



We put our heart into caring for you.

October 30, 2017

Cecila Patella
Director
18900 Cortez Blvd.
Brooksville, FL 34601

RE: Emergency Power Plan in Compliance with 59AER17-1

Dear Emergency Management Director:

Enclosed you will find our Emergency Power Plan for your review and approval in response to the Governor's Emergency Rule 59AER17-1 and under Emergency Rule 59AER17-2. We wanted to submit our Plan ahead of the 45-Day Deadline to inform you how we intend to become fully compliant with the Emergency Rule; however, our facility has submitted a Variance Request in accordance with F.S. 120.542 and Rules 28-104.004 and 104.005 due to the additional time that it will require for us to develop a permanent emergency power solution as promulgated in the Emergency Rule. The Variance Request was filed on 10/12/17 and posted to the AHCA Website on 10/17/17.

At present, we are currently awaiting an engineering evaluation to show what needs to be done to our electrical system to install a whole house transfer switch and to properly size a generator sufficient for full power to the facility in the event of a power loss emergency. These plans will require approval from the AHCA – Office of Plans and Construction before the new generator can be purchased, permitted, installed, and approved for use. In the meantime, we will continue to protect our resident population from temperatures above 80 degrees F in the event of a power loss per our longstanding policies and procedures that have been in place since the 1991 Federal Regulation requiring ambient temperatures be maintained between 71 and 81 degrees to ensure our residents' safety and well-being during a power loss.

For details of our current emergency power systems and capabilities please see the attached policies and procedures that have been in our Comprehensive Emergency Management Plan. After you have had an opportunity to review the enclosed Emergency Power Plan, please advise whether you need any additional information or require any amendments to the proposed Plan while we await approval of our Variance Request and initiate the installation of a permanent generator solution along with adequate fuel storage to meet the 96 Hour supply rule.

Sincerely,

Wanda Moak
Administrator

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

In Re: Petition for Rule Variance from rule 59AER17-1
by BROOKSVILLE HEALTH CARE CENTER LLC d/b/a
BROOKSVILLE HEALTHCARE CENTER,

Petitioner,

PETITION FOR EMERGENCY VARIANCE

The Petitioner, BROOKSVILLE HEALTH CARE CENTER LLC, d/b/a BROOKSVILLE HEALTHCARE CENTER, ("Petitioner"), by and through the undersigned Counsel, hereby files this Petition for Emergency Variance pursuant to Section 120.542, Fla. Stat. and Rule 28-104.004 F.A.C. In support thereof, the Petitioner states as follows:

I. PARTIES

1. Petitioner is a nursing home, licensed by the State of Florida, which is located at 1114 Chatman Boulevard, Brooksville, FL 34601.
2. Petitioner's legal representative is the Law Offices of Peter A. Lewis, P.L., whose address, telephone number and other contact information is set forth below.
3. The agency affected is the Agency for Health Care Administration ("Agency"), whose address is 2727 Mahan Drive, Tallahassee, Florida 32308.

II. BACKGROUND

4. On September 16, 2017, the Agency filed emergency rule 59AER17-1, which states:

(1) Procedures Regarding Emergency Environmental Control for Nursing Homes. Nursing homes shall, within forty-five (45) days of the effective date of this emergency rule, provide in writing, to the Agency for Health Care Administration and to the local emergency management agency for review and approval, a detailed plan which includes the following criteria:

(a) The acquisition of a sufficient generator or sufficient generators to ensure that current licensees of nursing homes will be equipped to ensure ambient

temperatures will be maintained at 80 degrees or less for a period of a minimum of ninety-six (96) hours in the event of the loss of electrical power.

(b) The acquisition and safe maintenance of sufficient fuel to ensure that in an emergency situation the generators can function to maintain ambient temperatures at 80 degrees or less for a period of a minimum of ninety-six (96) hours in the event of the loss of electrical power.

(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 generator system installed in the nursing home

(2) Each nursing home shall, within sixty (60) days of the effective date of this rule, have implemented the plan required under this rule.

(3) If the facility's initial submission of the plan is denied, then the local emergency management agency shall report the denial to the Florida Division of Emergency Management and the facility within forty-eight (48) hours of the date of denial.

(4) Within ten (10) business days of the date of the local county emergency management agency's notice of denial, the facility shall resubmit their plan.

