

# SHELTERING *IN* DANGER

AN INVESTIGATIVE REPORT BY THE MINORITY STAFF  
OF THE U.S. SENATE COMMITTEE ON FINANCE

## APPENDIX VOLUME 1

*(Appendices A, B, and C)*



UNITED  
STATES  
SENATE

NOVEMBER 2018



## Appendices

Any documents cited in this report that are not publically available are contained in the appendices that follow.

Appendix A contains letters from Senator Nelson and Senator Rubio, respectively, that were sent to Chairman Hatch and Ranking Member Wyden requesting an investigation. The Committee sent information request letters to CMS, the Florida Agency for Health Care Administration, and the Texas Health and Human Services Commission. Those information requests can be found in Appendix B; responses to those requests can be found in Appendix C.

The Minority staff sent additional requests for information to counsel for the owners of Hollywood Hills and Senior Care Centers; the owner of Lake Arthur Place; NextEra Energy, the parent of Florida Power & Light—the utility company serving Hollywood Hills; and CMS. Those responses can be found in Appendix D; responses from NextEra/FPL can be found in Appendix F. Minority staff collected transcripts and other trial information from the licensing hearing for Hollywood Hills, which can be found in Appendix E.

The appendices are contained in three volumes:

- Volume 1 contains Appendices A, B and C,
- Volume 2 contains Appendix D, and
- Volume 3 contains Appendices E, F and G.

Correspondence and documents cited in this report that cannot be categorized in one of the aforementioned appendices can be found in Appendix G.

In some cases in which the location of information cited in this report are not easily identifiable within the documents, Minority staff has added Bates numbers and/or highlighting to facilitate identification of the cited information. Documents that have had numbering or highlighting added to them by the Minority staff are noted in the index on the following page.

Lastly, the Minority staff has redacted certain information from a small number of the following documents. These redactions include personal information such as email addresses and non-public phone numbers; business information such as certain contract terms and financial information, and security-sensitive information. The Minority staff also consulted with the companies that provided documents as a part of this investigation in making these redactions. In the view of the Minority staff, none of the redactions subtract from the substance of the report, or the events and issues discussed therein.

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# Appendix A



# **Exhibit 1**



## United States Senate

WASHINGTON, DC 20510-0905

September 29, 2017

BILL NELSON  
FLORIDA

The Honorable Orrin Hatch  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Ron Wyden  
Ranking Member  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden:

I write to urge you to use your authority as the Chairman and Ranking Member of the Senate Committee on Finance to undertake a thorough investigation to determine what led to 12 seniors dying at a nursing home in Hollywood, Florida after Hurricane Irma knocked out the facility's air conditioning.

The 152-bed facility in Hollywood had been rated below average by the Centers for Medicare & Medicaid Services prior to the incident, and received a health inspection rating of "much below average." Despite a March 2017 health inspection report that found multiple deficiencies, the Florida Agency for Health Care Administration certified this facility and gave it a one-star ranking for its overall quality of care and quality of life for patients.

It is my understanding that it is the state's responsibility to certify a nursing home's compliance with all federal emergency preparedness regulations in order to receive federal payments under the Medicare and Medicaid programs. And to receive a state's certification, current federal regulations require skilled nursing facilities and nursing facilities to develop and maintain an adequate emergency plan that is reviewed at least annually by the state.

The specific requirements for a staff emergency plan are spelled out in 42 CFR Part 483, Subpart B, which states clearly that a nursing home's emergency plan must include policies and procedures to ensure that its faculty and residents will continuously have subsistence needs met, such as food, water, medical and alternate sources of energy. These regulations also clearly state that nursing homes must provide alternate sources of energy to maintain "temperatures to protect resident health and safety and for the safe and sanitary storage of provisions."

It is the state's responsibility to certify a nursing home's compliance with these federal requirements, and CMS relies on the state's certification to authorize Medicare and Medicaid payments to such a facility.

Because the certification for a skilled nursing facility is subject to CMS approval, and the Senate Committee on Finance has jurisdiction over the Medicare and Medicaid programs, I urge the Committee to use its authority to conduct a complete investigation into the State of Florida's certification of the Rehabilitation Center at Hollywood Hills to determine what led to the death of 12 seniors there in the wake of Hurricane Irma. In conducting such an investigation, I would ask the committee to examine emergency preparedness plans at this and other similar facilities, as well as the state's response in the aftermath of the Florida incident, to ensure that our seniors in nursing homes are being protected during hurricanes and other disasters.

The findings of such an investigation by your committee will help us understand what went so terribly wrong in Hollywood and what needs to be done to prevent such a tragedy from ever happening again.

Sincerely,

A handwritten signature in blue ink that reads "Bill Nelson". The signature is written in a cursive style with a large, sweeping "B" and "N".

# **Exhibit 2**

# United States Senate

WASHINGTON, DC 20510

October 11, 2017

Chairman Orrin Hatch  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Ranking Member Ron Wyden  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden:

In the wake of Hurricane Irma, 14 residents of a single nursing facility in Hollywood, Florida, passed away. While this terrible tragedy is currently under investigation, it has been widely reported that these individuals were left in sweltering conditions after the nursing facility's air conditioning system lost power. This has shocked the state of Florida, and rightfully raised questions about the oversight of nursing homes, particularly the enforcement of existing emergency preparedness requirements.

Previous inspections of this particular facility, the Rehabilitation Center at Hollywood Hills, were conducted by the Florida Agency for Health Care Administration (AHCA) on behalf of the state and Centers for Medicare and Medicaid Services (CMS). During a February 2016 inspection, AHCA found that the medication error rate during the observation period was nearly 26 percent,<sup>1</sup> far exceeding the federal regulation requiring facilities to ensure that "medication error rates are not five percent or greater."<sup>2</sup> Two years prior, AHCA found that the facility was not providing enough water to all patients in order to maintain proper hydration and health, contravening federal requirements.<sup>3</sup> These violations are especially alarming since the facility's personnel knew that they were being monitored by AHCA inspectors.

The Hollywood nursing home has also been cited for failing to properly maintain the automatic fire sprinkler system.<sup>4</sup> Not only is this a violation of federal regulations, but it is also indicative of the lack of seriousness with which the nursing home considered emergency response plans, as well as CMS' oversight of those plans. Moreover, federal regulations mandate that facilities' emergency preparedness procedures address subsistence needs for residents, including alternate sources of energy to maintain temperatures and protect residents' health and safety.<sup>5</sup> Unfortunately, despite this requirement and the facilities' close proximity to an

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<sup>1</sup> February 2016 AHCA inspection, [http://apps.ahca.myflorida.com/dm\\_web/DMWeb\\_Docs/6856421.pdf](http://apps.ahca.myflorida.com/dm_web/DMWeb_Docs/6856421.pdf)

<sup>2</sup> 42 CFR § 483.45(f)(1).

<sup>3</sup> 42 CFR § 483.25(g)(2).

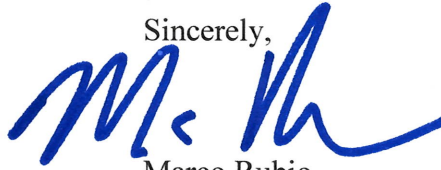
<sup>4</sup> December 2014 AHCA inspection, [http://apps.ahca.myflorida.com/dm\\_web/DMWeb\\_Docs/5834231.pdf](http://apps.ahca.myflorida.com/dm_web/DMWeb_Docs/5834231.pdf)

<sup>5</sup> 42 CFR § 483.73(b)(1)(ii)(A).

operational hospital, residents were found to have temperatures exceeding 109 degrees,<sup>6</sup> far above the level that puts seniors at risk for heat stroke.<sup>7</sup>

As the Chairman and Ranking Member of the committee with jurisdiction over Medicare and Medicaid, I implore you to investigate the failures that occurred at this nursing home and others throughout the country, particularly in Florida and Puerto Rico, to prevent similar tragedies from happening in the future. Additionally, I respectfully request that you consider examining other ways in which Medicare and Medicaid beneficiaries were impacted by these storms and how better planning and coordination between the federal, state, and local government could mitigate harm caused by hurricanes.

Sincerely,



Marco Rubio  
U.S. Senator

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<sup>6</sup> <https://www.nbcnews.com/storyline/hurricane-irma/florida-nursing-home-death-toll-rises-twelve-after-irma-knocked-n805846>

<sup>7</sup> <https://www.cdc.gov/disasters/extremeheat/warning.html>

# Appendix B

# **Exhibit 1**



ORRIN G. HATCH, UTAH, CHAIRMAN

CHUCK GRASSLEY, IOWA  
MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
MICHAEL B. ENZI, WYOMING  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
DEAN HELLER, NEVADA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA

RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
BILL NELSON, FLORIDA  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT P. CASEY, Jr., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
CLAIRE McCASKILL, MISSOURI

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A. JAY KHOSLA, STAFF DIRECTOR  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

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.<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup>

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

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

<sup>2</sup> *Id.* at 22.

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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?<sup>7</sup>
- 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?<sup>8</sup> 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?

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<sup>4</sup> 42 C.F.R. § 483.73(b)(1).

<sup>5</sup> *Id.* § 483.73(a).

<sup>6</sup> Erica Pesantes, *14<sup>th</sup> 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>.

<sup>7</sup> 42 C.F.R. § 483.10(i)(6).

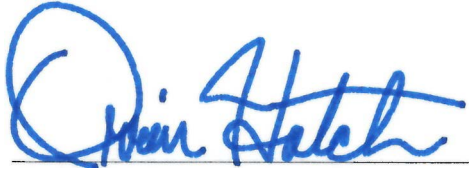
<sup>8</sup> *See id.* § 483.90(c)(2).

- 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?

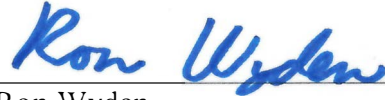
The Honorable Seema Verma  
October 18, 2017  
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Please provide your responses to these requests as soon as possible, but no later than November 15, 2017. If you have any questions, please contact Caitlin Soto of the Majority staff or David Berick of the Minority staff at (202) 224-4515.

Sincerely,



Orrin Hatch  
Orrin Hatch  
Chairman  
Senate Committee on Finance



Ron Wyden  
Ron Wyden  
Ranking Member  
Senate Committee on Finance

# **Exhibit 2**

ORRIN G. HATCH, UTAH, CHAIRMAN

CHUCK GRASSLEY, IOWA  
MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
MICHAEL B. ENZI, WYOMING  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
DEAN HELLER, NEVADA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA

RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
BILL NELSON, FLORIDA  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNETT, COLORADO  
ROBERT P. CASEY, JR., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
CLAIRE McCASKILL, MISSOURI

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A. JAY KHOSLA, STAFF DIRECTOR  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

October 18, 2017

Mr. Justin M. Senior  
Secretary  
Florida Agency for Health Care Administration  
2727 Mahan Drive  
Tallahassee, Florida 32308

Dear Mr. Senior:

We are writing to request information from Florida about its preparations for and responses to Hurricane Irma as it relates to nursing homes and other similar facilities. The Senate Committee on Finance has jurisdiction over both the federal Medicare and Medicaid programs. As part of our oversight responsibilities, we want to ensure the safety of residents and patients in nursing homes and other similar facilities during natural and manmade disasters.

In 2005, the tragic 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.<sup>1</sup> The OIG recommended that the Centers for Medicare & Medicaid Services (CMS) strengthen Federal standards for emergency plans and "encourage communication and collaboration between State and local emergency entities and nursing homes."<sup>2</sup> 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.<sup>3</sup> While CMS finalized new national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers a year ago,<sup>4</sup> those regulations have yet to be fully implemented.

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

<sup>2</sup> *Id.* at 22.

<sup>3</sup> 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).

<sup>4</sup> Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers, 81 Fed. Reg. 63,860 (Sept. 16, 2016).

