

NOTICE OF PROPOSED RULE

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NO.: RULE TITLE:

58A-5.036: Emergency Environmental Control for Assisted Living Facilities

PURPOSE AND EFFECT: The Department of Elder Affairs, in consultation with the Agency for Health Care Administration, the Department of Children and Families, and the Department of Health, announces the commencement of rulemaking proceedings to address assisted living facility regulation. The purpose of the rulemaking is to address the safety and quality of services and care provided to residents of assisted living facilities that may experience loss of power. Ensuring assisted living facilities have alternative power sources to provide sufficient cooling during emergency situations is critical to ensuring the health, safety, comfort and welfare of residents of assisted living facilities that experience loss of power.

SUMMARY: The proposed rule establishes a process for the Department of Elder Affairs to ensure that licensees of assisted living facilities develop and implement plans that 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 to an assisted living facility to ensure the health, safety, comfort and welfare of residents of assisted living facilities.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that this rule 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: Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 429.41, FS.

LAW IMPLEMENTED: 429.19, 429.28, 429.41, 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD): December 5, 2017, 3:00 p.m. – 5:00 p.m. Agency for Health Care Administration, 2727 Mahan Drive, Bldg. 3, Conference Room A, Tallahassee, FL 32308. Interested parties that would like to participate in the hearing by phone can do so by using a call-in number and passcode: Call-in Number: **1-877-686-1649**, Participant Passcode: **724 697 08#**

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jeanne Curtin, Senior Attorney, Department of Elder Affairs, Office of the General Counsel, alfrulecomment@elderaffairs.org, 4040 Esplanade Way, Tallahassee, FL 32399-7000. Public comments will be accepted until 5:00 p.m., December 5, 2017.

THE FULL TEXT OF THE PROPOSED RULE IS:

(1) DETAILED EMERGENCY ENVIRONMENTAL CONTROL PLAN. Each assisted living facility shall prepare a detailed plan (“plan”) to address emergency environmental control 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 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. For facilities with 16 or fewer beds, “installed” means an alternate power source on-site that is readily available for hook-up.

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 that is appropriate for the health, safety, comfort and welfare of all residents. For planning purposes, no less than 30 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 temperatures will be maintained to ensure the health, safety,

comfort and welfare of residents 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 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 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 to ensure the health, safety, comfort and welfare of residents. The plan shall include information regarding the systems and equipment that will be used by the facility and the fuel required to operate the systems and equipment.

(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.

1. Piped natural gas is an allowable fuel source under this rule. The plan shall include information regarding fuel source and fuel storage.

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 assisted living facility.

(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 and approval within 30 days of the effective date of this rule. Facility plans previously submitted and approved pursuant to emergency rule 58AER17-1 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 required under this rule shall amend its plan and submit it to the local emergency management agency for review and approval prior to undergoing any such additions, modifications, alterations, refurbishment, renovations or reconstruction.

(3) APPROVED PLANS. 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, 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.

(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) Each new assisted living facility shall implement 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 the systems or equipment affecting the facility's compliance with this rule shall implement its amended plan concurrent with any such additions, modifications, alterations, refurbishment, renovations or reconstruction.

(d) The State Fire Marshal shall 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 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 fluctuations in ambient air temperatures inside the facility.

(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, 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 law including, but not limited to, license revocation, license suspension, and the imposition of administrative fines and/or sanctions as provided in Section 429.19, F.S.

(7) COMPREHENSIVE EMERGENCY MANAGEMENT PLAN.

(a) 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 three (3) days, each assisted living facility 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 assisted living facility following review by the local State Fire Marshal.

(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, 429.28, 429.41, FS. History – New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jeanne Curtin

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jeffrey S. Bragg

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

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