

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:

- (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]

7.9.2.22 RIGHTS OF RESIDENTS: Every resident shall have the right to:

A. COMMUNICATIONS: Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

- (1) Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.
- (2) Use a telephone for private communications during reasonable hours.
- (3) Have private visiting pursuant to a reasonable written visitation policy.

B. ACCESS: Immediate access by representatives of Human Services Department, Health and Environment Department, Ombudsman, personal physician and, subject to resident's consent, immediate family or other relatives or visitors following notification of staff person in charge and presentation of valid identification. Reasonable access by providers of health, social, legal or other services must be assured.

C. GRIEVANCES: Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.

D. FINANCES: Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

- (1) A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorize this action in writing. The facility shall obtain separate authorization for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence.