



**Haven of Our  
Lady of Peace, Inc.** October 30, 2017

1900 Summit Boulevard  
Pensacola, Florida 32503-3359  
850-436-5900

**THIS LETTER IS BEING HAND DELIVERED WITH COPY  
SENT BY E-MAIL SERVICE**

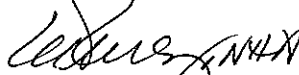
Bradford C. Hattaway  
Brad C. Hattaway <BCHATTAW@myescambia.com>  
Planning Coordinator  
Division of Emergency Management  
Public Safety Department  
6575 North "W" Street  
Pensacola, Florida 32505

To Whom it May Concern,

Pursuant to Emergency Rule 59ABR17-1 ("Emergency Rule"), enclosed is our facility's plan to make the changes required in the emergency rule. Recognizing the minimal time allotted for compliance, and the potential for substantial penalties, we have submitted to the State the enclosed Verified Emergency Petition for Variance ("Petition") requesting additional time to develop and implement a plan that satisfies the Emergency Rule. Due to their length, we are not including all of the attachments to the Petition but please let me know if there is anything referenced in the Petition that you would like to see. As detailed in the Petition, despite working diligently to satisfy the Emergency Rule's requirements, there are substantial obstacles in meeting the Emergency Rule's infeasible deadlines. For this reason, please recognize that the plan submitted today is a work in progress and will likely need additional refinements as we move forward. Further, given the pending appeal and the fact that the final rule requirements are presently unknown, we reserve the right to modify or re-draft our plan pursuant to any invalidations or revisions of the rule requirements. The health and safety of our residents remains our top priority. We look forward to working with you on this matter, and are committed to taking the necessary steps to continue to ensure the health and safety of our residents.

Please let me know if you have any questions.

Sincerely,

  
Martha Perez, NHA  
Administrator

Attachment: 1

*Our Commitment to God's Older Children*



**Sacred Heart  
Health System**



METHODIST HOMES FOR THE AGING CORPORATION

**Emergency Management Planning Criteria for Emergency  
Environmental Control 59AER17-1**

**Nursing Home/Skilled Nursing Facility**

- A. Provide basic information concerning the facility to include:

Name of Facility:	<b>HAVEN OF OUR LADY OF PEACE</b>
Facility Type:	<b>SKILLED NURSING FACILITY</b>
Facility Address:	<b>1900 SUMMIT BOULEVARD</b>
City, State and Zip Code:	<b>PENSACOLA, FL 32503</b>
Telephone Number:	<b>850.436.5900</b>
Administrator:	<b>MARTHA PEREZ, NHA</b>

- B. Identify area within facility and square footage that you plan to keep below 80 degrees:

Therapy Gym, 2,415 square feet; Chapel, 1028 square feet; Main Dining Room, 974 square feet

- C. Identify how many people (residents and staff) the area to be cooled will accommodate:

Therapy Gym: 80 @ 30 square foot per person=	2400 sq ft
Chapel: 34 @ 30 square foot per person =	1020 sq ft
Main Dining: 32 @ 30 square foot per person=	960 sq ft

- D. Provide a statement on how you plan to move residents to the identified location. Identify if beds will be located in the area to be cooled:

Residents will be moved via wheelchairs, gerichairs or stretchers as indicated.  
Beds will not be moved to the cooled areas

- E. Describe how staff will ensure the area does not exceed 80 degrees and how/how often the temperature will be monitored:

Therapy Gym is currently on HVAC system connected to back up generator. Chapel and Main Dining Room will be added to current generator for HVAC cooling.  
Estimated timeline for installation: May 14, 2018, subject to timely receipt of local and state regulatory approvals.  
Temperatures will be monitored hourly

- F. Describe make, model and size of generator. Is the generator fixed or portable?

The generator is fixed. Kossen ; 300KW, Diesel Fuel, 3 Phase Generator.  
208 Volts, 1400 gallon capacity. Fuel Tank: above ground

- G. Describe where the generator is located at your facility:

The generator is located at the back of facility at the service entrance.

