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Name of Case: Pruitt Health Santa Rosa, LLC d/b/a Pruitt Health Santa Rosa (Lic 103471024)

Agency Case No: To Be Assigned by the AHCA Agency Clerk's Office

Richard J. Shoop, Agency Clerk

Party Filing Document: Petitioner

Email: mjnorman@broadandcassel.com

Document Type: Petition for Variance or Waiver

Name of Document Uploaded: 2017.10.26 Verified Petition for Variance - Pruitt Health Santa Rosa.pdf

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2.0.06

4. On September 16, 2017, AHCA adopted Emergency Rule 59AER17-1, F.A.C., which purports to implement Fla. Stat. §§ 400.23, 408.819 and 408.821(4). The Emergency Rule requires all licensed nursing homes to implement emergency power source cooling measures, by acquiring one or more generators with installation and tie-ins, and sufficient on-site fuel storage to cool the facility to a temperature of 80 °F for 96 hours. The Emergency Rule also requires inspections and approvals, development, and implementation of policies and procedures to safely activate, operate and maintain the equipment and alternate fuel, and staff training. The Emergency Rule requires facilities to submit plans for compliance within 45 days (by October 31, 2017), and fully implement compliance within 60 days (by November 15, 2017). This Emergency Rule was adopted without forewarning or opportunity to consider facilities' practical ability to comply within the time allowed.

5. Petitioner has made good faith efforts to protect residents from concerns that the Emergency Rule seeks to address, but under principles of fairness, needs additional time to fully comply to avoid substantial hardship as shown below.

6. Petitioner's existing approved emergency plan for residents in case of a power outage is briefly summarized as follows:

Pruitt Health Santa Rosa currently has a 105 kW KatoLight generator with a 550 gallon diesel fuel tank. This system is used to power emergency medical equipment and a number of large fans located throughout the building. The ambient air temperature is routinely monitored and the consumption of fluids is encouraged. This has historically been adequate to insure resident well-being when air conditioning has been lost. In the event that the facility temperature becomes threatening, Petitioner has transfer agreements that would allow it to relocate residents to air conditioned facilities.

7. Petitioner has already taken the following additional steps in attempting to comply with the Emergency Rule:

Pruitt Health Santa Rosa has engaged David Sims & Associates, Consulting Engineers to undertake a study of the facility and to provide plans for coming into full compliance with the emergency rule. They have identified three possible solutions – keeping the existing generator and add a larger fuel tank and a second 450kW generator; replace the existing generator with a 550 kW generator; or replace the existing generator with an 800 kW generator. The first two options would allow the kitchen, dining room, therapy gym, and assembly room to be air conditioned. The third option would fully power the entire building. Davis Sims & Associates is preparing more detailed analyses of the benefits, drawbacks, and costs of each approach. Pruitt Health Santa Rosa will select from among the proposed solutions and will bring the building into compliance with the rule.

8. Full compliance by the dates specified in the Emergency Rule is impossible, and impractical, due to circumstances beyond Petitioner's control, such as shortages and delays due to abnormally high demand resulting from windstorms and the Rule itself. Once the engineer completes his analysis of the current capacity and future needs of the facility, it will be necessary to prepare the electrical design plans, retain an architect to prepare the building plans, submit these plans to the local emergency management agency for approval, apply to the local building authority for building permits, apply to AHCA Plans and Construction for plan approval, bid and purchase the necessary equipment, have the equipment installed and tested, and obtain the certificate of completion and final inspection from the local building authority and AHCA Plans and Construction. This process cannot be completed within the 60 days allowed in the emergency rule

9. The estimated date for complete compliance is **six (6) months**.

10. Petitioner has notified residents and/or their legal guardians or health care surrogates that it has applied for a variance from the Emergency Rule.

11. The facility needs a variance to allow additional time for compliance. Substantial hardship will result if time for compliance is not extended. This includes the physical disruption and financial hardship for the facility. Noncompliance risks substantial per diem fines that further reduce compliance capability, loss of the facility's goodwill with residents, potential residents, and staff, and possible license revocation. This would irreparably injure the facility itself, as well as its residents and their families, if the facility is threatened with penalties or loss of its license, forcing unnecessary discharge or relocation of residents.

12. Principles of fairness support this relief, both to maintain fair competition when some facilities will be unable to comply as promptly as others, and as set forth in Emergency Rule 59AER17-2 governing variances.

13. For the reasons stated above, Petitioner may suffer immediate adverse effects, including loss of goodwill and potential fines or other sanctions, unless the variance is issued expeditiously.

14. A variance serves the purpose of the underlying statutes by enabling the facility to continue to perform essential services for residents without threat of disruption or termination, while implementing the requirements of the Emergency Rule.

15. The additional time requested for the variance is 180 days, or until May 14, 2018, as allowed in the Emergency Rule 59AER17-2. This variance will be temporary. However, this request is without prejudice to seeking an additional variance for additional time, if the planned compliance time becomes impossible or impractical due to unforeseen circumstances.

16. Petitioner also requests that times for compliance with the Emergency Rule 59AER17-1 be tolled while this variance petition is being prepared, reviewed and resolved.

17. Petitioner is not aware of any disputed fact issues, and believes this verified petition can be decided promptly on its face, without adversary proceedings.

WHEREFORE, Petitioner requests that AHCA take jurisdiction, and determine that the situation presents a situation for which the granting of a variance is proper; stay enforcement of the Emergency Rule provisions pending resolution of this Petition; promptly review and approve the compliance plan described herein by granting a variance from Emergency Rule 59AER17-1(1) (a), (b) (c), (2), (8), (9) and (10), F.A.C., allowing Petitioner until May 14, 2018, to complete compliance with the requirements of said Rule or to provide an updated implementation plan for approval to extend the variance; and grant such further relief as may be proper.

VERIFICATION

I Peggy McCullough (name of affiant) as Administrator (Title) of Petitioner, Pruitt Health Santa Rosa, who having been duly sworn does state that the foregoing fact allegations are true and correct to the best of my knowledge and belief.

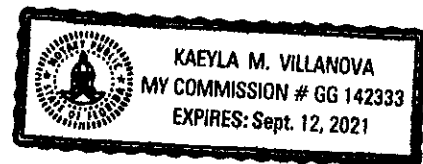
Peggy McCullough
Signature of Affiant

State of Florida
County of Escambia

BEFORE ME appeared Peggy McCullough who, [] being well known to me [] produced FL DL as identification, and having been duly sworn, did freely affix his/her signature hereto as verification of the facts contained herein.

Kaeyla M Villanova
NOTARY PUBLIC

MY COMMISSION EXPIRES:



Respectfully submitted this 26th day October, 2017.

BROAD AND CASSEL LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **Verified Petition for Variance from Rule 59AER17-1, F.A.C.** has e-filed with the Agency Clerk, Richard J. Shoop, Florida Agency for Health Care Administration, 2727 Mahan Drive MS #3, Tallahassee FL 32308-5403; and a true and correct copy has been served by E-Mail on the parties listed below,

this 26th day October, 2017.

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s/ Jay Adams
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