

Process for Consideration of Petitions for Variances/Waivers

From time to time, variances and waivers from licensing regulations may be requested by Providers. PCLB has established a process that complies with the applicable law to consider requests for variances/requests from regulations by Providers. Because of the changes that have been made to the statewide regulations, this situation is arising more frequently state-wide.

- A variance is a decision to grant a modification to all or part of the literal requirements of a regulation.
- A waiver is a decision to not apply all or part of a regulation.

PCLB is unique in that it has its own regulations that exceed state regulations. A variance/waiver can be granted temporarily or permanently while the Provider is licensed at the same location. PCLB has two variance/waiver processes in compliance with applicable law as follows:

- (1) For a situation in which a Provider petitions for a variance/waiver from a Pinellas regulation; and
- (2) For a situation in which a Provider petitions for a variance/waiver from a statewide regulation. In situation (2), PCLB is required to follow a more detailed process just like DCF. The proposed processes for each situation are attached.

Legally, variances and waivers are to be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person, and when application of a rule would create a substantial hardship or would violate principles of fairness.

Process for handling a Request for a Variance/Waiver from a Pinellas County Regulation

This process applies where a Provider requests a variance or waiver from a Pinellas County Regulation but will remain in compliance with State Regulations.

1. Provider completes the Petition for Variance/Waiver form and indicates that the request is for a variance/waiver from a Pinellas County regulation, but the Provider will meet the statewide regulation.
2. Assuming the form is completely and correctly filled out, within 30 days after the Request, staff shall review the petition and request submittal of any additional information that may be needed to consider the request.
3. The Provider will have 30 days to provide any additional information requested. If the Provider does not provide any response to the request for additional information within 30 days from the request, staff will consider only the original petition and information previously submitted.
4. PCLB will grant or deny a petition within 90 days after receipt of the original petition, the last item of timely requested additional information or the Provider's written request to finish processing the request.
5. The Executive Director is delegated the authority by PCLB to grant or deny a request for variance/waiver from a Pinellas County Regulation after consultation with PCLB legal counsel and will issue the ruling which shall contain a brief statement of the facts and the reasons supporting the decision to grant or deny the request.
6. Appeal rights of PCLB's decision are provided as required by applicable law.

Process for handling a Request for a Variance/Waiver from a Statewide Regulation

This process applies where a Provider requests a variance or waiver from a Statewide Regulation.

1. Provider completes the Petition for Variance/Waiver form and indicates that the request is for a variance/waiver from a statewide regulation.
2. Within 15 days after receipt of a petition, staff shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Register.
3. Assuming the form is completely and correctly filled out, within 30 days after the Request, staff shall review the petition and request submittal of any additional information that may be needed to consider the request.
4. The Provider will have 30 days to provide any additional information requested. If the Provider does not provide any response to the request for additional information within 30 days from the request, staff will consider only the original petition and information previously submitted.
5. PCLB will grant or deny a petition within 90 days after receipt of the original petition, the last item of timely requested additional information, or the provider's written request to finish processing the request.
6. The Executive Director is delegated the authority by PCLB to grant or deny a request for variance/waiver from a statewide regulation after consultation with PCLB legal counsel and will issue the ruling which shall contain a brief statement of the facts and the reasons supporting the decision to grant or deny the request.
7. The disposition of the petition shall be provided to the Department of State, which will publish the notice in the next available issue of the Florida Administrative Register.
8. Appeal rights of PCLB's decision are provided as required by applicable law.

Please contact our office at 727-507-4857 to obtain the appropriate form.