

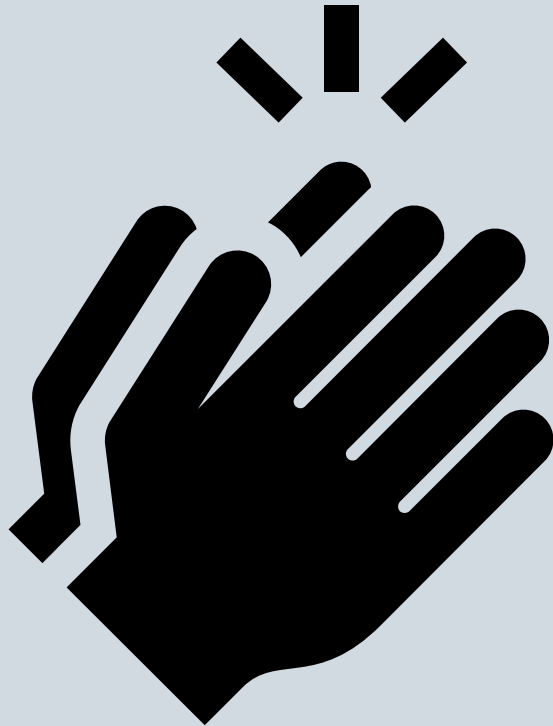


General Variance

DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE SERVICES
RESIDENTIAL LICENSING

Learning Objectives

1. At the end of this presentation, you will know:
2. What is a general variance?
3. What statutes and regulations you can seek a variance for?
4. When can the Department grant a variance?
5. What to expect if you're seeking a variance to Admit a child for care?



What is a General Variance?

A general variance is a Department approval to be out of compliance with a statute or regulation.

This means, if the Home has an approved variance, they will not be out of compliance with statute or regulation and not face possible enforcement action.

However,....

Objectives of a General Variance

The Department will only grant a variance if:

1. The Home has found a different method or alternative means to meet the requirement of the statute or regulation.
2. If granting the variance promotes a resident's ability to age in place and minimizes the need of said resident to move.
3. If it promotes a resident's abilities mentally, developmentally, and physically to reach the highest level of functioning.
4. The health, safety, and welfare of recipients of services are protected.





What a General Variance is not?

A general variance is not an easy fix.

Assisted Living statutes and regulations were created to ensure the health, safety, and welfare of individual receiving care.

It should not be taken lightly a granted variance means you are approved to not follow the law and can be revoked at any time.

What statutes and regulations can you seek a variance for?

Under the authority of 7 AAC 10.900 - 7 AAC 10.9535, an assisted living home may seek a variance from:

1. AS 47.32 Centralized Licensing and Related Administrative Procedures.
2. 7 AAC 10.1000 – 7 AAC 10.1095 including Barrier Crimes and Conditions and Environmental Health and Safety.

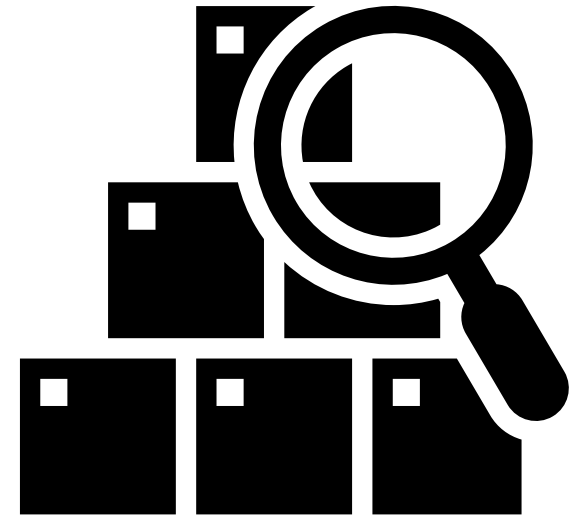
The Department may only grant a variance for the statutes and regulations above, should you submit a request for a variance outside these items, the Department cannot fulfill your request

Submitting a General Variance Request

To request a general variance the Home must submit their request on the Departments form.

The general variance application can be provided by your assigned licensing specialist, submitting a request to ALH.Newhome@alaska.gov, or by visiting the Assisted Living Licensing website and visiting the “Provider Forms & Resources” section.

<https://health.alaska.gov/dhcs/Pages/cl/ALH%27s/Provider-Resources.aspx>



What is required in the variance application?

