



**Nursing Home Rule 59A-4.1265, F.A.C. and Assisted Living Facility Rule 58A-5.036, F.A.C.  
Questions and Answers – April 20, 2018**

*Please refer to the rules for specific requirements and compliance matters. These Q&As are provided in response to questions and intended to assist facilities with compliance with these important resident protections.*

**Power Source**

**Question 1:** The generator requirement seems to be aimed at providing adequate cooling. Are there requirements for lighting and or operational items such as kitchens and laundry areas?

**Answer:** The intent of the rule is to provide adequate cooling and other services necessary to ensure the health, safety, welfare, and comfort of the residents. Life safety and critical systems must be designed to remain operational while the building is occupied. If the governing body determines that additional equipment is necessary to provide for the health, safety, welfare, and comfort of the residents, the alternate power source must be designed to accommodate these loads as well.

**Question 2:** Who approves the electrical (mechanical) information regarding generator or cooling source installation?

**Answer:** Nursing home building and fire safety requirements are regulated by AHCA, so information must be submitted to the AHCA Office of Plans and Construction for review and approval. Assisted living facility building and fire safety requirements are regulated by the local authority having jurisdiction, so information must be submitted to the appropriate local authority for approval – generally building code or fire department officials.

**Question 3:** 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.

As an aside, we have heard of issues with portable chillers being used. Remember that portable chillers must be vented to an outside source to prevent forcing the heat exhaust back into the facility. Bottom line – if a facility is using portable chillers, plan in advance for a means of exhaust. Providers should obtain the manufacturer's instructions in advance to ensure they are prepared when the time comes for their use.

**Question 4:** What load should be used to calculate generator run time on, rated load, calculated load or actual load?

**Answer:** The actual demand load is to be used to calculate the amount of fuel needed to operate the generator for the 96 hours specified by the rules.

### Climate Controlled Space

**Question 5:** What is meant by *net square feet per resident*?

**Answer:** Net square feet refers to occupiable space where temperatures are maintained in accordance with the rule, excluding accessory areas such as stairs, closets, restrooms, and mechanical rooms..

**Question 6:** In square foot space requirements do you need to include space for egress in the calculations?

**Answer:** The areas must conform with life safety requirements. This includes providing the required number of exits from the area, the required exit widths, and the required width of exit access (aisles) formed by furniture. It is not necessary to deduct area for the purpose of providing the required exit access (aisles), but the plan should demonstrate the ability to arrange furniture in a manner that provides code compliant egress.

**Question 7:** If a nursing home is on a campus with an assisted living facility (under common ownership), and their plan is to move the nursing home residents to a shared space in the assisted living facility, is the ALF space required to meet all code requirements applicable to SNF (FBC Section 450)?

**Answer:** Although the space does not have to be modified to meet different building code requirements, nursing home residents must have no less than 30 net square feet per resident. At all times, the health, safety, welfare, and comfort of the residents, must be maintained as required by this rule in all areas of the building where nursing home residents are relocated.

**Question 8:** For the purposes of sharing resources, what would be considered a *single campus* under *common ownership*?

**Answer:** This provision relates to facilities located on a single campus (property that is adjacent or connected) who have common ownership (the licensed entity has common ownership).

### Fuel

**Question 9:** 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 a 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.

**Question 10:** Ninety-six hours of fuel must be secured once a state of emergency has been declared and the facility's primary power delivery may be impacted. What is the trigger for determining an event that may impact primary power? At what point does the ALF have to acquire the additional fuel to equal 96 hours?

**Answer:** Depending on the specific situation that results in a declared state of emergency, the facility administration must reasonably determine if such a situation may potentially impact the facility's primary power. The expectation would be that facilities acquire the additional fuel once a state of emergency has been declared.

**Question 11:** What is meant by the phrase *declared state of emergency*?

**Answer:** A declared state of emergency refers to a state of emergency declared by executive order or proclamation of the Governor, pursuant to Section 252.36, F.S.

**Question 12:** What is meant by the phrase an event that “may impact primary power delivery”?

**Answer:** The phrase “may impact primary power delivery” is meant to distinguish from emergency events that would not typically be associated with loss of electrical power, such as a chemical spill or active shooter event. (This would be consistent with the potential hazards described in the “Hazard Analysis” section of the facility’s overall CEMP.)

### **Emergency Power Plans**

**Question 13:** Are there any specific items that the consumer-friendly version of the emergency power plan must have when submitted to AHCA?

**Answer:** The Agency has developed a format for submitting a consumer friendly summary of the emergency power plan, which can be accessed online at [http://ahca.myflorida.com/MCHQ/Emergency\\_Activities/EPP.shtml](http://ahca.myflorida.com/MCHQ/Emergency_Activities/EPP.shtml)

**Question 14:** The rules require that residents or their legal representatives must be notified after final implementation. Please confirm if final implementation is based on the State Fire Marshal review; or once the facility has finalized all their steps and awaiting the State Fire Marshal.

