

3701-7-16

Waivers and variances.

(A) Upon written request of a maternity unit or newborn care nursery, the director may grant:

(1) A variance from any requirement in rules 3701-7-01 to 3701-7-16 of the Administrative Code if the director determines that the intent of the requirement has been met in an alternative manner; or

(2) A waiver from any requirement in rules 3701-7-01 to 3701-7-16 of the Administrative Code if the director determines that the strict application of the requirement would cause an undue hardship to the maternity unit and that granting the waiver would not jeopardize the health or safety of any patient.

(B) In granting a variance or waiver, the director shall stipulate a time period for which the variance and waiver is to be effective and shall establish conditions the maternity unit must meet for the variance or waiver to be operative.

(C) The decision regarding a variance or waiver is a discretionary act by the director and an informal procedure not subject to Chapter 119. of the Revised Code. The director's decision shall be based on documentation of the following:

(1) In the case of a variance request, the alternative means by which the maternity unit or newborn care nursery is meeting the intent of the requirement; and

(2) In the case of a waiver request, the undue hardship caused by the requirement and the reasons why a waiver of the requirement will not jeopardize the health or safety of any patient.

(D) The granting of a variance or waiver by the director shall not be construed as constituting precedent for the granting of any other variance or waiver. All variance or waiver requests shall be considered on a case-by-case basis.

(E) The provider whose request for a waiver or variance under this rule is denied may request reconsideration of the decision by the director. A request for reconsideration must:

(1) Be received in writing by the director within thirty days of receipt of the director's denial of the waiver or variance request;

(2) Present significant, relevant information not previously submitted to the director by the provider because it was not available to the provider at the time the waiver or variance request was filed; or

(3) Demonstrate that there have been significant changes in factors or circumstances relied upon by the director in reaching the initial decision.

(F) A decision on an appropriately filed request for reconsideration shall be issued within

forty-five days of the director's receipt of the request for reconsideration and all information determined necessary by the director to make a decision.

(G) The reconsideration process is an informal procedure not subject to Chapter 119. of the Revised Code. The director's decision on reconsideration is final.

(H) Each maternity home seeking a variance or waiver shall file an application with the board of health of the city or general health district in which the maternity home is located.

(I) Not later than forty-five days after receiving an application, the board shall determine whether to grant the maternity home's request for variance or waiver and shall notify the applicant in writing of the board's decision.

(J) The board of health may grant a maternity home:

(1) A variance from any requirement in rules 3701-7-01 to 3701-7-16 of the Administrative Code if the board of health determines that the intent of the requirement has been met in an alternative manner; or

(2) A waiver from any requirement in rules 3701-7-01 to 3701-7-16 of the Administrative Code if the board determines that strict application of a requirement would cause an undue hardship to the applicant and that granting the waiver would not jeopardize the health and safety of any patient or resident.

(K) If a board of health denies a variance or waiver requested by a maternity home, the home may appeal the denial by filing a notice of appeal with the director of health. The notice must be filed not later than thirty days after the board's denial of the request.

(L) Not later than forty-five days after the notice of appeal is filed, the director shall either affirm the board's denial or grant the variance or waiver. The director shall notify the board and the maternity home in writing of the director's action.

(M) Notwithstanding any other provision of this section, the director may void the board's granting of a waiver or variance issued under this section. The director shall notify the board and the maternity home in writing of the director's action not later than forty-five days after the decision to void the boards granting of the waiver or variance.