STATE OF FLORIDA DEPARTMENT OF ELDER AFFAIRS  
DIVISION OF FEDERAL AGING PROGRAMS  

January 22, 2019  

IN RE: PATRICK MANOR ASSISTED LIVING FACILITY  

EMERGENCY PETITION FOR VARIANCE  
FROM PROCEDURES REGARDING EMERGENCY ENVIRONMENTAL CONTROL  
FOR ASSISTED LIVING FACILITIES RULE  

Petitioner:  
PATRICK MANOR ASSISTED LIVING FACILITY Hereby petitions and requests to  

Florida Department of Elder Affairs (DOE) for an emergency variance from rule 58A-5.036 F.A.C. because strict application of this rule will create a substantial hardship and will violate principles of fairness.  

In support thereof, Petitioner states:  

Background facts:  

1. Petitioner is PATRICK MANOR ASSISTED LIVING FACILITY AL#10248 and is physically located at 896 73rd Avenue North, St. Petersburg, FL 33702 in Pinellas County, with telephone number of 727-521-1843 and email is: info@patrickmanor.com.  

2. The Administrator is THERESA L PUTNAM.  

3. The petitioner is an assisted living facility licensed for 55 residents.  

4. The building is an approximately 18,000 sq foot single story structure comprised of 39 bedrooms, and multiple living, dining, and activity rooms.  

An Emergency Petition is Necessary  

1. Rule 58A-5.036 is implementing Florida Statutes 429.19 and 429.41.  

2. This Emergency Petition is filed pursuant to section 120.542 Florida Statutes and Chapter 28-104.004 F.A.C.  

3. Petitioner request an emergency temporary variance from the provisions in Rule 58A-5.036 F.A.C. which sets out a completion deadline for implementing the environmental control project.  

4. Thus, the petitioner will suffer an immediate adverse effect if the variance or a is not issued more expeditiously than the statutory time frames provided in Section 120.542 and Chapter 28-104 of F.A.C.
The Rule

(b) the agency shall allow an extension up to January 1, 2019 to providers in compliance with subsection (c), below, and who can show delays caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes. 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. If an assisted living facility can show in its quarterly progress reports that an unavoidable delays caused by necessary construction, delivery of ordered equipment, zoning or other regulatory approval processes will occur beyond the initial extension date, the assisted living facility may request a waiver pursuant to section 170.542, F. S.

1. The initial extension notification was submitted on August 1, 2018.

2. On August 1, 2018 the Petitioner was granted an extension with expected completion/implementation date of November 20, 2018.


4. Petitioner submitted an additional extension request on December 7, 2018 per request of AHCA with no expected completion date as permit process approval was unknown.

5. Petitioner has made a good faith effort to properly and timely implement the plan, however due to circumstances beyond the Petitioner’s control, the Petitioner is unable to implement the plan by the January 1, 2019 deadline. This creates a hardship for the Petitioner in that the DOE and/or AHCA could impose various penalties for noncompliance.

6. Section(2), Florida Statutes, provides that variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principle or fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. See Section 120-542(2) F.S. As discussed below, the application of Rule 58A-5.036 F.A.C. creates hardship on the Petitioner.

7. Specifically, the Petitioner has completed the following towards the plan implementation;

   a. Determined the appropriate method and equipment necessary to meet the residents’ comfort and clinical needs including maintaining an indoor environmental temperature which does not exceed 81 degrees.

   b. Contracted a licensed building contractor to properly install a standby generator suitable to meet the rule requirements. Said contractor has filed permit application with the appropriate municipality building regulatory authority, received revision/corrections requests and has submitted corrected/revised plans on now two occasions.
c. Installed necessary equipment in the existing building to attach the generator and F.S. 119.071(3)(a)2.b to once the permit is granted/approved.

d. Purchased and has on site the F.S. 119.071(3)(a)2.b 32kW generator ready to install.

8. Petitioner has submitted a preliminary EECP to local Pinellas County EEOC in 2018 and will be submitting a new plan to Pinellas County EEOC once the plan is implemented to reflect the updated generator.