(5) The county shall post all approved facility emergency management plans to their website within ten (10) days of the plan's approval.

(6) Within forty-eight (48) hours of the approval of the plan from the local emergency management agency, the facility shall submit in writing proof of approval to the Agency for Health Care Administration.

(7) The State Fire Marshall shall conduct inspections to ensure compliance with this rule within fifteen (15) days of installation.

(8) Each nursing home facility shall develop and implement written policies and procedures to ensure that the facility can effectively and immediately activate, operate and maintain the generators and alternate fuel required for the operation of the generators.

(9) The Agency for Health Care Administration may revoke the nursing home's license for failure to comply with this rule.

(10) In addition to other remedies provided by law, violation of this rule shall result in a fine or sanction of \$1,000 per day.

(11) The facility shall implement policies and procedures to ensure that the health care facility can effectively and immediately activate and maintain the generators and alternate fuel required for the operation of the generators.

5. The law implemented cited for the emergency rule is section 400.23, 408.819 and 408.821(4), Fla. Stat.

6. As mentioned above, the Petitioner operates a licensed nursing home and as such, is subject to the provisions of this emergency rule. The rule as filed carries with it potential license revocation and fines in the amount of \$1,000.00 per day for non-compliance. Therefore, the Petitioner has standing to make this request for a variance.

III. BASIS FOR THE EMERGENCY PETITION

7. This Petition is filed on an emergency basis because the effective date of implementation specified in the rule is sixty days from the date of the publication of the rule and the Petitioner does not have the time under the non-emergency variance request provisions to seek a variance under those provisions. According to the statutory provisions for non-emergency petitions for variances or waivers contained in section 120.542(8), Fla. Stat., an agency has *"90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition"* to render a decision on the request. According to the rule implementation requirements and sanctions for failure to comply, the non-emergency rulemaking provisions of the waiver/variance statute would leave the Petitioner in a potential state of noncompliance while the Agency reviewed the Request for Variance. Therefore, the non-emergency variance provisions are ineffectual in this case.

IV. THE RULE PROVISION FROM WHICH THE PETITIONER SEEKS A VARIANCE

8. The Petitioner requests an emergency variance on paragraph 2, 8, 9 and 10 of the emergency rule. The Petitioner has no way of complying with the 60 day implementation date set forth in paragraph 2.

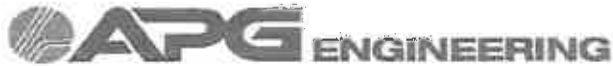
V. SPECIFIC FACTS THAT DEMONSTRATE SUBSTANTIAL HARDSHIP THAT WOULD JUSTIFY THE VARIANCE

9. According to section 120.542 (2), Fla. Stat., the definition of a "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. Despite diligent attempts to secure the necessary equipment to comply with the provisions of the emergency rule, it is impossible for the Petitioner to comply with those provisions within 60 days. Attached to this Petition is a letter from the contractor that the Petitioner has contracted with to provide the necessary services and equipment to achieve compliance. The letter clearly states the inability of the Petitioner, due to no fault of its own, to comply with the provisions of the emergency rule relating to implementation within 60 days.

10. The letter establishes that a reasonable time for the Petitioner to achieve compliance is August, 2018. This request for variance requests that the Petitioner not be required to comply with the provisions of the emergency rule and therefore, not subject to sanctions until and including August, 2018.

VI. STATEMENT AS TO WHY THE VARIANCE WOULD SERVE THE PURPOSE OF THE UNDERLYING STATUTE

11. The variance would permit the Petitioner to attain the goals of the statute within a reasonable time without the sanctions of licensure revocation or fines being imposed on the



MECHANICAL
ELECTRICAL
PLUMBING
FIRE PROTECTION
TELECOMMUNICATIONS

October 10, 2017

Mr. Rick Sweeney
Health Services Management, Inc.
206 Fortress Blvd.
Murfreesboro, TN 37128

RE: Brooksville Healthcare Center
1114 Chatman Blvd.
Brooksville, Fl. 34601

Dear Mr. Sweeney,

This letter is to confirm that APG Engineering, Inc. is under contract with Health Services Management, Inc. to perform an engineering evaluation of the skilled nursing facility's emergency electrical system pursuant to rule 59AER17-1 for Skilled Nursing Facilities and rule 58AER17-1 for Assisted Living Facilities, State of Florida.