**Answer:** The notice is required upon final implementation of the plan by the facility following review by the State Fire Marshal or the Agency’s Office of Plans and Construction.

**Question 15:** What is the deadline for a nursing home or ALF to submit revisions to a proposed plan after receiving notification from the local emergency management agency that the plan must be revised?

**Answer:** The nursing home rule requires the facility to respond within 10 days to deficiencies noted by the local emergency management agency; the assisted living rule does not include a specific deadline. Assisted living facilities are expected to act promptly to resolve any deficiencies. Efforts must be documented and unnecessary delays by the facility may impact eligibility for an implementation extension beyond June 1, 2018.

**Question 16:** There is no defined review timeline for local emergency management review of plans; however facilities are expected to have generators implemented within 60 days. If all plans received on 45th day – there is very little time for review/comment, particularly if permits are required if it is expected that reviews will be completed within the 60 day implementation period. Is it expected that the plan reviews and approvals be completed prior to implementation?

**Answer:** The rule describes plan reviews and approvals prior to implementation. If implementation is delayed due to regulatory approval processes, the provider may request an extension.

**Question 17:** Must the Emergency Power Plan (EPP) be submitted annually after initial approval?

**Answer:** The Emergency Power Plan rules address initial submission of the plan for approval, but clarify that these plans are part of each facility's Comprehensive Emergency Management Plan (CEMP). Therefore, the EPP would be submitted annually hereafter as an addendum to the CEMP whenever the CEMP is submitted for review and approval.

**Question 18:** 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. Plans previously approved under the Emergency Rules published in September, 2017 do not require resubmission unless changes occur. Providers whose plans were previously approved under the emergency rules will need to submit a consumer-friendly summary of the emergency power plan to the Agency. The recommended format for submitting a consumer friendly summary of the emergency power plan can be accessed online at:  
[http://ahca.myflorida.com/MCHQ/Emergency\\_Activities/EPP.shtml](http://ahca.myflorida.com/MCHQ/Emergency_Activities/EPP.shtml)

### **Facility Policies**

**Question 19:** The portion of the written policies describing the procedures for monitoring residents for signs of heat related injury is required to be a part of the emergency environmental control plan submitted to the local emergency management agency when a portion of the building will be cooled. Will these policies be required if the operator elects to provide cooling for the entire facility rather than only a portion?

**Answer:** The rule does not require the written policy if the entire facility is cooled, however, facilities are always required to protect the residents in their care.

**Question 20:** Must the policies and procedures for monitoring heat related injury be submitted with the plans for approval or can they solely be kept at the facility for inspection?

**Answer:** Details that must be included in the Emergency Environmental Control Plan are outlined in Rule 58A-5.036(1), F.A.C. for assisted living facilities and Rule 59A-4.1265(1), F.A.C. for nursing homes. In addition, local emergency management agencies may request additional information in order to demonstrate compliance with these requirements.

### **New Facilities**

**Question 21:** For providers seeking a license, plans must be submitted before a license may be granted. Another section of the rule requires facilities to notify residents within 5 business days that the plan has been submitted to the local emergency management agency. Must an applicant for licensure submit a plan prior to being licensed?

**Answer:** Yes, the rule requires new facilities to submit and implement plans prior to licensure.

## Carbon Monoxide Detectors for Assisted Living Facilities

**Question 22:** What, if any, details are required concerning the carbon monoxide (CO) alarm?

**Answer:** The rule does not provide specific requirements other than the need for all ALFs to have a carbon monoxide detector. For further guidance you may refer to Section 553.885, Florida Statutes, or contact your local authority having jurisdiction. Assisted living facilities must take precautions to assure resident safety at all times.

## Extensions of Deadlines

**Question 23:** How do I find out if a facility is in an *evacuation zone*?

**Answer:** For planning purposes, the evacuation zones equate to the hurricane evacuation zones identified by each county (typically titled zones A, B, C, D, E and F). Information about county evacuation zones are available at <https://www.floridadisaster.org/info>. Providers can determine if they are in an evacuation zone by clicking on “Know Your Zone” and entering the facility address. (This would be consistent with the potential hazards described in the “Hazard Analysis” section of the facility’s overall CEMP.)

**Question 24:** Should the EPP submitted to the Local EOC address extensions beyond 6/1?

**Answer:** The EPP submitted to the local emergency management agency should include a timeline by which the facility plans to fully implement the emergency power plan.

**Question 25:** Will there be a formal process to have extensions granted? If not, will the Agency be providing guidance as to what they would like to accompany any request for an extension?