1. Identify the statute or regulations that is not being met.
2. A description why the Home cannot come into compliance with the statute or regulation and what the impact to the Home will be to seek compliance.
3. The amount of time the variance is needed.
4. The Home's proposed alternative ways to meet the requirement of the statute or regulation.
5. How will the health, safety, and welfare of resident be protected if the variance is approved.
6. Plans to achieve compliance before the variance expires.
7. Assurances that conditions will not present a danger to residents.

What is required in the application? Continued.

8. If the variance involves fire safety or another state municipal requirement, the Home will need to provide evidence if has been reviewed and approved by that authority.
9. The names and addresses of the residents and their representatives.
10. The Department may request additional documentation depending on the statute or regulation for which you are seeking a variance.

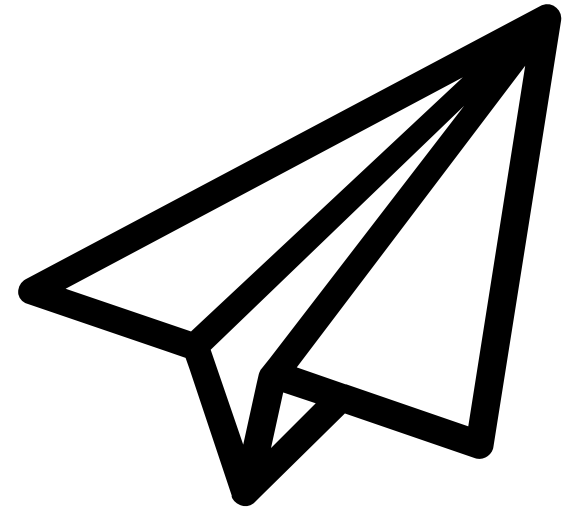
Requirement to Provide Notice

Under 7 AAC 70.9515 and as part of the variance application process, the Home is required to provide notice to each affected resident or their legal representative of the Home intent to seek a general variance from statute or regulation.

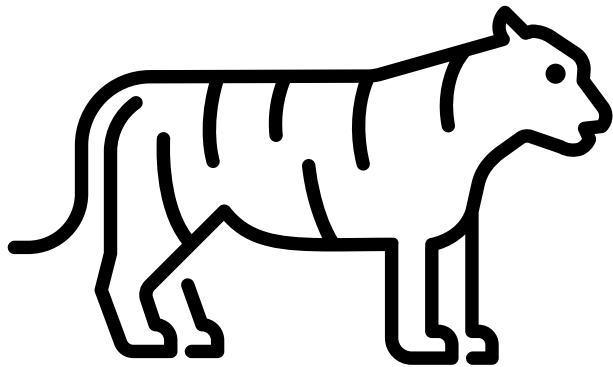
A copy of the notice must be included with your application and provided to the identified resident or representative with five days after the Home submits their variance request, note this can also be done before submitting a variance.

The notice must include:

1. A summary of the variance request the Home is seeking.
2. That the resident or representative has the right to submit comments to the department regarding the request. The Home should use the contact information of their assigned licensing specialist.
3. The date by which any comments must be received by the department.
 1. Home should allow the Department 10 business days to receive comment.



Sample Notice



Date: 11/24/2023

Attention: Resident Name or Representative

Cats are the Best Assisted Living Home is seeking a variance from 7 AAC 10.1090. Animals (g) Amphibians, ferrets, reptiles, and wild, poisonous, or predatory animals may not be kept in an entity listed in 7 AAC 10.1000(b).

The Home is seeking a variance to this regulation as the Home wishes to have a pet lion reside in the Home. The lion will be housed in a steel cage in our backyard, has current vaccinations, and we have been informed it bites softly.

