

GOV. SCOTT: I AM AGGRESSIVELY FIGHTING TO KEEP VULNERABLE FLORIDIANS SAFE DURING EMERGENCIES

Governor Scott provided the following statements and directives regarding Assisted Living Facilities and Nursing homes: **“Assisted living facilities and nursing homes serve our elderly and Florida’s most vulnerable residents, and so many families rely on the health care professionals at these facilities to care for their loved ones. I am outraged over the deaths of eight Floridians at the Rehabilitation Center at Hollywood Hills in Broward County and I am demanding answers as we furiously investigate this terrible loss of life. We must understand why this facility delayed calling 911 and evacuating patients and their decision to keep their patients in danger. During emergencies, health care facilities must be fully prepared to ensure the health, safety and wellbeing of those in their care and there is absolutely no excuse not to protect life. The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action. Failure to comply will result in penalties, including fines up to \$1,000 per day and the possible revocation of a facility’s license.**

“As ANY health care provider knows to do, if their patients are in danger – they MUST call 911. Around our state, thousands of nurses and health care professionals are rising to the challenge that Irma has presented to Florida. These individuals are heroes to the countless Floridians they serve and I am so proud of their work. Our state agencies, community partners and health care associations are also working together to shift resources in real-time to and from facilities with power to those without as power restoration continues. However, we must absolutely make sure there are laws in place to keep all vulnerable Floridians safe. I will stop at nothing to protect Floridians.”

59AER17-1 Nursing Home Emergency Power Plan

(1) Procedures Regarding Emergency Environmental Control for Nursing Homes. Nursing homes shall, within forty-five (45) days of the effective date of this emergency rule, provide in writing, to the Agency for Health Care Administration 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 nursing homes will be equipped to ensure ambient temperatures will be maintained at 80 degrees or less for a period of 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 an emergency situation the generators can function to maintain ambient temperatures at 80 degrees or less for a period of a minimum of ninety-six (96) hours in the event of 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 nursing home

(2) Each nursing home 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 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 the local emergency management agency, the facility shall submit in writing proof of approval to the Agency for Health Care Administration.

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

(8) Each nursing home 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 nursing home'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 of \$1,000 per day.

(11) The facility shall implement policies and procedures to ensure that the health care facility can effectively and immediately activate and maintain the generators and alternate fuel required for the operation of the generators.

Rulemaking Authority 400.23, 408.819, 408.821(4) FS. Law Implemented 400.23, 408.819, 408.821(4) FS. History –
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AGENCY FOR HEALTH CARE ADMINISTRATION

RULE TITLE:

Nursing Home Emergency Power Plan

RULE NO:

59AER17-1

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 nursing homes. 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 health-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 nursing homes in Florida. Ensuring that nursing homes 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 nursing homes that experience loss of electrical power. This emergency rule establishes a process for certain nursing homes to obtain sufficient equipment and resources to ensure that the ambient temperature of the nursing homes will be maintained at 80 degrees or less 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 nursing homes.

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 nursing homes 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 the action necessary to protect the public interest under the emergency procedure.

SUMMARY: This emergency rule establishes a process for the Agency for Health Care Administration to ensure that licensees of nursing homes develop and implement plans that ensure ambient temperatures will be maintained at 80

degrees or less for a minimum of ninety-six (96) hours in the event of the loss of electrical power to a health care facility.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Kimberly Stewart, Agency for Health Care Administration, Division of Health Quality Assurance, Bureau of Health Facility Regulation, 2727 Mahan Drive, MS# 28A, Tallahassee, FL 32308.

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.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED 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 OF THE RULE: 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.

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

(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.

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