



**Nursing Home Rule 59AER17-1 – Assisted Living Facility Rule 58AER17-1
Questions and Answers - September 21, 2017 (revisions 10/10/17)**

Question 1: Is any action required if a facility already meets the requirements of the rule?

Answer: Many facilities have already taken steps to protect their residents and are in compliance with this rule. Such facilities must submit their plan in accordance with the rule to confirm compliance and will be acknowledged for their proactive implementation.

Question 2: Does the requirement to maintain temperatures in subsection (1) apply to the entire licensed facility including all resident rooms and common areas?

Answer: The required temperatures must be maintained in an area of sufficient size to maintain all residents comfortably at all times and that is appropriate for the health, safety and welfare of all residents. This may include areas that are less than the entire licensed facility if the facility's emergency management plan includes relocating residents to portions of the building where temperatures will be maintained as required by the rule. This information must be included in the plan required by subsection (1).

Question 3: Will a contract or agreement to bring in a generator and/or fuel when needed comply with the requirement of subsection (1)?

Answer: No. The rule requires the generator be installed and maintained at the facility, and sufficient fuel must be safely maintained at the facility to ensure temperatures for 96 hours. A contract to bring in a generator when needed does not comply with the rule. A contract to bring in fuel to support temperatures beyond the initial 96 hours would be appropriate as part of the CEMP, however the initial 96 hours must be supported by a fuel source available at the facility at all times. The rule is intended to enable nursing homes and assisted living facilities to be self-sufficient in maintaining resident safety. During times of emergency, delivery of a generator or fuel can be unreliable and will not provide necessary protections for vulnerable residents.

Question 4: Will a mobile generator meet the requirements of the rule?

Answer: The rule does not restrict the type of generator required, but it must be installed and maintained at the facility. If the emergency generator used to meet the temperature requirements in the rule also supplies power for life safety and critical equipment, a level 1 generator must be used and the fuel supply and distribution equipment must be protected from debris impact as required by the Florida Building Code.

Answer revised 10/10/2017.

Question 5: Can natural gas be used as a fuel source?

Answer: Yes. Piped natural gas is an allowable fuel source under the rule. The plan submitted for review should include fuel information.

Answer revised 10/10/2017.

Question 6: Does the rule waive other permitting or approval requirements elsewhere in law?

Answer: The rule does not waive any other permitting or requirements. Nursing homes must continue to seek approval from all other state and local authorities including the Agency's Office of Plans and Construction. Assisted living facilities must continue to seek approval from all other state and local authorities.

Question 7: Does the rule provide for an extension of time if requested?

Answer: No. The rule does not provide for an extension of time.

Question 8: If a facility's CEMP is to evacuate if a power outage or other emergency does not enable the maintenance of required temperatures, is this plan a permissible alternative to meeting the generator and temperature requirements of this rule?

Answer: No. Emergency evacuation plans are vital in many instances. However, the rule does not provide evacuation as an alternative means for compliance with this rule.



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Additional Questions and Answers – October 2, 2017**

Rule Waivers and Variances

Question 9. How does a facility request a waiver or variance of the emergency rule?

Answer: Please refer to *FAQs on Petitions for Variance or Waiver of an Agency Rule*

Question 10. How long is a waiver or variance valid?

Answer: Timeframes for a waiver or variance may depend on the details of the request. For example, a request to delay a deadline in the rule by 90 days, if granted may specifically address how long the delay is authorized. Requests may be authorized for as long as the rule is in effect.

Question 11. When a facility submits the request for waiver or variance are they subject to fines until it would be granted?

Answer: There is no provision in the law that allows a petition for variance or waiver to automatically stay a disciplinary action. However, parties can agree to place a hold on disciplinary cases in the waiver/variance process.

Waiver or Variance Circumstances

Question 12. Can a rule waiver or variance be requested for the following requirements?

A. Submission of the plan? It is likely to take longer than the remaining 45 days to evaluate and determine the appropriate generator requirements for each facility.

B. Barriers such as restrictions from a local municipality that would prohibit the use of a fuel tank large enough to contain the required fuel amount?

C. The use of city piped natural gas if a fuel tank is not an option?

D. Use of temperature controlled space in another licensed facility on the same campus as the nursing home, for example an ALF across the street from the nursing home that can comfortably accommodate all the nursing home and ALF residents?

Answer: Facilities should explore all options as they prepare plans to comply with the rule. If barriers exist to compliance with the rule, requests for a waiver or variance of portions of the Agency's emergency rule may be considered on a case-by-case basis.

Please also see Q&A from September 21, see Questions #5 and #6 related to fuel and the requirement to provide space in the licensed facility.

Sanctions

Question 13. What occurs if by no fault of the provider the generator is re-directed and does not come on time but an extension was not requested until they were notified?

Answer: Sanctions imposed are subject to due process during which such circumstances may be presented to the Agency for consideration.



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Rule Requirements

Question 14. The rule does not state that the generator(s) needs to run HVAC systems to cool. Are spot coolers considered in the rule?

Answer: The rule does not specify the method of cooling required to allow flexibility for each provider to determine the most appropriate equipment to meet their facility needs. These details should be specified in the plan submitted for review and approval.

Question 15. In order to meet the 96 hour fuel provision can the requirement be through an added above ground tank?

Answer: The rule does not require specific fuel storage method to allow flexibility for each provider to determine the most appropriate method to meet their facility needs. These details should be specified in the plan submitted for review and approval.

Resources

Question 16. Do you have a list of generator companies and electrical engineering contractors who could be hired to help facilities implement

Answer: A number of businesses and associations have offered assistance to help facilities implement the emergency rule.

Access <http://dcnonline.org/PropertyOwner> to search the Disaster Contractors Network for contractors in your area.

Access <http://www.egsa.org/Membership/MemberDirectory/DirectorySearch.aspx> to search the Electrical Generating Systems Association membership directory for contractors in your area.

Home Depot has also offered their assistance. They can be reached at 1 (800) 466-3337 (prompt 1) for consultation and installation.

Please note we are providing this information as a resource. It is still your responsibility to ensure you hire the appropriate contractor for your project and that you verify their license.

Many resources were also shared during the FHCA 9/22 summit.

Question 17: Will funding be available to assist with any costs of acquiring or installing the generator or fuel source?

Answer: Nursing homes and assisted living facilities are required to comply regardless of outside funding. While not a guarantee that a loan will be provided, Governor Scott has activated the Florida Small Business Emergency Bridge Loan Program as a result of Hurricane Irma. Visit www.floridadisasterloan.org for additional details. Nursing homes may qualify for additional reimbursement of Medicaid costs through the existing reimbursement process.