

DCH HEALTHCARE FACILITIES REGULATION DIVISION	VARIANCES & WAIVERS
POLICY AND PROCEDURE MANUAL	February, 1999
SECTION I: POLICY	
SUBJECT: VARIANCES AND WAIVERS	

A. In accordance with O.C.G.A. Sections 31-2-4 and 50-13-9.1 et seq., all licensed facilities shall be afforded the opportunity to apply for variances or waivers to specific rules enforced by this office. The request must specify the length of time for which the variance or waiver is requested.

1. Variance means permission granted by the Department for a facility or class of facilities to depart from the literal requirements of a licensure rule.
2. Waiver means dispensing entirely by the Department with the enforcement of a requirement of a licensure rule with respect to a facility or class of facilities. (Generally, most requests received are variances unless the applicant is requesting that the rule not be enforced at all.)

B. Requests for variances or waivers submitted by an entire class of facilities may only be approved by the Board of Human Resources, for a time certain, as determined by the Board. A notice of the proposed variance or waiver shall be made in accordance with the requirements for notice of rulemaking under the Georgia Administrative Procedures Act.

C. Requests for variances or waivers submitted by a single facility in the class may be approved for a certain time period, as determined by the office, or denied by the office without Board consent. The office shall maintain a register of its actions with respect to variances and waivers and shall make this register available for public inspection upon request.

D. The office shall grant a variance or waiver to a rule when a person subject to that rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means which are agreeable both to the Department and to the person seeking the variance or waiver and that strict application of the rule would create a substantial hardship to such person.

E. In considering whether to grant a waiver or variance in accordance with O.C.G.A. Secs. 31-2-4 and 50-19-9.1 on behalf of a licensed residential facility, the office will consider the following:

1. The alternative standards or safeguards the residential facility is willing to take.
2. Any physicals or other medical information submitted by the residential facility during the waiver process.
3. The staffing of the residential facility.
4. The wishes of the resident and the resident's family and medical opinion of the resident's treating physicians, as well as any information concerning the resident's physical, mental and psychosocial well-being made available to the office in connection with the variance or waiver application.
5. Any information gathered by surveyors or others reviewing or inspecting the residential facility including but not limited to any medical information or assessments by DHR surveyors or other staff or any information submitted by the Ombudsman or other sources.
6. The fire safety features of the residential facility.
7. Any file information concerning the residential facility and the resident.
8. The ability of the residential facility to meet the needs of the resident.
9. Any other relevant information submitted by the residential facility or available to the Department.

With respect to waiver or variance requests for licensed residential facilities, where the evidence available to the Department with respect to the condition of the resident and the physical plant and staffing of the home demonstrates that the accommodations made or proposed in the waiver application by the home are likely to achieve the underlying purpose of the regulations by substantially reducing the risk of danger to the resident or others, the Department shall grant the waiver.

F. No variance or waiver should be granted if it would be harmful to the public health, safety or welfare or if the rule has been specifically adopted to implement or promote a federally delegated program.

G. The Department may grant a waiver or variance based upon the representations made by the licensed facility and subject to the licensed facility agreeing to meet certain alternative standards or conditions which the Department, in its discretion, determines are necessary. The failure of the licensed facility to comply with the alternative standards and conditions imposed by the Department may result in the Department withdrawing the waiver or variance.

H. Waivers or variances that have been granted by the Department are specific to the licensed facility. They are not transferable from one facility to another. A new application for a waiver or variance must be made when the facility undergoes a change in ownership.

SECTION II: PROCEDURES

A. A request for a variance or a waiver must be made in writing to the Section responsible for handling licensing responsibilities. The request must be made within a reasonable time of the events giving rise to the need for a waiver or variance. The request needs to include the following:

1. The name of the applicant (the licensed facility or provider) for the variance, including the address, phone number, contact person or person representing the applicant;
2. The rule from which the variance or waiver is requested;
3. The type of action requested, i.e. variance or waiver;
4. The specific facts of substantial hardship which would justify a variance or waiver for the applicant;
5. The alternative standards which the applicant agrees to meet;
6. A statement showing that the proposed alternative standards will afford adequate protection for the public, health, safety and welfare;
7. The reason why the variance or waiver requested would serve the purpose of the underlying statute; and
8. The length of time that the variance or waiver is requested to last.
9. Any additional information, e.g. documents, other relevant materials which the applicant, or a person associated with the variance or waiver request wishes to have considered. Where the application for a variance or waiver concerns the appropriateness of the resident's placement in the licensed facility, either the licensed facility or the resident may submit medical records, affidavits or letters in support of the request.

