

761—11.3 (17A) Criteria, considerations and limitations.

11.3(1) The director shall not grant a waiver from the requirements of a rule unless the director or the department has jurisdiction over the rule and the waiver is consistent with any applicable statute, constitutional provision, or other provision of law. The director shall not waive any requirement created or duty imposed by statute.

11.3(2) The director may grant a waiver from the requirements of a rule if the director finds, based on clear and convincing evidence, all of the following:

- a.* Application of the rule will pose an undue hardship.
- b.* The waiver will not prejudice the substantial legal rights of any person.
- c.* The provisions of the rule subject to waiver are not specifically mandated by statute or another provision of law, and the waiver will not cause a denial of federal funds.
- d.* Substantially equal protection of the public health, safety, and welfare will be afforded by means other than that prescribed in the rule.

11.3(3) The department shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition. The burden of persuasion rests with the petitioner.

11.3(4) A waiver, if granted, shall provide the narrowest exception possible to the provisions of the rule.

11.3(5) The director may place any condition on a waiver that the director finds desirable to protect the public health, safety, and welfare.

11.3(6) A waiver shall not be permanent, unless the director finds that a temporary waiver would be impracticable.

11.3(7) If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds all of the factors set out in subrule 11.3(2) remain valid.