- H. Describe what emergency features the generator is capable of powering (lights, fridge, A/C, etc.):

Generator will power:

HVAC to therapy room, (2) elevators; emergency lighting; refrigeration; walk in refrigerator and freezer; washers and dryers; 5 outlets per resident bed; limited lightening in common areas; ice machines; outlets surrounding common area; kitchen equipment; front office computer and printer.

Once modifications are made, the generator will also power the HVAC system to the Chapel and Main Dining Room.

Estimated timeline for installation: May 14, 2018, subject to timely receipt of local and state regulatory approvals.

- I. Describe how much fuel is located on site, where the fuel stored and how long it will provide fuel for the generator (minimum requirement is enough fuel for 96 hours/4 days):

1400 gallons, stored above ground near service entrance.

Estimated 53% capacity @ 15.3 gph, consumption= 1,469 gallons required

500 gallon auxiliary tank will be installed. Estimated timeline for installation: May 14, 2018, subject to timely receipt of local and state regulatory approvals.

- J. Describe how the generator is connected to supply emergency power to cool your facility:

Generator is connected to 2 direct expansion units and 2 air handling units to supply air conditioner to Therapy Room.

Chapel and Main Dining Room will be connected to the existing generator via an automatic transfer switch. Estimated timeline for installation: May 14, 2018, subject to timely receipt of local and state regulatory approvals.

- K. Describe the plan/procedure for initiating generator power:

Automatic transfer switch

- L. Document how the emergency generator, fuel supply and all equipment will be protected from debris and any impact:

Generator is housed inside 4 metal walls, fuel supply is stored in a double walled steel tank.

- M. Describe how the facility will refuel before and after an emergency. If a fuel agreement is established, provide the agreement:

Facility receives fuel from Puckett Oil Company, at minimum, once a year before the start of hurricane season. The facility will refuel as necessary.

- N. Describe how training will be provided to ensure staff is aware of how to operate the emergency power to the facility (this section may not apply to facilities with automatic transfer switches):

Automatic transfer switches. Staff is trained to ensure that all essential equipment remains plugged into a red outlet at all times.

- O. If your facility is planning on installing a fixed generator, describe the construction implementation time and attach the plans:

N/A at this time

- P. Describe if the fixed generator is to run the HVAC and provide a certified HVAC letter approving the tonnage required to cool the space indicated:

Please see attached report from Electrical Engineer.

# KLOCKE & ASSOCIATES, INC.

*Consulting Engineers*

102 E Garden Street, Pensacola, FL. 32502 (850) 434-0989

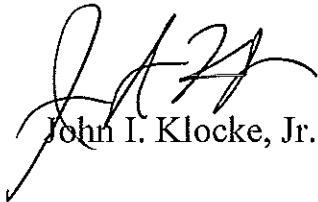
October 30, 2017

Martha Perez, Administrator  
Haven of Our Lady of Peace  
1900 Summit Blvd  
Pensacola, Florida 32503

RE: Haven of Our Lady of Peace  
Pensacola, Florida

Dear Martha:

As stated previously the referenced facilities electrical and HVAC systems will be modified to provide environmental controls (air conditioning) on emergency power for nominal 4400 sq. ft. of space during an extended power outage. The 4400 sq. ft. of space has been deemed adequate to house the facilities patients during an emergency condition. The space is divided into 3-areas (therapy area, chapel and main dining) These areas have HVAC equipment installed totalling nominal 45 tons (nominal 540,000 BTUH) of air conditioning capacity. This capacity will provide environmental controls in the designated spaces such that space temperatures will be 80 degrees F or less. The 45 tons of air conditioning equipment will be powered from the existing diesel generator system.



John I. Klocke, Jr., P.E.

Cc: Chris Zajac

**STATE OF FLORIDA**  
**AGENCY FOR HEALTH CARE ADMINISTRATION**

IN RE: VERIFIED PETITION AND EMERGENCY PETITION FOR  
VARIANCE FLORIDA ADMINISTRATIVE CODE EMERGENCY  
RULE 59AER17-1

BY: HAVEN OF OUR LADY PEACE, INC.

