

Notice of Proposed Rule

AGENCY FOR HEALTH CARE ADMINISTRATION
Health Facility and Agency Licensing

RULE NO.: RULE TITLE:

59A-4.1265: Emergency Environmental Control for Nursing Homes

PURPOSE AND EFFECT: This rule establishes criteria for nursing home preparation and maintenance of emergency power in order to protect the health, safety, comfort, and welfare of nursing home residents in the event of the loss of primary electrical power.

SUMMARY: Rule 59A-4.1265 outlines the requirements for alternative power sources to provide emergency environmental control for nursing homes that experience loss of power.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The Agency has determined that the proposed rule is expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: A SERC has been prepared by the agency.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [400.23 FS](#)

LAW IMPLEMENTED: [400.23 FS](#)

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Tuesday, December 5, 2017, 12:30 p.m. - 2:30 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room A, Tallahassee, FL 32308.

Interested parties that would like to participate by phone can do so by using a call-in number and participant code:

Call-in number: 1-877-239-3911 and Participant Code: 270 926 87#

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Kim Stewart at (850) 412-3492. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kim Stewart at (850) 412-3492 or email at: LTCStaff@ahca.myflorida.com.

Public comments will be accepted until 5:00 p.m., December 5, 2017.

THE FULL TEXT OF THE PROPOSED RULE IS:

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 address emergency power in the event of the loss of primary electrical power in that 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 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. 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 facility of sufficient size to maintain all residents comfortably at all times and is appropriate for the care needs and life safety requirements. For planning purposes, no less than fifty (50) net square feet per resident must be provided. This may include areas that are less than the entire facility if the 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 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 facility. If an optional standby system is used, it must be installed and maintained in accordance with the manufacturer's recommendations. The alternate power source and fuel supply shall be located in an area(s) that is not subject to flooding or damage from storm surge.

3. Each 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 facility required to operate the systems and equipment.

(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. The plan shall include information regarding fuel source and fuel storage.

1. Piped natural gas is an allowable fuel source under this rule.

2. If there is a conflicting local ordinance restricting the maximum amount of fuel storage allowed, then the facility 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. 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 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, 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 forty-eight (48) hours of the approval of the plan from the local emergency management agency, the facility shall submit in writing proof of the approval to the Agency for Health Care Administration.

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

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

(d) The State Fire Marshal 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 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 facility's plan to keep the residents in a safe and comfortable location within the 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, 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) 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 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

3. Upon final implementation of the plan by the nursing home following review by the State Fire Marshal.

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Kimberly Stewart

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Justin M. Senior, Secretary, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 13, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 11, 2017