



RON DESANTIS  
GOVERNOR

SHEVAUN L. HARRIS  
ACTING SECRETARY

November 2, 2020

Mr. Ernest L. Reddick, Program Administrator  
Florida Administrative Code and Register Section  
The Capital, Room #701  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Re: Emergency Rule 59AER20-12, Mandatory Entry and Testing for Assisted Living Facilities

Dear Mr. Reddick:

Enclosed is the certification package for the above-referenced emergency rule. The certification package includes:

- Certification of Emergency Rule
- Emergency Rule 59AER20-12
- Designation of Rule The Violation of Which is a Minor Violation Certification
- Document Outlining Statements of Facts, Reasons For Finding An Immediate Danger To The Public Health, Safety Or Welfare, and Reason For Concluding That The Procedure Is Fair Under The Circumstances

If you have questions or require additional information regarding this filing, please contact Kimberly Stewart by phone at (850)412-3492 or via e-mail at [Kimberly.Stewart@ahca.myflorida.com](mailto:Kimberly.Stewart@ahca.myflorida.com).

Sincerely,

Molly McKinstry, Deputy Secretary  
Division of Health Quality Assurance

Attachments



CERTIFICATION OF AGENCY FOR HEALTH CARE ADMINISTRATION  
EMERGENCY RULE FILED WITH THE  
DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with Section 120.54(4), F.S. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

Rule No.           59AER20-12

Under the provision of Section 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from filing, is set out below:

Effective Date: November 4, 2020

(month) (day) (year)



Signature, Person Authorized to Certify Rules



Title



Number of Pages Certified

**59AER20-12 Mandatory Entry and Testing for Assisted Living Facilities.**

(1) APPLICABILITY. The requirements of this emergency rule apply to all assisted living facilities licensed under Chapter 429, F.S.

(2) DEFINITIONS

“Infection control” means any duties carried out in furtherance of preparing for, responding to, or recovering from COVID-19 as authorized under Chapter 381, F.S.

(3) MANDATORY ENTRY AND TESTING FOR COVID-19.

(a) Assisted living facilities shall comply with all Department of Health infection control directives concerning staff and resident testing, including making off-shift staff available at the facility for testing.

(b) Assisted living facilities shall allow the Florida Department of Health or its authorized agents entry into the facility for the purpose of conducting COVID-19 infection control duties, and testing of residents and staff.

(c) When the Department of Health or its authorized agent enters the facility in its public health function for purposes of COVID-19 testing, assisted living facilities shall require facility staff to submit to a COVID-19 test.

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

(5) This rule supersedes emergency rule 59AER20-9.

Rulemaking authority, 429.41, 408.821(4) FS, Law Implemented 429.19, 429.28, 429.41 FS.

EFFECTIVE DATE: November 4, 2020

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION  
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

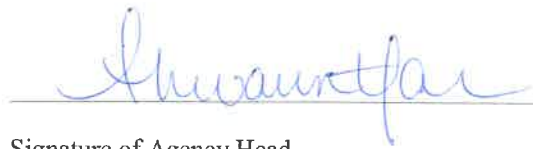
All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

Rules covered by this certification:

Rule No.: 59AER20-12



Signature of Agency Head

Acting Secretary, Agency for Health Care Administration

Title

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**RULE TITLE:**

Mandatory Entry and Testing for Assisted Living Facilities

**RULE NO:**

59AER20-12

**STATEMENT OF FACTS AND SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:**

The Novel Coronavirus Disease 2019 (COVID-19) is a severe respiratory illness that can spread among humans through respiratory transmission. According to the Centers for Disease Control and Prevention (CDC), people at risk for serious illness from COVID-19 include older adults and people with serious chronic medical conditions. In late 2019, a new and significant outbreak of COVID-19 emerged in China and the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. The CDC also confirmed community spread of COVID-19 in the United States and has issued extensive written guidance to help control the spread of COVID-19. According to the CDC, at the time of this filing, the United States has over 9,105,200 total cases and over 229,900 total deaths.<sup>1</sup> Older adults are at a higher risk of developing serious complications from COVID-19.<sup>2</sup> According to the United States Census Bureau, Florida has the largest percentage of residents age 65 and older in the nation.

On March 1, 2020, Governor Ron DeSantis declared a Public Health Emergency exists in the State of Florida as a result of COVID-19 pursuant to Executive Order number 20-51. On March 7, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency in the State of Florida as a result of COVID-19. On March 9, 2020, Florida Governor Ron DeSantis declared a state of emergency in Florida. As of the date of this filing, all counties in Florida have positive cases for COVID-19. There have been over 807,400 confirmed cases in Florida as a result of COVID-19 and over 16,780 deaths.

In guidance issued by the CDC titled Key Strategies to Prepare for COVID-19 in Long-term Care Facilities (LTCFs), the CDC directed that “[g]iven the high risk of spread once COVID-19 enters a LTCF, facilities must act

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<sup>1</sup> <http://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

immediately to protect residents, families, and staff from serious illness, complications, and death.”<sup>3</sup> In order to carry out this guidance, the CDC further instructs facilities to, among other things, 1.) Keep COVID-19 from entering the facility and 2.) Identify the infection early.

Medical research shows the highly contagious COVID-19 virus can manifest as asymptomatic in positive individuals and the live, contagious coronavirus can shed at high concentrations before symptomatic development resulting in spread of the infection. Due to the congregate nature of long-term care facilities, the increased risk of transmission of COVID-19 is high. The highly transmissible nature of COVID-19 combined with the congregate nature of the long-term care facility settings and the close and personal contact that many long-term care facility staff have with the patients puts both residents and staff at a high risk of infection. Combining the high risk of long-term care facility settings with the risk posed by positive, asymptomatic staff creates a potential for sudden outbreaks in long-term care facilities.

The Department of Health and its agents, including the Agency for Health Care Administration, are working daily to respond to positive cases to avoid outbreaks at long-term care facilities. These agencies have been systematically conducting infection control investigations and testing staff and residents at nursing homes and assisted living facilities across the state to quickly identify positive cases in order to avoid viral spread and outbreaks. However, in multiple instances, facility staff have refused the Department of Health entry to the facility for the requested testing. A single positive staff member in a facility can cause an outbreak resulting in the hospitalization and death of many vulnerable residents. If the staff member works at multiple facilities, this can result in facility-to-facility spread. Early identification of positive cases in long-term care facilities allows the state to implement immediate action to control outbreaks and avoid the loss of life.

Therefore, this emergency rule establishes a requirement that assisted living facilities must allow the Department of Health or its agents entry into the facility for purposes of COVID-19 infectious disease duties and testing and facilities must mandate that their staff comply with any COVID-19 testing offered by the Department of Health or its agents.

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<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care-strategies.html>

Prompt implementation of this rule is necessary to ensure the health, safety and welfare of residents and staff in Florida's assisted living facilities.

**STATEMENT OF 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 outbreak of COVID-19. This emergency rule is necessary and fair to ensure the health, safety, and welfare of the facility residents, and 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.

**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, by phone at (850) 412-3492, or email at [Kimberly.Stewart@ahca.myflorida.com](mailto:Kimberly.Stewart@ahca.myflorida.com).