

August 18, 2006

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 information available via the State's Rules Waiver Registry maintained on the State's web site.
- D. The Office shall be authorized to 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 I facility, the Office will consider the following:
1. The alternative standards or safeguards the facility is willing to take.
 2. Any physicals or other medical information submitted by the facility during the waiver process concerning the patients, clients or residents to be served under the waiver or variance.
 3. The staffing of the facility.

4. The wishes of the patient, client or resident and the patient, client or resident's family and medical opinion of the patient, client or resident's treating physicians, as well as any information concerning the patient, client or 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 facility including but not limited to any medical information or assessments by DHR surveyors or other staff of the patients or clients or residents in care or any information submitted by the Ombudsman or other sources.
 6. The fire safety features of the residential facility and evacuation times for fire drills.
 7. Any file information concerning the facility and the patient, client or resident.
 8. The ability of the facility to meet the needs of the patient, client or resident.
 9. Any other relevant information submitted by the facility or available to the Department.
- 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 the licensing responsibilities for that particular program. 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, zip code, phone number, contact person or person representing the applicant;
 2. The rule for 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. Where the waiver is made concerning a waiver for a resident of the home, the date that the resident was admitted or is proposed to be admitted to the home;
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, fire drill evacuation times, etc. 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 for the variance or waiver, a resident residing in the licensed facility or a resident's representative will be permitted an opportunity to discuss with the Department's representatives by telephone or in person or 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 basic information concerning the application for the waiver will be entered into the Office Variance/Waiver Register maintained on the Georgia Net rules registry site.
- E. The responsible Section staff reviews the written request and prepares its written decision letter either granting the variance or waiver or denying it. The written decision, either to grant or deny the variance or waiver, shall contain a statement of the relevant facts and the reasons supporting the Section's action. The Section Director is responsible for the initial decision. Copies of a suggested forms are attached as Appendices 3 and 4. Sections may choose to use this letter format or a memo format so long as all required elements are included. 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 Section's initial decision will include the reasons for granting 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 Section Director or designee in writing and placed on Rules Waiver Registry by the 45th day following the request being determined to be complete.
- G. The Section Director, , will also be responsible for notifying the applicant in writing by the 45th day of any decision denying the variance or waiver including the reasons for the denial, if any, 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 decision, or conditions to be imposed in granting the variance or waiver, 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. 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. In addition to notifying the applicant in writing of the decision of the Department, the final decision where appealed to the Director, if different from the initial decision, shall also be entered on the Office's register maintained on the Georgia Net within 60 days of the receipt of the completed application . No application for a variance or waiver may be granted until it has been posted on the Georgia Net web site for 15 days.
- J. The Sections are responsible for maintaining records on the variances and waivers that have been granted and for initiating renewal consideration when appropriate.
- K. The Sections are responsible for ensuring that waiver applications are attached to the facility's record in Aspen Central Office.

*Georgia Department of Human Resources
Office of Regulatory Services-- 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 Applicant: _____
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. Number(s) of the specific rule(s) (citations) for which variance or waiver is being requested:

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

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.

Applicant: List the name of the governing body who is responsible for holding the license for the particular program or facility.

Contact Person or Person Representing Applicant: 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.

Instructions for Appendix 1--Application for Variance or Waiver

PRINTED ON AGENCY LETTERHEAD WITH PHONE NUMBER

M E M O R A N D U M

To: _____

FROM: _____, Section

SUBJECT: Application for Variance or Waiver--Incomplete

DATE: _____

This will confirm that your application for a variance or waiver has been reviewed and has been determined to be incomplete. Additional information is required for the application for the variance or waiver to be acted upon by our Office. The section numbers that have been circled require additional information. [Sections 1, 2, 3, 4, 5, 6, 7, and 8]

The instructions which appear on the back of the application may be helpful to you in completing the application. If you have any questions, please call me at the number listed above.

Letter Granting Variance or Waiver (Note: the Section may choose to use a memo explaining the action on the waiver and attach that to the letter instead of including all of this detail in the body of the letter so long as between the two documents all of the following elements are included.)

Date

Applicant
Address

RE: Application for waiver of rule _____

Dear:

Your application for variance or waiver of rule _____, which would have prohibited your facility from _____, has been granted as a result of an administrative review conducted within the Office of Regulatory Services subject to meeting certain conditions. You will not be required to comply with the strict requirement of this particular rule provided that you comply with the following conditions or alternative standards:

CONDITIONS UPON WHICH APPROVAL IS BASED:

- 1.
- 2.
- 3.
- ...

This approval was based upon the following considerations:
(brief statement of facts that supported your decision)

The decision to approve the variance or waiver, with the conditions or alternative standards which must be met, is final unless you file a written request to have the conditions or alternative standards reviewed by Sharon E. Dougherty, Office of Regulatory Services. The written request for a review must be made within 10 days of your receipt of this letter and addressed to Sharon E. Dougherty, Office of Regulatory Services, 2 Peachtree Street, NW, Suite 32-415, Atlanta, Georgia 30303-3142. Ms. Dougherty may either uphold the decision or modify the conditions or alternative standards attached to the approval of the variance or waiver in some way.

Please remember that you must comply with all of the other rules and regulations that apply to child caring institutions. If you have any questions concerning this matter, please call (*name of person in section*) at _____.

Sincerely,

Section Director
Office of Regulatory Services

Letter denying variance or waiver

Applicant

Address

RE: Applications for waiver of Rule _____

Dear:

Your application for a variance or waiver of Rule, which requires (brief statement of rule), has been denied as a result of an administrative review conducted within the Office of Regulatory Services. The decision to deny was based upon the following considerations:

- 1.
- 2.
- 3.
- 4.

If you choose to operate a licensed program at the location specified, you will need to make arrangements to be in compliance with the rules governing your program. You will find enclosed with this letter a copy of the administrative review memorandum, which provide specific details about the denial.

The decision to deny the waiver is final unless you file a written request to have the decision reviewed by Sharon E. Dougherty, Office of Regulatory Services. The written request for a review must be made within 10 days of your receipt of this letter and addressed to Sharon E. Dougherty, Office of Regulatory Services, 2 Peachtree Street, NW, Suite 32-415, Atlanta, Georgia 30303-3142. Ms. Dougherty may either uphold the decision to deny the variance or grant the variance subject to meeting additional conditions.

Please remember that you must comply with all of the rules and regulations that apply to day care centers. If you have any questions concerning your application, please call_____, at_____.

Sincerely,

Section Director
Office of Regulatory Services

Enclosure

C: Sharon E. Dougherty