**JJ. “WAIVE/WAIVERS”** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the Licensing Authority. [7-1-60, 5-2-89, 10-31-96, 6-15-98; 7.9.2.7 NMAC - Rn, 7 NMAC 9.2.7, 8-31-00]

**7.9.2.21 WAIVERS AND VARIANCES:**

**A. DEFINITIONS:** As used in this section:

1. Waiver: means the grant of an exemption from a requirement of these regulations.
2. Variance: means the granting of an alternate requirement in place of a requirement of these regulations.

**B. REQUIREMENTS FOR WAIVERS AND VARIANCES:** A waiver or variance may be granted if the Department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:

1. Strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident.
2. An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interest of better care or management.

**C. APPLICATIONS:**

1. All applications for waiver or variance from the requirements of these regulations shall be made in writing to the Department, specifying the following:
   a. The rule from which the waiver or variance is requested;
   b. The time period for which the waiver or variance is requested;
   c. If the request is for a variance, the specific alternative action which the facility proposes;
   d. The reasons for the request; and
   e. Justification that the goal or purpose of the rule or regulations would be satisfied.
2. Requests for a waiver or variance may be made at any time.
3. The Department may require additional information from the facility prior to acting on the request.

**D. GRANTS AND DENIALS:**

1. The Department at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denials shall contain the reasons for denial.
2. The terms of a requested variance may be modified upon agreement between the Department and a facility.
3. The Department may impose such conditions on the granting of a waiver or variance which it deems necessary.
4. The Department may limit the duration of any waiver or variance.
5. The Department’s action on a request for a waiver is not subject to administrative appeal.
E. REVOCATION: The Department may revoke a waiver or variance if:

(1) It is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident’s; or

(2) The facility has failed to comply with the variance as granted; or

(3) The licensee notifies the Department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;

(4) Required by a change in law. [5-2-89; 7.9.2.21 NMAC - Rn, 7 NMAC 9.2.21, 8-31-00]

7.9.2.34 LICENSE LIMITATIONS:

B. CARE LEVELS: No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility, unless under waiver according to State guidelines.

7.9.2.71 PHYSICAL ENVIRONMENT:

A. GENERAL: The buildings of the nursing facility shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery services appropriate to the needs of the community and with due for protecting the health and safety of the patients. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted. Existing waivers at the time these regulations are enacted would continue to be accepted unless it is determined that the facility is unable to protect the health and safety of the resident.

D. FIRE PROTECTION:

(3) Existing facilities: Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.