In light of reported problems with emergency preparedness and response during Hurricane Irma, we are seeking information regarding the effectiveness of the requirements for emergency preparedness and response for nursing homes and similar facilities at the State level. Therefore, we ask that you please respond to the following requests:

1. Identify the statewide emergency preparedness and response requirements that applied at the time of Hurricane Irma to nursing homes and assisted living facilities in Florida. How does the State of Florida plan to prioritize nursing homes and assisted living facilities for power restoration in future disasters?
2. Provide the number of nursing homes and assisted living facilities in Florida that (a) were evacuated during Hurricane Irma or its aftermath and the reasons for the evacuation (*e.g.*, loss of power, flooding, precautionary evacuation), and (b) elected to shelter in place during the storm.
3. Is Florida taking and/or considering new measures to help nursing homes and assisted living facilities better prepare for and respond to natural and manmade disasters as a result of its experience during and after Hurricane Irma?
4. We would like to find out more information about a particular facility in Broward County, Florida—the Rehabilitation Center at Hollywood Hills, LLC (Hollywood Hills). On September 20, 2017, you issued an emergency suspension order to the owner of the facility due to the tragic loss of the lives of eight residents.<sup>5</sup> Since then, the deaths of six additional residents have been reported.<sup>6</sup>
  - a. Please confirm that Hollywood Hills is a nursing home licensed by the Florida Agency for Health Care Administration. For what services has the facility been licensed by your Administration? Are these licenses still active?
  - b. What emergency preparedness and response requirements and regulations applied to Hollywood Hills at the time of Hurricane Irma?
  - c. Provide the timeline of any communications (during and/or following the hurricane) between Hollywood Hills and any State or local authorities, as well as the timelines for the precautionary or emergency evacuation of Hollywood Hills residents and the restoration of electric power to the facility.
  - d. Describe the recent regulatory history of Hollywood Hills and any related nursing homes or similar facilities that share common ownership with Hollywood Hills (*e.g.*,

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<sup>5</sup> Emergency Suspension Order, State of Florida, Agency for Health Care Administration v. Rehabilitation Center at Hollywood Hills, LLC (Sept. 20, 2017).

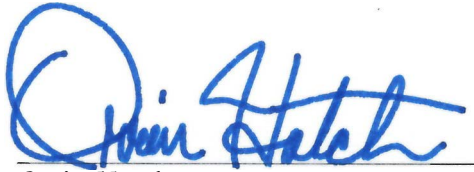
<sup>6</sup> Erica Pesantes, *14<sup>th</sup> Person from Hollywood Nursing Home Dies, Police Say*, SUN SENTINEL, Oct. 9, 2017, available at <http://www.sun-sentinel.com/news/hollywood-nursing-home-hurricane-deaths/fl-reg-13-nursing-home-death-20171009-story.html>.

Mr. Justin M. Senior  
October 18, 2017  
Page 3 of 3

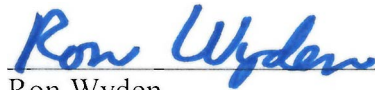
inspections, surveys, corrective actions, re-certifications, and relicensing, including those conducted on behalf of CMS).

We appreciate your cooperation with the Committee as we seek information about Florida's emergency preparedness and response requirements. By providing this information, we can better understand what needs to be done at the Federal level to ensure that nursing homes and other similar facilities are prepared to respond to natural and manmade disasters. Please provide your responses to these questions as soon as possible, but no later than November 15, 2017. If you have any questions, please contact Caitlin Soto of the Majority staff or David Berick of the Minority staff at (202) 224-4515.

Sincerely,



Orrin Hatch  
Chairman  
Senate Committee on Finance



Ron Wyden  
Ranking Member  
Senate Committee on Finance



# **Exhibit 3**

ORRIN G. HATCH, UTAH, CHAIRMAN

CHUCK GRASSLEY, IOWA  
MIKE CRAPO, IDAHO  
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RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
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PATRICK J. TOOMEY, PENNSYLVANIA  
DEAN HELLER, NEVADA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA

RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
BILL NELSON, FLORIDA  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT P. CASEY, Jr., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
CLAIRE McCASKILL, MISSOURI

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A. JAY KHOSLA, STAFF DIRECTOR  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

October 18, 2017

Mr. Charles Smith  
Executive Commissioner  
Texas Health and Human Services Commission  
4900 N. Lamar Blvd.  
Austin, Texas 78751

Dear Mr. Smith:

We are writing to request information from Texas about its preparations for and responses to Hurricane Harvey as it relates to nursing homes and other similar facilities. The Senate Committee on Finance has jurisdiction over both the federal Medicare and Medicaid programs. As part of our oversight responsibilities, we want to ensure the safety of residents and patients in nursing homes and other similar facilities during natural and manmade disasters.

In 2005, the tragic 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.<sup>1</sup> The OIG recommended that the Centers for Medicare & Medicaid Services (CMS) strengthen Federal standards for emergency plans and "encourage communication and collaboration between State and local emergency entities and nursing homes."<sup>2</sup> 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.<sup>3</sup> While CMS finalized new national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers a year ago,<sup>4</sup> those regulations have yet to be fully implemented.

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

<sup>2</sup> *Id.* at 22.

<sup>3</sup> 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).

<sup>4</sup> Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers, 81 Fed. Reg. 63,860 (Sept. 16, 2016).

In light of reported problems with emergency preparedness and response during Hurricane Harvey, we are seeking information regarding the effectiveness of the requirements for emergency preparedness and response for nursing homes and similar facilities at the State level. Therefore, we ask that you please respond to the following requests:

1. Identify the statewide emergency preparedness and response requirements that applied at the time of Hurricane Harvey to nursing homes and assisted living facilities in Texas.
2. Provide the number of nursing homes and assisted living facilities in Texas that (a) were evacuated during Hurricane Harvey or its aftermath and the reasons for the evacuation (*e.g.*, loss of power, flooding, precautionary evacuation), and (b) elected to shelter in place during the storm.
3. Is Texas taking and/or considering new measures to help nursing homes and assisted living facilities better prepare for and respond to natural and manmade disasters as a result of its experience during and after Hurricane Harvey?
4. We would like to find out more information about a particular facility in Dickinson, Texas—La Vita Bella—which received a great deal of media attention during Hurricane Harvey:<sup>5</sup>
  - a. Please confirm that La Vita Bella is an assisted living facility licensed by the Texas Health and Human Services Commission. For what services has the facility been licensed by your Commission? Are these licenses still active?
  - b. What emergency preparedness and response requirements applied to La Vita Bella at the time of Hurricane Harvey?
  - c. Provide the timeline of any communications (during and/or following the hurricane) between La Vita Bella and any State or local authorities, as well as the timeline for the precautionary or emergency evacuation of La Vita Bella's residents.
  - d. Describe the recent regulatory history of La Vita Bella (*e.g.*, inspections, surveys, corrective actions, re-certifications, and relicensing, including those conducted on behalf of CMS).

We appreciate your cooperation with the Committee as we seek information about Texas's emergency preparedness and response requirements. By providing this information, we can better understand what needs to be done at the Federal level to ensure that nursing homes and other similar facilities are prepared to respond to natural and manmade disasters. Please provide your responses to these questions as soon as possible, but no later than November 15,

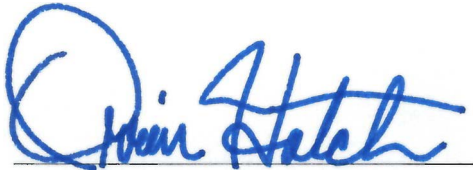
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<sup>5</sup> Jacey Fortin, *Behind the Photo of the Older Women in Waist-High Water in Texas*, N.Y. TIMES, Aug. 28, 2017, available at [https://www.nytimes.com/2017/08/28/us/nursing-home-houston-texas.html?\\_r=0](https://www.nytimes.com/2017/08/28/us/nursing-home-houston-texas.html?_r=0).

Mr. Charles Smith  
October 18, 2017  
Page 3 of 3

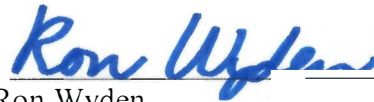
2017. If you have any questions, please contact Caitlin Soto of the Majority staff or David Berick of the Minority staff at (202) 224-4515.

Sincerely,

A handwritten signature in blue ink that reads "Orrin Hatch". The signature is written in a cursive style with a large initial "O".

---

Orrin Hatch  
Chairman  
Senate Committee on Finance

A handwritten signature in blue ink that reads "Ron Wyden". The signature is written in a cursive style.

---

Ron Wyden  
Ranking Member  
Senate Committee on Finance

# Appendix C

# **Exhibit 1**

## **Berick, David (Finance)**

---

**From:** Kostroun,David (HHSC) [REDACTED]  
**Sent:** Friday, October 26, 2018 11:15 AM  
**To:** Berick, David (Finance)  
**Cc:** Soto, Caitlin (Finance); Hallarman, Lynn (Finance); Lowery,Allison K (HHSC/DADS); Davis,Donyiel (HHSC); Nuckols,Kirsten (HHSC)  
**Subject:** RE: Senate Finance Committee follow-up questions

Dear Mr. Berick:

Per my email to you in August, I want to update you on the results of our follow-up investigations into how the Lake Arthur and Cypress Glynn nursing facilities in Port Arthur, Texas, responded to Hurricane Harvey.

Upon reinvestigation, which included on-site visits, our staff was able to interview nursing facility staff and other individuals, including former residents, whom they were unable to reach during their initial investigation in the wake of Harvey. They also were able to review some documents that were not initially available.

As a result, our investigators were able to substantiate allegations of regulatory violations and cite these two facilities for failure to comply with state and federal standards in the storm's aftermath, including violations that rose to a high severity level known as substandard quality of care. More specifically, our staff:

- Substantiated 31 allegations at Lake Arthur Place, including violations relating to neglect of residents, quality of care, and physical environment at the facility.
- Substantiated 25 allegations at Cypress Glen, also including neglect, quality of care, and physical environment.

Based on these substantiated violations, our enforcement team is recommending state administrative penalties, as well as federal penalties to deny these two facilities Medicaid payments for any new resident admissions and to terminate their agreements to participate in the federal Medicaid program.

The federal Centers for Medicare & Medicaid Services (CMS) has received our team's recommendations and can alter them at its discretion.

Both facilities pursued their due process rights to appeal our findings through an informal dispute resolution (IDR) process. The IDR process was recently completed, sustaining all state and federal violations. The facility will also have appeal rights and an opportunity for a hearing related to any proposed enforcement action.

Also, the licenses for three nursing facility administrators who led these two facilities are under review for possible enforcement actions.

If you have any additional questions, please do not hesitate to contact me.

### **David Kostroun**

Deputy Executive Commissioner for Regulatory Services Division  
(512) 424-6644

---

**From:** Kostroun,David (HHSC)  
**Sent:** Monday, August 13, 2018 4:34 PM  
**To:** 'Berick, David (Finance)' [REDACTED]

Cc: Soto, Caitlin (Finance) [REDACTED]; Hallarman, Lynn (Finance)

[REDACTED] Lowery, Allison K (HHSC/DADS) [REDACTED]

Davis, Donyiel (HHSC) [REDACTED]; Nuckols, Kirsten (HHSC) [REDACTED]

**Subject:** RE: Senate Finance Committee follow-up questions

Dear Mr. Berick:

Our regulatory investigation of Lake Arthur Place and its response to Hurricane Harvey is not final. For now, that facility remains closed, and no state or federal enforcement action has been taken against it or Senior Care Centers, pending the outcome of our investigation.

We will update you when this investigation is completed, but do let us know if you have any additional questions in the meantime.

**David Kostroun**

Deputy Executive Commissioner for Regulatory Services Division  
(512) 424-6644

---

**From:** Berick, David (Finance) [REDACTED]

**Sent:** Wednesday, August 1, 2018 6:01 PM

**To:** Kostroun, David (HHSC) [REDACTED]

**Cc:** Soto, Caitlin (Finance) [REDACTED]; Hallarman, Lynn (Finance)

[REDACTED] >; Lowery, Allison K (HHSC/DADS) [REDACTED]

Davis, Donyiel (HHSC) [REDACTED]; Nuckols, Kirsten (HHSC) [REDACTED]

**Subject:** Re: Senate Finance Committee follow-up questions

Thanks for the quick reply

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Kostroun, David (HHSC)" [REDACTED]

Date: 8/1/18 6:30 PM (GMT-05:00)

To: "Berick, David (Finance)" [REDACTED]

Cc: "Soto, Caitlin (Finance)" [REDACTED], "Hallarman, Lynn (Finance)"

[REDACTED], "Lowery, Allison K (HHSC/DADS)"

[REDACTED], "Davis, Donyiel (HHSC)" [REDACTED]

"Nuckols, Kirsten (HHSC)" [REDACTED]

**Subject:** RE: Senate Finance Committee follow-up questions

Dear Mr. Berick:

Thank you for your follow-up email of the status of the complaint investigations associated with Hurricane Harvey. I am obtaining the current status from our team and will respond with the information soon.



Thanks.

**David Kostroun**

Deputy Executive Commissioner for Regulatory Services Division  
(512) 424-6644

---

**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Tuesday, July 31, 2018 3:35 PM  
**To:** Kostroun,David (HHSC) [REDACTED]  
**Cc:** Soto, Caitlin (Finance) [REDACTED]; Hallarman, Lynn (Finance)  
[REDACTED]; Lowery,Allison K (HHSC/DADS) [REDACTED]  
Davis,Donyiel (HHSC) [REDACTED]; Nuckols,Kirsten (HHSC) [REDACTED]  
**Subject:** RE: Senate Finance Committee follow-up questions

**WARNING:** This email is from outside the HHS system. Do not click on links or attachments unless you expect them from the sender and know the content is safe.

