AGING IN THE EYE OF THE STORM: ADDRESSING THE NEED FOR STRONGER DISASTER PREPAREDNESS FOR OLDER ADULTS IN LONG-TERM CARE FACILITIES

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I. Introduction

In the days after Hurricane Irma slammed into Florida in 2017, residents of the Rehabilitation Center at Hollywood Hills endured what was called a "hellish nightmare."[1] Power outages left the nursing home without air conditioning and, as temperatures soared, emergency protocols were abandoned.[2] Fourteen residents of the Rehabilitation Center at Hollywood Hills unfortunately lost their lives after being abandoned by a system meant to protect them.[3] This tragedy highlights that, although considered among the most vulnerable members of our community, older adults are significantly overlooked when natural disasters strike: after Hurricane Katrina, the Center for Disease Control determined that, while the elderly accounted for only 15 percent of New Orleans' population at the time, they accounted for 73 percent of the deaths from the storm.[4]

Climate change continues to threaten our communities with rising sea levels and increasing hurricane intensity, which leads to several risks for older adults, particularly those in nursing homes.[5] In Florida alone, the number of long-term care facilities exposed to flooding is projected to increase by 67 percent in 30 years, illustrating the need for preparedness plans when emergencies strike.[6] Residents of these facilities are more likely to have medical problems that require various medications and may face limitations in their ability to get to safety.[7] Indeed, nursing homes specifically are more challenging to evacuate than other care facilities because nursing homes tend to be larger and have more beds.[8] Evacuations also require a sufficient amount of time to relocate safely, which can be difficult for nursing home residents with more delicate health who require special services, like ambulances, to evacuate.[9] Research into evacuation protocols during hurricanes also identifies the unique challenges influencing the decision to evacuate or shelter in place, as residents with different capabilities may be adversely affected by the evacuation itself.[10] Even if a facility decides not to evacuate its residents, and

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[1] Caitie Muñoz, *'Hellish Nightmare:' Hollywood Hills Nursing Home Tragedy Continues in Court*, WLRN PUB. MEDIA (Mar. 1, 2018, 6:29 PM), https://www.wlrn.org/news/2018-03-01/hellish-nightmare-hollywood-hills-nursing-home-tragedy-continues-in-court.

[2] *Id.*

[3] Jan Wesner Childs, *Nearly 700 Elderly Nursing Home Residents May Have Died Because of Hurricane Irma, New Study Says*, WEATHER CHANNEL (Oct. 13, 2020), https://weather.com/news/news/2020-10-13-hurricane-irma-nursing-home-deaths.

[4] Wendy Taormina-Weiss*, Rights of Persons with Disabilities in America*, DISABLED WORLD (Feb. 27, 2012), https://www.disabled-world.com/editorials/6786854.php (explaining that "experts have suggested this occurred because many of the persons who died experienced medical, physical, or sensory limitations which made them more vulnerable").

[5] Allison Kopicki & Charles Wohlforth, *Coming Storms: Climate Change and the Rising Threat to America's Coastal Elders*, GENERATIONS AM. SOC'Y AGING (2021), https://generations.asaging.org/climate-change-threatens-americas-coastal-elders.

[6] *Id.*

[7] *See* Michelle Conklin, Note, *Plan, Prepare, Prevail: How Nursing Homes Must Better Protect the Most Vulnerable When Disaster Strikes*, 28 ELDER L.J. 485, 489 (2021).

[8] Patricia Mazzei et al., *Hurricane Dorian Tests Florida's Ability to Move Older Adults Out of Harm's Way*, N.Y. TIMES (Sept. 3, 2019), https://www.nytimes.com/2019/09/03/us/hurricane-dorian-florida-evacuation.html.

