

4664.0016 WAIVERS AND VARIANCES.

Subpart 1. **Definitions.** For purposes of this part:

A. "waiver" means an exemption from compliance with a requirement of this chapter; and

B. "variance" means a specified alternative to a requirement of this chapter.

Subp. 2. **Criteria for waiver or variance.** Upon the application of a licensee, the commissioner must waive or vary any provision of this chapter, except for those provisions reflecting statutory requirements; relating to criminal disqualification, Minnesota Statutes, section 144A.754, subdivision 5, paragraph (b); or relating to the hospice bill of rights, part 4664.0030, if the commissioner finds that:

A. either:

(1) the waiver or variance is necessary because of the unavailability of services or resources in the hospice provider's geographic area; or

(2) the enforcement of a requirement would result in unreasonable hardship on the licensee; and

B. the waiver or variance will not adversely affect the health, safety, or welfare of any hospice patient.

Subp. 3. **Experimental variance.** The commissioner shall grant a variance to allow a hospice provider to offer hospice services of a type or in a manner that is innovative, will not impair the services provided, will not adversely affect the health, safety, or welfare of the hospice patients, and is likely to improve the services provided.

Subp. 4. **Conditions.** The commissioner shall impose conditions on the granting of a waiver or variance that the commissioner considers necessary for the health, safety, and well-being of persons who receive hospice care.

Subp. 5. **Duration.** The commissioner shall identify the duration of any waiver or variance.

Subp. 6. **Application.** An application for waiver or variance from the requirements of this chapter may be made at any time, must be made in writing to the commissioner, and must specify the following:

A. the rule for which the waiver or variance is requested;

B. the time period for which the waiver or variance is requested;

C. if the request is for a variance, the specific alternative action that the licensee proposes;

D. the reasons for the request;

E. justification that subpart 2 or 3 will be satisfied; and

F. any other information that the commissioner requests to determine whether the requested waiver or variance would meet the criteria in subpart 2 or 3.

Subp. 7. **Grants and denials.** The commissioner must grant or deny each request for waiver or variance in writing. Notice of a denial must contain the reasons for the denial. The terms of a requested variance may be modified upon agreement between the commissioner and a licensee.

Subp. 8. **Violation of variances or waivers.** A failure to comply with the terms of a variance or waiver is a violation of this chapter.

Subp. 9. **Revocation or denial of renewal.** The commissioner shall revoke or deny renewal of a waiver or variance if:

A. the waiver or variance adversely affects the health, safety, or welfare of the licensee's hospice patients;

B. the licensee fails to comply with the terms of the variance;

C. the licensee notifies the commissioner in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

D. the revocation or denial is required by a change in law.

Subp. 10. **Hearings.** A denial of a waiver or variance may be contested by requesting a hearing as provided by part 4664.0018. The licensee bears the burden of proving that the denial of a waiver or variance was in error.

Subp. 11. **Fines.** A fine shall be assessed for a violation under subpart 8 in the amount of the fine established for the rule that was varied or waived.

Statutory Authority: *MS s 144A.752*

History: *28 SR 1639*

Published Electronically: *October 11, 2007*