

be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A.** Failure to comply with any provision of these regulations.
- B.** Failure to allow survey by authorized representatives of the Licensing Authority.
- C.** Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D.** Misrepresentation or falsification of any information or application forms or other documents provided to the Licensing Authority.
- E.** Discovery of repeat violations of these regulations during surveys.
- F.** Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the long term care facility.
- G.** Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff, or relatives or operator/staff.

[10-31-96, 6-15-98; 7.9.2.18 NMAC – Rn, 7 NMAC 9.2.18, 8-31-00]

**7.9.2.19 HEARING PROCEDURES:**

- A.** Hearing procedures for an administrative appeal of an adverse action taken by the Licensing Authority against the long term care facility as outlined in Section 7.9.2.17 and 7.9.2.18 above will be held in accordance with Adjudicatory hearings, New Mexico Department of Health, 7 NMAC 1.2 (2-1-96).
- B.** A copy of the Adjudicatory Hearing procedures will be furnished to the long term care facility or agency at the time an adverse action is taken against its license by the Licensing Authority. A copy may be requested at any time by contacting the Licensing Authority.

[10-31-96; 7.9.2.19 NMAC – Rn, 7 NMAC 9.2.19, 8-31-00]

**7.9.2.20 PROGRAM FLEXIBILITY:**

- A.** All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the Department shall be obtained in order to ensure provisions for safe and adequate care. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the department.
- B.** Any approval of the Department granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility's license.

[5-2-89; 7.9.2.20 NMAC – Rn, 7 NMAC 9.2.20, 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: