



RON DESANTIS
GOVERNOR

MARY C. MAYHEW
SECRETARY

May 5, 2020

2020 MAY -5 PM 12:10

HAND DELIVERY

Mr. Ernest L. Reddick, Program Administrator
Florida Administrative Code and Register Section
The Capital, Room #701
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Emergency Rule 59AER20-1, Hospital Screening Requirements for Long-Term Care Facility Residents

Dear Mr. Reddick:

Enclosed is the certification package for the above-referenced emergency rule. The certification package includes:

- Certification of Emergency Rule
- Emergency Rule 59AER20-1
- Designation of Rule The Violation of Which is a Minor Violation Certification
- Document Outlining Statements of Facts, Reasons For Finding An Immediate Danger To The Public Health, Safety Or Welfare, and Reason For Concluding That The Procedure Is Fair Under The Circumstances



If you have questions or require additional information regarding this filing please contact Kimberly Stewart by phone at (850)412-3492 or via e-mail at Kimberly.Stewart@ahca.myflorida.com.

Sincerely,

Molly McKinstry, Deputy Secretary
Division of Health Quality Assurance

Attachments



CERTIFICATION OF AGENCY FOR HEALTH CARE ADMINISTRATION
EMERGENCY RULE FILED WITH THE
DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with Section 120.54(4), F.S. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

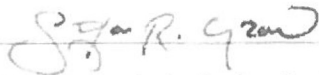
Rule No. 59AER20-1

Under the provision of Section 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from filing, is set out below:

Effective Date: May 5, 2020

(month) (day) (year)

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Signature, Person Authorized to Certify Rules

General Counsel

Title

1

Number of Pages Certified

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

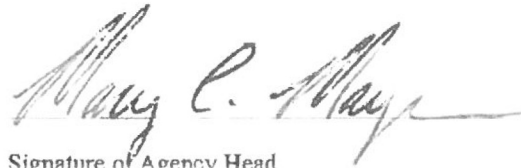
The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

Rules covered by this certification:

Rule No.: 59AER20-1

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Signature of Agency Head

Secretary, Agency for Health Care Administration

Title

59AER20-1 Hospital Screening Requirements for Long-Term Care Facility Residents.

(1) Applicability. The requirements of this emergency rule apply to all hospitals licensed under Chapter 395,

F.S.

(2) Definitions.

(a) "Long-term care facility" is defined, for purposes of this rule, as any of the following facilities:

1. Nursing Homes, as provided under Chapter 400, F.S.;
2. Group Home Facilities, as provided under Chapter 393, F.S.;
3. Intermediate Care Facilities for the Developmentally Disabled, as provided under Chapter 400, F.S.;
4. Assisted Living Facilities, as provided under Chapter 429, F.S.; and

(b) "Long-term care facility resident" is defined, for the purposes of this rule, as any individual in Florida that is considered to be a resident, client, or patient of a long-term care facility or who will imminently become a resident, client, or patient of a long-term care facility upon discharge from a hospital licensed under chapter 395.

(3) Mandatory Testing for COVID-19 of Long-Term Care Facility Residents Prior to Discharge.

(a) Every hospital must test any long-term care facility resident for COVID-19, using an FDA-approved lab-based PCR test, prior to discharging the individual to any long-term care facility.

(b) A hospital is prohibited from discharging any long-term care facility resident who tests positive for COVID-19 to any long-term care facility until the individual has two consecutive negative test results separated by 24 hours, unless the receiving long-term care facility has a dedicated wing, unit or building with dedicated staff to accept COVID-19 positive residents.

Rulemaking authority 408.819, 408.821(4), FS Law Implemented 408.819, 408.821(4) FS

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AGENCY FOR HEALTH CARE ADMINISTRATION

RULE TITLE:

Hospital Screening Requirements for Long-Term Care Facility Residents

RULE NO:

59AER20-1

STATEMENT OF FACTS AND SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:

The Novel Coronavirus Disease 2019 (COVID-19) is a severe respiratory illness that can spread among humans through respiratory transmission. According to the Centers for Disease Control and Prevention (CDC), people at risk for serious illness from COVID-19 include older adults and people with serious chronic medical conditions. In late 2019, a new and significant outbreak of COVID-19 emerged in China and the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. The CDC also confirmed instances of community spread of COVID-19 in the United States and has issued extensive written guidance to help control the spread of COVID-19. According to the CDC, at the time of this filing, the United States has over 1,000,000 total cases and over 67,000 total deaths.¹ Older adults are at a higher risk of developing serious complications from COVID-19.² According to the United States Census Bureau, Florida has the largest percentage of residents age 65 and older in the nation.

On March 1, 2020, Governor Ron DeSantis directed State Surgeon General Scott Rivkees to declare a Public Health Emergency in the State of Florida as a result of COVID-19 pursuant to Executive Order 20-51. On March 9, 2020, Florida Governor DeSantis declared a state of emergency in Florida. As of May 4, 2020, all counties in Florida have positive cases for COVID-19. As of the date of this filing, there have been 36,897 confirmed cases in Florida as a result of COVID-19 and 1,399 deaths.

¹ <http://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

Elders, older adults, and other residents of long-term care facilities are presenting without COVID-19 symptoms and are being treated by hospitals for various non-COVID-19 reasons. However, after being discharged from the hospital to their long-term care facility residences, the individual develops COVID-19 symptoms and spreads the virus to other residents and staff in the facility where previously there were no positive facility cases. Due to the congregate nature of long-term care facilities, the increased risk of transmission of COVID-19 is high. The highly transmissible nature of COVID-19 combined with the congregate nature of the long-term care facility settings and the close and personal contact that many long-term care facility workers have with the patients puts both residents and staff at a high risk of infection.

Medical research shows the highly contagious COVID-19 virus can manifest as asymptomatic in positive individuals and the live coronavirus can shed at high concentrations before symptomatic development resulting in spread of the infection. Ensuring hospitals test all long-term care facility residents before discharge to a long-term care facility is essential to protecting the health, safety and welfare of vulnerable residents who are at the highest risk of serious illness or death from the virus.

Long-term care facilities around the state have taken strong measures to ensure protection of their resident populations. While many facilities and hospitals already adhere to similar protocols as outlined by this rule, this emergency rule formalizes a requirement for all hospitals to confirm long-term care residents are negative for COVID-19 before they are discharged from the hospital to any long-term care facility, unless the receiving long-term care facility has a dedicated wing, unit or building with dedicated staff to accept COVID-19 positive residents. The rule is consistent with longstanding direction from Governor DeSantis that facilities and hospitals ensure patients and residents receive the utmost protection and care. The rule memorializes guidance from the Agency Secretary to health care providers related to best practices and measures necessary to ensure resident safety. Finally, the rule gives the Agency the tools necessary to take enforcement action in the event of a failure to comply.

Prompt implementation of this rule is necessary to ensure the health, safety and welfare of residents and staff in Florida's nursing homes, group home facilities, intermediate care facilities, and assisted living facilities.

STATEMENT OF REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:

The procedure used to adopt this emergency rule is fair as the State of Florida is under a declaration of emergency due to the outbreak of COVID-19. This emergency rule is necessary and fair to ensure the health, safety, and welfare of the facility residents, and provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution; and takes only that action necessary to protect the public interest under the emergency procedure.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Kimberly Stewart, Agency for Health Care Administration, Division of Health Quality Assurance, Bureau of Health Facility Regulation, 2727 Mahan Drive, MS# 28A, Tallahassee, FL 32308.