9. **F.S. 119.071(3)(a)2.b.**

10. The granting of the variance at this time is not unreasonable.

11. If the emergency variance is not granted, Petitioner will suffer an immediate adverse action.

12. Petitioner may be subject to revocation and/or non-renewal of license, fines or sanctions. Any fines imposed will reduce the capability of the petitioner to comply with the rule. Furthermore, the possibility of license revocation would irreparably injure the petitioner, as well as their residents and their families.

13. The literal application of the rule will thus create a substantial hardship for Petitioner. Additionally, the Petitioner will suffer an immediate adverse effect unless the variance is granted. Accordingly, the variance should be granted.

14. Section 429.19, Florid Statutes, was enacted to provide for imposition of administrative fines for violations of Chapter 429 Part 1, Florida Statutes See Sec 429.19(1) F.S.

15. Rule 58A-5.036 Section 4 (c) requires for the assisted living facility to make arrangements pending full implementation of its plan that provides the residents with an area or areas to congregate that meets the safe indoor air temperature of 81 degrees for a minimum of 96 hours.

16. A variance from the rule will not impair the purpose of the statutes, which is to require that assisted living facilities provide for safety, care, and comfort of its residents on a regular basis as well as during an emergency.

17. **F.S. 119.071(3)(a)2.b.** will be available at the assisted living facility at all times pending installation of the statutory generator and 96 hours of fuel.

18. F.S. 119.071(3)(a)2.b. Staff will remain with residents during prolonged outage and the temperature will be monitored hourly. If power is lost to the building, staff will make rounds to ensure residents have light source and to check on the safety of all residents. Staff on duty will do the following;

   a. Notify the power company of the loss of electrical services by Calling Duke Energy (800) 228-8485. Staff will NOT assume it has been reported.
b. F.S. 119.071(3)(a)2.b.

c. F.S. 119.071(3)(a)2.b. if temperature is not an issue, staff will regularly patrol the building every 20 minutes on wellness checks, to determine the needs of the residents and to check for the evidence of smoke or fire.

19. Petitioner will implement the rule, however, will not be able to do so by January 1, 2019. A variance serves the purpose of the underlying statutes by enabling the Petitioner to continue to perform essential services for residents without the threat of disruption or termination, while implementing the requirements of the rule.

20. The facts herein demonstrate a substantial hardship to petitioner and justify the granting of the variance for the Petitioner.

21. It must be noted that Petitioner is not seeking a variance from the implementation of the rule, but rather from substantial hardship and immediate adverse effect it is facing based on the deadline within which the rule requires implementation. It would be fundamentally fair to grant the Petitioner the time it requires to implement this project.

22. The deadline for implementing under the approved extension is January 1, 2019 by definition of the extension. Under 120.542, F.S. the Agency has 30 days to review the Petition and submit a request for additional information necessary. Within 30 days after receipt of such additional information, the Agency shall review such information, and may request information to clarify the additional information if necessary. Ultimately the Agency has up to 90 days within which to grant or deny this Petition. Although the request for additional information may not be made by the Agency, and in abundance of caution the undersigned has titled this n Emergency Petition.

23. The Petitioner will suffer immediate adverse effect unless the variance is granted since the Agency may choose to impose sanctions or fines for non-compliance with the rule.
Conclusion

For the foregoing reasons, Petitioner requests the DOE grants its Emergency Petition for Variance from Rule 58A-5.036 F.A.C. allowing Petitioner until March 31, 2019 for full implementation of the rule, and to stay imposition of any fines throughout the extension period provided by the variance. Additionally, Petitioner requests that they not be prohibited from seeking additional extension if implementation of the rule is unavoidably delayed through no fault of Petitioner.

Respectfully Submitted January 22, 2019.

Theresa L. Putnam, Administrator
PATRICK MANOR ASSISTED LIVING FACILITY

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true copy of this Emergency Petition for Variance has been provided to the Agency Clerk, Office of the General Counsel of the Florida Department of Elder Affairs, at agencyclerk@elderaffairs.org.

THERESA L PUTNAM, Administrator
PATRICK MANOR ASSISTED LIVING FACILITY AL#10248
896 73rd Avenue North
St. Petersburg, FL 33702