

**STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS
PETITION FOR EMERGENCY VARIANCE
FROM AND/OR
WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 58A-5.036**

Pursuant to Section 120.542, Florida Statutes, and Rules 28-104.002 and 28-104.004, Florida Administrative Code, OAK HAMMOCK AT THE UNIVERSITY OF FLORIDA, INC. (“Oak Hammock”), requests an emergency, temporary variance from and/or temporary waiver of Rule 58A-5.036, Florida Administrative Code.

In support of this request, Oak Hammock states:

Identification of Facility

1. The name, address, telephone number, fax number and license number:

Oak Hammock at the University of Florida, Inc.
2680 SW 53rd Lane
Gainesville, FL 32608

Telephone Number: (352) 548-1000 Main Line
(352) 548-1135 Administrator
(352) 548-1139 Fax

LICENSE AL 10493



2. Oak Hammock is a continuing care retirement community (the “CCRC Community”) with an eighty (80) bed licensed assisted living facility located in Gainesville, Alachua County, Florida (the “Facility”).

3. On March 26, 2018, Rule 59A-4.1265 Emergency Environmental Control for Assisted

Living Facilities (the “Rule”) became effective. The Rule was implemented pursuant to Section 429.19, Florida Statutes. The Rule requires assisted living facilities to provide the Department of Elder Affairs and the local emergency management agency a detailed written plan detailing the acquisition of generator(s) and the acquisition and safe maintenance of sufficient fuel for the generators to ensure that the generators can function in emergency situations so that temperatures in nursing homes are maintained at a level providing for the safety of residents residing therein, and the acquisition of services necessary to install, maintain and test the equipment and its functions to ensure the safe and sufficient operation of generators no later than June 1, 2018. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to such terms in the Rule.

4. Pursuant to the Rule, the Department shall allow an extension up to January 1, 2019 to providers in compliance with an interim plan in compliance with the Rule.
5. Oak Hammock has filed for and received approval of the extension up to January 1, 2019 (the “Extension”).
6. Oak Hammock has timely filed with the Department of elder Affairs (the “DOE”) and the applicable local emergency management agency the plans required under the Rule (the “Emergency Plans”).
7. DOE and the local emergency management agency have reviewed and approved the

Emergency Plans submitted by Oak Hammock.

8. Oak Hammock recently (dated November 16, 2018) received notice that the project plans have been approved for construction by the Agency for Health Care Administration (“AHCA”). As a CCRC the skilled nursing and assisted living portions of our community are in the same structure and the plan to is being implemented to meet the requirements of AHCA and DOE.

9. This Petition is being filed because, despite its best efforts, due to tremendous demand for generator installation services in the State of Florida, the significant lead time in ordering generators, diesel fuel tanks, and other components of a compliant generator system, and shortage of licensed contractors needed for such installation, Oak Hammock is unable to procure the necessary equipment to complete the installation of the generator by the extended deadline of January 1, 2019. Also the AHCA approval was only recently received and the necessary construction will take time to complete.

10. Oak Hammock plans to comply with the Rule by providing emergency generator capacity to support environmental control in excess of the required space in the assisted living (and the nursing home) during a power outage. This plan is a significant capital project at the facility requiring time for design, permitting, and construction including lead time on ordering a permanent generator. Oak Hammock has already incurred considerable expense with respect to the steps taken to date to comply with the Rule.

11. Oak Hammock has engaged an engineer. The engineer reviewed the building plans and building systems and worked with Oak Hammock in analyzing potential alternatives to comply with the Rule. After determining a course of action, Oak Hammock directed the engineer to create drawing. These drawing have been submitted and approved by AHCA.

12. Accordingly, despite its best efforts to comply with the Rule prior to January 1, 2019, Oak Hammock does not have the ability to do so.

13. Due to the necessary construction, ordering and delivery of equipment, and the regulatory approval process of this project, a request is being made for a one-hundred eighty (180)-day extension to allow Oak Hammock sufficient time to address, without limitation, the lead time for delivery of the generator and electrical work related to installation of the generator after delivery.

14. During the extension period, Oak Hammock has made arrangements pending full implementation of its plan that provides an area of sufficient size to maintain all residents safely at all times that meets the safe indoor air temperature requirements of subsection 58A-5.036 (1) (a), F.A.C., for a minimum of 96 hours. To comply with the Rule during the extension period, Oak Hammock has in place the following:

Oak Hammock at the University of Florida is going to meet the requirements pending full implementation in the following way:

- Oak Hammock has rented and purchased the materials necessary for the

deployment of a temporary system to generate electricity to power portable cooling units. The generating unit is QAS120-NAV unit. The rental also includes a 1,000 gallon fuel storage tank that will surpass the required 96 hours of fuel required.

- **F.S. 119.071(3)(a)2.b.**

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- Rented Portable Generator until full implementation.
 - Picture of Unit being deploys (attached)
 - Rental Contract (attached)
- Rented cables and connectors to integrate into system.
- Letter from Electrician (Helme) that generator can carry the load (attached).

- **F.S. 119.071(3)(a)2.b.**

- Map showing the cooled areas.

15. As required by the Rule, Oak Hammock will keep the DOE apprised of progress on a periodic basis to ensure there are no unnecessary delays in completing the project and compliance with the Rule.

16. Oak Hammock seeks an emergency temporary variance or temporary waiver under Rules 28-104.004 and 28-104.005, Florida Administrative Code, as the time period remaining until the expiration of the Extension on January 1, 2019 is shorter than the time period for review of a standard petition for variance or waiver. Unless the temporary variance or waiver is issued more expeditiously than the timeframes provided in Section 120.542, Florida Statutes, Oak Hammock will be subject to potential penalties for failure to comply with the applicable portions of the Rule by January 1, 2019.

17. For all the foregoing reasons, Oak Hammock respectfully requests that the Department of Elder Affairs grant this temporary Emergency Petition for Variance from and/or Waiver of Rule 58A-5.036 extending the timeframe for implementation of Oak Hammock's Emergency Plan and the compliant generator system required by the Rule for one hundred eighty (180) days to June 30, 2019.

18. The requested emergency temporary variance or waiver will serve the statutory purposes of Chapter 429, Florida Statutes, as well as the purpose of the Rule as, if the emergency temporary variance or waiver is granted, there will continue to be safe, accessible and quality assisted living services available to the citizens in the State of Florida in accordance with the requirements of the state and existing rules. Additionally, the requested temporary

emergency variance or waiver and the avoidance of the fines otherwise resulting from non-compliance with the Rule will preserve financial resources of Oak Hammock that will eventually be used to implement the applicable portions of the Rule through the procurement and installation of a compliant generator system.

19. Oak Hammock asserts that based upon the facts stated herein that it is appropriate for the Agency to grant the subject petition.
20. Several attachments of previously submitted items to help support the discussion above.

WHEREFORE, Oak Hammock respectfully requests the entry of a final order granting an emergency temporary variance from or waiver of Rule 58A-5.036, Florida Administrative Code, as set forth herein.

Respectfully submitted



Marie Okronley – Health Center Administrator

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December 12, 2018