

3701-17-26 **Variances.**

(A) The director may grant a variance from the requirements of rules 3701-17-01 to 3701-17-26 of the Administrative Code as will not be contrary to the public interest, where the operator shows that because of practical difficulties or other special conditions, their strict application will cause unusual and unnecessary hardship. However, no variance shall be granted:

- (1) That will defeat the spirit and general intent of these rules, adversely affect the health or safety of the residents, or otherwise not be in the public interest; or
- (2) For a requirement that is mandated by statute.

(B) A request for a variance from the requirements of rules 3701-17-01 to 3701-17-26 of the Administrative Code shall be made in writing to the director, specifying the following:

- (1) The rule requirement for which the variance is requested;
- (2) The time period for which the variance is requested;
- (3) The specific alternative action which the nursing home proposes;
- (4) The reason for the request; and
- (5) An explanation of the anticipated effect granting of the variance will have on residents.

(C) ~~The director shall notify the operator, in writing, of the director's determination regarding a variance request and of a revocation of a granted variance. The director may establish conditions that the nursing home shall meet for a variance to be operative, and a time frame for which the variance will be effective, or both. The director shall provide the nursing home with an opportunity for an informal hearing concerning the denial of a variance request or a revocation of a granted variance, if requested by the operator within thirty days of the mailing of the notice of denial or revocation, but the nursing home shall not be entitled to a hearing under Chapter 119. of the Revised Code. The informal hearing shall be held within thirty days of the request unless both parties agree otherwise. If the director proposes to deny or revoke a license because the nursing home is in violation of a rule for which a variance was denied or revoked, the director shall afford the nursing home a hearing in accordance with Chapter 119. of the Revised Code.~~

(D) The director shall notify the operator, in writing, of the director's determination to

revoke a granted variance. The director may revoke a variance if the director determines that:

- (1) The variance is adversely affecting the health and safety of the residents;
- (2) The nursing home has failed to comply with the variance as granted;
- (3) The operator or administrator notified the department that the owner or administrator wishes to relinquish the variance; or
- (4) The variance conflicts with a statutory change thus rendering the variance invalid.

(E) The refusal of the director to grant or revoke a variance or waiver, in whole or in part, shall be final and shall not be construed as creating any rights to a hearing under Chapter 119. of the Revised Code.

Effective:

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Certification

Date

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