**Answer:** Providers may request an extension up to January 1, 2019 and the request can be made in the form of a letter or e-mail. Extension requests must show delays are caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes. The request must demonstrate how arrangements have been made 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 for a minimum of ninety-six (96) hours. Requests for extension can be submitted via mail or email to the following addresses:

### Assisted Living Facilities

Assisted Living Unit  
Agency for Health Care Administration  
2727 Mahan Drive, MS #30  
Tallahassee, FL 32308  
ALF\_EmergencyRule@ahca.myflorida.com

### Nursing Homes

Long Term Care Services Unit  
Agency for Health Care Administration  
2727 Mahan Drive, MS #33  
Tallahassee, FL 32308  
NH\_EmergencyRule@ahca.myflorida.com

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.

Nursing homes granted an extension must keep the Agency apprised of progress on a monthly basis to ensure there are no unnecessary delays.

**Question 26:** Do I need to file a Section 120.542, F.S. request for waiver or variance in order to receive an extension?

**Answer:** No. A rule waiver or variance request pursuant to Section 120.542, F.S., is not required when requesting an extension. The request can be made in the form of a letter or e-mail.

**Question 27:** Does a delay in approval past June 1, 2018 of the Emergency Environmental Control Plan by the local emergency management agency constitute a delay in a regulatory approval process?

**Answer:** Yes.

**Question 28:** Will AHCA develop a form to fill out or request particular information to be submitted to a specified email address?

**Answer:** Providers must provide details as indicated in the rule specific to their individual circumstances. A form is not required, however, AHCA will provide a suggested format for facilities to utilize.

**Question 29:** Will AHCA develop a form to fill out or request particular information to be submitted to a specified email address for the progress reports?

**Answer:** A form is not required, however, AHCA will provide a suggested format for facilities to utilize.

**Question 30:** At the time of ALF extension notification, will AHCA also require submission of the ALF's arrangements to provide residents with an area(s) to congregate that meets the 81-degree temperature requirement pending full implementation of the plan?

**Answer:** Yes.

### **Legal Waivers and Variances**

**Question 31:** If a facility received a variance or waiver under the Emergency Rules (59AER17-1 or 58AER17-1) published in September, 2017, is the variance or waiver still valid?

**Answer:** No, the emergency rules 59AER17-1 and 58AER17-1 are no longer in effect and have been replaced by the permanent rules 59A-4.1265 and 58A-5.036, F.A.C. The permanent rules allow for extensions of the June 1, 2018 implementation deadline up to January 1, 2019, if certain conditions in the rules are met, without requiring a formal legal variance or waiver.

**Question 32:** The initial extension is in force from June 1, 2018 until January 1, 2019; however, an additional extension may be granted through a variance or waiver if unavoidable delays would cause the facility's implementation date to go beyond January 1, 2019. What is AHCA requiring for the Section 120.542, F.S. waiver/variance? Is AHCA contemplating receiving waiver requests at least 90 days prior to January 1, 2019 (Wednesday, October 3, 2018)?

**Answer:** Facilities should not assume requests will be approved and should make every effort to meet the requirements of the rule. Agencies generally have 90 days to grant or deny requests for variances or waivers

pursuant to Section 120.542, F.S. Any request to extend an implementation date past January 1, 2019 must be timely filed with the Agency for Health Care Administration 90 days prior to avoid being out of compliance with the requirements of the rule.

### **Penalties for Non-Compliance**

**Question 33:** What are the penalties for failure to comply with the Emergency Power Rules?

**Answer:** The Agency's goal is for all nursing homes and assisted living facilities to comply with the Emergency Power Rules and provide for safe environments for residents during an emergency power outage. Although these rules do not address specific penalties, the Agency may use existing sanction authority in the licensure laws for failure to implement these protections, including fines, license denial, and revocation.

### **Resources**

**Question 34:** Where can I find information about the EPP, Questions and Answers and any suggested forms?

**Answer:** Visit the AHCA website at: <http://ahca.myflorida.com/>  
Select: Licensure and Regulation  
Select: Bureau of Health Facility Regulation  
Nursing Homes - Select Long Term Care Unit  
Assisted Living Facilities – Select Assisted Living Unit

**Question 35:** Do you have a list of generator companies and electrical engineering contractors who could be hired to help facilities implement the emergency rule?

**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.

Please note this information is provided as a resource. It is the responsibility of the facility operator to ensure securing an appropriate contractor for your project with appropriate licensure.

**Question 36:** Will funding be available to assist with any costs of acquiring or installing the generator or fuel source?

**Answer:** Nursing homes may also qualify for additional reimbursement of Medicaid costs through the existing reimbursement process. Housing and Urban Development (HUD) financed properties may qualify for HUD funding assistance through HUD's Lean 232 Program, Office of Residential Care Facilities (ORCF). Please visit HUD website for details at [https://www.hud.gov/federal\\_housing\\_administration/healthcare\\_facilities/residential\\_care](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care).