[9] *Id.*

[10] David Dosa et al., *To Evacuate or Shelter in Place: Implications of Universal Hurricane Evacuation Policies on Nursing Home Residents*, 13 J. AM. MED. DIR. ASS'N 190, 197 (2012).

instead decides to shelter in place, management and staff must be prepared to assist residents who rely on electricity for essential medical devices, like sensors, dialysis machines, CPAP machines, or nebulizers.[11] As such, plans to include backup power generation have been strongly encouraged by facilities that have decided to shelter in place.[12]

In a study examining staff perspectives in Florida during evacuations, staff members described the decision-making process for evacuating versus sheltering in place as "excruciating."[13] The facility's administrators primarily make the decision to evacuate or shelter in place in nursing homes, as the Center for Medicare and Medicaid Services ("CMS") only requires that nursing homes have an evacuation plan in place, but does not dictate the specifics of those plans.[14] In 2006, Gulf Coast states held a summit where nursing home providers, along with state, local, and federal officials, collaborated to create the *National Criteria for Evacuation Decision-Making in Nursing Homes*.[15] Although this document serves merely as a guide, it provides detailed decision-making criteria considering factors like resident frailty, the severity of the approaching storm, anticipated storm surge and flooding, the facility's structural integrity, and the availability of essential resources like food, water, and electricity.[16]

Interviews with facility staff revealed that they felt "damned if we do, damned if we don't" regarding the decision to evacuate, citing pressure from emergency managers to leave the facility despite significant logistical and safety challenges associated with relocating residents.[17] Failing to plan adequately for future care in temporary shelters can result in dangerous conditions, as seen during Hurricane Ida's impact on nursing homes in Louisiana: elderly residents in an overcrowded warehouse used as a shelter were "forced to sleep on wet mattresses as the facility flooded, [and] were not provided adequate food or access to toilets."[18] Additionally, facilities that have a memory or dementia unit can be more difficult to evacuate safely since older adults with dementia may not have the cognitive ability to follow safety directions or prepare their own materials, leading to them being adversely affected during emergency evacuations.[19]

As a response to the devastating outcomes of mighty hurricanes, research and training on long-term care facilities and the effects on older adults led to improved disaster response across the country.[20] In 2016, CMS implemented the Emergency Preparedness Final Rule, setting out emergency preparedness requirements for long-

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[11] John Muscedere & George Heckman, *Climate Change and Older Adults: Lessons from Canada*, MCKNIGHTS LONG-TERM CARE NEWS (Sept. 13, 2019), https://www.mcknights.com/blogs/climate-change-and-older-adults-lessons-from-canada/ (explaining that electrical power is critical for nursing homes because "frail seniors have challenges regulating their body temperatures during extremes of heat or cold" and are more susceptible to ailments exasperated by weather events).

[12] Lindsay J. Peterson & Kathryn Hyer, *Stay or Go? Why Hurricane Evacuation of Nursing Homes Remains an Unsolved Challenge*, PBS NEWS (Sept. 3, 2019), https://www.pbs.org/newshour/nation/stay-or-go-why-hurricane-evacuation-of-nursing-homes-remains-an-unsolved-challenge.

[13] Lisa M. Brown et al., *Experiences of Assisted Living Facility Staff in Evacuating and Sheltering Residents During Hurricanes*, 34 CURR. PSYCH. 506, 509 (2015).

[14] *See infra* Part II (explaining the role of federal emergency preparedness regulations and responsibilities during an evacuation).

[15] Kathyrn Hyer et al., *Helping Nursing Homes Prepare for Disasters*, 29 HEALTH AFF. 1961, 1963 (2010). The *National Criteria for Evacuation Decision-Making in Nursing Homes* is included as an appendix in the *Emergency Management Guide for Nursing Homes*, which is a stand-alone document that has been frequently downloaded from the Florida Health Care Association website. *See Emergency Management Guide for Nursing Homes*, FLA. HEALTH CARE ASS'N, https://www.fhca.org/facility_operations/emergency_management_guide (last visited May 25, 2026).

[16] *Id.*

[17] *Disaster Preparedness and Response: The Special Needs of Older Americans*: *Hearing Before the S. Spec. Comm. on Aging*, 115th Cong. 9–10 (2017) (testimony of Kathryn Hyer) (noting that there was limited access to transportation and shelters were inadequately equipped to care for older adults, particularly due to shortages of medical staff and supplies).