---

HAVEN OF OUR LADY PEACE, INC. (“Petitioner”), by and through its undersigned attorneys and pursuant to section 120.542, Florida Statutes and Florida Administrative Code Chapter 28-104.004,<sup>1</sup> and 59-AER17-2, Florida Administrative Code, hereby requests an emergency variance<sup>2</sup> of a portion of Florida Administrative Code Emergency Rule 59AER17-1, and as grounds therefore would show:

1. Petitioner is HAVEN OF OUR LADY PEACE, INC., located at 1900 SUMMIT BOULEVARD, PENSACOLA, FL 32503. The contact information for Petitioner for purposes of this Petition is that of its undersigned counsel.

**INTRODUCTION**

2. On September 18, 2017, the Florida Agency for Health Care Administration (“AHCA”) published Emergency Rule 59AER17-1 in Section IV Emergency Rules in the Florida

---

<sup>1</sup> Petitioner seeks an emergency variance of the Emergency Rule’s 45-day plan submission requirement. The submission deadline imposed by the Emergency Rule, October 31st, 2017, does not allow for resolution of the issues presented in this Petition within the traditional 90-day statutory time frame. *See* 120.542(8), Fla. Stat. As such, Petitioner will suffer an immediate adverse effect, namely a revocation of its license pursuant to 59AER17-1(9) or a fine of \$1000 per day for noncompliance pursuant to 59AER17-1(10), unless the waiver is issued more expeditiously than the time frames provided in § 120.542, Florida Statutes. However, in the event that AHCA is not going to impose sanctions on Petitioner if the emergency plan submission and implementation requirement deadlines are not met during the pendency of this Petition, then Petitioner is amenable to this matter being considered based on the non-emergent rather than the emergent provisions of section 120.542, Florida Statutes. <sup>2</sup> Under the facts of this Petition, there is not a clear distinction between whether this is a request for a “waiver” or a “variance.” Petitioner has used the term “variance” herein but, for purposes of this Petition, the request for a variance is also intended to be treated the same as a request for a temporary waiver.

Administrative Register (hereafter referred to as “the Emergency Rule”). The Emergency Rule took effect September 16, 2017 upon being filed with the Department of State.

A copy of the Emergency Rule is attached as Exhibit “A”.

3. The Emergency Rule incorporates standards to ensure that nursing homes maintain sufficient resources to provide alternative power sources during emergency situations, mitigating the concerns related to the health, safety and welfare of nursing home residents that experience a loss of power. The Emergency Rule was purportedly adopted in response to the tragic loss of life that resulted from a loss of power during Hurricane Irma at one nursing home in Broward County.

4. The applicable portion of the Emergency Rule states:

(1)...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.

5. The Emergency Rule purports to implement §§ 400.23, 408.819, and 408.821(4), Fla. Stat.

6. Under the Emergency Rule, there are new requirements that require the acquisition and installation of additional generators, as well as the acquisition and installation of sufficient on-

site fuel and fuel storage. Consequently, the development and implementation of policies and procedures to safely install, operate, and maintain the additional generators and fuel supply—in addition to the requisite local and state inspections and approval—is required as well.

7. As noted, the local emergency management agency is responsible for approval of plans submitted pursuant to the Emergency Rule. The State Fire Marshall also is required to conduct inspections to ensure compliance.

8. The purpose of this Petition is to seek an emergency variance of the requirement that Petitioner formulate and submit a plan describing its emergency power plan within 45 days of the effective date of the Emergency Rule, and the requirement that Petitioner implement said plan within 60 days of the effective date of the Emergency Rule. As described below, Petitioner has already taken steps to formulate an emergency power plan but, because of circumstances beyond Petitioner's control, additional time beyond October 31st is needed. Additional time to implement an emergency power plan beyond November 15, 2017 is also needed.

