other state and local agencies:

1. The Office has not proactively carried out its statutory responsibility to delegate authority to local governments, contributing to additional workload and timeliness problems for the Office.
2. Coordination on electrical plan reviews conducted by the DFPES or delegated local authorities is lacking and does not ensure facilities are constructed according to appropriate codes.

## Agency Comments

The Office accepts all recommendations.

The Management Audit Committee considered the draft report on July 30, 2009. The official release is August 21, 2009.

*Copies of the full report are available from the Wyoming Legislative Service Office. If you would like to receive the full report, please fill out the enclosed response card or phone 307-777-7881. The report is also available on the Wyoming Legislature's website at <http://legisweb.state.wy.us>*



# Recommendation Locator

Chapter Number	Recommendation Number	Recommendation Summary	Page Number	Party Addressed	Agency Response *
3	1	The Office should re-establish in rules or formal policy reasonable time lines for conducting plan reviews and inspections; engineer staff should be monitored on their timeliness per these time lines.	35	Office	Agree
3	2	The Office should re-evaluate the overall need for the review of preliminary plans; if upon further review the Office chooses to eliminate the requirement, it should seek statutory change if necessary.	38	Office	Agree
3	3	The Office should promulgate codes/standards and process elements into separate rules to ensure that codes/standards and processes are consistently applied throughout the duration of each project.	45	Office	Agree
3	4	Due to its limited staff resources, the Office should more effectively and efficiently manage projects by setting and communicating clear waiver criteria for facilities.	47	Office	Agree
3	5	The Office should establish in rules and policies a clear appeals process for facilities to use to clarify or challenge Office decisions in an independent forum. It should also seek advice from the AG's Office to see if it has the statutory authority to truncate the appeals process for waiver and variance decisions.	49	Office	Agree
3	6	The Office should re-evaluate its paper and electronic record keeping requirements and develop a system to better recall and analyze project data and information.	51	Office	Agree
3	7	The Office should develop clear and sufficient policies to ensure consistency throughout the Office's processes.	54	Office	Agree

<b>Chapter Number</b>	<b>Finding Number</b>	<b>Recommendation Summary</b>	<b>Page Number</b>	<b>Party Addressed</b>	<b>Agency Response *</b>
<b>4</b>	<b>8</b>	<p><b>The Office should consider the following options to encourage more local governments to do plan review and inspection work:</b></p> <ul style="list-style-type: none"> <li>• <b>Allow locals to conduct preliminary reviews or final inspections if locals are delegated all code authority.</b></li> <li>• <b>Establish clear and consistent policies and procedures for required documentation and communication between Office and local building officials.</b></li> </ul>	<b>65</b>	<b>Office</b>	<b>Agree</b>
<b>4</b>	<b>9</b>	<p><b>The Office should work with DFPES to mirror certification and other requirements for local delegation of authority:</b></p> <ul style="list-style-type: none"> <li>• <b>Eliminate the plumbing and mechanical plans examiner certifications.</b></li> <li>• <b>Assure proper certification of Office staff engineers prior to conducting plan review and inspection work.</b></li> </ul>	<b>65</b>	<b>Office</b>	<b>Agree</b>
<b>4</b>	<b>10</b>	<p><b>The Office should coordinate with DFPES (and local jurisdictions) to ensure electrical plan reviews are performed, and to clarify where each entity's role begins and ends with respect to each applicable code.</b></p>	<b>68</b>	<b>Office</b>	<b>Agree</b>

\* In its updated agency response, the office accepted every recommendation.



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# Introduction: Objective, Scope, Methodology

The Management Audit Committee requested a review of the Wyoming Department of Health's (WDH) Office of Healthcare Licensing and Surveys (Office) to evaluate the plan review and inspection process for construction of healthcare facilities statewide. The Committee was also concerned about timeliness of the Office's work, as well as the impact on healthcare facilities.

Our review identified a major shift in change for the Office upon passage of SF 37 in 2003, which created W.S. 35-9-121.1. Prior to 2003, the Office did not have expressed statutory authority to regulate all aspects of construction and remodeling of state licensed health care facilities.

Although it had some options for exerting additional control through a Memorandum of Understanding (MOU) with the Department of Fire Prevention and Electrical Safety (DFPES), as well as opinions from Wyoming's Office of Attorney General, it limited its oversight only to preliminary plan reviews and final inspections. This focus did not necessitate abundant resources; however, it also did not guarantee adequate state oversight of health care facility construction.

Post 2003, the Legislature passed legislation (creating W.S. 35-9-121.1) that provided express authority to the Office granting it sole jurisdiction over "all aspects" of construction and remodeling of state licensed health care facilities. This step removed any leftover doubt that the Office was the responsible entity for ensuring safety standards related to health care facility construction. However, admittedly so, the Office was not immediately prepared in terms of resources to provide additional oversight, which created a series of challenges to navigate.

Although the Office planned and implemented a regulatory framework to provide guidance to facilities and local communities, there was a disconnect between what was envisioned versus what actually occurred. More specifically, the implementation and reaction to a myriad of regulations from 1996-2009, as well as increased workload (and backlog) from an up tick in construction projects, caused strained relationships between the Office, facilities, and local jurisdictions.

In addition, it caused an overwhelming belief that the Office's actions were haphazard, duplicative, confusing, and inconsistent. This appears to have caused a disincentive for local jurisdictions to proactively accept delegated authority over health care facility construction.

Although rules and policies implemented since 2007 have refined some procedures designed to relieve workload pressure, there remains distrust by local officials and facilities of the Office. For example, the imprint from past relationships and uncertainty with the Office's role has caused the following positive aspects to not be as effective as

they could be: third party review process; variance process; plan review teleconferences; selective jurisdictional authority for local governments; automated plan reviews; and updating the Office's website with procedural guidance.

Stated another way, the Office moved from a comfortable role of well defined, but not comprehensive tasks prior to 2003, to one of intense and fragmented activity with respect to establishing a multitude of rule changes and code requirements. Consequently, as the Office's workload increased, its work became less timely. The Office also appears to focus too much on the front-end plan reviews rather than continuous monitoring through frequent interim inspections and proactively reaching out to local communities to assist with oversight processes.

The longer term impact on the Office's ability to carry out its oversight functions is that its credibility at the local level and with facilities has suffered greatly. Currently, local governments are mostly unwilling to work with the Office, nor are facilities eager to reach out to the Office for cooperative assistance.

This challenging environment also causes uncertainty for facilities with respect to scheduling construction projects, encountering unreasonable costs due to delays, and suspicion of the Office. Finally, the Office has been unable to communicate and work effectively with local governments and health care facilities to ultimately ensure public safety is balanced with efficient oversight of the construction process.

In order for the Office to become more successful at fulfilling its statutory role, it must continue to retool and rethink the regulatory framework from which it operates. Rather than focusing so much on the specifics of multiple plan reviews, it should focus more of its efforts on reviewing final plans, conducting more frequent interim inspections, and proactively encouraging local government involvement with oversight.

Finally, it should communicate this new approach to local governments and health care facilities through a consistent framework of rules, policies and guidance. Working with the Department of Fire Prevention and Electrical Safety as another state-level construction and code oversight office would be a good start toward gaining such consistency and clarity of the process.

Our review discusses numerous concerns within the Office that are presented at length within our report.

## **Objective**

W.S. 28-8-107(b) authorizes the Legislative Service Office to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the



purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

In September 2008, the Management Audit Committee directed staff to undertake a review of the Wyoming Department of Health's (WDH) Office of Healthcare Licensing and Surveys (OHLS). The objective of this review is to evaluate the plan review and inspection process for healthcare facility construction throughout the state.

This report addresses the following questions about the process:

- How is the Office funded and staffed and what is its role in approving construction of healthcare facilities?
- How many facilities come under the Office's authority and does the Office complete reviews and inspections in a timely manner?
- What codes and standards does the Office use in reviewing plans, inspecting construction, and approving healthcare facilities for occupancy and services?
- How frequently does the Office carry out inspections during the construction phase of projects?
- What recourse or appeals do facility owners have if they are aggrieved by the Office's actions?
- What are the issues underlying the transfer of responsibilities to and coordination with local government building officials and third-party (private sector) contract reviewers and inspectors?
- How is this function carried out in other rural states and are there some practices Wyoming could adopt to improve the program/process effectiveness?

It should be noted that our research did not focus on the process to certify health care facilities in order to receive Medicaid/Medicare reimbursements.

## Scope and Methodology

This evaluation was conducted according to statutory requirements and professional standards and methods for governmental audits. The research was conducted from September 2008 through June 2009. The general timeframe for which we included information for this report is calendar years 1998 through 2008 (unless otherwise noted).

Our research methods included:

- 1) Conducting interviews with department and OHLS personnel, design and construction professionals, local government building officials, and other in-state stakeholders;

- 2) Review and analysis of department and OHLS documents and data as requested by the project team;
- 3) Customizing a questionnaire and conducting a survey of 85 facility owners/operators (54 percent response rate) regarding their experiences with the OHLS' plan review and inspection process;
- 4) Reviewing and analyzing a sample of 49 project case files (first sample 14 cases; second sample 35 cases), which were submitted to the OHLS since January 1, 2000, to determine documentation and adherence of the OHLS to statute, rules, and policies/procedures set out to track and guide the process; and
- 5) General government document and internet research on both in-state and other states' practices; we conducted follow-up interviews with selected surrounding states to clarify other states' practices.

## Scope Consideration

Throughout the report, we illustrate Department of Fire Prevention and Electrical Safety (DFPES) practices as suggested benchmarks for the Office to consider in the future. It should be noted however, that although we acknowledge differences in scope between the two agencies (e.g. DFPES has authority over fire safety standards while the Office has jurisdiction over all aspects of construction), it is still noteworthy to identify various practices and criteria for the Office's consideration.

## Acknowledgements

The Legislative Service Office expresses appreciation to the department and OHLS staff for providing interviews, documents, and data that went into this report. We would also like to thank the following:

- Various facility owners and operators that completed and returned our survey;
- Individuals and professional stakeholders in Wyoming that contributed comments and information; and
- State and local officials from other states who assisted our research by providing additional interviews and documents.

# Chapter 1: Background

The Wyoming Department of Health (WDH) is designated by W.S. 35-2-901 through 910 to oversee and monitor the licensing and operations of healthcare facilities throughout the state. This authority specifically includes oversight of healthcare facility construction. The department must review a facility's construction plans and accompanying documents, inspect the site/building during construction and conduct a comprehensive final inspection when construction is complete.

## Licensing authority includes "jurisdiction" over healthcare facility construction

In 2003, the Legislature passed Senate File 37, which further clarifies that the department has "*jurisdiction over all aspects of construction and remodeling, except for electrical installation, for any state licensed health care facility*" (W.S. 35-9-121.1(a), see **Appendix A** for selected statutes). This statute also gives the department authority, similar to that given to the Department of Fire Prevention and Electrical Safety (DFPES), to delegate plan review and inspection duties to local governments.

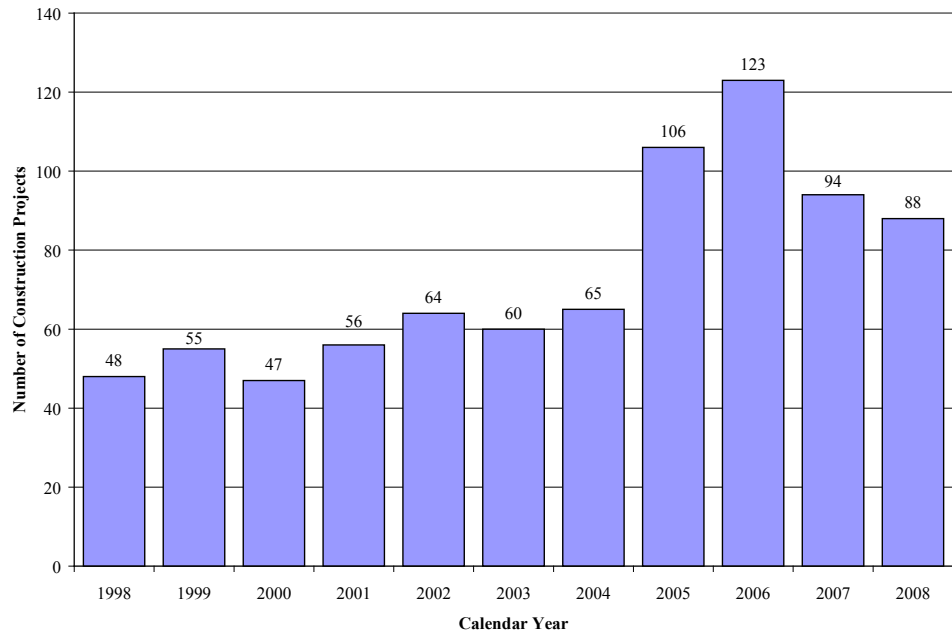
Currently, this construction oversight function is carried out by the Department's Office of Healthcare Licensing and Surveys (Office). Most construction code requirements and processes are prescribed by the Office's Chapter 3 Construction Rules and Regulations for Healthcare Facilities.

## Increase in healthcare facility construction projects

The Office tracks each individual construction project submitted to the agency. Though the method and comprehensiveness of the Office's tracking log has changed over time, data shows that the total number of healthcare facility construction projects has gone up in recent years.

The Office had a low of 47 projects submitted in 2000 to a high of 123 projects in 2006. The median annual number of projects submitted during eleven years was 64 projects. Figure 1.1 shows the number of projects submitted annually since 1998. Over 80 percent of construction projects reviewed by the Office come from hospitals and nursing homes (see **Appendix B** for additional data on project totals and distribution around the state).

**Figure 1.1**  
**Statewide healthcare facility construction projects submitted annually to the Office, CY '98 – '08<sup>1</sup>**



Source: LSO analysis of Office data: project tracking logs.

<sup>1</sup> We chose these year end markers to show project totals relative to five and one-half years before and after the July 1, 2003 statute change – W.S. 35-9-121.1.

## The Office Reviews and Inspects Projects Against 12 Different Codes/Standards

Not all healthcare facility construction projects will require the Office to review plans or inspect construction against each code and standard annotated in the Chapter 3 Construction Rules. The list of possible applicable codes is long; for some large projects, many of these codes and standards will apply. Figure 1.2 lists all the applicable codes adopted by reference in the Chapter 3 rules. For the end of project licensing purposes, facilities must also comply with the applicable chapter of facility licensing and operations rules (e.g. Chapter 5 licensure rules for ambulatory surgical centers).



**Figure 1.2**  
**List of adopted codes and standards for healthcare facility construction,**  
**effective April 2008 <sup>1,2</sup>**

- 1) National Fire Protection Association (NFPA) 101: Life Safety Code, 2006 Edition;
- 2) NFPA 99: Standard for Health Care Facilities, 2005 Edition;
- 3) American Institute for Architects: Guidelines for Design and Construction of Health Care Facilities, 2006 Edition;
- 4) NFPA 110: Standard for Emergency and Standby Power Systems (2005 edition; *for ambulatory surgical centers*);
- 5) NFPA 13: Standard for the Installation of Sprinkler Systems (*no edition stated*)<sup>3</sup>;
- 6) International Code Council (ICC) International Building Code, 2006 Edition (*with some subsections not applicable*);
- 7) ICC International Fuel Gas Code, 2006 Edition (*with some subsections not applicable*);
- 8) ICC International Mechanical Code, 2006 Edition (*with some subsections not applicable*);
- 9) ICC International Plumbing Code, 2006 Edition (*with some subsections not applicable*);
- 10) ICC International Fire Code, 2006 Edition (*with some subsections not applicable*); and
- 11) National Electrical Code (NEC – *replacing the ICC International Electrical Code wherein referenced in the other ICC codes; no edition stated*);
- 12) Wyoming-specific standards (*requirements listed in rule that are not referenced in one of the above codes/standards*).

Source: LSO summary of Chapter 3 Construction Rules and Regulations for Healthcare Facilities referenced codes and standards.

<sup>1</sup> Examples of codes/standards not applied to certain facilities: home health agencies and hospice facilities that do not provide inpatient care are exempt from the NFPA 101 Life Safety Code.

<sup>2</sup> Responsibility for facilities' plan review and inspection of the National Electric Code is with the DFPES; current rules require the 2008 edition of the NEC for ambulatory surgical centers.

<sup>3</sup> W.S. 16-3-103(h) (ii) requires city, state, and local powers to fully identify incorporated material, including edition.

**The Department may delegate plan review and inspection authority to other entities**

In recent years, the Office has allowed the use of other construction professionals from local government or from the private sector (termed “third-parties”) to help handle the plan review and inspection workload. Currently, the Office only allows final plans and interim inspections (ongoing inspections during construction) to be done by these professionals.

For both local governments and third parties, the process for approval by the Office to conduct plan reviews and inspections is similar. Under the Department’s Chapter 20

Health Care Facilities Jurisdiction and Delegation rules, if a local government requests such authority and can show it has relevant certifications per required codes, the Office must delegate plan review and inspection authority to the locality. The same certification requirements for third-parties are outlined in the Chapter 3 Construction Rules, effective April 2008.

Currently there are four municipalities (Casper, Lander, Gillette, and Sheridan) that have been delegated such authority.<sup>1</sup> Gillette is the only locality that has been delegated final plan review and interim inspection authority for all healthcare facility construction codes/standards.

As of this report writing, there were eight Office qualified third-party plan reviewers and/or inspectors listed on its website. Third-party contractors are hired directly by the facility, not the Office. A facility must apply to use one of the pre-qualified third-parties for each individual project submitted to the Office. In neither case does the local jurisdiction nor the third party have the authority to approve a facility to commence with construction. The Office retains all authority for final stamping and acceptance of final plans, after these professionals have done their reviews; the Office may also monitor interim construction inspections of these professionals.

## **The Plan Review and Inspection Process can be Complicated, Lengthy, and Informal**

The basic construction plan review and inspection process generally occurs in three phases: 1) Pre-Construction phase, including both the *preliminary plan* and the *final plan* reviews, 2) Construction phase, including *interim inspections* of the construction site as the facility is being built, and 3) Post-Construction phase, including the *final construction inspection*.

Most of the Office's construction oversight occurs during the first two phases. This process has been in place since 2003; prior to 2003, the Office only conducted preliminary plan reviews and final inspections. Since it has control over "all aspects" of healthcare facility construction oversight, the Office has full discretion to define the process, codes, and standards by which it conducts its work.

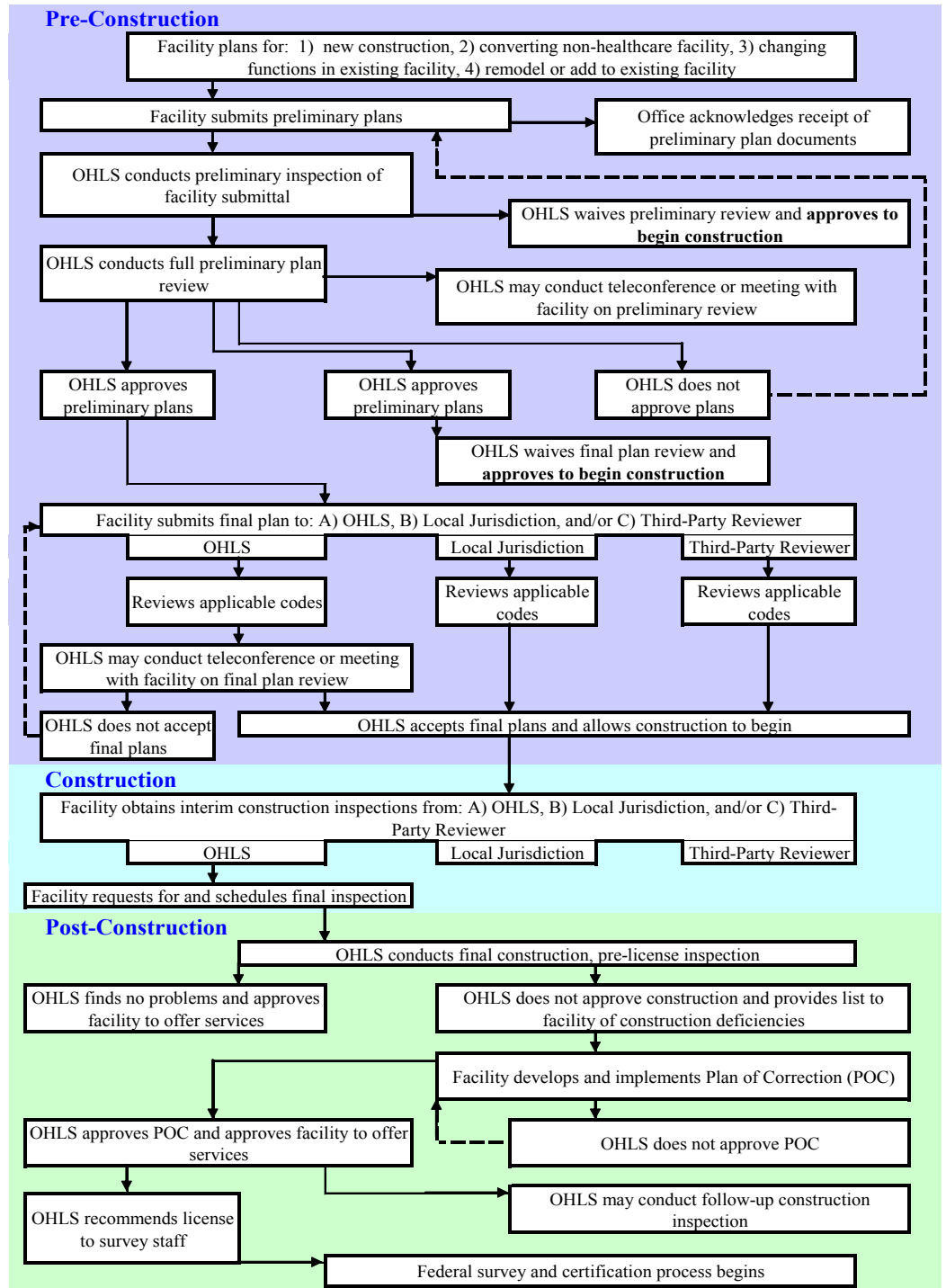
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<sup>1</sup> These four localities have continuing delegated authority for approved codes (generally all or portions of the ICC codes) for all projects submitted in their jurisdiction. The Office did approve Evanston to conduct interim inspections for the ICC building code for only one project in August 2006.

During the course of conducting reviews and inspections, the Office makes decisions on a variety of issues. These decisions include small issues like tracking required project submission documents as well as more complicated issues like code interpretations. This occurs when facilities and/or their design teams differ with the Office on what is required or how a code is being applied.

The plan review and inspection process includes numerous steps outlined in the Department's Chapter 3 Construction Rules. However, the only statutory stipulation on facility construction process is the "preliminary inspection" portion of W.S. 32-2-906(a). In some instances, construction projects may only take a few months or, in the case of "routine maintenance," need not be submitted to the Office for review. We also discovered that many projects take years to be completed. Figure 1.3 (next two pages) shows a flow chart and brief description of the specific steps of the process.

**Figure 1.3**  
**Office flowchart of the plan review and inspection process**



Source: LSO summary of Office interviews and process documentation.

### **Figure 1.3 Description**

#### **Pre-Construction**

During pre-construction on a project, the facility goes through its own planning protocols and then submits its plan documents to the Office for two plan review approvals: 1) the preliminary plan review and approval, and 2) the final plan review and approval. The preliminary plan review must be conducted by the Office; no other individual or agency conducts the preliminary review. The intent of the preliminary plans is to go over major project issues and the documents may not be very detailed or specific. The Office's approval of preliminary plans gives facilities permission to begin to design the final plans; preliminary plan approval is good for 12 months for facilities to submit final plans to the Office. Depending on the facility and its design team, some preliminary plans may be detailed and more or less equivalent to final plans.

The final plans are intended to be detailed blueprints of the actual intended construction for a facility. Final plans may be submitted in phases for large projects and some portions of the plans, like sprinkler system plans, may be deferred submissions and actually get reviewed and approved after construction begins.

The final plan review may be conducted by the Office, by a local government plan reviewer or by a third-party reviewer, or a combination of those three options depending on which codes have been delegated to others. Even if local government plan reviewers or third-party reviewers review and approve final plans, the final plans must still be stamped and approved by the Office before facilities may commence with construction. Facilities have 180 days from the date final plans are approved to begin construction. Facilities may submit electrical plans at any time to the DFPES or the DFPES' delegated local government. The Office does not take responsibility to forward or coordinate electrical plan reviews with the DFPES or local entities.

#### **Construction**

During the construction phase of a project, the facility owner actually builds according to the Office-approved final plans. Deviations from the approved plans must be separately approved by the Office. During construction, the Office requires inspections, termed "interim" inspections, be conducted to make sure construction follows the approved plans, codes, and standards. The Office conducts these inspections unless a facility can use a local government that has been delegated authority to do so. Third-party inspectors may also be employed by the facility to do these inspections. The Office must approve the use of third-party inspectors for each individual project.

### Post-Construction

When construction is finished, the Office will conduct a comprehensive final inspection of the facility. This inspection is not done by a delegated local jurisdiction or a third party. If the Office finds the construction satisfactory according to the plans, codes and standards, then the facility is approved for occupancy and the inspecting Office engineer will recommend provisional licensure, if necessary, to the Office's program manager; if the construction does not add/change the function of a facility, then the Office may not need to issue a provisional license to the facility. If construction deficiencies are found at the final inspection, the facility must develop and implement a Plan of Correction (POC) to address the deficiencies. The Office must approve this POC before the facility can pass final inspection; the Office may conduct follow-up inspections to see that deficiencies are addressed as stated in the approved POC. If the facility requests for and submits all required documentation, the Office will conduct a federal certification survey to begin the process to certify the facility to receive federal Medicare and/or Medicaid reimbursement for serving qualified patients

Source: LSO from information provided by the Office.

## Informality Dominates Key Process Elements

At a basic level, the Office relies heavily on individual engineers' discretion to both review projects according to codes and standards as well as to know when, where, and how to push projects through the process pipeline. Chapter 3 Construction Rules generally do outline a process that includes the requirements for the Office to do plan reviews and inspections. However, the Office has little additional structure and guidance to help both facilities and the Office's engineers set clear and consistent expectations throughout the process. The following seven areas are addressed in greater detail later in this report:

### Office Timeliness

The central issue for most facilities working through this process is the Office's timeliness on plan reviews. From our facility survey, this issue appeared to be the tipping point upon which facilities would reflect their experience with the Office as either positive or negative. Currently, the Office has no defined time frames set in rules or policies to which facilities may anticipate feedback on reviews or inspections, and thus when they may reasonably anticipate completing construction.

### Preliminary Plan Reviews

From our research, we learned that the Office treats preliminary plan reviews much like final plan reviews: they are very detailed, time consuming, often require facilities to submit plans multiple times, and do not seem to assist in easier or more timely final plan reviews. This redundancy impacts the timeliness of any one individual project, but is compounded on all projects working their way through the pipeline at any one time.

### Process and Code Rules

Chapter 3 Construction Rules have always contained both process and code/standards requirements. Additionally, the Office has promulgated regular and emergency Chapter 3 Construction Rules 13 times since 1996 (average once per year). By combining these issues with long and complex projects, and by haphazardly enforcing advice from their Attorney General counsel on what rules to apply to projects, facilities receive conflicting or contradictory correspondence from the Office on which new or changed codes and processes may be applied to their project.

### Process Waivers

The Office has tried to develop different ways to allow projects to go through the process quicker or in an abbreviated form. However, the manner in which it issues process waivers to eliminate or abbreviate plan review steps is inconsistent and cannot be relied upon to help manage or monitor the Office's workload.

### Process and Code Interpretation Appeals

Currently, the Office operates with few avenues for facilities to independently clarify or challenge its application of rules, code interpretations and waivers; the appeal process for the Office's potential licensure denial is too late for facilities to receive quick and cost effective action on their construction projects. This deters facilities from challenging or even questioning Office decisions on plan reviews and inspections.

### Process Tracking and Management

In conjunction with its broad oversight authority and increase in construction projects in recent years, project tracking and management has become more important. Furthermore, with the constant rule changes adopted by the Office, it requires better organization and efficiency. The ability to effectively manage projects among different engineers impacts timeliness, when to apply the correct codes/standards, and the opportunity to continually evaluate Office practices to conform to industry changes. The Office's current project tracking logs do not amount to a project management system.

### Process Policies

The essential elements of the Chapter 3 Construction Rules include the code/standards requirements, clarify what reviews and inspections must be done, and some of the formatting requirements for plan submissions; these are all facility-focused requirements. However, there is little in the rules to guide Office engineers' actions on how the process should play out for facilities.

We offer several examples where the Office has pursued changes to the process, but without formal policy and guidance to help consistently implement these changes. Additionally, in the previously discussed six areas we outlined, each area should be directed with clear operational policies that lead to consistent and reasonable treatment of each project regardless of which engineer conducts the plan review or inspection work.



## The Office Issues State Licenses and Recommends Federal Certification of Healthcare Facilities

Under the direction of the Deputy Director for Operations, the Office is responsible to carry out two main functions: 1) oversee state licensure, including construction of healthcare facilities, and 2) conduct surveys (inspections) of operating facilities so facilities may qualify for federal Medicare and Medicaid reimbursement.

### State Licensure

Licensing of facilities is only required by the State, not the federal government. A licensed facility must be both code compliant in its construction as well as compliant with state operational requirements set in department rules. Though many different facilities may be termed or understood to be healthcare facilities, statute defines 16 different facility types that require state licensure in order to operate (see Appendix C for brief definitions, maps, and additional information on licensed and certified beds and services):

*“Health care facility means any [1] ambulatory surgical center, [2] assisted living facility, [3] adult day care facility, [4] adult foster care home, [5] alternative eldercare home, [6] birthing center, [7] boarding home, [8] freestanding diagnostic testing center, [9] home health agency, [10] hospice, [11] hospital, [12] intermediate care facility for people with intellectual disability, [13] medical assistance facility, [14] nursing care facility, [15] rehabilitation facility and [16] renal dialysis center.” (W.S. 35-2-901(a)(x))*

### Federal Certification

Through a contract with the federal Department of Health and Human Services, Center for Medicare/Medicaid Services (CMS), the Office conducts periodic surveys of facilities for federal certification. It recommends to the CMS which facilities qualify for federal reimbursements of services rendered to eligible patients.

Federal certification is optional and not all state healthcare facilities apply to be certified. Also included in this responsibility, the Office must conduct investigations of complaints made against facilities. Complaints may be received from a number of different sources and may cover issues related to residents’ rights, abuse, dietary concerns, staffing, and environmental concerns.

## Most Office Staff and Budget are Dedicated to Monitor Federal Requirements

The Office has few staff dedicated to monitoring construction

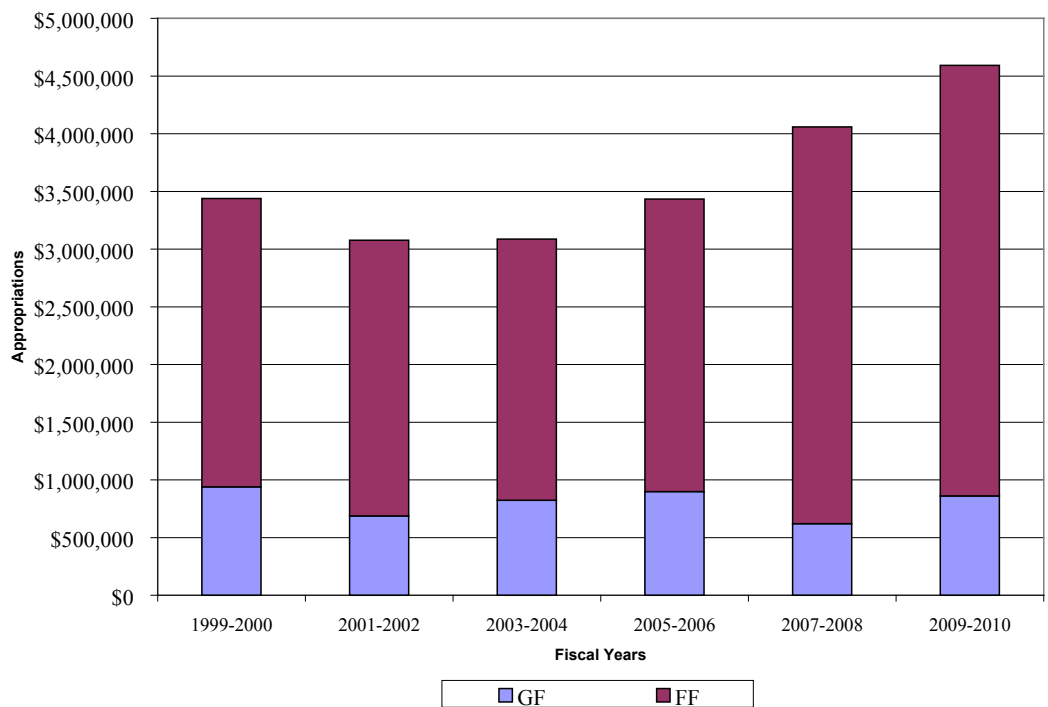
Since licensing is a state requirement and not a federal requirement, state licensing activities are not reimbursed by the federal government; the Office is reimbursed at a rate of approximately 85/15 percent split between federal and state matching dollars for federal certification activities under its federal contract. Of the 21 full-time equivalent (FTE) staff in the Office, 18, including the manager, primarily work on federal certification.

Therefore, the majority of the Office's budget and expenditures goes toward certification activities and is reimbursed by the federal government. Often, it will "piggy-back" state licensing inspections onto federal certification inspections, so the Office must allocate costs to the federal government according to an inspector's activities at each inspection. The remaining three staff are engineers who conduct the plan reviews and inspections of facility construction projects.

Overall, the Office's budget has increased nearly 50 percent to almost \$4.6 million since its low of just over \$3.0 million during the FY '01-'02 biennium; approved positions have remained steady during this budget increase and the proportion of federal funds are currently 81 percent of the Office's most recent FY '09-'10 budget.

Figure 1.5 shows a summary of the Office's biennial budget appropriations from FY 1999 through FY 2010 (see **Appendix D** for budget and expenditure series comparisons). The Office does charge initial and annual renewal state license fees; these fees amount to between \$25,000 and \$30,000 annually and go directly into the state's General Fund. These fees are not intended to account for the Office's cost to administer the construction plan review and inspection process.

**Figure 1.5**  
Office biennial appropriations, FY '99 - '10



Source: LSO analysis of the governor’s budget requests, appropriations summaries, and session laws.

**Federal certification does not impact facility construction standards, save for the NFPA 101 LSC**

The federal certification does not require any state to have a facility licensure program. However, federal certification for some facilities does require state licensure if a state has such a requirement. Since state construction codes and standards must be followed to obtain a state license, meeting the construction codes and standards are generally required to also meet federal certification. Yet the federal government does not stipulate uniformly any building code requirements for healthcare facilities.

For Wyoming, the one area of overlap between state construction requirements and federal certification is the application of the National Fire Protection Association 101 Life Safety Code (LSC); the federal minimum requirement is to meet the year 2000 version of this code while the state requires the most updated 2006 version of the code. This code “addresses those construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic,” but it is not a building code. To ensure continuing safety, facilities’ adherence to the LSC continues even after construction is complete and is a primary element of the periodic and continuing federal certification surveys.

## The Office's Administration of the Construction Process and Oversight Can Improve

The remainder of this report focuses on three main areas. First we provide more description and context to the healthcare facility plan review and inspection process; we make some conclusionary findings (without recommendations) that compare the process both before and after the passage of Senate File 37 from 2003. We also describe these processes as implemented in other states.

Second, we outline multiple findings regarding problems with how the Office has implemented the process. These issues include: 1) no expectations for timeliness of its work; 2) over-emphasis/review of projects' preliminary plans; 3) how the Office confusingly applies the Chapter 3 Construction Rules; 4) inconsistent use of procedural waivers; 5) no clear and consistent method for facilities to independently appeal Office code or procedural decisions; 6) outmoded project tracking system; and 7) lack of clear and consistent policies throughout the process.

Third we address some issues with the Office's oversight and coordination with other entities. Finally, the Office should re-think its strategy for encouraging more local jurisdictions to take over healthcare construction responsibilities since timeliness of its work continues to suffer. Specifically, the Office does not have a consistent method for tracking these professionals' certifications and updates. We also see possible overlap and duplication of effort on facility electrical systems with the DFPES.



# Chapter 2: Confusion in Wyoming over the state’s healthcare facility construction oversight authority, but not so in other states we reviewed.

## Finding 1: The Office did not use its authority to oversee “all aspects” of healthcare facility construction prior to 2003.

From 1991 to 2003, the Office limited its scope of duties with respect to health care facility construction oversight. It chose to only review preliminary plans (interpreted to meet the statutory obligation for “preliminary inspection”) and conduct final construction inspections immediately prior to facility license approval.

In addition, it fully adopted only two major codes/standards on which to assess facilities’ proposed construction plans: **1)** National Fire Protection Association 101 Life Safety Code (NFPA 101) for federal certification purposes; and **2)** American Institute of Architects’ Guidelines for Design and Construction of Health Care Facilities (AIA Guidelines), which focused on engineering, infection control, and safety of facilities.

Furthermore, the Office employed only one engineer to oversee healthcare facility construction in the entire state. More specifically, according to the Office, this engineer only performed preliminary reviews and final inspections. As a result, State monitoring of construction projects was severely limited, with minimal oversight of design and construction throughout the state.

**The Office had broad statutory authority, but did not use that authority to create a regulatory framework for oversight**

Although the Office did not have explicit authority or “jurisdiction over all aspects” of healthcare facility construction as currently expressed in W.S. 35-9-121.1, it did have broad discretion with respect to oversight. Statutory authority at that time gave the Office authority to conduct “preliminary inspection” of healthcare facility construction plans. It also granted expressed authority for rule making: “*shall promulgate and enforce reasonable rules and regulations necessary to protect the health, safety and welfare of patients of health care facilities licensed under this act.*” (W.S. 35-2-906(a) and 908) It does not appear however, that the Office exercised its authority to promulgate comprehensive regulations.

In addition, through two different avenues, the Office could have exercised more comprehensive oversight prior to 2003 under its original statutory authority: 1) collaborative Memorandum of Understanding (MOU) signed with the Department of Fire Prevention and Electrical Safety (DFPES); and 2) multiple Attorney General opinions.

**Department of Fire Prevention and Electrical Safety MOU and various Attorney General Opinions not used by the Office**

From 1998 through 2003, the Office had an MOU with DFPES to allow the Office to use the DFPES or local governments to conduct plan reviews and inspections of facility construction projects. Key points to this agreement included that the Office retained all approval rights and would oversee the DFPES' and locals' work. It also incorporated other building codes not officially adopted in the Offices' Chapter 3 Construction Rules. Despite the MOU's existence, Office officials stated they are not aware of any projects worked under this agreement.

In addition, two significant Attorney General opinions were written in 1993 and in 1999 (see **Appendix E** for the MOU and full opinion texts). In a 1993 agency opinion letter, the Attorney General reasoned that the Office, through the Wyoming Department of Health, had jurisdiction over "most" aspects of healthcare facility construction. More specifically, it had "exclusive jurisdiction" over fire safety standards in these facilities.

The 1999 Attorney General Formal Opinion (Number 99-009) refined the discussion and stated that the Office did have jurisdiction over fire safety and building codes for healthcare facility construction, while municipalities may retain jurisdiction for other "building standards;" in cases of conflict the State requirements apply. In essence, the Office had exclusive jurisdiction over fire safety codes and shared jurisdiction over other building codes, including structural components.

Although the Office had broad statutory authority over healthcare facilities, as well as additional support through the DFPES MOU and the Attorney General Opinions, it did not take the necessary steps to adequately monitor the construction of healthcare facilities in Wyoming.

**Mitigating factors may have contributed to lack of action by the Office**

Two primary mitigating factors may have contributed to the lack of action by the Office to exert its statutory authority prior to 2003: 1) interaction and coordination with locals was inconsistent or non-existent; and 2) adopted codes between the State and localities were changing. These factors may have contributed to an ambiguous and confusing oversight/enforcement structure from locality to locality and between the State and local governments.

Until 2003, the Office did not have official authority to delegate plan review and inspection work to local governments. During that time, only a few communities engaged in some limited review and oversight of healthcare facility construction. However, this occurred only at the discretion of the community, and without consistent or standard coordination with the Office.

In addition, there has been an exemption to the Fire Protection statute for healthcare facilities since 1989 (W.S. 35-9-118(a) (ii)), whereby the delegation of review and



enforcement authority to locals for healthcare facilities was not allowed. Also, not all municipalities had building offices from which to enforce building codes regarding public buildings and healthcare facilities.

Finally, from the mid-1990s forward there was the general abandonment of the Uniform codes among localities, which were developed by, but no longer revised by the National Conference of Building Officials. As different localities looked to find a compatible and comparable follow-up to the Uniform codes, inconsistencies developed in what codes were being applied in different areas of the state, either Uniform or International Code Council (ICC) codes. This made it difficult for facilities and designers to plan and build projects depending on the community in which they lived.

Ultimately in 1998, the State Fire Marshal formed a statewide task force to look into the original drafts of the ICC building codes. The task force recommended the State move to the ICC codes, which created more stability within the State.

## **Finding 2: After 2003, the Office assumed central responsibility for construction oversight authority.**

After the Joint Corporations, Elections, and Political Subdivisions Interim Committee study in 2002, the Legislature in 2003 passed Senate File 37 to provide almost universal authority and jurisdiction to the Office to oversee all licensed healthcare facility construction in the state.

The statute (W.S. 35-9-121.1(a)), referenced in the DFPES fire protection statutes reads as follows:

*“The department of health has jurisdiction over all aspects of construction and remodeling, except electrical installation, of any state licensed health care facility.”*

Other important, specific elements added to the statute include:

- *“...any state licensed health care facility shall meet the minimum requirements established in the National Fire Protection Association 101 Life Safety Code or any other code required to meet federal fire and life safety certification.”* (section 121.1(b))
- *“For aspects of construction and remodeling included in codes adopted by the council pursuant to W.S. 35-9-106, the rules and regulations shall be based on and not exceed the standards of these codes except where federal certification requirements dictate otherwise.”* (section 121.1(c))
- *“Upon written request from any county or municipality, the department of health shall delegate plan review and inspection responsibilities to the county or municipality that has personnel who are certified pursuant to the applicable code.”* (section 121.1(d))

Subsequently, the Office amended the Chapter 3 Construction Rules and adopted the International Code Council (ICC) codes, expanded from pre-2003 required codes shown in Figure 2.1; post-2003 adopted codes, including the ICC codes are shown in Figure 2.2. In addition, the Office developed specific qualification and certification requirements for local plan reviewers and inspectors; these are prescribed in the Office’s Chapter 20 Delegation Rules for local jurisdiction. Finally, it sought to clarify its responsibilities versus those of other governmental entities, with respect to monitoring of planning and construction of health care facilities. The following tables illustrate the evolution of responsibility from before 2003 to present.

**Figure 2.1**  
**Pre-2003 facility construction responsibility matrix <sup>1</sup>**

Area of Regulation	Codes	Process Points			
		Preliminary Plan Review	Final Plan Review	Interim Construction Inspections	Final Construction Inspection
Life and Safety	NFPA 101 Life Safety Code (LSC)	Office	N/A	Office Discretion	Office
Electrical	NFPA 70 National Electric Code (NEC)	N/A	DFPES; or local government	DFPES; or local government	DFPES; or local government
Structural	Uniform Building Code (UBC)	Local Building Authority (LBA) or not at all	Local Building Authority (LBA) or not at all	Local Building Authority (LBA) or not at all	Local Building Authority (LBA) or not at all
	Uniform Mechanical Code (UMC)	LBA or not at all	LBA or not at all	LBA or not at all	LBA or not at all
	Uniform Plumbing Code (UPC)	LBA or not at all	LBA or not at all	LBA or not at all	LBA or not at all

Area of Regulation	Codes	Process Points			
	American Institute of Architects (AIA) Guidelines	Office	N/A	Office Discretion	Office

Source: LSO summary of information presented to the 2002 Joint Corporations, Elections, and Political Subdivisions Interim Committee and other documents.

<sup>1</sup> The Office did enforce Chapter 3-specific standards not referenced in the above codes as well as portions of the NFPA 99 Standards for Healthcare Facilities.