[18] Suzy Khimm & Laura Strickler, *U.S. Scrutinizes Nursing Home Evacuation Rules After Hurricane Ida Deaths*, NBC NEWS (Sept. 30, 2021), https://www.nbcnews.com/news/us-news/u-s-scrutinizes-nursing-home-evacuation-rules-after-hurricane-ida-n1280492. Failing to properly secure safe transportation during an emergency was also illustrated during Hurricane Rita "when a bus fire resulted in the deaths of 24 assisted living facility residents . . . . An overheated right wheel bearing ignited a tire and the fire and smoke rapidly spread by portable oxygen containers that were improperly transported." Brown et al., *supra* note 13, at 511.

[19] Hyer, *supra* note 15, at 1963.

[20] *Id.*

term care facilities.[21] Florida also introduced additional requirements for the state's facilities to collaborate with local emergency response and have backup energy.[22] While regulations establish basic requirements for facilities, there continue to be ongoing problems including compliance failures and enforcement issues.[23] Audits on facilities' emergency preparedness identified systemic issues like delays in mandated inspections and a reduction of monetary penalties for noncompliance.[24]

Natural disasters often present challenges beyond the control of a single facility or government agency, so effective emergency preparedness usually includes federal, state, and local collaboration to prepare evacuation procedures.[25] "Paper" compliance with emergency plans does not effectively address the unexpected challenges during storms that are not typically addressed in a plan like blocked evacuation routes, lack of hospital beds, and other challenges.[26] Although disaster preparedness regulations for long-term care facilities have improved recently, compliance alone is insufficient to address older adults' safety during a natural disaster. Current national regulations are neither detailed nor enforced, and the lack of active collaboration between facilities, local agencies, and state authorities leads to ineffective emergency response. To better protect older adults, policymakers should require that facilities integrate into local disaster response plans using public reporting mechanisms, provide detailed training and oversight, and hold facilities accountable for noncompliance.

This Article will first provide background on the legal framework governing emergency preparedness in long-term care facilities, examining both federal regulations set by the CMS and Florida's state law and administrative code. The responsibilities of federal, state, and local agencies and how they interact with facilities in preparing for natural disasters will be discussed, highlighting the need for active collaboration between these actors for effective emergency response. The analysis will identify key gaps in current regulations, including violations of emergency planning rules, reduction of monetary penalties, and issues in state oversight and collaboration. Finally, recommendations for strengthening disaster preparedness in long-term care facilities will be offered, including strengthening CMS standards for the integration of nursing homes into local disaster response, building a stronger relationship between state agencies and facilities, and increasing accountability measures to ensure emergency compliance.

II. Background: Legal Framework on Emergency Preparedness for Long-Term Care Facilities

The type of disaster assistance available to older adults depends primarily on their place of residence.[27] Generally, nursing homes are required by federal law to provide specific levels of care to residents, while oversight of community-based assisted living facilities is usually state-regulated.[28] Some assisted-living facilities can offer support that is similar to that offered by a nursing home, while others can place the responsibility for evacuation and preparedness on the resident or their family.[29] CMS regulates nursing homes and determines whether these facilities meet federal requirements to receive payment under Medicare or Medicaid programs.[30] These requirements influence the quality of care that nursing homes provide since facilities must meet them to secure funding for their services.[31] The Emergency Preparedness Requirements for Medicare and Medicaid Participating

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[21] Michael Wasserman & R. Tamara Konetzka, *Beyond Compliance: A More Integrated Public Health Approach to Outbreaks in Nursing Homes and Other Disasters*, 41 HEALTH AFF. 831, 831–32 (2022).
[22] FLA. STAT. § 400.23(2)(g) (2025); FLA. ADMIN. CODE ANN. r. 59A-4.1265 (2025).
[23] Conklin, *supra* note 7, at 496.
[24] *Id.* at 499–500; STAFF OF S. SPEC. COMM. ON AGING, 118TH CONG., UNINSPECTED AND NEGLECTED: NURSING HOME INSPECTION AGENCIES ARE SEVERELY UNDERSTAFFED, PUTTING RESIDENTS AT RISK 1–2 (2023).
[25] Wasserman & Konetzka, *supra* note 21, at 831.
[26] *Id.* at 834.
[27] Brown et al., *supra* note 13, at 507.
[28] *Id.*
[29] *Id.*
[30] *Nursing Homes*, CMS, https://www.cms.gov/medicare/health-safety-standards/quality-safety-oversight-general-information/nursing-homes (last updated Dec. 23, 2024, 10:31 AM).
[31] Conklin, *supra* note 7, at 492.

