

Florida Variance or Waiver Process

September 2018

I. THE REGULATORY PROCESS FOR FILING A PETITION FOR VARIANCE OR WAIVER

Florida Statutes

120.52 Definitions.—As used in this act:

(21) “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(22) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

120.542 Variances and waivers.—

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency’s implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(5) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, denying, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

- (a) The rule from which a variance or waiver is requested.
- (b) The type of action requested.
- (c) The specific facts that would justify a waiver or variance for the petitioner.
- (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.

(7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.

(8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the waiver or variance is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

(9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section.

Uniform Rules

CHAPTER 28-104, Florida Administrative Code

VARIANCE OR WAIVER

28-104.001	Purpose; Construction
28-104.002	Petition for Variance or Waiver
28-104.003	Comments on Petition
28-104.004	Petition for Emergency Variance or Waiver
28-104.005	Time for Consideration of Emergency Petition
28-104.0051	Revocation of Emergency or Temporary Variance or Waiver
28-104.006	Request for Information

28-104.001 Purpose; Construction.

This chapter implements Section 120.542, F.S., by establishing the procedures for granting or denying petitions for variances and waivers of agency rules, and, should be read in conjunction with the provisions of Sections 120.52(18)*, 120.52(19)* and 120.542, F.S.

Rulemaking Authority 14.202, 120.542 FS. Law Implemented 120.542(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07.

**Note: The rule has not been revised to reflect the correct statutory subsections – the rule should reflect sections 120.52(21) and (22), F.S.*

28-104.002 Petition for Variance or Waiver.

(1) A petition for a variance from or waiver of an agency rule shall be filed with the clerk of the agency that adopted the rule, with a copy to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400.

(2) The petition must include the following information:

(a) The caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

(3) The petition for a variance or waiver may be withdrawn by the applicant at any time before final agency action.

(4) Upon receipt of a petition for variance or waiver, the agency shall furnish a copy of the petition to any other agency responsible for implementing the rule.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 3-18-98, 2-5-13.

28-104.003 Comments on Petition.

(1) Any interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S. The agency shall state in any order disposing of the petition whether comments were received by the agency.

(2) The agency shall maintain the comments as part of the record.

(3) The right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 2-5-13.

28-104.004 Petition for Emergency Variance or Waiver.

(1) A person requesting an emergency variance from or waiver of an agency rule shall so state in the caption to the petition.

(2) In addition to the other requirements of Section 120.542(5), F.S., and this chapter, the petition shall specify:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97.

28-104.005 Time for Consideration of Emergency Petition.

(1) Within 5 days after filing a petition for emergency variance or waiver with the agency clerk, the agency shall give notice of receipt of the petition on its website, if it has one. The agency shall also give notice by any procedure that is fair under the circumstances or provide notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Register. Any notice under this subsection shall inform interested persons of the right to submit comments. Interested persons or other agencies may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein. The notice and comment requirements in this subsection shall not apply if the agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, which final order shall recite with particularity the facts underlying such finding.

(2) The agency shall grant or deny a petition for emergency variance or waiver or determine that the request is not an emergency within 30 days of its receipt by the agency. If such petition is not granted or denied within this time limit, the petition shall be deemed approved unless the time limit is waived by the petitioner.

(3) If the agency decides that the situation is not an emergency, the agency shall so notify the petitioner in writing, and the petition shall then be reviewed by the agency on a non-emergency basis as set forth in Section 120.542(7), F.S.

(4) The duration of an emergency variance or waiver shall be determined by the agency.

(5) The agency shall issue a written order granting or denying the petition. The order shall state the facts and reasons supporting the agency's action.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.

28-104.0051 Revocation of Emergency or Temporary Variance or Waiver.

(1) Upon receipt of evidence sufficient to show that the recipient of an order granting an emergency or temporary variance or waiver is not in compliance with the requirements of that order, the agency shall issue an

order to show cause why the emergency variance or waiver should not be revoked.

(2) The recipient of an emergency or temporary variance or waiver shall respond to the order to show cause why the emergency variance or waiver should not be revoked within 15 days of the mailing date of the order to show cause. Failure to timely respond shall result in a final order revoking the emergency or temporary variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 3-18-98.

28-104.006 Request for Information.

(1) When a person inquires of the agency about the possibility of relief from any rule requirements or the remedies available pursuant to Section 120.542, F.S., the agency shall provide the information required by Section 120.542(4), F.S., within 15 days of the inquiry.

