

Notice of Emergency Rule

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NO.: RULE TITLE:

58AER17-1: Procedures Regarding Emergency Environmental Control for Assisted Living Facilities

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The State has experienced extreme shortages of electrical power that have jeopardized, and continue to jeopardize, the health, safety and welfare of residents in Florida's assisted living facilities. According to the United States Census Bureau, Florida has the largest percentage of residents age 65 and older in the nation. According to the Centers for Disease Control and Prevention, people age 65 years or older are more prone to heat-related health problems. An incompetent response by a nursing facility to a loss of air conditioning after Hurricane Irma resulted in the tragic loss of eight senior citizens at the Rehabilitation Center at Hollywood Hills. Thousands of frail seniors reside in assisted living facilities in Florida. Ensuring assisted living facilities maintain sufficient resources to provide alternative power sources during emergency situations mitigates the concerns related to the health, safety and welfare of residents in those assisted living facilities that experience loss of electrical power. This emergency rule establishes a process by which assisted living facilities shall obtain sufficient equipment and resources to ensure that the ambient temperature of assisted living facilities will be maintained at or below 80 degrees Fahrenheit within the facilities for a minimum of ninety-six (96) hours in the event of the loss of electrical power. Prompt implementation of this rule is necessary to ensure continuity of care and to ensure the health, safety and welfare of residents of Florida's assisted living facilities.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The procedure used to adopt this emergency rule is fair as the State of Florida is under a declaration of emergency due to the massive destruction caused by Hurricane Irma, and it is essential to ensure as soon as possible that temperatures in assisted living facilities are maintained at a level providing for the safety of the residents residing therein; provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution; and takes only that action necessary to protect the public interest under the emergency procedure.

SUMMARY: This emergency rule establishes a process for the Department of Elder Affairs to ensure that licensees of assisted living facilities develop and implement plans that ensure ambient temperatures will be maintained at or below 80 degrees Fahrenheit or less for a minimum of ninety-six (96) hours in the event of the loss of electrical power to an assisted living facility.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jeanne Curtin, Senior Attorney, Department of Elder Affairs, Office of the General Counsel, curtinj@elderaffairs.org, (850)414-2096, 4040 Esplanade Way, Tallahassee, FL 32399-7000.

THE FULL TEXT OF THE EMERGENCY RULE IS:

(1) Assisted living facilities shall, within forty-five (45) days of the effective date of this emergency rule provide, in writing, to the Department of Elder Affairs at ALFEMP@elderaffairs.org and to the local emergency management agency for review and approval, a detailed plan which includes the following criteria:

(a) The acquisition of a sufficient generator or sufficient generators to ensure that current licensees of assisted living facilities will be equipped to ensure ambient temperatures will be maintained at or below 80 degrees Fahrenheit for a minimum of ninety-six (96) hours in the event of the loss of electrical power.

(b) The acquisition and safe maintenance of sufficient fuel to ensure that in the event of the loss of electrical power the generators will maintain ambient temperatures at or below 80 degrees Fahrenheit for a minimum of ninety-six (96) hours after the loss of electrical power.

(c) The acquisition of services necessary to install, maintain, and test the equipment and its functions to ensure the safe and sufficient operation of the generator system installed in the assisted living facility.

(2) Each assisted living facility shall, within sixty (60) days of the effective date of this rule, have implemented the plan required under this rule.

(3) If the facility's initial submission of the plan is denied, then the local emergency management agency shall report the denial to the Florida Division of Emergency Management and the facility within forty-eight (48) hours of the date of the denial.

(4) Within ten (10) business days of the date of the local county emergency management agency's notice of denial, the facility shall resubmit their plan.

(5) The county shall post all approved facility emergency management plans to their website within ten (10) days of the plan's approval.

(6) Within forty-eight (48) hours of the approval of the plan from local emergency management agency, the facility shall submit in writing proof of approval to the Agency for Health Care Administration and the Department of Elder Affairs.

(7) The State Fire Marshall shall conduct inspections to ensure compliance with this rule within fifteen (15) days of installation.

(8) Each assisted living facility shall develop and implement written policies and procedures to ensure that the facility can effectively and immediately activate, operate and maintain the generators and alternate fuel required for the operation of the generators.

(9) The Agency for Health Care Administration may revoke the assisted living facility's license for failure to comply with this rule.

(10) In addition to other remedies provided by law, violation of this rule shall result in a fine or sanction as provided in Section 429.19, F.S. of \$1,000 per day.

Rulemaking Authority 429.41, FS. Law Implemented 429.19, 429.28, 429.41, FS. History – New 9-16-17.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 9/16/2017