**Figure 2.2**  
**Post-2003 facility construction responsibility matrix**

Area of Regulation	Codes	Process Points			
		Preliminary Plan Review	Final Plan Review	Interim Construction Inspections	Final Construction Inspection
Life and Safety	NFPA 101 Life Safety Code (LSC)	Office	Office, or Office approved local government, or third-party reviewer	Office, or Office approved local government, or third-party inspector	Office
Electrical	NFPA 70 National Electric Code (NEC)	N/A	DFPES; or local government	DFPES; or local government	DFPES; or local government
	NFPA 110 Standards for Emergency and Standby Power Systems	Office	Office, or Office approved local government, or third-party reviewer	Office, or Office approved local government, or third-party inspector	Office

Area of Regulation	Codes	Process Points			
<b>Structural</b>	<b>ICC Building Code (IBC)</b>	<b>Office</b>	<b>Office, or Office approved local government, or third-party reviewer</b>	<b>Office, or Office approved local government, or third-party inspector</b>	<b>Office</b>
	<b>ICC Mechanical Code (IMC)</b>				
	<b>ICC Plumbing Code (IPC)</b>				
	<b>ICC Fuel Gas Code</b>				
	<b>ICC Fire Code</b>				
	<b>AIA Guidelines</b>				
<b>Other Wyoming-specific standards</b>	<b>Wyoming Specific standards in Chapter 3</b>	<b>Office</b>	<b>Office, or Office approved local government, or third-party reviewer</b>	<b>Office, or Office approved local government, or third-party inspector</b>	<b>Office</b>
	<b>NFPA 99 Standards for Healthcare Facilities</b>				
	<b>NFPA 13 Standards for Installation of Sprinkler Syst.</b>				

Source: LSO summary of project research.

### **Finding 3: Comparator states' healthcare facility construction oversight generally is not fully centralized within state health agencies.**

The overall organization of building code and construction regulatory enforcement varies from state to state. However, the compelling difference is that comparator states we reviewed generally organize construction oversight at the local governmental level.

Regardless of whether it is for healthcare facilities or other public or commercial buildings, local governments tend to be the first line of oversight of building construction in their areas. It should be noted however, that comparator states were consistent with Wyoming with respect to Health Departments overseeing NFPA 101 (Life Safety Code) regarding federal certification requirements, as well as the American Institute for Architects: Guidelines for Design and Construction of Health Care Facilities (AIA).

#### **Examination of contiguous states**

We examined six contiguous states to assess the level of continuity or likeness in each state's organization for code and construction oversight for healthcare facilities: Colorado, Idaho, Montana, North Dakota, South Dakota, and Utah. We primarily focused on whether jurisdiction over healthcare facility construction rested at the local level or at the state level.

Because we found that Wyoming is the outlier with respect to state oversight of construction codes, we could not compare processes across the board; however, we did identify various differences with respect to state oversight re: NFPA 101 and AIA, as well as other noteworthy themes.

Figure 2.3 provides a summary on the plan review process when states, through their Health Departments, do conduct plan reviews related to NFPA 101 or AIA.

**Figure 2.3**  
**Comparison of other states' plan review and inspection process requirements**

	Colorado	Idaho	Montana	North Dakota	South Dakota	Utah	Wyoming
<b>Does the Health Department charge a plan review or construction inspection fee?</b>							
<b>Fees</b>	yes	no	no	no	no	yes	no
<b>What are the steps in the Health Department's process?</b>							
<b>Required number of plan reviews</b>	1	1	2	1	1	3	2
<b>Inspections during construction</b>	maybe	maybe	no	no	yes	yes	yes
<b>Final construction inspections</b>	no	yes	yes	no	yes	yes	yes
<b>Does the Health Department or state require or utilize the following:</b>							
<b>Set minimum certifications to conduct plan reviews and inspections?</b>	unknown	yes	yes	no	no	yes	yes
<b>Set timelines for completion of plan reviews?</b>	unknown	*yes	no	no	no	*yes	no
<b>Use or allow the use of contractors to conduct plan review and inspection work?</b>	no	no	no	no	no	yes	yes

Source: LSO summary of research on comparator states.

\*Timelines for completion for both states is 30-days. Although we did not conduct analysis of case files in these states related to timeliness, they both mentioned that some plan reviews may take up to two months. North Dakota also confirmed this, but in South Dakota one official stated plan reviews are completed in two days while a Montana official stated it may take 30 minutes to three weeks.

## Tendency towards local control related to enforcement of construction codes

Although the majority of comparator states' health departments are responsible for overseeing NFPA 101 and AIA, we found a tendency towards local control, with respect to enforcement of structural construction codes (building, electrical, fuel gas, mechanical, and plumbing). Basically, the states we reviewed operate in a more decentralized fashion similar to Wyoming's organization prior to 2003.

Comments from various state and local officials in our comparator states support this assertion:

- Colorado: *The Colorado Constitution (Title XXX) gives broad home rule powers to the municipalities. We are very much a local control state. Each county and city comes up with its own codes, and hopefully the net effect is that they are all using something that is authoritative.*
- Idaho: *Building code enforcement is local. In Idaho, the local jurisdiction is dominant. It is supreme.*
- Montana: *The local building officials are involved too.*
- South Dakota: *If the local jurisdiction doesn't enforce the building code, then we enforce the 2000 International Building Code.*
- Utah: *The local building official does the building code.*

## Most restrictive codes apply

We also found from our interviews with officials from comparator states that almost across the board, comparator states automatically defer to the most restrictive or stringent code in instances when construction codes conflict with NFPA 101 or AIA. Their comments are as follows:

- Idaho: *Usually the Life Safety Code is the most restrictive.*
- Montana: *Generally we discuss it and go with the most restrictive.*
- North Dakota: *Whoever designs the project, designs for the most restrictive code.*
- South Dakota: *The one that is most restrictive applies.*
- Utah: *There are some inconsistencies in code, but the most stringent governs. That is common across industry.*

This certainty appears to direct, without question, how these types of conflicts are resolved in comparator states and may serve to mitigate potential personal conflicts that could arise from conflicting code interpretations. In addition, this manner of



resolution may also allow facilities, local governments and state agencies to more quickly resolve these conflicts:

- Montana: *We try to work with facilities and try to make things easier. We don't make rules or code easier, though. We try to resolve things quickly-in hours, not weeks.*

### Wyoming contrasted

Contrast what we discovered in comparator states to Wyoming, where there appears to be inconsistent or arbitrary direction from the Office when codes used by local jurisdictions conflict with those used by the Office. As such, this confusion may create personal conflict between local and state officials.

Conflicts could be inherent to how Wyoming's system is set up, since building code and construction regulatory enforcement is primarily conducted by two state agencies: 1) DFPEs for state buildings, including schools, and other commercial or public buildings and 2) the Office for licensed healthcare facilities.

Subsequently, oversight is inherently left to the state unless local governments choose to take on these responsibilities. In areas of the state where locals choose not to take on these responsibilities for enforcement and oversight, one or both of the above state agencies has jurisdiction. As discussed previously, this paradigm is opposite in our comparator states.

The logical impact of other local involvement is that each community can oversee construction and have more involvement directly with the facilities. Local communities may also have planning, zoning, and site reviews prior to a project actually getting to the full building design and construction phases.

### Other states require less restrictive plan reviewer certifications

We found that some comparator states (Idaho, Montana, and North Dakota) typically do not require the stricter ICC Mechanical Plans Examiner and Plumbing Plans Examiner certifications for local officials. Rather, they have no requirements at all, or allow the local jurisdiction various options for certification.

As discussed more in Chapter 4 of our report, the Office requires that local building officials receive certification in these areas, which often provides a disincentive for locals to accept responsibility for oversight of health care facility construction at the local level in Wyoming.

### Each state is unique in how it oversees facility construction

In summary, each state organizes its enforcement and oversight structure differently; this includes at which level (state or local) rests the authority and what codes are enforced upon facilities. Therefore, it is difficult to specifically identify benchmarks for application to Wyoming's processes. It was also unclear how different states' organizational structures impact the overall quality and timeliness of their enforcement and oversight.

However, we were able to identify other themes from our overall research as follows:

- Comparator states rely more on licensed engineers and architects to be competent to design and draw plans and specs according to codes and standards.
- Local jurisdictions generally enforce building codes, particularly the ICC or Uniform codes, for healthcare facilities without direct delegation of these responsibilities from the state health agency.
- Other than the NFPA 101 Life Safety Code, other codes, including the AIA Guidelines, are not universally applied to all healthcare facilities construction requirements; each facility type must meet different code requirements per statute or rules of each state. Comparator states generally meet the 2000 version of the LSC.
- Wyoming’s plan review and inspection process is more comprehensive than most comparator states.
- With the exception of Utah, comparator states do not use private sector contractors to conduct plan reviews and inspections.
- Few states require preliminary plan reviews; if they are required they are treated as preliminary and may only be “glanced at” with a short meeting to accompany agency comments. Idaho, Montana and North Dakota have similar statutory language requiring “preliminary inspection” and approval of plans.
- With the exception of Idaho and Utah, comparator states do not generally have plan review completion time requirements.
- If certifications are required for plan reviewers and inspectors, these requirements are set by other state agencies, not the state health agency; state health agencies do not oversee or delegate authority to local building offices.
- Most comparator states do not charge plan review or inspection fees to cover the cost of agency work.
- Final inspection, including NFPA 101 LSC surveys, is the main area of state health offices’ enforcement work.



# Chapter 3: The Offices' plan review and inspection process requires strategic retooling to make it complete, fair, timely and transparent.

## **Finding 1: The timeliness of the Office's work has significantly decreased.**

Since 2004, the Office has attempted to develop a complex regulatory structure to implement its explicit overarching authority to oversee healthcare facility construction in the state. Yet by centralizing its oversight authority, and by creating a confusing regulatory structure, it has also created a new dichotomy.

More specifically, it has struggled to weigh and implement its newfound statutory authority against its ability to work effectively and efficiently; also to complete plan reviews and inspections in a timely manner, but also ensuring that code requirements are being followed.

Under the previous statute, the Office limited its responsibility to preliminary plan reviews and final inspections; the reviews were generally done in a timely manner according to rule requirements, but significant areas of projects did not receive State oversight. Under the new statute, Office responsibilities increased and the resulting work, particularly for plan reviews, became less timely.

Prior to 2003, the Office was generally able to meet its 21-day review rule requirement to complete preliminary plan reviews. Since 2003 however, timeliness for preliminary plan reviews has worsened and the average is more than double (at 44 working days) the previous 21-day requirement.

Figure 3.1 below provides additional information on average and median calendar days and work days for the Office to complete preliminary plan reviews since 1998.

**Figure 3.1**  
Office timeliness on plan reviews (preliminary), CY '98 - '08 <sup>1</sup>

Year	Number of Projects	PPR			
		Calendar Days		Work Days	
		Median	Average	Median	Average
1998	48	25	26	18	19
1999	55	23	28	16	20
2000	47	20	20	14	14
2001	56	19	26	13	18
2002	64	13	25	9	18
2003	60	29	33	21	24
2004	65	18	36	13	26
2005	106	18	52	13	37
2006	123	32	36	23	26
2007	94	70	107	50	76
2008	88	58	80	41	57
Pre-2003	299	22	27	16	19
Post-2003	507	36	62	26	44
1998-2008	806	28	46	20	33

Source: LSO analysis of Office project tracking logs.

<sup>1</sup> The Office began conducting final plan reviews in 2003, but has recorded sufficient review date information for only about 10 percent of all projects submitted. See **Appendix F** for limited data that was available during our review; data is inconclusive.

## No Standards for Timeliness

The Office sets no standards for timeliness

In 2008, the Office eliminated the 21-day deadline for review of preliminary plans in its regulations. In addition, the Office eliminated wording in correspondence to facilities that would bind it to maximum time-frames to conduct inspections, once requested. With increased project submissions in recent years, the Office has been under added pressure related to its workload, and is not able to meet the previous 21-day requirements for plan reviews, nor provide timely inspections upon request.

Because there is no statutory or regulatory caveat to grant implied approval if the plan review is not conducted in a timely manner, there are no incentives for Office staff engineers to limit delays. Furthermore, despite Office officials stating that policy may be the best way to set time requirements for the Office's work, it has yet to address the timelines issue in a formal manner.

The Office gave three reasons for eliminating the 21-day deadline: **1)** the 21-day review standard was arbitrary with no rational basis; **2)** the Office was not going to meet this standard and simply gave facilities something to complain about; and **3)** rules are not focused on the agency's process responsibilities.

These reasons were used to essentially reverse criteria in rules from 1998 to 2008, where time requirements for plan reviews and inspections were formalized. Previous time requirements provided healthcare facilities with minimal assurance related to turn-around time, as well as expectations for project completion. Currently, facilities no longer have this assurance.

Consequently, there is greater uncertainty with respect to facilities' ability to plan out construction projects during the prime construction spring and summer months. One stakeholder stated that if plans are submitted in January, but plan reviews and approvals are not completed until September, it makes construction more difficult and costly in the colder weather months (e.g. having to insulate concrete for foundations, etc.).

These delays also prevent facilities from operating sooner and recouping any of their construction expenses. Since many of the healthcare facilities in the state, particularly hospitals, are publicly-owned, there is added pressure to maintain construction budgets for fear of having to acquire more loans or issue more public bonds to finance project cost overruns. Typically, these facilities have little margin to cover costs of the exceptional delays caused by the Office's project backlog.

**Similar agencies have standards related to timeliness**

The agency most like the Office at the state level is the Department of Fire Prevention and Electrical Safety (DFPES), which must also handle both plan reviews and inspections for commercial and public buildings. Current statute for the DFPES requires all plan reviews be done in 21 working days or the plans are automatically deemed approved without a review; the agency has ten working days to approve plan revisions (W.S. 35-9-108(b) and (c)). In addition, statute requires that electrical inspections occur within five working days of a request (W.S. 35-9-120(b) (iii)).

Moreover, local building officials we spoke with said they complete plan reviews, even for complex projects within one to two months. These same local officials generally have a quick response time for inspections, typically within 24 hours of a request. One locality said they do same-day inspections if facilities or contractors call before 7:00 am in the morning. For different communities, these time expectations were set more by policy than by official ordinance.

## Overall Timeliness Not Improving

**The Office states it is currently caught up on plan reviews**

Office officials told us they are currently caught up with preliminary and most final plan reviews. However, despite this “caught up” status, several stakeholders communicated otherwise. More specifically, they stated they have recently been told by the Office that final plan reviews specifically will take upwards of eight or nine months and the Office has been requesting facilities to use third-party reviewers.

This applies to state-owned and licensed healthcare facilities operated and managed by the Wyoming Department of Health; the same parent agency to the Office. For example, we reviewed two project case files for state-owned, licensed facilities and one encountered a preliminary plan review that took over 200 days, while the final plan review took almost a full year. Increased construction costs are only compounded by the expense of having to find third-party reviewers and inspectors after the Office has already delayed a project.

**Facilities surveyed would like to see better timeliness**

Since facilities work with the DFPES and local building officials, they generally have similar expectations for timely work to be done by the Office. In our survey of healthcare facilities, about 60 percent of facilities disagreed that plan reviews (both for preliminary plans and final plans) are completed in a timely manner by the Office. Over 70 percent thought both preliminary and final plan reviews should take 45 days or less; more than a third expect the reviews to be done in 30 days or less.

It should be noted however, that Figure 3.1 does show improvements in timeliness during some years. For example, from 2005 to 2006 the average time to complete plan reviews decreased from an average of 37 days to an average of 26 days. This improvement was negated however, with an increase in 2007 to an average of 76 days, then with a positive decrease in 2008 to 57 working days. This sporadic up and down improvement in timeliness may indicate some short-term improvement, which has not yet translated to an overall trend.

In addition, according to Office officials, it is in the process of implementing an electronic plan review system, which could speed up the plan review process. For the 15 projects submitted since January 2009 that have gone through preliminary review, Office timeliness has ranged from 8 days to 68 days. The median is 35 and the average is 37 days, but this information is inconclusive to assert that the Office has turned the corner on plan review timeliness. <sup>1</sup>

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<sup>1</sup> We did not judge and analyze the size and complexity of each project.



As for interim and final inspections, facilities also want the Office to act more in line with DFPES' and locals' standards. Over 60 percent of facilities' representatives think interim inspections should be done within seven days of a request; many facilities want these inspections done within a day or two of a request. Facilities offer more allowance on final inspections and the Offices' current two week notice requirement falls within 60 percent of facility responses (see **Appendices G and H** for a full summary of facility survey responses).

**Recommendation: The Office should re-establish in rules or formal policy reasonable time lines for conducting plan reviews and inspections; engineer staff should be monitored on their timeliness per these time lines.**

Despite the Office's current contention that time requirements do not need to be stated in policy or rules, this is counter to its past practices, as well as other similar offices' current standards and practices. The fact that the facilities work with both the DFPES and local governments with similar constraints related to increased workloads, etc., makes the Office's position difficult to justify and defend.

The construction industry is very dependent on timelines and project scheduling. Since the Office has such over-arching jurisdiction and authority in this process, however, healthcare facilities are mostly left to deal with the Office's dictates when it comes to a lack of timelines. In other words, they are not empowered to change the Office's behaviors or lack of policy in this area. Lastly, since the DFPES has its timeline requirements in statute, this may set an example or serve as a benchmark for facilities to discuss when pushing for more concrete and enforceable timelines for the Office.

**Finding 2: The Office's preliminary plan reviews do not assist in quicker or easier final plan reviews for facilities.**

One of the few statutory requirements for this process includes the requirement for "preliminary inspection" of facilities' construction plans. Specifically, W.S. 35-2-906(a) states the following:

*"A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the division for preliminary inspection and approval prior to commencing construction. Significant changes to the original plans must also be submitted and approved prior to implementation. The plans and any changes shall indicate any increase in the number of beds." (LSO emphasis)*

**The Office may be interpreting statute too restrictively**

Although statute doesn't use the term "preliminary plans," the Office has interpreted this statutory language to require its engineers to conduct preliminary plan reviews on all healthcare facility construction projects; this requirement has been in Chapter 3 Construction Rules since 1991.

Subsequently, it has developed a detailed and potentially duplicative review of preliminary plans commensurate with final plans. This causes it to spend inordinate amounts of time on reviewing preliminary plans, which may not be an added value or speed up the final plan review process. Recently the Office has attempted, through rule changes, to clarify that "routine maintenance" of health care facilities does not require plan submission.

**Other building offices do not require the same type of preliminary plan reviews**

In contrast, we learned that other building officials at both State and local levels do not require these preliminary plan reviews. The DFPES and local building officials noted that they only conduct the equivalent of the Office's final plan review on construction projects; this plan review immediately precedes approvals for construction. To be clear, both the DFPES and local building officials may be involved in preliminary discussions on different construction projects, but an official and lengthy preliminary review is not required and is at the discretion of the facility proposing a project.

## **Time-Consuming Process**

**Process for preliminary plan reviews has become time consuming and tedious**

Though generally stated in earlier rule editions, Chapter 3 Construction Rules since 2003 have required various documents, as part of the preliminary plan review process. For example, healthcare facilities are required to submit a functional program plan (to describe the purpose and use of the proposed construction area); an infection control risk assessment (ICRA – to determine level of infection risk and controls necessary during construction); and proposed construction plan documents. However, there is no further direction as to what minimal information or components should comprise these documents, which may lead to questions concerning actual content.

The intent of the preliminary plan review, as explained by the Office, is to go over larger, more generalized issues with a project and the plans may necessarily be sketchy on construction specifics. Yet from the results of our evaluation, the Office often delves into great detail when conducting these reviews, as well as into the content of the aforementioned documents.

We were told by some designers that they submit almost complete plans, more like final plans, at this stage; we also saw this in our case file review. This may contribute to the Office's involved review on some projects in that they are specifically reacting to all the details given them by the facilities' designers, when it may be more appropriate to wait until the final plan review.

**The Office is making some changes to the review process**

Beginning in September 2008, the Office implemented an informal policy to use teleconferences to go over Office plan review comments with facilities related to application of codes and rules. This appears similar to the pre-construction conference option stated in previous Chapter 3 Construction Rules. The Office envisions the conferences as a way to possibly reduce questions and conflict related to the preliminary plan review process.

Stakeholders with whom we spoke provided differing opinions on the use of these teleconferences. Several stated that they do feel more comfortable and better understand the Office's comments and suggested revisions to the plans given the interactive forum. This is contrasted to the past when the Office commented through formal written correspondence.

However, these same individuals believe the absence of any documentation (letter or conference summary minutes) means the facilities are still shooting in the dark to work out all the required plan changes. Toward the end of our research, the Office said it will be adjusting this process further by sending facilities copies of the teleconference meeting minutes.

## **Facilities Question the Benefit of Preliminary Plan Reviews**

**Majority of facilities are skeptical that preliminary plan reviews yield any payoff during final plan review**

In our survey of facilities, we asked whether the Office's required preliminary plan review was duplicative of the final plan review. Based on our survey results, of those answering this question, 19 (54 percent) said it was duplicative and 16 (46 percent) said it was not. Basically, this means that a slim majority of facilities feel the preliminary plan review is not very useful to head off problems prior to the final plan review.

The detailed approach of the Office concerning preliminary reviews generally prolongs the overall plan review and inspection process. As stated above, many facilities/designers submit plans at this stage that are fairly complete and may as well be ready for the final plan review. However, the Office generally adheres to its process and funnels all initial plan submissions through the preliminary stage regardless of plan details.

**The Office acknowledges that requiring multiple submissions of preliminary plans may not be efficient**

To quantify our level of concern with the potential inefficiency of the preliminary plan review process, we analyzed case files to determine the extent the Office required multiple reviews on preliminary plans. We found that in almost half of the 35 project case files<sup>2</sup> we reviewed 17 (or 49 percent) facilities were required to submit preliminary plan documents more than once prior to Office approval to go forward with final plans. Since preliminary plans are intended to highlight issues that should be taken care of in final plans, this level of resubmission indicates that the Office frequently attempts to get perfected preliminary plans prior to authorizing the next step for final plans.

The Office acknowledged toward the end of our study that requiring multiple submissions of preliminary plans may not be the best use of resources. They stated that preliminary plans are intended to be early and rough documents for a project and need not be detailed to the extent of final plans. However, this comment is not consistent with what we heard from facility owners, as well as what we found during our file reviews.

**Recommendation: The Office should re-evaluate the overall need for the review of preliminary plans; if upon further review the Office chooses to eliminate the requirement, it should seek statutory change if necessary.**

Designers we spoke with from Wyoming mentioned that for some inexperienced or out-of-state designers, the preliminary plan review may prove useful and worth the effort prior to final plan submissions. However, the manner in which the Office currently reviews these plans for basically all projects and for all designers is inefficient for what facilities may term as little payoff during final plan reviews.

Even with recent changes made by the Office to reduce the emphasis on preliminary plan reviews, we believe the Office should re-evaluate this processes altogether to determine if the more facility-discretionary approach used by other agencies is warranted.

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<sup>2</sup> We conducted two stages to our case file review. We conducted an early, initial review of 14 case files to summarize general file content. We then conducted a second and targeted review of 35 case files focused on information the Office tracks specific to the process and oversight objectives we identified.

### **Finding 3: Combining codes and standards requirements with process criteria in rules, along with frequent rule changes, causes confusion for Office staff and other stakeholders.**

From 1991 to 1996, the Office operated under one version of the Chapter 3 Construction Rules. However, since 1996 the Office has promulgated ten Chapter 3 rule changes and issued three emergency rules for the same chapter, which equates to 13 rule changes in about 12 years.

These changes occurred as management identified problems with processes, devised various solutions, and revised rules to resolve these issues. Unfortunately while trying to eliminate some problems, additional problems have arisen because local communities and facilities have experienced difficulty understanding and implementing the numerous rule changes throughout the years.

In all these promulgations and emergency rules, the Office has incorporated both the plan review and inspection process elements as well as the codes/standards requirements under the same chapter. Figure 3.2 provides additional information on the dates and purposes for these rule changes as they relate to either code adoptions, process changes, or both (see **Appendices I and J** for more information on the rule changes).

**Figure 3.2  
Office rule changes by effective date, regular or emergency status, and purpose, 1991 - 2008**

<b>Rule Number and Effective Date</b>	<b>Rule Type</b>	<b>Purpose/Explanation of Rule Change</b>
<b>5/29/1991</b>	<b>Regular</b>	<b>Code/Process: New rules adopted according to W.S. 32-3-901 et seq. and 16-3-101 through 16-3-115</b>
<b>6/20/1996</b>	<b>Regular</b>	<b>Code: Section 9 change only. Redefined requirements for ventilation systems.</b>
<b>7/17/1997</b>	<b>Regular</b>	<b>Code: Update the current edition of NFPA codes regarding construction and remodeling health care facilities.</b>

<b>Rule Number and Effective Date</b>	<b>Rule Type</b>	<b>Purpose/Explanation of Rule Change</b>
<b>3/23/1998</b>	<b>Regular</b>	<b>Process: Exemption of adult daycare facilities, the assumption being they represent a social model, not a medical model.</b>
<b>6/16/1998</b>	<b>Regular</b>	<b>Code: Reduces regulation to supposedly reduce construction cost of Wyoming Health Facilities.</b>
<b>10/30/1998</b>	<b>Regular</b>	<b>Process: Additional language to rules for clarification on how to receive technical assistance and submit construction plans.</b>
<b>11/9/1999</b>	<b>Regular</b>	<b>Process: Inclusion of criteria to for licensure of health care facilities.</b>
<b>6/12/2001</b>	<b>Regular</b>	<b>Process/Code: Provision of criteria for plan review and clarification to exceptions of “guidelines for design and constructions of hospitals”.</b>
<b>4/29/2002</b>	<b>Regular</b>	<b>Code: Updated rule changes to keep pace with technology and trends in health care delivery.</b>
<b>11/3/2003</b>	<b>Emergency</b>	<b>Process: Assimilation for compliance with W.S. 35-9-121.1 that gave OHLS jurisdiction over all aspects of construction and remodeling except for electrical installations. <sup>1,2</sup></b>
<b>3/10/2004</b>	<b>Emergency</b>	<b>Process: Assimilation for compliance with W.S. 35-9-121.1 that gave OHLS jurisdiction over all aspects of construction and remodeling except for electrical installations. <sup>1,2</sup></b>
<b>7/15/2004</b>	<b>Regular</b>	<b>Process: Assimilation for compliance with W.S. 35-9-121.1 that gave OHLS jurisdiction over all aspects of construction and remodeling except for electrical installations. <sup>1,2</sup></b>
<b>3/20/2007</b>	<b>Emergency</b>	<b>Process: Owners become responsible for all inspections subject to reference by the Office at any time. The Office determines applicable building system and testing requirements on a case-by-case basis depending on size and scope of project.</b>

Rule Number and Effective Date	Rule Type	Purpose/Explanation of Rule Change
7/22/2007	Regular	<b>Process: Emergency rules expired; therefore reversion to previous rules is warranted.</b>
4/3/2008	Regular	<b>Process/Code: New amendments to rules due to situational constraints of time due to significant increases in construction and remodel project submissions.</b>

Source: LSO summary and analysis from rules archived with Secretary of State’s office and the Legislative Service Office.

<sup>1</sup> The amendment includes provisions to adopt International Building Code, International Mechanical Code, International Plumbing Code, International Fire Code, National Fire Protection Association 101 Life Safety Code, and NFPA 99 Standard for Health Care Facilities. Also includes provisions for plan review and inspection to ensure complete reviews and on-site inspections.

<sup>2</sup> The NFPA 101 LSC and portions of the NFPA 99 codes were already in rules prior to 2003 statute change.

As a result of the numerous rule changes, and without more formal and written guidance, confusion often occurs with respect to the regulatory framework. For example, we found the Office regularly enforces varying rule editions for projects at any given time, which leads to confusing and contradictory correspondence to facilities related to approval of plans and conducting inspections. This may generally lead facilities to conclude that the requirements are the result of individual engineer preferences and prerogatives rather than the formal written rules; this also gives a perception that the Office is being arbitrary in its decisions.

**The Office tries to provide some guidance, but falls short in consistency**

The Office’s understanding and informal policy, on advice from the Attorney General, is to apply the rules in place at the time a project’s preliminary plan is submitted; these rules are the applicable rules for the duration of the project as it moves from beginning to end of the plan review and inspection process. In other words, rules applicable to the review of preliminary plans at the time of plan submission would apply, as well as rules applicable to inspections at that time, even though inspections might be years later.

While attempting to be consistent with advice from the Attorney General, a common feature of the Office’s correspondence to facilities includes a statement on the appropriate effective date of the applicable rules for the project. This therefore stipulates the by which a facility has been reviewed or inspected. The Office’s form letters are generally worded as follows (example for preliminary plan approval):

“Thank you for submitting the preliminary plans concerning the above-mentioned project. We have conducted a preliminary inspection of your project documents and we find them acceptable to proceed with the final plans.  
Please ensure the final plans and specifications reflect the following rules, regulations, codes, and standards:



1. State of Wyoming Department of Health Rules and Regulations for Construction of Healthcare Facilities, effective [effective date].”

Letters go on to list eleven other codes/standards requirements and process considerations that are also individually referenced within the stated rules.

However, the basic confusion occurs from the general statement, “please ensure the final plans and specifications reflect the following *rules, regulations, codes and standards.*” (LSO emphasis) This general statement encompasses numerous code and process requirements, which may conflict with the more specific notations delivered later by the Office, via approval and denial letters. For example, from our case file review, we documented in some letters the Office will state the general rules effective for a project upon submission of the preliminary plan, only to contradict the required rules with the codes/standards stated later in the letter that were effective at another point in time.

**Facilities must constantly hit a moving target**

Facilities and designers expressed confusion and frustration trying to determine which codes and standards to follow. Architectural plans are intended to be designed under specific code requirements in force at the time of project submission. Due to the lengthy Office plan review process and the frequent rule changes by the Office, however, additional and more restrictive standards go into effect during the course of a project.

Whether intentional or not, the Office will often apply the more recent standards, even though the preliminary plan was submitted at a previous date. This further increases facilities’ uncertainty about the process and erodes confidence in the Office and its decisions.

Additionally, as shown later in the report regarding appeals of Office decisions, applying codes and standards have many gray areas requiring the Office to make interpretations and judgments. With the constant changing of rules and the disjointed way in which the Office applies these rules, facilities are at an additional disadvantage knowing when and where they may need to clarify or challenge Office decisions.

**Contradictions not limited to plan reviews**

These contradictions are not limited to plan reviews, as seen in Figure 3.2, which is an excerpt from a letter sent to a facility detailing deficiencies found during a final inspection. Although we incorporate this example into our report, there are instances where letters address codes and standards related to the plan reviews as well.



**Figure 3.2**  
**Excerpt from Office final inspection letter to facility, 2008**

On November 7, 2008, at your request, \_\_\_\_\_ conducted a final inspection of the sleep lab under the critical access hospital licensure program of the above-mentioned project. This inspection was to determine compliance to the *State of Wyoming Department of Health Rules and Regulations for Construction Rules for Healthcare Facilities*, effective 7/15/04, and the *Life Safety Code* 2006 Edition. The following deficiencies were identified as a result of the inspection.

1. **Aerators:** As required in Section 5 (b) (iv) (E) of the *State of Wyoming Department of Health Rules and Regulations for Construction Rules for Health Care Facilities*, effective 7/15/04. "In ambulatory surgical centers, birthing centers, freestanding diagnostic testing centers, hospices providing inpatient care, hospitals, medical assistance facilities, nursing care facilities, rehabilitation facilities and renal dialysis centers all sinks shall be provided with spray heads or equivalent. Aerators shall not be used."

The regulations, codes, and standards were not met as evidenced by:

- a. Not all sink faucets were provided with spray heads and prohibited from the use of aerators. During the inspection, the faucets in the bathrooms had aerators.
2. **Ramp Construction:** As required by Section 7.2.5.3.1(2) and Section 7.2.5.3.1(4) and, as referenced by Section 38.2.2.6 of NFPA (National Fire Protection Association) 101, *Life Safety Code* 2000 Edition, "Ramp construction shall be as follows:...(4) The ramp floor and landings shall be solid and without perforations," and as required in Section 302.1 of the *American National Standard, Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1-2003*, "Floor surfaces shall be stable, firm, and slip resistant, and shall comply with Section 302." And, as required in Sections 302.3 of the *American National Standard, Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1-2003*, "Openings in floor surfaces shall be of a size that does not permit the passage of a ½ inch diameter sphere, except as allowed in Sections 407.4.3, 408.4.3, 409.4.3, 410.4, and 805.10. Elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel."

Source: Office case file archives.

The above referenced project was submitted in 2007 and was required to follow the Chapter 3 Construction Rules effective July 15, 2004. Despite this circumstance, the letter states the facility must meet the July 15, 2004 effective rules (for which the 2000 Life Safety Code was enforced), only to contradict those rules by stating the facility must follow the 2006 Life Safety Code.

Further down, it does show that the Office's engineer did in fact inspect to the 2000 Life Safety Code. Finally, the Office inspected the facility to the 2006 ICC codes when the July 15, 2004 rules stipulated the 2003 ICC codes in effect at the time the project was submitted to the Office shall be followed.

Generally, this provides an example that shows the Office has changed rule requirements on projects as they move through the process. This type of situation impacts both the codes/standards upon which a project is reviewed and inspected, as well as whether changes to the process must be adhered to by a facility.

**The Office informally contradicts the AG's advice**

To complicate matters, the Office in its attempts to provide facilities the option of using third-party reviewers, which became available in 2008 through rule change, has created another ambiguity for facilities to sort out. On one hand, the Office communicates the intent of the AG's advice, but on the other hand provides an opportunity for facilities to do the opposite by adhering to more recent codes.

In the case files we reviewed, we saw no documentation that facilities were offered or requested to be held to the latest edition of rules, with respect to third-party reviewers or other areas. Nor did we see any documentation by facilities requesting to move to the more current rule edition to comply with different codes or process changes.

In fact, we saw the opposite, where facilities request authority to use codes and guidelines under which projects were originally submitted. This usually results because of the Office's backlog, which causes projects to be reviewed after new rules are adopted.

We also found that for another project, the Office required a facility to meet the formal third-party inspector approval process toward the end of the project after the April 2008 Chapter 3 rules were promulgated. This occurred even though the facility had already met the requirement per the 2007 emergency regulations requiring the use of third-party inspectors, but without formal Office approval.

In our second sample of 35 project case files reviewed, contradictory statements regarding the effective rules required for projects based on their submittal dates or the contradictory application of rules occurred in 11 (or 31 percent) of the cases. Based on this evidence, it appears the Office frequently applies the most current rules to projects based on whatever submission is the most recent for a project. Decisions by the Office do not appear to be based on the original date of project submission, or because facilities request review using the most recent rule or code.

**Emergency regulations also complicated matters**

Another complicating factor in how and when to apply different versions of the Office's Chapter 3 Construction Rules is the adoption of emergency rules, which has happened three times since 2003. When emergency rules are adopted, the revised provisions supersede the conflicting provisions in the regular promulgated rules; where no revisions have occurred, the regular promulgated rules are still in effect.

As such, many projects were required to meet two different sets of rules when these projects were submitted at the time emergency rules were active. The Office's emergency rules have addressed both process changes and code/standards changes, which also contributes to facilities' confusion.

## **Recommendation: The Office should promulgate codes/ standards and process elements into separate rules to ensure that codes/standards and processes are consistently applied throughout the duration of each project.**

With the next promulgation of Chapter 3 Construction Rules, the Office should consider separating the codes and standards for facility construction from the plan review and inspection process requirements. Codes and standards are generally updated every three years by their respective national code-writing organizations; Office code/standards rules likely do not require more frequent promulgations.

Process changes may result in more frequent updates to rules in order to maintain consistency with the Office management's vision for greater delegated oversight to locals and third parties, workload changes, and technology. These differences in purposes between codes/standards and the process necessitate separation of those requirements for easier understanding by facilities and easier tracking by Office engineers. For example, as noted on page 55, process rules should be updated accordingly to incorporate by reference the required applications and other forms.

## **Finding 4: The Office's application of project process waivers to manage project plan review workload is inconsistent.**

One way for the Office to get a better handle on the project workload is to determine if every project submitted to them actually needs to go through both the preliminary and final plan reviews. Therefore, we analyzed data on the proportion of projects for which the Office issued one or both plan review waivers over calendar years 2007 and 2008.

We found a significant increase in the use of these waivers in the latter part of 2008; 14 of the 29 projects submitted the last four months of the year had one or both plan reviews waived. This is logical given the Office's increased workload; however, we cannot confirm the reasonableness of these waivers. We found this proportion, almost 50 percent, was much higher than the 15 percent rate (24 of 157) for projects submitted over the preceding 20 months.

### **Waiver decisions are not timely**

In the same analysis, we found that the Office takes significant time to make waiver decisions. For the 38 projects that received waivers in 2007 and 2008, the average time from project submission to the Office decision to waive a required review (usually the final plan review) was 36 days. Interestingly, for some projects, this initial assessment occurred prior to waiving the final plan review. However, for most

projects, this initial assessment took the same amount of time that it took to conduct a full preliminary plan review.

**Rules allow for waivers, but without specific criteria**

Current Chapter 3 Construction Rules allow the Office to waive one or both of the preliminary and final plan reviews. Specific language in rules are as follows:

*“The requirement for preliminary plans may be waived at the sole discretion of the Department, based on the nature of the project.” (section 6(a) (ii) (C))*

*“Based on a preliminary plan review, the final plan review may be waived at the discretion of the Department, based on the scope and nature of the project.” (section 6(a) (i) (C))*

Rules also state that projects defined as “routine maintenance” and “emergency repairs” may deviate from the standard plan review and inspection process. Facilities are instructed that routine maintenance projects do not have to be submitted through the process and that emergency repair projects may go through a post construction approval process. Rules do not state whether interim or final inspections may be waived by the Office, however.

In contrast to the Office, the DFPES has explicit statutory criteria setting out when plan reviews are not required by the department. The criteria include a monetary threshold on project cost and certain size and types of buildings that need not go through the department’s plan review and inspection process.

**Office discretion is to review all projects**

From our research, facilities appear to operate on the assumption that despite rules, the Office wants to see every project, no matter how small. This inherently limits the effectiveness of these rule provisions to keep the Office working only on projects for which reviews and inspections really need to be completed.

Corroborating this perception, and maintaining true to the rule stipulation that waivers are “at the sole discretion of the Department,” the Office told us that there really is no way to tell if a project needs to be reviewed until the project is submitted. This included how to apply the definition of routine maintenance. By this reasoning, no project big or small can reasonably be undertaken by a facility without first submitting it to the Office. This may cause unneeded time delays for some projects as well as increased project costs and delay of patient services.

In addition, stakeholders voiced concern that sometimes by performing maintenance or repairs the Office brings in larger portions of an existing facility that are not part of a proposed project design or planned construction. Furthermore, we recognized in our analysis of the project tracking logs that many projects that appear not to impact licensed portions of healthcare facilities also get reviewed by the Office, including parking garages, private doctor’s offices, private bathrooms and utility lines going to a facility site.

**Recommendation: Due to its limited staff resources, the Office should more effectively and efficiently manage projects by setting and communicating clear waiver criteria for facilities.**

Though the DFPES is currently implementing adjustments to its processes and is working with the Joint Corporations, Elections and Political Subdivisions Interim Committee on statutory changes to its authority, it provides a good example of how not all projects must go through every step in the process. The Office should consider using some of the criteria DFPES uses in its waiver decisions in defining thresholds for when to expend its limited staff resources.

**Finding 5: There is no clear or consistent appeals process to check Office code application and interpretation of decisions prior to final licensure.**

Statute and rule provide few avenues for facilities to clarify or check the consistency or reasonableness of Office code application and interpretation decisions. In addition, there does not appear to be an appeals process for waiver or variance decisions.

The Office stipulates that the ultimate licensing decision at the end of a project is the time when formal challenges to Office decisions can be made. They cite W.S. 35-2-905 (a) and (b), which discuss actions specifically with respect to the issuance or revocation of licenses. However, facilities may not want to wait until the end of a project and potentially face reconstruction costs to dispute or question Office decisions.

The Office does not provide for a consistent and clear dispute or clarification process for appeals. The issues are twofold: 1) each type of decision has a unique and generally informal path to settle disputes, creating inconsistency in how facilities and the Office handle problems from project to project, and 2) the Office does not have a method to gain consistent and timely independent review of Office decisions.

**Appeals process exists for DFPES and at the local level**

Lack of an appeals process is in contrast to the most comparable Wyoming agency – DFPES – which provides in statute that appeals of code application or interpretations go to either its Council on Fire Prevention and Electrical Safety in Buildings (Council) or to the State Electrical Board. If the petitioner is not fully satisfied, the issue may then go to district court.

**Some Office decisions may be reviewed**

Also, W.S. 35-9-121.1(d)(ii) provides an appeals process for facilities that are located within a local jurisdiction with delegated authority. More specifically, if facilities wish to appeal a local decision with respect to code interpretation, etc., they may do so through an appeals board established by the Department of Health made up of representatives of the department and the Council.

Reviewable decisions are limited and most aspects are at the discretion of the Office or department director. Two types of issues are allowed outside review. First, license disputes may be appealed to an administrative hearing according to the Administrative Procedures Act.

The second issue pertains to code interpretation decisions as defined in rules. These decisions may be sent to the International Code Council, CMS, the AIA, or other code/standard making bodies.

Waiver decisions, which allow a facility to bypass a specified process at the discretion of the department, as well as variances, which allow the facility to meet the intent of the code by another means, are not appealable, according to the Office. These decisions are made within the department and Office, often by people who collaborate with the manager and consulting engineers making the original decision.

Although the Office insists waiver and variance decisions may not be appealed outside of the department, it is unclear if such restrictions exceed statutory authority. Stated another way, just because the Office has not established an appeals process does not mean decisions related to waivers and variances are not appealable.<sup>3</sup>

Stakeholders indicate they are required to do things one way on one project and a different way on the next project, with no redress. One example of ambiguity without appeal pertains to which code prevails when local jurisdictions with delegated authority use construction codes that conflict with fire safety codes.

Unlike conventional code application, the Office does not always allow the local's stricter codes to apply. There is no objective process to review these decisions during the construction phase of a project when changes are most appropriate and cost effective.

<sup>3</sup> W.S. 16-3-114 outlines the right for judicial review of any agency action or for an individual affected by an agency rule.

**Recommendation: The Office should establish in rules and policies a clear appeals process for facilities to use to clarify or challenge Office decisions in an independent forum. It should also seek advice from the AG’s Office to see if it has the statutory authority to truncate the appeals process for waiver and variance decisions.**

We understand that any appeal may impact the timeliness of a construction project. Facilities should be assured that they may access independent professional advice to provide a check and balance to Office decisions. This is a matter of basic due process on government decisions and actions, especially when such decisions can financially harm a health care facility.

This is particularly important since the Office has such overarching authority on facility construction. The Office may want to consider exploring the possible use of the DFPES’ Council to hear facility appeals in lieu of creating another, duplicate entity. Allowing other professionals versed in codes and plan review, inspection, and construction processes would assist the facilities and Office in getting clear and possibly quicker interpretations.

**Finding 6: The Office’s project paper file and electronic tracking systems are cumbersome and ineffective for review and oversight.**

As far back as 1997, the Office relied mostly on its paper files and later a basic table to log and track projects. This tracking system consisted of only sporadically recorded data in fields related to project names, descriptions and the preliminary plan reception and final inspection dates; the Office even tried to gauge its adherence to the (then required) 21-day review deadline stated in rules.

In later versions of the tracking log, the Office began to assign each project an identifying number. We found that in our own analysis of these logs, the Office only recorded enough information to determine timeliness on about 80 percent of preliminary plan reviews and for only about 10 percent of final plan reviews (final plan reviews recorded since 2003).

Because the Office has not had the data analysis capability to evaluate each part of its process to determine inefficiencies, duplications or other resource drains, it will



be difficult for it to move from a reactionary perspective of problem-solving towards proactive policies.

**Several changes necessitated a better tracking system**

Since 2003, the Office is responsible not only for additional projects, but also checking for compliance to more codes and becoming increasingly involved with final plan reviews and ongoing interim construction inspections. Engineering staff are not assigned to oversee specific categories of projects such as ambulatory surgery centers, but instead projects are assigned as they filter into the Office to the next available engineer.

The Office also uses a rotation cycle where each engineer spends one week per month on the road to conduct inspections. The engineer in the field conducting inspections may be inspecting projects when he has not been the primary person reviewing plans. A more comprehensive strategy is necessary for the engineers and the Office's manager to respond to questions from facility owners.

**The current paper and electronic files are not user-friendly to track or recall project information**

In 2008, the Office implemented an electronic logging system that shows not only when projects are received, but also where they are in the process. This process, while an improvement on previous logs, has a number of limitations primarily because it remains word processor-based. For example, using a Microsoft Word document does not lend itself to effectively collecting and analyzing various types of statistical information.

The logs do not provide a clearly recognizable picture of the workload and progress as they inconsistently provide several key components from project to project: interim inspections; when final plans are received; Office decisions; dates and types of correspondence; etc.

Also, project records are not easily sortable and information retrieval can generally only occur on a project-by-project basis. Aggregating and reporting on the information contained in the log is problematic and cannot be used easily to analyze timeliness or other performance measures according to the Office's informational needs.

When we conducted our case file review of sample project files, we found the majority of files lacked consistent and fundamental information. In many cases, documents were not in order and often were misfiled or absent. A key example of where Office documentation is sparse relates to the process of interim inspections during construction. Few case files we reviewed had this documentation and the current project tracking log has few references to when and where interim inspections were noted as scheduled or were completed.



**New log tracking policy cannot be easily met**

Because the Office has trouble recalling project documents and actions, it is not able to do more than the most cursory analysis, coordination or verification of its information. Nor is it able to prove it consistently conducts interim inspections, which is a vital component of the construction oversight process.