(2) In its response to a request for information, the agency shall indicate the name, address and e-mail address of the appropriate contact person for additional information and shall indicate how a petition for variance or waiver is filed with the agency.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.542(4) FS. History—New 4-1-97, Amended 2-5-13.

II. THE RULE FROM WHICH A VARIANCE OR WAIVER IS REQUESTED

58A-5.036 Emergency Environmental Control for Assisted Living Facilities, Florida Administrative Code.

(1) DETAILED EMERGENCY ENVIRONMENTAL CONTROL PLAN. Each assisted living facility shall prepare a detailed plan (“plan”) to serve as a supplement to its Comprehensive Emergency Management Plan, to address emergency environmental control in the event of the loss of primary electrical power in that assisted living facility which includes the following information:

(a) The acquisition of a sufficient alternate power source such as a generator(s), maintained at the assisted living facility, to ensure that current licensees of assisted living facilities will be equipped to ensure ambient air temperatures will be maintained at or below 81 degrees Fahrenheit for a minimum of ninety-six (96) hours in the event of the loss of primary electrical power.

1. The required temperature must be maintained in an area or areas, determined by the assisted living facility, of sufficient size to maintain residents safely at all times and that is appropriate for resident care needs and life safety requirements. For planning purposes, no less than twenty (20) net square feet per resident must be provided. The assisted living facility may use eighty percent (80%) of its licensed bed capacity as the number of residents to be used in the calculation to determine the required square footage. This may include areas that are less than the entire assisted living facility if the assisted living facility’s comprehensive emergency management plan includes allowing a resident to congregate when he or she desires in portions of the building where temperatures will be maintained and includes procedures for monitoring residents for signs of heat related injury as required by this rule. This rule does not prohibit a facility from acting as a receiving provider for evacuees when the conditions stated in Section 408.821, F.S., and subsection 58A-5.026(5), F.A.C., are met. The plan shall include information regarding the area(s) within the assisted living facility where the required temperature will be maintained.

2. The alternate power source and fuel supply shall be located in an area(s) in accordance with local zoning and the Florida Building Code.

3. Each assisted living 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 achieve ambient

temperatures at or below 81 degrees Fahrenheit 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 assisted living facility and the fuel required to operate the systems and equipment.

a. An assisted living facility 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 assisted living facility is occupied but is permitted to utilize a mobile generator(s) to enable portability if evacuation is necessary.

b. Assisted living facilities located on a single campus with other facilities 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 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 to maintain ambient temperatures at or below 81 degrees Fahrenheit for a minimum of ninety-six (96) hours after the loss of primary electrical power during a declared state of emergency. The plan must include information regarding fuel source and fuel storage.

1. Facilities must store minimum amounts of fuel onsite as follows:

a. A facility with a licensed capacity of 16 beds or less must store 48 hours of fuel onsite.

b. A facility with a licensed capacity of 17 or more beds must store 72 hours of fuel onsite.

2. An assisted living facility 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 assisted living facility 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.

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

4. If local ordinances or other regulations limit the amount of onsite fuel storage for the assisted living facility's location, then the assisted living 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.

(c) The acquisition of services necessary to maintain, and test the equipment and its functions to ensure the safe and sufficient operation of the alternate power source maintained at the assisted living facility.

(d) The acquisition and maintenance of a carbon monoxide alarm.

(2) SUBMISSION OF THE PLAN.

(a) Each assisted living facility licensed prior to the effective date of this rule shall submit its plan to the local emergency management agency for review within 30 days of the effective date of this rule. Assisted living facility plans previously submitted and approved pursuant to Emergency Rule 58AER17-1, F.A.C., will require resubmission only if changes are made to the plan.

(b) Each new assisted living facility shall submit the plan required under this rule prior to obtaining a license.

(c) Each existing assisted living facility that undergoes any additions, modifications, alterations, refurbishment, renovations or reconstruction that require modification of its 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) APPROVED PLANS.

(a) Each assisted living facility must maintain a copy of its approved plan in a manner that makes the plan readily available at the licensee's physical address for review by a legally authorized entity. If the plan is maintained in an electronic format, assisted living 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 of the approval of the plan from the local emergency management agency, the assisted living facility shall submit in writing proof of the approval to the Agency for Health Care Administration.

(c) The assisted living facility 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 assisted living facility 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.

(4) IMPLEMENTATION OF THE PLAN.