9. The anticipated date for the submission of a detailed plan pursuant to the Emergency Rule is December 31, 2017. The anticipated date for implementation of the plan pursuant to the Emergency Rule is on or before May 14, 2018, which is 180 days from the Emergency Rule's November 15, 2017 deadline and importantly before the start of Florida's hurricane season, assuming appropriate regulatory approvals can be secured from various local and state regulatory agencies in a timely manner. Until submission and implementation are completed, Petitioner will continue to comply with all regulations governing emergency preparedness to ensure the health and safety of its residents.

#### **PETITIONER AND ITS NURSING HOME**

10. Petitioner's facility was first built in 2001 and includes 120 beds.



11. Petitioner is licensed by AHCA to provide nursing home services. Petitioner holds AHCA Licensure Number: 11970951.

12. Petitioner is majority owned and managed by Ascension Health, the largest notfor-profit health system in the United States with 141 hospitals and over 2,000 sites of care across 24 states.

13. Recognizing the importance of preparedness, Ascension Health has a dedicated program for emergency management planning, response, and recovery. The program includes a “whole of corporation” approach to disasters. Utilizing a virtual emergency operations center (EOC), Ascension Health is able to bring the support and expertise of the company to support its local facilities during a disaster.

14. For example, during Hurricane Irma in 2017, planning for this storm started seven days before landfall with coordination calls with Ascension Health hospitals, long term care, and outpatient facilities. At Petitioner’s facility, management participated in daily conference calls with Ascension Health to monitor the storm and ensure disaster preparedness. Further, Petitioner proactively ordered seven days of necessary medical supplies, prescriptions, food, water, oxygen, and other provisions. Petitioner also secured the property in the event Hurricane Irma changed paths. During this time, Petitioner’s management team met daily to review plans and further prepare. Additionally, Petitioner kept an updated communication board in the front lobby detailing events and preparations so as to keep residents, families, and visitors informed. Ascension Health also subscribes to a private meteorological service, StormGeo, which gives location specific forecasts to our facilities during weather events.

15. Petitioner’s staff works closely with local emergency management and public safety services, and also collaborates with Ascension, at the national level, on health care and Public Health critical infrastructure programs.

## **THE NECESSARY RENOVATIONS**

16. After publication of the Emergency Rule, the Petitioner has taken the following steps to formulate a detailed plan and implement said plan:

- a. On October 4, 2017, Medxcel Facilities Management (“Medxcel”), a subsidiary of Ascension Health that provides facility management, environment of care, emergency management, safety, construction, and compliance services, was asked to assist Petitioner with the needs per the Emergency Rule.
- b. In the following days:
  - i) Medxcel toured the site with the facility manager and administration to complete an initial assessment of the facility and what additions would be required.
  - ii) The Haven Facility Manager provided the room square footages and information on the emergency electrical distribution system along with the current electrical load.
  - iii) Electrical and Mechanical contractors were asked to tour the site for recommendations.
- c. On October 12, 2017, Petitioner’s leadership met to discuss clarification of the emergency rule and possibilities to move forward.
- d. Klocke and Associates, Inc., an engineering firm, was retained to assess the facility and make recommendations per the rule. They have been asked to determine the most economical method to meet the requirements. Specifically, Klocke and Associates have been asked to:
  - i) Evaluate the existing cooling system square footage coverage under generator power, fuel capacity and run time.

ii) Determine what additional area is needed to comply with the rule, along with the required changes to the cooling system and electrical supply to meet the rule.

iii) Submit stamped drawings of the above plan to AHCA for approval.

e. Petitioner has also initiated conversations with Escambia County about specific local guidelines required for compliance.

17. A further complicating factor is that it appears that there may be different requirements imposed by different counties for both the plan and the implementation. Petitioner has not received final guidelines from the Escambia County local emergency management agency. Without clear guidance from the agency tasked with approving these plans, Petitioner faces uncertainty and the possibility of having to completely revise its plans if and when local compliance guidelines are adopted.