In March 2009 the Office instituted its first and only Office-specific formal policy dealing with the Office's need to track projects' progress on a monthly basis. The policy states that the supervising engineer will review the project log monthly and look at specific issues with each project to resolve outstanding project submittal, review, and inspection issues.

For example, if a facility has not submitted final plans for review and approval within 180 days of the preliminary approval, the Office will track progress and follow-up with the facility. With dozens of projects active at any one time, however, meeting this policy with reportable results will be time consuming in addition to regular engineer plan review and inspection duties.

The Office now has increased responsibilities, additional projects, and more staff creating varied informational needs. Relying on the current paper files and a cumbersome Microsoft Word document is inadequate. While the Office is in the process of obtaining the technology to review plans electronically, we believe an efficient and effective record keeping system should be a high Office priority.

**Recommendation: The Office should re-evaluate its paper and electronic record keeping requirements and develop a system to better recall and analyze project data and information.**

Even if the number of projects is reduced, or the workload is lessened by more local jurisdictions or third-party reviewers, the Office stills bears responsibility for assuring coordination and some level of oversight that the projects have been parsed out to all the relevant and correct entities.

This level of coordination and customer service requires a more sophisticated interface between data and documentation and a more rapid analytical response to changing industry and technology. DFPES is implementing its own improved electronic system which the Office may find compatible and superior to the current one.

## Finding 7: The Office lacks formal policies to provide guidance and assist consistency in its work processes.

Prior to 2003, written policies and procedures were not as critical because of the Office's limited role in the construction process. In addition, it only had one staff to make decisions and monitor construction within a framework of rules that set out limited expectations for the Office.

With the broad and explicit statutory authority currently given to the Office, it did adopt additional codes, process requirements, and added staff to try to meet its responsibilities. However, consistent guidance through policies, procedures, or directives has not been forthcoming, which is essential to successful implementation of regulatory change.

We were unable to find evidence that the Office spent any time strategically analyzing staff resources needed to take on the additional code and process responsibilities since 2003. Instead of working to develop consistent guidance for facilities and local governments, it continued processing each project and each detail with little regard to time and cost.

And, because the Office was no longer able to meet the previously stated 21 day deadline, it removed that benchmark instead of working proactively to handle its newfound responsibilities. To date, the Office has not developed formal written policies and procedures to provide effective guidance and oversight of the plan review and inspection process.

### Lack of policies cause the Office to become reactionary

We found that the Office conducts its work in an inconsistent and reactionary manner dealing with crises rather than dealing systematically with the process. Four examples below show some of the Office's attempts to change process, but without setting clear policies and guidance for engineer staff.

**Project Prioritization:** As projects increased and timeliness suffered, a fact the Office acknowledged in its 2005 strategic plan, the Office engaged in stop gap measures to manage project workload. For example, it devised a system whereby facilities would schedule their plan reviews months in advance. The problem was that the Office did not require all facilities to schedule plan reviews.

Also, we heard that after receiving pressure from various officials, groups, etc., the Office would reprioritize and move some projects forward in the process, or would drop some incomplete projects in favor of those that happened to schedule. The Office also focused sometimes on batches of plans, whether preliminary or final plans, to move a group of projects to the next stage, while other plans sat idle for review.

**Implementation of March 2007 Emergency Rule:** Since the Office began to conduct interim construction inspections, the Office has tried different methods to manage this workload among the staff. When plans became backlogged, the Office issued the emergency rule *requiring* interim inspections to be done by third-party inspectors. This idea of outsourcing to reduce workload is admirable, but without any guidance, became burdensome to facilities.

For example, the emergency rule left many facilities that submitted projects in earlier years stranded, while looking for approved inspectors. For a time, the Office did not conduct these inspections, and in one case we reviewed, did allow a local government that did not have delegated authority to cover all the inspections for the facility. Even though the regulations provided a viable option to relieve the Office's workload, appropriate guidance was not provided for implementation.

**Inspections:** Seeking consistency, the Office attempted to set up inspection regions with assigned staff. However, its efforts did not account for differing rates of construction around the state. This resulted in overburdened staff related to workload and travel.

And, under the current rotation of engineers responsible to inspect for one week per month, the Office is not well suited to offer quick and reasonable turnaround for projects requiring inspection. Moreover, facilities noted they have been told informally that the Office will only conduct interim and final inspections on certain days of the week and weeks of the month.

**Application Forms and Checklists:** In an attempt to provide facilities and local governments guidance on suggested application forms and checklists, the Office provides access on its website to various documents, but does not require their use. Our case file review revealed sporadic use of these materials by facilities.

The Office also stated that forms may be used by anyone involved in a project, whether it is an engineer employed by the Office or facility design and construction team members. There is no standard direction given by the Office on the use of forms or at which point in the process they should be used. For example, the Office has an application form for final plan review, but not the preliminary plan review. This is despite its interpretation that the preliminary plan review is statutorily mandated.

Furthermore, preliminary plan submission components are outlined in the Office's Guidelines to Chapter 3 Construction Rules. However, similar to the inconsistent use of application forms and checklists, we could not identify when or how the Office utilizes these guidelines to maintain adherence to the codes and rules for each project. This type of inconsistent guidance through forms, checklists, and the guidelines is confusing at best for facilities.

**“Discretion” dominates the Office’s work philosophy**

Several factors contribute to the lack of policies guiding the Office’s work. Primarily, the Office has maintained control and discretion in most aspects of their work; the Office operates on a “case-by-case” basis for each project throughout the process and does not address problems on a larger scale. As a result, lessons learned from interaction with the Office on one project for a stakeholder are not consistent to smooth the way for their next projects.

Another factor contributing to the absence of formal and standard policies and procedures is that the Office has unsuccessfully tried to implement both large and small process changes through formal rule changes. These frequent rule changes, while also removing key customer service controls like timelines, make formalizing Office practices and protocols at the policy level more challenging to develop, maintain and update.

**Recommendation: The Office should develop clear and sufficient policies to ensure consistency throughout the Office’s processes.**

Fair and consistently applied policies, particularly for the process areas we have listed in this chapter, will go a long way toward assuring continuity, objectivity and fairness go into each decision made by the Office. Internal operational policies provide continual guidance to hold the Office and the engineers accountable and supplement the requirements set up in statute and rules. The use of applications and forms should also be formalized and incorporated as part of the Office’s rules, or annotated as formal policy.

# Chapter 4: The Office's processes and standards for oversight and coordination with other agencies are not adequate.

## **Finding 1: The Office has not proactively carried out its statutory responsibility to properly delegate local authority, thus creating additional workload and lack of timeliness.**

The Office has statutory authority to delegate “plan review and inspection” work to local governments. However, it has not been proactive to ensure that local governments accept authority over health care construction projects; it has no formal or consistent approach to encourage local communities to accept delegated authority.

Although the Office in 2004 implemented its rules related to local delegation, only four Wyoming cities have taken delegated authority over construction of health care facilities: Casper, Gillette, Lander, and Sheridan. The Office has not been consistent with its requirements for local jurisdictions to meet in order to receive local delegation.

As a result of so few municipalities accepting jurisdiction, the Office has had trouble meeting its workload generated by the increase in construction projects over the last few years. It is also less timely in its review of preliminary and final plans, which causes various problems for facility owners.

**Office requirements are much more stringent than enabling statute**

According to W.S. 35-9-121.1(d), “the Department of Health shall delegate plan review and inspection responsibilities to the county or municipality that has personnel who are certified pursuant to the applicable code.” Pursuant to this statute, under the department’s Chapter 20 Health Care Facilities Jurisdiction and Delegation rules promulgated in July 2004, the Office set out criteria that local building officials must meet to qualify for delegation.<sup>1</sup> The following is a list of these plan review and inspector certification requirements:

- 1) Building Plans Examiner – certified by the International Code Council.
- 2) Fire Plans Examiner – certified by the National Fire Protection Association.
- 3) Mechanical Plans Examiner – certified by the International Code Council.
- 4) Plumbing Plans Examiner – certified by the International Code Council.
- 5) Commercial Building Inspector – certified by the International Code Council.
- 6) Fire Inspector I – certified by the National Fire Protection Association.
- 7) Commercial Mechanical Inspector – certified by the International Code Council.
- 8) Commercial Plumbing Inspector – certified by the International Code Council.

<sup>1</sup> The same qualifications were set out in Chapter 3 Construction Rules for third -party plan reviewers and inspectors.

**Office requirements prevent local jurisdictions from pursuing delegated authority**

## No Incentives for Accepting Delegated Authority

As seen above, the Office requires that local jurisdictions have personnel who are certified generally as ICC Building Plans Examiners, as well as more specific plan reviewer certifications: ICC Mechanical Plans Examiner and ICC Plumbing Plans Examiner. These restrictions do not encourage local jurisdictions to pursue delegated authority.

Although most local jurisdictions have certified Building Plans Examiners, they do not have personnel who are certified in the newer and more specialized plumbing and mechanical plans examiner certifications. As a result, local jurisdictions do not technically qualify to receive delegated authority for this type of plan review, even when they have requested such authority. Additionally, these specialized certifications have caused hesitancy among some communities to pursue delegated authority from the Office.

Some of the building officials we interviewed who stated they have certified building plans examiners also have plumbing and mechanical inspectors who provide assistance related to more technical plumbing and mechanical aspects of construction plans. Additionally, local officials mentioned that inspectors who have their “master” professional status have much higher qualifications than the plan reviewer certifications required by the Office.

Figure 4.1 provides information on the four communities which have been granted delegated authority.

**Figure 4.1**  
**Local jurisdictions' scope of authority and certified personnel qualifications <sup>1</sup>**

<b>City</b>	<b>Date Delegated Authority Granted</b>	<b>Scope of Authority</b>	<b>Certified Personnel <sup>2</sup></b>
<b>Casper</b>	<b>July 2006</b>	<b>International Code Council (ICC) Codes: Building, Plumbing, Mechanical, Fire</b>	<b>Certified Building Plans Examiner and Inspector, Certified Plumbing Plans Examiner and Inspector, Certified Mechanical Plans Examiner and Inspector, Certified Fire Plans Examiner and Inspector</b>
<b>Gillette</b>	<b>ICC Codes: February 2008  All Other Codes: September 2008</b>	<b>All healthcare facility construction codes and standards including ICC codes, NFPA codes, AIA Guidelines, and Office's Wyoming-specific construction standards</b>	<b>Certified Building Plans Examiner and Inspector, Certified Plumbing Inspector, Certified Mechanical Inspector, Certified Fire Plans Examiner and Inspector</b>
<b>Sheridan</b>	<b>February 2008</b>	<b>International Code Council (ICC) Codes: Building, Plumbing, Mechanical, Fire</b>	<b>Certified Building Plans Examiner and Inspector, Certified Plumbing Inspector, Certified Mechanical Inspector, Certified Fire Plans Examiner and Inspector</b>
<b>Lander</b>	<b>December 2006</b>	<b>International Code Council (ICC) Code: Building</b>	<b>Certified Building Plans Examiner and Inspector</b>

Source: LSO summary from Office and local jurisdiction information.

<sup>1</sup> The Office retains complete authority for preliminary plan review and approval as well as for final construction inspections.

<sup>2</sup> Certification of plumbing and mechanical also certifies personnel to meet the ICC fuel gas qualification.

Not only may the Office be too restrictive in requiring local jurisdictions to have the specific plumbing and mechanical plan reviewer certifications, but it also does not apply this requirement consistently to all jurisdictions. For example, two communities (Gillette and Sheridan) currently do not have staff with these specialized plan reviewer certifications, but the Office has granted delegated authority to these jurisdictions.

On the other side of this issue is the City of Cheyenne, which applied for delegated authority and was not granted the authority primarily due to city staff not having the more specific reviewer certifications. Moreover, in the Office's correspondence to the city, the Office noted the city had qualified staff to perform the required plan reviews; regardless, the Office stated the city needed these plan reviewer certifications. Nor was mention made in the correspondence that Cheyenne would be allowed partial delegated authority for the aspects where its personnel did have certification. In light of the allowances granted to the cities of Gillette and Sheridan, this denial to the City of Cheyenne certainly appears inconsistent.

## Office not Proactive in Encouraging Locals

Despite the drastic increase in construction projects in recent years, the Office has not been effectively proactive in approaching communities to take on delegated authority. The Office did notify healthcare facility personnel and local governments of this new statutory guidance during the Chapter 20 Delegation Rule promulgation process in 2003 and 2004.

Since these rules were promulgated, we did not find any additional correspondence from the Office to local governments encouraging them to pursue delegated authority. Finally, we found that several stakeholders are under the impression that communities must take on all codes/standards requirements, and therefore all certifications, in order to obtain delegated authority. The communities of Sheridan, Casper and Lander give examples of how this is not the case.

**Local communities initiate the process, but do not really have sole authority**

For the four communities that have received delegated authority, the local communities tended to approach local political leaders to pursue delegation and their relationships have developed organically community by community. This has resulted in four separate and inconsistent working relationships whereby the Office may not be obtaining the same documentation or following the same protocols with each community.

Currently, the Office only allows locals to conduct final plan reviews and interim construction inspections over the codes which they have been delegated enforcement authority. In other words, it retains all review and enforcement authority on the preliminary plan review and the final construction inspection.



Furthermore, although the Office still stamps and accepts plans which the locals have reviewed, it will duplicate some portions of locals' final inspections. For example, the city of Gillette has been delegated enforcement authority over all healthcare facility construction codes and standards, but the Office still duplicates the city's final construction inspection.

**Office code interpretations cause problems**

Another potential conflict exists with the Office's Chapter 20 rules which state that the codes required for federal certification take precedence over other codes that may be in conflict, even if the competing codes are stricter. In some cases, local building officials may get confused why a more strict code they enforce becomes secondary to the less strict code the Office wants enforced. The Office states that there is no caveat in the NFPA 101 LSC (required for federal certification) allowing for the strictest code to apply, but many of the other states we contacted said they require the strictest code, regardless of which code can apply.

Also, we heard that some local building officials are concerned that they will approve the final plans or complete their construction inspections on a project and not find problems, only to have Office engineers find problems during their final inspections.

**Refusal of the Office to fully delegate negatively impacts workload and timeliness**

Since few local governments have taken delegated authority, this leaves a higher workload for the Office staff engineers. More projects in recent years, coupled with the Office conducting primarily preliminary and final plan reviews, impacts the Office's timeliness in its work. If more cities and counties have delegated authority, then the Office will be responsible for fewer areas of the state, and thus, fewer projects.

Figure 4.2 shows the distribution of projects in eight communities that we contacted for this study: four with delegated authority (Casper, Gillette, Lander, and Sheridan) and four without (Cheyenne, Jackson, Laramie, Rock Springs).

These latter four were chosen based on their size and the scope of delegated authority that they already have from the Department of Fire Prevention and Electrical Safety (DFPES). If the Office could encourage these communities to take on some or all of the required codes and plan review/inspection workload for healthcare facility construction, the Office could eliminate almost half its project workload.

**Figure 4.2**  
**Distribution of project workload for four delegated and four non-delegated communities, pre/post-July 1, 2003**

<b>Delegated Jurisdictions</b>				
<b>City</b>	<b>Pre 2003 <sup>1</sup></b>		<b>Post 2003</b>	
	<b>Number of Projects</b>	<b>Percent of All Projects</b>	<b>Number of Projects</b>	<b>Percent of All Projects</b>
<b>Casper</b>	<b>45</b>	<b>15.05%</b>	<b>45</b>	<b>8.88%</b>
<b>Gillette</b>	<b>30</b>	<b>10.03%</b>	<b>25</b>	<b>4.93%</b>
<b>Lander</b>	<b>18</b>	<b>6.02%</b>	<b>20</b>	<b>3.94%</b>
<b>Sheridan</b>	<b>10</b>	<b>3.34%</b>	<b>27</b>	<b>5.33%</b>
<b>Subtotal</b>	<b>103</b>	<b>34.45%</b>	<b>117</b>	<b>23.08%</b>
<b>Non-Delegated Jurisdictions</b>				
<b>Cheyenne</b>	<b>32</b>	<b>10.70%</b>	<b>57</b>	<b>11.24%</b>
<b>Jackson</b>	<b>21</b>	<b>7.02%</b>	<b>14</b>	<b>2.76%</b>
<b>Laramie</b>	<b>14</b>	<b>4.68%</b>	<b>22</b>	<b>4.34%</b>
<b>Rock Springs</b>	<b>8</b>	<b>2.68%</b>	<b>20</b>	<b>3.94%</b>
<b>Subtotal</b>	<b>75</b>	<b>25.08%</b>	<b>113</b>	<b>22.29%</b>
<b>Total</b>	<b>178</b>	<b>59.53%</b>	<b>230</b>	<b>45.37%</b>

Source: LSO analysis from Office project tracking logs.

<sup>1</sup> Local jurisdictions did not have delegated authority prior to 2003. These numbers and percentages represent the actual community project workload for various cities during pre-2003 years.

**Locals are willing to take on delegated authority**

From our interviews of various local officials, we discovered there is a willingness to take on delegated authority. Generally, locals compose their building staffs around the recommended qualifications/certifications developed by the DFPES. For example, DFPES has delegated enforcement of the building code (both plan reviews and inspections based on the same ICC codes adopted by the Office) to 24 local governments. The DFPES has also delegated enforcement of the electrical code for plan reviews and inspections to 22 local governments. Furthermore, DFPES has delegated more comprehensive state-building review/inspection authority to six communities; these communities must also meet DFPES required certifications.

We also heard the following explanations from local officials during our interviews:

- Regardless of the Office’s oversight, many facilities interact with their local building and planning offices with respect to plan review and inspections. These offices communicated that ultimate accountability for local construction rests with local offices.

- Because of the Office’s engineering staff limitations, local officials believe their offices can provide more timely and better plan reviews and inspections.
- It would be more efficient to match certification/ qualification requirements between DFPES and the Office.

**The Office’s engineer staff only recently obtained certifications they require of local jurisdictions**

It is also interesting to note that the first rules stating required certifications were adopted in July 2004 with the Chapter 20 Delegation Rules for local governments. Figure 4.3 illustrates these requirements and when the current Office staff engineers became certified in the required code for plan reviewer and inspector.

Office engineer staff has had some turnover since 2004 when these requirements were started, but the Office’s current philosophy is to ensure that all engineers are certified in all plan reviewer and inspector certifications; this will allow each engineer to handle any project submitted by facilities.

**Figure 4.3  
Office engineer staff with certifications and date obtained**

<b>Certification Name</b>	<b>Date Staff First Certified</b>
<b>ICC Building Plans Examiner</b>	<b>7/28/2005</b>
<b>NFPA Fire Plans Examiner</b>	<b>5/4/2009</b>
<b>ICC Mechanical Plans Examiner</b>	<b>10/2/2003</b>
<b>ICC Plumbing Plans Examiner</b>	<b>9/4/2003</b>
<b>ICC Commercial Building Inspector</b>	<b>6/9/2005</b>
<b>ICC Fire Inspector I (equivalent to NFPA Fire Inspector 1)</b>	<b>10/20/2005</b>
<b>ICC Commercial Mechanic Inspector</b>	<b>9/18/2003</b>
<b>ICC Commercial Plumbing Inspector</b>	<b>6/5/2003</b>

Source: LSO summary of Office documents and information.

Two key points to note in Figure 4.3 are that the Office’s engineer staff did not obtain half of the required certifications until after the 2004 local jurisdictions rules were promulgated and, as of this writing, all of the Office’s engineer staff are only finishing certification for the NFPA Fire Plans examiner certification (June 2009). This means it has taken almost five years for Office staff to fulfill all required certifications (July 2004 to June 2009).

## Third Party Reviewers

With the adoption of emergency rules in March 2007, the Office established the possibility for facilities to utilize third-party reviewers and inspectors. This option was not fully developed and officially part of the Chapter 3 Construction Rules until April 2008. Figure 4.4 shows a listing of the Office's currently pre-approved third-party reviewers and inspectors per the required codes.

Overall, the Office's process for approving and overseeing third parties is relatively new and still evolving. Yet our initial review of this issue indicates the Office has similar inconsistency issues with its oversight of third-party reviewers and inspectors as it does with local jurisdictions. We identified the following problems related to third parties:

- Lack of documentation in project files related to required qualifications or certifications.
- Long and redundant project-by-project approval process for facilities to obtain Office approval to utilize these already pre-approved third-parties.
- Third party reviewer and inspector contracts for each project must be submitted and approved by the Office. There is no equivalent process with local governments to define project scope and duties for each project.

It is important to recognize that the facilities, not the Office, bear the additional cost to use third-party reviewers and inspectors. Since the Office has difficulty projecting, estimating, or meeting reasonable timeliness standards for its work, facilities may not be prepared early during a project to account for these added reviewer/inspector costs.

Though the Office stated it hopes facilities account for this expense when they begin to build their project budgets, it may be confusing and problematic for facilities to do so. Especially, when they don't know when and where the Office may be able to conduct the appropriate reviews and inspections. Additionally, there may be certain types of remodels, projects to address CMS deficiency corrections, and smaller construction projects where third-party reviewer or inspector costs will not be cost effective compared to the size of the project.

**Figure 4.4**  
**List of Office pre-approved third-party reviewers and inspectors (as of March 31, 2009) <sup>1</sup>**

<b>Office's Third Party Registration Number</b>	<b>Reviewer</b>	<b>Qualified to review the following codes/ standards</b>	<b>Inspector</b>	<b>Qualified to inspect the following codes/ standards</b>
<b>101</b>	<b>N</b>	<b>N/A</b>	<b>Y</b>	<b>ICC code: Building code</b>
<b>102</b>	<b>Y</b>	<b>ICC codes: Building, Mechanical, Plumbing, Fire, Fuel Gas</b>	<b>Y</b>	<b>ICC codes: Building, Mechanical, Plumbing, Fire, Fuel Gas</b>
		<b>AIA Guidelines</b>		<b>AIA Guidelines</b>
		<b>NFPA 101 Life Safety Code</b>		<b>NFPA 101 Life Safety Code</b>
		<b>NFPA 99 Standards for Healthcare Facilities</b>		<b>NFPA 99 Standards for Healthcare Facilities</b>
<b>103</b>	<b>Y</b>	<b>ICC codes: Building, Fire</b>	<b>N</b>	<b>N/A</b>
		<b>AIA Guidelines</b>		
		<b>NFPA 101 Life Safety Code</b>		
		<b>NFPA 99 Standards for Healthcare Facilities</b>		
<b>104</b>	<b>Y</b>	<b>ICC codes: Building, Mechanical, Plumbing</b>	<b>N</b>	<b>N/A</b>
		<b>NFPA 101 Life Safety Code</b>		
<b>105</b>	<b>Y</b>	<b>ICC codes: Building, Fire</b>	<b>Y</b>	<b>ICC code: Building code</b>
		<b>AIA Guidelines</b>		
		<b>NFPA 101 Life Safety Code</b>		
		<b>NFPA 99 Standards for Healthcare Facilities</b>		
<b>106</b>	<b>Y</b>	<b>ICC codes: Building, Mechanical, Plumbing, Fire</b>	<b>Y</b>	<b>ICC codes: Building, Mechanical, Plumbing, Fire</b>

Office's Third Party Registration Number	Reviewer	Qualified to review the following codes/ standards	Inspector	Qualified to inspect the following codes/ standards
		AIA Guidelines		AIA Guidelines
		NFPA 101 Life Safety Code		NFPA 101 Life Safety Code
		NFPA 99 Standards for Healthcare Facilities		NFPA 99 Standards for Healthcare Facilities
107	Y	ICC codes: Mechanical, Plumbing, Fuel Gas	Y	ICC codes: Building, Mechanical, Plumbing, Fuel Gas
		AIA Guidelines		AIA Guidelines
		NFPA 101 Life Safety Code		NFPA 101 Life Safety Code
		NFPA 99 Standards for Healthcare Facilities		NFPA 99 Standards for Healthcare Facilities
108	Y	ICC codes: Building, Mechanical, Plumbing, Fire, Fuel Gas	N	N/A
		AIA Guidelines		
		NFPA 101 Life Safety Code		
		NFPA 99 Standards for Healthcare Facilities		

Source: LSO summary of Office website information.

<sup>1</sup> All third-party reviewers and inspectors have been approved since the newest rules became effective in April 2008.

**Recommendation: The Office should consider the following options to encourage more local governments to do plan review and inspection work:**

- **Allow locals to conduct preliminary reviews or final inspections if locals are delegated all code authority.**
- **Establish clear and consistent policies and procedures for required documentation and communication between Office and local building officials.**

The Office should annotate reasonable and effective requirements and policies for when locals are used in this process. Since many of the larger localities have qualified personnel and have the most healthcare construction projects, it seems imperative for the Office to obtain more support through these local governments.

Where possible, the Office should consider fully delegating authority to local communities and lessen some of the current duplicative efforts with secondary approval of final plans and final inspections; failure to do so has the effect of creating additional or unnecessary work for the Office and local communities. Finally, the Office should re-educate local governments about their ability and opportunity to take on healthcare facility code enforcement where they have qualified and certified officials.

**Recommendation: The Office should work with DFPES to mirror certification and other requirements for local delegation of authority.**

- **Eliminate the plumbing and mechanical plans examiner certifications.**
- **Assure proper certification of Office staff engineers prior to conducting plan review and inspection work.**

Prior to implementing this recommendation, the Office should consult the Attorney General to help clarify W.S. 35-9-121.1(d) requiring local personnel to be “certified pursuant to the applicable code.” Basically, does “applicable code” mean the ICC Plumbing and Mechanical codes or the more general ICC code structure?

## **Finding 2: Coordination is lacking on electrical plan reviews and does not ensure construction is built according to appropriate codes.**

There is a lack of coordination between Office and The Department of Fire Prevention and Electrical Safety (DFPES) to ensure that electrical plans related to healthcare facilities are reviewed, as well as uncertainty as to which aspects of electrical work fall under the Office’s versus DFPES’ jurisdiction. As a result, electrical plans may not be reviewed appropriately by either entity, prior to construction.

W.S. 35-9-121.1 grants the Office jurisdiction over “all aspects of healthcare facility plan review and inspection *except for electrical installations.*” (*LSO emphasis*) The DFPES is the State authority over electrical plan review (permitting) and inspection. Electrical work in Wyoming is conducted under the National Electric Code pursuant to W.S. 35-9-108; plans and inspections are conducted by the DFPES unless local jurisdictions are delegated with such authority by the DFPES.

However, the Office may have exceeded its authority in its Chapter 3 Construction Rules (section 5), where it outlines that construction design requirements for detailed electrical drawings be submitted to the Office for review. Although the Office does have jurisdiction over some electrical aspects in health care facilities because of the specific responsibilities it has for NFPA 72, NFPA 99, and the NFPA 101 Life Safety Code, it does not have sole authority for electrical matters.

### **Lack of Coordination**

Currently, the Office does not facilitate coordination to ensure that the electrical plans are submitted for review with DFPES or the local jurisdiction having delegated authority. The Office’s Chapter 3 Construction Rules maintain that the responsibility for ensuring the plans are submitted to the proper entity rests solely with the facility. If however, the facility does not submit plans to DFPES for review, installation may occur without all required reviews by the Office or DFPES.



We reviewed electrical plan data for 26 selected cases from our case file review; we found three of the 26 cases (almost 12 percent) did not show any electrical plan review being performed by the DFPES or local jurisdiction on the project.<sup>2</sup>

In addition, we found that documentation in Office case files showed minimal and inconsistent evidence that required electrical plan reviews or inspections were performed. For one project, the case file did indicate a third-party reviewer may have performed the electrical review/inspection, but third parties are not authorized by the Office or the DFPES to conduct electrical plan reviews or inspections.

### Overlap between the Office and DFPES

Another issue related to facility construction electrical work is that there is overlap where the electrical review and inspection work may be carried out by DFPES personnel, but is under the Office's authority and control. Fire alarms are one example where DFPES enforces the NEC codes related to the connectors, the wiring, and the installation, but the Office enforces NFPA 72 and 101 codes related to design and performance features of such systems.

These areas of responsibility or when to communicate these responsibilities between agencies are not well articulated in rules, guidelines or in formal policies by the Office. This has resulted in conflict and confusion in the past related to inspections at work sites.

For example, the Office has been inconsistent in how it defines electrical installations and when it allows electrical inspectors on site. Coupled with the potential for some plans to not be reviewed or projects inspected, this may result in unsafe electrical work and added cost in the future to remedy unsafe conditions.

It should be noted that for many years prior to 2003, the Office received all plans, including electrical, and ensured they were sent to the appropriate entity for review. Given the explicit and overarching authority granted to the Office 2003, it is still incumbent on the Office to ensure that appropriate reviews and inspections are occurring for "all aspects" of construction projects.

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<sup>2</sup> Due to the data system limitations of the DFPES, we could not look for electrical plan reviews for all projects included in our case file review. The DFPES only tracks projects for which it performs a plan review or inspection; plans submitted to delegated local authorities would not be in the DFPES data system.

**Recommendation: The Office should coordinate with DFPES (and local jurisdictions) to ensure electrical plan reviews are performed, and to clarify where each entity's role begins and ends with respect to each applicable code.**

As with much of the Office's practices related to the process, the Office has chosen to keep interactions with the DFPES and local electrical personnel infrequent and informal. This has created constant confusion and conflict that inevitably impacts project processing time.

Since the Office is statutorily required to control all aspects of construction, it should include clear coordination policies and protocols on how the Office and facilities need to interact with other entities throughout the process. Perhaps the Office and the DFPES could revisit the use of an MOU to set out transparent expectations for each agency as they relate to healthcare facility construction projects.

# Chapter 5: Conclusion

The Management Audit Committee requested a review of the Wyoming Department of Health's (WDH) Office of Healthcare Licensing and Surveys (Office) to evaluate the plan review and inspection process for construction of healthcare facilities statewide. The Committee was also concerned about timeliness of the Office's work, as well as the impact on healthcare facilities.

The Office was thrust into a transformational, yet untested position as a result of the passage of SF 37 in 2003. Because W.S. 35-9-121.1 granted jurisdiction to the Office over all aspects of construction and remodeling of health care facilities, the Legislature expressed its intent for more complete oversight at the state level. With this authority however, came the realization that the Office saw itself as ill-equipped at that time to fully carry out its statutory charge. This statutory change unfortunately and immediately preceded a boom in statewide construction activity, which contributed to a backlog of facility projects.

We understand from our interviews with agency officials that the additional authority brought challenges related to resources, fostering new relationships with local governments and facilities, as well as positing ideas with respect to implementing a meaningful and thorough oversight process. Even though we found that the Office promulgated its ideas and thoughts into a regulatory framework for local governments and facilities to follow, those ideas conveyed through numerous rule changes from 1996 through 2009 have been met with confusion, misunderstanding, and distrust. That is the current circumstance the Office must address.

The longer term impact on the Office's ability to carry out its oversight functions is that its credibility at the local level and with facilities has suffered greatly. As stated previously, whether because of perception or fact, local governments are mostly unwilling to work with the Office, nor are facilities eager to reach out to the Office for cooperative assistance.

We acknowledge that the Office, especially since 2007, has instituted additional modifications to the process to relieve some of the workload and address other concerns identified in our study. However, these adjustments have not been fully embraced because of the past imprint of uncertainty surrounding the Office's constantly changing administrative priorities.

We also acknowledge that the Office understands these problems and we are encouraged that it continues to retool its processes. The Office should refocus efforts on meaningfully reaching out to local governments to accept partial or full delegated authority, as well as rethink some of the certifications it requires with respect to reviews of mechanical and plumbing plans. Also, there should be more of a focus on interim inspections and final plan reviews, as opposed to preliminary plan reviews.

Finally, several plan review process points need clearer and more formal written policies and procedures to promote consistency and accountability on both the Office and facilities as they work projects from beginning to end.

Acknowledgement of past and present concerns, as well as continued efforts to refine its process, should help the Office reset the relationships it needs in order to effectively carry out its broad and comprehensive statutory charge.

# Agency Response



Wyoming  
Department  
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Brent D. Sherard, M.D., M.P.H., F.A.C.P., Director and State Health Officer

Governor Dave Freudenthal

## MEMORANDUM

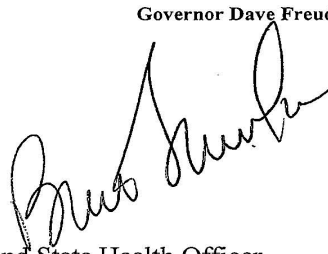
**Date:** July 13, 2009

**To:** Management Audit Committee Members

**From:** Brent D. Sherard, M.D., M.P.H., F.A.C.P., Director and State Health Officer  
Wyoming Department of Health

**Subject:** Response - Legislative Service Office's Evaluation of the Plan Review and Inspection Process Construction of Wyoming Healthcare Facilities

**Ref:** S-2009-537



Please find attached the Wyoming Department of Health's response to the Draft Document, dated June 25, 2009, to the Legislative Service Office's Evaluation of the Plan Review and Inspection Process Construction of Wyoming Healthcare Facilities.

Please contact me at (307) 777-7656 if you have any questions regarding this report.

Thank you.

BDS/jg

Attachment

c: Lee Clabots, M.S.Hyg., M.P.H., Deputy Director of Administration  
Amanda Harris, Senior Policy Advisor  
Gerald Hoppmann, Program Evaluation Manager, Legislative Service Office  
Jean McLean, RD, Manager, Office of Healthcare Licensing and Surveys

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**Wyoming Department of Health  
Office of Healthcare Licensing and Surveys**

**LSO Evaluation of the Plan Review and Inspection Process  
Construction of Wyoming Healthcare Facilities**

**Agency Response to the June 25, 2009 Final Draft Document**

**July 13, 2009**

The Wyoming Department of Health (WDH) believes strongly that the Management Audit process is important in identifying problem areas within legislatively mandated programs, critically reviewing processes and outcomes, and hopefully providing constructive feedback on how to improve the delivery of services to Wyoming residents. The problems that have been encountered in the Office of Healthcare Licensing and Surveys (OHLS) over the past two to three years with the Construction Plan Review process along with inspections has been at the top of the list of priorities within WDH's administration.

The WDH and the OHLS acknowledge there have been problems with timeliness of plan reviews and inspections since 2003, primarily in completing plan reviews. There have been a number of mitigating circumstances that contributed to this:

1. The 2003 legislation, Senate File 37, provided for no funding or positions to carry out the duties outlined in the legislation. The Department reclassified two healthcare facility surveyor positions to provide for engineer positions to staff the function.
2. In 2006 and 2007, the number and complexity of healthcare facility construction projects increased significantly. The complexity of these projects greatly increased the time needed for plan reviews.
3. The OHLS experienced turnover in one of the engineering positions during this period of increased construction activity.
4. Local jurisdictions did not readily accept local authority for project review and inspections as envisioned in the legislation.

However, the Department has proactively sought solutions.

As noted, the Department reclassified positions to staff the required functions. In 2007 and 2008, the Department and OHLS pursued rule changes to create more flexibility for facilities to control their construction needs by allowing facilities to utilize qualified inspectors for plan reviews and inspections and providing for an option to seek variances for certain construction codes to help reduce the costs of construction.

Since April 2008, OHLS has made tremendous strides in improving the management of the construction oversight system. We have purposely implemented many customer service options into the process and have significantly improved the time lines for plan reviews.

The Department's response to this report follows.



**Chapter 2, Finding 3:**

Comparator states' healthcare facility construction oversight generally is not fully centralized within state health agencies.

**WDH Response:**

The WDH agrees in principal, but has the following comments:

The OHLS's own review of other states revealed a wide variation in how healthcare facility construction oversight was handled by state agencies. This ranges from no involvement to having significant responsibility for various elements of construction. Oversight and directed tasks were inconsistent among those states with facility construction responsibilities. This section of the report discusses the application of the most restrictive codes when conflict arises between construction codes and the NFPA 101 (Life Safety Code) or the American Institute of Architects (AIA) Guidelines for Design and Construction of Health Care Facilities. This section of the report erroneously implies that in Wyoming this is not the case.

In Wyoming the most restrictive requirement would apply regardless of the code. For example, if one code required a minimum corridor width of eight feet and another only required the width to be six feet, OHLS would expect the facility to meet the eight feet requirement, which is more restrictive, but serves the purpose of meeting both codes. One code is not necessarily more stringent than another, but a specific requirement of a particular code may be more restrictive.

Any federally-certified healthcare facility is required to meet the Life Safety Code in order to attain and maintain certification. Most healthcare facilities in this state are federally certified and, as this is a primary source of funding for these facilities, maintaining their certification is critical. WDH cannot permanently waive or grant a variance for any aspect of the federally-required Life Safety Code for certified facilities or for facilities seeking initial certification. In fact, W.S.§35-9-121.1(b) states "...if any code requirements for federal certification conflict with the code of any other state or local government entity, the code required for federal certification shall prevail." The experience of WDH is that most of the time conflict related to a construction project occurs because a particular requirement in the Life Safety Code is *more* restrictive, not less restrictive.

The value in having a comprehensive plan review and inspection process is that facilities will have fewer delays in utilizing the space at the end of a project, less expensive corrections will need to be made at the end of a project, and the constructed area will be a safer and healthier environment for residents, patients, clients, and staff.

**Recommendation 1:**

The Office should re-establish in rules or formal policy reasonable time lines for conducting plan reviews and inspections; engineer staff should be monitored on their timeliness per these time lines.

**WDH Response:**

The WDH agrees in part.

OHLS currently measures the timeliness of project reviews by monitoring the activity record log. Summarized time lines are evaluated monthly by the OHLS engineering and supervisory staff. OHLS has discovered most comparator states have not attempted to establish time limits for the review process, and those that have established time limits seldom meet their goal. The same OHLS personnel who conduct plan reviews must also conduct final inspections, interim inspections when necessary, and participate in design review meetings with providers and architects. There is no way to control when the requests for inspections are going to be received

or when providers will want to have meetings to discuss proposed projects or problems with existing projects. There is also no way to limit or regulate the flow of plans into OHLS. Further, there are no restrictions on the complexity of projects submitted to this office for review. Due to the unpredictability as to when plans may be received and the variability in the complexity of projects, OHLS believes issues related to staff activity and workloads are better addressed through policy than rule.

WDH does not agree that the complexity of plan reviews and inspections for healthcare facility construction is equivalent to the work done by the Department of Fire Prevention and Electrical Safety (DFPES). Having the responsibility for oversight of all aspects of construction, except electrical, for healthcare facilities includes the responsibility to ensure compliance with numerous codes and standards, as well as any referenced codes, whereas the authority and responsibility for plan reviews for DFPES is limited to fire safety and the electrical code, primarily for non-healthcare structures.

The 21-day time line in the 2004 Chapter 3 rules proved to be unrealistic related to the OHLS' limited staff resources and the scope and complexity of the work that resulted from W.S. 35-9-121.1. Furthermore, the 21-day time line for completing plan reviews was not based on a healthcare industry standard. The OHLS disagrees that the timeliness of the work has significantly increased. Our data show that the turn-around time to complete preliminary and final plan reviews has decreased since January 2009. These data are available for review.

**Recommendation 2:**

The Office should re-evaluate the overall need for the review of preliminary plans; it should seek statutory clarification if necessary to eliminate this requirement upon further review.

**WDH Response:**

The WDH partially agrees.

The statute is clear and historically preliminary plans have been reviewed pursuant to this statute. OHLS certainly would not be opposed to getting a legislative opinion. However, we believe the process for conducting preliminary plan reviews can be further streamlined, and the requirement for multiple preliminary plan submissions has been eliminated by this office. We also initiated a teleconference with interested parties following a preliminary plan review to improve our customer service and effect more timely communications.

**Recommendation 3:**

The Office should promulgate codes/standards and process elements into separate rules and ensure that codes/standards and processes are consistently applied throughout the duration of each project.

**WDH Response:**

The WDH agrees in part.

WDH simplified the Chapter 3 Construction Rules in April 2008. This product is a significant improvement and forward-looking with regard to future applicability. Additionally, we are considering separating process requirements from codes, standards, and other building requirements to further improve our efforts to reduce the complexity of the rules.



**Recommendation 4:**

Due to its limited staff resources, the Office should more effectively and efficiently manage projects by setting and communicating clear waiver criteria for facilities.

**WDH Response:**

The WDH agrees.

WDH is in the process of a writing formal policy to guide staff practice in this area.

**Recommendation 5:**

The Office should establish in rules and policies a clear and stepped appeals process for facilities to use to clarify or challenge Office decisions in an independent forum. It should also seek advice from the Attorney General's Office to see if it has the statutory authority to truncate the appeals process for waiver and variance decisions.

**WDH Response:**

The WDH agrees.

The licensure rules for each provider type currently address the appeals process for any issues that may affect licensure. In addition, the Chapter 20 rules address the establishment of an appeals board to hear appeals regarding construction issues. We believe this process should be clarified with advice from the Attorney General and communicated to all healthcare providers who have construction projects that fall under the authority of OHLS.

The requests for variances have been minimal. We have had four requests since the rules were changed to allow this option. One was determined to be unnecessary and the other three were approved. Two of those have been revoked because the reason for the requesting the variance no longer exists. Currently there is one healthcare facility that has an active variance, which was also granted based on a temporary condition that the facility intends to correct.

Currently, most construction disagreements between OHLS and healthcare facilities are about code interpretations. When this occurs, it has been our practice to request a formal written opinion from the code authority, which would be the International Code Council, the National Fire Protection Association, or the Centers for Medicare and Medicaid Services. We do not believe it would be prudent to attempt to override a formal interpretation by a national code authority through the appeals process. Such an override could potentially increase the state's liability in the event of a systems failure or fire that impacted health and safety of patients, residents, clients, or staff. In addition, having the OHLS engineering staff also involved in formal hearings would add to the time required to complete plan reviews and inspections.

**Recommendation 6:**

The Office should re-evaluate its paper and electronic record keeping requirements and develop a system to better recall and analyze project data and information.

**WDH Response:**

The WDH disagrees.

The OHLS internal tracking system meets the goals of improving transparency and facilitating oversight by the present administration. All current projects are managed by this system. We will continue to identify ways to improve our tracking processes. The current system allows us to utilize the information to track, trend, and analyze project submissions. Developing or modifying this relatively new project tracking system is not currently a high priority for OHLS.

**Recommendation 7:**

The Office should develop clear and sufficient policies to ensure consistency throughout the Office's processes.

**WDH Response:**

The WDH agrees.

We are in the process of developing policies and procedures to guide staff practices.

**Recommendation 8:**

The Office should consider the following options to encourage more local governments to do plan review and inspection work:

- Allow locals to conduct preliminary reviews of final inspections if locals are delegated all code authority.
- Establish clear and consistent policies and procedures for required documentation and communication between Office and local building officials.

**WDH Response:**

The WDH partly agrees.

The OHLS believes legislative action would be needed to eliminate the requirement for the division [in this case, the OHLS] to conduct preliminary inspection and approval of plans and specifications related to proposed projects pursuant to W.S. 35-2-906(a).

Regarding policy development, OHLS has developed written guidelines and has informal policies in place at this time. The OHLS agrees that formal policies will enhance staff practices.

As part of the WDH's survey of facilities regarding their satisfaction with the construction review process, a number of facilities suggested that they assume the responsibility to assure that their construction projects meet the applicable construction and Life Safety codes. Additionally, LSO noted in their survey of comparator states that many of those state agencies rely on the facilities, their architects and local authorities to monitor construction projects. With those comments in mind, the WDH and OHLS would agree with the first item of the recommendation but suggest an alternative approach. Wyoming should rely on the facilities; their architects, engineers and facility designers, as well as the local jurisdictions to ensure that construction projects comply with applicable construction and Life Safety codes. The OHLS engineers would assume a monitoring and consultative function during the construction process. Possible changes in the legislation might include:

1. Allow locals to conduct all plan reviews, including preliminary reviews, as well as any required construction. Locals should be delegated all construction code authority.
2. Facilities should simply notify the OHLS of the plans for construction by submitting a copy of preliminary plans that have been approved by the local authority. OHLS would not review or approve these plans.
3. Facilities must provide the OHLS and DFPES with copies of the final plans and a letter attesting that the design is and the construction will be in compliance with all applicable construction codes, Chapter 3 Construction Rules, and the Life Safety Code. This letter must be signed by the owner and/or board chair, the facility's administrator, and the architect/engineer for the project.
4. Interim and final construction inspections shall be conducted by the local jurisdiction. The results of the inspection(s) shall be submitted to the OHLS along with a letter attesting that the construction conforms to the applicable construction codes, rules, and the Life Safety Code. This letter must also be signed by the owner and/or board chair, the facility administrator, the architect/engineer and the local jurisdiction authority.
5. The local authority shall be responsible for issuing the certificate of occupancy.
6. The OHLS will conduct the licensure and Life Safety Code inspections for any new construction within 15 working days of the issuance of the certificate of occupancy.
7. The facility shall correct any Life Safety Code or construction code violations identified by the OHLS prior to final occupancy and/or the issuance of a provisional license. That corrective action plan shall be submitted to the OHLS for approval. A letter of attestation for the construction corrections signed by the owner and/or board chair and the facility administrator must be submitted to the OHLS and may be accepted by the OHLS as evidence of correction in lieu of an on-site inspection. The Life Safety Code corrections must be evaluated through either an on-site or off-site inspection/desk review.

