



TOM GALLAGHER  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

In re the Matter of

Sunrise Community, Inc., a  
501(c)(3) Not for Profit Corp.,

Case No.: 79589-04-FM

Petition for Declaratory Statement to  
The Florida Department of  
Financial Services

\_\_\_\_\_ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on December 21, 2004, by the Department of Financial Services, hereinafter referred to as the Department, from Sunrise Community, Inc., a 501(c)(3) Not-for-Profit Corporation, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. The Chief Financial Officer as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition for Declaratory Statement. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as

being true and Petitioner's question is being answered purely as a hypothetical one. If any of the facts asserted by the Petitioner are untrue or materially incomplete the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition for Declaratory Statement contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

#### BACKGROUND and FACTS ASSERTED

4. Petitioner states:

A. On August 26, 2004, the Agency for Health Care Administration (AHCA) applied the Health Care Occupancy standards in Chapter 19 of the 2000 edition of NFPA 101 when surveying a six person, licensed Intermediate Care Facility for Individuals with Development Disabilities (ICF/DD) located at 1950 Country Meadows Circle, Sarasota, FL 34235, rather than the Board and Care Occupancy standards in Chapter 69A-38, Florida Administrative Code.

B. AHCA cited Petitioner, the agency providing the services, for not having emergency lighting in the home.

C. Emergency lighting is not required under the Board and Care Occupancy chapter.

D. Even when presented with the specific, applicable chapter (69A-38) of the Florida Administrative Code by Petitioner, AHCA chose to disregard the rules, and impose the citation based on the Health Care Occupancy chapter.

E. On October 21, 2004, AHCA surveyed Petitioner's six person licensed ICF/DD located at 19420 Oakmont Drive, Miami Lakes, FL 33015.

F. AHCA again applied Chapter 19 of the 2000 edition of NFPA 101, the Life Safety Code, and cited Petitioner for failure to have emergency lighting.

G. Petitioner believes, per the Florida Administrative Code, that Chapter 69A-38, Florida Administrative Code, requires that the only occupancy chapters of NFPA 101 that can be applied in these ICF/DD homes, are Chapters 33 or 34 of the 2000 edition of NFPA 101, as adopted in Section 69A-38.023, Florida Administrative Code.

H. If an authority having jurisdiction can apply a Life Safety Code chapter of its own choosing, the house may be:

(i) unable to meet the code and, therefore, the individuals living in the home would be forced to relocate, the home would be forced to close, and the resulting disruption could be detrimental to the health and safety of the residents and Petitioner would incur substantial expenses and possibly be forced to cease operations; and/or

(ii) required to be retrofitted with unnecessary equipment or renovated without basis in applicable code, at substantial cost to Petitioner.

I. In either case, this would cause extensive problems for Petitioner and for the individuals with disabilities who reside in the home.

J. For example, the Health Care Occupancy chapter of NFPA 101 requires hallway widths of four feet, which none of Petitioner's many homes meet.

K. It would be impossible in many homes and cost prohibitive in most of the other homes to retrofit hallways to the standards required in the Health Care Occupancy chapter.

L. Additionally, Petitioner cannot comply with fire codes when an authority having jurisdiction can arbitrarily apply an occupancy chapter of the Life Safety Code in conflict with that specified by Florida Administrative Code.

M. In Petitioner's specific case, the cost already incurred by Petitioner to prevent revocation of its license, is \$1,150.00 to install emergency lighting in the Country Meadows home and \$543.00 in the Oakmont home.

N. In the future, when AHCA inspects these homes or any other licensed home for people with disabilities in the State of Florida, more citations from non-applicable chapters of the Life Safety Code can result in substantial additional costs or the closure of the home because it is cost prohibitive to retrofit a residential structure to a Health Care (or other non-applicable) Occupancy chapter of the Life Safety Code.

O. These unnecessary costs incurred by Petitioner will result in increased costs in the home which are passed on to Medicaid and ultimately paid by the taxpayers of Florida and other states.

