

3106 APPROVAL OF VARIANCES

3106.1 The Director may grant a variance from any of the requirements of the Act and the rules, if the applicant can show undue hardship and the variance can satisfy the following conditions:

- (a) It is not inconsistent with other provisions of the Act;
- (b) It is not deleterious to the public health and safety; and
- (c) It would not have the effect of permitting a violation of other laws or regulations of the District of Columbia.

3106.2 A facility requesting a variance shall submit in writing to the Director the following:

- (a) The regulatory requirement(s) for which a variance from strict compliance is being requested;
- (b) Specific justification as to why the facility cannot meet the requirement(s); and
- (c) Alternative measures provided to ensure quality care and services consistent with the Act and these rules.

3106.3 The Director shall grant a variance only to the extent necessary to ameliorate an undue hardship and only when compensating factors are present to give adequate protection to the public health without impairing the intent and purpose of the Act or these rules.

3106.4 If the Director believes that the conditions in §3106.1 of these rules are not met, the Director shall issue a written proposed denial together with advice to the applicant as to his or her right to a hearing on the matter which shall be conducted by the Director in accordance with §§3107.3 and 3110.

3106.5 The Director shall maintain a record, open to inspection by the public, of all variances granted. The record shall contain a complete written explanation of the basis for each variance.

3106.6 If a variance is requested from standards established pursuant to §§5(a) (3) or (4) of the Act, the Director shall provide the Director, Department of Human Services, with notice and an opportunity to comment before a decision is made.

SOURCE: Final Rulemaking published at 39 DCR 5098, 5106 (July 10, 1992).