**Recommendation 9:**

The Office should work with DFPES to mirror certification and other requirements for local delegation of authority.

- Eliminate the plumbing and mechanical plans examiner certifications.
- Assure proper certification of Office staff engineers prior to conducting plan review and inspection work.

The Office should consult the Attorney General to help clarify W.S. 35-2-121.1(d) requiring local personnel to be "certified pursuant to the applicable code." Basically, does "applicable code" mean the ICC Plumbing and Mechanical codes or the more general ICC code structure?

**WDH Response:**

The WDH partially agrees.

We believe that eliminating the plumbing and mechanical plans examiner certification requirements would be detrimental in terms of ensuring that requirements unique to healthcare facilities would be met. Healthcare facilities are complex systems where people with infectious diseases or those who are immuno-compromised receive care and services on a routine basis. Key modalities for the transmission of infections include air and water. It would not be prudent to eliminate the specialized knowledge of mechanical and plumbing systems that would be attained through these certifications. In addition, the International Mechanical Code and the International Plumbing Code have sections specific to healthcare facilities, which are not included in the International Building Code.

The OHLS's current administration has assumed the Chapter 20 Rules promulgated on July 15, 2004 pursuant to W.S. 35-2-121.1(d) accurately reflected the intent of the statute. The current OHLS administration has required all OHLS engineers to become certified in accordance with the Chapter 20 and Chapter 3 rules. This has been achieved.

We agree that consultation from the Attorney General to clarify the intent of W.S. 35-2-121.1(d) is reasonable.

**Recommendation 10:**

The Office should coordinate with DFPES (and local jurisdictions) to ensure electrical plan reviews are performed, and to clarify where each entity's role begins and ends with respect to each applicable code.

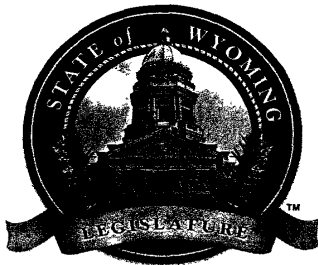
**WDH Response:**

The WDH disagrees.

WDH believes WS 35-9-108 clearly shows that the responsibility for ensuring electrical plan reviews are finalized rests with the owner or owner's representative. It is the practice of the OHLS to share specific information with the owner or owner's representative regarding who to contact to ensure their electrical plans are reviewed. WDH does not believe the statute gives OHLS any authority to direct, oversee, or ensure that electrical plan reviews are done.



# Management Audit Committee Letter



WYOMING LEGISLATIVE SERVICE OFFICE

## Memorandum

**DATE** July 31, 2009

**TO** Brent D. Sherard, M.D., M.P.H., F.A.C.P., Director and State Health Officer  
Wyoming Department of Health

**FROM** Management Audit Committee  
Representative David Miller, Chair *D. Miller*  
Senator Hines, Vice Chair *J. Hines*

**SUBJECT** Draft Report: *Office of Healthcare Licensing and Surveys*

We appreciate the time that you and your staff took on July 30, 2009 to discuss the draft report on the Office of Healthcare Licensing and Surveys. However, we are requesting that you submit another response to this Committee to more fully detail and address the specific actions that you plan to take with respect to the problems identified in our draft report.

During your presentation, you mentioned four actions that the Department of Health has taken over the past three years to correct identified deficiencies within the Office of Healthcare Licensing and Surveys: **1)** conducted a survey; **2)** moved engineers from one building to another and hired a third engineer; **3)** encouraged 3<sup>rd</sup> party plan reviewers; and **4)** use of teleconferences and email instead of "snail mail" to communicate results of preliminary plan reviews.

Although your comments give the impression that the Department of Health has for three years given top priority to the problems identified in the report, the reality of what is occurring in local communities throughout Wyoming speaks otherwise. In our judgment, the actions you discussed have fallen short of what is expected from a state agency that has such a tremendous influence over the lives of individuals, as well as the finances of local business throughout Wyoming.

Also, in your formal response, you agree with only three out of ten recommendations for improvement. To then suggest to this Committee that it work hand-in-hand with the Department to modify existing statute with respect to identified problems, as well as inviting other stakeholders to participate in the discussion, is all but a complete rejection of this Committee's valuable time and effort to provide meaningful recommendations to you and your staff.

For such a discussion to occur at this point may very well be inappropriate, given that the majority of problems appear to exist because of a lack of proactive management and direction from the Director's Office to your staff engineers with respect to the substantial changes that occurred in 2003 with the passage of SF 37. Before a meaningful dialogue can occur with respect to programmatic aspects and suggested statutory changes, fundamental management concerns within the Department should be addressed to ensure smoother program operations, which are responsive to customer concerns.

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We do understand that the statutory changes which occurred in 2003 as a result of the passage of Senate File 37 greatly increased the responsibilities of the Department. However, we also understand that such a statutory change requires an agency to immediately develop a focused, strategic, and comprehensive plan of action for implementing these newfound responsibilities. It does not appear that this type of plan existed in 2003, nor to this day.

However, we are hopeful that a more detailed description of how you envision your staff moving from this point forward is reflected in your amended response.

Cc: Governor Dave Freudenthal

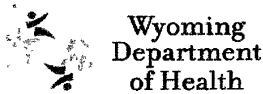
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**WYOMING LEGISLATIVE SERVICE OFFICE *Memorandum***

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# Agency Amended Response



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LEGISLATIVE SERVICE OFFICE



Brent D. Sherard, M.D., M.P.H., F.A.C.P., Director and State Health Officer

AUG 07 2009

Governor Dave Freudenthal

## MEMORANDUM

**Date:** August 7, 2009

**To:** Management Audit Committee Members

**From:** Brent D. Sherard, M.D., M.P.H., F.A.C.P., Director and State Health Officer  
Wyoming Department of Health

**Subject:** Response – Committee’s Evaluation of the Plan Review and Inspection  
Process Construction of Wyoming Healthcare Facilities

**Ref:** S-2009-607

Please find attached the Wyoming Department of Health’s response to the Management Audit Committee on the Plan Review and Inspection Process Construction of Wyoming Healthcare Facilities.

Please contact me at (307) 777-7656 if you have any questions regarding this report.

Thank you.

BDS/jg

Attachment

c: Governor Dave Freudenthal  
Lee Clabots, M.S.Hyg., M.P.H., Deputy Director of Administration  
Wendy Curran, Health Policy Analyst, Office of the Governor  
Amanda Harris, Senior Policy Advisor  
Gerald Hoppmann, Program Evaluation Manager, Legislative Service Office  
Jean McLean, RD, Manager, Office of Healthcare Licensing and Surveys

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**Wyoming Department of Health  
Office of Healthcare Licensing and Surveys**

**LSO Evaluation of the Plan Review and Inspection Process  
Construction of Wyoming Healthcare Facilities - June 25, 2009**

**August 7, 2009**

The Wyoming Department of Health (WDH) believes that the Management Audit process is important in identifying areas of concern within legislatively mandated programs, critically reviewing processes and outcomes, and providing constructive feedback on how to improve the delivery of services to Wyoming residents. WDH and the Office of Healthcare Licensing and Surveys (OHLS) appreciate the opportunity to participate in this process.

The WDH and the OHLS acknowledge there have been problems with timeliness of plan reviews and inspections. There have been a number mitigating circumstances contributing to this situation. However, we believe it is time to move forward. WDH will continue its efforts to improve the construction rules, the plan review process, and customer service for our constituents, while ensuring that healthcare facility construction in Wyoming is safe and protects the health and welfare of our residents.

After a detailed review, the WDH accepts the Management Audit Committee's recommendations. Our response below will address each recommendation indentifying what the WDH and OHLS has done to date and any proposed next steps and/or plan of action. Some of those next steps will require changes to the current rules. However, we believe that those proposed changes will streamline the process even more, be more responsive to the needs of our healthcare providers, and assure that our providers have greater control and self-direction over their construction projects.

**Recommendation 1:**

The Office should re-establish in rules or formal policy reasonable time lines for conducting plan reviews and inspections; engineer staff should be monitored on their timeliness per these time lines.

**WDH Response:** Agree.

OHLS has developed and implemented a formal policy establishing reasonable timelines for conducting plan reviews. This policy includes a requirement for monitoring the engineering personnel and their adherence to these timelines. Those timelines provide for some flexibility depending upon the complexity and scope of the project. This policy will be continuously evaluated and refined when necessary.

As part of the overall review/evaluation of reasonable timelines, OHLS will also look at the need for OHLS review of final plans. This portion of the review process can be very time intensive. The current statute does not require final plan reviews by the OHLS. OHLS will consider giving healthcare providers greater control and self-direction for their projects as follows:

- Healthcare providers/facilities are responsible to ensure that their construction plans/projects are in full compliance with the applicable construction and life safety codes.
- Health care providers/facilities shall submit to OHLS either 1) proof that the local jurisdiction, who has been delegated the plan review and inspection authority, has reviewed the plans or 2) proof that qualified third party reviewers, as defined by the codes, have reviewed those plans.



**Recommendation 2:**

The Office should re-evaluate the overall need for the review of preliminary plans; it should seek statutory clarification if necessary to eliminate this requirement upon further review.

**WDH Response:** Agree.

OHLS will re-evaluate the overall need for the review of preliminary plans.

In the meantime, OHLS has developed and implemented a formal policy that includes a definition of the intended scope and purpose of a preliminary plan review and limits preliminary plans to one submittal only. Any suggested changes or plan deficits identified during the preliminary plan review can be incorporated into final plans, thus eliminating the need for multiple plan submissions at the preliminary review stage.

**Recommendation 3:**

The Office should promulgate codes/standards and process elements into separate rules and ensure that codes/standards and processes are consistently applied throughout the duration of each project.

**WDH Response:** Agree.

As recommended, with the next promulgation of the Chapter 3 Construction Rules, WHD will consider separating the codes and standards for facility construction from the plan review and inspection process requirements.

**Recommendation 4:**

Due to its limited staff resources, the Office should more effectively and efficiently manage projects by setting and communicating clear waiver criteria for facilities.

**WDH Response:** Agree.

A formal policy has been developed and implemented establishing clear waiver criteria for facilities. This been published on the OHLS website and will further communicated to our healthcare providers via personal contact.

**Recommendation 5:**

The Office should establish in rules and policies a clear and stepped appeals process for facilities to use to clarify or challenge Office decisions in an independent forum. It should also seek advice from the Attorney General's Office to see if it has the statutory authority to truncate the appeals process for waiver and variance decisions.

**WDH Response:** Agree.

The licensure rules for each provider type currently address the appeals process for any issues that may affect licensure. In addition, the Chapter 20 rules address the establishment of an appeals board to hear appeals regarding construction issues. With advice for the Attorney General, we agree this process should be clarified and communicated to all healthcare providers via the OHLS website and personal contact that have construction projects that fall under the authority of OHLS.

**Recommendation 6:**

The Office should re-evaluate its paper and electronic record keeping requirements and develop a system to better recall and analyze project data and information.

**WDH Response:** Agree.

WDH agrees that OHLS should utilize MS Excel or another database management program utilizing the WDH IT staff to develop data collection and statistical analyses capability. This will allow for more effective management of the construction section of OHLS resulting in enhanced customer service to our healthcare providers.

**Recommendation 7:**

The Office should develop clear and sufficient policies to ensure consistency throughout the Office's processes.

**WDH Response:** Agree.

We are in the process of developing policies and procedures to enhance staff consistency and best practices.

**Recommendation 8:**

The Office should consider the following options to encourage more local governments to do plan review and inspection work:

- Allow locals to conduct preliminary reviews of final inspections if locals are delegated all code authority.
- Establish clear and consistent policies and procedures for required documentation and communication between Office and local building officials.

**WDH Response:** Agree.

WDH agrees that more should be done to encourage local governments to request and accept delegation to do plan reviews and inspection work and will work to accomplish this goal.

WDH believes legislative action would be needed to eliminate the requirement for the division [in this case, the OHLS] to conduct preliminary inspection and approval of plans and specifications related to proposed projects pursuant to W.S. 35-2-906(a).

Regarding policy development, OHLS has developed written guidelines and has formal and informal policies in place at this time. The OHLS agrees that formal policies will enhance staff practices.

**Recommendation 9:**

The Office should work with DFPES to mirror certification and other requirements for local delegation of authority.

- Eliminate the plumbing and mechanical plans examiner certifications.
- Assure proper certification of Office staff engineers prior to conducting plan review and inspection work.

The Office should consult the Attorney General to help clarify W.S. 35-2-121.1(d) requiring local personnel to be “certified pursuant to the applicable code.” Basically, does “applicable code” mean the ICC Plumbing and Mechanical codes or the more general ICC code structure?

**WDH Response:** Agree.

WDH agrees that it is reasonable to consult with Department of Fire Prevention and Electrical Safety to determine what their requirements are for local delegation authority.

OHLS would like to evaluate “the plumbing and mechanical plans examiner certification requirements” and the application of the International Mechanical Code and the International Plumbing Code vs. the International Building Code. Both the International Mechanical Code and the International Plumbing Code have specific requirements for healthcare facilities that are not addressed in the International Building Code. These particular healthcare construction requirements are protective measures to ensure the health and safety of patients, staff, and visitors.

The OHLS’s current administration has interpreted the Chapter 20 Rules promulgated on July 15, 2004 pursuant to W.S. 35-2-121.1(d) accurately reflect the intent of the statute. The current OHLS administration has required all OHLS engineers to become certified in accordance with the Chapter 20 and Chapter 3 rules. This has been achieved.

We agree that consultation with the Attorney General to clarify the intent of W.S. 35-2-121.1(d) will be beneficial.

**Recommendation 10:**

The Office should coordinate with DFPES (and local jurisdictions) to ensure electrical plan reviews are performed, and to clarify where each entity’s role begins and ends with respect to each applicable code.

**WDH Response:** Agree.

WDH will forward electronic copies (when applicable) of electrical plans to the appropriate review authority and request a response from the reviewer when the plan reviews have been completed and determined acceptable. OHLS will request individuals submitting paper sets of plans to include adequate postage so that we can forward those to the appropriate electrical reviewer. Again, we will request notification when the plans have been reviewed and approved. OHLS will meet with Department of Fire Prevention and Electrical Safety to discuss and clarify issues and requirements with respect to enforcement of the Life Safety Code (NFPA 101) where the NFPA references the National Electrical Code.



# Appendix A: Selected statutes

## TITLE 35 - PUBLIC HEALTH AND SAFETY

### CHAPTER 2 - HOSPITALS, HEALTH CARE FACILITIES AND HEALTH SERVICES

#### ARTICLE 9 - LICENSING AND OPERATIONS

#### 35-2-901. Definitions; applicability of provisions

(a) As used in this act:

(i) “Acute care” means short term care provided in a hospital;

(ii) “Ambulatory surgical center” means a facility which provides surgical treatment to patients not requiring hospitalization and is not part of a hospital or offices of private physicians, dentists or podiatrists;

(iii) “Birthing center” means a facility which operates for the primary purpose of performing deliveries and is not part of a hospital;

(iv) “Boarding home” means a dwelling or rooming house operated by any person, firm or corporation engaged in the business of operating a home for the purpose of letting rooms for rent and providing meals and personal daily living care, but not habilitative or nursing care, for persons not related to the owner. Boarding home does not include a lodging facility or an apartment in which only room and board is provided;

(v) “Construction area” means thirty (30) highway miles, from any existing nursing care facility or hospital with swing beds to the site of the proposed nursing care facility, as determined by utilizing the state map prepared by the Wyoming department of transportation;

(vi) “Department” means the department of health;

(vii) “Division” means the designated division within the department of health;

(viii) “Freestanding diagnostic testing center” means a mobile or permanent facility which provides diagnostic testing but not treatment and is not part of the private offices of health care professionals operating within the scope of their licenses;

(ix) Repealed By Laws 1999, ch. 119, § 2.

(x) “Health care facility” means any ambulatory surgical center, assisted living facility, adult day care facility, adult foster care home, alternative eldercare home, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, intermediate care facility for people with intellectual disability, medical assistance

facility, nursing care facility, rehabilitation facility and renal dialysis center;

(xi) “Home health agency” means an agency primarily engaged in arranging and directly providing nursing or other health care services to persons at their residence;

(xii) “Hospice” means a program of care for the terminally ill and their families given in home or health facility which provides medical, palliative, psychological, spiritual and supportive care and treatment;

(xiii) “Hospital” means an institution or a unit in an institution providing one (1) or more of the following to patients by or under the supervision of an organized medical staff:

(A) Diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons;

(B) Rehabilitation services for the rehabilitation of injured, disabled or sick persons;

(C) Acute care;

(D) Psychiatric care;

(E) Swing beds.

(xiv) “Intermediate care facility for people with intellectual disability” means a facility which provides on a regular basis health related care and training to persons with intellectual disabilities or persons with related conditions, who do not require the degree of care and treatment of a hospital or nursing facility and services above the need of a boarding home. The term also means “intermediate care facility for the mentally retarded” or “ICFMR” or “ICFs/MR” as those terms are used in federal law and in other laws, rules and regulations;

(xv) “Medical assistance facility” means a facility which provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient care to persons needing that care for a period of no longer than sixty (60) hours and is located more than thirty (30) miles from the nearest Wyoming hospital;

(xvi) “Nursing care facility” means a facility providing assisted living care, nursing care, rehabilitative and other related services;

(xvii) “Physician” means a doctor of medicine or osteopathy licensed to practice medicine or surgery under state law;

- (xviii) “Psychiatric care” means the in-patient care and treatment of persons with a mental diagnosis;
- (xix) “Rehabilitation facility” means an outpatient facility which is operated for the primary purpose of assisting the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluations and training or any combination of these services and in which the major portion of the services is furnished within the facility;
- (xx) “Renal dialysis center” means a freestanding facility for treatment of kidney diseases;
- (xxi) “Swing bed” means a special designation for a hospital which has a program to provide specialized in-patient long term care. Any medical-surgical bed in a hospital can be designated as a swing bed;
- (xxii) “Assisted living facility” means a dwelling operated by any person, firm or corporation engaged in providing limited nursing care, personal care and boarding home care, but not habilitative care, for persons not related to the owner of the facility. This definition may include facilities with secured units and facilities dedicated to the special care and services for people with Alzheimer’s disease or other dementia conditions;
- (xxiii) “Adult day care facility” means any facility not otherwise certified by the department of health, engaged in the business of providing activities of daily living support and supervision services programming based on a social model, to four (4) or more persons eighteen (18) years of age or older with physical or mental disabilities;
- (xxiv) “Adult foster care home” means a home where care is provided for up to five (5) adults who are not related to the provider by blood, marriage or adoption, except in special circumstances, in need of long term care in a home like atmosphere. Clients in the home shall have private rooms which may be shared with spouses and shall have individual handicapped accessible bathrooms. “Adult foster home” does not include any residential facility otherwise licensed or funded by the state of Wyoming. The homes shall be regulated in accordance with this act and with the Wyoming Long Term Care Choices Act, which shall govern in case of conflict with this act;
- (xxv) “Alternative eldercare home” means a facility as defined in W.S. 42-6-102(a)(iii). The homes shall be regulated in accordance with this act and with the Wyoming Long Term Care Choices Act which shall govern in case of conflict with this act;
- (xxvi) “This act” means W.S. 35-2-901 through 35-2-912.

(b) This act does not apply to hospitals or any other facility or agency operated by the federal government which would otherwise be required to be licensed under this act or to any person providing health care services within the scope of his license in a private office.

**35-2-902. License required**

No person shall establish any health care facility in this state without a valid license issued pursuant to this act.

**35-2-903. Application for license; submission of evidence prerequisite to issuance**

(a) An applicant for a license under this act shall file a sworn application with the division on a form provided by the division. The form shall request the following information:

- (i) The applicant's name;
- (ii) The type of health care facility to be operated;
- (iii) A description of and the location of the facility buildings;
- (iv) The name of the person in charge of the health care facility;
- (v) Whether the applicant has had a license to operate a health care facility or agency providing health care services in this or any other state denied, suspended, revoked or otherwise terminated for cause and the specific reasons for such action. Evidence that the facility subject to the application is currently in compliance with all applicable statutes, rules and regulations is required;
- (vi) Evidence that the applicant is capable of complying with applicable rules and regulations;
- (vii) Such other information as the division may require pursuant to rules promulgated under this act.

(b) An application by other than an individual shall be made by two (2) officers of the organization or by its managing agents.

**35-2-904. Issuance of license; fee; duration; renewal; transferability; provisional licenses; procedures**

(a) The division shall issue a license under this act:

- (i) If the applicant is in compliance with this act and in substantial compliance with the



rules and regulations promulgated pursuant to this act; and

(ii) Upon payment of a license fee as established by the department for each health care facility. The department shall adopt rules which provide for reasonable fees not to exceed five hundred dollars (\$500.00) designed to recover administrative and operational expenses of the department in conducting its licensure program under this article.

(b) Licenses are issued for a period of one (1) year beginning on July 1 of the year of issuance and ending on June 30 of the succeeding year. The full fee is due whether the license is issued for the entire year or for part of the year.

(c) Licenses are renewed annually upon payment of the license fee unless suspended or revoked pursuant to W.S. 35-2-905.

(d) Fees collected under this act shall be deposited in the general fund.

(e) Licenses are not assignable or transferable.

(f) Applicants not complying with this act and not substantially complying with the rules and regulations promulgated pursuant to this act may be granted a provisional license subject to restrictions imposed by the division if the operation of the facility will not endanger the health, safety and welfare of patients. All applicants found in noncompliance shall be notified of the reason for noncompliance.

### **35-2-905. Conditions, monitoring or revoking a license**

(a) The division may place conditions upon a license, install a division approved monitor or manager at the owner's or operator's expense, suspend admissions, or deny, suspend or revoke a license issued under this act if a licensee:

(i) Violates any provision of this act or the rules and regulations promulgated pursuant to this act;

(ii) Permits, aids or abets the commission of any illegal act by a licensee;

(iii) Conducts practices detrimental to the health, safety or welfare of the patients of the licensee;

(iv) Repealed By Laws 2008, Ch. 116, § 2.

(b) No license issued pursuant to this act shall be suspended or revoked or have conditions placed upon it or admissions suspended nor shall the division install an approved monitor or manager

without notice to the licensee and an opportunity for a hearing under W.S. 16-3-101 through 16-3-115.

(c) If the division suspends the admission of new patients to a health care facility, the health care facility shall be provided an opportunity to abate the condition or conditions prior to suspension of admissions. If the conditions leading to the suspension of new admissions continue unabated beyond the period allowed for abatement, the division may continue the suspension of new admissions, or suspend or revoke the license.

(d) Any hearing held by the division under this section shall be held in the city or town in which the facility is located, or in the closest city or town with appropriate facilities for a hearing.

(e) If the division finds that conditions in a health care facility are in violation of this act and rules and regulations adopted under this act to the extent that there exists a substantial and immediate threat to the health or safety of patients, it may summarily suspend the license of that facility and take action necessary to protect the health and safety of patients. In cases of suspension under this subsection, the licensee shall be afforded an opportunity for a hearing within ten (10) days after the suspension.

(f) If a license is revoked pursuant to this act, an application for a new license may be made to the division only after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished to the division. A new license shall be granted only if the applicant is in compliance with all provisions of this act and rules and regulations promulgated pursuant to this act.

### **35-2-906. Construction and expansion of facilities; exemption**

(a) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the division for preliminary inspection and approval prior to commencing construction. Significant changes to the original plans must also be submitted and approved prior to implementation. The plans and any changes shall indicate any increase in the number of beds.

(b) Nursing care facility beds shall not be expanded or constructed if the average of all the nursing care bed occupancy, excluding veteran administration beds, in the construction area is eighty-five percent (85%) or less based upon the annual occupancy report prepared by the division.

(c) Notwithstanding the other provisions of this section any nursing care facility or hospital may, in any two (2) year period, increase its bed capacity by ten percent (10%) of the current nursing care facility bed capacity or by not more than ten (10) beds.

(d) Repealed By Laws 2002, Ch. 87, § 2.

(e) Repealed By Laws 2002, Ch. 87, § 2.

(f) Beds in adult foster care homes and beds in alternative eldercare homes constructed pursuant to the pilot programs authorized in W.S. 42-6-104 and 42-6-105 shall not be considered as nursing care facility beds for the purposes of this section.

**35-2-907. Inspection of licensed establishments; exceptions; assisted living facility inspection procedure**

(a) Except as otherwise provided in this section every licensed health care facility shall be periodically inspected by the division under rules and regulations promulgated by the department. A licensed health care facility which has been accredited by a nationally recognized accrediting body approved by federal regulations shall be granted a license renewal without further inspection. Inspection reports shall be prepared on forms prescribed by the division. Licensees accredited by the nationally recognized accrediting body shall submit the inspection report pursuant to its accreditation. If the standards of the nationally recognized accrediting body fail to meet or exceed the state standards for licensure, the division may inspect the licensed facility with regard to those matters which did not meet state standards.

(b) Except as required in administrative and judicial proceedings, information obtained from licensees under this act is subject to public disclosure only after deletion of information which reveals the identity of patients, persons who file complaints with the division and employees of the health care facility.

(c) The division shall:

(i) Provide for the selection of an inspector to inspect and evaluate an applicant for an assisted living facility;

(ii) Approve and establish a fee to be paid by the applicant to the selected inspector. The division shall notify the applicant of the inspection fee prior to the inspection and evaluation;

(iii) Act on the application within thirty (30) days after receiving a report from the selected inspector on the inspection and evaluation of the applicant.

**35-2-908. Rules and regulations**

The department shall promulgate and enforce reasonable rules and regulations necessary to protect the health, safety and welfare of patients of health care facilities licensed under this act.

**35-2-909. Penalties for violations**

Except for violations otherwise punishable as a felony under the laws of this state, any person establishing or operating a facility or providing a service without first obtaining a license as required in this act is guilty of a misdemeanor punishable by a fine of not to exceed seven hundred fifty dollars (\$750.00), by imprisonment for not more than six (6) months, or both. Each calendar week or portion thereof during which a violation continues is a separate offense.

**35-2-910. Quality management functions for health care facilities; confidentiality; immunity; whistle blowing; peer review**

(a) Each licensee shall implement a quality management function to evaluate and improve patient and resident care and services in accordance with rules and regulations promulgated by the division. Quality management information relating to the evaluation or improvement of the quality of health care services is confidential. Any person who in good faith and within the scope of the functions of a quality management program participates in the reporting, collection, evaluation, or use of quality management information or performs other functions as part of a quality management program with regard to a specific circumstance shall be immune from suit in any civil action based on such functions brought by a health care provider or person to whom the quality information pertains. In no event shall this immunity apply to any negligent or intentional act or omission in the provision of care.

(b) Health care facilities subject to or licensed pursuant to this act shall not harass, threaten discipline or in any manner discriminate against any resident, patient or employee of any health care facility for reporting to the division a violation of any state or federal law or rule and regulation. Any employee found to have knowingly made a false report to the division shall be subject to disciplinary action by the employing health care facility, including but not limited to, dismissal.

(c) No hospital shall be issued a license or have its license renewed unless it provides for the review of professional practices in the hospital for the purpose of reducing morbidity and mortality and for the improvement of the care of patients in the hospital. This review shall include, but not be limited to:

- (i) The quality and necessity of the care provided to patients as rendered in the hospital;
- (ii) The prevention of complications and deaths occurring in the hospital;
- (iii) The review of medical treatments and diagnostic and surgical procedures in order to ensure safe and adequate treatment of patients in the hospital; and
- (iv) The evaluation of medical and health care services and the qualifications and professional competence of persons performing or seeking to perform those services.

(d) The review required in subsection (c) of this section shall be performed according to the decision of a hospital's governing board by:

- (i) A peer review committee appointed by the organized medical staff of the hospital;
- (ii) A state, local or specialty medical society; or
- (iii) Any other organization of physicians established pursuant to state or federal law and engaged by the hospital for the purposes of subsection (c) of this section.

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**TITLE 35 - PUBLIC HEALTH AND SAFETY**

**CHAPTER 9 - FIRE PROTECTION**

**ARTICLE 1 - DEPARTMENT OF FIRE PREVENTION AND ELECTRICAL SAFETY (Some sections are not included)**

**35-9-101. Department created**

The department of fire prevention and electrical safety is created.

**35-9-102. Definitions**

(a) As used in W.S. 35-9-101 through 35-9-130:

- (iii) "Board" means the electrical board;
- (iv) "Council" means the council on fire prevention and electrical safety in buildings;
- (v) "Department" means the department of fire prevention and electrical safety;
- (xvi) "Owner" means the person holding legal title to a building or real property;
- (xvii) "Public building" means a building intended for access by the general public;
- (xviii) "Remodeling" includes repairing, altering or adding to a building or its electrical system;

**35-9-103. Divisions created; council and board created.**

(a) There are created within the department:

- (i) The division of fire prevention;
- (ii) The division of electrical safety;

(iii) The council on fire prevention and electrical safety in buildings;

(iv) The electrical board.

(b) The council consists of five (5) members appointed by the governor for six (6) year terms which commence on April 1 following appointment. One (1) member shall be appointed to represent each of the following: counties or municipalities, fire fighters, the electrical board, an association of architects or an association of general contractors and the general public. Vacancies shall be filled for the unexpired term. When new appointments are made, the council shall select a chairman, a vice chairman and a secretary. A quorum consists of three (3) members. The council shall meet at least twice each year.

(c) The board consists of five (5) members appointed by the governor for six (6) year terms. At least one (1) member and no more than two (2) members shall be journeymen electricians, at least one (1) and no more than two (2) shall be master electricians, and at least one (1) and no more than two (2) shall be electrical contractors. No two (2) members shall be employed by the same entity and serve on the board. Any member who becomes employed by the same entity as another member during his term of office shall be ineligible to continue as a member of the board. Vacancies shall be filled for the unexpired term. When new appointments are made, the board shall select a chairman and a secretary. A quorum consists of three (3) members. The board shall meet at least twice each year.

(d) The members of the council and board shall receive compensation, per diem and travel expenses in the same manner and amount as the state legislature while going to, attending or returning from meetings. The governor may remove any council or board member as provided in W.S. 9-1-202.

### **35-9-106. Powers and duties of council.**

(a) The council shall adopt rules and regulations to:

(i) Establish minimum fire standards not exceeding the standards prescribed by the International Fire Code, the International Building Code, the International Mechanical Code and the International Fuel Gas Code for:

(A) All new building construction or remodeling under W.S. 35-9-108(a);

(B) The prevention of fire and the protection of life and property from fire and panic in all existing buildings;

(C) The safeguarding of life and property from hazards of fire and explosion arising from storage, handling and use of hazardous substances, materials and devices.

(ii) Repealed by Laws 2003, Ch. 49, § 3.

(iii) Recommend minimum standards for qualification of inspectors for political subdivisions;

(iv) Implement this article.

(b) The council shall investigate the conduct of the divisions, shall have access to records of the divisions and may require written or oral information from any officer or employee of the department.

(c) Except as provided under W.S. 35-9-124(a)(ii), the council shall hear appeals to determine the suitability of alternate materials and type of construction and to interpret and grant variances from rules and regulations of the council.

(d) The standards for liquefied petroleum gas installations shall be the current edition of NFPA 58 Liquefied Petroleum Gas Code and ANSI Z223.1/NFPA 54 National Fuel Gas Code. To the extent the standards for liquefied petroleum gas conflict with the standards prescribed by the International Fuel Gas Code, the NFPA 58 Liquefied Petroleum Gas Code and ANSI Z223.1/NFPA 54 National Fuel Gas Code control.

(e) To the extent that any provision in the International Fire Code, the International Building Code, the International Mechanical Code and the International Fuel Gas Code conflicts with the standards prescribed by the National Electrical Code, the National Electrical Code shall control.

### **35-9-108. Plan review; procedure; fees**

(a) Prior to beginning any new construction, the remodeling of existing buildings except as provided under subsection (q) of this section, or the installation of aboveground flammable or combustible fuel storage tanks, the owner or the owner's designated representative shall submit plans to the state fire marshal for review of the proposed project for compliance with applicable fire and electrical safety standards for:

(i) Buildings or structures owned or leased by the state or local governmental entities;

(ii) Public buildings over five thousand (5,000) square feet of total floor area including basement;

(iii) Multistory public buildings;

(iv) Buildings intended for use as child care centers housing more than ten (10) children;

(v) Public bars, public lounges, restaurants, night clubs, lodge halls, theaters, churches or public meeting places regardless of size;

(vi) Public and private aboveground fuel dispensing facilities.

(b) If the state fire marshal does not notify the sender in writing of violations of the fire or electrical safety standards within twenty-one (21) working days of receiving the plans, they are approved as submitted.

(c) Plans which are disapproved may be corrected and resubmitted. The state fire marshal shall review only the corrections made in response to the violations cited in the initial review. If the state fire marshal does not notify the sender in writing of violations of the fire and electrical safety standards within ten (10) working days of receiving the corrected plans, they are approved as resubmitted.

(d) The department shall collect fees for plan reviews and other inspections except as provided in subsections (q) and (r) of this section, in the amount provided in the 1997 Uniform Building Code and adjusted for inflation as adopted by rule or regulation by the council. Fees collected under this subsection shall be deposited into the general fund.

(e) There shall be no plan review fee for publicly owned buildings.

(f) Repealed By Laws 2003, Ch. 49, § 3.

(g) Repealed By Laws 2003, Ch. 49, § 3.

(h) Nothing in this section shall apply to municipalities or counties which have received enforcement authority for fire safety standards under W.S. 35-9-121.

(j) No new construction or remodeling of buildings or installation of aboveground flammable or combustible fuel storage tanks shall begin until the state fire marshal has approved the plans for compliance with applicable fire and electrical safety standards.

(k) If new construction or remodeling of buildings or installation of aboveground flammable or combustible fuel storage tanks is commenced without approved plans, the state fire marshal may order the construction, remodeling or installation to cease until plans are approved, subject to the requirements of subsection (m) of this section.

(m) Orders issued by the state fire marshal pursuant to this section shall be served upon the owner in the manner provided for service of process by the Wyoming Rules of Civil Procedure. The order shall require that the person served immediately cease certain activities until he has complied with the applicable statutory requirements. The order shall be in full force and effect from the time of



service until the person complies with the statutory requirement as described in the order, or the order is revoked by the council. If the person fails to cease certain activities as required within forty-eight (48) hours of service, the person is guilty of a misdemeanor.

(n) After new construction or remodeling of buildings is completed, the state fire marshal shall inspect the building and determine conformance with the plan review. If he finds conformance, the state fire marshal shall issue a certificate of occupancy for a newly constructed building and a letter of compliance for a remodeled building. No newly constructed or remodeled building shall be used or occupied until the state fire marshal has issued a certificate of occupancy or letter of compliance. If a newly constructed or remodeled building is used or occupied prior to the issuance of a certificate of occupancy or letter of compliance, the state fire marshal shall order the use and occupancy of the building to cease until a certificate of occupancy or letter of compliance is issued, subject to the requirements of subsection (m) of this section.

(o) After the installation of aboveground flammable or combustible fuel storage tanks is completed, the state fire marshal shall inspect the premises and determine conformance with the plan review. If he finds conformance, the state fire marshal shall issue a letter of compliance. No premises with aboveground flammable or combustible fuel storage tanks installed shall be used until the state fire marshal has issued a letter of compliance. If a premise with aboveground flammable or combustible fuel storage tanks installed is used prior to issuance of a letter of compliance, the state fire marshal shall order the use of the premises to cease until a letter of compliance is issued, subject to the requirements of subsection (m) of this section.

(p) Any owner aggrieved by an order of the state fire marshal may appeal to the council within forty-eight (48) hours. The complaint shall be investigated immediately by direction of the council. Unless the order is revoked by the council, it shall remain in force and the owner shall comply.

(q) A plan review is:

(i) Not required for remodeling that is exempt from permitting under the International Code;

(ii) Required for remodeling that costs less than twenty-five thousand dollars (\$25,000.00) and affects a built-in fire protection system for the building, provided a fee of no more than fifty dollars (\$50.00) per hour shall be paid to the department for the review;

(iii) Required for remodeling that costs twenty-five thousand dollars (\$25,000.00) or more, provided the department shall collect a fee pursuant to subsection (d) of this section.

(r) There shall be no inspection fees for school buildings.

(s) Subsections (a) through (r) shall not apply to remodeling that is exempt under subsection (q).

### **35-9-118. Exceptions**

(a) W.S. 35-9-106 through 35-9-117 do not apply to:

- (i) Farms or ranches of forty (40) acres or more on deeded land;
- (ii) County memorial hospitals, state-owned health care institutions, hospital districts, private hospitals and other health care facilities, except as permitted pursuant to W.S. 35-9-121.1;
- (iii) Mines or their appurtenant facilities, oil field operations, petroleum refineries and liquefied petroleum gas facilities;
- (iv) Railway shops, railway buildings (except those used for public assembly, cafeterias, dormitories, etc.), rolling stock and locomotive equipment;
- (v) Automotive equipment employed by a railway, gas, electric or communication utility in the exercise of its function as a public utility.

(b) Nothing in this section prohibits the state fire marshal from assisting, upon request, another state agency, or an owner or operator of property listed in subsection (a) of this section.

### **35-9-119. Duties of chief electrical inspector**

(a) The chief electrical inspector shall:

- (i) Enforce the minimum requirements for electrical installations except in localities which have received enforcement authority for electrical safety standards under W.S. 35-9-121;
- (ii) Aid cities, towns, counties and inspectors in understanding the National Electrical Code;
- (iii) Distribute copies of the National Electrical Code at cost;
- (iv) Interpret the National Electrical Code; and
- (v) Supervise deputy electrical inspectors.

### **35-9-120. Minimum requirements for electrical installations; permits; inspections; fees**

(a) The installation of electric equipment in or on buildings, mobile homes and premises shall be made subject to the applicable minimum requirements of the National Electrical Code.

(b) The chief electrical inspector and his deputies:

(i) Have the right of ingress or egress to all buildings or other structures owned or leased by the state or local governmental entities during reasonable working hours to make electrical inspections;

(ii) May inspect any building or structure:

(A) With a search warrant issued by a district court after a finding of probable cause that there is a violation of state law regarding electrical installations; or

(B) At any time during construction and within thirty (30) days after completion of the installation for which an electrical wiring permit was issued or an electrical plan review was performed.

(iii) Shall inspect any building or structure within five (5) business days of the request of the owner or the general or electrical contractor installing the electrical equipment.

(c) For any requested electrical inspection conducted or electrical wiring permit issued by the chief electrical inspector or his deputy, a fee established by the board by rule shall be paid by the person or contractor making the request. The electrical wiring permit fee shall be waived for anyone requesting and paying for an electrical inspection. The fees established by the board shall not exceed the following:

(i) Electrical inspection fees for requested inspections:

(A) Each residential unit \$20.00 plus \$.50 per ampere rating of the electrical service;

(B) Mobile home services \$20.00 plus \$.50 per ampere rating of mobile home;

(C) Temporary services \$40.00 each;

(D) Remodels of residential units \$20.00 plus 2% of the value of any electrical installation included in the remodel;

(E) All other electrical installations \$20.00 plus \$.50 per ampere rating of the electrical service;

(F) Reinspections \$50.00 plus \$.20 per ampere rating of the electrical service.

(ii) Effective July 1, 1993, electrical wiring permit fees. \$30.00

(d) Inspection fees pursuant to paragraph (c)(i) of this section shall be charged for requested inspections made on installations that are not under new construction or remodeling.

(e) No person shall install electrical equipment in new construction or remodeling, if the remodeling requires a public utility to connect or disconnect and restore electrical power, of a building, mobile home or premises without obtaining an electrical wiring permit. No public utility shall energize an electrical service for an electrical installation which requires an electrical wiring permit until the person responsible for the electrical installation has obtained an electrical wiring permit. A utility may energize an electrical service in an emergency situation without proof that an electrical wiring permit has been obtained, however the utility shall notify the department of fire prevention and electrical safety of the action as soon as possible, but in no case later than five (5) days following the date that the electrical service was energized. Electrical wiring permits shall be issued by the chief electrical inspector upon request. Each permit shall explain procedures and costs for permits and requested inspections conducted by the chief electrical inspector or his deputy electrical inspectors. This subsection does not apply to municipalities and counties granted local enforcement authority for electrical safety standards under W.S. 35-9-121 and to exempt installations under W.S. 35-9-123(a)(ii) through (v).

(f) Fifty percent (50%) of the fees collected pursuant to subsection (c) of this section shall be deposited in a separate account for the purpose of providing additional state electrical inspectors. Fifty percent (50%) of the fees collected pursuant to subsection (c) of this section shall be deposited in the general fund.

### **35-9-121. Local enforcement**

(a) The state fire marshal shall delegate complete authority to municipalities and counties which apply to enforce and interpret local or state fire, building or electrical safety standards which meet the requirements of this section. The state fire marshal shall notify the governing body of the municipality or county of the minimum standards and requirements of this act and W.S. 16-6-501 and 16-6-502 and transfer jurisdiction and authority by letter. Nothing in this section affects the authority of the state fire marshal or chief electrical inspector regarding state owned or leased buildings. Local enforcement authority under this subsection shall be subject to the following:

(i) Before a municipality or county without local enforcement authority is initially granted local enforcement authority for fire, building or electrical standards the state fire marshal shall determine that the local governing body has adopted minimum standards by ordinance or resolution that are equivalent to or more stringent than those applicable standards adopted by the council on fire prevention and electrical safety;

(ii) If a municipality or county that has been granted local enforcement authority under this subsection fails to adopt, within six (6) months following the adoption of new standards by the council on fire prevention and electrical safety, or maintain standards by ordinance or resolution that at least meet the statewide standards, enforcement authority

shall immediately revert to the department of fire prevention and electrical safety. It shall be the responsibility of the municipality or county to notify the department of fire prevention and electrical safety of the repeal of minimum standards in their jurisdiction.

(b) Notwithstanding the provisions of subsection (a) of this section a local governmental entity is authorized to assume joint plan review authority with the state fire marshal, and that entity has sole construction inspection authority on the approved plans, and sole authority for periodic fire and life safety inspections on state owned or leased buildings. For the purpose of this section, school buildings shall be construed to be state buildings. If local code provisions are more stringent than adopted state codes, the local code prevails. The authority granted to local governmental entities under this subsection is subject to certification of local inspectors as follows:

(i) If joint plan review authority is requested, certification of a plan reviewer by the international conference of building officials or the International Code Council;

(ii) If code enforcement authority for fire and building codes is requested, certification of a fire inspector or building inspector by the International Code Council or the International Conference of Building Officials;

(iii) If code enforcement authority for the electrical code is requested, certification of an electrical inspector by the International Code Council or the International Association of Electrical Inspectors and licensing by the state as a master electrician.

(c) If a municipality or county has assumed enforcement authority for only one (1) or two (2) of the fire, building and electrical standards, the municipality or county shall deliver notice of any project plans submitted to the municipality or county for approval to the department of fire prevention and electrical safety. The notice of the project shall be delivered within ten (10) days of receiving plans from the applicant.

(d) A municipality or county which has enforcement authority under this section may create its own appeals boards to determine the suitability of alternate materials and types of construction. The boards shall be appointed and removed by the governing body of the municipality or county. The council on fire prevention and electrical safety in buildings and the electrical board shall serve as appeals boards for a municipality or county that has not created an appeals board under this subsection.

(e) A decision rendered by the local municipal or county appeals board pursuant to subsection

(d) of this section regarding state owned or leased buildings may be appealed to the council on fire prevention and electrical safety in buildings for a final decision.

### **35-9-121.1. Health care facilities; jurisdiction; delegation; rules**

- (a) The department of health has jurisdiction over all aspects of construction and remodeling, except electrical installation, of any state licensed health care facility as defined in W.S. 35-2-901.
- (b) The fire safety code requirements for the construction and remodeling of any state licensed health care facility shall meet the minimum requirements established in the National Fire Protection Association 101 Life Safety Code or any other code required to meet federal fire and life safety certification. If any code requirements for federal certification conflict with the code of any other state or local governmental entity, the code required for federal certification shall prevail.
- (c) The department of health shall promulgate rules and regulations for all aspects of construction and remodeling of health care facilities except electrical installation. For aspects of construction and remodeling included in codes adopted by the council pursuant to W.S. 35-9-106, the rules and regulations shall be based on and not exceed the standards of these codes except where federal certification requirements dictate otherwise.
- (d) Upon written request from any county or municipality, the department of health shall delegate plan review and inspection responsibilities to the county or municipality that has personnel who are certified pursuant to the applicable code. The department of health shall transfer jurisdiction and authority by letter. The department of health shall notify the governing body of the municipality or county of the minimum standards and requirements under this section and W.S. 16-6-501 and 16-6-502. The following shall apply:
  - (i) Any municipality or county may issue a certificate of occupancy for a health care facility. The certificate shall reference any code applied to the construction or remodeling of the facility;
  - (ii) A municipality or county which has enforcement authority under this subsection may create its own appeals board to determine the suitability of alternate materials and types of construction. If a municipality or county has not created an appeals board, the department of health shall establish an appeals board which includes representation from the department of health and the council.
- (e) After construction or remodeling of any health care facility, the department of health shall have jurisdiction over the fire and life safety inspections required for federal certification.

### **35-9-123. Electrical installations to be performed by licensed electricians; exceptions**

- (a) Licensed electrical contractors employing licensed master or journeymen electricians, or registered apprentice electricians supervised by a licensed master or journeyman electrician shall install all electrical equipment. This requirement is waived for:

- (i) Property owned or leased by a person when the person, his partner or a major stockholder of a family corporation is installing the equipment and the property is not for immediate resale;
- (ii) Oil or gas field operations, including those operations involving exploration, testing, drilling, production or transporting via pipeline of oil or gas, railroads, petroleum refineries, fertilizer manufacturing facilities, foundries, mines and their appurtenant facilities;
- (iii) Liquefied petroleum, gas, electric or communication facilities exercising their function as public utilities;
- (iv) Cable-TV, including data and related services of cable-TV providers including its contractors and subcontractors provided such contractors and subcontractors are limited to the installation of low voltage cable, A.M. or F.M. radio stations, television stations, cable phone services, cable internet services, data services and related services;
- (v) Farms or ranches of forty (40) acres or more on deeded land;
- (vi) Buildings constructed by a school or community college district as part of an industrial arts curriculum, under the direct supervision of a qualified industrial arts instructor. The school or community college district shall have the installations inspected by the state electrical inspector's office or the home rule authority, whichever has jurisdiction, to ensure compliance with W.S. 35-9-120;
- (vii) Licensed low voltage electrical contractors employing licensed low voltage technicians or registered low voltage apprentice technicians who may install electrical equipment which falls under the scope of their low voltage license or registration. No low voltage contractor may work on electrical systems which exceed ninety (90) volts unless allowed pursuant to this subsection. The chief electrical inspector may issue a low voltage electrical contractor's license to contractors not qualified for an electrical contractor's license but qualified for their low voltage area of expertise for the installation, repair or remodel of:
  - (A) All electrical systems under ninety (90) volts;
  - (B) Alarm systems under ninety (90) volts;
  - (C) Communication systems under ninety (90) volts or current limited communication systems of higher voltage;
  - (D) Sound systems under ninety (90) volts;



(E) Television systems under ninety (90) volts;

(F) Control systems under ninety (90) volts.

(viii) Licensed limited electrical contractors employing licensed limited technicians or registered limited apprentice technicians who may install electrical equipment which falls under the scope of their limited license or registration. The electrical work shall only include the electrical system on the load side of the disconnect which supplies power to the electrical equipment that they are licensed to work on. The chief electrical inspector may issue a limited electrical contractor's license to a contractor not qualified for an electrical contractor's license but qualified in his limited area of expertise for the:

(A) Installation, repair or remodel of heating, ventilating and air conditioning systems limited to wiring on the load side of the equipment disconnect;

(B) Installation, repair or remodel of elevator systems limited to wiring on the load side of the equipment disconnect;

(C) Installation, repair or remodel of sign systems limited to wiring on the load side of the equipment disconnect;

(D) Installation, repair or remodel of water well and irrigation systems limited to wiring on the load side of the equipment disconnect;

(E) Routine repair or maintenance of light fixtures limited to replacement of lamps, ballasts and fixture parts.

(b) Exceptions shall not apply to anyone who contracts or subcontracts to or for any exempt person, partnership or corporation.

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## **TITLE 35 - PUBLIC HEALTH AND SAFETY**

### **CHAPTER 2 - HOSPITALS, HEALTH CARE FACILITIES AND HEALTH SERVICES**

#### **ARTICLE 3 - STATE HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT**

##### **35-2-301. Short title.**

This act [ §§ 35-2-301 through 35-2-345 ] may be cited as the "State Hospital and Medical Facilities Survey and Construction Act."

##### **35-2-302. Definitions.**

(a) As used in this act [ §§ 35-2-301 through 35-2-345]:

(i) “Commissioner” means the director of the state department of health. The director of the state department of health shall be, ex officio, the commissioner;

(ii) “The federal act” means title VI of the Public Health Service Act (42 U.S.C. § 291 et seq.) as is now and as may hereafter be amended;

(iii) “The surgeon general” means the surgeon general of the public health service of the United States;

(iv) “Hospital” includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses’ home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care;

(v) “Public health center” means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics and administrative offices operated in connection with public health centers;

(vi) “Nonprofit hospital” means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(vii) “Medical facilities” means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act and such other medical facilities for which federal aid may be authorized under the federal act.

**35-2-303. Department of health; sole agency for making an inventory and developing and administering state plan.**

(a) The department of health shall constitute the sole agency of the state for the purpose of:

(i) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital construction as provided in W.S. 35-2-320 through 35-2-322; and

(ii) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in W.S. 35-2-340 through 35-2-345.

**35-2-304. Powers and duties of commissioner enumerated.**

(a) In carrying out the purposes of the act [ §§ 35-2-301 through 35-2-345], the commissioner is authorized and directed:

(i) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(ii) To provide such methods of administration, appoint personnel and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(iii) To procure the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(iv) To the extent that he considers desirable to effectuate the purposes of this act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(v) To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act, and to expend the same for such purposes;

(vi) As required by W.S. 9-2-1014, to report to the governor concerning activities and expenditures and recommendations for such additional legislation as the commissioner considers appropriate to furnish adequate hospital, clinic, and similar facilities to the people of this state.

**35-2-305. Repealed by Laws 1979, ch. 155, § 3.**

**35-2-306. Disbursement of funds.**

All claims against funds made available for the administration of this act [ §§ 35-2-301 through 35-2-345] shall be submitted, audited, allowed and paid in the same manner as other claims against the state and in addition thereto shall be approved by the commissioner.

**35-2-320. Duties of commissioner.**

The commissioner is authorized and directed to make an inventory of existing hospitals and medical facilities, including public, nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical

facilities for furnishing adequate hospital, medical facility and similar services to all the people of the state.

**35-2-321. Construction program.**

The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility services reasonably accessible to all persons in the state.

**35-2-322. Application for and use of federal funds.**

The commissioner is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited in the state treasury and shall be available for expenditure for carrying out the purposes of W.S. 35-2-320 through 35-2-322. Any such funds received and not expended for such purposes shall be repaid to the treasury of the United States.

**35-2-340. Preparation and submission to surgeon general; notice and hearing prerequisite to submission; publication upon approval; subsequent modifications.**

The commissioner shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facilities construction program developed under W.S. 35-2-320 through 35-2-322 and which shall provide for the establishment, administration, and operation of the hospital and medical facilities construction activities in accordance with the requirements of the federal act and regulations thereunder. The commissioner shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the commissioner shall publish a general description of the provisions thereof in at least one (1) newspaper having general circulation in each county in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The commissioner shall from time to time review the hospital and medical facilities construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable.

**35-2-341. Minimum standards of maintenance.**

The commissioner shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan.

**35-2-342. Relative need for projects to be set forth.**

The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need.

**35-2-343. Applications for construction projects; conformity to federal and state requirements required.**

Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the commissioner and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or a medical facility. Each application for a construction project shall conform to federal and state requirements.

**35-2-344. Hearing and approval of applications for construction.**

The commissioner shall afford to every applicant for a construction project an opportunity for a fair hearing. If the commissioner, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of W.S. 35-2-343 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general.

**35-2-345. Inspection of construction projects; payment of installment of federal funds.**

From time to time the commissioner shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the commissioner shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

# Appendix B: Statistics and distribution of statewide construction projects

**Figure B.1**  
Number of pre and post-July 1, 2003 construction projects by facility type, CY '98 - '08

Facility Type		Pre-July 1, 2003	% of All projects	Post-July 1, 2003	% of All project	CY '98 - '08	% of All projects
1	Ambulatory Surgical Center	18	6.02%	12	2.37%	30	3.72%
2	Assisted Living Facility	14	4.68%	29	5.72%	43	5.33%
3	Adult Day Care	0	0.00%	4	0.79%	4	0.50%
4	Adult Foster Care Home	0	0.00%	0	0.00%	0	0.00%
5	Alternative Eldercare Home	0	0.00%	0	0.00%	0	0.00%
6	Birthing Center	0	0.00%	0	0.00%	0	0.00%
7	Boarding Home	7	2.34%	8	1.58%	15	1.86%
8	Freestanding Diagnostic Testing Center	0	0.00%	0	0.00%	0	0.00%
9	Home Health Agency	0	0.00%	0	0.00%	0	0.00%
10	Hospice Center	3	1.00%	4	0.79%	7	0.87%
11	Hospital	197	65.89%	269	53.06%	466	57.82%
12	Intermediate Care Facility for People with Intellectual Disabilities	2	0.67%	4	0.79%	6	0.74%
13	Medical Assistance Facility	0	0.00%	0	0.00%	0	0.00%
14	Nursing Home	39	13.04%	158	31.16%	197	24.44%
15	Rehabilitation Facility	2	0.67%	3	0.59%	5	0.62%
16	End Stage Renal Dialysis Center	5	1.67%	3	0.59%	8	0.99%
Unknown		12	4.01%	13	2.56%	25	3.10%
Total		299	100%	507	100%	806	100%
% Pre or Post July 1, 2003		37.10%		62.90%			

Source: LSO summary of OHLS project tracking logs, as of March 31, 2009.

**Figure B.2**  
**Construction project distribution cities, most to least: pre-2003 (A), post-2003 (B)**

**A**

<b>City</b>	<b>Total</b>	<b>Percent of All Projects</b>
Casper	45	15.05%
Cheyenne	32	10.70%
Gillette	30	10.03%
Jackson	21	7.02%
Riverton	20	6.69%
Lander	18	6.02%
Laramie	14	4.68%
Douglas	13	4.35%
Evanston	11	3.68%
Sheridan	10	3.34%
Thermopolis	10	3.34%
Rock Springs	8	2.68%
Worland	8	2.68%
Afton	6	2.01%
Buffalo	6	2.01%
Cody	6	2.01%
Kemmerer	6	2.01%
Rawlins	5	1.67%
Basin	4	1.34%
Newcastle	4	1.34%
Sundance	4	1.34%
Torrington	4	1.34%
Lovell	3	1.00%
Powell	3	1.00%
Wheatland	2	0.67%
Fort Washakie	1	0.33%
Green River	1	0.33%
Greybull	1	0.33%
Ranchester	1	0.33%
Saratoga	1	0.33%
Wright	1	0.33%
Glenrock	0	0.00%



City	Total	Percent of All Projects
Lusk	0	0.00%
Moorcroft	0	0.00%
Mountain View	0	0.00%
Pinedale	0	0.00%
Unknown	0	0.00%
<b>Total</b>	<b>299</b>	<b>100.00%</b>

**Figure B.2**  
**Construction project distribution cities, most to least: pre-2003 (A), post-2003 (B)**

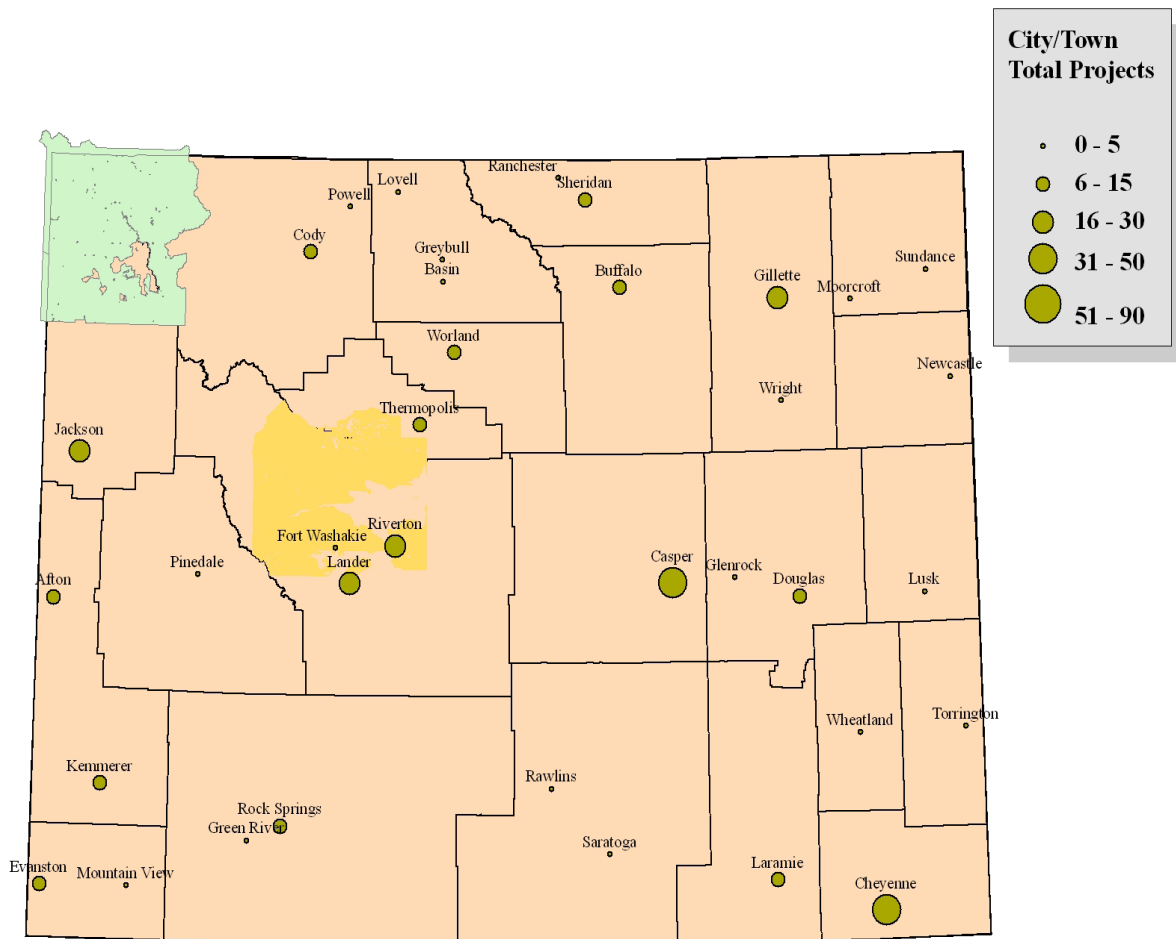
**B**

City	Total	Percent of All Projects
Cheyenne	57	11.24%
Casper	45	8.88%
Sheridan	27	5.33%
Gillette	25	4.93%
Basin	23	4.54%
Laramie	22	4.34%
Evanston	21	4.14%
Lander	20	3.94%
Newcastle	20	3.94%
Riverton	20	3.94%
Rock Springs	20	3.94%
Thermopolis	19	3.75%
Cody	18	3.55%
Lovell	18	3.55%
Torrington	18	3.55%
Worland	18	3.55%
Rawlins	15	2.96%
Douglas	14	2.76%
Jackson	14	2.76%
Afton	9	1.78%
Buffalo	9	1.78%
Powell	9	1.78%
Fort Washakie	7	1.38%
Pinedale	7	1.38%

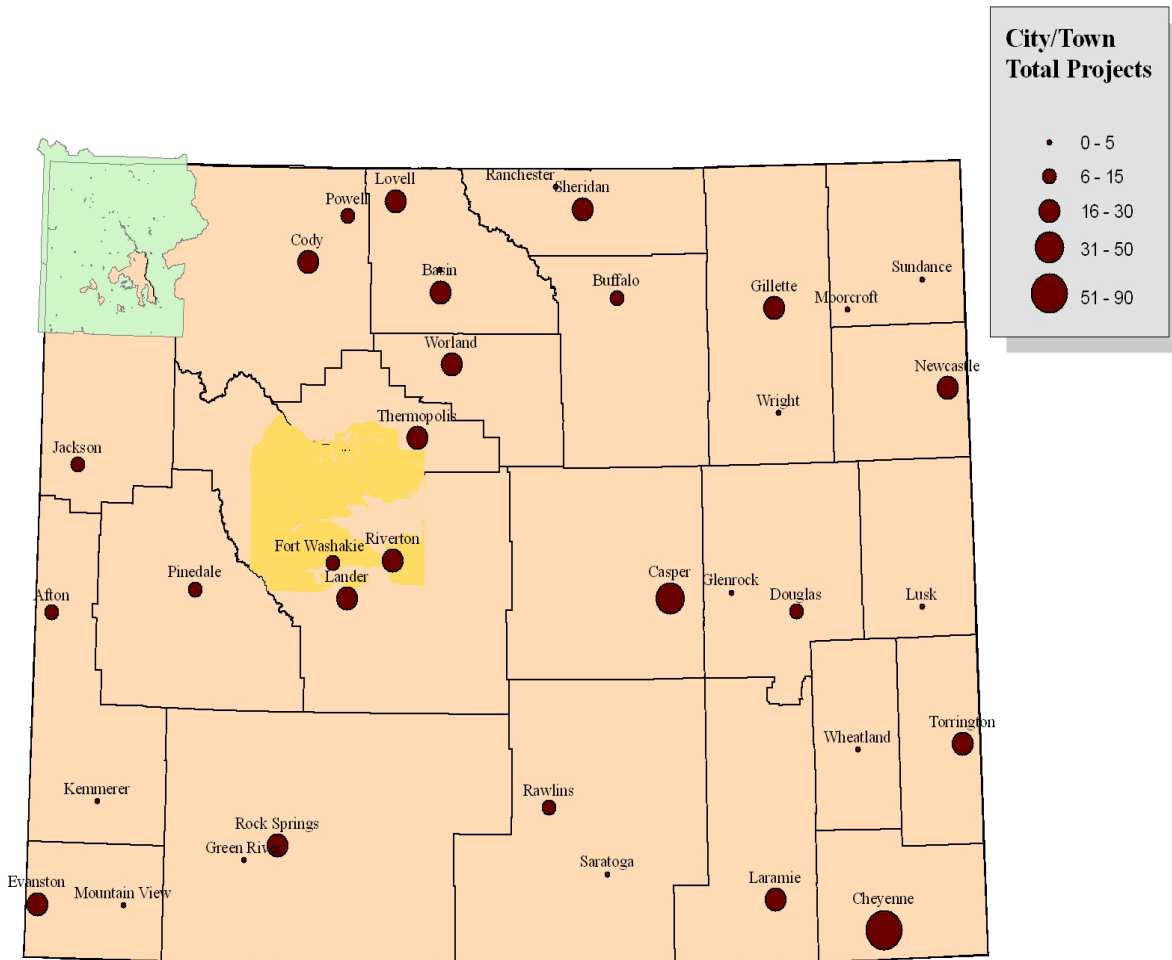
<b>City</b>	<b>Total</b>	<b>Percent of All Projects</b>
<b>Green River</b>	<b>5</b>	<b>0.99%</b>
<b>Kemmerer</b>	<b>5</b>	<b>0.99%</b>
<b>Lusk</b>	<b>5</b>	<b>0.99%</b>
<b>Wheatland</b>	<b>5</b>	<b>0.99%</b>
<b>Saratoga</b>	<b>4</b>	<b>0.79%</b>
<b>Sundance</b>	<b>3</b>	<b>0.59%</b>
<b>Glenrock</b>	<b>1</b>	<b>0.20%</b>
<b>Greybull</b>	<b>1</b>	<b>0.20%</b>
<b>Moorcroft</b>	<b>1</b>	<b>0.20%</b>
<b>Mountain View</b>	<b>1</b>	<b>0.20%</b>
<b>Unknown</b>	<b>1</b>	<b>0.20%</b>
<b>Ranchester</b>	<b>0</b>	<b>0.00%</b>
<b>Wright</b>	<b>0</b>	<b>0.00%</b>
<b>Total</b>	<b>507</b>	<b>100.00%</b>

Source: LSO summary of OHLS project tracking logs, as of March 31, 2009.

**Figure B.3**  
**Construction project distribution (number of projects) by city/town:**  
**pre-2003 (A), post-2003 (B), CY 98 - '08 (C)**  
**A - Pre-2003**



## B - Post-2003





**Figure B.4**  
**Construction project distribution counties, most to least: pre-2003 (A), post-2003 (B)**

A		
County	Total	Percent of All Projects
Natrona	45	15.05%
Fremont	39	13.04%
Laramie	32	10.70%
Campbell	31	10.37%
Teton	21	7.02%
Albany	14	4.68%
Converse	13	4.35%
Lincoln	12	4.01%
Sheridan	11	3.68%
Uinta	11	3.68%
Hot Springs	10	3.34%
Park	9	3.01%
Sweetwater	9	3.01%
Big Horn	8	2.68%
Washakie	8	2.68%
Carbon	6	2.01%
Johnson	6	2.01%
Crook	4	1.34%
Goshen	4	1.34%
Weston	4	1.34%
Platte	2	0.67%
Niobrara	0	0.00%
Sublette	0	0.00%
Unknown	0	0.00%
<b>Total</b>	<b>299</b>	<b>100.00%</b>

**B**

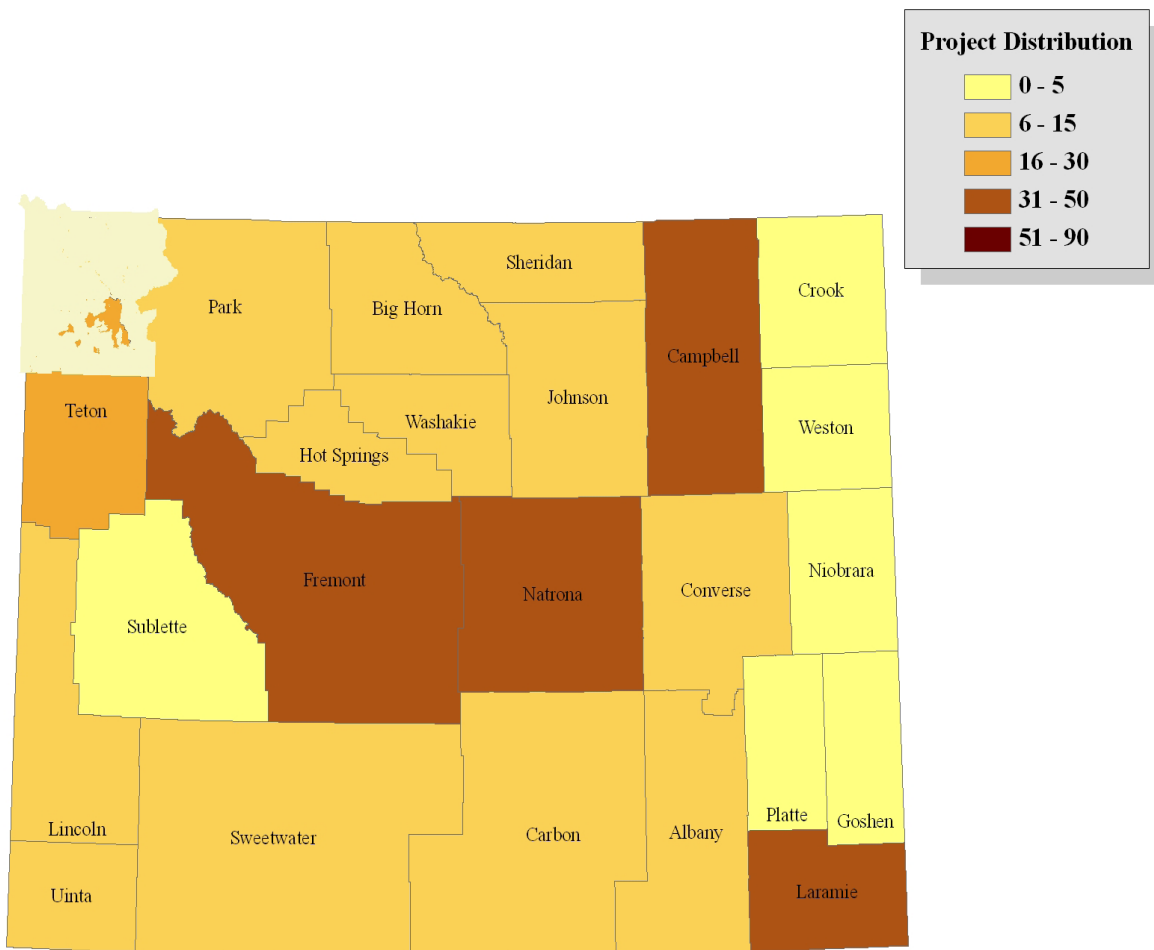
<b>County</b>	<b>Total</b>	<b>Percent of All Projects</b>
<b>Laramie</b>	<b>57</b>	<b>11.24%</b>
<b>Fremont</b>	<b>47</b>	<b>9.27%</b>
<b>Natrona</b>	<b>45</b>	<b>8.88%</b>
<b>Big Horn</b>	<b>42</b>	<b>8.28%</b>
<b>Park</b>	<b>27</b>	<b>5.33%</b>
<b>Sheridan</b>	<b>27</b>	<b>5.33%</b>
<b>Campbell</b>	<b>25</b>	<b>4.93%</b>
<b>Sweetwater</b>	<b>25</b>	<b>4.93%</b>
<b>Albany</b>	<b>22</b>	<b>4.34%</b>
<b>Uinta</b>	<b>22</b>	<b>4.34%</b>
<b>Weston</b>	<b>20</b>	<b>3.94%</b>
<b>Carbon</b>	<b>19</b>	<b>3.75%</b>
<b>Hot Springs</b>	<b>19</b>	<b>3.75%</b>
<b>Goshen</b>	<b>18</b>	<b>3.55%</b>
<b>Washakie</b>	<b>18</b>	<b>3.55%</b>
<b>Converse</b>	<b>15</b>	<b>2.96%</b>
<b>Lincoln</b>	<b>14</b>	<b>2.76%</b>
<b>Teton</b>	<b>14</b>	<b>2.76%</b>
<b>Johnson</b>	<b>9</b>	<b>1.78%</b>
<b>Sublette</b>	<b>7</b>	<b>1.38%</b>
<b>Niobrara</b>	<b>5</b>	<b>0.99%</b>
<b>Platte</b>	<b>5</b>	<b>0.99%</b>
<b>Crook</b>	<b>4</b>	<b>0.79%</b>
<b>Unknown</b>	<b>1</b>	<b>0.20%</b>
<b>Total</b>	<b>507</b>	<b>100.00%</b>

Source: LSO summary of OHLS project tracking logs, as of March 31, 2009.

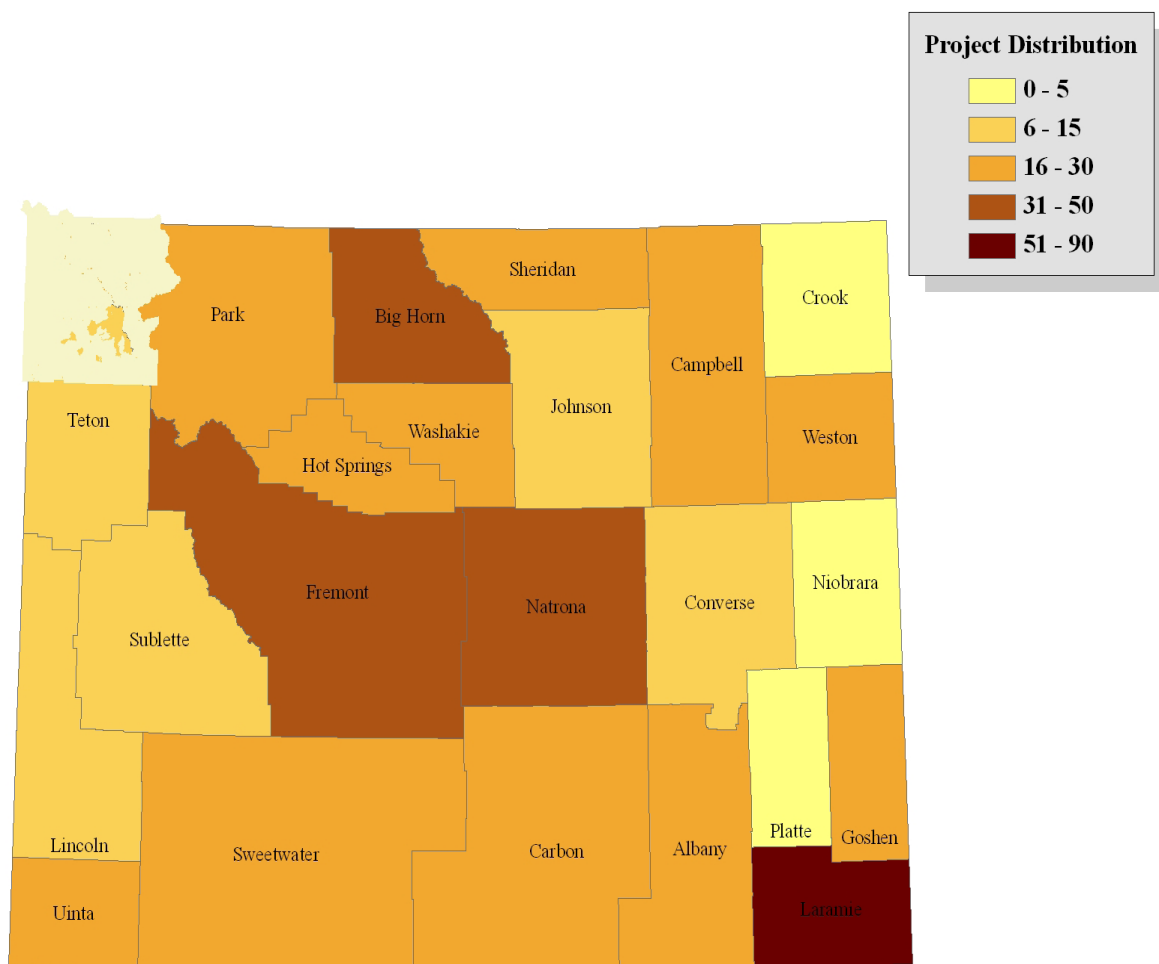


**Figure B.5**  
**Construction project distribution (number of projects) by county:**  
**pre-2003 (A), post-2003 (B), CY 98 - '08 (C)**

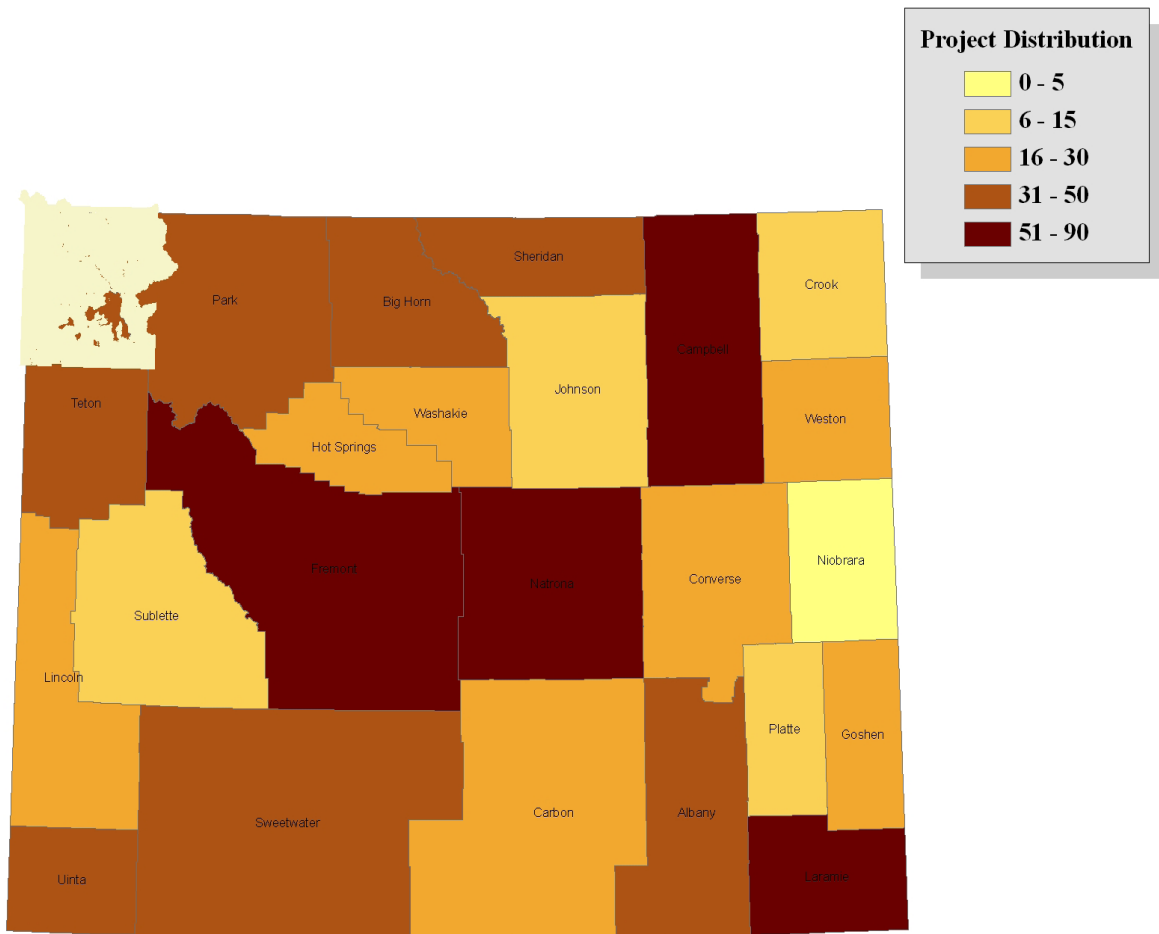
**A - Pre-2003**



## B - Post-2003



### C - CY '98 - '08



Source: LSO summary of OHLS project tracking logs, as of March 31, 2009.

# Appendix C: Facility types and their distribution around the state

## State Licensed Facility Types

W.S. 35-2-901 (a)(x) – “Health care facility” means any [1] ambulatory surgical center, [2] assisted living facility, [3] adult day care facility, [4] adult foster care home, [5] alternative eldercare home, [6] birthing center, [7] boarding home, [8] freestanding diagnostic testing center, [9] home health agency, [10] hospice, [11] hospital, [12] intermediate care facility for people with intellectual disability, [13] medical assistance facility, [14] nursing care facility, [15] rehabilitation facility and [16] renal dialysis center.

**Figure C.1**  
**Licensed (by statutory definition) and federally certified facilities by facility definition,**  
**as of March 31, 2009**

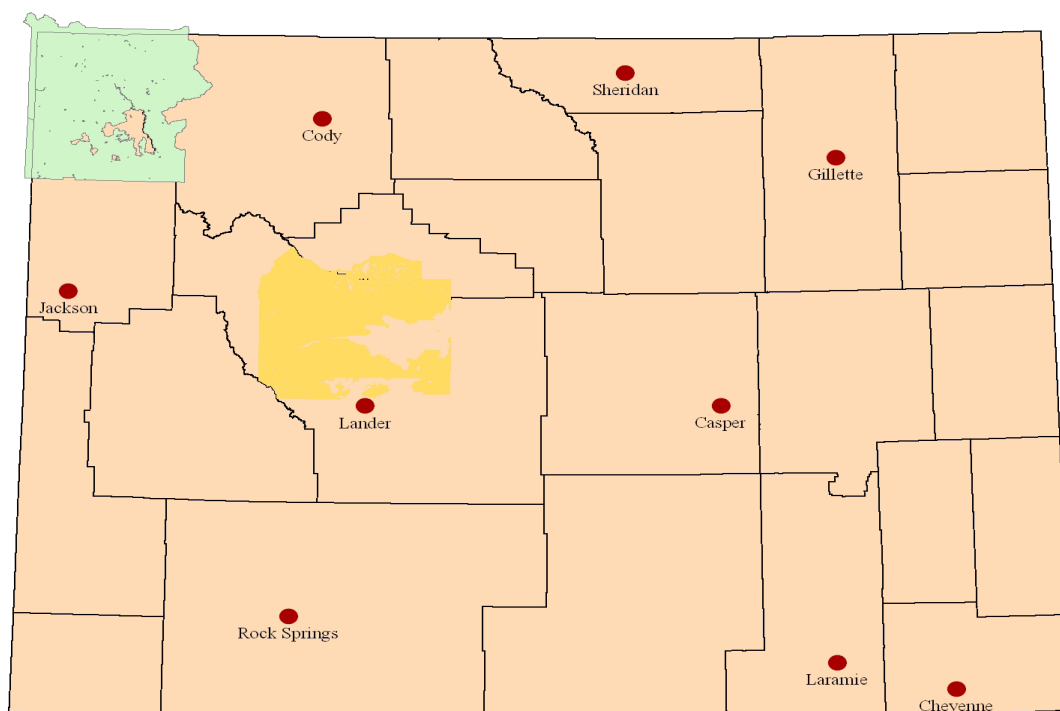
Facility Type		Number of Facilities	Number of Beds (if applicable)	Number of City/Towns	Number of County(ies)	
1	Ambulatory Surgical Center	19	N/A	9	9	
2	Assisted Living Facility	21	1,208	15	13	
3	Adult Day Care	6	N/A	6	5	
4	Adult Foster Care Home	0	-----	-----	-----	
5	Alternative Eldercare Home	0	-----	-----	-----	
6	Birthing Center	0	-----	-----	-----	
7	Boarding Home	11	206	11	11	
8	Freestanding Diagnostic Testing Center	1	N/A	1	1	
9	Home Health Agency	42	N/A	24	20	
10	Hospice Center <sup>1</sup>	19	N/A (16); 31 (3)	16	13	
11	Hospital	Critical Access Hospital <sup>2</sup>	14	302	14	12
		Hospital	14	1,138	12	11
		Psychiatric Hospital	2	236	2	2
12	Intermediate Care Facilities for the Mentally Retarded	1	142	1	1	
13	Medical Assistance Facility	0	N/A	0	0	
14	Nursing Home	39	2,927	29	22	
15	Comprehensive Outpatient Rehabilitation Facility	2	N/A	2	2	
16	End Stage Renal Dialysis Center	9	68	9	9	
Other <sup>3</sup>	Federally Qualified Health Center	8	N/A	6	5	
	Outpatient Physical Therapy	1	N/A	1	1	
	Rural Health Clinic	18	N/A	15	9	
	Community Mental Health Center	3	N/A	3	3	
	Psychiatric Residential Treatment Center	3	N/A	3	3	
<b>Total</b>		<b>233</b>				

Source: LSO analysis and summary of the Office's facility directory.

<sup>1</sup> Hospice centers are licensed for beds if they are inpatient facilities. <sup>2</sup> Critical Access Hospitals are not considered hospital for state licensing. However, office construction staff do track these facilities as hospitals. <sup>3</sup> The “other” facilities do not meet state licensing definitions. However, they are federally certified and tracked by the office in its facility directory.

**1. Ambulatory surgical center:** means a facility which provides surgical treatment to patients not requiring hospitalization and is not part of a hospital or offices of private physicians, dentists or podiatrists.

**Figure C.2**  
**Ambulatory Surgical Centers**



**Number of Facilities:** 19

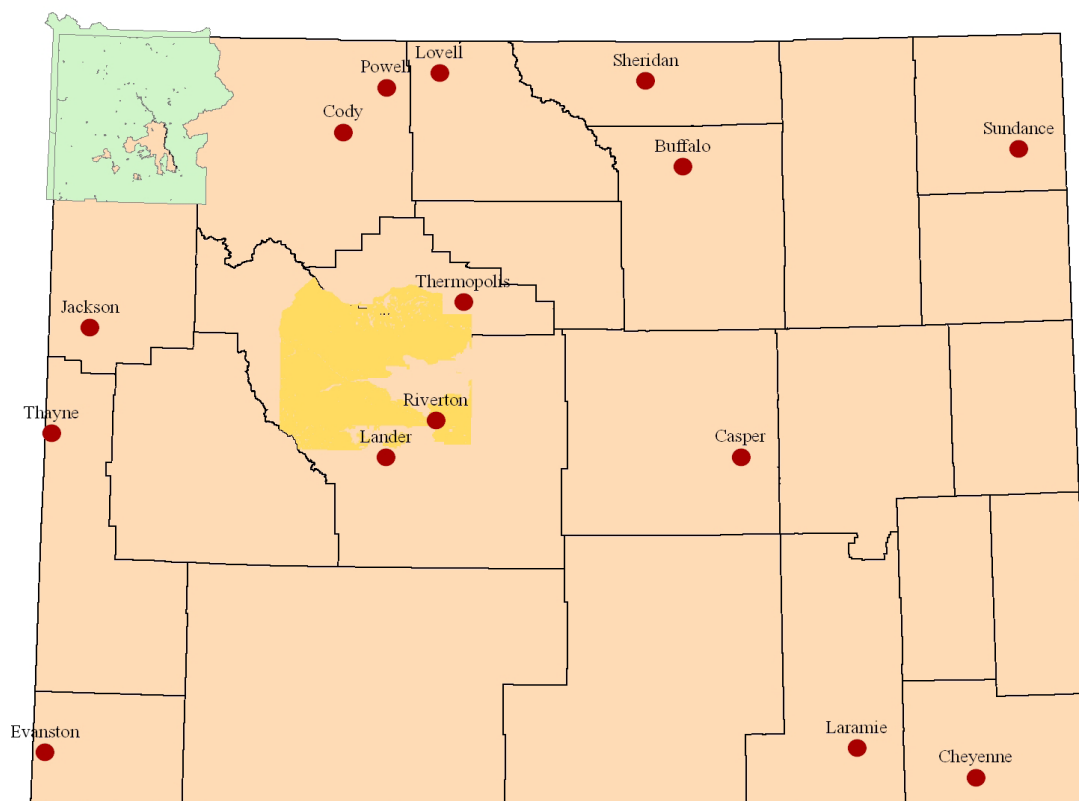
**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 9 – Casper (4), Cheyenne (6), Cody, Gillette (2), Jackson, Lander (2), Laramie, Rock Springs, Sheridan

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**2. Assisted living facility:** means a non-institutional dwelling operated by any person, firm or corporation engaged in providing limited nursing care, personal care and boarding home care, but not habilitative care, for persons not related to the owner of the facility. *This definition may include facilities with secured units and facilities dedicated to the special care and services for people with Alzheimer's disease or other dementia conditions.*

**Figure C.3  
Assisted Living Facilities**



**Number of Facilities:** 21

**Number of Licensed Beds:** 1,208

**Number of Communities:** 15 – Buffalo, Casper (4), Cheyenne (3), Cody, Evanston (2), Jackson, Lander, Laramie, Lovell, Powell, Riverton, Sheridan, Sundance, Thyne, Thermopolis

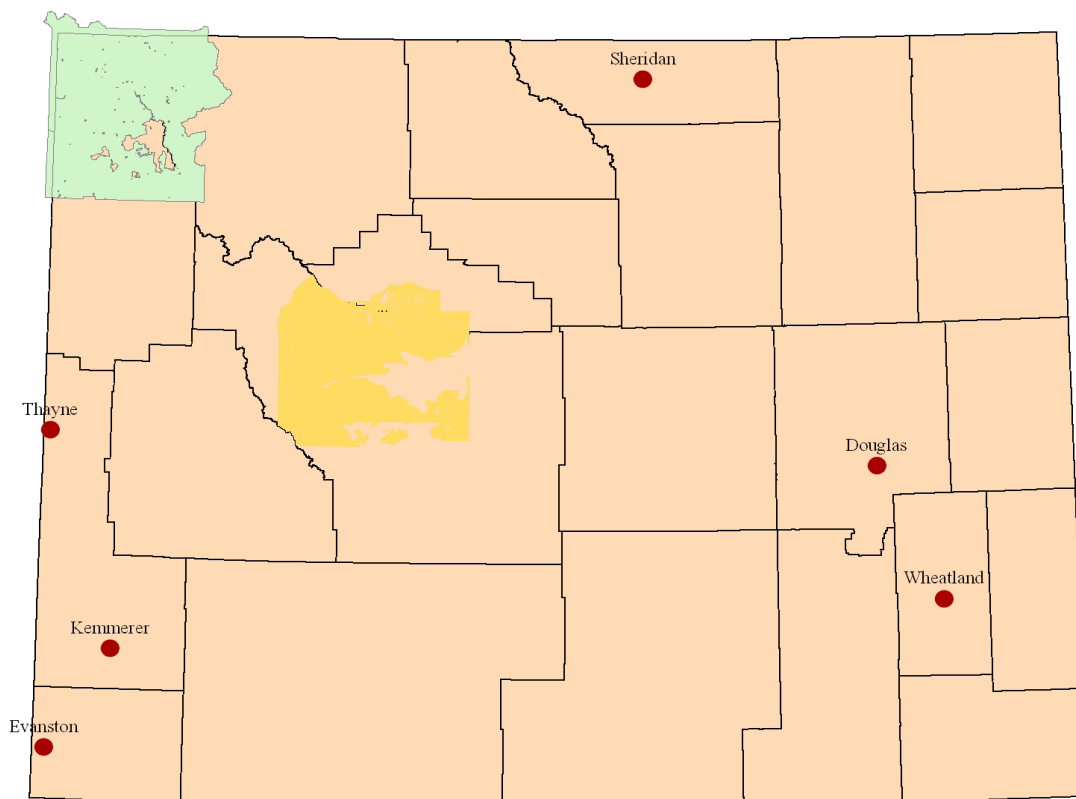
Source: LSO summary of OHLS facility directory, as of March 31, 2009.

