



CHARLIE CRIST
GOVERNOR

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SECRETARY

June 18, 2007

Carol Berkowitz
Florida Association of Homes and Services for the Aging
1812 Riggins Road
Tallahassee, FL 32308

Dear Ms. Berkowitz:

As requested, please accept the following clarification to your concerns regarding proper destinations for evacuating nursing home residents. We appreciate that your members are conscientious in regard to maintaining compliance with state and federal regulations and hope you find this information helpful. Should you have additional questions, please contact me at (850) 414-9707.

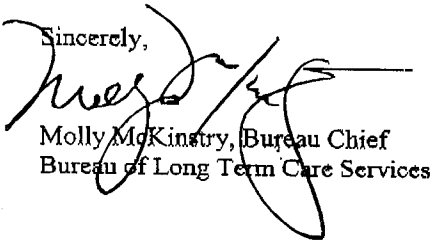
Requirements related to nursing home emergency preparedness and planning are found in subsection 400.23(2)(g), Florida Statute, and section 59A-4.126, Florida Administrative Code. Specifically, Florida Statutes state that each nursing home must prepare and annually update a comprehensive emergency management plan. The plan is subject to review and approval by the local emergency management agency. The local emergency management agency shall complete its review within 60 days and either approve the plan or inform the facility of any necessary revisions.

Requirements found in Florida Administrative Code state that the written plan must include procedures to be followed in the event of an internal or externally caused disaster. The initiation, development, and maintenance of this plan shall be the responsibility of the facility administrator, and shall be accomplished in consultation with the Department of Community Affairs, County Emergency Management Agency. The plan must include, at a minimum, the requirements found in the Emergency Management Planning Criteria for Nursing Home Facilities, AHCA 3110-6006, March, 1994. This document as well as other emergency information and resources is located on the Agency's website at: http://ahca.myflorida.com/MCHQ/Emergency_Activities/index.shtml.

In summary, the regulations do not specifically address the nursing home destination during an evacuation, however the final plan must be approved by the local emergency management agency. Moreover, the nursing home licensee is responsible for the preparation, transportation, staffing and overall health, safety and welfare of the residents.

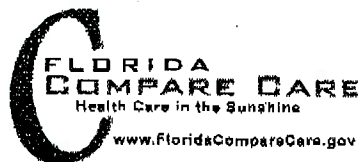
I hope this information has been helpful. Please let me know if you have additional questions regarding emergency preparedness.

Sincerely,



Molly McKinstry, Bureau Chief
Bureau of Long Term Care Services

2727 Mahan Drive, MS# 33
Tallahassee, Florida 32308



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<http://ahca.myflorida.com>

Disaster Strikes: And Further Disaster When Residents Refuse to Evacuate

Did you know that failing to evacuate, when informed to do so, is a violation of state statute? Some residents may demand that they have EVERY right to remain in their home; however, they should be informed that it is a violation of law and second degree misdemeanor penalties could apply. Penalties could be as much as 60 days' imprisonment.

- The law provides that Section 252.34 (3), F.S., define "Emergency" as “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property”.
- Section 252.36 (6) F.S. ,further states that “The Governor shall take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of sections 252.31-252.91 and with the orders and rules made pursuant thereto.”
- Section 252.47, F.S., describes the enforcement as “the law enforcement authorities of the state and the political subdivisions thereof shall enforce the orders and rules issued pursuant to sections 252.31-252.91.”
- Section 252.50, F.S., establishes penalties as “Any person violating any provision of sections 252.31-252.91 or any rule or order made pursuant to sections 252.31-252.91 is guilty of a misdemeanor of the second degree, punishable as provided in section. 775.082 or section 775.083.”
- Finally, section 755.082 (4) (b), F.S., sets forth the penalty for a second degree misdemeanors as “a definite term of imprisonment not exceeding 60 days.”

In the event that a resident refuses to evacuate during a disaster, it is recommended that they sign a Release of Liability form. Attached is a suggested Release of Liability for Refusal to Evacuate Long-term Care Facility form that you may find useful in the event a long-term care resident refuses to leave the premises after ordered to do so during an emergency. Hurricanes come to mind, however, this form can be used in case of facility or forest fire, flood, riot, influenza outbreak, loss of power for cooling and refrigeration or any number of other emergencies or disasters.

It is also recommended that the facility have a durable method of identification available like a plastic wristband where the resident's name, date of birth and Social Security Number can be written in indelible ink and attached to the resident. It is our hope that simply presenting this release to a resident will be enough to change their mind about staying, but if not, this may help reduce facility liability. Be sure the Release of Liability form is explained to and signed by each resident who refuses to evacuate. A new form should be signed for every hurricane or event that could result in an evacuation.

The above information and release form was provided by Martin L. Khoury, Attorney, and a member of one of FAHA's Preferred Attorney firms -- Quintairos, Prieto, Wood & Boyer, P.A. Mr. Khoury's contact information is as follows: One East Broward Blvd., Ste. 1400, Fort Lauderdale, FL 33301 (Phone: 954/523-7008; Fax: 954/523-7009; www.QPWBLaw.com).

The information contained in this document is not intended as a substitute for legal advice. Please discuss any information gathered from this or any other FAHA publications with your legal counsel in the context of your particular situation before implementing new policies or procedures.

