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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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October 18, 2017

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave, SW
Washington, DC 20201

Dear Administrator Verma:

We are writing to request information from the Centers for Medicare & Medicaid Services (CMS) about its requirements for emergency preparedness and response for nursing homes and other similar facilities. As Chairman and Ranking Member of the Senate Committee on Finance, we have a responsibility to ensure that these facilities are habitable for all residents, including the many Medicare and Medicaid patients served by these facilities.

In 2005, the deaths of nursing home residents during Hurricane Katrina highlighted the necessity for adequate emergency preparedness and response at the Federal, State, and local levels. Following Hurricane Katrina, the Office of Inspector General of the Department of Health and Human Services (OIG) issued a report detailing a number of problems with nursing home emergency preparedness nationwide as well as certain nursing homes' responses to recent hurricanes.¹ The OIG recommended that CMS strengthen Federal standards for emergency plans and "encourage communication and collaboration between State and local emergency entities and nursing homes."² In a 2012 follow-up report, the OIG examined the responses of nursing homes to recent wildfires in the West, floods in the Midwest, and hurricanes on the Gulf Coast and East Coast and found that gaps in nursing home emergency preparedness and response continued to exist.³

In response to recommendations by the OIG, CMS proposed and finalized new national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers effective November 15, 2016 (the "EP Final Rule"). These requirements must be implemented by November 15, 2017. The EP Final Rule requires a long-term care facility to

¹ Department of Health and Human Services, Office of Inspector General, *Nursing Home Emergency Preparedness and Response During Recent Hurricanes* (Aug. 2006).

² *Id.* at 22.

³ Department of Health and Human Services, Office of Inspector General, *Gaps Continue to Exist in Nursing Home Emergency Preparedness and Response During Disasters: 2007-2010* (Apr. 2012).

develop policies and procedures that address the subsistence needs for staff and residents, including, but not limited to, alternate sources of energy to maintain “temperatures to protect resident health and safety.”⁴ In addition, the EP Final Rule requires facilities to conduct a facility-based and community-based risk assessment that utilizes “an all-hazards approach” and to rely on this assessment to develop its emergency preparedness plan, which then must be reviewed and updated at least annually.⁵

Since publication of the EP Final Rule, fourteen residents of the Rehabilitation Center of Hollywood Hills, LLC (“Hollywood Hills”) have died because the facility’s air conditioning system lost power during Hurricane Irma.⁶ Similar reports after Hurricanes Harvey and Irma raise concerns about the adequacy of emergency preparedness and response at nursing homes and other facilities. Our Committee would like information about the Federal requirements that were applicable during these events and the actions CMS has taken since. As such, please provide answers to the following questions:

- 1) Describe CMS’s authority to establish emergency preparedness and response standards for nursing homes and similar long-term care facilities.
- 2) Explain whether nursing homes and similar facilities were required to comply with the EP Final Rule at the time of Hurricanes Harvey and Irma. If nursing homes and similar facilities were not required to comply with the EP Final Rule, identify the emergency preparedness requirements that would have been applicable at the time of these events.
- 3) What are the penalties for long-term care facilities that fail to maintain temperatures in the range of 71 degrees Fahrenheit to 81 degrees Fahrenheit, as required by CMS regulations?⁷
- 4) The EP Final Rule requires a facility to have policies and procedures in place that address the facility’s alternate sources of energy in the event of an emergency. However, it is not clear if the facility must maintain temperatures in the range of 71 degrees to 81 degrees. What temperature must be maintained under emergency conditions pursuant to the EP Final Rule?
- 5) While Hollywood Hills had an emergency generator, it did not power the facility’s air conditioning system. Is a long-term care facility required to have an emergency generator that provides emergency electrical power to life support systems?⁸ What is considered a life support system? Does the EP Final Rule require a nursing home to have an emergency generator for purposes of maintaining temperatures during an emergency?

⁴ 42 C.F.R. § 483.73(b)(1).

⁵ *Id.* § 483.73(a).

⁶ Erica Pesantes, *14th Person from Hollywood Nursing Home Dies, Police Say*, SUN SENTINEL, Oct. 9, 2017, available at <http://www.sun-sentinel.com/news/hollywood-nursing-home-hurricane-deaths/fl-reg-13-nursing-home-death-20171009-story.html>.

⁷ 42 C.F.R. § 483.10(i)(6).

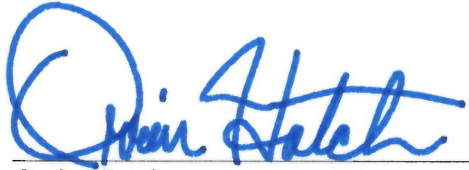
⁸ *See id.* § 483.90(c)(2).

- 6) During Hurricane Irma, Houston experienced extreme flooding. One assisted living facility—La Vita Bella—received national attention after residents were photographed in waist-deep water. The EP Final Rule requires long-term care facilities to conduct a community-based risk assessment upon which to base their emergency preparedness plans, but it is not clear whether these assessments must take into account local hazards and conditions (e.g., location in a floodplain, risk of earthquake, wildfire hazard levels, tsunami risk, etc.). Describe whether long-term care facilities are required to consider local hazards and conditions when using the “all-hazards” approach to conduct their community-based and facility-based risk assessment. Does CMS survey, or intend to survey, whether a long-term care facility has considered local hazards and conditions in its risk assessment and emergency preparedness plan?
- 7) Does CMS have a policy for long-term care facilities to follow for determining whether to evacuate or shelter in place? Who within the facility management chain is accountable for making this decision? If a facility elects to shelter in place during an emergency, please explain if the EP Final Rule provides guidance on when a facility should transition from sheltering in place to evacuation procedures. If not, why not?
- 8) For Hollywood Hills and any related facility that shares common ownership with Hollywood Hills, please provide copies of all determinations made by CMS in the last five years to allow the facility to participate in the Medicare program, and all complaints, surveys, and certifications or re-certifications of compliance or noncompliance with Federal participation requirements submitted by the State of Florida to CMS within the last five years.
- 9) Please state whether La Vita Bella and Hollywood Hills participate as providers in the Medicare and/or Medicaid programs.
- 10) Explain if CMS has terminated its agreement with Hollywood Hills or any related facility that shares common ownership with Hollywood Hills and, if so, please provide copies of the termination notice. If CMS has not terminated its agreement with Hollywood Hills, or any related facility that shares common ownership with Hollywood Hills, please explain why.
- 11) Has CMS identified other long-term care facilities that experienced patient deaths or safety or compliance issues because of problems caused by Hurricanes Harvey or Irma? If so, identify those facilities and describe what actions CMS is taking to address the problems.
- 12) In the wake of Hurricanes Harvey and Irma, does CMS intend to review the adequacy of its emergency preparedness requirements for long-term care facilities?

The Honorable Seema Verma
October 17, 2017
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Please provide your responses to these requests as soon as possible, but no later than November 15, 2017. If you have any questions, please contact [REDACTED]

Sincerely,



Orrin Hatch
Chairman
Senate Committee on Finance



Ron Wyden
Ranking Member
Senate Committee on Finance