Providers and Suppliers Final Rule, which went into effect in 2017, outlines four core elements: (1) risk assessment and emergency planning; (2) communication plans; (3) policies and procedures; and (4) training and testing.[32] In addition to the few bullet points under each element, CMS also offers downloadable documents that are "not intended to be full comprehensive plans, but rather serve as examples and guide providers."[33] CMS does not require that the plan be in a specific format and only requires that the facility be able to provide it when asked in a survey.[34] Notably, CMS encourages facilities to coordinate with state and local public health departments and emergency management agencies, underscoring the importance of having clear communication plans during emergencies.[35]

However, due to changes in the regulations, relationships with various levels of authority have been difficult to maintain.[36] In 2019, federal regulations mandated that long-term care facilities document their efforts to contact emergency managers in their areas to help integrate themselves into local emergency planning, including sharing existing plans with local officials, having their contact information, and being able to demonstrate collaboration through full-scale exercises.[37] In 2021, however, CMS eliminated the documentation requirement and now only requires facilities to "have a process" to engage in collaborative disaster planning with state and local officials.[38]

In some states, like Florida, state legislatures and agencies have gone beyond the federal requirements to ensure residents are safe during emergencies. Florida requires nursing homes to submit their emergency management plans to their respective county's emergency officials annually for review and approval, ensuring that at least some community collaboration is being pursued.[39] Additionally, the Florida Administrative Code requires that each nursing home include plans to address emergency power in case the facility loses its source of primary electrical power, mandating all nursing homes to maintain a safe indoor air temperature, not to exceed 81 degrees Fahrenheit, for a minimum of 96 hours.[40]

A state's obligation to maintain proper oversight over its facilities is detailed in an agreement between CMS and the states' survey agencies named the 1864 Agreement.[41] The 1864 Agreement says that the state agency of each state is responsible for certifying the compliance or non-compliance of the facilities, including completing life-safety training and emergency preparedness surveys at least once every 15 months.[42] The regulatory work of conducting these surveys and certification processes is carried out by offices within state governments, known as survey agencies, which are jointly funded by Medicare and the states.[43] Further, the management and staff at each

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[32] *Id.*

[33] *Core EP Rule Elements*, CMS, https://www.cms.gov/medicare/health-safety-standards/quality-safety-oversight-emergency-preparedness/core-ep-rule-elements (last updated Dec. 30, 2024).

[34] Conklin, *supra* note 7, at 494.

[35] *Core EP Rule Elements*, *supra* note 33.

[36] Lindsay J. Peterson, *Protecting Nursing Home Residents in Disasters: The Urgent Need for a New Approach Amid Mounting Climate Warnings*, 71 J. AM. GERIATRICS SOC'Y. 702, 703 (2021).

[37] *Id.*; *Survey & Certification Group Frequently Asked Questions (FAQs) Emergency Preparedness Regulation*, CMS, https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/downloads/frequently-asked-questions-faqs.pdf (last updated Oct. 28, 2016).

[38] Peterson, *supra* note 36.

[39] *Id.*; FLA. STAT. § 400.23(2)(g) (2025).

[40] FLA. ADMIN. CODE ANN. r. 59A-4.1265 (2025).

[41] Memorandum from Karen L. Triz & David R. Wright, Directors, Center for Medicare & Medicaid Services Quality, Saftey, & Oversight Group and Survey & Operations Group, to Directors, State Survey Agency, State Obligations to Survey to the Entirety of Medicare and Medicaid Health and Safety Requirements Under the 1864 Agreement, No. QSO-22-12-ALL, at 1 (Feb. 9, 2022), https://www.cms.gov/files/document/qso-22-12-all.pdf [hereinafter CMS Memo QSO-22-12-ALL].

