Article 5. General Variance Procedures.

7 AAC 10.9500. Purpose and applicability. (a) Except as provided in (b)(2) and (3) of this section, the purpose of 7 AAC 10.9500 - 7 AAC 10.9535 is to provide a process for determining whether a general variance, if requested, should be granted for a requirement of

(1) AS 47.32;

(2) this chapter; or

(3) another regulation applicable to an entity referred to in 7 AAC 10.015.

(b) The provisions of 7 AAC 10.9500 - 7 AAC 10.9535

(1) apply to the entities referred to in 7 AAC 10.015;

(2) do not apply to a temporary variance to admit a child for care in an assisted living home under 7 AAC 75.415; and

(3) do not apply to a request for a variance from a provision of 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), 7 AAC 41.205 (Child Protection and Criminal History Check Requirements), or 7 AAC 57.315 (Child Protection and Criminal History Check Requirements).

7 AAC 10.9505. General variance. (a) Subject to 7 AAC 10.9500(b)(2) and (3), and (b) of this section, the department may grant a general variance if

(1) the applicable requirements of 7 AAC 10.9500 - 7 AAC 10.9515 are met;

(2) an alternative means, acceptable to the department, satisfies the purpose of the requirement for which the variance is sought; and

(3) the health, safety, and welfare of recipients of services are protected.

(b) The department may grant an assisted living home a general variance from a requirement of AS 47.32, 7 AAC 75, or this chapter to allow the home to

(1) meet the goals of AS 47.32, 7 AAC 75, and this chapter in a way that differs from the methods set out in AS 47.32, 7 AAC 75, or this chapter;

(2) promote aging in place to minimize the need for a resident to move from the home; or

(3) integrate mentally, developmentally, and physically disabled residents into the community to reach their highest level of functioning.

7 AAC 10.9510. Request for a general variance. An entity seeking a general variance under 7 AAC 10.9500 - 7 AAC 10.9535 must submit to the department, on a form supplied by the
department, a request for a general variance as required by this section. A request must contain the following:

(1) the requirement from which the variance is sought;

(2) the reasons why the entity is unable to comply with the requirement, a description of how the entity is not in compliance, and the extent to which compliance with the requirement will impose any substantial economic, technological, programmatic, legal, or medical hardship on the entity or recipients of services;

(3) the period of time for which the variance is requested;

(4) the proposed alternative means of satisfying the purpose of the requirement for which the variance is sought;

(5) a statement as to how the health, safety, and welfare of recipients of services will be protected during the period of the variance;

(6) the plan for achieving compliance before the variance expires;

(7) assurance that the conditions at the entity do not present an imminent danger to the health, safety, or welfare of recipients of services;

(8) if the request for a variance involves fire safety or another state or municipal requirement, evidence that the request has been reviewed by the appropriate authority;

(9) for a licensed entity, the names of the recipients of services who would be affected by the variance, and the names and addresses of any representatives of those recipients of services; the requirements of this paragraph do not apply to a child care facility subject to 7 AAC 57 unless this information is requested by the department;

(10) for an assisted living home, assurance that the notice requirements of 7 AAC 10.9515 will be met;

(11) any additional information requested by the department to determine the effect of a variance on the health, safety, and welfare of recipients of services.

7 AAC 10.9520. Evaluation of a request for a general variance. The department will evaluate a request for a general variance by

(1) investigating the statements in the request form;
(2) inspecting the entity, if appropriate; and
(3) taking one or both of the following actions:
   (A) conferring with the applicant or licensee regarding the request;
   (B) discussing the request with the affected recipients of services or their representatives, as appropriate, to determine whether they support granting the variance.

7 AAC 10.9525. Grant or denial of a general variance. (a) The department’s decision to grant or deny a request for a general variance will be issued in writing and will be delivered to the person who made the request.
(b) Subject to (c) of this section, the department may grant a general variance, for a period that does not exceed one year, if the department determines that the entity

(1) is unable to comply with the requirement from which the variance is sought;

(2) has an effective plan for achieving compliance during the term of the variance; and

(3) is able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance.

(c) The department may grant a general variance for a longer period than allowed under (b) of this section if the department determines

(1) that
(A) strict compliance with the requirement from which the variance is sought cannot be accomplished without a substantial economic, technological, programmatic, legal, or medical hardship; or
(B) the variance will maintain or improve the quality of services for recipients of services; and

(2) that the entity has an effective plan for meeting the goal of the requirement from which the variance is sought, and that the plan adequately protects the health, safety, and welfare of recipients of services and otherwise meets all applicable statutory or regulatory standards.

(d) A decision to grant a request for a general variance will identify the statutory or regulatory requirement involved by section number and subject matter and state the duration, terms, and conditions of the variance, including the steps the entity must take to achieve compliance before the variance expires.

(e) A decision to deny a request for a general variance will be in writing and will state the reasons for the denial. The entity may reapply for a variance, addressing the department's stated reasons for the denial or may request reconsideration under 7 AAC 10.9535.

(f) If an entity violates a condition of a general variance granted under this section, the department will send written notice to the entity that the variance is revoked. The notice will advise that the entity may request reconsideration under 7 AAC 10.9535.

7 AAC 10.9530. Posting of a general variance. (a) If the department grants a request for a general variance, the entity shall post a copy of the general variance decision in a conspicuous place, with the entity's license as required by AS 47.32.080, during the period the variance is in effect, and shall make it available to any person who wishes to review it. A general variance remains in effect for the duration stated, unless the department revokes the variance under (b) of this section.

(b) The department will revoke a general variance if the department finds that the entity is not following its plan for achieving compliance, or is no longer able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance. If the department decides to revoke a variance, it will provide written notice of revocation to the entity, setting out the reasons for the department's decision. The department will advise the entity of its right to request reconsideration under 7 AAC 10.9535. A notice of revocation issued under this subsection is effective 30 days after it is received by the entity unless a request for reconsideration is submitted. Nothing in this subsection precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of recipients of services is threatened.
7 AAC 10.9535. Request for reconsideration of denial or revocation of a general variance.  (a) If the department denies or revokes a variance subject to 7 AAC 10.9500 - 7 AAC 10.9535, the entity may submit a written request to the department for reconsideration of that decision.

(b) A request under (a) of this section must be submitted within 30 days after the entity receives the denial or notice of revocation, and must include

(1) the requestor’s name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;
(2) a summary of the department’s decision to be reviewed; and
(3) a clear and concise statement of the reason for the request, including
   (A) a statement of the nature and scope of the requestor’s interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;
   (B) the contested terms and conditions of the department's decision, and proposed alternatives; and
   (C) copies of any documents or data that would assist the department in its review.

(c) After reviewing a request for reconsideration, the department will notify the entity in writing within 30 days after receiving the request, and will state the reasons for the department's final decision.