Section 4. Existing Facilities With Waivers.
(1) The Inspector General shall deem an existing health care facility to be in compliance with a facility specification requirement, even though the facility does not meet fully the applicable requirement, if:
   The Inspector General has previously granted, to the facility, a waiver for the requirement;
   The facility is licensed by the cabinet;
   The facility is in good standing as of the effective date of this administrative regulation; and
   The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:
The Inspector General shall notify the facility by certified mail of the findings and the need to comply with the applicable administrative regulations; and
(b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 5. Variances.
(1) The Inspector General may grant a health care facility a variance from a facility specification requirement if the facility establishes that the variance will:
   Improve the health, safety, or welfare of a resident or patient; or
   Promote the same degree of health, safety, or welfare of a resident or patient as would prevail without the variance.
(2) A facility shall submit a request for a variance, in writing, to the Office of the Inspector General, Cabinet for Health Services. The request shall include:
   All pertinent information about the facility;
   The specific provision of the administrative regulation affected;
   The specific reason for the request; and
   Evidence in support of the request.
(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction. The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:
   Improved the health, safety, or welfare of a patient or resident; or
   Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail, of a decision to
revoke a variance and the need to comply with the applicable regulatory requirement.  
2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(5)(b) of this administrative regulation.

Section 6. Variance Hearings. (1) A health care facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health Services. The request shall be received by the secretary of the cabinet within twenty (20) days of the date the healthcare facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.  
(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.  
(2) Registered nurse.

(3) Licensed nurse waiver. Waiver of requirement to provide licensed nurses on a twenty-four (24) hour basis. A facility may request a waiver from the requirement that a nursing facility provide a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week, as specified in subsection (2) of this section, and the requirement that a nursing facility provide licensed nurses on a twenty-four (24) hour basis, including a charge nurse as specified in subsection (1) of this section, if the following conditions are met:  
(a) The facility demonstrates to the satisfaction of the cabinet that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;  
(b) The cabinet determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;  
(c) A waiver granted under the conditions listed in this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.  
(d) In granting or renewing a waiver, a facility may be required by the cabinet to use other qualified, licensed personnel.  
(e) The facility shall have a non-call system which provides for an immediate response by a registered nurse or a physician for those times when licensed nursing services are not available.  
(4) Registered nurse waiver. Waiver of the requirement to provide services of a registered nurse for more than forty (40) hours a week, including a director of nursing specified in subsection (2) of this section, may be granted if the cabinet finds that the facility:  
(a) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;  
(b) Has one (1) full-time registered nurse who is regularly on duty at the facility forty (40) hours a week; and  
Either:  
1. Has only patients whose physicians have indicated (through physicians’ orders or admission notes) that they do not require the services of a registered nurse or a physician for a forty-eight (48) hour period; or  
2. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.  
(d) A waiver of the registered nurse requirement under paragraph (a) of this subsection is
subject to revocation if the cabinet finds that the health and safety of the residents is threatened.
(5) When a waiver is granted a facility shall inform the residents, their legal representatives, and members of their immediate family.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.
(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding a license and shall be accompanied by a verifying document signed by a licensed physician.
(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements shall be granted by the board for a period of time not to exceed one (1) calendar year.
(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.