18. Upon information and belief, Petitioner states that other counties may have different guidelines. Also on information and belief, with all nursing homes and assisted living facilities in Florida scrambling to address the Emergency Rule<sup>2</sup>, even ascertaining the requirements is complicated and time consuming.

19. Due to circumstances beyond its control, the 45-day deadline for plan submission inhibits Petitioner from gathering sufficient information to develop a comprehensive plan for compliance with the Emergency Rule and any local guidelines. Indeed, the minimal time allotment impedes Petitioner's ability to even ascertain what it doesn't know and what it needs to know to move further to effectuate the Emergency Rule's purpose. In fact, part of the delay in formulating

---

<sup>2</sup> Contemporaneous with the publication of the Emergency Rule, the Florida Department of Elder Affairs also published Rule 58AER17-1 imposing similar requirements on assisted living facilities in Florida. According to information on AHCA's website, there are almost 700 nursing homes and over 3000 assisted living facilities in Florida.

a plan is directly caused by the promulgation of the Emergency Rule; the Emergency Rule has created such a demand for architects and engineers that they are unable to complete site visits and create remediation plans within a normal timeframe. Without the input of its engineer or architect, Petitioner is unable to develop a finalized plan of action.

20. Petitioner's experts in the field have stated that they will not be able to provide all of the necessary information within the 45-day timeframe. As such, at this point in time, any portrayal of the necessary renovations will present an incomplete picture of what will actually need to be accomplished in order to satisfy the Emergency Rule.

21. Extensive architectural and engineering work is likely required to bring Petitioner's facility into compliance. At this point in time, upon information and belief, the precise remaining steps for formulating and fully implementing the detailed plan are not fully known due to circumstances beyond Petitioner's control. However, upon information and belief, the likely steps necessary will be based on the following information:

- a. The Emergency Rule requires that the facility has generator, fuel, and cooling to maintain the temperatures of 80 degrees or less for 96 hours following a power outage event. The cooling requires 30 sq ft per patient and associate that will be in the facility during this situation.
- b. The facility currently has 300kva generator that has 1400 gallons of diesel fuel available. Under the current generator load the generators consume approximately 19.5 gal/hr which will provide emergency power for approximately 72 hours. The facility will be required to add an additional 500 gallons of fuel capacity to meet the 96-hour requirement.
- c. In the event of an emergency, the facility could house up to 120 patients and 24 staff at any one time. Under the emergency rule, this would require 144 x 30

sift = 4320 sift of cooling. The facility currently has one room, Therapy room, that will provide approximately 3521 sift of appropriate cooling. The facility was able identify the Chapel, approximately 800 sq ft, and the Dining room, approximately, as optional spaces to add cooling. Petitioner has also identified the need for chilled water and emergency power to operate these air handlers.

- d. Petitioner has contacted Locke and Associates, Inc. to review the current needs of the facility per the Emergency Rule. This assessment will include verifying the spaces for proper square footage needed for cooling, current electrical load on the generator and distribution system, and what it will take to make the needed changes. The facility offered three possibilities for addition to generator power that will be verified and reviewed:

- i) Addition of the air handler for Chapel and/or Dining room. A chiller and chilled water pump to provide chilled water to these areas.
- ii) Above option, plus the addition of the patient room fan coil units for cooling
- iii) Facility wide cooling by the addition of all air handlers and fan coil units along with both chillers and chilled water pumps.

22. Further, as regulatory approval rests, in part, in the hands of local emergency officials, additional county-specific requirements that go beyond the Emergency Rule, will increase the time needed to create and implement an emergency power plan.

23. Such uncertainties further highlight the need for a variance. This is particularly true with respect to the 45-day plan submission deadline imposed by the Emergency Rule. While Petitioner could submit a barebones

plan to the local emergency management agency on October 31, 2017, doing so would neither reduce the burden placed on Petitioner nor effectuate the purpose of the Emergency Rule. Indeed, the submission of incomplete plans would only serve to frustrate the purpose of the Emergency Rule by overwhelming local emergency agencies with review of hypothetical proposals inevitably subject to substantial change. By granting the variance, Petitioner will have more time to engage in thoughtful discourse with all interested parties to determine the best course of action to ensure the health and safety of its residents during emergencies.

