

DHS 132.21 Waivers and variances

(1)

DEFINITIONS. As used in this section: (a) "Waiver" means the grant of an exemption from a requirement of this chapter. (b) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

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"Waiver" means the grant of an exemption from a requirement of this chapter.

(b)

"Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(2)

REQUIREMENTS FOR WAIVERS OR VARIANCES. A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that: (a) Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or (b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interests of better care or management.

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Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident; or

(b)

An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interests of better care or management.

(3)

PROCEDURES. (a) Applications. 1. All applications for waiver or variance from the requirements of this chapter shall be made in writing to the department, specifying the following: a. The rule from which the waiver or variance is requested; b. The time period for which the waiver or variance is requested; c. If the request is for a variance, the specific alternative action which the facility proposes; d. The reasons for the request; and e. Justification that sub. (2) would be satisfied. 2. Requests for a waiver or variance may be made at any time. 3. The department may require additional information from the facility prior to acting on the request. (b) Grants and denials. 1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved. 2. The terms of a requested variance may be modified upon agreement between the department and a facility. 3. The department may impose such conditions on the granting of a waiver or variance which it deems necessary. 4. The department may limit the duration of any waiver or variance. (c) Hearings. 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats. 2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable. (d) Revocation. The department may revoke a waiver or variance if: 1. It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the

residents; or 2. The facility has failed to comply with the variance as granted; or 3. The licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or 4. Required by a change in law.

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(b)

Grants and denials.1. The department shall grant or deny each request for waiver or variance in writing. Notice of denials shall contain the reasons for denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved. 2. The terms of a requested variance may be modified upon agreement between the department and a facility. 3. The department may impose such conditions on the granting of a waiver or variance which it deems necessary. 4. The department may limit the duration of any waiver or variance.

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Hearings. 1. Denials of waivers or variances may be contested by requesting a hearing as provided by ch. 227, Stats. 2. The licensee shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

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Revocation. The department may revoke a waiver or variance if: 1. It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the residents; or 2. The facility has failed to comply with the variance as granted; or 3. The licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or 4. Required by a change in law.

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