Mr. Kostroun,

Just to wrap things up on this matter, in your response to Question 1 below, you told us that “(a)ll complaints stemming from the facility’s response to Hurricane Harvey remain under investigation.” Have those investigations concluded and/or have any enforcement actions or remedies been taken with regard to the Lake Arthur Place facility or the facility owner – Senior Care Centers? If so, what actions have taken place?

Thanks.

---

**From:** Kostroun,David (HHSC) [REDACTED]  
**Sent:** Monday, February 05, 2018 1:25 PM  
**To:** Berick, David (Finance) [REDACTED]  
**Cc:** Soto, Caitlin (Finance) [REDACTED]; Hallarman, Lynn (Finance)  
[REDACTED]; Lowery,Allison K (HHSC/DADS) [REDACTED]  
Davis,Donyiel (HHSC) [REDACTED]; Nuckols,Kirsten (HHSC) [REDACTED]  
**Subject:** RE: Senate Finance Committee follow-up questions

Dear Mr. Berick:

We appreciate the opportunity to respond to your inquiry regarding Lake Arthur Place Nursing Home and its response to Hurricane Harvey. The following are our answers to your questions:

1. Please confirm that Lake Arthur Place is a nursing home licensed by the Texas Health and Human Services Commission (HHSC). For what services was the facility been licensed by your administrator? And what, if any regulatory actions, has HHSC taken with regard to Lake Arthur Place following this event?
  - a. Lake Arthur Place is licensed through HHSC as a nursing facility provider until April 1, 2018. It is licensed to deliver long-term care services covered under the Health and Safety Code, Chapter 242, and under the Texas Administrative Code, Title 40, Part 1, Chapter 19.

# **Exhibit 2**

**From:** [Harris, William \(CMS/OL\)](#)  
**To:** [Berick, David \(Finance\)](#); [Boulanger, Jennifer L. \(CMS/OL\)](#)  
**Cc:** [Felder, Emily \(CMS/OL\)](#); [Gartrell, Peter \(Finance\)](#); [Hallarman, Lynn \(Finance\)](#)  
**Subject:** RE: Reply to Senator Wyden  
**Date:** Tuesday, August 07, 2018 11:51:23 AM

---

Good morning, David. Please find below responses to your earlier follow-up questions. Please let us know if you have further questions or need any additional information. Thanks,

Will

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1. **In the agency’s Dec 13<sup>th</sup> response (page 4), it notes that “CMS understands that the State Survey Agencies in Florida and Texas have received storm-related complaints, and these complaints have been ranked so that the most serious complaints are investigated first. CMS has not received the investigative reports for review.” Has CMS subsequently received additional investigative reports from Florida or Texas? If so, what has it received and what specific enforcement actions, if any, has it taken in response?**

**Response:**

As of July 30th, the Texas Health and Human Services Commission (TXHHSC) reported 74 complaints filed on 38 Skilled Nursing Facilities. Of the 38 complaints, 36 were deemed to justify an onsite investigation. Of the 36 investigations, 10 SNFs were found to have Medicare requirements out of compliance for which the TXHHSC recommended a federal remedy. None resulted in an involuntary termination from the Medicare program, however, 1 SNF permanently closed.

In Florida, 42 complaints were received, which each resulted in an onsite investigation. Of these, there were 12 resulting findings of deficient practices.

2. **Has CMS reviewed incidents related to Hurricane Harvey and Irma, overall, including the Hollywood Hills incidents, with regard to any lessons-learned? Any proposed changes in regulations, including but not limited to emergency evacuation, physician over site during emergencies or family/custodial notification?**

**Response:** As evidenced by the immediate termination Hollywood Hills from Medicare and Medicaid participation, the failures at this facility were not a lack of regulatory gaps but rather care and management decisions made by facility leadership and staff that were contrary to already existing quality of care regulatory expectations.

We are updating Appendix Z, the Interpretive Guidelines for Emergency Preparedness, which will clarify areas for acceptable use and expectations for safeguarding temperature controls, such as portable generators.

Additionally, the requirements under the Emergency Preparedness final rule also require long-term care facilities to have protocols for sharing information from their emergency plan with residents and their families or representatives, as well as evacuation and shelter in place policies and procedures which protect the health and safety residents.

3. **The December 13<sup>th</sup> letter reiterates (page 2) that nursing homes are required to maintain safe temperature levels even during emergencies, although the emergency power requirements do not specifically require emergency power for that purpose, only for life support. On page 4, the letter says that CMS has issued civil money penalties in response to temperature deficiencies. When and under what circumstances did this occur? In light of the Hollywood Hills deaths is the agency re-evaluating the requirement on emergency generation for temperature control?**

**Response:** There are existing Life Safety Code requirements for temperature maintenance. Long-term care facilities must provide comfortable and safe temperature levels at all times. For those facilities initially certified after October 1990, this is specifically defined as between 71 to 81 degrees Fahrenheit. This requirement applies regardless of whether a facility is experiencing an emergency. Under the Emergency Preparedness Final Rule, there are additional expectations for maintaining safe temperatures and guidance for use of additional equipment which may assist in those efforts.

Additionally, states may impose more stringent requirements under their state licensure authority. For example, Florida has passed legislation to require all nursing homes to have a permanent generator installed. States, using their licensure authority, are best situated to mandate provisions such as this and are able to specify interventions that best mitigate their specific hazards and geographic locations.

Almost 500 facilities were cited on this issue from 2016 to 2017 when they failed to comply with regulatory requirements.

4. **As noted in the response (page 3), the new Emergency Planning regulations went into effect in November 15, 2016 and surveys to evaluate compliance with the new regulations began November 15, 2017. What is the status of the survey process for the EP rule implementation? What facilities in what states have been surveyed for compliance with these new requirements?**

**Response:** Surveys began on November 15, 2017. The surveys are performed in conjunction with existing survey cycles for initial, recertification, and complaint surveys. As recertification surveys occur annually, at this time over half of the nursing homes in the United States have been surveyed under these requirements.

5. **Have any facilities been subject to enforcement measures since EP regs are in place? How is that tracked?**

**Response:** Since November 2017, 2,027 facilities have been cited for non-compliance with emergency preparedness requirements through 6,252 deficiency findings. The scope and severity of these deficiencies are outlined below:

Number of Deficiencies by Scope and Severity	
<b>B</b>	9
<b>C</b>	4499
<b>D</b>	440
<b>E</b>	170
<b>F</b>	1133
<b>Total</b>	6252

6. **Required surveyor training for EP? Is CMS tracking compliance with training? What percentage of surveyors have completed training in EP?**

**Response:** CMS provides all surveyor training through an online portal. This portal provides a log in screen for surveyors which tracks their completion of required training. Currently, 4,907 surveyors out of 8,636 state surveyors, or 57%, have completed the Emergency Preparedness training. It is important to note that some states are using Life Safety Code surveyors to perform these surveys, while others use health surveyors, or a mix of the two. Therefore, 100% competency by all surveyors is not required for a state to be able to effectively perform these surveys.

- 7. As noted in the nursing homes are required to have emergency plans, including safe evacuation and sheltering in place. What guidance, if any, has CMS issued to nursing homes for their use in making these decisions?**

**Response:** The Emergency Preparedness rule does not require pre-approval of emergency plans. It requires that facilities provide written documentation of their plans.

Many states, however, require review and approval of emergency operating plans under state licensure. Ensuring the efficacy of these plans is a state/local function as these entities are best situated to make those evaluations.

Appendix Z, the Interpretive Guidelines for Emergency Preparedness Requirements, is available publically on the CMS website at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/Advanced-Copy-SOM-Appendix-Z-EP-IGs.pdf>. Guidance regarding the evacuation requirements includes considerations for triaging the evacuations, transfer agreements, transportation considerations and more. Additionally, we have partnered with the HHS Assistant Secretary for Preparedness and Response (ASPR) office to include information on ASPR TRACIE (<https://asprtracie.hhs.gov/>) to assist providers and suppliers with downloadable templates, checklists, and best practices. Finally, we have also partnered with different agencies for training resources and performed several outreach presentations.

- 8. CMS now requires facilities to develop and maintain an emergency preparedness training and testing program for new and existing staff with annual refresher training. How is compliance with and the quality of training and testing being monitored? Do facilities have to report compliance to CMS?**

**Response:** The Emergency Preparedness rule requires facilities to demonstrate in writing that they have completed their training and testing exercises. Surveyors are expected to review the documentation, which include the lesson plans, sign in rosters for training, training portals or any other platform which the facility may be using. Surveyors ensure the training includes hazards identified in the facility's risk assessment.

CMS and ASPR also partnered with FEMA's Center for Domestic Preparedness to develop a comprehensive "how-to" course to provide healthcare providers and suppliers with training in achieving the four core emergency preparedness elements outlined in the

Emergency Preparedness Requirements:

<https://asprtracie.s3.amazonaws.com/documents/health-sector-emergency-preparedness-course-syllabus.pdf>.

- 9. What is the defined role of physicians in the care of nursing home residents, generally, and what is their role, if any, in an emergency? And to what extent is their role required to be defined in CMS-required emergency preparedness**

**plans?**

**Response:** Federal Medicare/Medicaid regulations require that each resident be under the care of an attending physician selected by the resident. This attending physician is responsible for managing the residents care and must be notified by the facility of any of the following:

- An accident resulting in an injury where the physician needs to be involved;
- A significant change in the resident's physical, mental or psychosocial status;
- A need to significantly alter treatment;
- A decision to transfer/discharge the resident.

The attending physician is part of the resident's care planning team, and routinely reviewing the total plan of care for the resident. See 42 CFR §§ 483.10(d), 483.10(g) (14) and 483.30.

The Emergency Preparedness rule also requires facilities to have policies and procedures which include the development of arrangements with other facilities and other providers to receive patients in the event of limitations or cessation of operations to maintain the continuity of services to facility patients. Additionally, facilities must have a method for sharing information and medical documentation for residents under their care with other health providers to maintain continuity of care.

**10. CMS states in the December 13th letter that it is committed to transparency. Is CMS planning on adding a quality rating on "nursing home compare" related to EP?**

**Response:** CMS does not intend to add a separate quality rating related to Nursing Home Compare as any non-compliance associated with Emergency Preparedness requirements will be included as part of the overall inspection score. We also believe there is a high level of compliance with these requirements, which would make differentiation of facilities based solely on this measure difficult. We will evaluate the rate of compliance once the full one-year cycle of recertification surveys is complete.

**11. With regard to safe indoor temperatures in LTC facilities: In the 2016 Final Rule: *Reform of Requirements for Long-Term Care Facilities* under the section titled "Safe Environment", facilities are instructed to maintain "Comfortable and safe temperature levels." and "Facilities initially certified after October 1 1990 must maintain a temperature range of 71 to 81 degrees F." However, in the 2016 Final Emergency Preparedness Rules 483.73 there is no mention of a safe temperature range? Under the "Policies & Procedures" section facilities are instructed to have an alternate source of energy that maintains "*Temperatures to protect resident health and safety and for the safe and sanitary storage of provisions.*" Why was the specific temperature range or cross-reference omitted?**

**Response:** The existing Life Safety Code requirements still require Long Term Care facilities to maintain temperatures as indicated above. As the Emergency Preparedness regulations cover all seventeen Medicare provider and supplier types, we did not believe it necessary to restate existing requirements found elsewhere in regulation.

---

**From:** Berick, David (Finance) [REDACTED]

**Sent:** Wednesday, July 25, 2018 4:25 PM

**To:** Harris, William (CMS/OL) [REDACTED]; Boulanger, Jennifer L. (CMS)/OL

[REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Gartrell, Peter (Finance)  
[REDACTED]; Hallarman, Lynn (Finance)  
[REDACTED]

**Subject:** RE: Reply to Senator Wyden

Thanks for the update. Looking forward to seeing what you've put together.

---

**From:** Harris, William (CMS/OL) [REDACTED]  
**Sent:** Wednesday, July 25, 2018 4:22 PM  
**To:** Berick, David (Finance) [REDACTED]; Boulanger, Jennifer L. (CMS)/OL  
[REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Gartrell, Peter (Finance)  
<[REDACTED]> Hallarman, Lynn (Finance)  
[REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Good afternoon – thanks for checking on this. Folks here are working hard on those, and I think we should be able to get you something soon. I think it's safe to say we'll try to get you answers next week, and I'll let you know if that changes. Thanks again,

Will

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**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Wednesday, July 25, 2018 11:43 AM  
**To:** Harris, William (CMS/OL) [REDACTED]; Boulanger, Jennifer L. (CMS)/OL  
[REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Gartrell, Peter (Finance)  
[REDACTED]; Hallarman, Lynn (Finance)  
[REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Good Morning,

Checking on the status of this. Any ETA for these?

