

***** DRAFT – NOT FOR FILING *****

3701-17-68 **Variances.**

(A) The director may grant a variance from the requirements of rules 3701-17-50 through 3701-17-68 of the Administrative Code unless required by statute if the operator or administrator shows that granting the variance will not jeopardize the health or safety of any resident and that:

- (1) Because of practical difficulties or other special conditions, strict application of the licensure requirement will cause unusual and unnecessary hardship; or
- (2) An alternative to the licensure requirement, including new concepts, methods, procedures, techniques, or the conducting of pilot projects is in the interest of better health care or management.

No variance shall be granted that will defeat the spirit and general intent of these rules or otherwise not be in the public interest.

(B) A request for a variance from the requirements of the residential care facility licensure rules 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 residential care facility proposes;
- (4) The reasons for the request;
- (5) An explanation of the anticipated affect granting of the variance will have on residents;

The director may request additional information from the residential care facility prior to making a determination regarding the request.

(C) 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 residential care facility has failed to comply with the variance as granted;
- (3) The operator or administrator notifies the department in writing that the owner or administrator wishes to relinquish the variance; or
- (4) The variance conflicts with a statutory change thus rendering the variance invalid.

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- (D) 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 residential care facility must meet for a variance to be operative. The director shall provide the residential care facility 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 residential care facility shall not be entitled to a hearing under Chapter 119. of the Revised Code. If the director proposes to deny or revoke a license because the residential care facility is in violation of a rule for which a variance was denied or revoked, the director shall afford the residential care facility a hearing in accordance with Chapter 119. of the Revised Code.