

FAQs ON PETITIONS FOR VARIANCE OR WAIVER OF AN AGENCY RULE

Question A: May a nursing home or assisted living facility request a waiver from the emergency rules?

Answer: Nursing homes and assisted living facilities affected by the rule may file a petition for a waiver or variance under Section 120.542, Florida Statutes. Requests should demonstrate efforts to comply with the rule, describe why a waiver or variance is requested, and specify the section of the rule from which relief is requested.

Question B: How do I obtain information on filing a petition for variance or waiver of an agency rule?

Answer: The procedures for filing a variance or waiver can be found at section 120.542, Florida Statutes (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.542.html), and rule 28-104, Florida Administrative Code (<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=28-104>).

Question C: How do I file a petition for variance or waiver?

Answer: Petitions for variance or waiver must be filed with the Agency Clerk's Office. Nursing homes must file their Petition for variance or waiver with the Agency Clerk for the Agency for Health Care Administration ("Agency"). Assisted living facilities must file their Petition for variance or waiver with the Department of Elder Affairs ("Department"). The contact information for the Agency Clerks is as follows:

For Nursing Homes:

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
(850) 412-3671 (Tel.)
(850) 921-0158 (Fax)
Richard.Shoop@ahca.myflorida.com

For Assisted Living Facilities:

Francis Carbone, Agency Clerk
Department of Elder Affairs
4040 Esplanade Way, Ste. 315
Tallahassee, FL 32399-7000
(850) 414-2342 (Tel.)
(850) 414-2126 (Fax)
Carbonef@elderaffairs.org

Petitions for variance or waiver can be filed with the respective Agency Clerk's Office via mail, facsimile or hand delivery. Petitions for variance from nursing homes may also be filed electronically through the Agency's e-file system, which is located on the Agency's website at <http://apps.ahca.myflorida.com/Efile>. If a petition for variance or waiver is filed by facsimile or electronic transmission after 5:00 pm, it shall be deemed to have been filed as of 8:00 a.m. on the next regular business day. You only need to file your petition for variance or waiver by one method (e-file, facsimile, courier, hand-delivery, or U.S. mail). Any duplicate filings will not be docketed and will be destroyed.

Question D: What should I put in my petition for variance or waiver?

Answer: A petition for variance or waiver must contain:

- 1) The name, address, any e-mail address, telephone number, and any facsimile number of the party requesting the variance or waiver, as well as that of the party's attorney or qualified representative, if they have one;
- 2) The rule from which a variance or waiver is requested and a citation to the statute that the rule is implementing;

- 3) Whether the party filing the petition is seeking a variance or a waiver of the rule at issue and whether it wants the variance or waiver to be temporary or permanent;
- 4) The specific facts that would justify a waiver or variance; and
- 5) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

Question E: What happens once I file the petition?

Answer: Within 15 days after receiving a petition for waiver of variance, the Agency or the Department must provide notice of the petition to the Department of State, who, in turn, publishes the notice in the first available issue of the Florida Administrative Register. Once the notice is published, interested parties have 14 days in which to submit written comments on the petition to the Agency or the Department. Additionally, within 30 days of the date the petition is filed, the Agency or the Department must review the petition and may request additional information from you.

Question F: How long will it take for the Agency or the Department to make a determination on my petition?

Answer: Section 120.542, Florida Statutes, requires the Agency or the Department to grant or deny a petition for variance or waiver within 90 days after receipt of the petition, receipt of the last item of timely requested additional information, or the party's written request to finish processing the petition, whichever is last in time. Given the nature of the emergency rule, all effort will be made to grant or deny a petition in an expedited manner.

Question G: How will the Agency or the Department decide whether to grant or deny a petition for variance or waiver?

Answer: Section 120.542, Florida Statutes requires the Agency or the Department to grant a petition for variance or waiver when the person requesting it demonstrates that it can meet the purpose of the underlying statute by other means; and when application of a rule would create a substantial hardship or would violate principles of fairness. The "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Question H: How will I know if my petition is granted or denied?

Answer: The Agency or the Department must grant or deny a petition for variance or waiver by written order that contains a statement of the relevant facts and reasons supporting the decision. The Agency or the Department must file a copy of the order with the Administrative Procedures Committee and provide notice of the issuance of the order with the Department of State, who then publishes the notice in the next available issue of the Florida Administrative Register.

Question I: What can I do if I do not agree with the decision to deny my petition?

Answer: If the party who filed the petition for variance or waiver does not agree with the Agency or the Department's decision, then they are entitled to challenge it in a proceeding under sections 120.569 and 120.57, Florida Statutes. The written order notifying you of the final decision will contain a Notice of Rights that instructs the person filing the petition how they can challenge the decision and the timeframe for doing so.