

PART VI *Confidentiality - Variance and Appeal Procedure*

Section 53.0 *Confidentiality*

53.1 Disclosure of any health care information relating to individuals shall be subject to all the statutory and regulatory provisions pertaining to confidentiality including but not limited to the provisions of reference 17.

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.

Variations 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.

Section 55.0 *Deficiencies and Plans of Correction*

55.1 The procedures of this section are exclusive of those required in accordance with section 24.5 herein and of those procedures required to be performed as a result of inspections and investigations conducted in accordance with Chapter 23-17 of the General Laws of Rhode Island, as amended.

55.2 The licensing agency shall notify the governing body or other legal authority of a facility of violations of individual standards through a notice of deficiencies which shall be forwarded to the facility within fifteen (15) days of inspection of the facility unless the director determines that immediate action is necessary to protect the health, welfare, or safety of the public or any member thereof through the issuance of an immediate compliance order in accordance with section 23-1-21 of the General Laws of Rhode Island, as amended.

- 55.3 A facility which received a notice of deficiencies must submit a plan of corrections to the licensing agency within fifteen (15) days of the date of the notice of deficiencies. The plan of corrections shall detail any requests for variances as well as document the reasons therefor.
- 55.4 The licensing agency will be required to approve or reject the plan of corrections submitted by a facility in accordance with section 55.3 above within fifteen (15) days of receipt of the plan of corrections.
- 55.4.1 To be deemed acceptable by the licensing agency, a plan of correction shall:
- a) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice(s);
 - b) Address how the facility will identify other residents having the potential to be affected by the same deficient practice(s);
 - c) Address what measures will be put into place or systemic changes made to ensure that the deficient practice(s) will not recur;
 - d) Indicate how the facility plans to monitor its performance to ensure that solutions are sustained;
 - e) Include dates when corrective action will be completed; and
 - f) Include any additional components deemed necessary by the licensing agency.
- 55.4.2 The facility shall develop a plan for ensuring that correction is achieved and sustained. This plan shall be implemented and the corrective action(s) evaluated for effectiveness. The plan of correction shall be integrated into the quality assurance system.
- 55.4.3 All deficiencies shall be fully and wholly corrected within thirty (30) days of the date of notice of the deficiencies, unless an extension is granted for good cause shown, but in no case shall an extension exceed fifteen (15) days.
- 55.5 If the licensing agency rejects the plan of corrections, or if the facility does not provide a plan of corrections within the fifteen (15) day period stipulated in section 55.3 above, or if a facility whose plan of corrections has been approved by the licensing agency fails to execute its plan within a reasonable time, the licensing agency may invoke the sanctions enumerated in section 9.6 herein. If the facility is aggrieved by the action of the licensing agency, the facility may appeal the decision and request a hearing in accordance with reference 20.
- 55.6 The notice of the hearing to be given by the Department of Health shall comply in all respects with the provisions of section 10 of reference 20. The hearing shall in all respects comply with sections 9, 10 and 12 of reference 20.

PART VII *Exception and Severability*

Section 56.0 *Exception*

56.1 Modification of any individual standard herein, for experimental or demonstration purposes, or as deemed appropriate by the licensing agency, provided that such modification will not be contrary to the public interest and the public health, or to the health and safety of residents, shall require advance written approval by the licensing agency.

Section 57.0 *Rules Governing Practices and Procedures*

57.1 All hearings and reviews required under the provisions of Chapter 23-17 of the General Laws of Rhode Island, as amended, shall be held in accordance with the provisions of the *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*.

Section 58.0 *Severability*

58.1 If any provisions of these regulations or the application thereof to any facility or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.