Source: LSO summary of OHLS facility directory, as of March 31, 2009.



**3. Adult day care facility:** means any facility not otherwise certified by the department of health, engaged in the business of providing activities of daily living support and supervision services programming based on a social model, to four (4) or more persons eighteen (18) years of age or older with physical or mental disabilities.

**Figure C.4**  
**Adult Day Care Facilities**



**Number of Facilities:** 6

**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 6 – Douglas, Evanston, Lyman, Sheridan, Thyne, Wheatland

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**4. Adult foster care home:** means a home where care is provided for up to five (5) adults who are not related to the provider by blood, marriage or adoption, except in special circumstances, in need of long term care in a home like atmosphere. Clients in the home shall have private rooms which may be shared with spouses and shall have individual handicapped accessible bathrooms. “Adult foster home” does not include any residential facility otherwise licensed or funded by the state of Wyoming. The homes shall be regulated in accordance with this act and with the Wyoming Long Term Care Choices Act, which shall govern in case of conflict with this act.

**Note:** *There are no adult foster care homes meeting this definition licensed in the state.*

**5. Alternative eldercare home:** means a facility as defined in W.S. 42-6-102(a)(iii). The homes shall be regulated in accordance with this act (W.S. 35-2-901 et. seq.) and with the Wyoming Long Term Care Choices Act which shall govern in case of conflict with this act.

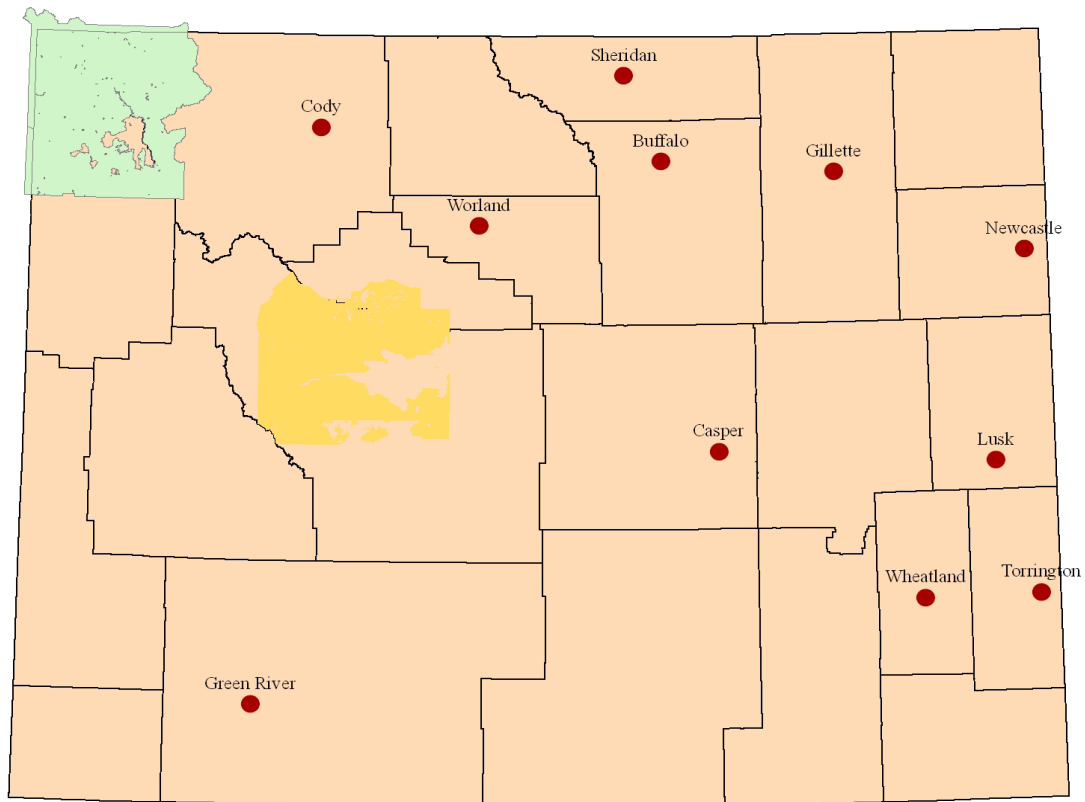
**Note:** *There are no alternative eldercare homes meeting this definition licensed in the state.*

**6. Birthing center:** means a facility which operates for the primary purpose of performing deliveries and is not part of a hospital and where births are planned to occur away from the mother’s residence following normal uncomplicated pregnancy.

**Note:** *There are no birthing centers meeting this definition licensed in the state.*

**7. Boarding home:** means a dwelling or rooming house operated by any person, firm or corporation engaged in the business of operating a home for the purpose of letting rooms for rent and providing meals and personal daily living care, but not habilitative or nursing care, for persons not related to the owner. Boarding home does not include a lodging facility or an apartment in which only room and board is provided.

**Figure C.5  
Boarding Homes**



**Number of Facilities:** 11

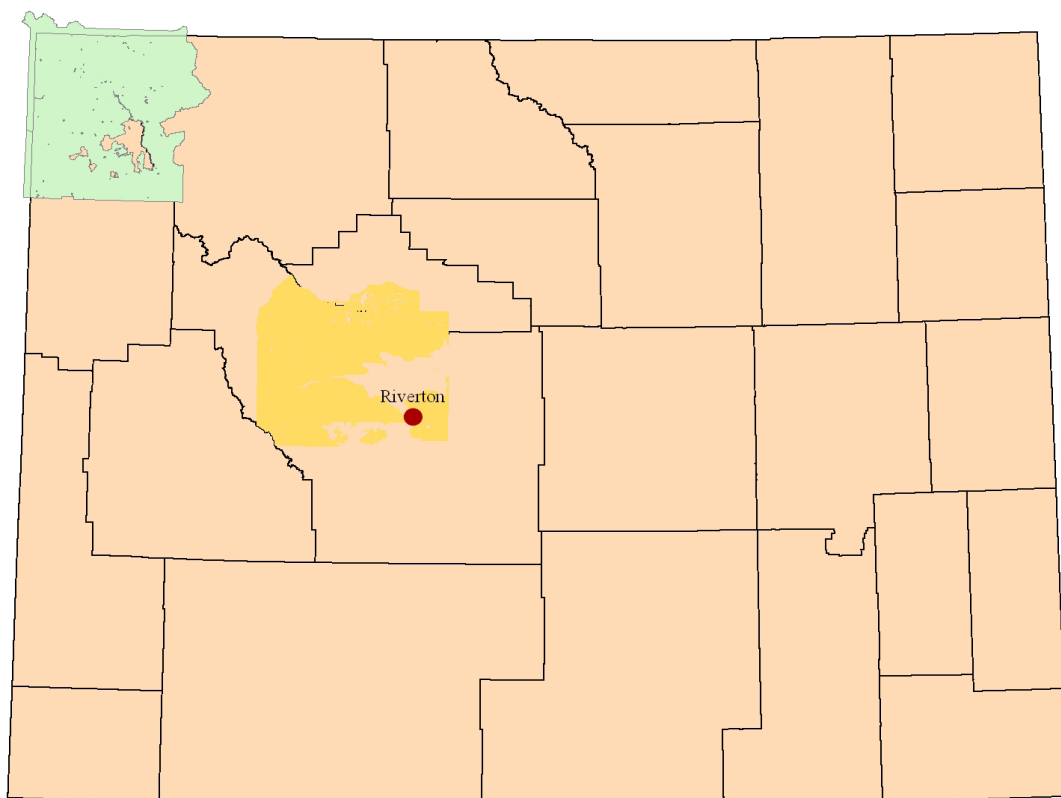
**Number of Licensed Beds:** 206

**Number of Communities:** 11 – Buffalo, Casper, Cody, Gillette, Green River, Lusk, Newcastle, Sheridan, Torrington, Wheatland, Worland

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**8. Freestanding diagnostic testing center:** means a mobile or permanent facility which provides diagnostic testing but not treatment and is not part of the private offices of health care professionals operating within the scope of their licenses.

**Figure C.6**  
**Freestanding Diagnostic Testing Center**



**Number of Facilities:** 1

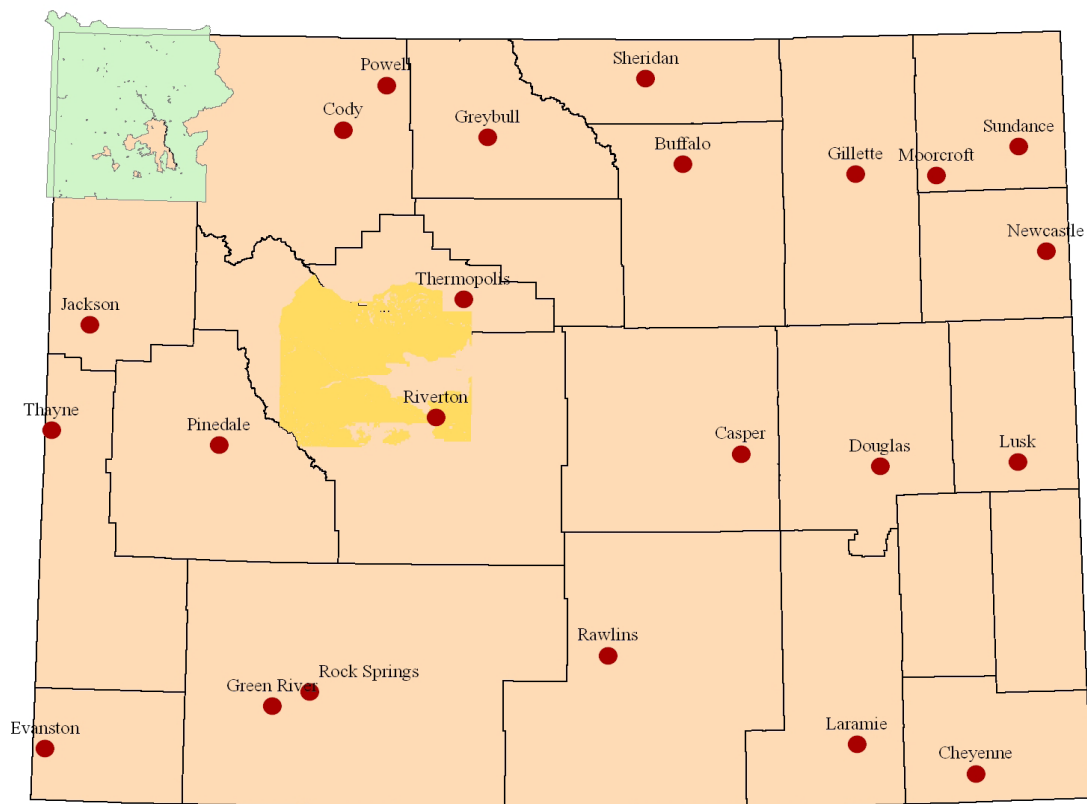
**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 1 – Riverton

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**9. Home health agency:** means an agency primarily engaged in arranging and directly providing nursing or other health care services to persons at their residence.

**Figure C.7**  
**Home Health Agencies**



**Number of Facilities:** 41

**Number of Licensed Beds:** Not Applicable

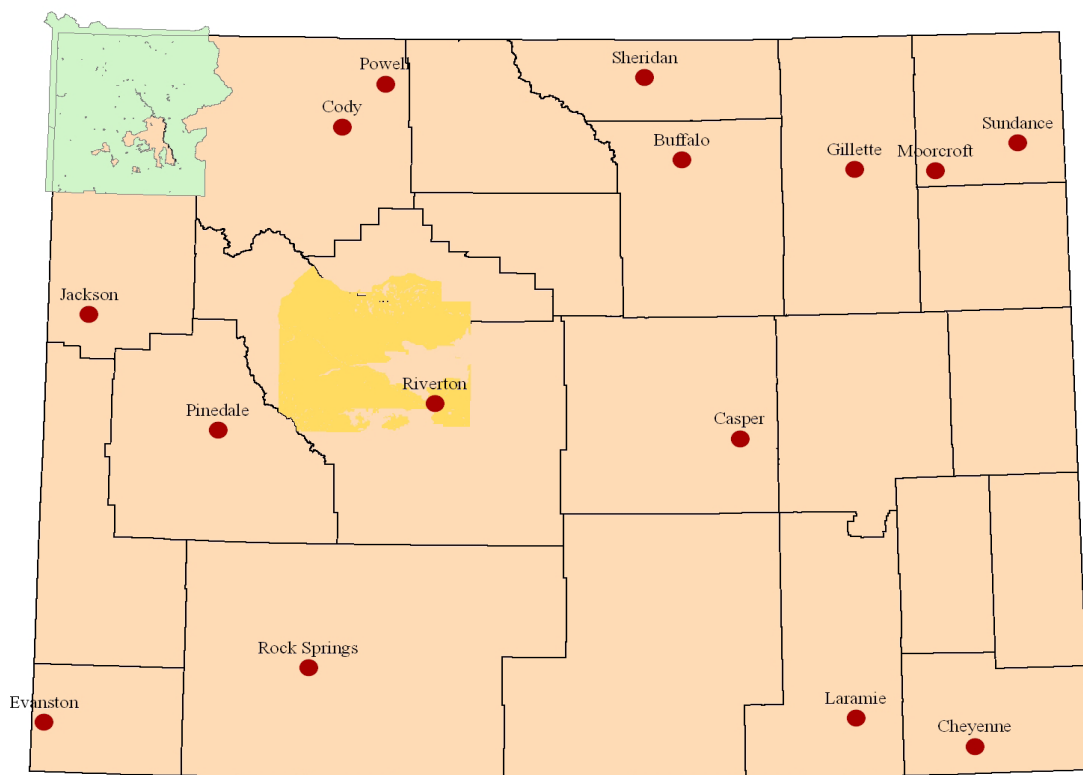
**Number of Communities:** 23 –Buffalo, Casper (4), Cheyenne (3), Cody (3), Douglas, Evanston (2), Gillette (2), Green River, Greybull, Jackson, Laramie (4), Lusk, Moorcroft, Newcastle, Pinedale, Powell, Rawlins (2), Riverton, Rock Springs (2), Sheridan (3), Sundance, Thayne (2), Thermopolis (2)

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**Note:** One facility in Montpelier, Idaho (not shown on map) is licensed to serve Wyoming patients.

**10. Hospice:** means a program of care for the terminally ill and their families given in a home or health facility which provides medical, palliative, psychological, spiritual and supportive care and treatment.

**Figure C.8  
Hospice**



**Number of Facilities:** 18

**Number of Licensed Beds:** Inpatient Facility = 3 with 31 licensed beds Other facilities = Not Applicable

**Number of Communities:** 15 – Buffalo, Casper (2), Cheyenne, Cody, Evanston (2), Gillette, Jackson, Laramie, Moorcroft, Pinedale, Powell, Riverton (2), Rock Springs, Sheridan, Sundance

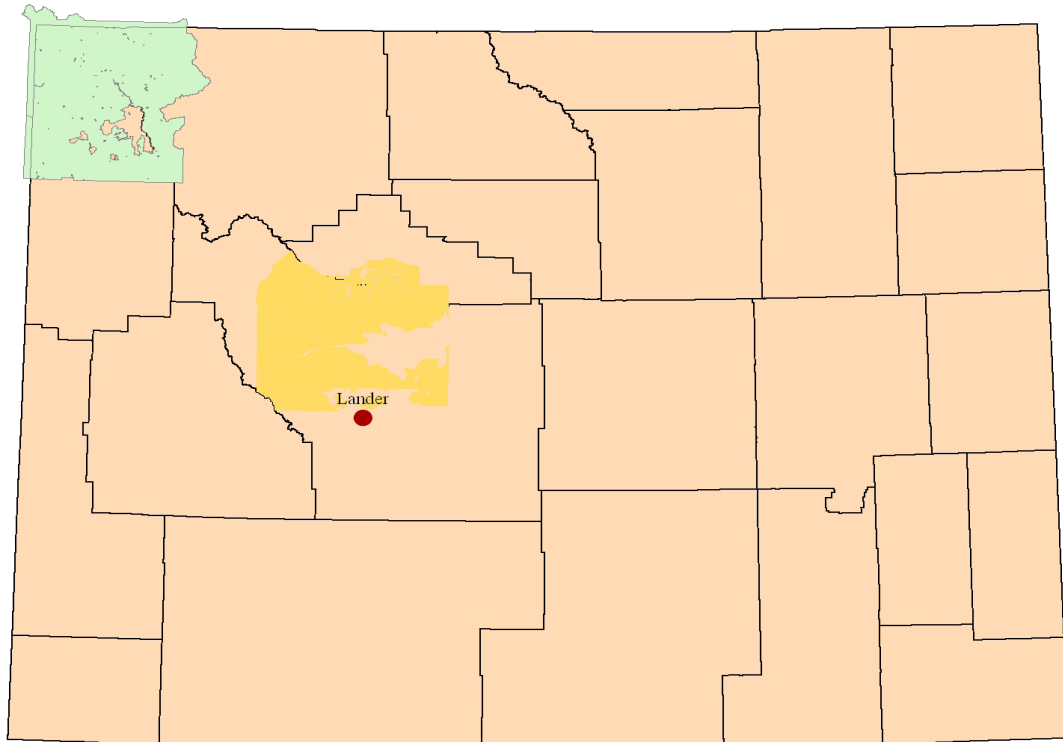
Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**Note:** One facility in Scottsbluff, Nebraska (not shown on map) is licensed to serve Wyoming patients; it is not an inpatient facility.



**12. Intermediate care facility for people with intellectual disability:** means a facility which provides on a regular basis health related care and training to persons with intellectual disabilities or persons with related conditions, who do not require the degree of care and treatment of a hospital or nursing facility and services above the need of a boarding home. The term also means “intermediate care facility for the mentally retarded” or “ICFMR” or “ICFs/MR” as those terms are used in federal law and in other laws, rules and regulations

**Figure C.10**  
**Intermediate Care Facility for People With Intellectual Disabilities**



**Number of Facilities:** 1  
**Number of Licensed Beds:** 142  
**Number of Communities:** 1 – Lander

Source: LSO summary of OHLS facility directory, as of March 31, 2009.



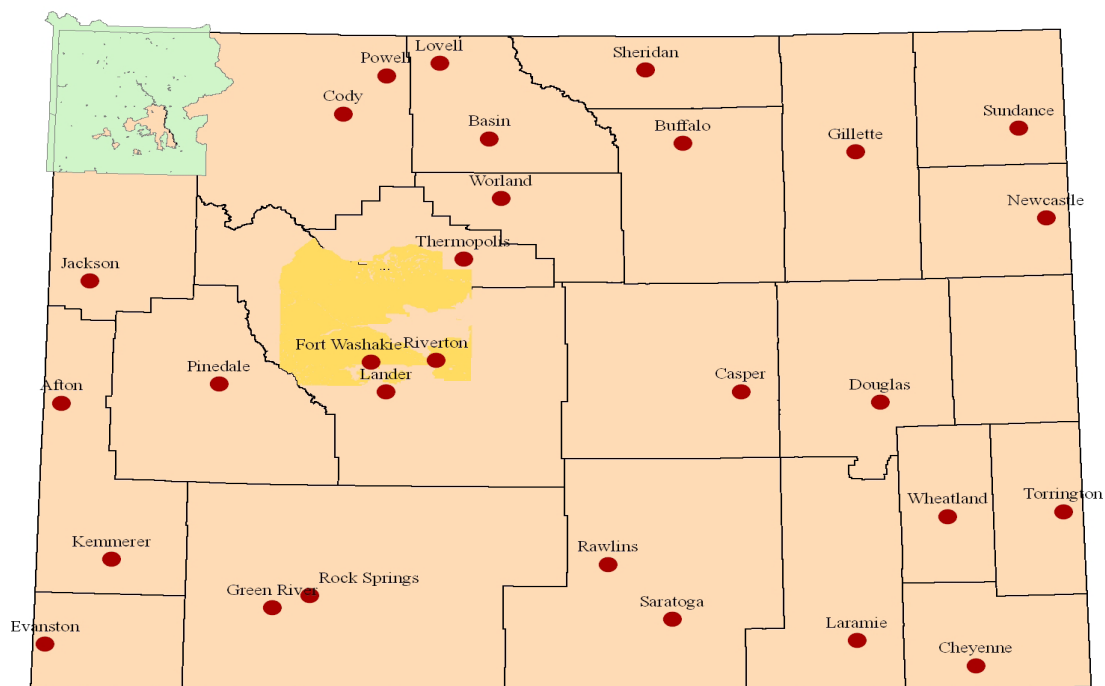
**13. Medical assistance facility:**

means a facility which provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient care to persons needing that care for a period of no longer than sixty (60) hours and is located more than thirty (30) miles from the nearest Wyoming hospital.

**Note:** *There are no medical assistance facilities meeting this definition licensed in the state.*

**14. Nursing care facility:** means a facility providing assisted living care, nursing care, rehabilitative and other related services.

**Figure C.11**  
**Nursing Care Facilities**



**Number of Facilities:** 39

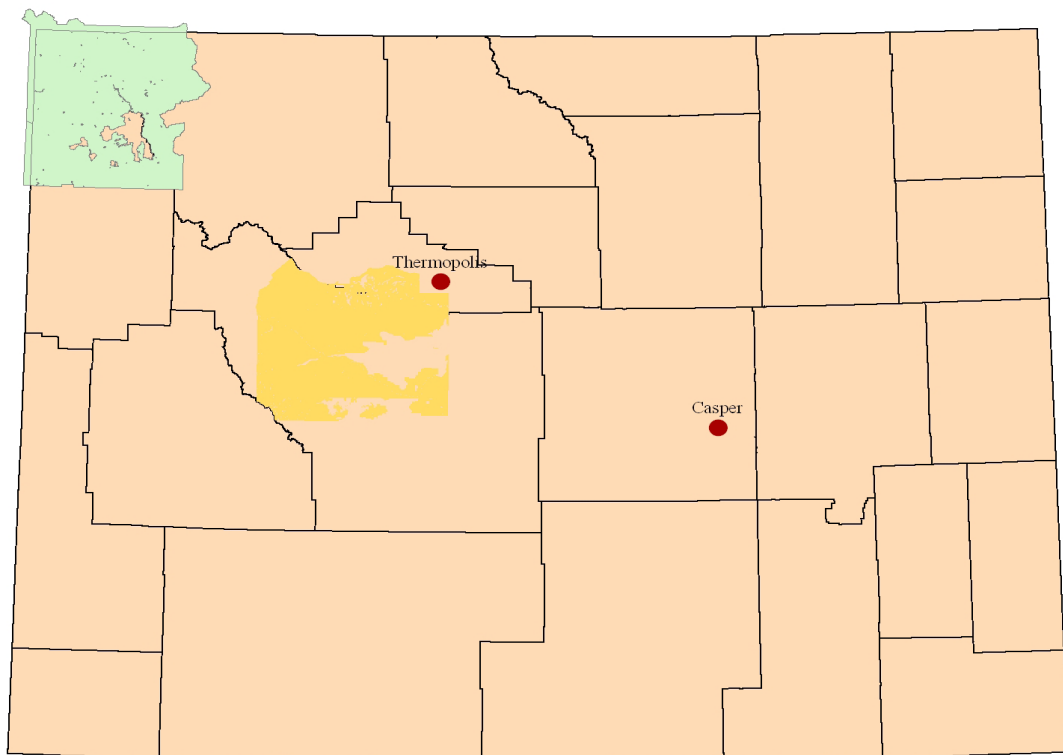
**Number of Licensed Beds:** 2,927

**Number of Communities:** 29 – Afton, Basin (2), Buffalo, Casper (4), Cheyenne (4), Cody, Douglas, Evanston, Fort Washakie, Gillette, Green River, Jackson, Kemmerer, Lander, Laramie (2), Lovell, Newcastle, Pinedale, Powell, Rawlins (2), Riverton, Rock Springs, Saratoga, Sheridan (2), Sundance, Thermopolis, Torrington, Wheatland, Worland

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**15. Rehabilitation facility:** means an outpatient facility which is operated for the primary purpose of assisting the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluations and training or any combination of these services and in which the major portion of the services is furnished within the facility.

**Figure C.12**  
**Rehabilitation Facilities**

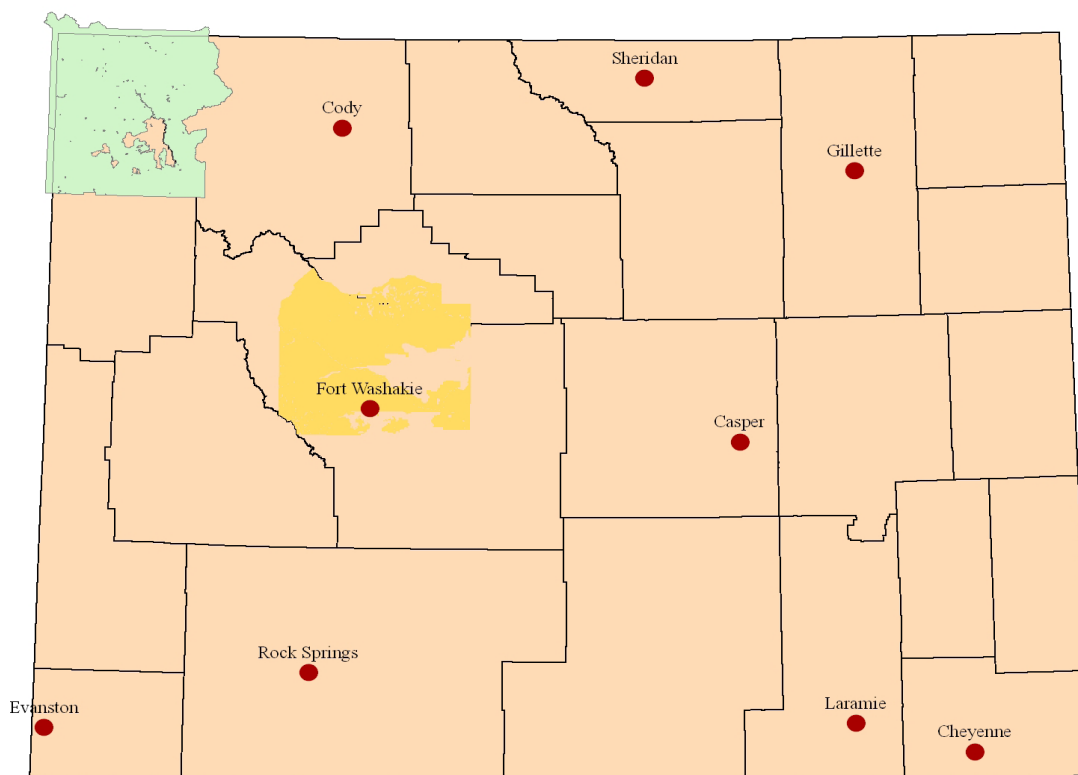


**Number of Facilities:** 2  
**Number of Licensed Beds:** Not Applicable  
**Number of Communities:** 2 – Casper, Thermopolis

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

16. **Renal dialysis center:** means a freestanding facility for treatment of kidney diseases.

**Figure C.13**  
**Renal Dialysis Centers**



**Number of Facilities:** 9

**Number of Licensed Beds:** 68

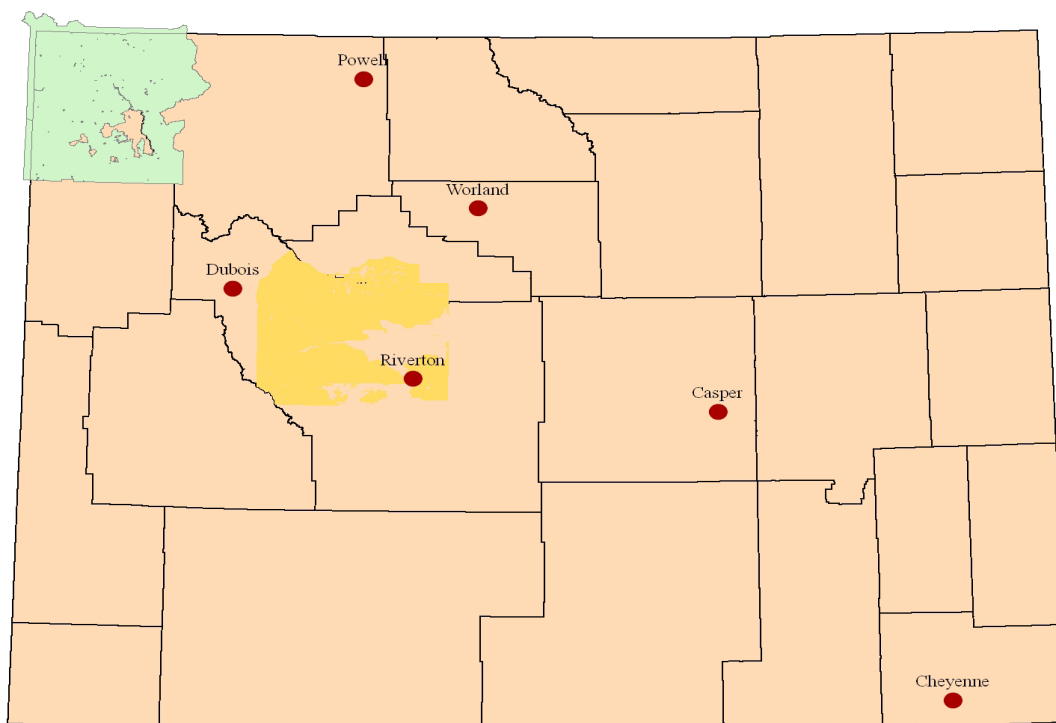
**Number of Communities:** 9 – Casper, Cheyenne, Cody, Evanston, Fort Washakie, Gillette, Laramie, Rock Springs, Sheridan

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

## Other Facilities: Facilities that are not licensed by the state but are certified for the federal Medicare/Medicaid programs

1. **Federally qualified health center:** services consist of services that are similar to those provided in rural health clinics. The FQHC services also include preventive primary health services. The law defines Medicare preventive services as the preventive primary health services that an FQHC is required to provide under §330 of the Public Health Service (PHS) Act.

**Figure C.14**  
**Federally Qualified Health Center**



**Number of Facilities:** 8

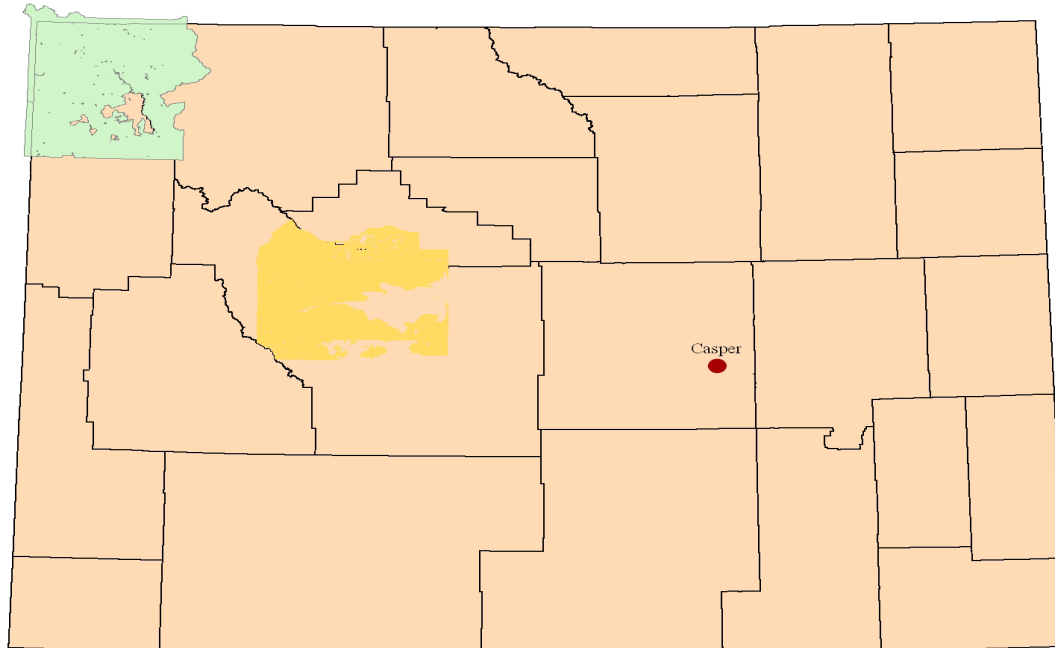
**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 6 – Casper (2), Cheyenne (2), Dubois, Powell, Riverton, Worland

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**2. Outpatient Physical Therapy:** There are three types of organizations that may qualify as OPT/OSP providers: 1) Rehabilitation Agency is an agency that provides an integrated, multidisciplinary program designed to upgrade the physical functions of handicapped, disabled individuals by bringing together, as a team, specialized rehabilitation personnel; 2) Clinic is a facility established primarily for the provision of outpatient physicians' services. To meet the definition of a clinic, the facility must meet the following test of physician participation: the medical services of the clinic are provided by a group of three or more physicians practicing medicine together; and a physician is present in the clinic at all times during hours of operation to perform medical services (rather than only administrative services); 3) Public Health Agency is an official agency established by a State or local government, the primary function of which is to maintain the health of the population served by providing environmental health services, preventive medical services, and in certain instances, therapeutic services. In order for clinics, rehabilitation agencies, and public health agencies to be eligible to participate as providers of OPT/OSP services, they must be in compliance with all applicable Medicare requirements,

**Figure C.15**  
**Outpatient Physical Therapy**

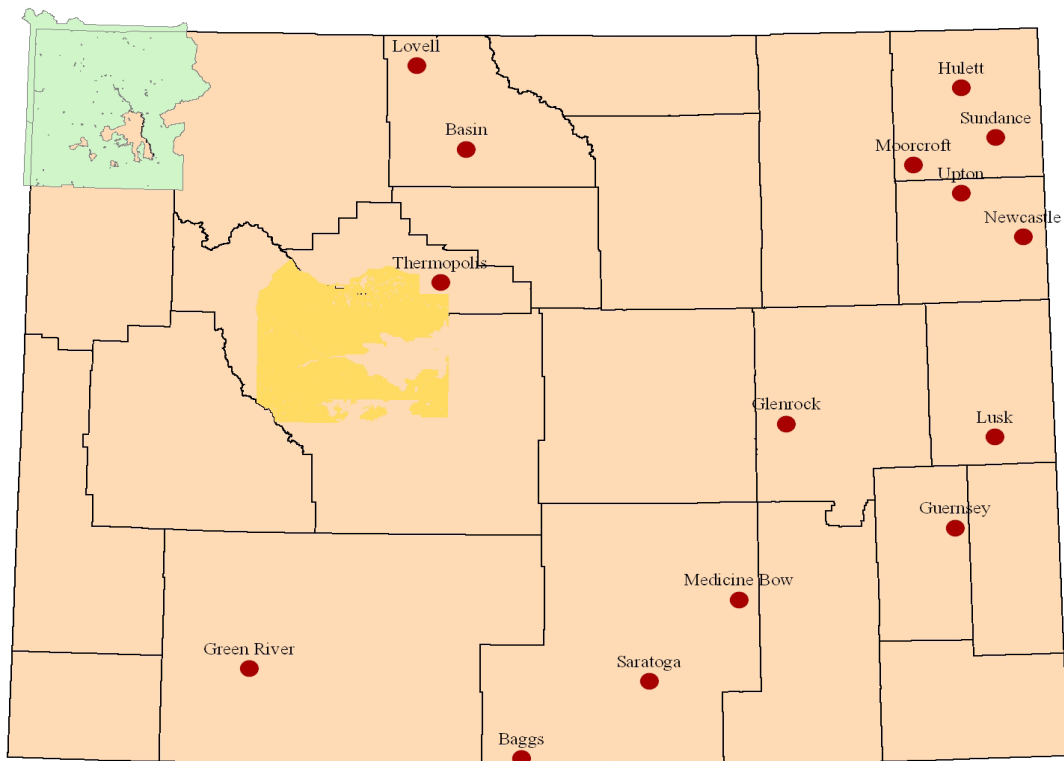


**Number of Facilities:** 1  
**Number of Licensed Beds:** Not Applicable  
**Number of Communities:** 1 – Casper

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**3. Rural health clinic:** is a facility located in a rural area designated as a shortage area and is neither a rehabilitation agency nor a facility primarily for the care and treatment of mental diseases.

**Figure C.16  
Rural Health Clinics**



**Number of Facilities:** 18

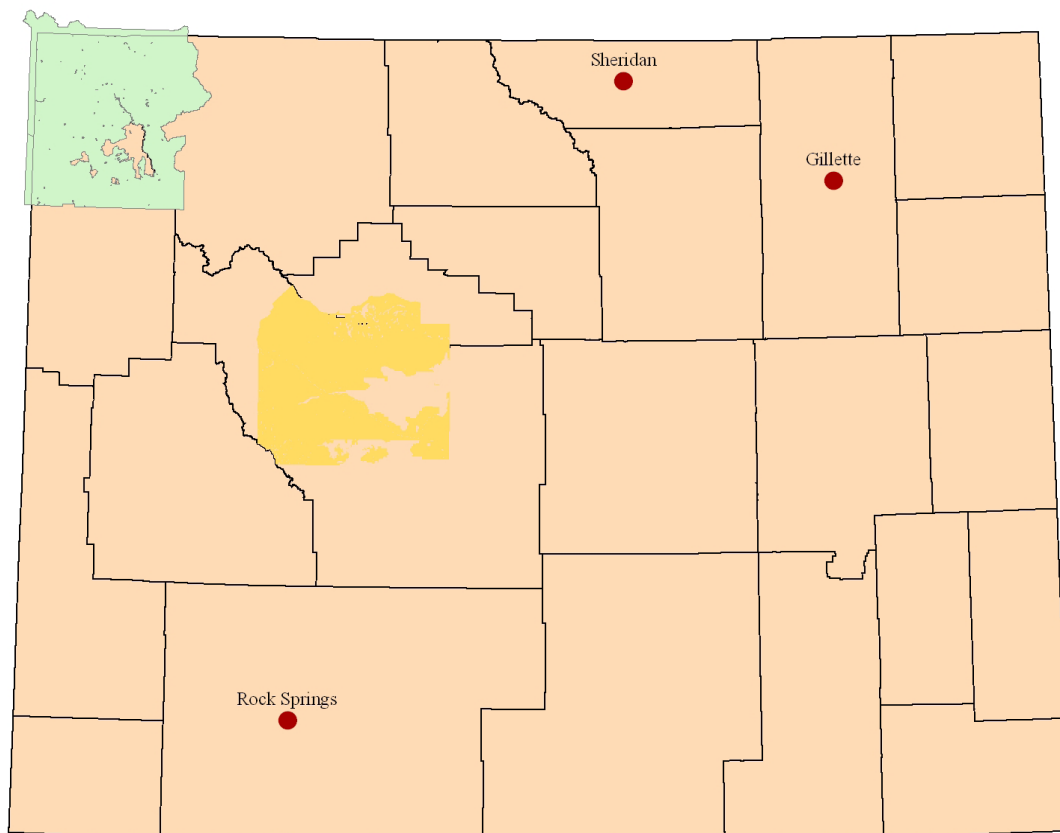
**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 15 – Baggs, Basin (2), Glenrock (2), Green River, Guernsey, Hulett, Lovell, Medicine Bow, Moorcroft, Newcastle, Saratoga, Sundance, Thermopolis, Upton

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**4. Community mental health center:** Must provide all of the following core services to meet the definition of a CMHC. The core services include: 1) Outpatient services, including specialized outpatient services for children, the elderly, individuals who are chronically mentally ill, and residents of the CMHC's mental health service area who have been discharged from inpatient treatment at a mental health facility; 2) 24 hour-a-day emergency care services; 3) Day treatment, or other partial hospitalization services, or psychosocial rehabilitation services; and 4) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

**Figure C.17**  
**Community Mental Health Centers**



**Number of Facilities:** 3

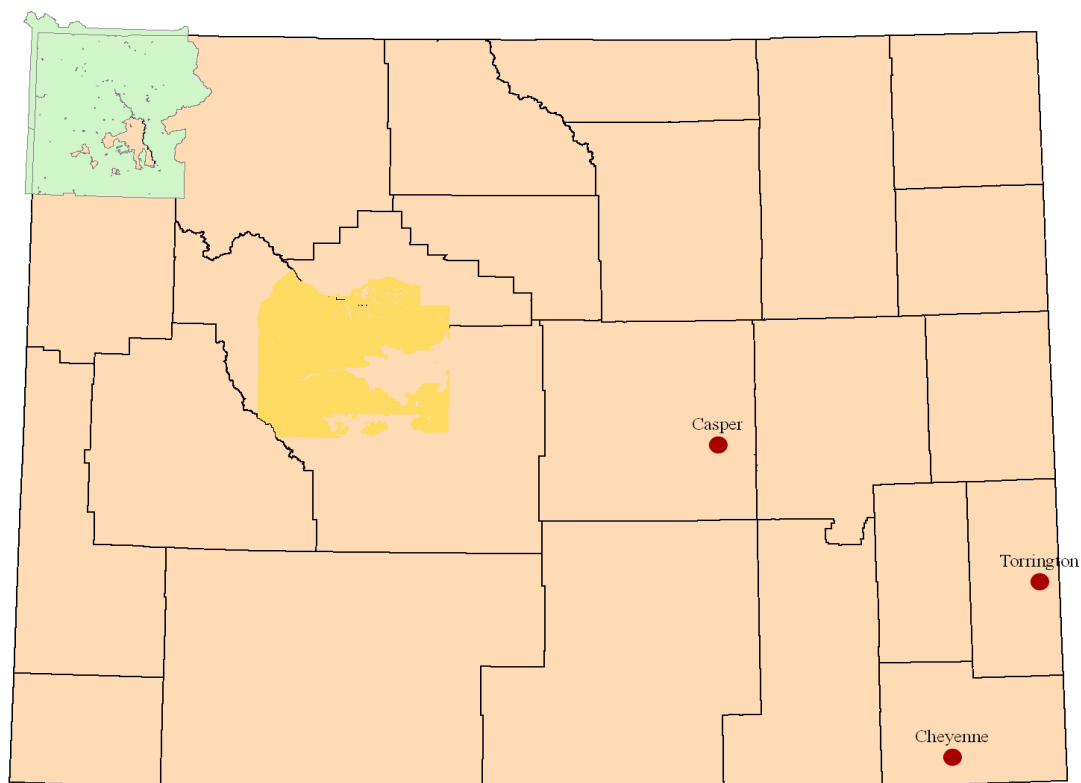
**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 3 – Gillette, Rock Springs, Sheridan

Source: LSO summary of OHLS facility directory, as of March 31, 2009.

**5. Psychiatric Residential Treatment Center:** is any non-hospital facility with a provider agreement with a State Medicaid Agency to provide the inpatient services benefit to Medicaid-eligible individuals under the age of 21 (psych under 21 benefit). The facility must be accredited by JCAHO or any other accrediting organization with comparable standards recognized by the State.

**Figure C.18**  
**Psychiatric Residential Treatment Centers**



**Number of Facilities:** 3

**Number of Licensed Beds:** Not Applicable

**Number of Communities:** 3 – Casper, Cheyenne, Torrington

Source: LSO summary of OHLS facility directory, as of March 31, 2009.



# Appendix D: Office's budget and expenditure series information

**Figure D.1**  
Office biennial budget request and Governor's recommendations, FY '99 - '10  
(FY '07 - '08 expenditures shown in Figure D.2)

Biennium	Total Request	GF	FF	GF %	FF %	Governor's Recommendation
1999-2000	\$3,438,010	\$939,612	\$2,498,398	27.33%	72.67%	\$2,339,045
2001-2002	\$3,077,376	\$687,553	\$2,389,376	22.34%	77.64%	\$3,077,376
2003-2004	\$3,086,055	\$822,784	\$2,263,271	26.66%	73.34%	\$3,086,055
2005-2006	\$3,434,440	\$899,325	\$2,535,115	26.19%	73.81%	\$3,434,440
2007-2008	\$4,059,516	\$621,105	\$3,438,411	15.30%	84.70%	\$4,059,516
2009-2010	\$4,592,097	\$861,330	\$3,730,767	18.76%	81.24%	\$4,592,097

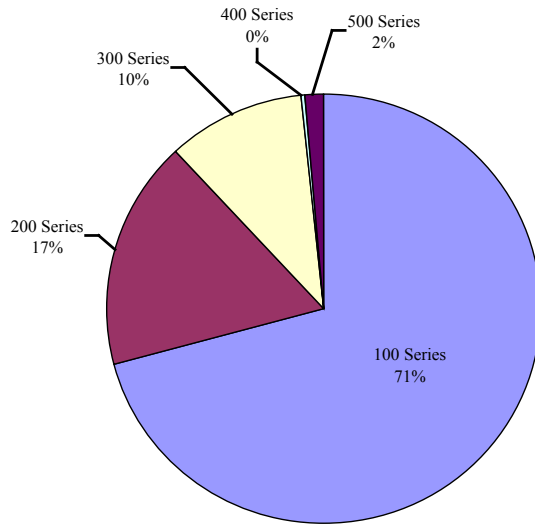
Source: LSO analysis of the Governor's budget requests.

