

March 14, 2019

Dear Residential Care Home Provider,

This communication is to clarify the information required to apply for a variance to 5.1.a of the Residential Care Home Licensing Regulations.

The Residential Care Home Licensing Regulation 5.1.a states “The licensee shall not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide.”

Variance Request

A variance can be granted to 5.1.a by following the variance process found at 3.5. The process directs you to furnish:

3.5.a A current assessment, with a description of the resident’s care needs and how the home will meet those needs.

3.5.b A written statement from the resident or the resident’s legal representative stating the resident’s fully informed choice to remain in the home; and that they have been informed the resident will have to leave if the variance is terminated.

3.5.c A written statement from the resident’s physician giving the resident’s prognosis and recommending retention at or admission to the home.

Fire Safety

Residential Care Homes must comply with the Division of Fire Safety regulatory requirements. Please see the attached memorandum from the Division of Fire Safety dated October 18, 2018. Along with the three requirements above, you must also furnish written evidence that you have obtained permission from Fire Safety if you are requesting to increase the number of impractical residents beyond the number of three (3). Call the Division of Fire Safety at 1-802-479-7566 for further clarification.

Staffing

Due to the increase in the number of nursing home level of care residents Residential Care Homes wish to retain, we feel the need to address staffing levels. Per the Residential Care Home Regulations 5.11.a, There shall be sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to assure prompt, appropriate action in cases of injury, illness, fire, or other emergencies. Per Residential Care Home Regulation 5.11.g, the licensing agency may require a home to have specified staffing levels in order to meet the needs of residents. Through careful consideration with the Department, **The Division of Licensing and Protection will now require Residential Care Home Residences to staff your home with at least two (2) caregivers per shift if you maintain six (6) or more nursing home level of care residents.**

When applying for a variance to admit or retain a resident who is eligible for nursing home admission, regardless of payor source, please include an attestation that your home has at least 2 caregivers on duty for each shift, if this means the home will be caring for six or more nursing

home level of care residents. Depending on resident needs, the second staff person assigned to the overnight shift is not required to be awake.

Required Materials

To request a level of care variance to be considered complete, the following must be submitted for each request:

1. LOC variance request form with all signatures;
2. Current resident assessment on the LOC variance request form that demonstrates nursing home LOC needs.
3. Permission from the Division of Fire Safety ***ONLY** if you are applying to admit or retain a **fourth (4th) or higher** resident classified as impractical;
4. A written attestation, signed by the Manager of record, confirming the home has 2 caregivers (or more) on duty per shift ***ONLY** if you are applying to admit or retain a **sixth (6th) or higher** resident with nursing home level of care needs.

DIVISION OF LICENSING AND PROTECTION (DLP)

LEVEL OF CARE VARIANCE REQUEST FORM

This form must be submitted with all questions answered for DLP to consider granting a variance. All required documents must be submitted at the same time or the request will be denied. A variance is necessary only when the needs of the resident exceed residential home level of care.

Facility Statement:

Section A

Name of Facility: _____ **Resident Name:** _____

Name and phone number for facility contact person: _____

This request is to: **Admit or Retain (circle one)** **ERC or PrivatePay/LOC (circle one)**

Will this resident put the number of ERC or LOC residents at (6) or more? **Yes/No (circle one)**

IF yes:
Have you included an attestation that is signed by the manager that the facility has at least two direct caregiving staff on all shifts? **Yes, No, N/A (circle one)**

Describe below how the resident's functional, cognitive and/or medical and nursing needs meet criteria for nursing home placement.

Include the following:

Does the resident use any type of siderail? Circle: **Yes** or **No**. If yes, include evidence of a side rail safety assessment.

Does the resident require any type of behavioral management? **Yes** or **No**. If yes, Describe below.

Does the resident require ADL support? Describe all needs below.

Other:

I attest that the core needs of this resident and all other residents of the facility shall be met.

Facility RN

Date:

Manager

Date:

Section B

Resident Statement:

I understand that the manager believes that my care needs may exceed what the facility is licensed to provide. I wish to continue to live here and the manager has assured me that they can meet my care needs. I further understand that I will have to leave this facility if this request is not approved or if the licensing agency terminates the variance in the future.

Resident/Legal Guardian Signature

Date

Physician Statement:

As the attending physician, I recommend continued stay or admission at this facility.

Physician

Date

Section C

Is the facility fully sprinklered? **Yes/No (circle one)**

Does your assessment of the resident classify them as being considered "impractical" per the Fire Safety definition? [The inability of a group to reliably move to a point in a timely manner]. **Yes/No (circle one)**

For questions, contact Fire and Safety at 802-479-7566

Number of current residents assessed as "impractical" per Fire Safety Definition? _____

Will this resident put the total number of impractical residents over (3)? **Yes/No (circle one)**

If yes, then your request must include evidence of approval from the Division of Fire Safety.

Mail or fax (802-241-0343) or scan (SurveyandCertification@Vermont.gov) this request with a current assessment/Clinical Eligibility Worksheet and staffing pattern to include any changes if this request is approved to:

**Dept. of Disabilities, Aging and Independent Living
Division of Licensing and Protection
HC2 280 State Drive
Waterbury, VT 05671-2060**