**Section 370.220 Variances**

a) The Department may, at its discretion, grant a variance to a specific standard set forth in these Regulations when the owner or licensee of a community living facility makes a request for such variance supported by documentation showing that the alternative designs, methods and practices proposed or now in existence will provide equivalent protection of the health, safety, and welfare of the facility's residents to that protection which would prevail under the promulgated standard. Waivers currently in effect will remain in effect until their expiration date.

b) Requests for a variance shall be directed to the Chief of the Division of Health Facilities Surveillance where they will be considered on an individual case basis. The Division shall notify the facility of any additional conditions necessary for the protection of the health, welfare and safety of the facility's residents. The conditions imposed may include mandatory means which will provide the effective equivalent of compliance. Upon occurrence of such additional conditions by the facility, such conditions imposed will be incorporated into and become a part of the variance.

c) In granting or denying any request for a variance, the Division will consider the following:

1) The health, welfare and safety of the residents;

2) The licensee's record of compliance with governing statutes and regulations;

3) The quality of resident care and safety that may be provided if the variance is granted;

4) The efforts exerted by the facility to comply with the standard;

5) Expense; and

6) Precedent.

d) Any variance granted by the Department may be for a specific period of time or for an indefinite period of time.

1) If granted for a specific period of time, the variance shall state when the variance shall expire, and shall also state whether or not a request for a continuation of the variance will be considered by the Department prior to the expiration of the initial variance.

2) If granted for an indefinite period of time, the variance shall so state and shall also describe the procedures under which the Department may revoke the variance and the reasons why such action might be taken by the Department.

3) The Department may revoke any variance at any time upon determination that the continuation of the variance poses a threat to the health, welfare or safety of residents.