(a) Each assisted living facility 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 allow an extension up to January 1, 2019 to providers in compliance with subsection (c), below, and who can show delays caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes. Assisted living facilities shall notify the Agency that they will utilize the extension and keep the Agency apprised of progress on a quarterly basis to ensure there are no unnecessary delays. If an assisted living facility can show in its quarterly progress reports that unavoidable delays caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes will occur beyond the initial extension date, the assisted living facility may request a waiver pursuant to Section 120.542, F.S.

(c) During the extension period, an assisted living facility must make arrangements pending full implementation of its plan that provides the residents with an area or areas to congregate that meets the safe indoor air temperature requirements of paragraph (1)(a), for a minimum of ninety-six (96) hours.

1. An assisted living facility 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 assisted living facility, it must have the alternative power source and no less than ninety-six (96) hours of fuel stored onsite.

2. An assisted living facility 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 assisted living facility.

(d) Each new assisted living facility shall implement the plan required under this rule prior to obtaining a license.

(e) Existing assisted living facilities that undergo any additions, modifications, alterations, refurbishment, renovations or reconstruction that require modification of the systems or equipment affecting the assisted living facility's compliance with this rule shall implement its amended plan concurrent with any such additions, modifications, alterations, refurbishment, renovations or reconstruction.

(f) The Agency for Health Care Administration may request cooperation from the State Fire Marshal to conduct inspections to ensure implementation of the plan in compliance with this rule.

(5) POLICIES AND PROCEDURES.

(a) Each assisted living facility shall develop and implement written policies and procedures to ensure that the assisted living 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 ensure that residents

do not experience complications from fluctuations in ambient air temperatures inside the facility. Procedures must address the care of residents occupying the facility during a declared state of emergency, specifically, a description of the methods to be used to mitigate the potential for heat related injury including:

1. The use of cooling devices and equipment;
2. The use of refrigeration and freezers to produce ice and appropriate temperatures for the maintenance of medicines requiring refrigeration;
3. Wellness checks by assisted living facility staff to monitor for signs of dehydration and heat injury; and,
4. A provision for obtaining medical intervention from emergency services for residents whose life safety is in jeopardy.

(b) Each assisted living facility shall maintain the written policies and procedures in a manner that makes them readily available at the licensee's physical address for review by a legally authorized entity. If the policies and procedures are maintained in an electronic format, assisted living facility staff must be readily available to access the policies and procedures and produce the requested information. For purposes of this section, "readily available" means the ability to immediately produce the policies and procedures, either in electronic or paper format, upon request.

(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 such additional parties as authorized in writing or by law.

(6) REVOCATION OF LICENSE, FINES OR SANCTIONS. For a violation of any part of this rule, the Agency for Health Care Administration may seek any remedy authorized by Chapter 429, Part I, F.S., or Chapter 408, Part II, F.S., including, but not limited to, license revocation, license suspension, and the imposition of administrative fines.

(7) COMPREHENSIVE EMERGENCY MANAGEMENT PLAN.

(a) Assisted living facilities whose comprehensive emergency management plan is to evacuate must comply with this rule.

(b) Each facility whose plan has been approved shall submit the plan as an addendum with any future submissions for approval of its comprehensive emergency management plan.

(8) NOTIFICATION.

(a) Within five (5) business days, each assisted living facility 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 final implementation of the plan by the assisted living facility.

(b) Each assisted living facility must maintain a copy of each notification set forth in paragraph (a), above, in a manner that makes each notification readily available at the licensee's physical address for review by a legally authorized entity. If the notifications are maintained in an electronic format, facility staff must be readily available to access and produce the notifications. For purposes of this section, "readily available" means the ability to immediately produce the notifications, either in electronic or paper format, upon request.

Rulemaking Authority 429.41 FS. Law Implemented 429.19, 429.41 FS. History—New 3-26-18.

III. THE UNDERLYING STATUTE CITED AS BEING IMPLEMENTED BY RULE 58A-5.036, F.A.C.

Florida Statutes

429.41 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. Uniform firesafety standards for assisted living facilities shall be established by the State Fire Marshal pursuant to s. 633.206. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Families, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

...

(b) The preparation and annual update of a comprehensive emergency management plan. Such standards must be included in the rules adopted by the department after consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; communication with families; and responses to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

IV. THE COMPREHENSIVE EMERGENCY MANAGEMENT PLAN RULE – ALSO IMPLEMENTING s. 429.41(1)(B)

58A-5.026 Emergency Management.

