Section 54.0 Variance Procedure

54.1 The licensing agency may grant a variance from the provisions of a rule or regulation in a specific case if it finds that a literal enforcement of such provision will result in unnecessary hardship to the applicant and that such a variance will not be contrary to the public interest, public health and/or health and safety of residents.

Variances shall not be granted for the provisions of these regulations found in sections 2.0, 9.0, 16.0, 19.0, 22.0, 24.0, 25.0, 27.11, 48.0, 49.0, 51.0, and 53.0.

54.2 A request for a variance shall be filed by an applicant in writing, setting forth in detail the basis upon which the request is made.
   a) Upon the filing of each request for variance with the licensing agency, and within a reasonable time thereafter, the licensing agency shall notify the applicant by certified mail of its approval or in the case of a denial, a hearing date, time and place may be scheduled if the facility appeals the denial.

54.3 At a hearing held in furtherance of an appeal from a denial for a variance in accordance with section 54.2 (a) above, the applicant shall present his case to the Director or his designee for quasi-judicial matters, and shall have the burden of persuading the Director or his designee as aforesaid, through the introduction of clear and convincing evidence, that a literal enforcement of the rules will result in unnecessary hardship, and that a variance will not be contrary to the public interest, public health and/or health and safety of residents.

54.4 Nursing facilities that provide care in accordance with alternative service delivery models may be eligible for a variance in accordance with the requirements contained herein.