

## .12 VARIANCES

### A. The Office may not:

- (1) **Waive a regulation; or**
- (2) **Grant a variance that diminishes safeguards to a child's health, safety, or well-being.**

INTENT: Under Maryland law, CCA has no authority to grant you an exemption from any regulation. All regulations under COMAR 07.04.01 exist primarily to protect the health, safety, and welfare of each child in care. Therefore, CCA will only grant a variance that would not diminish that protection.

### B. The Office may grant a variance:

- (1) **When the provider presents clear and convincing evidence that a regulation is met by an alternative which complies with the intent of the regulation for which the variance is sought; and**
- (2) **For a limited period of time as specified by the Office or for as long as the certificate remains in effect and the provider continues to comply with the terms of the variance.**

INTENT: A variance is an acceptable way of meeting the intent of a regulation without meeting the regulation's literal requirements. If you believe you cannot reasonably meet a regulation's literal requirements, you may request a variance from the Regional Office. In making your request, you must propose an alternative and demonstrate how the alternative will fully satisfy the regulation's intent.

#### Notes:

- To request a variance, you must submit a completed Variance Request form (DHR/CCA [1213](#)), along with any relevant supporting documentation, to the Regional Office.
- If the variance is granted, it has the same force and effect as the regulation, and you must comply fully with all of its terms and conditions.
- Before inspecting your home, your Licensing Specialist will review your file to see if a variance is in effect and, if so, what its nature and duration are. If a variance is in effect, the Specialist will determine during the inspection if you and the home comply with the terms of the variance.
- If you are not in compliance with the terms of the variance, the time code (shown on the inspection report as C1, C2, or C3) for correcting the noncompliance is the same as it would be for the regulation.

### C. In deciding whether to grant a variance to a regulation, the Office shall consider:

- (1) **The provider's record of compliance with this chapter;**
- (2) **The ages, developmental maturity, individual needs, and other characteristics of the children in care at the home; and**
- (3) **Any other relevant factors concerning the environment in which child care is provided at the home.**

INTENT: Each variance decision is a provider-specific action. That means it must take into account your compliance history, the particular children served by your program, and any other issues concerning your program that may be affected by the variance.

### D. Within 30 calendar days of receiving a completed request for a variance, the Office shall notify the provider that the variance has been granted or denied.

INTENT: You are responsible for submitting all information and documentation needed by the Regional Office to reach a decision on the variance request. Until the Regional Office has received all relevant information, the variance request is not complete. Once the request is complete, the Regional Office is responsible for

making a decision about the request and informing you of the decision in a timely manner.

Note: The Regional Manager will ensure that the decision is recorded on the Variance Request form and sent to you.

**E. If a variance request is denied by a regional office of the Agency, the provider may appeal the denial to the Agency's central office.**

**INTENT:** If you believe that an adverse decision by the Regional Office was unfair or in error, you may appeal the decision to the CCA Director of Licensing. If you are not satisfied with the Director's decision, you may appeal further to the CCA Executive Director. Appeals to the Director of Licensing and the Executive Director may be made verbally or in writing.

Note: If you want to appeal a variance denial made by the Regional Manager, the Regional Manager must:

- Give your name and telephone number of the CCA Director of Licensing, and
- Forward to the Director of Licensing a copy of the variance request and all pertinent supporting documentation, with a written explanation of the basis for the Manager's denial of the request.