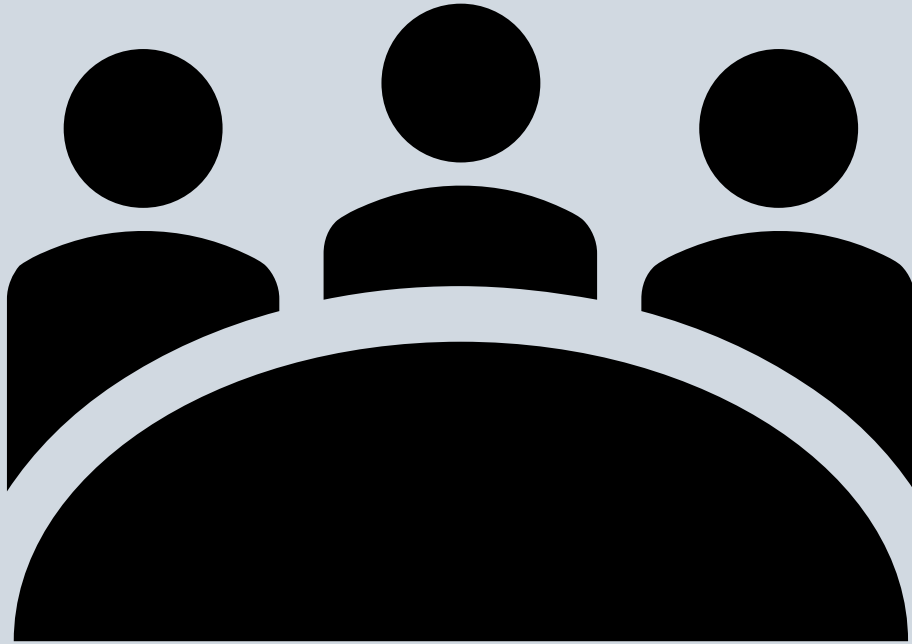
As a Resident or Representative of a Resident of our Home, you have the right to submit any comments or concerns to the Department regarding our variance request. Please contact our licensing specialist (Licensing Specialist Name, Phone Number, and Email Address) with your comments or concerns.

Your comments or concerns must be received within 10 business days to the Department of the date of this notice.

Thank you,

Cats are the Best Assisted Living Home

Meow!



General Variance Evaluation

Once a general variance is received by the Department your assigned licensing specialist will review your request and ensure your request is complete.

Your Licensing Specialist may request additional documentation or conduct a visit to the Home so the Department can effectively evaluate the risk to the residents of the Home and that their health, safety, and welfare will be protected.

Once your application is complete, the licensing specialist will make their recommendation as to whether your variance request, should be approved, approved with conditions, or denied and is then submitted to the variance committee.

The variance committee consists of all members of the Residential Licensing management team, and they will make a decision regarding the variance request.

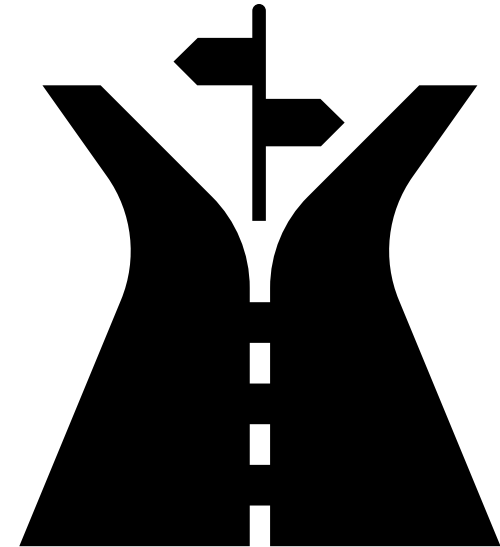
Decision

Once the committee has decided to approve or deny a variance the Home will be notified in writing by the Department of the decision.

Should the variance be approved, the decision may include conditions. The decision issued to the Home will identify the conditions the Home must abide.

The decision will identify when the variance expires.

Failure of the Home to abide by any conditions listed in the variance can result in the Department revoking the Home's variance.



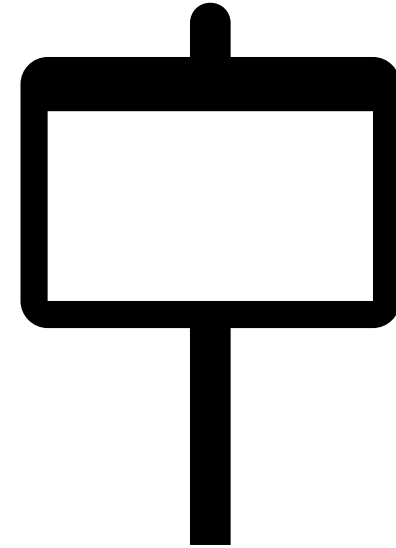
Request for reconsideration of denial or revocation of a general variance.