P. Not asserted by Petitioner, but determined upon inquiry, was the fact that some homes may have been providing services other than, or in addition to, the services authorized by the license.

#### QUESTIONS

5. Petitioner's questions are:

A. Are all authorities having jurisdiction in Florida compelled to comply with the provisions of Chapter 69A-38 of the Florida Administrative Code when surveying residences for persons with developmental disabilities?

B. Can any authority having jurisdiction in Florida apply an occupancy chapter of the NFPA 101 Life Safety Code to a Florida residential facility for people with disabilities other than the occupancy chapter specified in Chapter 69A-38 of the Florida Administrative Code,?

#### DISCUSSION

6. Each time a firesafety inspection is made, if the authority having jurisdiction cites the property being inspected for a violation or other problem, the authority having jurisdiction must indicate the specific authority in the Florida Administrative Code for citing the property being inspected for the violation or other problem.

7. An authority having jurisdiction may not simply state that something is in violation, or something is required, without giving the basis; that is, the specific statute, rule, code, or standard for his or her conclusion that a violation exists.

8. A board of appeals, a state administrative agency, and the courts must have the specific basis for the authority having jurisdiction's conclusion(s) to be able to properly review the authority having jurisdiction's findings.

9. In addition, the rule chapter applicable to the type of facility being inspected must be applied.

10. In other words, an authority having jurisdiction could not apply the requirements of the rule chapter relating to correctional facilities to a child care facility.

11. The same principles apply in this case.

12. A licensed facility ICF/DD that was described in the statement of facts, above, is limited to providing personal care services.

13. NFPA 101 defines personal care as, "The care of residents who do not require chronic or convalescent medical or nursing care."<sup>1</sup>

14. Some examples of personal care include but are not limited to daily awareness of whereabouts or functioning, reminding residents of appointments, intervention in the event of a crisis or supervision in the area of nutrition and medication.

15. If a facility is found during an inspection to be providing services other than or beyond those considered personal care, the facility must either be corrected to only provide the services appropriate to its license, or it must be reclassified according to its then current use and the appropriate code requirements for the reclassified facility must be applied.

---

<sup>1</sup> Subdivision 3.3.145, NFPA 101, 2000 Edition. Subdivision 3.3.163, NFPA 101, 2003 Edition, for which adoption proceedings are currently in progress.

## DECLARATORY STATEMENT

WHEREFORE, the State Fire Marshal, hereby responds to the questions presented as follows:

16.A. Question A.: Are all authorities having jurisdiction in Florida compelled to comply with the provisions of Florida Administrative Code, Chapter 69A, when inspecting residences for persons with developmental disabilities?

Response to Question A.: Yes. Authorities having jurisdiction must apply the prescribed code requirements of the uniform rules listed in Chapter 69A-38, Florida Administrative Code, for each uniform facility. Each time a facility is cited for a violation, the authority having jurisdiction must provide the basis (statute, rule, code, or standard) for the violation.

16.B. Question B.: Can any authority having jurisdiction in Florida apply an occupancy chapter of the NFPA 101 Life Safety Code to a Florida residential facility for people with disabilities other than the occupancy chapter specified in Florida Administrative Code, Chapter 69A-38?

Response to Question B.: As stated in the discussion section, the standards found in Chapter 69A-38 must be applied, assuming the facility is providing the services for which it has been licensed. However, if the facility is providing services in addition to or other than the services for which it has been licensed, the authority having jurisdiction must either

(i) require the facility to discontinue providing such services, or, if the facility fails or refuses to discontinue providing such services,

(ii) reclassify the facility for the services which it is actually providing and inspect the facility under the reclassified standards.

#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2005.

Karen Chandler  
Deputy Chief Financial Officer

\_\_\_\_\_

Copies furnished to:

Michael J. Hart  
Sunrise Community, Inc.  
9040 Southwest 72<sup>nd</sup> Street  
Miami, Florida 33173

Gabriel Mazzeo, Attorney  
Division of State Fire Marshal  
200 East Gaines Street  
Tallahassee, Florida 32399-0340