---

**From:** Harris, William (CMS/OL) [REDACTED]  
**Sent:** Tuesday, July 10, 2018 2:25 PM  
**To:** Berick, David (Finance) [REDACTED]; Boulanger, Jennifer L. (CMS)/OL  
[REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Gartrell, Peter (Finance)  
[REDACTED]; Hallarman, Lynn (Finance)  
[REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Good afternoon, David. We're working on getting responses to these questions written up for you all because that might be a bit easier. When we've got those ready for you all, I'll let you know. Thanks again,

Will

---

**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Tuesday, July 10, 2018 2:07 PM  
**To:** Boulanger, Jennifer L. (CMS)/OL [REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Harris, William (CMS/OL) [REDACTED]; Gartrell, Peter (Finance) [REDACTED]; Hallarman, Lynn (Finance) [REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Jennifer, I was out last week, so may have missed something, but were you able to come up with some dates and times when we could meet on this?

---

**From:** Berick, David (Finance)  
**Sent:** Friday, June 22, 2018 1:31 PM  
**To:** 'Boulanger, Jennifer L. (CMS)/OL' [REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Harris, William (CMS/OL) [REDACTED]; Gartrell, Peter (Finance) [REDACTED]; Hallarman, Lynn (Finance) [REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Great, thank you.

---

**From:** Boulanger, Jennifer L. (CMS)/OL [REDACTED]  
**Sent:** Friday, June 22, 2018 1:29 PM  
**To:** Berick, David (Finance)  
**Cc:** Felder, Emily (CMS/OL) ; Harris, William (CMS/OL) ; Gartrell, Peter (Finance) ; Hallarman, Lynn (Finance)  
**Subject:** RE: Reply to Senator Wyden

David,

I am sorry for my delay in replying. I think a meeting to walk through the questions (+Lynn's email) would be most expeditious. We will get dates/times and be back to you shortly.

Jennifer



**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Wednesday, June 20, 2018 10:04 AM  
**To:** Boulanger, Jennifer L. (CMS/OL) [REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Harris, William (CMS/OL) [REDACTED]; Gartrell, Peter (Finance) [REDACTED]  
Hallarman, Lynn (Finance) [REDACTED]  
**Subject:** RE: Reply to Senator Wyden

Jennifer et. al.

Returning to this, we have some follow-up questions concerning the CMS December 13<sup>th</sup> response (attached) regarding nursing homes and CMS emergency planning requirements and updates on developments since then such as the status of surveys of compliance with the new regulations. We are flexible on whether we do this by conference call, at least to start with, or written responses. So please let us know how you want to proceed.

1. In the agency's Dec 13<sup>th</sup> response (page 4), it notes that "CMS understands that the State Survey Agencies in Florida and Texas have received storm-related complaints, and these complaints have been ranked so that the most serious complaints are investigated first. CMS has not received the investigative reports for review." Has CMS subsequently received additional investigative reports from Florida or Texas? If so, what has it received and what specific enforcement actions, if any, has it taken in response?
2. Has CMS reviewed incidents related to Hurricane Harvey and Irma, overall, including the Hollywood Hills incidents, with regard to any lessons-learned? Any proposed changes in regulations, including but not limited to emergency evacuation, physician oversight during emergencies or family/custodial notification?
3. The December 13<sup>th</sup> letter reiterates (page 2) that nursing homes are required to maintain safe temperature levels even during emergencies, although the emergency power requirements do not specifically require emergency power for that purpose, only for life support. On page 4, the letter says that CMS has issued civil money penalties in response to temperature deficiencies. When and under what circumstances did this occur? In light of the Hollywood Hills deaths is the agency re-evaluating the requirement on emergency generation for temperature control?
4. As noted in the response (page 3), the new Emergency Planning regulations went into effect in November 15, 2016 and surveys to evaluate compliance with the new regulations began November 15, 2017. What is the status of the survey process for the EP rule implementation? What facilities in what states have been surveyed for compliance with these new requirements?
5. Have any facilities been subject to enforcement measures since EP regs are in place? How is that tracked?
6. Required surveyor training for EP? Is CMS tracking compliance with training? What percentage of surveyors have completed training in EP?
7. As noted in the nursing homes are required to have emergency plans, including safe evacuation and sheltering in place. What guidance, if any, has CMS issued to nursing homes for their use in making these decisions?
8. What are the reporting requirements for facilities to CMS regarding EP emergency plans?
9. CMS now requires facilities to develop and maintain an emergency preparedness training and testing program for new and existing staff with annual refresher training. How is compliance with and the quality of training and testing being monitored? Do facilities have to report compliance to CMS?
10. What is the defined role of physicians in the care of nursing home residents, generally, and what is their role, if any, in an emergency? And to what extent is their role required to be defined in CMS-required emergency preparedness plans?
11. CMS states in the December 13<sup>th</sup> letter that it is committed to transparency. Is CMS

planning on adding a quality rating on “nursing home compare” related to EP?

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**From:** Boulanger, Jennifer L. (CMS/OL) [REDACTED]  
**Sent:** Wednesday, December 13, 2017 6:36 PM  
**To:** Gartrell, Peter (Finance) [REDACTED]; Berick, David (Finance)  
[REDACTED]  
**Cc:** Felder, Emily (CMS/OL) [REDACTED]; Harris, William (CMS/OL)  
[REDACTED]  
**Subject:** Reply to Senator Wyden

Peter and David,

Attached is the reply to Senator Wyden regarding his letter on the requirement of participation and in particular emergency preparedness requirements. The Chairman and the ranking member requested a number of documents that we will deliver to you tomorrow on a disk. (Unfortunately, there are too many documents to make it to you via email!) Please let us know if you have any questions.

Thanks,

Jennifer

Jennifer Boulanger  
CMS Office of Legislation  
[REDACTED]

# **Exhibit 3**

**DEC 13 2017**

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Wyden:

Thank you for your letter regarding the Centers for Medicare & Medicaid Services' (CMS) role in ensuring nursing home residents receive appropriate and safe care, particularly after events surrounding Hurricanes Harvey, Irma, and Maria. CMS staff is deeply concerned by disaster-related deaths during or following emergency events. Beneficiary safety is our top priority, and we expect it to be the top priority in every single facility that participates in the Medicare and Medicaid programs, including nursing homes.

CMS works to provide appropriate oversight to ensure nursing home residents receive appropriate care in safe and stable environments. Monitoring residents' health and well-being in nursing homes and other long-term care facilities serving Medicare and Medicaid beneficiaries requires coordinated efforts between the federal government and the states. Federal law<sup>1</sup> defines facilities that are nursing homes, including skilled nursing facilities and nursing facilities such as the Rehabilitation Center at Hollywood Hills; sets out specific requirements for such facilities; and also gives CMS authority<sup>2</sup> to establish such additional requirements as may be necessary to protect the health and safety of the beneficiaries receiving care in them. These facilities must be certified by CMS as a Medicare provider of services in order to receive payment from Medicare and Medicaid. Assisted living facilities and group homes, on the other hand, do not participate in Medicare, and these types of facilities, including La Vita Bella, are not required to comply with the CMS Requirements for Long Term Care Facilities. Generally, these facilities are licensed and regulated by states. However, in some instances where states have elected to furnish optional home and community-based services (HCBS) through Medicaid, assisted living facilities may be HCBS providers, and are subject to HCBS-related health and welfare requirements, as well as state-based regulation.

In order to become certified by CMS, a nursing home must comply with basic health and safety standards included in our Medicare and Medicaid Requirements for Long Term Care Facilities,<sup>3</sup> among other federal requirements. We expect facilities to meet these requirements at all times, including during emergencies. The requirements address such

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<sup>1</sup> Section 1819(a) and 1919(a) of the Social Security Act (the Act)

<sup>2</sup> Sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act.

<sup>3</sup> 42 CFR Part §483, Subpart B

issues as infection control, quality of care, nursing services, and many other factors. There are numerous requirements regarding emergency preparedness,<sup>4</sup> and a specific rule setting emergency power<sup>5</sup> standards. Specifically, nursing homes are required to have an emergency power system adequate enough to supply power for lighting all entrances and exits; equipment to maintain the fire detection, alarm and extinguishing systems; and life support systems, such as ventilators, in the event that normal electrical supply is interrupted. When life support systems are used, the facility must provide emergency electrical power with an emergency generator that is located on the premises. In addition, the long-term care facility must have an emergency plan, and must implement emergency and standby power systems based on that emergency plan.

Our Requirements for Participation also set out resident rights.<sup>6</sup> Every resident has a right to a safe, clean, comfortable and personalized environment including, but not limited to, receiving treatment and supports for safe living. For example, all CMS long-term care facilities must provide comfortable and safe temperature levels; for those facilities that became initially certified after October 1990, including Hollywood Hills, this is specifically defined as 71 to 81 degrees Fahrenheit.<sup>7</sup> This requirement applies regardless of whether a facility is experiencing any emergency conditions; however, the requirements do not specify that facilities must have a generator for cooling or heating systems unless they provide care to residents on life-saving equipment, such as ventilators.

Using lessons learned from previous natural disasters, CMS recently updated and improved previously-existing emergency preparedness requirements in our Emergency Preparedness Final Rule (81 FR 63860).<sup>8</sup> In our revision, we required nursing homes to store emergency fuel and associated equipment and systems. We also introduced additional testing requirements for their emergency and stand-by-power systems.<sup>9</sup> This final rule also requires long-term care facilities (as well as other providers and suppliers) to have policies and procedures for safe evacuation from the facility. These policies and procedures must include consideration of care and treatment needs of evacuees, staff responsibilities, transportation, identification of evacuation location(s), and primary and alternate means of communication with external sources of assistance.<sup>10</sup> Additionally, the rule covers requirements for sheltering in place.<sup>11</sup> However, it is not specific as to when a facility must evacuate or shelter-in-place in order to allow flexibilities for the facilities, as the circumstances of each disaster vary. The expectation is facilities will assess these procedures during their risk assessments and continue to maintain resident safety and care during an emergency.

CMS also updated emergency planning criteria to require that facilities use an “all-hazards” risk assessment approach in emergency planning to identify and address location-specific

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<sup>4</sup> 42 CFR §483.73

<sup>5</sup> 42 CFR §483.73(e)

<sup>6</sup> 42 CFR 483.10

<sup>7</sup> 42 CFR §483.10(i)(6)

<sup>8</sup> <https://www.gpo.gov/fdsys/pkg/FR-2016-09-16/pdf/2016-21404.pdf>

<sup>9</sup> 42 CFR §483.73(e).

<sup>10</sup> 42 CFR §483.73(b)(3)

<sup>11</sup> 42 CFR §483.73(b)(4)

hazards and responses.<sup>12</sup> We now require facilities to develop and maintain an emergency preparedness training and testing program for new and existing staff, including annual refresher training. Facilities must also establish a communications system to contact appropriate staff, residents' treating physicians, and other necessary persons in a timely manner to ensure continuation of care functions. These new standards became effective on November 15, 2016. Surveys to evaluate compliance with the new requirements began on November 15, 2017, and allow us to assess facilities' needs for additional resources. CMS also created a website prior to these disasters to assist facilities in their planning efforts and will continue to reach out to all provider and supplier types. The website addresses are <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Emergency-Prep-Rule.html>; and <https://www.cms.gov/About-CMS/Agency-Information/Emergency/index.html>.

CMS has a responsibility to make sure that Medicare-certified facilities, including nursing homes, meet all Requirements for Participation, and we expect every facility to be in compliance at all times. Any federal survey, whether conducted by a State Survey Agency or CMS, must be unannounced. In addition to annual recertification surveys, CMS and federal surveyors conduct investigations in response to complaints received from residents, family members, caregivers, providers, facility staff, and others who have concerns about a facility that is Medicare or Medicaid certified.