A copy of a suggested form for the written request is attached as Appendix 1.

B. Upon specific request, the applicant, a resident residing in the licensed facility or a resident's representative will be permitted an opportunity to meet with the Department's representatives either in person or by telephone to discuss the variance or waiver application.

C. Upon receipt of an application for a variance or waiver, the written request should be reviewed to determine if it contains all of the required information. If additional information is required, the applicant must be contacted and informed about the need to provide additional information to process the request and given a reasonable amount of time to produce the information. The contact should be confirmed in writing. A copy of a suggested form is attached as Appendix 2.

D. When an application has been determined to be complete, the date of completion should be noted on the request and a copy of the request forwarded by the next work day to the Director's office for entry into the office Variance/Waiver Register maintained on the Georgia Net rules registry site.

E. The responsible Section reviews the written request and prepares its written recommendation for submission to the Director's office not later than 25 days from the date the request was determined to be complete. The Section's recommendation should include all of the following:

1. The name of the applicant;
2. The complete rule citation for which the variance or waiver is being requested;
3. The purpose of the rule as the Section understands it;
4. A summary or explanation of Applicant's justification for the Variance or Waiver;
5. The Section's recommendation as to whether the request should be granted with an explanation of the reasons for the recommendation, together with any conditions recommended if request is granted and the recommended length of time if granted.
6. Any additional comments received from the public concerning the pending waiver request.

A copy of a suggested form is attached as Appendix 3. It is not necessary to restate information that is duplicative of what appears in the application. For example, the Section could indicate "see attached" for Applicant's justification.

F. The initial decision will include the reasons for granting or denying the waiver or variance and any conditions that will be applicable to the granting of the waiver or variance. The initial decision will be made by the Assistant Director of the office in writing and forwarded back to the responsible Section by the 30th day following the request being determined to be complete.

G. Either the Section or the Assistant Director, upon request of the Section, will be responsible for notifying the applicant in writing by the 35th day of the decision including the reasons for the denial and the applicant's ability to request within 10 days of receipt of the notice that the adverse decision be reviewed (including any of the conditions) by the Director of the office, where applicable. (If the Board has made the decision concerning the waiver, that decision can not be reviewed by the Director of the office.)

H. If the applicant files for a review of the initial decision within 10 days, the Director of the office will review the request and all supporting documentation and issue a final decision in writing to the applicant within 60 days of the receipt of the completed application. The written decision will contain a statement of the relevant facts and the reasons supporting the agency's actions if not previously provided. If the applicant's request for a variance or waiver is denied, the applicant will be informed of the right to seek judicial review of the decision in accordance with O.C.G.A. Secs. 50-13-9 and 50-19-9.1.

I. The final decision of the agency shall be entered on the office's register maintained on the Georgia Net.

J. The Sections are responsible for maintaining records on the variances and waivers that have been granted and for initiating renewal consideration when appropriate.

Instructions to Applicant Seeking Variance or Waiver:

In order to process your request for a variance or waiver, you must complete an **Application for Variance or Waiver**. (See above for application form.) All information requested must be supplied in order to have your application for a variance or waiver considered. If you require additional space to explain your request, you may attach a continuation sheet.

Section 1.

Licensed facility: List the name, address and phone number of the licensed facility.

Contact Person or Person Representing Facility: This person many times will be the administrator of the facility. However, it could be an attorney or someone else designated by the license holder to provide information on behalf of the licensed facility concerning the variance or waiver request.

Section 2.

List each rule separately for which a variance or waiver is being requested.

Section 3.

Determine whether you are seeking a variance or waiver and check accordingly. Most requests are for variances. A variance is a request to permit some departure or variation from the literal requirements of the rule, e.g. the rule requires a 6 foot wide hall and your hall is 70 inches wide. A waiver is a request to dispense entirely with a specific rule, e.g. the rule requires the care giver to have a high school diploma or GED and the applicant has neither and doesn't plan to get one, but can read and write and follow directions. If your request concerns a particular resident at your facility, please provide the date that the resident was admitted to the facility and attach a copy of a recent medical evaluation.

Section 4.

Explain how complying with the rule would cause you a substantial hardship and any other information you believe justifies your application. (Example: hall would have to be completely remodeled to add 2 inches to comply with the rule. Costs would be prohibitive.)

