In this draft, §745.8319 and §745.8323 cross-reference §745.8805 (relating to How does a person request an administrative review?), which is being proposed as a new rule in another rule project.

TITLE 26 HEALTH AND HUMAN SERVICES

PART 1 HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745 LICENSING

SUBCHAPTER J WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

§745.8301. What words must I know to understand this subchapter?

These words have the following meanings:

(1) Kinship caregiver--A person who is:

 (A) Related to a foster child by consanguinity or affinity; or

 (B) Another adult with a longstanding and significant relationship with the foster child.

(2) Waiver--A decision by Licensing that waives an operation’s compliance with a minimum standard, if the economic impact of compliance with that standard is great enough to make compliance impractical.

(3) Variance--A decision by Licensing that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.

§745.8303. What minimum standards are ineligible for a waiver or variance?

A minimum standard is ineligible for a waiver or variance if the minimum standard is required by state or federal law.

§745.8305. How do I request a waiver or variance?

(a) You must submit your written request for a waiver or variance by:

 (1) Submitting a Waiver/Variance Request through your online account and separately providing any supporting documentation to your Licensing representative;

 (2) Mailing or emailing Form 2937 *Child Care Regulation Waiver/Variance Request* and any supporting documentation to your Licensing representative; or

 (3) Mailing, emailing, or faxing all the information required on Form 2937 *Child Care Regulation Waiver/Variance Request* and any supporting documentation to your Licensing representative.

(b) A waiver or variance request may only be for:

 (1) one operation; and

 (2) one minimum standard number or subsection.

(c) If a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the waiver or variance request can only be for a single foster home.

§745.8307. What conditions may Licensing place on an approved waiver or variance?

(a) We may place any condition on a waiver or variance we determine is necessary to protect the health and safety of children in your care.

(b) You must comply with each condition while the waiver or variance is in place.

§745.8309. What factors does Licensing consider when deciding whether to grant me a waiver or variance ?

(a) We consider the following factors when deciding whether to grant you a waiver or variance:

 (1) Whether the minimum standard is ineligible for a waiver or variance as outlined in §745.8303 (relating to What minimum standards are ineligible for a waiver or variance?);

 (2) The risk to children if your operation or foster home does not meet the standard;

 (3) The compliance history of your operation, including past and current enforcement actions;

 (4) The compliance history of the foster home, if the request is associated with a foster home;

 (5) Any waivers or variances currently in effect;

 (6) Your permit status, including if you are an applicant or have an initial license ;

 (7) Whether your operation is on heightened monitoring;

 (8) Any economic factors or other constraints affecting your ability to comply; and

 (9) Any other factor relevant to your request or operation that we identify.

(b) If we grant you a waiver or variance, we will also use the factors listed in subsection (a) of this section when determining what time limits and conditions to put on the waiver or variance.

§745.8311. What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?

When processing a request for a waiver or variance related to a foster home, we will consider any limitations in state or federal law, including:

 (1) Only granting a waiver for a foster home if the foster parent is a kinship caregiver; and

 (2) If the request is to increase a foster home’s total capacity in accordance with §749.2551(d) (relating to What is the maximum number of children a foster family home may care for?), not granting a waiver or variance if doing so would result in the home’s foster care capacity exceeding six foster children or the home’s total capacity exceeding eight children.

§745.8313. How long does Licensing have to process my request for a waiver or variance ?

(a) Within 15 days after Licensing receives your request, your Licensing representative:

 (1) Reviews your request and any supporting documentation; and

 (2) Makes a recommendation to the supervisor or the supervisor's designee whether to grant your requested waiver or variance.

(b) Within 15 days after receiving the Licensing representative’s recommendation, the supervisor or designee makes the final decision whether to grant the waiver or variance.

(c) Within five days after the supervisor makes the final decision, Licensing staff notifies you of the final decision.

§745.8315. When does a waiver or variance expire?

(a) We grant a waiver or variance for a specific amount of time and specify the date it will expire.

(b) We may issue a waiver or variance for up to three years. If you need a waiver or variance for a period of time that exceeds three years, you will have to submit a new request as explained in subsection (c) of this section.

(c) If you will still need a waiver or variance after the waiver or variance expires, you must submit a new request to us according to §745.8305 of this subchapter (relating to How do I request a waiver or variance?):

 (1) At least 35 days prior to the expiration; or

 (2) As soon as possible if the waiver or variance is for less than 35 days.

§745.8317. What must I do if my waiver or variance expires?

When your waiver or variance expires, you must comply with the minimum standard, even if a new request related to that standard is pending our review.

§745.8319. What may I do if I disagree with a time limit or condition that Licensing places on my waiver or variance?

(a) If you disagree with a time limit or condition that we place on your waiver or variance:

 (1) You may discuss an alternative time limit or condition with the Licensing supervisor or designee who made the decision and who may choose to amend the time limit or condition or continue to require the original time limit or condition; and

 (2) You also have the right to request an administrative review under §745.8805 of this chapter (relating to How does a person request an administrative review?). If you resolve the disagreement as described in paragraph (1) of this subsection after you request an administrative review, you may withdraw your request for an administrative review.

(b) You must comply with any original time limit or condition while the waiver or variance is in effect unless we notify you that we have changed the original time limit or condition as a result of situations described in subsection (a) of this section.

§745.8321. Can Licensing amend or revoke a waiver or variance?

(a) A waiver or variance is not an entitlement. Accordingly, we may amend or revoke a waiver or variance if:

 (1) We determine that a waiver or variance does not address a risk to children that currently exists;

 (2) The circumstances that supported the decision to grant the waiver or variance have changed;

 (3) You fail to meet a condition;

 (4) We determine that the waiver or variance requires an additional or alternative condition; or

 (5) We change the time limit or a condition as provided by §745.8319 of this subchapter (relating to What may I do if I disagree with a time limit or condition that Licensing placed on my waiver or variance?).

(b) If you disagree with our amendment of your waiver or variance, you may discuss the decision to amend it as provided by §745.8319 of this subchapter.

(c) If you disagree with our revocation of your waiver or variance, you may discuss the decision to revoke it as provided by §745.8323 of this subchapter (relating to What can I do if Licensing denies or revokes my waiver or variance?).

§745.8323. What can I do if Licensing denies or revokes my waiver or variance?

(a) If we deny or revoke your waiver or variance, you may request an administrative review as provided in §745.8805 of this chapter (relating to How does a person request an administrative review).

(b) You must comply with the minimum standard for which you requested a waiver or variance while your administrative review is pending.