Facilities must meet state licensure requirements in order to be certified by CMS.<sup>13</sup> The State Survey Agency, working as CMS's agency to conduct surveys to determine compliance with Medicare health and safety and life safety code requirements, is usually the same agency responsible for State Licensure surveys and oversight. Many of the requirements under the Medicare and Medicaid programs and for State Licensure are similar. Therefore, these on-site surveys are often performed concurrently by the same team of surveyors, with the findings then drafted into two separate reports: one for state licensure, and one for Medicare and Medicaid compliance. Utilizing the expertise of state officials to perform surveys means that State Survey Agencies and officials have up-to-date information on health and safety risks at facilities, and, as appropriate, can take direct, independent action against facilities through sanctions authorized under state licensure, as well as recommend federal enforcement and remedies in response to noncompliance deficiencies of Medicare requirements.

When state inspectors identify violations of Medicare program requirements by participating providers, the state informs CMS. While state and federal requirements may share similarities, state licensure requirements or the standards for making a determination of noncompliance under state law may also differ from federal standards, and a facility could be found out of compliance with a state requirement while still be determined as complying with federal standards. When a facility is found to be in violation of federal requirements, it is generally required to develop a corrective action plan, and CMS may also impose a variety of federal enforcement remedies<sup>14</sup> depending on the situation. For example, CMS has issued civil money penalties in response to temperature deficiencies. Civil money penalties can be

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<sup>12</sup> 42 CFR §483.73(a)(1)

<sup>13</sup> 42 CFR §483.70 (a)

<sup>14</sup> See sections 1819(h)(2) and 1919(h)(3) of the Act; 42 CFR Part 488, Subpart F.

assessed against facilities depending on the level of scope and severity of the deficient practice, and can range from \$105 to \$20,965 per day, or \$2,097 to \$20,965 per instance, and these amounts are adjusted annually for inflation.<sup>15</sup> Other remedies may include denial of Medicare and Medicaid payments for new admissions and termination of the facility's provider agreement. When immediate jeopardy to resident health and safety is identified, CMS or the State Medicaid Agency may terminate the facility and/or install temporary management in as few as two calendar days after the survey which determined immediate jeopardy exists.

After Hurricane Irma, surveyors from Florida's Agency for Health Care Administration (AHCA) were onsite at the Rehabilitation Center at Hollywood Hills on Wednesday, September 13, 2017 – three days after the Hurricane made landfall in the area, to assess compliance with both state and federal health and safety requirements. During this survey, the AHCA found substandard quality of care that resulted in immediate jeopardy<sup>16</sup> to resident health and safety. As a result of that survey, on October 11, CMS terminated the Rehabilitation Center at Hollywood Hills from the Medicare and Medicaid programs.<sup>17</sup>

Transparency is an important part of CMS's beneficiary safety work across the Agency, and CMS is committed to making sure our beneficiaries, their families and caregivers, and policymakers have the information they need to make decisions about the health care facilities we oversee. Included with this letter are copies of the survey reports (Form CMS-2567, Statement of Deficiencies) resulting from surveys conducted at the Rehabilitation Center at Hollywood Hills from January 1, 2012 through October 19, 2017, along with any enforcement notice letters issued by CMS. These survey reports may also be accessed on CMS's Nursing Home Compare Website.<sup>18</sup>

State Survey Agencies also conduct complaint investigations on behalf of CMS. A federal survey report is issued if there are any federal regulatory violations identified during the survey. During the 2017 hurricanes and subsequent tropical storms, some certified nursing homes experienced power outages that were readily managed by each facility in collaboration with community partners. CMS understands that the State Survey Agencies in Florida and Texas have received storm-related complaints, and these complaints have been ranked so that the most serious complaints are investigated first. CMS has not yet received the investigative reports for review.

Making sure providers and suppliers are prepared for future disasters, whether it is a hurricane, wildfire, or disease pandemic, is essential to ensuring beneficiary safety in every setting of care. As we continue to work with our local, state, and federal partners to help the areas impacted by Hurricanes Harvey, Irma, Maria, and Nate rebuild, we will remain diligent in our duties to monitor nursing homes participating in Medicare and Medicaid. We look forward to continuing to work with you to make sure the nursing home residents we

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<sup>15</sup> 42 CFR 488.438 and 45 CFR 102.3

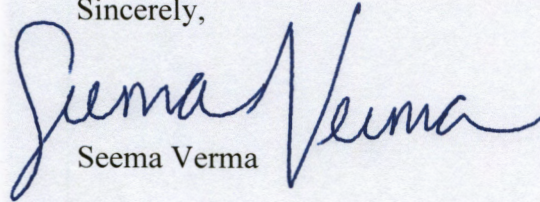
<sup>16</sup> Immediate jeopardy to resident health and safety means that the provider's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment or death. See 42 CFR §488.301.

<sup>17</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Termination-Notices.html>

<sup>18</sup> <https://www.medicare.gov/nursinghomecompare/search.html?>

serve are receiving safe and high quality health care. I will also provide this response to Senator Hatch.

Sincerely,

A handwritten signature in blue ink that reads "Seema Verma". The signature is fluid and cursive, with the first name "Seema" and the last name "Verma" clearly distinguishable. The signature is positioned to the right of the typed name "Seema Verma".

Seema Verma

Enclosures



# **Exhibit 4**



November 27, 2017

The Honorable Orrin Hatch  
Chairman  
Senate Committee on Finance  
104 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Ron Wyden  
Ranking Member  
Senate Committee on Finance  
211 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Hatch and Senator Wyden:

We greatly appreciate this opportunity to respond to your request for information regarding our preparation for and responses to Hurricane Harvey as it relates to Texas nursing homes and other long-term care facilities.

1. Identify the statewide emergency preparedness and response requirements that applied at the time of Hurricane Harvey to nursing homes and assisted living facilities in Texas.

In accordance with Texas Administrative Code, Title 40, Chapter 19, Section 19.1914 for nursing facilities and Chapters 92.41 and 92.62 for assisted living facilities, these facilities are required to have written emergency response plans. Emergency response plans must address the following eight core components of emergency management:

- 1) **Direction and Control** plans must describe who will direct execution of the emergency plan and how.
- 2) **Warning** plans must describe how the facility will be notified of an emergency and whom they will notify.
- 3) **Communication** plans must describe with whom and by what mechanism the facility will communicate during a disaster.
- 4) **Sheltering arrangements** must describe what actions a facility will take in implementing a decision for staff and residents to shelter-in-place.
- 5) **Evacuation** plans must describe destinations and routes in the event that a facility implements a decision to evacuate residents.
- 6) **Transportation** plans describe the facility's plan for transporting residents in the event of an evacuation.

- 7) **Health and medical needs** must describe how the facility will meet all of the residents' health and medical needs during a disaster (medications, treatments, equipment, etc.).
- 8) **Resource management** plans must describe how the facility will manage resources such as staffing, records, emergency equipment, and supplies during a disaster.

Providers in both programs are required to have an emergency plan and follow the eight core functions; however, the nursing facility requirements contain a greater level of detail, outlining specific items that must be included within each of the eight core functions in rule, whereas the assisted living facility requirements are more general. We have recommended to state lawmakers that we work with assisted living provider groups to make their requirements more clear and prescriptive.

2. Provide the number of nursing homes and assisted living facilities in Texas that
  - (a) were evacuated during Hurricane Harvey or its aftermath and the reasons for the evacuation (e.g., loss of power, flooding, precautionary evacuation), and
  - (b) elected to shelter-in-place during the storm.
- 2(a). A total of 122 facilities in storm-affected counties evacuated due to predicted structural damage, flooding, and power outages.
- 2(b). An estimated 740 facilities in storm-affected counties sheltered-in-place, based on information self-reported by providers.
3. Is Texas taking and/or considering new measures to help nursing homes and assisted living facilities better prepare for and respond to natural and manmade disasters as a result of its experience during and after hurricane Harvey?

Texas is reviewing its current measures and considering several recommendations for nursing homes and assisted living facilities to better prepare for and respond to disasters. In addition to the recommendation above for assisted living facilities' emergency plans, we have recommended to lawmakers that local authorities consider imposing evacuation orders sooner for facilities housing a high number of individuals with limited mobility.

We also recommended that our agency develop and maintain a list of standardized, appropriate long-term care rule suspensions that could be automatically authorized by our agency to providers as soon as the governor declares a disaster. An example would be granting these facilities the temporary right to exceed their licensed capacity to take in evacuees from another facility. Like any other rule waiver we would recommend be on this list, this one is

nearly always granted to providers during a disaster and is in the interest of protecting resident health and safety.

4. We would like to find out more information about a particular facility in Dickinson, Texas, – La Vita Bella-which received a great deal of media attention during Hurricane Harvey:

- a. Please confirm that La Vita Bella is an assisted living facility licensed by the Texas Health and Human Services Commission. For what services has the facility been licensed by your Commission? Are these licenses still active?

La Vita Bella is licensed as a Type B Assisted Living Facility in the state of Texas. A Type B facility is for residents who require staff assistance to evacuate, are not capable of following directions in an emergency, and require nighttime attendance. The current license for La Vita Bella was issued on July 23, 2017, and expires on July 23, 2019. Under this license, it is authorized to provide personal care services to residents.

- b. What emergency preparedness response requirements applied to La Vita Bella at the time of Hurricane Harvey?

The main requirements for La Vita Bella at the time of Hurricane Harvey were to have a written emergency preparedness and response plan that addresses the eight core functions outlined in question one, including an evacuation plan.

- c. Provide the timeline of any communication (during and/or following the hurricane) between La Vita Bella and any state or local authorities, as well as the timeline for the precautionary or emergency evacuation of La Vita Bella's residents.

August 23, 2017 – The Texas Health and Human Services Commission's Regulatory Services long-term care staff called and sent out email notices to all long-term care facilities, including La Vita Bella, requesting status updates.

August 26, 2017, at 9:48 a.m. – An email was received from La Vita Bella indicating the facility had not been affected and was fully operational.

August 26, 2017, at 12:14 p.m. – An email was received from La Vita Bella indicating family members of residents had been alerted and had agreed to pick up their loved one in case of extended power outages. Residents not picked up would be taken to partner facilities as described in the evacuation plan for the facility. For short-term power outages, residents and staff would remain in the facility with battery powered appliances.

August 27, 2017 – A call was received from La Vita Bella indicating the facility needed assistance to evacuate. Our staff communicated this information to the state emergency operations center, which confirmed it was addressing the situation with Texas Task Force One Urban Search and Rescue. We were in contact with La Vita Bella about its need to evacuate and communicating with 911 on the facility's behalf, as well as with state emergency management.

We continued communicating with facility staff during and after the evacuation to determine where the residents were evacuated to and received updates on their health and safety. All residents of La Vita Bella were safely evacuated.

- d. Describe the recent regulatory history with La Vita Bella (e.g., inspections, surveys, corrective actions, re-certifications, and relicensing, including those conducted on behalf of CMS).

Long-term Care Regulatory has conducted 46 on-site visits at La Vita Bella since 2000.

- 22 licensure visits
- 5 complaint visits
- 19 follow-up visits

During this timeframe, La Vita Bella had one enforcement action. It paid a \$500 administrative penalty after being cited in 2002 for improper placement of a resident – meaning the resident should have been served in a different facility type based on his or her level of need.

I hope this information regarding our state's emergency preparedness and response requirements is helpful. If you have any questions or need additional information, David Kostroun, Deputy Executive Commissioner for Regulatory Services, serves as the lead staff on this matter and he can be reached by telephone at (512) 424-6644 or by email at David.Kostroun@hhsc.state.tx.us.

Sincerely,



Charles Smith

# **Exhibit 5**

**From:** [Kostroun, David \(HHSC\)](#)  
**To:** [Berick, David \(Finance\)](#)  
**Cc:** [Soto, Caitlin \(Finance\)](#); [Hallarman, Lynn \(Finance\)](#); [Lowery, Allison K \(HHSC/DADS\)](#); [Davis, Donyiel \(HHSC\)](#); [Nuckols, Kirsten \(HHSC\)](#)  
**Subject:** RE: Senate Finance Committee follow-up questions  
**Date:** Monday, February 05, 2018 1:25:08 PM

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Dear Mr. Berick:

We appreciate the opportunity to respond to your inquiry regarding Lake Arthur Place Nursing Home and its response to Hurricane Harvey. The following are our answers to your questions:

1. Please confirm that Lake Arthur Place is a nursing home licensed by the Texas Health and Human Services Commission (HHSC). For what services was the facility been licensed by your administrator? And what, if any regulatory actions, has HHSC taken with regard to Lake Arthur Place following this event?
  - a. Lake Arthur Place is licensed through HHSC as a nursing facility provider until April 1, 2018. It is licensed to deliver long-term care services covered under the Health and Safety Code, Chapter 242, and under the Texas Administrative Code, Title 40, Part 1, Chapter 19.
  - b. All complaints stemming from the facility's response to Hurricane Harvey remain under investigation. This facility has been closed since its evacuation.
2. It's our understanding that a second nursing home in Port Arthur – Cyprus Glen – and owned by the same company -- Senior Care Centers, also required evacuation. Describe the recent regulatory history of Lake Arthur Place nursing home and any related nursing homes or similar facilities that share common ownership with Lake Arthur Place (e.g., inspections, surveys, corrective action, re-certification, and relicensing, including those conducted on behalf of CMS).
  - a. Since January 1, 2016, there have been 566 regulatory visits to the 92 Senior Care nursing facilities in Texas.