(1) EMERGENCY PLAN COMPONENTS. Pursuant to section 429.41, F.S., each facility must prepare a written comprehensive emergency management plan in accordance with the “Emergency Management Criteria for Assisted Living Facilities,” dated October 1995, which is incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-04010>. This document is available from the local emergency management agency. The emergency management plan must, at a minimum, address the following:

(a) Provision for all hazards;

(b) Provision for the care of residents remaining in the facility during an emergency, including pre-disaster or emergency preparation; protecting the facility; supplies; emergency power; food and water; staffing; and emergency

equipment;

(c) Provision for the care of residents who must be evacuated from the facility during an emergency including identification of such residents and transfer of resident records; evacuation transportation; sheltering arrangements; supplies; staffing; emergency equipment; and medications;

(d) Provision for the care of additional residents who may be evacuated to the facility during an emergency including the identification of such residents, staffing, and supplies;

(e) Identification of residents with Alzheimer's disease or related disorders, and residents with mobility limitations who may need specialized assistance either at the facility or in case of evacuation;

(f) Identification of and coordination with the local emergency management agency;

(g) Arrangement for post-disaster activities including responding to family inquiries, obtaining medical intervention for residents, transportation, and reporting to the local emergency management agency the number of residents who have been relocated, and the place of relocation; and,

(h) The identification of staff responsible for implementing each part of the plan.

(2) EMERGENCY PLAN APPROVAL. The plan must be submitted for review and approval to the local emergency management agency.

(a) If the local emergency management agency requires revisions to the emergency management plan, such revisions must be made and the plan resubmitted to the local office within 30 days of receiving notification that the plan must be revised.

(b) A new facility as described in rule 58A-5.023, F.A.C., and facilities whose ownership has been transferred, must submit an emergency management plan within 30 days after obtaining a license.

(c) The facility must review its emergency management plan on an annual basis. Any substantive changes must be submitted to the local emergency agency for review and approval.

1. Changes in the name, address, telephone number, or position of staff listed in the plan are not considered substantive revisions for the purposes of this rule.

2. Changes in the identification of specific staff must be submitted to the local emergency management agency annually as a signed and dated addendum that is not subject to review and approval.

(d) The local emergency management agency is the final administrative authority for emergency management plans prepared by assisted living facilities.

(e) Any plan approved by the local emergency management agency is considered to have met all the criteria and conditions established in this rule.

(3) PLAN IMPLEMENTATION.

(a) All staff must be trained in their duties and are responsible for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the facility must request assistance from local law enforcement or emergency management personnel in maintaining communication.

(4) FACILITY EVACUATION. The facility must evacuate the premises during or after an emergency if so directed by the local emergency management agency.

(a) The facility must report the evacuation to the local office of emergency management or designee and to the agency within 6 hours of the evacuation order. If the evacuation takes more than 6 hours, the facility must report when the evacuation is completed.

(b) The facility must not be re-occupied until the area is cleared for reentry by the local emergency management agency or its designee and the facility can meet the immediate needs of the residents.

(c) A facility with significant structural damage must relocate residents until the facility can be safely re-occupied.

(d) The facility is responsible for knowing the location of all residents until the residents have been relocated to another facility.

(e) The facility must provide the agency with the name of a contact person who must be available by telephone 24 hours a day, seven days a week, until the facility is re-occupied.

(f) The facility must assist in the relocation of residents, and must cooperate with outreach teams established by the Department of Health or emergency management agency to assist in relocation efforts. Resident needs and preferences must be considered to the extent possible in any relocation decision.

(5) EMERGENCY SHELTER. In the event a state of emergency has been declared and the facility is not required to evacuate the premises, the facility may provide emergency shelter above the facility's licensed capacity provided the following conditions are met:

(a) Life safety will not be jeopardized for any individual;

(b) The immediate needs of residents and other individuals sheltered at the facility can be met by the facility;

(c) The facility reports the number of individuals over its licensed capacity and the conditions causing it to the Agency Field Office within 48 hours or as soon as practical. As an alternative, the facility may report to the Agency Central Office at (850)412-4304. If the facility will continue to be over capacity after the declared emergency ends, the agency will review requests for excess capacity on a case-by-case basis; and,

(d) The facility maintains a log of the additional individuals being housed in the facility. The log must include the individual's name, usual address, and the dates of arrival and departure. The log must be available for review by representatives of the agency, the department, the local emergency management agency or its designee. The admissions and discharge log maintained by the facility may be used for this purpose provided the information is maintained in a manner that is easily accessible.

Rulemaking Authority 429.41 FS. Law Implemented 429.41 FS. History—New 10-17-99, Amended 7-30-06, 4-17-14.