[42] OFF. INSPECTOR GEN., DEPT. HEALTH & HUM. SERVS., FLORIDA SHOULD IMPROVE ITS OVERSIGHT OF SELECTED NURSING HOMES' COMPLIANCE WITH FEDERAL REQUIREMENTS FOR LIFE SAFETY AND EMERGENCY PREPAREDNESS, No. A-04-18-08065, at 3–10 (2020) [hereinafter HHSOIG No. A-04-18-08065] ("Nursing homes are required to comply with all Federal, State, and local laws, regulations, and codes . . . . Federal regulations on emergency preparedness include specific requirements for nursing home emergency preparedness plans . . . . CMS lists applicable requirements on its *Emergency Preparedness Surveyor Checklist* . . . and references each regulation with an identification number referred to as an 'E-Tag").

[43] STAFF OF S. SPEC. COMM. ON AGING, *supra* note 24, at 7; CMS Memo QSO-22-12-ALL, *supra* note 41, at 1–2 ("CMS allocates funding to each state for the reasonable costs of performing the functions specified in the 1864 Agreement . . . [and] will provide additional information to providers in such states clarifying the expected process to demonstrate compliance with federal requirements.").

facility are responsible for ensuring the safety of their residents by making sure that generators, alarm systems, and elevators are properly installed, maintained, and tested in case of an emergency.[44]

III. Analysis: Gaps in Emergency Preparedness in Long-term Care Facilities

a. Noncompliance in Emergency Preparedness

Despite recent improvements to emergency preparedness regulations, long-term care facilities are still failing to protect their vulnerable residents in the face of reoccurring natural disasters.[45] In 2022, the Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services ("HHS") released a report on audits of emergency preparedness in eight states, highlighting that the purpose of this review was because residents of nursing homes have limited or no mobility, making them particularly vulnerable in the event of an emergency.[46] In the investigation, the OIG identified 1,139 areas of noncompliance with emergency preparedness requirements in 150 of the 154 nursing homes surveyed.[47] These areas included noncompliance with requirements for emergency plans, emergency supplies and power, plans for evacuations and sheltering in place, tracking residents, communication plans, and plan training and testing.[48]

Specifically, the investigation noted that facility staff used generic templates to incorporate CMS requirements into their emergency plans, resulting in an undetailed plan that provides little guidance, especially for a facility that may require more specific evacuation plans for its residents.[49] Moreover, inspections revealed that facilities failed to prepare for basic contingencies like bringing wheelchair-dependent people down the stairs in case of a power outage.[50] The OIG also found areas of noncompliance regarding supplies and backup power, noting that some facilities lacked sufficient water supply and had generators that could not power the facility's machines, were not in appropriate areas, or were not properly tested and maintained.[51] Even though evacuation procedures are one of the most essential aspects of preparing for a hurricane, there were nursing homes whose emergency plans failed to even mention evacuation or sheltering-in-place policies.[52] Lastly, the OIG report identified 245 areas of noncompliance regarding training, specifically noting that some nursing homes did not conduct training on their emergency plans or update their plans and training exercises.[53]

b. Survey Delays and Reduction of Penalties for Noncompliance

As previously discussed, facilities receiving federal funds must be surveyed to determine whether they are compliant with federal requirements, including emergency preparedness requirements.[54] Unfortunately, noncompliance is not always addressed due to the survey backlogs that have plagued the skilled nursing sector for years: feedback from all 50 states reported that severe staffing shortages hinder their ability to conduct timely surveys and promptly investigate noncompliance.[55] The staffing issue is not unique for state surveyors, since CMS

