

Notice of Change/Withdrawal

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE NO.: RULE TITLE:

59A-4.1265 Emergency Environmental Control for Nursing Homes

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 43 No. 220, November 14, 2017 issue of the Florida Administrative Register.

NOTICE OF CHANGE

59A-4.1265 Emergency Environmental Control for Nursing Homes

(1) DETAILED NURSING HOME EMERGENCY POWER PLAN. Each nursing home shall prepare a detailed plan ("plan"), to serve as a supplement to its Comprehensive Emergency Management Plan, to address emergency power in the event of the loss of primary electrical power in that nursing home facility, which includes the following information:

(a) The acquisition of a sufficient alternate power source such as a generator(s), ~~installed and~~ maintained at the nursing home facility, to ensure that current licensees of nursing homes will be equipped to ensure the protection of resident health, safety, welfare, and comfort for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power. ~~Safe Minimum~~ indoor air temperatures in resident occupied areas shall be determined by the licensee to meet the clinical needs of residents, but shall not exceed eighty-one (81) degrees Fahrenheit.

1. The required temperature must be maintained in an area or areas determined by the nursing home facility of sufficient size to maintain all residents ~~safely comfortably~~ at all times and is appropriate for the care needs and life safety requirements. For planning purposes, no less than ~~thirty (30) fifty (50)~~ net square feet per resident must be provided. This may include areas that are less than the entire nursing home facility if the nursing home's facility's comprehensive emergency management plan includes relocating residents to portions of the building where the health, safety, welfare, and comfort of the residents will be maintained as required by this rule. The plan shall include information regarding the area(s) within the nursing home facility where the required temperature will be maintained.

2. The alternate power source for the equipment necessary to maintain the safe indoor air temperature required by this rule may be provided by the essential electrical system required by the Florida Building Code for Nursing Home design and construction or ~~a permanently installed~~ onsite optional standby system as defined by NFPA 70 National Electrical Code supplying normal power to the nursing home facility maintained onsite at all times when the building is occupied. If an optional standby system is used, it must be ~~connected installed~~ and maintained in accordance with the manufacturer's recommendations. The alternate power source and fuel supply shall be located in an area(s) in accordance with local zoning and the Florida Building Code that is not subject to flooding or damage from storm surge.

3. Each nursing home facility is unique in size; the types of care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and staffing characteristics. Accordingly, this rule does not limit the types of systems or equipment that may be used to maintain the safe indoor air temperature required by this rule for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power. The plan shall include information regarding the systems and equipment that will be used by the nursing home facility required to operate the systems and equipment.

a. A nursing home in an evacuation zone pursuant to chapter 252, F. S. must maintain an alternative power source and fuel as required by this subsection at all times when the facility is occupied but is permitted to utilize a mobile generator(s) to enable portability if evacuation is necessary.

b. Facilities located on a single campus with other facilities licensed by the Agency under common ownership, may share fuel, alternative power resources, and resident space available on the campus if such resources are sufficient to support the requirements of each facility's residents, as specified in this rule. Details regarding how

resources will be shared and any necessary movement of residents must be clearly described in the emergency power plan.

c. A multistory facility, whose comprehensive emergency management plan is to move residents to a higher floor during a flood or surge event, must place its alternative power source and all necessary additional equipment so it can safely operate in a location protected from flooding or storm surge damage.

(b) The acquisition of sufficient fuel, and safe maintenance of that fuel on-site at the facility, to ensure that in the event of the loss of primary electrical power there is sufficient fuel available for the alternate power source required in subsection (1)(a) to power life safety systems, critical systems, and equipment necessary to maintain safe indoor air temperatures as described in this rule for ninety-six (96) hours after the loss of electrical power during a declared state of emergency. The plan shall include information regarding fuel source and fuel storage.

1. A nursing home located in an area in a declared state of emergency area pursuant to section 252.36, F.S. that may impact primary power delivery must secure ninety-six (96) hours of fuel. The nursing home may utilize portable fuel storage containers for the remaining fuel necessary for ninety-six (96) hours during the period of a declared state of emergency.

2. A nursing home must store a minimum of seventy-two (72) hours of fuel onsite,

3. Piped natural gas is an allowable fuel source and meets the onsite fuel requirement under this rule.

4. If there is a conflicting local ordinance or other regulations that limit the amount of onsite fuel storage for the nursing home's location and the nursing home does not have access to piped natural gas restricting the maximum amount of fuel storage allowed, then the nursing home facility must develop a plan that includes maximum onsite fuel storage allowable by the ordinance or regulation and a reliable method to obtain the maximum additional fuel at least 24 hours prior to depletion of onsite fuel shall maintain the maximum amount of fuel allowable by that local ordinance or code.

(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 alternate power source installed in the nursing home.

(2) SUBMISSION OF THE PLAN.

(a) Each nursing home licensed prior to the effective date of this rule shall submit its plan to the local emergency management agency for review and approval within thirty (30) days of the effective date of the rule. Nursing Home Facility plans previously received and approved under emergency rule 59AER17-1 will require resubmission only if changes are made.

(b) Each new nursing home shall submit the plan required under this rule prior to obtaining a license.

(c) Each existing nursing home that undergoes additions, modifications, alterations, refurbishment, reconstruction or renovations that require modification of the systems or equipment affecting the nursing home's facility's compliance with this rule shall amend its plan and submit it to the local emergency management agency for review and approval.

(3) PLAN REVIEW. Architectural and engineering plans are subject to review by the Agency's Office of Plans and Construction. The local emergency management agency shall review the emergency power plan for compliance with the subsection and may rely on the technical review of the Office of Plans and Construction. Once the review is complete, the local emergency management agency shall:

(a) Report deficiencies in the plan to the nursing home for resolution. The nursing home must resubmit the plan within ten (10) business days.