1. If the department denies or revokes a variance subject to 7 AAC 10.9500 – 7 AAC 10.9535, the entity may submit a written request to the department for reconsideration of that decision.
2. The request must be submitted within 30 days after the Home receives the denial or notice of revocation, and must include
 1. The requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;
 2. A summary of the department's decision to be reviewed; and
 3. A clear and concise statement of the reason for the request, including
 1. A statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;
 2. The contested terms and conditions of the department's decision, and proposed alternatives; and
 3. Copies of any documents or data that would assist the department in its review.
3. After reviewing a request for reconsideration, the department will notify the entity in writing within 30 days after receiving the request and will state the reasons for the department's final decision.

Posting Required

If the department grants a request for a general variance, the entity shall post a copy of the general variance decision in a conspicuous place, in the Home, during the period the variance is in effect, and shall make it available to any person who wishes to review it. A general variance remains in effect for the duration stated, unless the department revokes the variance.

This posting requirement will be satisfied if the variance is listed on the Home's license issued by the Department.



Continuation of an Approved Variance

Effective 12/01/2023, Homes with an approved variance will be able to request a continuation of any approved variances, on the Assisted Living Home License Renewal Application.

Homes with previously approved variance will no longer have to complete a new variance application, if they utilize this continuation request in the renewal application.

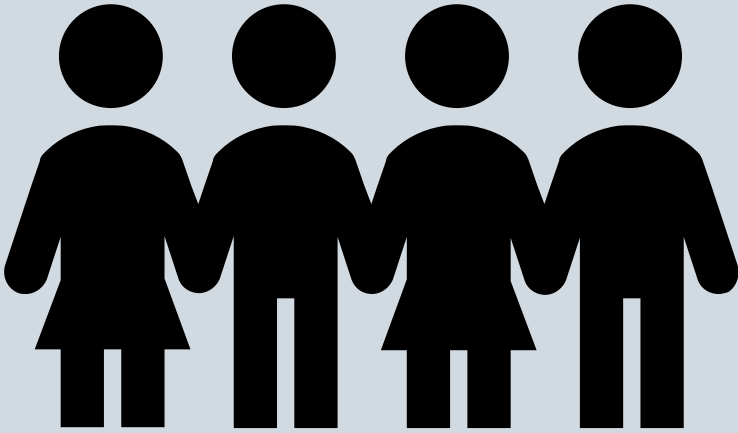
7. General Variance Continuation Request -

Does the Home have any currently approved general variances? Yes No

Does the Home wish to request continuation of those approved general variances? Yes No

If yes, please list below the statute and/or regulation the variance was granted for, if the variance is for specific resident provide the resident's first and last name and date of birth.

7 AAC 75.415. Temporary variance to admit a child for care in an assisted living home.



An assisted living home may apply for a temporary variance to admit a specific child by name for care if the home and a referring agency, in addition to meeting all other applicable requirements of 7 AAC 10.1000 – 7 AAC 10.1095.

1. Ensures the health and safety of the adults in the home;
2. Ensures the health and safety of the child; and
3. Is approved by the department, by the child's representative, and by each resident of the home or the representative for each resident.

Effective 12/01/2023, the Department will be utilizing a separate application for Home's requesting a variance to admit a child.

The Home must contact their assigned licensing specialist or request an application from alh.newhome@alaska.gov.

Application to Admit Child – Part 1

The application request:

1. The Home's information.
2. The Child, Legal Guardian, Care Coordinator, and/or OCS Case Worker's information.
3. How long do you wish to provide care to the child you're requesting a variance for?
4. Provide a detailed statement of why your Home is seeking a variance to admit a child.
5. Identify the services the Home will be providing the child including any health-related services and/or any type of restraints. Identifying any current or planned trainings/certifications to address the child's needs for example: MANDT, CPI, Medication Administration, Mental Health First Aid.

Application to Admit Child – Part 2

The application request:

6. Safety Plan: How will the health, safety and welfare of the child be protected if the variance is approved? Note: The Department requires the Home to provide a designated caregiver 24/7 for the child and separate staffing for any adults receiving care.
7. Does the Home currently have any residents receiving care? If yes, please provide the full name of each resident, their date of birth, the full name of their legal representative, and their legal representative contact phone number.
8. Safety Plan: How will the health, safety and welfare of the adults residing in the Home be protected if the variance is approved? Note: The Department requires the Home to provide a designated caregiver for the child and separate staffing for any adults receiving care.