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[44] HHSOIG No. A-04-18-08065, *supra* note 42, at 3.
[45] Conklin, *supra* note 7, at 492.
[46] OFF. INSPECTOR GEN., DEPT. HEALTH & HUM. SERVS., AUDITS OF NURSING HOME LIFE SAFETY AND EMERGENCY PREPAREDNESS IN EIGHT STATES IDENTIFIED NONCOMPLIANCE WITH FEDERAL REQUIREMENTS AND OPPORTUNITIES FOR THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TO IMPROVE RESIDENT, VISITOR, AND STAFF SAFETY, No. A-02-21-01010, at 1, 4 (2022) [hereinafter HHSOIG No. A-02-21-01010].
[47] *Id.*
[48] *Id.* at 8.
[49] *Id.* at 9.
[50] Jordan Rau, *Nursing Home Disaster Plans Often Faulted As 'Paper Tigers'*, KFF HEALTH NEWS (Sept. 19, 2017), https://kffhealthnews.org/news/nursing-home-disaster-plans-often-faulted-as-paper-tigers/.
[51] HHSOIG No. A-02-21-01010, *supra* note 46, at 9.
[52] *Id.* at 10.
[53] *Id.* at 11.
[54] *See supra* Part II (describing federal regulations on long-term care facilities regarding emergency preparedness).
[55] STAFF OF S. SPEC. COMM. ON AGING, *supra* note 24, at 16.

wrote that the number of federal employees conducting surveys and inspections has also been falling over the past ten years.[56]

Even when surveyors do inspect facilities for compliance with emergency preparedness, facilities rarely face severe consequences, even after repeated mistakes.[57] Generally, CMS has different ways of applying monetary penalties to address violations: they can impose a specific fine, impose a fine for each day of violation, or deny new payments altogether.[58] In President Trump's first term, CMS scaled back on the use of penalties against facilities for patient safety errors, citing the administration's goal to reduce bureaucracy, regulation, and government intervention in healthcare businesses.[59] Citing the concern of "unnecessary regulation," the revised guidelines discouraged regulators from imposing fines in certain situations, even when they have resulted in a resident's death.[60] Specifically, CMS developed a system that gave regulators discretion to impose "immediate jeopardy" fines (rather than an automatic fine) and to merely instruct the facility to fix deficiencies.[61]

Importantly, revised regulations under President Trump's first term also shifted policy from "per day" fining to "per instance" fining.[62] "Per day" fining refers to a fine imposed on facilities for each day they are found to be out of compliance with federal regulations, whereas "per instance" fining applies to each time surveyors cite a deficiency.[63] The change relaxes penalties that deter wrongdoing and allows nursing homes to avoid fines above the maximum per-instance fine of $23,989.[64] Consequently, penalties become too low to be effective since care does not generally improve when the fines are inconsequential to the nursing home.[65] Experts also agree that per-instance fining provides a weaker incentive for nursing homes to improve the care provided to residents.[66] In a 2019 group letter to Congress, a coalition of patient advocates—including the Center for Medicare Advocacy, Justice in Aging, the Long-Term Care Community Coalition, and others—denounced CMS for lessening fines, pointing to the fact that fines are "critical deterrent[s] to abuse and substandard care."[67]

Given the Trump administration's previous policies on reducing fines for nursing homes cited for deficiencies, and his repeated stance on eliminating what he considers "excessively burdensome regulations," it seems likely that a similar approach toward relaxed penalties for noncompliance with emergency preparedness standards could continue.[68] Notably, Project 2025's section on the HHS explicitly states that the federal government should "focus reform on reducing burdens of regulatory compliance . . . ceasing interference in the daily lives of patients and providers."[69] This language closely mirrors the administration's initial rationale for scaling back penalties on nursing homes,[70] suggesting a continuation of these policies.

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[56] *Id.* at 19.
[57] Rau, *supra* note 50.
[58] Conklin, *supra* note 7, at 492.
[59] Jordan Rau, *Trump Administration Eases Nursing Home Fines in Victory for Industry*, N.Y. TIMES (Dec. 24, 2017), https://www.nytimes.com/2017/12/24/business/trump-administration-nursing-home-penalties.html.
[60] *Id.*
[61] Dylan Matthews, *Trump Reduced Fines for Nursing Homes that Put Residents at Risk. Then Covid-19 Happened*, VOX NEWS (July 14, 2020), https://www.vox.com/2020/7/14/21323279/nursing-home-coronavirus-covid-deaths.
[62] *Id.*
[63] *Id.*
[64] Conklin, *supra* note 7 at 501; *LTC-HHA-CLIA Calculations of CMP Adjustments*, CMS (2022), https://www.cms.gov/files/document/ltc-hha-clia-specific-cmp-adjustments-2022.pdf.
[65] Conklin, *supra* note 7, at 501.
[66] Matthews, *supra* note 61, at 5.
[67] *Id.*
[68] *See* Jordan Rau, *Nursing Home Industry Wants Trump To Rescind Staffing Mandate*, N.Y. TIMES (Nov. 29, 2024), https://www.nytimes.com/2024/11/29/health/trump-nursing-homes-staff-mandates.html.
[69] Roger Severino, *Department of Health and Human Services*, *in* MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 2025 449, 450 (Paul Dans & Steven Groves, eds., 2023).
[70] *See Trump Administration Eases Nursing Home Fines in Victory for Industry*, *supra* note 59.