For those visits, 418 resulted in either no deficiencies or standard level deficiencies, meaning these facilities were found to be in substantial compliance with state and federal regulations.
  - b. Of the 566 visits, 21 identified "immediate jeopardy" level issues, meaning those that posed a risk to health and safety of residents and needed to be resolved immediately.
  - c. And finally, 127 visits revealed issues in the category of "substandard quality of care" but did not rise to the level of an immediate jeopardy. These findings required the providers to develop a plan of correction once our regulatory staff issued their report of findings.
3. As spelled out in the HHSC response, nursing facilities are required to have written emergency response plans. Did Lake Arthur Place and Cyprus Glen have approved emergency plans at the time of the hurricane and by whom were they approved?
  - a. HHSC does not approve provider emergency plans. During an annual survey, Regulatory staff verifies that the facility has an emergency preparedness and response plan, and also checks the plan to ensure they have the required core elements. It is incumbent on providers to work with local officials to develop an emergency plan and ensure that the nursing facility staff members are properly

trained on how to execute it. Both of these facilities did have emergency plans on site during Hurricane Harvey.

4. Are those plans kept on file by HHSC or local authorities and if possible, could you provide us with a copy of each facility's emergency plan in place at the time of Hurricane Harvey?
  - a. HHSC does not keep provider emergency plans on file, and we do not know whether local authorities keep them on file. Nursing facilities are required to have written, updated plans on site.
5. To what extent did HHSC require Lake Arthur Place and other state nursing homes to structure their emergency plans to comply with CMS's updated emergency preparedness and response regulations published in September 2016?
  - a. A nursing facility is required by both state and federal rule to have policies and procedures for disaster and emergency preparedness. Code of Federal Regulations 42 CFR Part [§483.73](#), and Texas Administrative Code [§19.1914](#) require policies and procedures that include:
    - 1) A facility-wide assessment to determine what resources are necessary to care for residents during emergencies. This must address or include an assessment of the facility's resident population, the facility's available resources, and a facility-based and community-based risk assessment using an all-hazards approach (fire, flood, tornado, hurricane etc.).
    - 2) A disaster and emergency preparedness response plan that includes what actions the facility will take based on its decision to either shelter-in-place or evacuate, as well as direction for each of the eight core functions of emergency management. The facility must have designated staff to act as the emergency preparedness coordinators (EPC) and must have a plan to contact both the local emergency management coordinator (EMC) and HHSC, including both the regional office where the facility is located and the Complaint and Incident Intake hotline. The plan must include procedures for communication, cooperation, and collaboration with local, state, and federal emergency preparedness officials' efforts to maintain an integrated response, including documentation of efforts to contact such officials and, when applicable, of its participation in collaborative planning efforts.
    - 3) The facility must conduct at least 12 fires drills and two disaster drills each year. The fire drills are conducted once per shift, per quarter, with at least one fire drill each month, and must include staff participation. The disaster drills must include at least one unannounced staff drill using the facility's emergency procedures and be either a full-scale,



community-based exercise or a facility-based exercise if a community-based one is not available. The second disaster drill can include another full-scale exercise (community- or facility-based), or a tabletop exercise that includes a group discussion led by a facilitator, using a narrated, relevant emergency scenario and a set of problem statements, directed statements, directed messages, or prepared questions designed to challenge an emergency plan.

6. According to contemporaneous news accounts, the site manager at Lake Arthur Place insisted that National Guard resources had been dispatched to evacuate the facility and that he required an order from the state in order to evacuate. Please provide a timeline of any communication (prior to, during and following the hurricane) between Lake Arthur Place Nursing Home or its owner and HHSC and any other state authorities regarding evacuation of the facility.
  - a. Facilities in Texas are allowed to evacuate residents without a state order. Our regulatory regional director was in contact with both corporate and facility staff at Lake Arthur Place Nursing Home early on Aug. 30, 2017, to assess the facility's status and discuss evacuation. Around 6:45 that evening, corporate staff sent HHSC an email requesting that emergency personnel transport these residents to other facilities in the corporate chain. However, emergency personnel had already activated and were unable under their orders to honor the request. At the request of local emergency personnel, we coordinated with other area nursing facilities that had the capacity and ability to transport Lake Arthur's residents, who were evacuated first to a staging area in Conroe, Texas, and then to these alternative facilities. The following day, Aug. 31<sup>st</sup>, HHSC staff informed corporate staff about the new location of these residents. We would not have information for any other state authorities.
7. Please describe the procedures for initiating an evacuation that Texas nursing homes are supposed to follow including their communication with local and state entities during and/or after a disaster events.
  - a. Code of Federal Regulations 42 CFR Part [§483.73](#), and Texas Administrative Code [§19.1914](#) require nursing facilities to develop policies and procedures for communication, collaboration, and cooperation with local, state, and federal emergency preparedness officials during emergency or disaster conditions. The facility must communicate and cooperate with local, state, and federal emergency officials during evacuation of the building and community or geographical area.

A nursing facility is required to call the HHSC regional office for the area in which it is located immediately after the EPC decides to shelter-in-place or evacuate residents. It is also required to call HHSC immediately after the EPC decides to return residents to the facility. The facility must not return residents until it has contacted the local EMC to determine it is safe to do so. Facilities also must contact HHSC state office within 24 hours of a decision to evacuate or shelter-in-place at (800) 458-9858, or at:

<https://www.dads.state.tx.us/services/crs/incidentforms/SRI/index.cfm>.

8. According to HHSC's response, "740 facilities self-reported sheltering in place." Are there on-line or telephone-based reporting systems set up by Texas to assist local and state entities in monitoring and responding to status of facilities during a disaster? Is it possible to access this information? If so, could you please identify those and provide web-links to them?
  - a. This type of system does not exist for nursing facilities in Texas. Regulatory officials at both the state and local level are in contact mostly by phone or email with providers prior to, during, and after a hurricane.

Sincerely,

**David Kostroun**

Deputy Executive Commissioner for Regulatory Services Division  
[REDACTED]

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**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Wednesday, January 17, 2018 12:34 PM  
**To:** Kostroun, David (HHSC) [REDACTED]  
**Cc:** Soto, Caitlin (Finance) [REDACTED] Hallarman, Lynn (Finance)  
[REDACTED]  
**Subject:** Senate Finance Committee follow-up questions

Mr. Kostroun,

We greatly appreciate the November 26, 2017 response from Charles Smith to the Finance Committee's request for information regarding emergency preparedness in Texas as it relates to nursing homes and other facilities. The letter identifies you as the Commission's point of contact on this issue.

We are now writing to request some additional information regarding Lake Arthur Place Nursing Home in Jefferson County, Texas which received media attention post Hurricane Harvey for problems surrounding evacuation of some 70 residents. Our reviews of media reports of the evacuation at the facility portray a disturbing scene of confusion and frustration of staff, local law enforcement, and good Samaritans as well as the seemingly absence of administrative leadership regarding the triage of patients to safety. This included the apparent necessity of restraining the on-site administrator who would not let police and other responders initiate an emergency evacuation of residents from flooded hallways. Our understanding from the Jefferson County District Attorney's office is that these events are currently under criminal investigation.

1. Please confirm that Lake Arthur Place is a nursing home licensed by the Texas Health and Human Services Commission (HHSC). For what services was the facility been licensed by your administrator? And what, if any regulatory actions, has HHSC taken with regard to Lake Arthur Place following this event?
2. It's our understanding that a second nursing home in Port Arthur – Cyprus Glen – and owned by the same company -- Senior Care Centers, also required evacuation. Describe the recent regulatory history of Lake Arthur Place nursing home and any related nursing homes or similar facilities that share common ownership with Lake Arthur Place (e.g., inspections, surveys, corrective action, re-certification, and relicensing, including those conducted on behalf of CMS).
3. As spelled out in the HHSC response, nursing facilities are required to have written emergency response plans. Did Lake Arthur Place and Cyprus Glen have approved emergency plans at the time of the hurricane and by whom were they approved?

4. Are those plans kept on file by HHSC or local authorities and if possible, could you provide us with a copy of each facility's emergency plan in place at the time of Hurricane Harvey?
5. To what extent did HHSC require Lake Arthur Place and other state nursing homes to structure their emergency plans to comply with CMS's updated emergency preparedness and response regulations published in September 2016?
6. According to contemporaneous news accounts, the site manager at Lake Arthur Place insisted that National Guard resources had been dispatched to evacuate the facility and that he required an order from the State in order to evacuate. Please provide a timeline of any communication (prior to, during and following the hurricane) between Lake Arthur Place Nursing Home or its owner and HHSC and any other state authorities regarding evacuation of the facility.
7. Please describe the procedures for initiating an evacuation that Texas nursing homes are supposed to follow including their communication with local and state entities during and/or after a disaster events.
8. According to HHSC's response, "740 facilities self-reported sheltering in place". Are there on-line or telephone-based reporting systems set up by Texas to assist local and state entities in monitoring and responding to status of facilities during a disaster? Is it possible to access this information? If so, could you please identify those and provide web-links to them?

Thank you for help with this. If you have questions about these follow-up issues, please feel free to contact us. You can reach any of us through the Finance Committee main number – 202-224-4515

# **Exhibit 6**



RICK SCOTT  
GOVERNOR

JUSTIN M. SENIOR  
SECRETARY

December 4, 2017

The Honorable Orrin Hatch, Chairman  
United States Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

The Honorable Ron Wyden, Ranking Member  
United States Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

Dear Senators Hatch and Wyden:

Thank you for your October 18, 2017 letter to the Agency for Health Care Administration (Agency) regarding Florida's preparations for and responses to Hurricane Irma as it relates to nursing homes and other similar facilities. The tragic loss of life at the Rehabilitation Center of Hollywood Hills is inexcusable and the matter of a criminal investigation. As you may know, the Hollywood Police Department has ruled twelve of the deaths as homicides. In addition, our agency, and the Florida Department of Children and Families are currently conducting investigations. The victims' loved ones and Floridians must have answers as to why this facility made the decision not to timely call 911 or timely evacuate their patients to the hospital across the street that never lost power. No amount of emergency preparation can prevent what has been determined by law enforcement to be homicides at the Rehabilitation Center of Hollywood Hills.

We appreciate the opportunity to provide the information you have requested. Below are responses to your specific questions.

1. Identify the statewide emergency preparedness and response requirements that applied at the time of Hurricane Irma to nursing homes and assisted living facilities in Florida. How does the State of Florida plan to prioritize nursing homes and assisted living facilities for power restoration in future disasters?

*Response:* Florida law includes specific emergency preparedness and response requirements that applied at the time of Hurricane Irma that pertain to both nursing homes and assisted living facilities. The requirements can be found in both Florida Statute and Florida Administrative Code.

Pursuant to section 400.23(2)(g), Florida Statutes (F.S.) and Rule 59A-4.126 Florida Administrative Code (F.A.C.), nursing homes are required to have an approved comprehensive emergency management plan that addresses emergency evacuation transportation; adequate sheltering arrangements; post-disaster activities, including emergency power, food, and water; post-disaster transportation; supplies; staffing; emergency equipment; individual identification of



residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. In addition, facilities must have policies on dealing with loss of power, water, and air-conditioning or heating pursuant to Rule 59A-4.106, F.A.C.

Pursuant to section 429.41(1)(b), F.S. and Rule 58A-5.026, F.A.C., assisted living facilities are required to develop a written comprehensive emergency management plan that addresses emergency evacuation transportation; adequate sheltering arrangements; post-disaster activities, including provision of emergency power, food, and water; post-disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; communication with families; and responses to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. Each assisted living facility is required to review its plan on an annual basis.

Please find links to these statutes and rules:

Florida Statutes 400.23:

[http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App\\_mode=Display\\_Statute&Search\\_String=400.23&URL=0400-0499/0400/Sections/0400.23.html](http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=400.23&URL=0400-0499/0400/Sections/0400.23.html)

Florida Statutes 429.41:

[http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App\\_mode=Display\\_Statute&Search\\_String=429.41&URL=0400-0499/0429/Sections/0429.41.html](http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=429.41&URL=0400-0499/0429/Sections/0429.41.html)

Florida Administrative Code 59A-4.126: <https://www.flrules.org/gateway/ruleno.asp?id=59A-4.126>

Florida Administrative Code 58A-5.026: <https://www.flrules.org/gateway/ruleNo.asp?id=58A-5.026>

2. Provide the number of nursing homes and assisted living facilities in Florida that (a) were evacuated during Hurricane Irma or its aftermath and the reasons for the evacuation (e.g., loss of power, flooding, precautionary evacuation), and (b) elected to shelter in place during the storm.

