



September 2017

FL Governor Orders AHCA and DOEA to Issue Emergency Rules for ALFs and Nursing Homes Following Power Outages

On Sept. 16, Florida Governor Rick Scott directed the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) to issue emergency rules requiring all Florida assisted living facilities (ALFs) and nursing homes to obtain generators and a sufficient supply of fuel to cool facilities for at least 96 hours within the next 60 days. Links to the emergency rule by AHCA pertaining to nursing homes can be found [here](#) and by DOEA pertaining to ALFs can be found [here](#). Gov. Scott also stated that he would pursue legislation mandating these requirements in statute.

Emergency Rules

The emergency rules require that the rule requirements be implemented within 60 days of the effective date of the rules, which is Sept. 16, 2017.

Pursuant to these emergency rules, facilities must submit within 45 days to AHCA or DOEA and to the local emergency management agency for review and approval of detailed plans which include the following criteria:

- acquisition of generators and fuel to maintain temperatures of 80 degrees or less for 96 hours following a power outage event;

- acquisition of services necessary to install, maintain, test and ensure the safe operation of the generators systems.

If the initial submitted plan is denied, the local emergency management agency shall report the denial to the Florida Division of Emergency Management and the facility within 48 hours of denial. The facility shall then have 10 business days from the notice of denial to resubmit their plan. If the plan is approved, the facility shall submit written proof of approval to AHCA for nursing homes or DOEA for ALFs within 48 hours of notice of approval.

The rules require that the State Fire Marshal conduct inspection of facilities to ensure compliance with the rules within 15 days of installation.

Penalties for Not Meeting Requirements

The emergency rules mandate that AHCA and DOEA fine any nursing homes or ALFs that fail to meet the new requirements \$1,000 per day and authorize revocation of their license.

Uncertainty for Florida Nursing Homes and ALFs

The emergency rules present several questions which will need to be resolved, including:

- What percentage of each facility must be maintained at 80 degrees or less following a power outage? Is it the entire facility and all living spaces or only areas necessary to house residents during an outage?
- Which is the proper agency to challenge a denial of an implementation plan or failure to implement the plan within 60 days? Does a facility challenge the local emergency management agency only or also AHCA or DOEA?
- What additional permits must be obtained to store sufficient fuel to power the generators for 96 hours? Such permits may be necessary from both the Florida Department of Environmental Protection and city and/or county governments. Are those agencies required to issue necessary permits on an expedited basis?

Takeaways for Nursing Homes and Assisted Living Facilities in Florida

There are nearly 700 nursing homes and over 3,000 ALFs licensed in Florida. The emergency rules require immediate action by all Florida nursing homes and ALFs to obtain generators and sufficient fuel to maintain air conditioned cooling of 80 degrees or less for at least 96 hours within 60 days of the effective date of the rules and obtaining state and/or local permits which may be necessary for fuel storage. Facilities should immediately make and document preparations to meet the rule requirements which may include contacting state and/or local permitting agencies, installation contractors, generator manufacturers, and fuel suppliers.

Facilities should also begin drafting proposed plans for implementation which must be submitted to both the local emergency management agencies and AHCA or DOEA within 45 days of the effective date. While doing so, facilities should evaluate their existing emergency preparedness plans considering the operational, clinical, and staffing needs of the facility.

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