c. Lack of Collaboration Between State Agencies and Facilities[71]

Federal, state, and local agencies all have parts to play in a nursing home's plan to protect its residents during a climate emergency.[72] In Florida, nursing homes are required to prepare and annually update a "comprehensive emergency management plan" that must include risk assessment and planning, policies and procedures, communication plans, and training and testing programs.[73] The nursing home county's local government then reviews each facility's plan following guidance from the Florida Agency for Health Care Administration ("AHCA"), Florida's state agency overseeing nursing homes.[74] County emergency management agencies are ultimately responsible for performing emergency management functions, primarily coordinating and executing the facility's plan.[75] Lastly, Florida requires each nursing home to address emergency backup power in a detailed supplemental plan.[76]

An audit conducted by OIG into Florida's compliance with state and federal emergency preparedness regulations exposed several shortcomings, mainly that facilities failed to submit their emergency plan to their local counties, AHCA provided little oversight for facilities on their supplemental backup power plan, and local agencies lacked guidance on how to review and approve each facility's plan.[77] Local emergency management agencies reported numerous challenges to ensuring emergency plans are reviewed and approved, stating that AHCA either did not provide adequate resources or that the guidance only required the county to verify state requirements, which did not include all federal requirements detailed in 42 C.F.R. § 483.73.[78] County agencies additionally reported that AHCA did not develop an effective tracking system to track deficiencies and failed to provide facilities with the results of the surveyor's work on their emergency preparedness plans to make them aware of vulnerabilities.[79] In 2022, during a workshop with assisted living facilities and local emergency management officials, local stakeholders expressed concerns that the information presented was overwhelming and requested additional workshops for better collaboration.[80] Despite these concerns from both local management and facilities, AHCA's senior management declined to participate in these workshops, limiting the opportunity for meaningful dialogue and input.[81] Although the agency eventually agreed to host additional workshops, its refusal to actively engage in collaborative planning with local governments and facilities undermines the effectiveness of these critical preparedness efforts.[82]

Additionally, county emergency management agencies discussed concerns regarding general responsibilities.[83] For example, one agency reported that they did not have the engineering and electrical knowledge to properly assess a backup power plan (generator) or know where to obtain this guidance.[84]

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[71] This Section will analyze the shortcomings of Florida's emergency preparedness response collaboration between the state agency, long-term care facilities, and local governments. Although Florida has made significant strides in emergency preparedness—such as implementing generator laws and other requirements discussed in the Background section—critical gaps remain that undermine the effectiveness of these measures. This analysis aims to illustrate that even states with advanced preparedness laws still face challenges that must be addressed to adequately protect older adults during climate emergencies.

[72] Wasserman & Konetzka, *supra* note 21, at 831.

[73] FLA. STAT. § 400.23(2)(g) (2025).

[74] FLA. STAT. § 252.38(1)(c) (2025).

[75] OFF. INSPECTOR GEN., DEPT. HEALTH & HUM. SERVS., FLORIDA SHOULD IMPROVE ITS OVERSIGHT OF SELECTED NURSING HOMES' COMPLIANCE WITH FEDERAL REQUIREMENTS FOR LIFE SAFETY AND EMERGENCY PREPAREDNESS, No. A-04-18-08065, at 1, 15 (2020) [hereinafter HHSOIG No. A-04-18-08065].

[76] *Id.* at 2.

[77] *Id.* at 15, 16.

[78] *Id.* at 16.