Section 5.

List the alternative standards or conditions you are willing to meet which relate to the underlying purpose of the rule for which a variance or waiver is being requested. (Example: no furniture will be placed in the hallway.)

Section 6.

Explain how the standards or conditions listed in Section 5. will provide adequate protection for the health, safety and welfare of the person receiving care through your licensed facility or program. (Example: wide hallway is to ensure that public can exit the premises easily. Keeping the hall free of all furniture should ensure that people will be able to leave the area easily.)

Section 7.

Explain why you believe the variance or waiver would serve the purpose of the underlying statute. (Example: Licensing statute exists to ensure that care is delivered safely. Variance with additional voluntary standards provides for safe care.)

Section 8.

State how long you want the variance or waiver to last. Variances or waivers are granted for a specific period of time. Example: one year, two years, ten years, etc.

**Georgia Department of Community Health
Healthcare Facility Regulation Division-- Application for Variance or Waiver**

I would like to apply for a variance or waiver and submit the following information for consideration:

1. Name of Licensed Facility: _____
Address of Licensed Facility: _____
City: _____ County: _____ Zip Code: _____
Phone Number of Facility: _____
Contact Person or Person Representing the Facility: _____
Name of Resident the waiver application concerns (if applicable): _____
Date of Admission to Facility (if request is made on behalf of a specific resident): _____
NOTE: Attach recent evidence of medical evaluation to application if application involves the health status of the resident.
2. List the specific rule(s) (citations) for which variance or waiver is being requested (e.g. 111-6-62-.16(1) (b):

3. Action requested (check one): Variance _____ Waiver _____
(A variance is a request to permit some variation from the literal requirements of the rule. A waiver is a request to dispense with compliance with the rule entirely with no alternative standards proposed to be met for the specific rule to be waived.)
4. Facts supporting a claim of substantial hardship for the applicant and which are believed to justify the variance or waiver: _____

5. Alternative standards which the applicant agrees to meet instead of the rule: _____

6. Explanation as to how the alternative standards will afford adequate protection for the public health, safety and welfare: _____

7. The reason why the variance or waiver requested would serve the purpose of the underlying statute:

8. The length of time that the variance or waiver is requested to last: _____
9. Date Application Submitted: _____

(Departmental use only)
Date application determined complete: _____ by: _____ Appendix 1
2/01/10

FIRE SAFETY APPROVAL FORM

Required for Waiver Applications for Residents Who Do Not Meet
Admission/Retention Criteria
[Rule 111-8-62-.16(1)(b) or .16(2)]

Name of Home: _____

Address: _____

Owner's Phone Number: _____

Name of resident or residents who are mostly incapable of self-preservation: _____

TO BE COMPLETED BY THE FIRE INSPECTOR

I, _____ have inspected the above listed Personal Care Home or Community Living Arrangement.

___ I and am aware that the above identified resident(s) who are mostly incapable of self preservation live in the home.

___ I have reviewed the home's fire drills and the home remains in-compliance with the NFPA 101 Life Safety Code, 2000 Edition, OCGA 120-3-3, OCGA 120-3-20, the International Fire Code, 2006 Edition, and applicable local fire ordinances.

Signature: _____

Printed Name: _____

Date of Approval: _____

Name of Fire Department: _____

Phone Number: _____

**Waiver Applications for Residents Who Do Not Meet
Admission/Retention Criteria
[Rule 111-8-62-.16(1)(b) or .16(2)]**

Additional Information Needed

1. Date of admission
2. Date of Birth
3. Current physical exam
4. Floor plan of facility – indicate resident’s room, exits/ramps and escape routes
5. Current staffing schedule – include sitter schedule, if applicable
6. Current census
7. List of current active waivers
8. Copy of the last 3 fire drills with at least one fire drill conducted when residents are sleeping
9. Hospice, Home Health or other service providers’ plans of care, if applicable
10. A statement from the fire marshal that “the facility continues to meet all fire safety code regulations with a resident(s) on site who is mostly incapable of self preservation”
 - The statement must be based on the most current fire inspection.
 - Before fire marshal makes the above statement, the facility must advise the fire marshal of the residents in the facility who are mostly incapable of self preservation.

The above information must be submitted with the waiver application or the waiver cannot be processed. Absence of this documentation will delay or result in denial of the waiver request.