

**4658.0040 VARIANCE AND WAIVER.**

Subpart 1. **Request for variance or waiver.** A nursing home may request that the department grant a variance or waiver from the provisions of this chapter. A request for a variance or waiver must be submitted to the department in writing. Each request must contain:

- A. the specific part or parts for which the variance or waiver is requested;
- B. the reasons for the request;
- C. the alternative measures that will be taken if a variance or waiver is granted;
- D. the length of time for which the variance or waiver is requested; and
- E. other relevant information necessary to properly evaluate the request for the variance or waiver.

Subp. 2. **Criteria for evaluation.** The decision to grant or deny a variance or waiver must be based on the department's evaluation of the following criteria:

- A. whether the variance or waiver adversely affects the health, treatment, comfort, safety, or well-being of a resident;
- B. whether the alternative measures to be taken, if any, are equivalent to or superior to those prescribed in this chapter; and
- C. whether compliance with the part or parts would impose an undue burden upon the applicant.

Subp. 3. **Notification of variance.** The department must notify the applicant in writing of its decision. If a variance or waiver is granted, the notification must specify the period of time for which the variance or waiver is effective and the alternative measures or conditions, if any, to be met by the applicant.

Subp. 4. **Effect of alternative measures or conditions.** Alternative measures or conditions attached to a variance or waiver have the force and effect of this chapter and are subject to the issuance of correction orders and penalty assessments in accordance with Minnesota Statutes, section 144A.10.

The amount of fines for a violation of this part is that specified for the particular rule for which the variance or waiver was requested.

Subp. 5. **Renewal.** A request for the renewal of a variance or waiver must be submitted in writing at least 45 days before its expiration date. Renewal requests must contain the information specified in subpart 1. A variance or waiver must be renewed by the department if the applicant continues to satisfy the criteria in subparts 2 and 3, and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance or waiver was granted.

Subp. 6. **Denial, revocation, or refusal to renew.** The department must deny, revoke, or refuse to renew a variance or waiver if it is determined that the criteria in subparts 2 and 3 are not met. The applicant must be notified in writing of the reasons for the decision and informed of the right to appeal the decision.

Subp. 7. **Appeal procedure.** An applicant may contest the denial, revocation, or refusal to renew a variance or waiver by requesting a contested case hearing under Minnesota Statutes, chapter 14. The applicant must submit, within 15 days of the receipt of the department's decision, a written request for a hearing. The request for hearing must set forth in detail the reasons why the applicant contends the decision of the department should be reversed or modified. At the hearing, the applicant has the burden of proving that it satisfied the criteria specified in subparts 2 and 3, except in a proceeding challenging the revocation of a variance or waiver.

**Statutory Authority:** *MS s 144A.04; 144A.08; 256B.431*

**History:** *20 SR 303*

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