*Response:* In September 2017, the Agency licensed 683 active nursing homes and 3,109 active assisted living facilities. Based upon information collected during and immediately following Hurricane Irma, 88 nursing homes and 635 assisted living facilities made the decision to evacuate because of Hurricane Irma. Reasons for evacuation varied but included pre-impact conditions, including mandatory evacuation orders and execution of emergency management protocols. The vast majority of post-impact evacuations were reported as occurring in response to power-outage. This information is self-reported by facilities and may be slightly understated due to facility loss of electrical power during the reporting period. Facilities that did not report evacuation are assumed to have sheltered in place.

3. Is Florida taking and/or considering new measures to help nursing homes and assisted living facilities better prepare for and respond to natural and manmade disasters as a result of its experience during and after Hurricane Irma?

*Response:* New measures have been put in place to improve preparedness of nursing homes and assisted living facilities during disasters such as Hurricane Irma. In Florida, it is imperative

that these facilities meet their responsibility to provide safe conditions for their patients during an emergency. On September 16, 2017, the Agency and the Florida Department of Elder Affairs each filed 90-day emergency rules that require nursing homes and ALFs to file a detailed emergency power plan, to include the ability to control the facility's indoor temperatures, with the local emergency management agency for review and approval. Several major long-term care trade associations have challenged the emergency rules. Permanent rules have also been initiated which include:

- (1) The acquisition of a sufficient emergency power source to ensure the licensed facility will be equipped to maintain ambient temperatures of at least 81 degrees or less for a minimum of 96 hours (four days) in the event of the loss of electrical power;
- (2) The acquisition and maintenance of sufficient fuel to ensure the licensed facility will be equipped to ensure ambient temperatures will be maintained at 81 degrees or less for a minimum of 96 hours in the event of the loss of electrical power; and
- (3) 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 facility.

The permanent rule will require ratification by the state legislature which convenes for a 60 Day Legislative Session on January 9, 2018.

We have already seen significant progress in meeting these new requirements and expect that all facilities are either currently in compliance or will be in compliance prior to the start of the 2018 Hurricane Season.

Please find links to the emergency rules and proposed permanent rules at:

[http://ahca.myflorida.com/MCHQ/Emergency\\_Activities/EPP.shtml](http://ahca.myflorida.com/MCHQ/Emergency_Activities/EPP.shtml)

Nursing Home proposed permanent rule:

[http://ahca.myflorida.com/executive/communications/press\\_releases/pdf/NoticeofProposedRuleNursingHome.pdf](http://ahca.myflorida.com/executive/communications/press_releases/pdf/NoticeofProposedRuleNursingHome.pdf)

Assisted Living Facility proposed permanent rule:

[http://ahca.myflorida.com/executive/communications/press\\_releases/pdf/NoticeofProposedRule58A5.036.pdf](http://ahca.myflorida.com/executive/communications/press_releases/pdf/NoticeofProposedRule58A5.036.pdf)

4. We would like to find out more information about a particular facility in Broward County, Florida-the Rehabilitation Center at Hollywood Hills, LLC (Hollywood Hills). On September 20, 2017, you issued an emergency suspension order to the owner of the facility due to the tragic loss of the lives of eight residents. Since then, the deaths of six additional residents have been reported.

a. Please confirm that Hollywood Hills is a nursing home licensed by the Florida Agency for Health Care Administration. For what services has the facility been licensed by your Administration? Are these licenses still active?

*Response:* Rehabilitation Center at Hollywood Hills, LLC was one of the 683 licensed nursing homes in Florida to provide 24 hour nursing care, case management, health monitoring, personal care, nutritional meals and special diets, physical, occupational, and speech therapy, social activities and respite care for those who are ill or physically infirmed. The facility's license is currently suspended, with the suspension in place in September 2017. During the

suspension, the provider is not allowed to operate. The licensee has challenged the suspension action and a hearing has been scheduled for January 2018, before an Administrative Law Judge.

The Agency also issued an Order which served to immediately suspend the facility from Florida Medicaid participation in September 2017. Subsequent to the CMS termination notice, the Agency initiated Medicaid termination proceedings for which the provider has responded with a request for administrative hearing.

In addition to the licensure action, the Federal Centers for Medicare and Medicaid Services (CMS) issued a letter informing the facility that its Medicare provider agreement was terminated at 11:59 p.m. on October 13, 2017, in accordance with the Code of Federal Regulations.

b. What emergency preparedness and response requirements and regulations applied to Hollywood Hills at the time of Hurricane Irma?

*Response:* Rehabilitation Center at Hollywood Hills, LLC must be in compliance with regulations found in Florida Statutes and Florida Administrative Code as indicated in question 1.

c. Provide the timeline of any communications (during and/or following the hurricane) between Hollywood Hills and any State or local authorities, as well as the timelines for the precautionary or emergency evacuation of Hollywood Hills residents and the restoration of electric power to the facility.

*Response:* Please find attached link to the timeline: <http://www.flgov.com/wp-content/uploads/2017/09/DOC.pdf> . It is important to note that all calls received from this facility were promptly returned by the Department of Health or Agency staff. This facility and its management was informed by state officials multiple times to call 911 if they believed that their patients were in any danger. Also, at no time did this facility indicate to the state that their patients lives were in danger. The deaths of 12 individuals at this facility have been ruled as homicides.

d. Describe the recent regulatory history of Hollywood Hills and any related nursing homes or similar facilities that share common ownership with Hollywood Hills (e.g., inspections, surveys, corrective actions, re-certifications, and relicensing, including those conducted on behalf of CMS).

*Response:* Florida law defines a controlling interest as the licensee, a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member, [see section 408.803(7), F.S.]. In response to your questions, we interpret “nursing home or similar facilities” to include assisted living facilities.

Please find attached links to the regulatory history of the Rehabilitation Center at Hollywood Hills and Floridian Gardens, an assisted living facility that includes Jack J. Michel is a controlling interest. Each provider is listed with a link to the Florida Health Finder Provider Profile, which is



available to the public, including inspection reports, ownership, legal actions and a link to the federal facility profile for certification information.

Rehabilitation Center at Hollywood Hills, LLC:

<http://www.floridahealthfinder.gov/facilitylocator/FacilityProfilePage.aspx?id=28359>

Current status: License suspension and revocation / Medicaid suspension and termination - administrative challenges pending

Floridian Gardens Assisted Living Facility:

<http://www.floridahealthfinder.gov/facilitylocator/FacilityProfilePage.aspx?id=356262>

Current status: License renewal denied / Medicaid termination - administrative challenges pending

Please be assured the Agency takes seriously its mission to champion accessible, affordable, quality health care for all Floridians. Please feel free to contact my office should you have additional questions.

Sincerely,



Justin M. Senior  
Secretary

JMS/MM

# **Exhibit 7**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 10/19/2017  
FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>105021</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING <b>01 - MAIN FED</b>  B. WING _____	(X3) DATE SURVEY COMPLETED  <b>12/11/2014</b>
NAME OF PROVIDER OR SUPPLIER  <b>REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC</b>			STREET ADDRESS, CITY, STATE, ZIP CODE <b>1200 N 35TH AVE HOLLYWOOD, FL 33021</b>	
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
K 000	<p>INITIAL COMMENTS</p> <p>42 CFR 483.70 (a) K 3 Building: 0101 K 6 Plan Approval: 1964/1972/1989 K 7 Survey Under: 2000 Existing K 8 SNF/NF</p> <p>An unannounced Recertification survey was conducted at Hollywood Hills Nursing Home in Hollywood, Florida on December 10, 2014 to December 11, 2014. Deficiencies were identified as a result of the recertification survey. The facility is not in compliance with the regulations at 42 CFR Part 483, Requirements for Long Term Care Facilities. This annual survey was conducted to determine the facility's compliance with the NFPA Life Safety Code (LSC) 101 (2000) including all Chapter 2 referenced codes, and referenced standards and publications as mandated by the Center for Medicare and Medicaid Services (CMS). At the entrance conference the facility did not formally advise of electing any LSC categorical waivers allowed S&amp;C: 13-58-LSC dated August 30, 2013.</p> <p>The facility as surveyed was built or licensed in 1964 with a building changes in 1972 and 1989. Building may be of Type II (111) construction. two story, 152 bed nursing home and has (10) smoke compartments. Building features and protection include a complete supervised fire alarm system, a complete automatic fire sprinkler system and a temporary emergency generator. The building is connected to a Psychiatric Hospital and shares all life safety features including fire alarm, sprinkler and generator systems. The facility Administrator indicated there are no Fire Safety Evaluation System (FSES) or waivers. Administration</p>	K 000		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

12/31/2014

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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K 000	Continued From page 1 indicated that no construction or modifications were made to the building since last year's survey which would change the original approved building blueprint plans. On the date of survey the facility was not able to provide blue prints of the facility construction. Special features of this facility include sharing the building with a Psychiatric Hospital and having a temporary emergency generator for a number of years, including last years survey. Resident room bed count check was done.	K 000		
K 012 SS=F	Based on the findings of this survey, this facility is not in compliance with NFPA LSC (2000) Existing Life Safety Code and referenced standards and publications as mandated by the Center for Medicare and Medicaid Services. (CMS). The following deficiencies were cited as K tags as result of these areas of non-compliance: NFPA 101 LIFE SAFETY CODE STANDARD Building construction type and height meets one of the following. 19.1.6.2, 19.1.6.3, 19.1.6.4, 19.3.5.1  This STANDARD is not met as evidenced by: Based on observation, written document review, and staff interview, the facility failed to maintain the building fire wall separations. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.  The findings include:	K 012		1/11/15

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K 012	<p>Continued From page 2</p> <p>On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was noted that there were improper and/or unsealed fire-stop penetrations observed. Examples include but are not limited to the following:</p> <p>(1) In at least 2-6 areas where piping through the fire wall, fire-stop material occurred in the fire walls above fire doors in fire compartment division walls.</p> <p>(2) In a least 4 areas where piping through the fire wall, fire-stop material occurred in the air handler room number 1 fire wall.</p> <p>(3) In at least 2 areas where piping through the fire wall, fire-stop material occurred in the fire wall above the communications room.</p> <p>(4) In at least 6 areas where piping through the fire wall, fire-stop material occurred in the flammable liquid storage room fire wall.</p> <p>(5) In at least 3 areas where piping through the fire wall, fire-stop material occurred in the main electrical room fire wall.</p> <p>Improper fire stopping voids a fire barrier rating and is considered a zero hour rating. An interview with the maintenance director at the time of observation(s) revealed he could not produce any type of documentation showing the fire stopping was installed per the manufactures specifications for the fire walls. No documentation of meeting manufacture specifications, UL or nationally recognized products to seal the hole penetrations to the</p>	K 012			

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K 012	Continued From page 3 required fire barrier ratings were provided. No additional written documentation to support the fire rated protection by fire-stopping of the fire-stop penetrations was provided at the time of exit.  The census was verified by the Administrator. The findings were acknowledged by the Administrator and was verified by the Maintenance Director at the time of observation and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 19.1.6., 8.2.3.2.4.2, 8.2.4.4, and 8.3.6 - Penetration opening protection. NFPA LSC 101 (2000) 19-3.7 and 4.6.9 Conditions for occupancy. NFPA 101 LSC (2000) 8.2.3.2.4.2 requires pipes, conduits, bus ducts, cables wires, air ducts, pneumatic tubes and ducts, and similar building service that pass through fire barriers shall be protected ...need documentation of meeting NFPA 251 standard methods of tests of fire endurance of building construction and materials, as part of a rated assembly. Protection is to be by an approved through penetration system that has been tested in accordance with ASTM E 814. Methods for fire tests of through-penetration fire stops. NFPA 1 (2000) 7-1.1 The authority having jurisdiction shall have the authority to require that shop drawings for all fire protection systems be submitted for review, and approval and permit be issued for installation, rehabilitation, or modification.	K 012			
K 015 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Interior finish for rooms and spaces not used for	K 015		1/11/15	