24. Relatedly, without the tools to develop a detailed plan for compliance with the Emergency Rule, Petitioner cannot begin the implementation phase. Once a plan has been developed, Petitioner could face delays in obtaining labor and necessary materials, given the number of entities affected by the Emergency Rule. Similarly, at this point in time, the total cost of this project is currently unknown.

25. Moreover, work schedules are largely dependent on the schedules of inspectors and other regulators. As a nursing home facility, Petitioner is subject to various levels of review by the local jurisdiction, as well as extensive regulatory oversight by AHCA. *See Fla. Admin. Code. 59A-4.134.* The Department of Elder Affairs' [DOEA] FAQ regarding the Emergency Rule explicitly states, "[t]he rule does not waive any other permitting or requirements. Nursing homes must continue to seek approval from all other state and local authorities including the Agency's Office of Plans and Construction." *See Nursing Home Rule 59AER17-1 – Assisted*

Living Facility Rule 58AER17-1 Questions and Answers, Department of  
Elder Affairs

(September 21, 2017). Presumably, given the number of nursing homes affected by the Emergency Rule, a delay in approval from local agencies and AHCA is to be reasonably expected.

26. Given the limited time frame and external factors beyond Petitioner's control, the necessary renovations cannot be determined with precision nor can they be implemented as required by the Emergency Rule. Therefore, the requested variance is critical.

**THE PURPOSE OF THE REGULATIONS WILL BE ACHIEVED  
WHILE THE VARIANCE IS IN PLACE**

27. As noted, the purpose of the Emergency Rule is to ensure the health and safety of nursing home residents during an emergency in the event of a power outage.

28. As discussed, Petitioner's current emergency plan includes a number of measures to ensure the health and safety of its residents in the event of a power outage. Petitioner's Emergency Management Plan, which includes provisions for power loss, was approved by the Escambia County Board of County Commissioners as recently as June 6, 2017. *See* Exhibit "B". Additionally, pending the full implementation of a new plan, Petitioner, through its affiliation with Ascension Health and Medxcel, has contracted with Thompson Power to provide emergency mobile generators to ensure that residents will not be exposed to dangerous conditions in the event of a power failure.

29. Further, hurricane season ends November 30, 2017. The likelihood of another emergency situation comparable to Hurricane Irma, which purportedly prompted the adoption of the Emergency Rule, is low; only four tropical storms and one hurricane have hit Florida during

the month of November since records have been kept. *See* Rob Duns, *How Likely are November Hurricanes to Hit Florida?*, NBC-2 (November 2, 2016), <http://www.nbc-2.com/story/33613446/weather-blog-how-likely-are-november-hurricanes-to-hit-florida>.

30. Petitioner anticipates project completion before the start of the next hurricane season, June 1, 2018 assuming the cooperation of local and state regulatory agencies.

**APPLICATION OF THE EMERGENCY RULE WITHOUT THE  
VARIANCE WOULD CREATE A SUBSTANTIAL HARDSHIP  
AND VIOLATE PRINCIPLES OF FAIRNESS**

31. Section 120.542, Florida Statutes authorizes and provides the standards for granting waivers. Subsection (2) states:

(2) 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 principles of 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.

32. This waiver request meets the qualifications for substantial hardship and principles of fairness.

33. As noted above, it is impossible for Petitioner to achieve compliance with the Emergency Rule within the time frame provided. Under normal circumstances, a construction project such as this, requiring coordination with local and state agencies, takes months to complete. Without going into details of which AHCA is well aware, the process to seek the various levels of plans review by the AHCA Office of Plans and Construction is a timeconsuming process not to mention the additional time it takes to obtain various inspections that may be necessary depending



on the level of construction/renovations that are necessary. Under circumstances such as these, in which nursing homes and assisted living facilities in Florida will be engaging the limited number of qualified contractors available, and seeking state and local approval, completion within sixty days is completely infeasible.