Application to Admit Child – Part 3

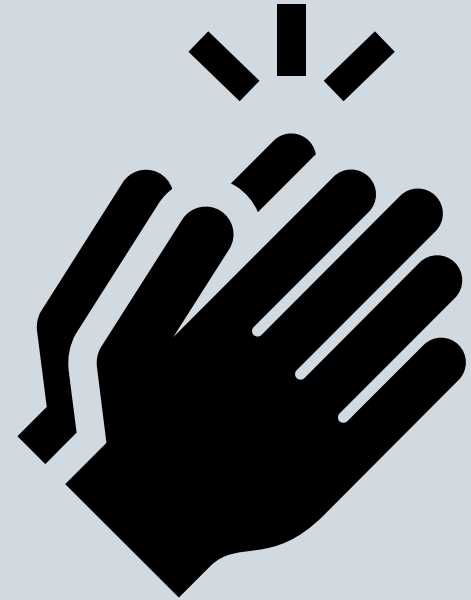
9. Documents Required: Include the following documentation with this application:
- Letter of recommendation from child's legal representatives as to why your home would best meet the needs of the child.
 - A signed and complete Assisted Living Plan, Home Community Based Services Support Plan, or Treatment Plan for the child outlining any diagnoses and level of care needed.
 - A physician's statement documenting the child is able to receive their needed care in your home.
 - A staffing plan indicating one-on-one staffing for the child 24/7 while in the home, and the additional staff to supervise the other residents.
 - Documented approval by the Home's other residents and/or legal representatives, agreeing to the placement of the child in the Home and the safety plan.

General Variance Vs. Variance to Admit a Child

The process for which these two variances are handled by the Department are the same, but with one major difference.

For the Department to grant a variance to Admit a child for care into an assisted living home, all current residents or the resident's legal representatives must approve of the placement of the child and the proposed safety plan for the variance to be approved.

The Home can provide documentation of current resident or representative approval or disapproval with their variance application, or the resident or representative may contact the department with their approval or denial.



Sample Notice to Admit a Child for Care in an Assisted Living Home.

Notice: Temporary Variance to Admit a Child for Care in an Assisted Living Home

(Assisted Living Home Name), is requesting a temporary variance to admit a child for care.

As a resident, (Resident's Name Receiving Notice), of the Home and/or a legal representative of a (Resident's Name Receiving Notice), you have right to submit any comments to the Department of Health's Residential Licensing Program regarding the Home's request to admit a child for care.

Please send comments to:

Home's Assigned Licensing Specialist Name
Home's Assigned Licensing Specialist Email Address
Home's Assigned Licensing Specialist Phone Number

Additionally,

Before the Department of Health's Residential Licensing Program can approve the Home's request to admit a child, you, (Resident's Name Receiving Notice), as a resident of the Home and/or a legal representative of the resident must approve of the Home's request and it's attached safety plan..

Do you approve of our Home's request to admit a child for care?

Yes – I approve of the Home's request to admit a child for care and the safety plan.

No – I do not approve of the Home's request to admit a child for care and the safety plan.

Please return this notice with your approval or denial to the Home and/or the Home's assigned Licensing Specialist (see above contact information).

Signature of Resident or Resident's Legal Representative

Date: _____

Printed Name of Resident or Resident's Legal Representative

What to look for in the future?

The Residential Licensing team is in the process of creating a frequently requested documents guide to accompany the general variance application.

The goal of this document will be to help the Home provide a more complete variance application to the Department.

This guide will not address all the statutes or regulations, but the most common the program receives request for.

Furthering your Knowledge: Statutes and Regulations

7 AAC 75.405. Request for variance.

7 AAC 75.415. Temporary variance to admit a child for care in an assisted living home.

7 AAC 10.9500. Purpose and applicability.

7 AAC 10.9505. General variance.

7 AAC 10.9510. Request for a general variance.

7 AAC 10.9515. Notice requirements for general variance requests for assisted living homes.

7 AAC 10.9520. Evaluation of a request for a general variance.

7 AAC 10.9520. Evaluation of a request for a general variance.

7 AAC 10.9530. Posting of a general variance.

7 AAC 10.9535. Request for reconsideration of denial or revocation of a general variance.



Questions or Comments

- If you have any additional questions or concerns, please follow-up with your assigned licensing specialist and/or their supervisor.
- Questions and concerns can also be sent to ALH.Newhome@alaska.gov.