At your direction, this office has proceeded with the evaluation and has conducted a site visit to the facility on October 5, 2017 to determine existing conditions. Please note that this is only an evaluation and still requires in depth field investigation, engineering analysis, detailed engineering construction drawings, AHCA review and approval, local jurisdiction permitting, generator equipment and switchgear ordering, construction/installation, and final inspections by local jurisdiction and AHCA. Given this sequence of events required by law, the project cannot feasibly be completed within a 60 day time frame. Furthermore, we are restricted by law from deviating from any of the aforementioned steps. We could reasonably estimate that the engineering analysis and preparation of construction documents could be completed by January 1, 2018 and the construction period to last another 7 months which includes a 16 week lead time on generator equipment delivery.

We are looking forward to working with you on this project.

Sincerely
APG Engineering

Bill Evans
Project Manager/
Senior Electrical Designer

COMPREHENSIVE EMERGENCY MANAGEMENT PLAN	
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Subject	
Power Loss	

Policy Statement

In the event of power loss, the facility will initiate protocols to ensure the residents are not exposed to temperatures above 80 degrees F. If the temperature of the facility reaches 81 degrees F the facility will notify the department of health, AHCA, and begin to evacuate the facility.

Policy Interpretation and Implementation

1. Immediately call the Duke Energy high-priority response number at 888-262-5677 or 800-228-8485 for repair service.

2. If after hours, Maintenance person on call shall be paged to notify them of generator use. The maintenance person notified is responsible for making sure that the emergency generator is operating properly and is kept fueled. The generator contains 100 gallons of diesel oil. In case of generator failure, Maintenance person on call shall immediately contact Ring Power 904-737-7730 for a Service Technician out here to check on the problem. The Maintenance person on call shall then notify the Administrator on call of the necessity of calling in a Service Technician. Fuel for the generator can be obtained through Whetstone Oil Company 799-1400.

3. Administration will be notified whenever the facility must go onto Emergency Power.

4. If air conditioning is lost, indoor temperatures must be taken and logged every four hours. Readings should be taken at various locations in the building to determine the hotter spots. The below actions should be taken by staff, at the direction of the administrator or designee of the administrator:
 - ⇒ Maintenance director will distribute our 6 on site portable air conditioners to the following common Areas: Main Dining Room, Courtyard Dining Room, Activities Room, and Therapy Gym. These units run on the emergency outlets and will run on our current generator. These cool zones will house all residents during a power loss emergency. Extra diesel fuel is on site to run the generator for 96 hours.

 - ⇒ Call United Rentals rep David Mannschreck at 813-468-8514 to obtain a portable generator and AC units within 24 hours of notification. These extra portable AC units will condition additional space, in addition to our onsite portable air conditioners, to give conditioned space for our staff. Rental company will provide two 500 gallon fuel cubes to provide for 96 hours of continuous operation. In the event of a named storm United Rentals will provide the same services with a 72 hours notification.

COMPREHENSIVE EMERGENCY MANAGEMENT PLAN	
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Emergency Generator Equipment	

Ahead of extra generator and extra AC delivery:

- ⇒ Relocate residents to air-conditioned areas of the building: Main Dining Room, Courtyard Dining Room, Activities Room, and Therapy Gym.
- ⇒ Large fans are activated in patient care areas.
- ⇒ Medical director is notified.
- ⇒ Fluids are encouraged.
- ⇒ Extra ice is made available to all patients.
- ⇒ Portable air conditioning units are utilized through generator power, in a triage area if needed for patients with fevers or medical emergencies.
- ⇒ High risk patients should have body temperatures recorded every four hours. The nurse will monitor and report information to the attending physician when applicable.
- ⇒ Closely monitor sanitation. Heat speeds up food spoilage.
- ⇒ Place patients with elevated temperatures near fans cooled with air blowing over basins of ice.
- ⇒ Turn off lights as well as other heat producing appliances whenever possible.
- ⇒ Keep residents out of direct sunlight.
- ⇒ Close blinds and curtains in areas of direct sunlight.

5. The emergency generator is tested and maintained in accordance with NFPA 110 to ensure proper mechanical operations.
6. If the building temperature reaches 81 degrees, notify the county health department, AHCA, and then begin evacuation procedures.

See Evacuation Procedures Policy.

References	Federal Code 483.73, 483.10 NFPA 110
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