34. Even assuming the expert opinions, plans, construction materials, workers, and approvals could be obtained in a timely manner, the cost of expediting the process would needlessly increase the expense when a variance will help resolve the problem, while still ensuring the purpose of the statute is fulfilled.

35. Further, the Emergency Rule imposes severe penalties for non-compliance. Failure to submit a detailed plan or implement such plan could result in revocation of Petitioner's license or a \$1000 fine, per day.

36. Similarly, Petitioner is subject to those same penalties if it submits an unsatisfactory plan, and is unable to resubmit the plan to the local emergency management agency's satisfaction within ten days. Thus, the solution of submitting whatever plan is possible to formulate in the limited time frame is untenable.

37. As such, Petitioner faces substantial hardship if the time for compliance is not extended. Specifically, enforcement of the Emergency Rule as-written will result in substantial financial hardship for Petitioner, as well as other potential disruptions within its facility. If Petitioner's license is revoked pursuant to the Emergency Rule, it and its residents will face further hardship—potentially forcing unnecessary resident discharge or relocation. Additionally, literal application of the Emergency Rule would violate principles of fairness because Petitioner would be subject to severe penalties due to circumstances beyond its control.

## CONCLUSION

38. In short, the Emergency Rule asks Petitioner to do the impossible. Construction plans, permitting, and inspections take time. This is particularly true when the pending project requires significant architectural and engineering feats, as the Emergency Rule requires. Fortyfive days to plan, and sixty days to implement is not enough time to achieve what the Emergency Rule asks. Further, given the severe penalties for non-compliance, Petitioner and its patients will be subject to substantial hardship unless granted a variance.

39. Petitioner requests a variance that would allow submission of the emergency power plan on or before December 31, 2017. Petitioner also requests a variance that would allow implementation of the plan on or before May 14, 2018, contingent upon prompt local and state approval.<sup>3</sup> Petitioner commits to advising the Agency for Health Care Administration if the project is completed sooner and would stipulate that this variance will end when that final phase is completed. Petitioner further stipulates as a condition of this waiver that it will continue to comply with the version of Rule 59A-4.126, Florida Administrative Code, in effect prior to September 18, 2017.

40. Pursuant to Rule 59-AER17-2(e), Florida Administrative Code, Petitioner will send a letter by October 23, 2017, providing notice to each resident, and/or, if applicable, the resident's legal guardian or health care surrogate, that Petitioner has applied for a waiver from the Emergency Rule and the steps Petitioner is taking to comply with the Emergency Rule.

41. This variance is truly critical to Haven of Our Lady Peace, Inc. To emphasize the importance of this request, in addition to the signature of undersigned legal counsel, this Petition

---

<sup>3</sup> Petitioner has chosen May 14, 2018 based on the guidance provided by AHCA in Florida Administrative Rule 59AER17-2 published on October 12, 2017. Petitioner reserves the right to seek an additional variance later should there not be adequate time to implement the final plan.

is also signed and verified by Martha Perez, Haven of Our Lady Peace, Inc., to further attest to the veracity of the statements made herein and to underscore the critical need for this variance.

RESPECTFULLY SUBMITTED this 16th day of October 2017.



ALEXANDRA E. AKRE  
Florida Bar No. 125179  
Ausley McMullen  
Post Office Box 391  
Tallahassee, Florida 32301  
Telephone: (850) 425-5474  
Facsimile: (850) 222-7560  
mglazer@ausley.com  
aakre@ausley.com  
Secondary: jmcvaney@ausley.com

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been furnished by AHCA EFile this 16th day of October, 2017 to Richard Shoop, Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Room 3431, Building 3, Tallahassee, Florida 32308 and a copy has been provided by hand delivery to:

Joint Administrative Procedures Committee  
680 Pepper Building  
111 W. Madison Street  
Tallahassee, Florida 32399-1400

---



Michael J. Grazer