**Figure D.2**  
Office total Office (e-org 150 of WDH director's office) expenditures for FY '07 - '08 biennium

Expenditure Type	Total Expenditure	General Fund	Federal Fund
100 (Personnel)	\$2,620,135	\$1,505,241	\$1,114,894
200 (Support Services)	\$524,603	\$250,343	\$274,260
300 (Cost Allocation)	\$319,466	\$99,139	\$220,327
400 (Information Tech.)	\$154,055	\$84,014	\$70,041
500 (Space Rental)	\$121,126	\$84,966	\$36,160
600 (Grant/Aid Payments)	\$47,790	\$46,744	\$1,046
700 (Captio Construction)	\$0	\$0	\$0
800 (Non-Operating Expenses)	\$0	\$0	\$0
900 (Contract Services)	\$168,699	\$32,406	\$136,293
<b>Total</b>	<b>\$3,955,874</b>	<b>\$2,102,853</b>	<b>\$1,853,021</b>

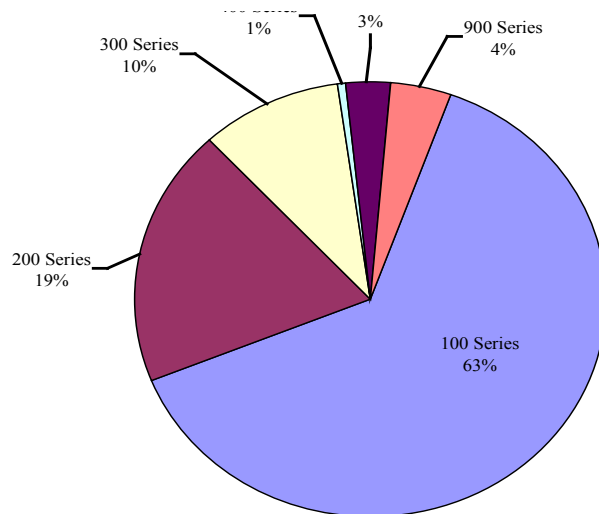
Source: LSO analysis of Office data.

**Figure D.3**  
**Proportions of expenditure series, FY '99 - '00**



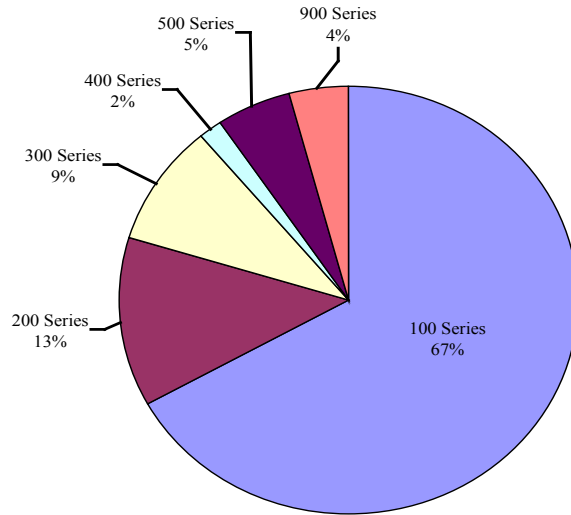
Source: LSO analysis of the Governor's budget requests.

**Figure D.4**  
**Proportions of expenditure series, FY '01 - '02**



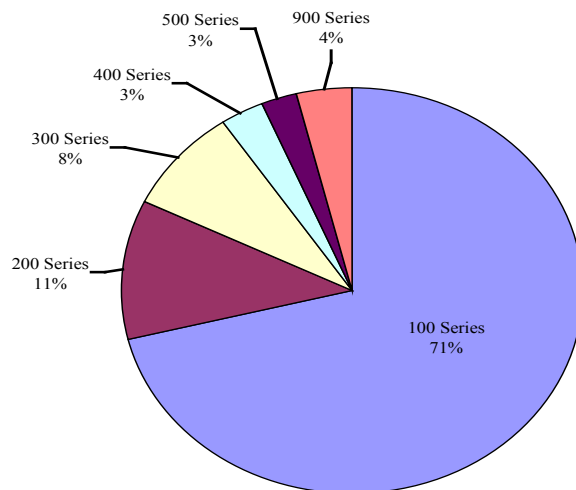
Source: LSO analysis of the Governor's budget requests.

**Figure D.5**  
**Proportions of expenditure series, FY '03 - '04**



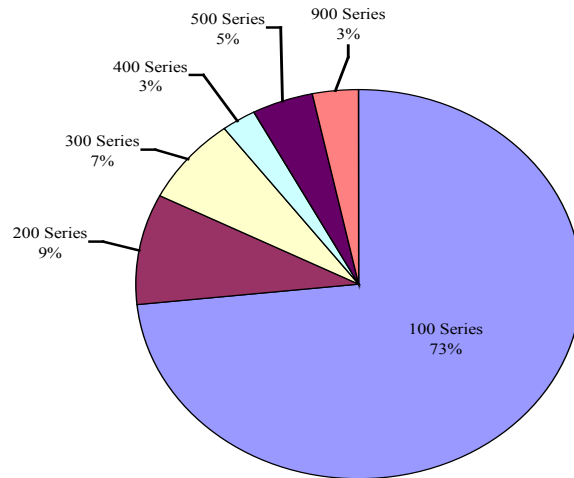
Source: LSO analysis of the Governor's budget requests.

**Figure D.6**  
**Proportions of expenditure series, FY '05 - '06**



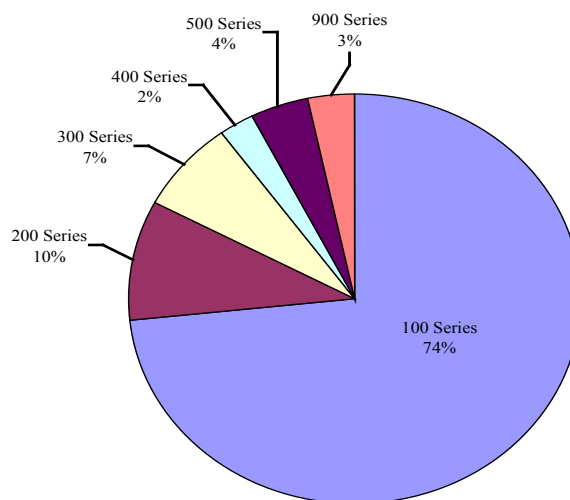
Source: LSO analysis of the Governor's budget requests.

**Figure D.5**  
**Proportions of expenditure series, FY '07 - '08**



Source: LSO analysis of the Governor's budget requests.

**Figure D.6**  
**Proportions of expenditure series, FY '09 - '10**



Source: LSO analysis of the Governor's budget requests.

# Appendix E: MOU between Office and DFPEs and Wyoming Attorney General opinions on healthcare facility construction jurisdiction

## MEMORANDUM OF UNDERSTANDING BETWEEN WYOMING DEPARTMENT OF FIRE PREVENTION AND ELECTRICAL SAFETY AND THE WYOMING DEPARTMENT OF HEALTH

1. **Parties.** This Memorandum of Understanding (MOU) is made and entered into by and between the Wyoming Department of Fire Prevention and Electrical Safety (FMO), and the Wyoming Department of Health (WDH).
2. **Purpose.** The purpose of this MOU is to develop a co-operative partnership between the FMO and WDH which enables the FMO to provide, when appropriate, plan review and inspection services for the construction of new, and the remodeling of existing, health care facilities, pursuant to WYO. STAT. § 35-9-118(b).
3. **Term of MOU.** This MOU shall commence upon the day and date last signed and executed by the duly-authorized representatives of the parties to this MOU, and shall remain in full force and effect until terminated. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice, which shall be delivered by hand or by certified mail.
4. **Payment.** No payment shall be made to either party by the other party as a result of this MOU.
5. **Definitions.**
  - A. "Approved" - means that which is acceptable to the authority having jurisdiction.
  - B. "Authority Having Jurisdiction" - means the Wyoming Department of Health or the U.S. Department of Health and Human Services, as determined by federal and state laws, rules and regulations.
  - C. "Building" - means any structure used or intended for a licensed health care facility occupancy. The term building shall be construed as if followed by the words "or portions thereof".
  - D. "Building Existing" - means any health care facility erected prior to adoption of the Life Safety Code 101, 1994 Edition, by the Wyoming Department of Health.

- E. "Building Code" - means the Uniform Building Code, Current Edition, as promulgated by the International Conference of Building Officials.
- F. "Certificate of Occupancy" - means a certificate issued by the authority having jurisdiction showing that the facility is ready and fit for occupancy and that there are no building code violations.
- G. "Code" - means a standard that is an extensive compilation of provisions on a broad subject matter or that is suitable for adoption into law independently of other codes and standards.
- H. "Electrical Code" - means the National Electrical Code, Current Edition, as promulgated by the National Fire Protection Association.
- I. "Facility" - means one or more structures.
- J. "Fire Safety Code" - means the Life Safety Code 101, 1994 Edition, as promulgated by the National Fire Protection Association; Wyoming Department of Health Chapter III Construction Rules for Health Facilities; State of Wyoming Health Care Facility Licensure Rules and Regulations; and other requirements set forth by the U.S. Department of Health and Human Services for Medicare and Medicaid certification.
- K. "General Plan Review Correction List" - means a FMO generated report which identifies those items that do not meet the minimum standards of the Uniform Building Code, Current Edition; National Electrical Code, Current Edition; Life Safety Code 101, 1994 Edition; and Uniform Mechanical Code, Current Edition.
- L. "Health Care Facility" - means an ambulatory surgical center, assisted living facility, birthing center, boarding home, in-patient hospice, hospital, intermediate care facility for the mentally retarded, medical assistance facility, nursing care facility, rehabilitation facility, renal dialysis center and/or any facility defined under the most recent WYO. STAT. § 35-2-901. This MOU does not apply to adult day care facilities.
- M. "Inspections" - means inspection for plan review compliance by FMO and/or WDH personnel of all newly constructed or remodeled existing health care facilities. All FMO personnel performing on-site building construction inspections shall be certified by the International Conference of Building Officials.

Any personnel inspecting health care facilities for fire safety code compliance shall be trained by the U.S. Department of Health and Human Services. The U.S. Department of Health and Human Services requires, as a minimum, the completion of the Basic Life Safety Surveyor and Principles of Documentation courses.

N. "Mechanical Code" - means the Uniform Mechanical Code, Current Edition, as promulgated by the International Conference of Building Officials.

O. "Occupancy" - means the purpose for which a health care facility is used or intended to be used.

P. "Plan Review" - means the application, plans, specifications, computations, and other data filed by an applicant for the construction of a new or the remodeling of an existing health care facility shall be reviewed for code compliance, state licensure requirements, and federal certification standards by FMO and WDH personnel who are certified by the International Conference of Building Officials and/or trained, as required, by the U.S. Department of Health and Human Services in the Basic Life Safety Surveyor and Principles of Documentation courses.

Q. "Structure" - means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or portion thereof".

#### 6. Responsibilities of the FMO.

Upon request of WDH, as appropriate and on a voluntary basis:

A. Perform plan reviews for the construction of new health care facilities and the remodeling of existing health care facilities using the provisions of the following codes:

Uniform Building Code, Current Edition;  
National Electrical Code, Current Edition;  
Life Safety Code 101, 1994 Edition; and  
Uniform Mechanical Code, Current Edition.

Each plan review shall be completed within twenty-one (21) days after the plan package is received by the FMO, and within this time frame a written General Plan Review Correction List shall be provided to the WDH.



B. Perform all on-site Uniform Building Code, National Electrical Code, and Uniform Mechanical Codes, plan review compliance inspections. This includes a final inspection which will be made after final grading and after the health care facility is completed and ready for occupancy.

C. Perform on-site fire safety code plan review inspections as delegated by the WDH.

D. Deficiencies noted during an inspection shall be placed in writing and mailed to the facility's owner representative and the WDH within seven (7) working days after completion of the inspection.

E. When a health care facility has received the final inspection and has been approved for occupancy by the Authority Having Jurisdiction, the FMO shall issue a Certificate of Occupancy. In areas of local jurisdiction and where the local jurisdiction has issued a Certificate of Occupancy, the FMO shall not issue such certificate. The Certificate of Occupancy shall include the following information:

- (1) The Plan Review/Facility I.D. Number;
- (2) The building address or facility address;
- (3) The name of the facility;
- (4) The name and address of the owner of the facility and whether such owner is an individual, corporation, partnership or limited liability company;
- (5) A description of the building/structure for which the certificate is being issued; and
- (6) A statement indicating the codes under which the building was inspected for compliance.

F. Personnel who perform on-site fire safety code plan review inspections shall be subject to proficiency evaluations as required by the U.S. Department of Health and Human Services and/or WDH.



G. The FMO shall, upon request, from a local jurisdiction, transfer or delegate any of the duties set forth in Section 6, Paragraphs A and B of this MOU to local jurisdictions. The FMO shall notify the governing body of the local jurisdiction of the minimum standards and requirements under this MOU and transfer jurisdiction and authority by letter. However, prior to and after the transfer of authority, the local jurisdiction shall meet and maintain the same qualifications the FMO is require to meet for health care facility plan reviewers and on-site plan review inspections.

H. The WDH shall be provided with copies of all plan reviews and inspections performed pursuant to this MOU by the FMO and the local governmental agencies.

I. All documents, data, compilation, reports, computer programs, photographs, and any other work provided to or produced by the FMO or other governmental entities in the performance of this MOU shall be kept confidential unless written permission is granted for the release of such information by the WDH.

#### **7. Responsibilities of the WDH.**

A. Provide a minimum of two (2) sets of plans and specifications for each health care facility subject to a plan review to the FMO.

B. Perform and evaluate plan reviews for the construction of new and the remodeling of existing health care facilities using the provisions of the following codes:

Uniform Building, Code, Current Edition;  
National Electrical Code, Current Edition;  
Life Safety Code 101, 1994 Edition; and  
Uniform Mechanical Code, Current Edition.

C. Jointly review General Plan Review Correction lists with the FMO.

D. Provide a written list of all deficiencies noted during the plan review to the facility's owner representative and to the FMO.

E. Maintain copies of General Plan Review Construction Lists, deficiency lists, and other applicable construction project correspondence.

F. Serve as the single authority to grant the beginning of construction.

G. Perform on-site fire safety code plan review inspections except for those inspections delegated to the FMO.

H. Provide to the facility's owner representative and to the FMO a written listing of the deficiencies noted during on-site plan review inspections.

I. Conduct periodic evaluations of FMO and local jurisdiction personnel who conduct on-site fire safety code plan review inspections. These evaluations shall be coordinated with the FMO and the local jurisdiction.

J. Serve as the approval authority for the issuance of Certificates of Occupancy for health care facilities.

8. **Settlement of Disputes.** The intent is for the health care plan review and on-site inspection disputes to be resolved at the lowest level. The levels for resolving disputes are listed below with lowest being (1), as follows:

A. Uniform Building Code, National Electrical Code, and/or Uniform Mechanical Code:

(1) Plan reviewers and/or on-site inspectors;

(2) FMO department supervisors;

(3) State Fire Marshal; and

(4) State of Wyoming Council on Fire Prevention, Electrical Safety, and Energy Efficiency.

B. Fire Safety (Life Safety Code 101):

(1) Plan reviewers and/or on-site inspectors;

(2) Department of Health, Office of Health Quality, Senior Management Consultant;

(3) Department of Health, Office of Health Quality, Administrator;

(4) U.S. Department of Health and Human Services, Health Care Financing Administration Region VIII; and

(5) U.S. Department of Health and Human Services, Health Care Financing Administration, Central Office.

## 9. General Provisions.

A. **Amendments.** Either party may request changes in the MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.

B. **Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

C. **Entirety of Agreement.** This MOU consisting of nine (9) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or his representative.

E. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

F. **Sovereign Immunity.** The State of Wyoming, Wyoming Department of Fire Prevention and Electrical Safety and the Wyoming Department of Health do not waive their sovereign immunity by entering into this MOU, and

each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

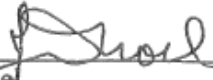
G. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for breach of this MOU.

**INTENTIONALLY LEFT BLANK**

10. Signatures. In witness whereof, the parties to this MOU through their duly-authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.


The effective date of this MOU is the date of the signature last affixed to this page.

WYOMING DEPARTMENT OF FIRE PREVENTION  
AND ELECTRICAL SAFETY

  
\_\_\_\_\_  
James P. Noel  
State Fire Marshal


3/16/98  
\_\_\_\_\_  
Date

WYOMING DEPARTMENT OF HEALTH

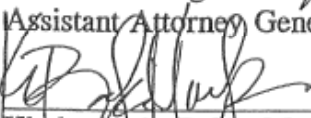
  
\_\_\_\_\_  
Don Rolston  
Director

3/18/98  
\_\_\_\_\_  
Date

ATTORNEY GENERAL'S OFFICE  
APPROVAL AS TO FORM

  
\_\_\_\_\_  
Claudia S. Angelos  
Assistant Attorney General

3/16/98  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kimberly A. Baker-Musick  
Assistant Attorney General

3/16/98  
\_\_\_\_\_  
Date



THE STATE OF WYOMING

# Attorney General

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GOVERNOR

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123 CAPITOL BUILDING  
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ADMINISTRATION 337-1221  
CIVIL DIVISION 337-1222, 337-1223, 337-6297  
CONSUMER AFFAIRS 337-6743, 337-7514  
CRIMINAL DIVISION 337-6743, 337-7372  
NATURAL RESOURCES DIVISION 337-1224, 337-6743


L. HASKINS PRISON 337-9866, 337-6227, 337-6743  
1615 WEST 48TH STREET BUILDING  
FAX: 337-737-8222

NORTH PLATTE LITIGATION 337-6296  
4TH EAST, 48TH STREET BUILDING

July 9, 1993

## MEMORANDUM

TO: Charlie Siminco, Program Manager  
Health Facilities

FROM: D. Stephen Melchior   
Assistant Attorney General

RE: Jurisdiction Regarding the Fire Safety Code and Building Standards  
for Health Facilities

You asked whether it is the Wyoming Department of Health (the department) or the City of Gillette that has jurisdiction regarding the Fire Safety Code and Building Standards for Campbell County Hospital. It appears that Campbell County Hospital is preparing to undergo construction/remodeling, and both the Wyoming Department of Health and the City of Gillette assert exclusive jurisdiction to regulate said hospital construction, including the standard(s) with which the hospital's fire alarm system must comply. The City of Gillette would require that the hospital's fire alarm system comply with Uniform Building Code (UBC) and Uniform Fire Code (UFC) standards which are stricter standards than the Life-Safety Code standards required by the department.

Contrary to the opinion of Gillette City Attorney Charles W. Anderson (see MEMORANDUM to Douglas Dick, Chief Building Inspector from Charles W. Anderson, City Attorney, dated May 5, 1993) it is my opinion that the Wyoming Department of Health has jurisdiction to regulate most aspects of the construction, remodeling and/or expansion of health care facilities within the State of Wyoming, and has exclusive jurisdiction when it comes to regulating fire safety in Wyoming health care facilities.

DEBRA LITLAND, DEPUTY ADMINISTRATOR  
MARY S. BULLOCK, DEPUTY ASSISTANT ATTORNEY GENERAL

DEBRA LITLAND, ADMINISTRATOR - GENERAL

MICHAEL J. HUBBARD, DEPUTY ASSISTANT ATTORNEY GENERAL



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Article 13 of the Wyoming Constitution directs that all cities and towns be empowered to determine their local affairs and government subject to general statutes uniformly applicable to all cities and towns. Wyo. Const. art. 1, § (b). In addition, it is well established in case law that municipalities can exercise only those powers of government which are expressly or impliedly conferred, City of Buffalo v. Joslyn, 527 P.2d 1106 (Wyo. 1974), and that it is the legislature that is the well spring of all municipal authority, Whipps v. Town of Greybull, 109 P.2d 805 (Wyo. 1941); Stewart v. City of Cheyenne, 154 P.2d 355 (Wyo. 1944); Wyoming State Treasurer v. City of Rawlins, 510 P.2d 301 (Wyo. 1973). Consequently, to determine whether it is the Wyoming Department of Health or the City of Gillette that has jurisdiction over fire safety standards in health care facilities, it will be necessary to examine the legislature's grant of authority to the respective entities.

Examination of Title 35 of the Wyoming statutes (the Public Health and Safety Act, or the Act) reveals that no person shall establish any health care facility<sup>1</sup> in the state of Wyoming without a license issued pursuant to Title 35 of the Wyoming statutes. W.S. 35-2-902. The Act further provides that "[a] licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specification to the division<sup>2</sup> for preliminary inspection and

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<sup>1</sup> The term "Health care facility" is defined as "any . . . hospital . . ." W.S. 35-2-901 (a)(x). The term "Hospital" is defined as

an institution or a unit in an institution providing one (1) or more of the following to patients by or under the supervision of an organized medical staff:

- (A) Diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons;
- (B) Rehabilitation services for the rehabilitation of injured, disabled or sick persons;
- (C) Acute care;
- (D) Psychiatric care;
- (E) Swing beds.

<sup>2</sup> The term "Division" is defined as the designated division within the Department of Health. W.S. 35-9-901 (a)(vii).

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approval prior to commencing construction," W.S. 35-2-906 (a), and that "every licensed health care facility shall be periodically inspected by the division under rules and regulations promulgated by the department."<sup>3</sup> W.S. 35-2-907 (a). Title 35 also provides that the division shall issue a license under the Act if the applicant is in compliance with the rules and regulations promulgated pursuant to the act, W.S. 35-2-904 (a)(i), and that the division may place conditions on a license, or deny, suspend or revoke the license of a health care facility if said licensee violates any provision of the Public Health and Safety Act or the rules and regulations promulgated pursuant to the Act. W.S. 35-2-905 (a).

Title 35 provides an implied, if not express, grant of authority to the Wyoming Department of Health to regulate health care facilities. The Act requires health care facilities to be licensed by the department, to submit construction/alteration/addition plans to the department for approval, and to keep in compliance with rules and regulations promulgated by the department in order to maintain licensure.

It is interesting to note that the legislature required the department to promulgate and enforce reasonable rules and regulations necessary to protect the health, safety and welfare of patients of licensed health care facilities. W.S. 35-2-908. The Department of Health through its Division of Preventive Medicine, Health Facilities Section, promulgated Chapter III, Construction Rules for Health Facilities. These rules and regulations, which were properly promulgated in accordance with W.S. 16-3-103,<sup>4</sup> deal almost entirely with fire safety requirements. The rules state that "[t]he 1988 edition of NFPA 101 Life Safety Code and all codes referenced therein are adopted as the Wyoming State Fire Safety Minimum Standards for Health Care Facilities." Wyoming Department of Health, Division of Medical Facilities' Rules and Regulations, Chapter III, Construction Rules for Health Facilities, Section 4. (a)(i)(1991). The rules also provide that "[w]hen safety items and other requirements of the Department are

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<sup>3</sup> The term "Department" is defined as "the department of health." W.S. 35-2-901 (a)(iv).

<sup>4</sup> Rules adopted pursuant to statutory authority and promulgated through the proper procedure have the force and effect of law. Ye'ik v. Department of Revenue and Taxation, 656 P.2d 365 (Wyo. 1979).



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substantially completed, occupancy [in a health care facility] may occur. Id. at Section 5. (a)(iii). Establishing fire safety standards for health care facilities is clearly within the scope of the legislative mandate to promulgate "rules and regulations necessary to protect the health, safety and welfare of patients of health care facilities," and can be construed as an expressly conferred power to the department. W.S. 35-2-908.

Upon examination of the general powers of the governing bodies of all cities and towns, one would discover that said governing bodies may "[p]rescribe the thickness, strength and manner of constructing any buildings and the construction of fire escapes,<sup>5</sup> and provide for their inspection." W.S. 15-1-103 (a)(xxv). One would also discover that "[a]ny city or town may adopt by reference all or part of . . . any national fire prevention, building, plumbing and electrical codes . . ." W.S. 15-1-119. At first glance these statutory grants of power to governing bodies of cities and towns appear to be in direct conflict with the aforementioned statutes which confer powers to the Department of Health relative to health care facilities -- that is until such statutes are read in conjunction with the statutes governing the Department of Fire Prevention and Electrical Safety, W.S. 35-9-101 et seq.

W.S. 35-9-121 provides that

The state fire marshal shall delegate complete authority to municipalities and counties which apply to enforce and interpret local or state fire, energy efficiency, building or electrical safety standards. The state fire marshal shall notify the governing body of the municipality or county of the minimum standards and requirements of this act [ §§ 35-9-101 through 35-9-130 ] . . . and transfer jurisdiction and authority by letter. . .

W.S. 35-9-121 (a). Because the state fire marshal must, upon request by a municipality or county, delegate complete authority to municipalities and counties

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<sup>5</sup> See W.S. 35-9-507.

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to enforce and interpret local or state fire, energy efficiency, building or electrical safety standards, there is sometimes a need for cities and towns to have in place local fire, building, plumbing and/or electrical codes – thus the logic behind the legislative grant of power to cities and towns to “adopt by reference all or part of . . . any national fire prevention, building, plumbing and electrical codes.” W.S. 15-1-119. However, a municipality or county may apply its adopted codes only to those buildings, etc., within its jurisdiction. Municipalities and counties do not receive jurisdiction to enforce fire safety standards in health care facilities from the state fire marshal via said delegation because the state fire marshal never had such jurisdiction. The state fire marshal can only delegate to municipalities and counties that which it possesses, and W.S. 35-9-118 states in relevant part that “W.S. 35-9-106 through 35-9-117<sup>6</sup> do not apply to . . . [c]ounty memorial

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<sup>6</sup> W.S. 35-9-106 (a) states in relevant part that the Department of Fire Prevention and Electrical Safety through its counsel on fire prevention, electrical safety and energy efficiency in buildings, “shall adopt rules and regulations to:

- (i) Establish minimum fire standards not exceeding the standards prescribed by the Uniform Fire Code, the Uniform Building Code and the Uniform Mechanical Code for:
  - (A) All new building construction;
  - (B) The prevention of fire and the protection of life and property from fire and panic in all existing buildings;

W.S. 35-9-107 (a) states in relevant part that “[t]he state fire marshal shall :

- (ii) Enforce regulations promulgated by the council;
- (iii) Implement fire safety programs designed to minimize fire hazards and disasters and loss of life and property from these causes. These programs shall include:
  - (A) Establishment and enforcement of fire safety and safety practices throughout the state;
  - (B) Preventive inspection and corrective activities;

W.S. 35-9-108 provides in relevant part that

“(p)rior to beginning work, the [person holding legal title to a building or real property] shall submit to the state fire marshal and the state fire marshal shall review for fire and electrical safety considerations and efficient energy usage all plans for construction or remodeling, if the cost of remodeling exceeds twenty-five percent (25%) of the market

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hospitals, hospital districts, private hospitals and other health care facilities." W.S. 35-9-118 (a)(ii). Even the state fire marshall acknowledges that it has no jurisdiction to enforce fire safety standards in health care facilities.<sup>7</sup>

W.S. 35-9-501 et seq. deals with the topic of fire escapes. W.S. 35-9-507 provides that the state statutes relative to fire escapes as delineated in W.S. 35-9-501 through W.S. 35-9-507

shall not be applicable in any incorporated city or town that has by ordinance adopted a uniform building code which provides among other things adequate and safe means of inside fire escapes, smoke towers and fireproof inclosed stairways and further fixes the types of occupancies and types of buildings subject to the said code."

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value of the structure of five thousand dollars (\$5,000.00), whichever is less, . . .

<sup>7</sup> In a letter dated July 24, 1988 to Sheridan, Wyoming, Mayor Max DeBolt (see attached), Billy Weckwerth, the State Fire Marshall, stated that:

Fire standards in health-care related facilities are currently regulated by the Wyoming Department of Health and cannot be delegated by the State Fire Marshall. However, authority for enforcement of electrical safety standards within those facilities is included in this delegation of authority.

Apparently the State Fire Marshall relied on W.S. 35-9-119 in drawing the conclusion that electrical safety standards were included in the delegation of power because W.S. 35-9-119 is not included within the W.S. 35-9-118 exceptions.

In letters to both William Westbrook, Mayor of Jackson, Wyoming, and Steve Thomas, Chairman of the Board of County Commissioners, Teton County, Wyoming, dated June 27, 1991 and July 23, 1991 respectively (see attached), State Fire Marshall Gene Brooks stated that:

Fire standards in health-care related facilities are currently regulated by the Wyoming Department of Health and cannot be delegated by the State Fire Marshal.

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This statute gives cities and towns the authority to regulate in the area of fire escapes only. The statute acknowledges that a city or town may have adopted ordinances which provide, among other things, adequate and safe means of fire escapes. If a city or town has adopted a uniform building code which provides a safe means of inside fire escapes, etc., then W.S. 35-9-501 through W.S. 35-9-507 shall not be applicable in that particular city or town, implying that the municipality shall use its own adopted ordinances governing fire escapes. The statute does not imply that municipal building codes are to govern hospitals, or that municipalities have exclusive building code jurisdiction over hospitals located within the municipality, particularly in the area of fire safety.

W.S. 35-9-507 is a poorly drafted statute. Note that W.S. 35-9-507 states that "[t]he provisions of . . . §§ 35-9-501 through 35-9-507 shall not be applicable in any incorporated city or town that has by ordinance adopted a uniform building code . . ." (Emphasis added). Taken literally, if a city or town adopts by ordinance uniform building codes, then W.S. 35-9-507 does not apply. If W.S. 35-9-507 does not apply, then the statute which proclaims certain statutes inapplicable is itself inapplicable by its own proclamation — an extremely obtuse concept!

It appears that the legislature fully intended for the Wyoming Department of Health to have exclusive jurisdiction over health care facilities in the area of fire safety standards. It is my opinion, therefore, that Campbell County Hospital is required to comply with the fire safety standards articulated in the Wyoming Department of Health rules and regulations relative to Construction of Health Facilities, and that the hospital need not comply with the City of Gillette's more stringent Uniform Fire Code standards.

Please contact me if you have questions.

cc: Jane Sabes, Director  
Wyoming Department of Health  
Stan Music, M.D., Administrator  
Division of Preventive Medicine  
Gene Brooks, State Fire Marshall

## FORMAL OPINION NO. 99-009

September 24, 1999

TO: Garry L. McKee, Director  
Department of Health

FROM: Gay Woodhouse  
Attorney General

Michael L. Hubbard  
Deputy Attorney General

Marci M. Hoff  
Assistant Attorney General

QUESTION PRESENTED: Who is vested with jurisdictional authority over fire safety and building codes in health care facilities constructed in Wyoming municipalities?

SHORT ANSWER: The Department of Health has jurisdictional authority over fire safety and building codes for the construction of healthcare facilities while municipalities retain jurisdiction for other building standards, that are not in conflict with state standards. See Discussion.

### DISCUSSION

#### I. Home Rule

Municipalities are granted broad powers over their local affairs under the Wyoming Constitution's "home rule" provision:

(B) All cities and towns are hereby empowered to determine their local affairs and government as established by ordinances passed by the governing body, subject to referendum when prescribed by the legislature, and further subject only to statutes uniformly applicable to all cities and towns, and to statutes prescribing limits of indebtedness. \* \* \* (emphasis added)

WYO. CONST. art. 13, § 1(b).

The Wyoming "home rule" amendment was adopted in 1972. The basic grant of home rule authority is generally explained:

Broadly speaking, it gives to municipalities some degree of constitutional status and some protection against unbridled domination by the legislature. In other words, from the point of view of municipalities, it mitigates the more unfavorable consequences of the creature concept. ...

It should, in the first place, eliminate questions under Dillon's Rule. The common feature of all home rule provisions is the grant of independent legislative authority, within prescribed limits, to municipalities. Therefore, the mere fact that the city has no express or implied statutory authority for particular action should not, without more, make the action illegal. The more difficult questions concern the right of a municipality, under its home rule authority, to take action in conflict with state statutes, or in areas that the legislature might otherwise be considered to have preempted.... (emphasis added)

E. GEORGE RUDOLPH, WYOMING LOCAL GOVERNMENT LAW, § 2.6, at 76-77 (1985).

In *Police Protective Ass'n v. City of Rock Springs*, 631 P.2d 433, 439 (Wyo. 1981), the Wyoming Supreme Court explained, "Article 13, Section 1 of the Wyoming Constitution, giving 'home rule' to cities and towns, exempts 'statutes uniformly applicable to all cities and towns' from the authorization given to cities and towns to 'determine their local affairs and government.'" The court held that the city did not have the authority to engage in collective bargaining.

As noted by Professor Rudolph, the Wyoming "home rule" amendment was patterned after the Kansas amendment. It is an essential element of all constitutional provisions establishing the principle of home rule that the constitution and general laws of the state shall continue in force within the municipalities. 56 Am.Jur.2d *Municipal Corporations* § 128, p. 184 (1971).

Home rule allows municipalities to control their local affairs unless preempted by statute. Further, municipalities may legislate on the same statutory subject so long as the municipal ordinance does not conflict with the statute and the subject has not been specifically preempted by the legislature.

In determining whether home rule applies, we must evaluate three areas: (1) the conflict, if any, between a relevant state statute and a municipal ordinance; (2) whether the statute has uniform application; and (3) if any preemptive statutory language exists.

## **II. Department of Health Authority**

The Department of Health has broad power over licensing and operations of health care facilities under WYO. STAT. §§ 35-2-901-910. Pursuant to WYO. STAT. § 35-2-906, the Department of Health must approve building plans prior to construction of health care facilities. Subsection (a) of WYO. STAT. § 35-2-906 provides:

A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the division for preliminary inspection and approval prior to commencing construction. Significant changes to the original plans must also be submitted and approved prior to implementation. The plans and any changes shall indicate any increase in the number of beds. (emphasis added)

Under subsection (e) of the same statute provides “[T]his section shall remain in effect until June 30, 2001.”

WYO. STAT. § 35-2-908 specifically provides, “[T]he department shall promulgate and enforce reasonable rules and regulations necessary to protect the health, safety and welfare of patients of health care facilities licensed under the act.” (emphasis added) Pursuant to rules promulgated by the department, the construction of health care facilities must meet the “Guidelines for Design and Construction of Hospital and Health Care Facilities” as outlined under Chapter III, Construction Rules for Health Facilities (hereinafter “Construction Rules”). The construction rules adopt the 1994 edition of NFPA 101 and the Life Safety Code as the Wyoming State Fire Minimum Standards for Health Care Facilities. Construction Rules, Sec. 4 (a)(i). Assisted living facilities are specifically exempted from these requirements. See Construction Rules, § 4 (b)(i)(A).

The Department of Health Rules and Regulations for Assisted Living Facilities, promulgated pursuant to WYO. STAT. § § 35-2-901 *et seq.* (hereinafter ALF Rules) provide with regard to building codes:

Section 18. Construction/Remodeling.

(c) Codes and Standards. All new construction shall meet the provisions of the 1991 edition of the NFPA 101 Life Safety Code of the National Fire Protection Association that are applicable to residential board and care occupancies. All new construction shall meet the provisions of the 1991 edition of the Uniform Building Code, the 1991 edition of the Uniform Mechanical Code and the 1991 edition of the Uniform Plumbing Code, except as modified by the 1991 edition of the NFPA 101 Life Safety Code.

ALF Rules, Ch.4, § 18(c).

While these rules address the codes that must be utilized, your question remains whether the state or the municipality has jurisdiction to require compliance with a particular building code.

### **III. FIRE CODE JURISDICTION**

Fire standards must be differentiated from the other building codes as authority over fire codes is vested in the “council on fire prevention and electrical safety and energy efficiency in buildings.” WYO. STAT. § § 35-9-103(a)(iii), 106. In addition, the State Fire Marshal is granted the power to enforce fire safety in the state. WYO. STAT. 35-9-107(a).

Under WYO. STAT. § 35-9-106(a)(i)(A), the council is required to adopt rules and regulations to establish minimum fire standards not exceeding the standards prescribed by the Uniform Fire Code, the Uniform Building Code and the Uniform Mechanical Code for all new building construction.



The State Fire Marshal is required to enforce the regulations promulgated by the council. See WYO. STAT. § 35-9-107(a)(ii). However, WYO. STAT. § 35-9-121(a) requires the State Fire Marshal to delegate this authority to cities, towns and counties upon request:

(a) The state fire marshal shall delegate complete authority to municipalities and counties which apply to enforce and interpret local or state fire, energy efficiency, building or electrical safety standards. ... The state fire marshal shall notify the governing body of the municipality or county of the minimum standards and requirements of the act [ §§ 35-9-101 through 35-9-130 ] and W.S. 16-6-501 and 16-6-502 and transfer jurisdiction and authority by letter... (emphasis added)

It is important to note that there are exceptions to the council's rulemaking authority under WYO. STAT. § 35-9-106 and the State Fire Marshal's enforcement authority under WYO. STAT. § 35-9-107. Such exceptions are listed in WYO. STAT. § 35-9-118. More specifically, WYO. STAT. § 35-9-118(a)(ii) provides:

W.S. 35-9-106 through 35-9-117 do not apply to:

(ii) County memorial hospitals, hospital districts, private hospitals and other health care facilities. (emphasis added)

Thus, the rules and regulations of the council establishing fire standards do not apply to hospitals and other health care facilities. Nor does the enforcement power of the State Fire Marshal apply to these facilities.

While "health care facilities" is not defined in WYO. STAT. § 35-9-102, the phrase is defined in WYO. STAT. § 35-2-901(a)(x) as follows:

'Health care facility' means any ambulatory, surgical center, assisted living facility, adult day care facility, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, intermediate care facility for the mentally retarded, medical assistance facility, nursing care facility, rehabilitation facility and renal dialysis center; (emphasis added)

To ascertain the legislative intent, we must read all of the statutes in *pari materia*. *Mauler v. Titus*, 697 P.2d 303 (Wyo. 1985). Although the State Fire Marshal is required to delegate enforcement authority to local governments under WYO. STAT. § 35-9-121, such authority does not include "health care facilities" because such facilities are specifically exempted from WYO. STAT. §§ 35-9-106 through 35-9-117. The reasonable interpretation of this specific exemption reflects a clear intent of the legislature to leave the fire standards of health care facilities under the jurisdiction of the health department. See *V-1 Oil Co. v. City of Rock Springs*, 823 P.2d 1176 (Wyo. 1991), ("Reasonable interpretation" of language reflects clear intent).



Wyoming municipalities may govern their own affairs unless preempted by statute; the Department of Health fire codes clearly preempt municipal fire codes. “ A city or town can only exercise those powers expressly or impliedly conferred by constitution or statute. The legislature is therefore the well-spring of practically all powers here in play.” *Tri-County Elec. Ass’n v. City of Gillette*, 584 P.2d 995, 1005 (Wyo. 1978). Since the Fire Marshal cannot delegate jurisdiction of fire codes to municipalities for hospitals and other health care facilities the jurisdiction remains within the confines of the state, specifically the Department of Health.

#### **IV. Fire Escape Statutes - Hospitals**

WYO. STAT. § 35-9-501 *et seq.*, outlines the type of fire escapes that must be utilized in buildings, including “hospital buildings, two (2) or more stories in height.” These fire escape statutes, pursuant to WYO. STAT. § 35-9-507, are not applicable:

. . . in any incorporated city or town that has by ordinance adopted a uniform building code which provides among other things adequate and safe means of inside fire escapes, smoke towers and fireproof inclosed stairways and further fixes the types of occupancies and types of buildings subject to said code.

Thus, a city or town with a uniform building code may regulate its own fire escapes, but WYO. STAT. § 35-9-507 does not confer fire code jurisdiction in other areas to the city or town. Such jurisdiction is clearly maintained by the Department of Health pursuant to WYO. STAT. § 35-9-118(a)(ii) and WYO. STAT. § 35-2-906.

The Department of Health has jurisdiction to establish and enforce fire safety standards for health care facilities.

#### **V. Building Codes**

Each health care facility in the state must have a valid license issued by the Department of Health. WYO. STAT. § 35-2-902. Licensees must comply with the rules and regulations promulgated by the Department of Health. See WYO. STAT. § 35-2-905 (a). As previously noted, the Department of Health has promulgated fire and building codes with which all health care facilities must comply. See ALF Rules, Ch.4, § 18(c).

The second prong of your question focuses on jurisdiction over building codes. As stated earlier, state statute requires the Department of Health to inspect and approve plans and specifications for health care facilities. See WYO. STAT. §§ 35-2-906, 908. The Department has promulgated rules regarding construction codes but has not addressed specific issues, such as mine subsidence compliance and local natural hazards. Statutorily, if federal funds are being used for the facility, the medical construction project must conform to federal and state

requirements. WYO. STAT. § 35-2-343. Article 13 § 1 of the Wyoming Constitution provides municipalities with the power to govern their local affairs and establish their own ordinances. Further, the Constitution reads:

(d) The powers and authority granted to cities and towns, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.

WYO. CONST. art. 13, § 1(d).

The legislature has specifically granted municipalities the powers to:

(xxv) Prescribe the thickness, strength and manner of constructing any buildings and the construction of fire escapes therein, and provide for their inspection;

(xxvi) Provide for the repair, removal or destruction of any dangerous building or enclosure;

(xxvii) Define fire limits and prescribe limits within which no building may be constructed except of brick, stone or other incombustible material, without permission and cause the destruction or removal of any building constructed or repaired in violation of any ordinance;

WYO. STAT. § 15-1-103(a).

This statute, in context with the powers granted under the Wyoming Constitution, delegates to the city the right to implement its own building requirements within its jurisdiction: requirements with which all buildings must comply.

In *State ex rel. Schneider v. City of Kansas City*, 612 P.2d 578, 228 Kan. 25 (1980), the Kansas Supreme Court explained:

There is no question that cities in Kansas may pass ordinances setting minimum standards for construction projects, including the adoption of building, mechanical, plumbing, electrical and similar codes. The state, on the other hand, has adopted comprehensive building codes of its own that are mandatory in the construction of all school buildings and, apparently, sometimes conflict with the codes adopted by Kansas City. Do such statutes preclude local municipalities from enforcing local building codes which are or may be in conflict therewith? We think so. (emphasis added)

*Id.*, 612 P.2d at 581.

In determining whether an ordinance is in conflict with general laws, the test is whether or not the ordinance permits or licenses that which the statute forbids or prohibits, and vice versa. *Middleburg Hts. v. Ohio Board*, 605 N.E.2d 66, 68 (Ohio 1992).

In applying the home rule doctrine to decide whose code prevails, we must determine whether a conflict exists between the two building codes. The Department of Health has the power to license health care facilities and has promulgated rules continuing building requirements. This power is not in direct conflict with the authority of the municipality to regulate its own building codes. The requirements of the Department of Health are building standards for health care facilities and the municipality may demand more stringent requirements in areas where there is no conflict with the state standards. Thus, in areas of mine subsidence, drinking water supply, localized natural hazards, etc., the local building codes would apply. Thus, there is overlapping jurisdiction in the area of building codes, except in the area of fire codes which is exclusive to the Department. In the case of building code conflicts for health care facilities, the state standards apply. The health care facility would have to meet the state building codes before being licensed by the Department of Health.

### **CONCLUSION**

With regard to health care facilities, the Department of Health has jurisdiction over the fire and building code requirements. The fire code jurisdiction is exclusive. The building code jurisdiction is not. The local municipality maintains jurisdiction over the building codes standards that do not conflict with the state building codes for health care facilities. If you have any further questions or concerns regarding this matter, please contact us.



# Appendix F: Office's timeliness on preliminary and final plan reviews

**Note:** Grey areas represent information that was not available or insufficient to provide annual or aggregate numbers related to timeliness (primarily for final plan reviews)

**Figure F.1**  
**Median and average calendar/work days for preliminary plan reviews and final plan reviews, CY '98 - '08**

Year	PPR				FPR			
	Calendar Days		Work Days		Calendar Days		Work Days	
	Median	Average	Median	Average	Median	Average	Median	Average
1998	25	26	18	19				
1999	23	28	16	20				
2000	20	20	14	14				
2001	19	26	13	18				
2002	13	25	9	18				
2003	29	33	21	24				
2004	18	36	13	26				
2005	18	52	13	37				
2006	32	36	23	26				
2007	70	107	50	76	334	302	239	216
2008	58	80	41	57	34	83	24	59
pre-2003	22	27	16	19				
post-2003	36	62	26	44	140	198	100	142

Source: LSO analysis of Office project tracking logs.

