

Note: Effective October 16, 2023, the below rules in Title 26, Chapter 745, Subchapter J, Waivers and Variances for Minimum Standards, were deleted and replaced with new rules in Title 26, Chapter 745, Subchapter J.

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 if I cannot comply with a specific minimum standard?~~

~~If you cannot comply, you will be deficient in a minimum standard; however, you may request a waiver or variance. A waiver or variance is not an entitlement. We consider each request individually.~~

~~§745.8303. What is the difference between a waiver and a variance?~~

~~By statute, you may request a waiver if the economic impact of compliance with a minimum standard is great enough to make compliance impractical. You may request a variance if there is good and just cause for you to meet the purpose of the minimum standard in a different way. PRS processes waivers and variances in the same manner.~~

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

~~You must submit your written request and any supporting documentation to the Licensing representative. Your written request must be either a PRS Child Care Waiver/Variance Request Form or a letter containing all of the information required on the form.~~

~~§745.8307. How does Licensing make the decision to grant or deny my waiver or variance request?~~

~~We will not grant a waiver or variance if the minimum standard is required by statute. For all other waiver and variance requests, we consider the following factors when making the decision to grant or deny your request:~~

- ~~—(1) The risk to children if you are not meeting the standard;~~
- ~~—(2) The compliance history of your operation;~~
- ~~—(3) The monitoring plan assigned to your operation;~~
- ~~—(4) Any waivers or variances currently in effect;~~
- ~~—(5) Your regulatory status (for example, whether you are on initial status, evaluation, or probation);~~
- ~~—(6) Any economic factors or other constraints affecting your ability to comply;~~
~~and~~

~~—(7) Any other variables identified by Licensing staff.~~

~~§745.8309. Who makes the decision to grant or deny my waiver or variance request?~~

~~The PRS Licensing representative reviews the material you submit and makes a recommendation to his supervisor or his supervisor's designee. The Licensing supervisor or his designee makes the final decision to grant or deny the waiver or variance.~~

~~§745.8311. Does a waiver or variance expire?~~

~~Yes. We grant a waiver or variance for a specific amount of time and specify the date it will expire. In no circumstances will a waiver or variance be granted for more than three years.~~

~~§745.8313. Is a waiver or variance unconditional?~~

~~No. We may set conditions on the waiver or variance, so it does not place children at risk. You must comply with the conditions at all times.~~

~~§745.8315. What if I disagree with the time limit or conditions that Licensing places on my waiver or variance?~~

~~The waiver or variance time limit and conditions are determined by the supervisor or the supervisor's designee and are based on the risk to children. You may discuss an alternative time limit or conditions with the Licensing staff who made the decision. The Licensing supervisor or designee may choose to amend the time limit or conditions as a result of the discussion or continue to require the original conditions. If you cannot reach a mutual agreement as to the time limit or conditions, you can either comply with the minimum standard or appeal the denial in the same manner specified in §745.8319 of this title (relating to What can I do if Licensing denies or revokes my waiver or variance?).~~

~~§745.8317. Can Licensing amend or revoke a waiver or variance, including its conditions?~~

~~Yes. We may amend or revoke a waiver or variance if:~~

- ~~—(1) It presents a risk to children;~~
- ~~—(2) The circumstances that supported it have changed;~~
- ~~—(3) You failed to meet the conditions; or~~
- ~~—(4) We agree to an alternative time limit or conditions.~~

~~§745.8319. What can I do if Licensing denies or revokes my waiver or variance?~~

~~If we deny or revoke your waiver or variance, you may request an administrative review. You must send your written request to the Director of Licensing within 15 calendar days after you receive our denial or revocation letter. Forward a copy of~~

~~your letter to the Licensing supervisor. Your request for a review must include a copy of the letter denying your request for a waiver or variance, and any additional information that supports your waiver or variance request. We will hold you accountable for complying with the minimum standard for which you requested a waiver or variance while you are requesting an administrative review.~~