

2911.0400 VARIANCES.

Subpart 1. **Variances, generally.** The granting of a variance under this part for one facility shall not constitute a precedent for any other facility. The granting and denial of variances shall be in writing and made within 30 days of the request for a variance. The variance shall be granted by the commissioner if, in the licensing procedure or enforcement of this chapter, all of the following are present:

A. requiring a particular facility to strictly comply with one or more of the provisions will result in undue financial hardship or jeopardize the health, safety, security, detention, or well-being of the inmates or facility staff;

B. the facility is otherwise in substantial conformity with this chapter or is making satisfactory progress toward substantial conformity;

C. granting the variance will not preclude the facility from making satisfactory progress toward substantial conformity with this chapter;

D. granting the variance will not leave the interests and well-being of the inmates or facility staff unprotected; and

E. the facility will take substitute action as is necessary or available to comply with the general purpose of this chapter to the fullest extent possible.

Subp. 2. **Emergency notification.** When a facility administrator declares an emergency, the applicable rules may be suspended during the duration of the emergency. The facility administrator or designee shall notify the DOC in writing within 72 hours of an emergency that results in the suspension of any rule under this chapter.

Subp. 3. [Repealed, 38 SR 523]

Subp. 4. **Suspension limit.** A suspension of rules because of an emergency declared by a facility administrator or a designee shall not exceed seven days unless the administrator obtains the approval of the commissioner of corrections for a variance to the rules and the variance is necessary:

A. for the protection of the health, security, safety, detention, or well-being of the staff or the inmates detained or confined in the institution where the emergency exists; or

B. when an emergency public safety issue has occurred.

Subp. 5. [Renumbered 2911.3700 subp 6]

Subp. 6. [Renumbered 2911.3700 subp 7]

Subp. 7. **Notification.** The facility administrator or a designee shall notify the DOC in writing of each instance of failure to maintain population at or below the facility approved

bed capacity for more than seven consecutive days or 15 days of any month in which the facility has had an average daily population greater than its approved bed capacity.

Subp. 8. **Overcrowded facility plan.** Whenever an overcrowded facility condition occurs and the conditions in subpart 7 exist, a facility shall have a written plan that requires the use of available contract per diem bed space in DOC-approved facilities within a 125-mile radius. The plan shall require the following.

A. The facility administrator may exceed approved capacity established under parts 2911.0330 to 2911.0370 only when no space is available for contract per diem usage within 125 miles.

B. The unavailability of space shall be documented at least once each day for continuing authority to exceed capacity.

C. Documentation shall set forth persons contacted, identification of the facility they represent, the date and time of contact, and a statement that the person advised that contract per diem space was not available.

Subp. 9. **Intermittent sentence contingency plans.** A facility shall have a written plan that governs space arrangements and procedures to be followed in the event the number of inmates in the facility at 8:00 a.m. on any day and the number of inmates serving intermittent sentences scheduled for admission into the facility that day will exceed the facility's approved bed capacity.

Statutory Authority: *MS s 241.021*

History: *23 SR 1834; 38 SR 523*

Published Electronically: *December 20, 2013*