

12VAC5-371-80 Variances

A.

The commissioner may authorize variances only to its own licensing standards, not to regulations of another agency or to any requirements in federal, state, or local laws.

B.

A nursing facility may request a variance to a particular standard or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of residents, employees, or the public.

C.

Upon finding that the enforcement of one or more of the standards would be clearly impractical, the commissioner shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these standards, provided safety, resident care and services are not adversely affected.

D.

The commissioner may rescind or modify a variance if (i) conditions change; (ii) additional information becomes known which alters the basis for the original decision; (iii) the nursing facility fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of residents, employees and the public.

E.

Consideration of a variance is initiated when a written request is submitted to the director of the OLC. The OLC may provide consultation in the development of the written request and throughout the variance process.

F.

The request for a variance must describe the special hardship to the existing program or to a planned innovative or pilot program caused by the enforcement of the requirements. When possible, the request should include proposed alternatives to meet the purpose of the requirements which will ensure the protection and well-being of residents, employees, and the public.

G.

The OLC shall notify the nursing facility of the receipt of the request for a variance. The commissioner may attach conditions to the granting of the variance in order to protect persons in care.

H.

When the decision is to deny a request for a variance, the reason shall be provided in writing to the licensee.

I.

When a variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed. The nursing facility may at any time withdraw a request for a variance.