**Figure F.2**  
**Descriptive statistics for preliminary plan review timeliness, CY '98 - CY '08**

Year	PPR (calendar days)				# projects w/ data	# Total Projects	% projects with data	% increase/ decrease in timeliness (median)
	Median	Average	Low	High				
1998	25	26	1	71	44	48	91.67%	-----
1999	23	28	1	141	51	55	92.73%	-6.12%
2000	20	20	2	51	46	47	97.87%	-15.22%
2001	19	26	1	158	56	56	100.00%	-5.13%
2002	13	25	1	204	54	64	84.38%	-32.43%
2003	29	33	1	252	58	60	96.67%	132.00%
2004	18	36	1	414	53	65	81.54%	-37.93%
2005	18	52	1	336	59	106	55.66%	0.00%
2006	32	36	1	215	108	123	87.80%	77.78%
2007	70	107	2	534	82	94	87.23%	118.75%
2008	58	80	8	222	73	88	82.95%	-17.86%
pre-2003	22	27	1	252	257	427	60.19%	-----
post-2003	36	62	1	534	375	476	78.78%	63.64%
1998-2008	28	46	1	534	684	806	84.86%	

Source: LSO analysis of Office project tracking logs.

**Figure F.3**  
**Descriptive statistics for final plan review timeliness (calendar days), CY '98 – CY '08**

<b>Year</b>	<b>Median</b>	<b>Average</b>	<b>Low</b>	<b>High</b>	<b># projects w/ data</b>	<b># Total Projects</b>	<b>% projects with data</b>	<b>% increase/decrease in timeliness</b>
<b>1998</b>						<b>48</b>		
<b>1999</b>						<b>55</b>		
<b>2000</b>						<b>47</b>		
<b>2001</b>						<b>56</b>		
<b>2002</b>						<b>64</b>		
<b>2003</b>						<b>60</b>		
<b>2004</b>					<b>3</b>	<b>65</b>	<b>4.62%</b>	
<b>2005</b>					<b>8</b>	<b>106</b>	<b>7.55%</b>	
<b>2006</b>					<b>4</b>	<b>123</b>	<b>3.25%</b>	
<b>2007</b>	<b>334</b>	<b>303</b>	<b>12</b>	<b>646</b>	<b>20</b>	<b>94</b>	<b>21.28%</b>	
<b>2008</b>	<b>34</b>	<b>83</b>	<b>7</b>	<b>437</b>	<b>12</b>	<b>88</b>	<b>13.64%</b>	
<b>pre-2003</b>						<b>427</b>		
<b>post-2003</b>	<b>141</b>	<b>199</b>	<b>7</b>	<b>646</b>	<b>47</b>	<b>476</b>	<b>9.87%</b>	
<b>1998-2008</b>						<b>806</b>		

Source: LSO analysis of Office project tracking logs.

**Figure F.4**  
**Combined plan reviews (preliminary plan + final plan) completion timeliness,**  
**CY '98 - '08**

Year	Both Reviews			
	Calendar Days		Work Days	
	Median	Average	Median	Average
1998				
1999				
2000				
2001				
2002				
2003				
2004				
2005				
2006				
2007	464	471	331	336
2008	91	109	65	78
pre-2003				
post-2003	274	305	196	218
1998-2008				

Source: LSO analysis of Office project tracking logs.



**Figure F.5**  
**Distribution of the number and percentage of projects according to calendar days for preliminary plan review, pre/post-2003 and CY '98 - '08<sup>1</sup>**

Range of Calendar Days to Complete Preliminary Review	Selected Time Frames - Number of Projects		
	pre-2003	post-2003	1998-2008
	<b>0-21</b>	<b>143</b>	<b>130</b>
<b>22-42</b>	<b>98</b>	<b>93</b>	<b>191</b>
<b>43-63</b>	<b>24</b>	<b>67</b>	<b>91</b>
<b>64-84</b>	<b>8</b>	<b>32</b>	<b>40</b>
<b>85+</b>	<b>6</b>	<b>83</b>	<b>89</b>
<b>Total Projects</b>	<b>279</b>	<b>405</b>	<b>684</b>
Range of Calendar Days to Complete Preliminary Review	Selected Time Frames - Percent of Projects		
	pre-2003	post-2003	1998-2008
	<b>0-21</b>	<b>51.3%</b>	<b>32.1%</b>
<b>22-42</b>	<b>35.1%</b>	<b>23.0%</b>	<b>27.9%</b>
<b>43-63</b>	<b>8.6%</b>	<b>16.5%</b>	<b>13.3%</b>
<b>64-84</b>	<b>2.9%</b>	<b>7.9%</b>	<b>5.8%</b>
<b>85+</b>	<b>2.2%</b>	<b>20.5%</b>	<b>13.0%</b>
<b>Total Projects</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: LSO analysis of Office project tracking logs.

<sup>1</sup> Project totals do not match those in Appendix B; this figure only tracks projects for which there was enough data to calculate timeliness.



# Appendix G: LSO healthcare facility survey responses

<b>Question 1</b>		<b>The Office conducts the following plan review and inspection work in a timely manner:</b>				
		<b>Strong Agree/ Agree</b>	<b>Unsure or Does Not Apply</b>	<b>Strong Disagree/ Disagree</b>	<b>Blank</b>	<b>Total Surveys Returned</b>
<b>1a.</b>	<b>Preliminary Plan Review</b>	<b>28.26% (13)</b>	<b>6.52% (3)</b>	<b>60.87% (28)</b>	<b>4.35% (2)</b>	<b>100.00% (46)</b>
<b>1b.</b>	<b>Final Plan Review</b>	<b>21.74% (10)</b>	<b>13.04% (6)</b>	<b>58.70% (27)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>
<b>1c.</b>	<b>Ongoing Inspections During Construction</b>	<b>41.30% (19)</b>	<b>30.43% (14)</b>	<b>21.74% (10)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>
<b>1d.</b>	<b>Final Construction Inspection</b>	<b>50.00% (23)</b>	<b>19.57% (9)</b>	<b>23.91% (11)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>

<b>Question 2</b>		<b>The Office clearly communicates statutory and regulatory requirements of facilities for the following processes:</b>				
		<b>Strong Agree/ Agree</b>	<b>Unsure or Does Not Apply</b>	<b>Strong Disagree/ Disagree</b>	<b>Blank</b>	<b>Total Surveys Returned</b>
<b>2a.</b>	<b>Preliminary Plan Review</b>	<b>69.57% (32)</b>	<b>4.35% (2)</b>	<b>21.74% (10)</b>	<b>4.35% (2)</b>	<b>100.00% (46)</b>
<b>2b.</b>	<b>Final Plan Review</b>	<b>63.04% (29)</b>	<b>10.87% (5)</b>	<b>21.74% (10)</b>	<b>4.35% (2)</b>	<b>100.00% (46)</b>
<b>2c.</b>	<b>Ongoing Inspections During Construction</b>	<b>54.35% (25)</b>	<b>23.91% (11)</b>	<b>15.22% (7)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>
<b>2d.</b>	<b>Final Construction Inspection</b>	<b>65.22% (30)</b>	<b>17.39% (8)</b>	<b>10.87% (5)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>

Question 3	The Office clearly explains deficiencies on plans or at inspection.				
	Strong Agree/ Agree	Unsure or Does Not Apply	Strong Disagree/ Disagree	Blank	Total Surveys Returned
3.	63.04% (29)	8.70% (4)	21.74% (10)	6.52% (3)	100.00% (46)

Question 4	The Office conducted in-person inspections throughout the construction process.				
	Strong Agree/ Agree	Unsure or Does Not Apply	Strong Disagree/ Disagree	Blank	Total Surveys Returned
4.	39.13% (18)	32.61% (15)	21.74% (10)	6.52% (3)	100.00% (46)

Question 5	The Office makes an effort to understand my needs regarding project timelines and cost.				
	Strong Agree/ Agree	Unsure or Does Not Apply	Strong Dis- agree/ Dis- agree	Blank	Total Surveys Returned
5.	26.09% (12)	26.09% (12)	41.30% (19)	6.52% (3)	100.00% (46)

Question 6	The Office applies codes and standards consistently for the following:					
		Strong Agree/ Agree	Unsure or Does Not Apply	Strong Disagree/ Disagree	Blank	Total Surveys Returned
6a.	Preliminary Plan Review	60.87% (28)	17.39% (8)	17.39% (8)	4.35% (2)	100.00% (46)
6b.	Final Plan Review	58.70% (27)	21.74% (10)	15.22% (7)	4.35% (2)	100.00% (46)
6c.	Ongoing Inspections During Construction	43.48% (20)	36.96% (17)	13.04% (6)	6.52% (3)	100.00% (46)
6d.	Final Construction Inspection	50.00% (23)	28.26% (13)	15.22% (7)	6.52% (3)	100.00% (46)

<b>Question 7</b>		<b>The Office applies codes and standards reasonably for the following:</b>				
		<b>Strong Agree/ Agree</b>	<b>Unsure or Does Not Apply</b>	<b>Strong Disagree/ Disagree</b>	<b>Blank</b>	<b>Total Surveys Returned</b>
<b>7a.</b>	<b>Preliminary Plan Review</b>	<b>52.17% (24)</b>	<b>15.22% (7)</b>	<b>28.26% (13)</b>	<b>4.35% (2)</b>	<b>100.00% (46)</b>
<b>7b.</b>	<b>Final Plan Review</b>	<b>50.00% (23)</b>	<b>13.04% (6)</b>	<b>30.43% (14)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>
<b>7c.</b>	<b>Ongoing Inspections During Construction</b>	<b>43.48% (20)</b>	<b>34.78% (16)</b>	<b>15.22% (7)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>
<b>7d.</b>	<b>Final Construction Inspection</b>	<b>45.65% (21)</b>	<b>26.09% (12)</b>	<b>21.74% (10)</b>	<b>6.52% (3)</b>	<b>100.00% (46)</b>

<b>Question 8</b>		<b>The Office clearly communicates the requirements and process for the following:</b>				
		<b>Strong Agree/ Agree</b>	<b>Unsure or Does Not Apply</b>	<b>Strong Disagree/ Disagree</b>	<b>Blank</b>	<b>Total Surveys Returned</b>
<b>8a.</b>	<b>Use of Third Party Plan Reviewers and Inspectors.</b>	<b>52.17% (24)</b>	<b>21.74% (10)</b>	<b>15.22% (7)</b>	<b>10.87% (5)</b>	<b>100.00% (46)</b>
<b>8b.</b>	<b>Use of City or County Government Plan Reviewers and Inspectors</b>	<b>36.96% (17)</b>	<b>26.09% (12)</b>	<b>23.91% (11)</b>	<b>13.04% (6)</b>	<b>100.00% (46)</b>

Question 9	The Office accepts without question the work of the following qualified or approved individuals:					
		Strong Agree/ Agree	Unsure or Does	Disagree/ Strongly Disagree	Blank	Total Surveys Returned
9a.	Use of Third Party Plan Reviewers and Inspectors	28.26% (13)	39.13% (18)	21.74% (10)	10.87% (5)	100.00% (46)
9b.	Use of City or County Government Plan Reviewers and Inspectors	15.22% (7)	52.17% (24)	19.57% (9)	13.04% (6)	100.00% (46)

Question 10	Overall, I was satisfied with the plan review and inspection services I received from the Office of Healthcare Licensing and Surveys.				
	Strong Agree/ Agree	Unsure or Does Not Apply	Strong Disagree/ Disagree	Blank	Total Surveys Returned
10.	28.26% (13)	6.52% (3)	52.17% (24)	13.04% (6)	100.00% (46)

Question 11	Have you incurred additional costs as a result of the Office's plan review and inspection process?			
	Yes	No	Blank	Total Surveys Returned
11.	67.39% (31)	17.39% (8)	15.22% (7)	100.00% (46)

Question 12	Do you believe the preliminary plan review process duplicates work conducted by the Office during the final plan review?			
	Yes	No	Blank	Total Surveys Returned
12.	41.30% (19)	36.96% (17)	21.74% (10)	100.00% (46)

Question 13	How many days do you feel is adequate and reasonable for the Office to complete the following (once a facility has made a request of the office):					
		OHLS Process Points				
13.	Days	Weeks	Prelim. Plan Review	Final Plan Review	Interim Construction Inspections	Final Construction Inspection
	0-21 Days	3 Week or Less (DFPES Standard)	36.96% (17)	34.78% (16)	76.09% (35)	71.74% (33)
	22-49 Days	7 Weeks or Less (Consistent With Statements in Interviews and at 2007 OHLS Rules Promulgation Public Hearing - D-3c)	26.09% (12)	39.13% (18)	4.35% (2)	6.52% (3)
	50 or More Days	More Than 7 Weeks (Generally Viewed as Unreasonable)	19.57% (9)	8.70% (4)	2.17% (1)	4.35% (2)
	Blank		17.39% (8)	17.39% (8)	17.39% (8)	17.39% (8)
	Total Surveys Returned		100.00% (46)	100.00% (46)	100.00% (46)	100.00% (46)

<b>Question 14</b>	<b>Check which area(s) you believe change is most needed with respect to the Office's plan review and inspection process:</b>	
<b>14.</b>	<b>Areas Needing/Not Needing Improvement</b>	<b>Number of Affirmative Responses</b>
	<b>Preliminary Plan Review Process</b>	<b>60.87% (28)</b>
	<b>Final Plan Review Process</b>	<b>56.52% (26)</b>
	<b>Final Construction Inspections</b>	<b>17.39% (8)</b>
	<b>Ongoing/Interim Construction Inspections</b>	<b>15.22% (7)</b>
	<b>Communication of Statutory and Regulatory Requirements</b>	<b>15.22% (7)</b>
	<b>No Changes Needed</b>	<b>8.70% (4)</b>
	<b>No Response Given</b>	<b>13.04% (6)</b>
	<b>Total Surveys Returned</b>	<b>46</b>



# Appendix H: LSO healthcare facility survey comments

**Question 1:** The Office **conducts** the following plan review and inspection work in a timely manner: *A) Preliminary plan review; B) Final plan review; C) Ongoing inspections during Construction; D) Final construction Inspection.*

1. Improvement in review process – more timely than it was before.
2. Plans were in review over a year before being reviewed.
3. They did not have resources (personnel) to check during construction.
4. Not adequate enough staff to complete all project requirements.
5. Agree only under new process, not the previous one.
6. Much improved end of 2008 & into 2009. This goes for all Q & As.
7. Have had to wait up to 20 months for final plan review & 6 months for preliminary.
8. It feels like the office actually slowed down their work to prove a point of some kind. It is my understanding that Office staff are contract individuals and control most of what goes on in the Office.
9. Could be much faster turnaround.
10. I have only dealt with one review in my short tenure.
11. Last project had several months between final inspection and follow up inspection.
12. To date it has been four months since the final inspection for a follow up to verify deficiencies have been taken care of.
13. Original reviews took much too long.

**Question 2:** The Office **clearly communicates** statutory and regulatory requirements of facilities for the following processes: *A) Preliminary plan review; B) Final plan review; C) Ongoing inspections during Construction; D) Final construction Inspection.*

1. Utilizing third party inspectors.
2. Office staff are great to work with.
3. The preliminary plan review process isn't documented. Done with a phone call. No minutes of conversation.
4. They are good about hiding behind statute whenever possible.
5. As I prepare for a new construction project it has been relatively easy to find regulations.
6. Office personnel only give code references not specific requirements.
7. Office personnel only give code references, not specific requirements.
8. The office only states that it does not or does meet requirements "not specific".

**Question 3:** The Office clearly explains deficiencies on plans or at inspection.

1. Did not happen.
2. Again the preliminary plan review process isn't documented.
3. Again the preliminary plan review process as flawed. No written record from dept. of conversation.
4. The reason for insisting a final plan review was because they missed things on the preliminary and then at the time of occupancy or during routine inspections made you change things that were significant expense to change at that stage of the project.
5. I have not participated in an inspection.
6. Change order decisions during construction were not transferred to final inspection process.
7. Change order decisions during construction were not transferred to final inspection process.
8. Only states that there are deficiencies "not specific".

**Question 4:** The Office conducted in-person inspections throughout the construction process.

1. Did not happen.
2. Sometimes the department can't make timely inspections; we must try to document work with pictures.
3. While they conducted them they were at their time and connivance.
4. 3rd party inspections.
5. 3rd party inspections performed.
6. None that we know of were done.

**Question 5:** The Office makes an effort to understand my needs regarding project timelines and cost.

1. They need more help. To hit timelines on time.
2. Delays due to staffing issues at State level.
3. Understanding did not speed the process.
4. During phone calls & conference calls with OHLS the department responded to concerns with an "so sorry, but that's the way it is" attitude. "Delays are part of the world we live in", Leadership for the department has limited input for solutions. I felt the department took no responsibility for finding a solution.
5. They are under time constraints and are more concerned with their own than ours.
6. The Office has been helpful in getting approvals & getting started.

7. Change order process was handled in a timely manner.
8. Authorization given verbally and in a timely manner on some change orders, other received in writing 6 months after work had been completed.

**Question 6:** The Office applies codes and standards **consistently** for the following: *A) Preliminary plan review; B) Final plan review; C) Ongoing inspections during Construction; D) Final construction Inspection.*

1. During phone calls concerning plan reviews, Office staff tries to get changes to the project not covered by codes, but instead are a “good idea”.
2. I have had them approve plans only to tell us something else needed to be done during an inspection.
3. I have only participated in 3rd party reviews with the exception of one project which took nearly a year to receive final approval. It seems for the project codes were fine.
4. Lack of communication between Office personnel.
5. Department inspections interpreted codes and standards differently.
6. Did not lesson on width of side walk trend plugs.

**Question 7:** The Office applies codes and standards **reasonably** for the following: *A) Preliminary plan review; B) Final plan review; C) Ongoing inspections during Construction; D) Final construction Inspection.*

1. This is a problem. I believe Office staff don't use reason or common sense to try to insure a safe, code compliant, construction project is created. I believe that office staff use power to ask for “unreasonable items”.
2. Prior to be required to conduct final review they would contradict what they told you during preliminary reviews.
3. I understand the need to be specific with code.
4. Lack of communication between Office personnel.
5. Department inspectors interpret codes and standards differently.
6. Unreasonable.
7. The multiply codes requiring compliance can contradict each other, especially with remodel or additional work to existing facilities. To require compliance with new construction for a remodel of an existing facilities. To require compliance with new construction for remodel of an existing facility (when the Life Safety Code does not and has separate provisions for existing facilities) is not always feasible or even possible. This can severely hinder the construction documentation process and subsequently the approval process and the construction schedule, all adding cost and unnecessary stress on the owner.

**Question 8:** The Office clearly communicates the requirements and process for the following: *A) Use of third-party plan reviewers and inspectors; B) Use of city or county government plan reviewers and inspectors.*

1. I don't think cities understand Healthcare requirements.
2. On previous project approved by town, OHLS changed requirements on inspection; change order cost + \$200,000.00
3. The process for 3rd party plan review is very complicated and requires a lot of effort that is unnecessary.
4. Directions could be a little clearer on the website.
5. I have had a good experience with this.
6. The responsibilities are not clearly defined between state & city governments.
7. Responsibility is not clearly defined between State and city governments.
8. The emergency regulations adopted 2-3 years ago unfairly tossed this responsibility to the owner. In rural WY, it is next to impossible to find inspectors to cover projects in remote areas. Also, many counties do not even have their own inspectors for non-healthcare projects. I doubt that Cheyenne has these same issues. The change in policy added undue burden to too many facilities.

**Question 9:** The Office accepts without question the work of the following qualified or approved individuals: *A) Use of third-party plan reviewers and inspectors; B) Use of city or county government plan reviewers and inspectors.*

1. The city is not involved in our building process.
2. No project submitted using 3rd party.
3. We have no current experience with this process, hope it works.
4. I have had them review plans that were reviewed by a third party and point out changes. However, it was better at this time than later i.e. during an inspection (would have been more costly)
5. We'll see. I just recently submitted plans from a 3rd party reviewer.

**Question 10:** Overall, I was satisfied with the plan review and inspection services I received from the Office of Healthcare Licensing and Surveys.

1. Timeliness of process was main concern. There has been improvement.
2. Unfortunately, it is not a quick process.
3. Not satisfied with plan review (takes way to long) the office needs more engineers to help

out. – Great with inspections and questions.

4. Until the use outside contractors was approved for the review process, it was extremely timely. It is much better now.
5. Hard to Answer. Again – since when? Much improved Oct-Dec 2008, Jan – Mar 09. Prior to those dates- strongly disagree.
6. Delays, lack of communication, lack of customer service, (no help with paperwork requirements). These items create an atmosphere of distrust, and overcome any good things about the department.
7. The time frame it takes for reviews takes longer than it should. Initially there were not final reviews, but with the number of discrepancies at the time of final inspections, we requested that they be done. Then they instituted final reviews, did a work slow down and forced us to use 3rd party reviewers, but still retain final authority, so they get you either way.
8. Like I said. I have limited experience, however, from what I hear, things getting better.
9. It is like they are the opposition rather than someone wanting to improve the hospitals of Wyoming – I feel it is their way or no way.
10. I can say that the review was extremely thorough and carefully completed, especially given the multiply codes needing compliance, and found the plan reviewers to be extremely knowledgeable, and the staff was professional and pleasant to work with. The final review period was more than several months: not a very workable time frame. The subsequent changes required and the time frame for permitting unnecessarily hindered the construction schedule and the facilities' compliance. Once was more times than I care to work with the OHLS. I have completed many public sector projects without incident, but my experience with OHLS was the ultimate frustration.

**Question 11:** Have you incurred additional costs as a result of the Office's plan review and inspection process?

1. We were required to hire an independent inspector because the office had a temporary suspension of all inspections due to their work load.
2. LOST TIME.
3. 3rd party plan review and inspections, delay of project.
4. Utilized third party inspectors due to the timeliness/availability of state inspectors, incurring additional costs.
5. Hired 3rd party for construction inspections.
6. Had to go with a third party to get project started.
7. Last minute changes to meet codes.
8. Project delays & increased costs with start of project.

9. 15-18 Month process – costs of building supplies increased from time we submitted our plans.
10. Construction crews on site while waiting for review.
11. Using own inspectors will add cost to project and do not have handle on budget. Estimate \$100.00 per hr. & travel expense for inspectors.
12. Delays in construction have caused increased costs 30%
13. I have had additional construction management expenses due to States' inability to conduct inspections in a timely manner. In the thousands of dollars.
14. Items inadvertently missed by design team. In remodel situations items not accessible until demolition is started.
15. Paid for engineering firm to evaluate and write up project. Plans were sent back to be resubmitted with requested changes by State. Facility incurred additional costs for the project.
16. Due to the extended amount of plan review, materials had increased dramatically.
17. Due to the extended amount of time for plan review, the cost of materials had increased dramatically.
18. A project was delayed six months awaiting plan review, resulting in millions of dollars in budget overruns.
19. Third part plan review.
20. On one project we needed to add one fire sprinkler head. By the time we were done we had to hire an engineer and had a mountain of paperwork and three months of time.
21. Time delays increase cost and contractor building supplies and their pricing when dealing with this aspect.
22. 3rd party review.
23. Common areas that are not functional, i.e. kitchen common area.
24. Had to replace faucets in all areas, and miscellaneous replacement costs for additional items.
25. More research, documentation, reprinting, time, construction being pushed into the winter months with extra heating for concrete.
26. Found sprinkler that were missing.
27. In process at this time not sure of additional cost yet.

**Question 12:** Do you believe the **preliminary plan review** process duplicates work conducted by the Office during the **final plan review**?

1. Once the plans have been approved there should be no further need for a second round.

2. If changes were warranted, the final plan review would see them implemented.
3. Prelims are basically the same as construction documents.
4. We usually had a first rendition to get an interpretation of codes before we move to final plans.
5. Must want for a preliminary review that isn't documented done by phone call. All requirements are covered at the final review.
6. The preliminary review should be for purposes of determining need for full construction drawing and identify any concerns before proceeding with a professional firm, so if done timely and correctly could save head aches later.
7. Looking for same things twice. The process is redundant.
8. Timeliness is the issue. Seems like it takes much longer for final then preliminary...much longer.
9. To a certain extent it has to. Final should be mainly for clarification of codes and standards as they relate to specific building areas.
10. The ICRA and functional program description can be included with the final plans submittal. Some codes apply to both.
11. Yes, on small projects there should only be one review.
12. It seems that if after the prelim plan review is returned to manager/engineer, and deficiencies are addressed final plan review should fly through final review.
13. Preliminary information prepared by an architect is just that: preliminary and rather elementary. Its finer points of the mechanical and electrical requirements/codes that drive more causes and effect changes to projects. Perhaps the preliminary review should be more informal and for the facilities as a tool in determining their building options, especially for existing facilities.

Question 13: How many days do you feel is adequate and reasonable for the Office to complete the following (once a facility has made a request of the office): *Preliminary plan review* \_\_\_\_\_; *Final plan review* \_\_\_\_\_; *Ongoing/interim construction inspections* \_\_\_\_\_; or *Final construction inspection* \_\_\_\_\_.

1. Interim inspections should be dependent on construction schedule.
2. Inspections have been completed in a timely manner.
3. Past projects only serious delays have been at preliminary review. Inspections have always been prompt.
4. This is really hard to comment on as I do believe it is dependent upon on the complexity of the project. i.e. 1-2 days small project 3-5 days large project.
5. Depends on the size and scope of project.

6. Ongoing construction inspection seems unnecessary.
7. I don't know how many reviewers are on staff. My 3rd party reviewers turned my preliminary around in 10 business days & finals in 5 business days.
8. When construction/projects are in process we need almost immediate response.
9. Facilities experiencing citation of Life Safety Code issues and are on fixed time schedule should have priority over projects which are not part of a plan of correction on the 2567.
10. When the Office makes requests from us they require a much shorter time then when we make requests of them.

**Question 14:** Check which area(s) you believe change is most needed with respect to the Office's plan review and inspection process: *Communication of statutory and regulatory requirements; Preliminary plan review process; Final plan review process; Ongoing/interim construction inspections; Final construction inspections; No changes needed.*

1. I believe the dept. is understaffed for the amount of tasks required.
2. Plan reviews take forever!
3. Conference call for preliminary plan review is excellent; has shortened the overall project time.
4. Need to charge for cost to help pay for extra engineers on staff.
5. The general contractor chosen had difficulty understanding what specific needs had to be corrected to be in compliance – a healthcare facility is different than other types of buildings.
6. This can help avoid last minute changes.
7. Final plan reviews are labor intensive; additional staffing needed in office of the Health Care Licensing. Code review knowledge is absolutely needed during reviews and is beneficial to healthcare organizations.
8. New construction always seems to be a priority so service levels and response times have been satisfactory. Remodels have been a completely different issue. When we submitted for remodel, a room for storage went 8 months without any attention then came to life. We were told State was fifty projects behind and would get to it when they can. We went past 1yr with preliminary approval and started over. That project has been in system 60 + days and still not at final approval. Same with joint Com. Requests to change existing facilities, sometimes work moves very slow, final interview on scope of project with State to preliminary to final.
9. In fairness to the Office, they get a lot of reviews and may not have been staffed appropriately, but I believe that State has undertaken measures to remedy this. However, the issues haven't gone away yet. I'd like to see an accelerated review process or non review items under a certain dollar levels, etc. it is crazy to have a review for painting



a room, replacing floor covering, moving a non load bearing wall which doesn't impact smoke or fire barriers etc. It maybe possible to set a minimum limit of \$150,000 or \$250,000 projects won't require a review or something.

10. Could come up with faster turn around time for all areas checked. (e.g. we have submitted plans for a project twice to the office. We were told the first copy (sent 2007) got lost. We re-submitted plans in 2008 and have not yet received a response. Our residents are the ones who are being dis-served in this process!
11. I will be able to respond more clearly once I have gone through inspections.
12. Eliminate the preliminary plan review or combine it with the final plan review. Turn around final plan review with initial comments in three weeks or less. Utilize outside engineering and/or plans examiners in cases where the projects are of such size that three week is unreasonable, given OHLS staffing/workload restrictions. Perform final inspections at the licensed facilities convenience, not the Offices'. Two weeks notice should be ample time to schedule an inspection on the exact date requested. OHLS employees/inspectors should be prepared to grant occupancy the same day of the final inspection if there are no discrepancies found that would pose a serious threat to the health/safety of the occupants, pending resolution of less serious deficiencies that might be noted.
13. Other than time required for preliminary and final plan review. The staff has always been good to work with, answering questions and follow ups.
14. Communicate with everyone involved in process.
15. To help the cause, the facilities owners should be made more aware of the process requirements. I also firmly believe that inspections should be handled by this agency and not outsourced.
16. To let all management have copies of results and prices.



# Appendix I: Office rule changes: summary of descriptive statistics days effective for each change

**Figure I.1**  
**Days effective for each Office regular and emergency rule change**

<b>Rule Set #</b>	<b>Start Date</b>	<b>Rule Type</b>	<b>Days Effective</b>
<b>1</b>	<b>5/29/1991</b>	<b>Regular</b>	<b>1,849</b>
<b>2</b>	<b>6/20/1996</b>	<b>Regular</b>	<b>392</b>
<b>3</b>	<b>7/17/1997</b>	<b>Regular</b>	<b>249</b>
<b>4</b>	<b>3/23/1998</b>	<b>Regular</b>	<b>85</b>
<b>5</b>	<b>6/16/1998</b>	<b>Regular</b>	<b>136</b>
<b>6</b>	<b>10/30/1998</b>	<b>Regular</b>	<b>375</b>
<b>7</b>	<b>11/9/1999</b>	<b>Regular</b>	<b>581</b>
<b>8</b>	<b>6/12/2001</b>	<b>Regular</b>	<b>321</b>
<b>9</b>	<b>4/29/2002</b>	<b>Regular</b>	<b>553</b>
<b>10</b>	<b>11/3/2003</b>	<b>Emergency</b>	<b>128</b>
<b>11</b>	<b>3/10/2004</b>	<b>Emergency</b>	<b>127</b>
<b>12</b>	<b>7/15/2004</b>	<b>Regular</b>	<b>978</b>
<b>13</b>	<b>3/20/2007</b>	<b>Emergency</b>	<b>124</b>
<b>12<sup>1</sup></b>	<b>7/22/2007</b>	<b>Regular</b>	<b>256</b>
<b>14</b>	<b>4/3/2008</b>	<b>Regular</b>	<b>434</b>

Source: LSO analysis of Secretary of State and LSO office archived Office rules.

<sup>1</sup> Rule Set # 12 is listed twice because emergency rules were instituted on 3/20/2007 and then on 7/22/2007 the same rule set (#12) were reinstated.

**Figure I.2**  
**Average effective days for selected intervals for effective rules**

<b>Rule Set #</b>	<b>Start/End Date</b>	<b>Duration (Days)</b>	<b>Number of Changes</b>	<b>Average Effective Time Frame of Rule Set (Days)</b>
<b>1</b>	<b>5/29/1991 to 5/29/1996</b>	<b>1828</b>	<b>0</b>	<b>1828</b>
<b>2-7</b>	<b>5/30/1996 to 5/30/2001</b>	<b>1827</b>	<b>6</b>	<b>305</b>
<b>8-12</b>	<b>5/31/2001 to 5/31/2006</b>	<b>1827</b>	<b>5</b>	<b>365</b>
<b>13, 12<sup>1</sup>, &amp; 14</b>	<b>6/01/2006 to 6/01/2009</b>	<b>1097</b>	<b>3</b>	<b>366</b>
<b>Selected Time Series</b>	<b>5/30/1996 to 6/01/2009</b>	<b>4751</b>	<b>14</b>	<b>339</b>
<b>Cumulative Total</b>	<b>5/29/1991 to 6/01/2009</b>	<b>6,579</b>	<b>14</b>	<b>470</b>

Source: LSO analysis of Secretary of State and LSO office archived Office rules.

<sup>1</sup> Rule Set # 12 is listed twice because emergency rules were instituted on 3/20/2007 and then on 7/22/2007 the same rule set (#12) were reinstated.

**Figure I.3**  
**Average effective years/months for selected intervals for effective rules**

<b>Rule Set #</b>	<b>Start/End Date</b>	<b>Duration (Years)</b>	<b>Number of Changes</b>	<b>Average Effective Time Frame of Rule Set (Years)</b>
<b>1</b>	<b>5/29/1991 to 5/29/1996</b>	<b>5</b>	<b>0</b>	<b>≅ 5 yr.</b>
<b>2-7</b>	<b>5/30/1996 to 5/30/2001</b>	<b>5</b>	<b>6</b>	<b>≈ 10 mo.</b>
<b>8-12</b>	<b>5/31/2001 to 5/31/2006</b>	<b>5</b>	<b>5</b>	<b>≈1 yr.</b>
<b>13, 12<sup>1</sup>, &amp; 14</b>	<b>6/01/2006 to 6/01/2009</b>	<b>3</b>	<b>3</b>	<b>≈ 1 yr. - 1d.</b>
<b>Selected Time Series</b>	<b>5/30/1996 to 6/01/2009</b>	<b>13</b>	<b>14</b>	<b>≈ 11 mo. - 5d.</b>
<b>Cumulative Total</b>	<b>5/29/1991 to 6/01/2009</b>	<b>18</b>	<b>14</b>	<b>≈ 1 yr. - 3.5 mo.</b>

Source: LSO analysis of Secretary of State and LSO office archived Office rules.

<sup>1</sup> Rule Set # 12 is listed twice because emergency rules were instituted on 3/20/2007 and then on 7/22/2007 the same rule set (#12) were reinstated.



# Appendix J: Office rule changes: summary of process changes (pre and post-2003 summaries)

## Pre-2003 Rules Summary

### Changes Impacting Preliminary Plan Review:

Rule Effective Dates	Description of Changes
5/29/1991 to 3/23/1998	1. At the earliest possible date, preliminary plans were to be submitted to the Department of Health for consultation purposes and to provide assistance to the project's Wyoming licensed architect or engineer concerning compliance with latest codes and standards in effect at the time of the construction.
	2. The Department is also responsible for preliminary plan approval.
6/16/1998 to 6/12/2001	1. Three complete sets of plans to "authority having jurisdiction" (AHJ), which was the Department of Health by definition, for review by AHJ or authorized AHJ representative.
	2. Only AHJ shall approve and send preliminary plan approval to owner within 21 working days.
4/29/2002	1. Three complete sets of plans to AHJ or AHJ authorized representative for review
	2. Only AHJ shall approve and send preliminary plan approval to owner within 21 working days.
	3. If significant changes to original plans, three sets of plans to be submitted to AHJ for approval before implementation

### Changes Impacting Final Plan Review:

Rule Effective Dates	Description of Changes
5/29/1991 to 3/23/1998	1. Final plans and specifications to be submitted to the Department which have been prepared by a licensed Wyoming architect and a licensed Wyoming engineer.
	2. Two sets of final plans to be submitted for approval. The Department to send one set to the Wyoming Fire Marshal's office for review and approval of electrical systems.
	3. Plans must come in at least 30 days before bid letting.
	4. All change orders need to be approved by Department.
	5. If there is a pre-construction conference, the Department shall be notified.
6/16/98 to 11/9/1999	1. Final plan review was eliminated
	2. Three sets of significant changes to the original plans as approved by the owner shall be submitted to AHJ for review and approval prior to implementation.
6/12/2001	1. Section added for independent plan review.
	2. As requested, owner must submit test reports and certifications (long list of references including various NFPA standards)
4/29/2002	1. Independent plan review – Department permitted to have a mutually acceptable and qualified third party review final plans at owner's expense.
	2. Reviewer to provide written evaluation and recommend necessary changes of the proposed design, operation, or process to the owner and the Department.

### Changes Impacting Interim Inspections:

Rule Effective Dates	Description of Changes
5/29/1991 to 3/23/1998	1. Inspections by Department shall be performed during construction to observe progress of the construction and to verify compliance with codes and standards.
6/16/98 to 4/29/2002	1. Inspections by AHJ or AHJ's authorized representative shall be performed during construction to observe progress of the construction and to verify compliance with codes and standards.



## Changes Impacting Final Inspection:

Rule Effective Dates	Description of Changes
5/29/1991 to 3/23/1998 *	1. Architect to notify Department with a copy of the punch list to contractor.
	2. Contractor to submit test reports and certifications as requested by law for building systems that are incorporated in the projects. (Specific list including NFPA codes).
	3. Owner/architect shall establish a date of final inspection with the Department.
	4. Department to notify owners of areas incomplete or not in compliance with standards.
	5. When substantially completed, occupancy may occur.
6/16/98 to 11/9/1999	1. Prior to final inspection, three sets of construction contract documents, plans and specs with affixed seals to be submitted to AHJ for use during final inspection.
	2. Occupancy must be approved by AHJ.
6/12/2001 to 4/29/2002	1. Prior to final inspection, three sets of construction contract documents, plans and specs with affixed seals to be submitted to AHJ for use during final inspection.
	2. Occupancy must be approved by AHJ.
	3. Owner responsible for notifying Dept. of Fire Prevention and Electrical Safety for electrical inspections.
	4. Requests for final inspection with mutually agreed upon date to be made in writing to Department.
	5. Refusal to approve construction nullifies request for final inspection. Once deficiencies are addressed, request for final inspection may be repeated.
	6. Repeated request for final inspection to be made within 30 days after initial request for final inspection was nullified.

\* From 5/29/1991 to 3/23/1998 there was no change in the provisions:

## Post-2003 Rules Summary

### Changes Impacting Preliminary Plan Review:

Rule Effective Dates	Description of Changes
<p><b>11/3/2003 to 7/15/2004</b></p>	<p><b>1. One set of preliminary plans, function program and infection control risk assessment to Department.</b></p>
	<p><b>2. Upon request, Department may hold preliminary meetings to discuss code issues relative to proposed projects.</b></p>
	<p><b>3. Department shall send preliminary approval to owner within 21 working days after receipt.</b></p>
	<p><b>4. One set of significant changes to original plans shall be submitted to Department for approval before implementation.</b></p>
	<p><b>5. Letters of approval expire in 12 months if final plans not submitted and approved. Preliminary plans would then need to be resubmitted.</b></p>
<p><b>7/21/2004 <sup>1</sup></b></p>	<p><b>1. Requirement for preliminary plans may be waived at Department's discretion.</b></p>
	<p><b>2. One set of preliminary plans, function program and infection control risk assessment to Department.</b></p>
	<p><b>3. If preliminary plans approved, final plans to be submitted.</b></p>
	<p><b>4. Letters of approval expire in 12 months if final plans not submitted and approved. Preliminary plans would then need to be resubmitted.</b></p>
	<p><b>5. NOTE: 21 working day requirement and submission of one set of significant changes to original plans were removed.</b></p>
<p><b>7/15/2004 <sup>2</sup></b></p>	<p><b>1. One set of preliminary plans, function program and infection control risk assessment to Department.</b></p>
	<p><b>2. Upon request, Department may hold preliminary meetings to discuss code issues relative to proposed projects.</b></p>
	<p><b>3. Department shall send preliminary approval to owner within 21 working days after receipt.</b></p>
	<p><b>4. One set of significant changes to original plans shall be submitted to Department for approval before implementation.</b></p>
	<p><b>5. Letters of approval expire in 12 months if final plans not submitted and approved. Preliminary plans would then need to be resubmitted</b></p>

<sup>1</sup> Emergency regulations – allowed to expire

<sup>2</sup> Reverted to when the emergency regulations expired.

Rule Effective Dates	Description of Changes
4/3/2008	1. Requirement for preliminary plans may be waived at Department's discretion.
	2. One set of preliminary plans, function program and infection control risk assessment to Department.
	3. Letters of approval expire in 12 months if final plans not submitted and approved. Preliminary plans would then need to be resubmitted.
	4. After preliminary plans approved, owner may submit final plans to either Department or outside plan review approved by the Department.
	5. NOTE: 21 working day requirement and submission of one set of significant changes to original plans were removed.

### Changes Impacting Final Plan Review:

Rule Effective Dates	Description of Changes
11/3/1999 to 7/15/2004	1. Prior to construction, submit to Department for review and approval.
	2. If plans acceptable for review, reviewer to have review completed within 21 working days.
	3. If modifications required, owner to submit two complete sets of revised plans to Department. If approved, construction to begin within 180 days.
	4. Department may revoke or suspend acceptance.
	5. Provision for a "fast track" review under special submittal. Must be pre-approved by Department
7/21/2004 <sup>1</sup>	1. Before construction, two complete sets of plans submitted to Department.
	2. If prepared by architect or engineer, must be licensed in Wyoming.
	3. Upon approval, construction must begin within 180 days.
	4. Department may suspend or revoke acceptance.
	5. NOTE: 21 working day, revised plan submission requirement, and "fast track" provision removed.

<sup>1</sup> Emergency regulations – allowed to expire

Rule Effective Dates	Description of Changes
7/15/2004 <sup>2</sup>	1. Prior to construction, submit to Department for review and approval.
	2. If plans acceptable for review, reviewer to have review completed within 21 working days.
	3. If modifications required, owner to submit two complete sets of revised plans to Department. If approved, construction to begin within 180 days.
	4. Department may revoke or suspend acceptance.
	5. Provision for a “fast track” review under special submittal. Must be pre-approved by Department.
4/3/2008	1. After preliminary plan approval, two sets of final plans to be submitted to the Department or owner may retain third party examiner qualified by the Department to review plans.
	2. Department indicates final acceptance and retains one complete set of plans and send the other to the worksite. No changes without Department authorization.
	3. Construction must begin within 180 days of approval, but Department may authorize one or more 180 day extensions.
	4. If project suspended or abandoned for 180 consecutive days, approval deemed invalid.
	5. NOTE: 21 working day provision and “fast track” provision removed.

<sup>2</sup> Reverted to when the emergency regulations expired.

### Changes Impacting Interim Inspections:

Rule Effective Dates	Description of Changes
11/3/2003 to 7/15/2004	1. Inspections by Department or authorized representative shall be performed during construction to observe progress of the construction and to verify compliance with codes and standards.
	2. Must be done by certified personnel.
	3. Owner responsibility to notify Department of Fire Prevention and Electrical Safety, or delegated county or municipality, for electrical inspections.
	4. Records of inspections retained by owner and available for Department to inspect.

Rule Effective Dates	Description of Changes
7/21/2004 <sup>1</sup>	1. Require contractor to perform tests ensuring systems conform with plans.
	2. Owner responsibility to ensure qualified inspectors retained for inspections.
	3. Records of inspections retained by owner and available for Department to inspect.
	4. Department may periodically visit worksite for random inspections.
7/15/2004 <sup>2</sup>	1. Inspections by Department or authorized representative shall be performed during construction to observe progress of the construction and to verify compliance with codes and standards.
	2. Must be done by certified personnel.
	3. Owner responsibility to notify Department of Fire Prevention and Electrical Safety, or delegated county or municipality, for electrical inspections.
	4. Records of inspections retained by owner and available for Department to inspect.
7/21/2004 <sup>1</sup>	1. Require contractor to perform tests ensuring systems conform to plans.
	2. Owner responsibility to ensure qualified inspectors retained for inspections.
	3. Records of inspections retained by owner and available for Department to inspect.
	4. Department may periodically visit worksite for random inspections.
7/15/2004 <sup>2</sup>	1. Inspections by Department or authorized representative shall be performed during construction to observe progress of the construction and to verify compliance with codes and standards.
	2. Must be done by certified personnel.
	3. Owner responsibility to notify Department of Fire Prevention and Electrical Safety, or delegated county or municipality, for electrical inspections.
	4. Records of inspections retained by owner and available for Department to inspect.

<sup>1</sup> Emergency regulations – allowed to expire

<sup>2</sup> Reverted to when the emergency regulations expired.

Rule Effective Dates	Description of Changes
4/3/2008	1. Construction specs require contractor to perform tests ensuring all systems conform to the approved plans & specs.
	2. Owner responsibility to ensure qualified inspectors is retained.
	3. Owner may request 3rd party inspectors or may use DOH.
	4. DOH to approve 3rd party inspectors.
	5. Inspection records to be retained for review by DOH.
	6. DOH may conduct random inspections to ensure conformation.

### Changes Impacting Final Inspection:

Rule Effective Dates	Description of Changes
11/3/2003 to 7/15/2004	1. Requests for final inspection at a mutually agreed upon date between owner and Department.
	2. Refusal by Department due to incompleteness or violations nullifies request.
	3. Department to schedule inspection no later than 30 calendar days from date final inspection was nullified.
7/21/2004 <sup>1</sup>	1. Requests for final inspection at a mutually agreed upon date between owner and Department.
	2. Owner to submit to DOH test reports and certifications, if requested.
	3. Plan of correction to be submitted if deficiencies are found.
	4. Owner or rep may ask for technical assistance from DOH.
	5. NOTE: 30 calendar day requirement removed.
7/15/2004 <sup>2</sup>	1. Requests for final inspection at a mutually agreed upon date between owner and Department.
	2. Refusal by Department due to incompleteness or violations nullifies request.
	3. Department to schedule inspection no later than 30 calendar days from date final inspection was nullified.
	4. Owner to submit to DOH test reports and certifications, if requested.
	5. Plan of correction to be submitted if deficiencies are found.

<sup>1</sup> Emergency regulations – allowed to expire

<sup>2</sup> Reverted to when the emergency regulations expired.

Rule Effective Dates	Description of Changes
4/3/2008	1. Requests for final inspection at a mutually agreed upon date between owner and Department.
	2. Owner to submit to DOH test reports and certifications, if requested.
	3. Plan of correction to be submitted if deficiencies are found.

Source: LSO analysis and summary of Secretary of State's and LSO archived rules.





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