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K 015	<p>Continued From page 4</p> <p>corridors or exitways, including exposed interior surfaces of buildings such as fixed or movable walls, partitions, columns, and ceilings, has a flame spread rating of Class A or Class B. (In fully sprinklered buildings, flame spread rating of Class A, Class B, or Class C may be continued in use within rooms separated in accordance with 19.3.6 from the access corridors.) 19.3.3.1, 19.3.3.2</p> <p>This STANDARD is not met as evidenced by: Based on observation and staff interview, the facility failed to maintain the flame spread ratings for various interior finishes in the facility. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.</p> <p>The findings include:</p> <p>On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was noted that the facility has un-rated plastic folding panel type doors on the resident room closets. The closets were noted in approximately 36 out of 39 rooms on the first floor and 21 out of 30 rooms on the second floor. When requested, written documentation of the flame spread ratings were not produced by the facility. The use of un-rated interior finish's that do not meet the required flame spread ratings could generate excessive toxic smoke, quickly spread fire, and endanger occupants in the event of a fire. An interview was conducted at this time with the Maintenance</p>	K 015			

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K 015	Continued From page 5 Director who acknowledged that the facility could not produce documentation of the flame spread rating.  The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director at the time of observations and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 19.3.3.1 or 21.3.3.1, which requires compliance with the requirements of Section 10.2 Interior Finish.	K 015			
K 018 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Doors protecting corridor openings in other than required enclosures of vertical openings, exits, or hazardous areas are substantial doors, such as those constructed of 1¾ inch solid-bonded core wood, or capable of resisting fire for at least 20 minutes. Doors in sprinklered buildings are only required to resist the passage of smoke. There is no impediment to the closing of the doors. Doors are provided with a means suitable for keeping the door closed. Dutch doors meeting 19.3.6.3.6 are permitted. 19.3.6.3  Roller latches are prohibited by CMS regulations in all health care facilities.	K 018		1/11/15	



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K 018	Continued From page 6  This STANDARD is not met as evidenced by: Based on observation and staff interview, the facility failed to maintain the building door opening assemblies. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.  The findings include:  On December 10-11, 2014 between 8:30 a.m. and 4 p.m. accompanied by the Maintenance Director during the observation tour it was noted that when tested, various corridor doors did not close and latch in the door frame. Doors did not meet the code requirement of providing a means suitable to keep the door closed. The door did not latch closed in the door frame and/or the door to the door frame has an opening which will allow the spread of smoke through the door. Some examples include but are not limited to:  (1) Laundry room doors times 3. (2) The first floor East activity room corridor door. (3) Kitchen to corridor door. (4) First floor smoke compartment doors times 3.  An interview was conducted at these times with the Maintenance Director who acknowledged and witnessed that the corridor doors did not meet the code requirement of providing a means suitable to keep the door closed. No additional written documentation to support the testing of the doors for function or providing a smoke barrier was provided at the time of exit.	K 018			

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>105021</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING <b>01 - MAIN FED</b>  B. WING _____		(X3) DATE SURVEY COMPLETED  <b>12/11/2014</b>
NAME OF PROVIDER OR SUPPLIER  <b>REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC</b>			STREET ADDRESS, CITY, STATE, ZIP CODE <b>1200 N 35TH AVE HOLLYWOOD, FL 33021</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
K 018	Continued From page 7 The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director at the time of observation and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 19.3.2.4 and 19-3.6.3.2, NFPA 1 (2000) 5-4.1 installation and maintenance of assemblies and devices used to protect openings in walls, floors, and ceilings against the spread of fire and smoke within, into, or out of buildings. NFPA 80, corridor doors to be provided with a means suitable for keeping the door closed.	K 018			
K 062 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Required automatic sprinkler systems are continuously maintained in reliable operating condition and are inspected and tested periodically. 19.7.6, 4.6.12, NFPA 13, NFPA 25, 9.7.5  This STANDARD is not met as evidenced by: Based on observation, and staff interview, the facility failed to maintain the building automatic fire sprinkler system to code requirements. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.  The findings include:  On December 10-11, 2014 between 8:30 a.m.	K 062		2/11/15	

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NAME OF PROVIDER OR SUPPLIER  <b>REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC</b>			STREET ADDRESS, CITY, STATE, ZIP CODE <b>1200 N 35TH AVE HOLLYWOOD, FL 33021</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
K 062	Continued From page 8 and 4 p.m. accompanied by the Maintenance Director during the observation tour it was noted that: in 36 out of 39 rooms on the first floor and 21 out of 30 rooms on the second floor, there is no automatic fire sprinkler protection in the resident room closets. An interview was conducted at this time with the Maintenance Director who acknowledged that the fire sprinkler heads were not installed, as per manufacture and code requirements.  The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director at the time of observation and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 19.1. NFPA 1 (2000) 7-1 and NFPA 13 (1999) 8.5 installation of fire sprinkler systems.	K 062			
K 076 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Medical gas storage and administration areas are protected in accordance with NFPA 99, Standards for Health Care Facilities.  (a) Oxygen storage locations of greater than 3,000 cu.ft. are enclosed by a one-hour separation.  (b) Locations for supply systems of greater than 3,000 cu.ft. are vented to the outside. NFPA 99 4.3.1.1.2, 19.3.2.4	K 076		1/11/15	

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K 076	Continued From page 9  This STANDARD is not met as evidenced by: Based on observation and staff interview, the facility failed to properly store medical gases. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.  The findings include:  1. On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was observed that: in at least 3 areas where crash type cart's with an E sized oxygen cylinder were found to have a plastic cover, which completely covered the oxygen. An interview was conducted at this time with the Maintenance Director who acknowledged that the oxygen was improperly stored.  2. On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was observed that: in the maintenance shop area at least 11 E sized oxygen cylinders were found to be loose and freestanding. An interview was conducted at this time with the Maintenance Director who acknowledged that the oxygen was improperly stored.  The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director the time of observations and at the exit conference on December 11, 2014.	K 076			

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K 076	Continued From page 10 Actual NFPA Standards:  NFPA 99 (1999) 4-3.5.2.1 (7) requires that an oxygen cylinder shall never be draped with any material such as hospital gowns, mask, or caps. NFPA 99 (1999) 4-3.5.2.2. Storage of cylinders and containers. NFPA 99 (1999) 8-3.1.11.3 requires a precautionary sign. NFPA 99 (1999) 5.1.13.5.2 requires that empty cylinders shall be segregated from full cylinders. The empty and full cylinders were not segregated. NFPA 99 (1999) 4-3.5.2.1 requires gases in Cylinders and Liquefied Gases in Containers - (b) (25) Cylinders shall be attached to a cylinder stand. (27) Freestanding cylinders shall be properly chained or supported in a proper cylinder stand or cart.	K 076			
K 106 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Hospitals, and nursing homes and hospices with life support equipment, have a Type I Essential Electrical System powered by a generator with a transfer switch and separate power supply. The EES is in accordance with NFPA 99, 3.4.2.2, 3.4.2.1.4.  This STANDARD is not met as evidenced by: Based on observation and staff interview, the facility failed to maintain the emergency generator to manufacture and code requirements. This deficient practice affects all smoke compartments, staff, visitors and all residents. The facility has the capacity for 152 beds and at the time of survey the census was 134.	K 106		1/11/15	

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K 106	Continued From page 11 The findings include:  On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was noted that: when tested, the remote generator alarm located near the nurses ' station failed to function. An interview was conducted at this time with the Maintenance Director who acknowledged that the remote alarm was not functional. If not maintained, the emergency generator may fail without staff being aware of the generator malfunction. No additional written documentation to substantiate compliance was received at the exit conference.  The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director at the time of observation and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 4.5.6. System design and installation. NFPA 99 (1999) 3-4.1.1 and NFPA 110 (1999) 3-5.5.2 require and NFPA 99 (2000) 3-4.1.15 Alarm Annunciation. Code requires a remote annunciator, storage battery powered, shall be provided to operate outside of the generating room in a location readily observed by operating personnel at a regular work station ...	K 106			
K 211 SS=F	NFPA 101 LIFE SAFETY CODE STANDARD  Where Alcohol Based Hand Rub (ABHR) dispensers are installed in a corridor: o The corridor is at least 6 feet wide o The maximum individual fluid dispenser	K 211		1/11/15	

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K 211	<p>Continued From page 12 capacity shall be 1.2 liters (2 liters in suites of rooms)</p> <ul style="list-style-type: none"> <li>o The dispensers have a minimum spacing of 4 ft from each other</li> <li>o Not more than 10 gallons are used in a single smoke compartment outside a storage cabinet.</li> <li>o Dispensers are not installed over or adjacent to an ignition source.</li> <li>o If the floor is carpeted, the building is fully sprinklered. 19.3.2.7, CFR 403.744, 418.100, 460.72, 482.41, 483.70, 483.623, 485.623</li> </ul> <p>This STANDARD is not met as evidenced by: Based on observation and staff interview, the facility failed to properly install dispensers following the requirements for Alcohol-based hand-rub dispenser installation. Dispensers incorrectly installed may endanger staff, visitors and occupants.. The facility has the capacity for 152 beds and at the time of survey the census was 134.</p> <p>The findings include:</p> <p>On December 10-11, 2014 between 8:30 a.m. and 4 p.m., accompanied by the Maintenance Director during the observation tour it was noted that: throughout the facility, in resident rooms, Alcohol-based hand-rub dispensers were installed directly over or adjacent to electrical ignition sources. The Maintenance Director acknowledged the facility had installed Alcohol-based hand-rub dispensers directly over or adjacent to electrical ignition sources.</p>	K 211			

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K 211	Continued From page 13 The census was verified by the Administrator. The findings were acknowledged by the Administrator and verified by the Maintenance Director at the time of observation and at the exit conference on December 11, 2014.  Actual NFPA Standards:  NFPA LSC 101 (2000) 19.3.2.7, CFR 403.744, 418.100, 460.72, 482.41, 483.70, 483.623, 485.623. Dispensers shall not be installed over or directly adjacent to an ignition source	K 211		



# **Exhibit 8**

## Berick, David (Finance)

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**From:** Harris, William (CMS/OL) [REDACTED]  
**Sent:** Monday, August 20, 2018 11:27 AM  
**To:** Berick, David (Finance); Boulanger, Jennifer L. (CMS)/OL  
**Cc:** Felder, Emily (CMS/OL); Gartrell, Peter (Finance); Hallarman, Lynn (Finance)  
**Subject:** RE: Reply to Senator Wyden

Good morning, David. No worries at all, and I'm sorry for the confusion. The link I last sent you (issued June 9, 2017) is the most recently-issued version of Appendix Z. I'm happy to keep you updated when there are any changes or a new version issued. Let me know if you need anything else or want to clarify anything further. Thanks,

Will

---

**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Friday, August 17, 2018 6:30 PM  
**To:** Harris, William (CMS/OL) ; Boulanger, Jennifer L. (CMS)/OL  
**Cc:** Felder, Emily (CMS/OL) ; Gartrell, Peter (Finance) ; Hallarman, Lynn (Finance)  
**Subject:** RE: Reply to Senator Wyden

Sorry to be dense about this...in the e-mail on August 7, 2018 below, you folks say in your response (Question 2 & 7) that lessons learned from the 2017 hurricanes are going to be reflected in a revised Appendix Z. And you sent a link...that one's undated and un-numbered The one immediately below is to the June 9, 2017 version....before the hurricanes. If the answer is that the updated Appendix Z is still in process, then so be it. We're just trying to unpack what changes you are making.

---

**From:** Harris, William (CMS/OL) [REDACTED]  
**Sent:** Friday, August 17, 2018 5:50 PM  
**To:** Berick, David (Finance) <[REDACTED]>; Boulanger, Jennifer L. (CMS)/OL <[REDACTED]>  
**Cc:** Felder, Emily (CMS/OL) <[REDACTED]>; Gartrell, Peter (Finance) <[REDACTED]>; Hallarman, Lynn (Finance) <[REDACTED]>  
**Subject:** RE: Reply to Senator Wyden

Good afternoon, David. Here the link: [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_z\\_emergprep.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_z_emergprep.pdf)

Have a great weekend,

Will

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**From:** Berick, David (Finance) [REDACTED]  
**Sent:** Friday, August 17, 2018 2:17 PM  
**To:** Harris, William (CMS/OL) <[REDACTED]>; Boulanger, Jennifer L. (CMS)/OL <[REDACTED]>  
**Cc:** Felder, Emily (CMS/OL) <[REDACTED]>; Gartrell, Peter (Finance) <[REDACTED]>; Hallarman, Lynn (Finance) <[REDACTED]>  
**Subject:** RE: Reply to Senator Wyden



UNITED  
STATES  
SENATE

NOVEMBER 2018

SHELTERING  
*IN*  
DANGER

AN INVESTIGATIVE REPORT  
by the Minority Staff of the U.S. Senate Committee on Finance