



Variance Request Process for a Licensed Substance Use Disorder Facility- Division for Regulatory Services

Purpose:

To establish a process for a substance use disorder facility to request and submit a formal written request for a temporary variance or exception from complying with a provision of a rule found at Title 25, Texas Administrative Code (TAC), Chapter 448, Substance Abuse Standards of Care Rules.

A variance cannot be granted for a statutory requirement. Each variance request is given full consideration by the commission and will be issued a formal response either granting or denying the variance request. Approved variances will be granted for a specified period of time.

Procedures and Criteria for Issuance of a Variance:

1. **Request for a variance-** A written variance request must specify the rule(s) at Title 25 TAC, Chapter 448 for which a variance is requested.
 - a) The facility must address the following criteria and provide documentation as necessary to support its position.
 - (1) An alternative method is used to meet the intent of the rule.
 - (2) Explain how the variance will not jeopardize the health, safety, or welfare of clients or compromise substance abuse services.
 - b) In addition to the criteria above, please include the:
 - (1) Facility Name
 - (2) Site address(es) that the variance will apply to.
 - (3) Site(s) License Number(s)
 - (4) Date of request
 - (5) Facility Contact person - name, email, phone, and mailing address if different than site address.

- c) Please submit requests to Lisa Peers, R.N., Nurse Consultant, at lisa.peers@hhsc.state.tx.us and by regular mail:

HHSC
Facility Licensing Group, Nurse Consultant
P.O. Box 149347, Mail Code 2835
Austin, Texas 78714

2. **Review process** - The variance request and supporting documentation is given full consideration through the following process:

- a) The Facility Licensing Group Nurse Consultant reviews the request for compliance with the licensing requirements and ensures that the facility has submitted all required information. The request is shared with the Facility Licensing Group Manager, Health Facility Compliance Branch Manager, and the Substance Abuse Compliance Manager. Additional information may be requested from the facility to support the variance.
- b) The Substance Abuse Compliance Manager reviews the variance request and supporting documentation and prepares an initial recommendation for approval or denial.
- c) The Regulatory Division Cross-Functional Health Facility Team considers the variance request and supporting documentation. The team reviews all evidence and documentation submitted by the facility and considers each of the criteria addressed by the facility in the variance request (see 1. a and b above).

The Cross-Functional Health Facility Team is composed of: the Health Care Quality Section Director, Enforcement Unit Manager, Facility Licensing Group Manager, Facility Licensing Group Nurse Consultant, Architectural Review Group Manager, Health Facility Compliance Branch Manager, and Substance Abuse Compliance Group Manager.

- d) The Cross-Functional Health Facility Team reaches a consensus decision to approve or deny the variance request after giving due consideration to historical data such as previous decisions the commission has made on similar requests. The Facility Licensing Group Nurse Consultant prepares a memorandum for review by the Deputy

Executive Commissioner for Regulatory Services, which specifies the regulatory and/or public policy reasons for the recommendation.

3. **Final Review and Consideration** – The final authority for granting or denying variances lies with the Deputy Executive Commissioner, Regulatory Services, of the Health and Human Services Commission.
 - a) The Deputy Executive Commissioner gives full consideration to the variance request and the supporting documentation provided by the facility, and to the consensus decision of the Cross-Functional Health Facility Team. The Deputy Executive Commissioner issues the final written letter to grant or deny the variance.
 - b) The commission will notify the facility that the requested variance is either approved or denied. The grounds and terms of the variance shall be recorded in writing. The facility must maintain the variance in its permanent records.
 - c) Variances are authorized under Title 25, TAC Section 448.402.