(b) Report approval or denial of the plan to the Agency and the nursing home.

~~(c) Post the approved facility emergency power plans on its website within ten (10) days of the plan's approval.~~

(4) APPROVED PLANS.

(a) Each nursing home must maintain a copy of its plan in a manner that makes the plan readily available at the licensee's physical address for review by the authority having jurisdiction. If the plan is maintained in an electronic format, nursing home facility staff must be readily available to access and produce the plan. For purposes of this section, "readily available" means the ability to immediately produce the plan, either in electronic or paper format, upon request.

(b) Within ~~two (2) business days~~ ~~forty-eight (48) hours~~ of the approval of the plan from the local emergency management agency, the nursing home facility shall submit in writing proof of the approval to the Agency for Health Care Administration.

~~(c) The nursing home shall submit a consumer friendly summary of the emergency power plan to the Agency. The Agency shall post the summary and notice of the approval and implementation of the nursing home emergency power plans on its website within ten (10) business days of the plan's approval by the local emergency management agency and update within ten (10) business days of implementation.~~

(5) IMPLEMENTATION OF THE PLAN.

(a) Each nursing home licensed prior to the effective date of this rule shall, no later than June 1, 2018 have implemented the plan required under this rule.

~~(b) The Agency shall grant an extension up to January 1, 2019 to providers in compliance with (c) below and who can show delays caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes. Nursing homes granted an extension must keep the Agency apprised of progress on a monthly basis to ensure there are no unnecessary delays.~~

~~(c) During the extension period, a nursing home must make arrangements pending full implementation of its plan that the residents are housed in an area that meets the safe indoor air temperature requirements of subsection (1) (a) for a minimum of ninety-six (96) hours.~~

~~1. A nursing home not located in an evacuation zone must either have an alternative power source onsite or have a contract in place for delivery of an alternative power source and fuel when requested. Within twenty-four (24) hours of the issuance of a state of emergency for an event that may impact primary power delivery for the area of the nursing home, it must have the alternative power source and no less than ninety-six (96) hours of fuel stored onsite.~~

~~2. A nursing home located in an evacuation zone pursuant to chapter 252, F.S. must either:~~

~~a. Fully and safely evacuate its residents prior to the arrival of the event; or~~

~~b. Have an alternative power source and no less than ninety-six (96) hours of fuel stored onsite, within twenty-four (24) hours of the issuance of a state of emergency for the area of the nursing home,~~

~~(d) (b) Each new nursing home shall implement the plan prior to obtaining a license.~~

~~(e) (e) Each nursing home that undergoes any additions, modifications, alterations, refurbishment, reconstruction or renovations that require modification of the systems or equipment affecting the nursing home's facility's compliance with this rule shall implement its amended plan subsequent with the completion of construction.~~

~~(f) (d) The Agency may request cooperation from the State Fire Marshal ~~to shall~~ conduct inspections to ensure implementation of the plan in compliance with this rule. ~~The State Fire Marshal may defer and utilize the inspection conducted by the Office of Plans and Construction for implementation and approval of the facility's alternative power source and fuel storage.~~~~

(6) POLICIES AND PROCEDURES.

(a) Each nursing home shall develop and implement written policies and procedures to ensure that each nursing home facility can effectively and immediately activate, operate and maintain the alternate power source and any fuel required for the operation of the alternate power source. The procedures shall be resident-focused to ensure that residents do not experience complications from heat exposure, and shall include a contingency plan to transport residents to a safe facility if the current nursing home's facility's plan to keep the residents in a safe and comfortable location within the nursing home facility at or below the indoor air temperature required by this rule becomes compromised.

(b) Each nursing home shall maintain its written policies and procedures in a manner that makes them readily available at the licensee's physical address for review by the authority having jurisdiction. If the policies and procedures are maintained in an electronic format, nursing home facility staff must be readily available to access the policies and procedures and produce the requested information.

(c) The written policies and procedures must be readily available for inspection by each resident; each resident's legal representative, designee, surrogate, guardian, attorney in fact, or case manager; each resident's estate; and all parties authorized in writing or by law.

(7) REVOCATION OF LICENSE, FINES OR SANCTIONS. For a violation of any part of this rule, the Agency may seek any remedy authorized by Chapter 400, Part II, Florida Statutes, or Chapter 408, Part II, Florida Statutes, including but not limited to, license revocation, license suspension, and the imposition of administrative fines.

(8) COMPREHENSIVE EMERGENCY MANAGEMENT PLAN.

(a) ~~Nursing homes Facilities~~ whose comprehensive emergency management plan is to evacuate must comply with this rule.

(b) Once the plan has been approved, the nursing home shall submit the plan as an addendum with any future submissions for approval of its Comprehensive Emergency Management Plan.

(9) NOTIFICATION.

(a) Within three (3) business days, each nursing home must notify in writing unless permission for electronic communication has been granted, each resident and the resident's legal representative:

1. Upon submission of the plan to the local emergency management agency that the plan has been submitted for review and approval;

~~2. Upon approval of the plan by the local emergency management agency; and~~

~~2. 3. Upon final implementation of the plan by the nursing home following review by the State Fire Marshal or the Agency's Office of Plans and Construction.~~

(b) The nursing home shall keep a copy of each written or electronic notification sent by the nursing home facility to the resident and resident's representative on file.

Rulemaking Authority 400.23, FS, Law Implemented 400.23, FS, History-New.