[79] *Id.*

[80] Christine J. Sexton, *Assisted Living Facilities Ask State to Slow Down, Work with Stakeholders on New Emergency Rules*, FLA. POLS. (Nov. 30, 2022), https://floridapolitics.com/archives/573329-assisted-living-facilities-ask-state-to-slow-down-work-with-stakeholders-on-new-emergency-rules/.

[81] *Id.*

[82] *Id.*

[83] HHSOIG No. A-04-18-08065, *supra* note 75, at 16.

[84] *Id.* ("The [county emergency management] agency stated that it did not know what [it's] responsibility was for obtaining this expertise.").

Concerningly, agencies reported critical evacuation issues, such as multiple nursing homes relying on the same transportation company and planning to evacuate to the same locations.[85] Local agencies also worried that transportation companies could not handle the combined demand, and shelters might not be able to accommodate all residents safely.[86]

Despite it being the responsibility of each facility's leadership to develop, update, and train staff on their emergency plans,[87] many facility staff members still lack adequate training.[88] The OIG report noted that out of the 20 Florida nursing homes audited, 40 percent of them had one or more deficiencies related to emergency plan training, including not conducting full-scale training exercises or analyses of their training programs and failing to update training programs annually.[89] In response to these findings, AHCA argued that sufficient training was provided to nursing homes, pointing to the "abundant amount of training in the public domain" for providers.[90] The OIG responded by stating that although training on federal emergency preparedness requirements remains available for public use, AHCA has not done enough to develop Florida-specific training that could be required for nursing home staff.[91] Although different workshops and sessions have been scheduled throughout the state, attendance is neither mandatory nor tracked—an audit from the OIG found that many staff members had never been to a training session or conference related to emergency preparedness requirements.[92] Importantly, the OIG emphasized its recommendation for greater communication and collaboration in emergency planning and response, highlighting that through this audit, Congress specifically aimed to evaluate how effectively county, state, and federal authorities communicate during crises.[93]

IV. Recommendations for Strengthening Disaster Preparedness in Long-Term Care Facilities

Based on the analysis and insights discussed, the following recommendations aim to address the identified challenges in facility emergency preparedness and enhance the effectiveness of emergency preparedness regulations. By implementing these strategies, older adults can be better protected in the face of ongoing climate emergencies.

a. Stronger Standards from CMS & Responsive Regulation Approach

As previously discussed, CMS has played a general role in encouraging facilities to collaborate with local and state agencies to plan for an emergency.[94] In 2019, federal regulations stated that nursing homes were required to document their efforts to contact emergency managers in their areas to help integrate themselves into community-level disaster planning.[95] In 2022, however, this requirement for documentation was removed, hindering the collaborative process that nursing homes should foster with local agencies.[96] Policymakers should encourage CMS to revisit this documentation requirement to ensure that facilities are doing all they can to prepare for a climate emergency. Although CMS has already set out general conditions for Medicare funding for

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[85] *Id.* at 16, 17.
[86] *Id.* at 17.
[87] *Id.* at 3. Additionally, the Social Security Act mandates that states conduct periodic educational programs for the staff and residents of nursing homes and skilled nursing facilities to present current regulations, procedures, and policies. 42 U.S.C. §§ 1395i-3(g)(1)(B), 1396(g)(1)(B).
[88] HHSOIG No. A-04-18-08065, *supra* note 75, at 14.
[89] *Id.*
[90] *Id.* at 19.
[91] *Id.* at 21.
[92] HHSOIG No. A-04-18-08065, *supra* note 75, at 21.
[93] *Id.*
[94] *See supra* Part II (examining CMS's role in ensuring that long-term care facilities collaborate with local emergency management agencies).
[95] Peterson, *supra* note 36, at 703.
[96] *Id.*

emergency plans, it should provide additional regulations for long-term care facilities to help guide state and local governments in improving emergency preparedness.[97]

A responsive regulation approach has been recommended by researchers to ensure that emergency preparedness plans for facilities are both sufficient and tailored to specific risks.[98] A responsive regulation approach recognizes that each state faces distinct climate emergencies, and each facility has unique vulnerabilities that must be addressed in an emergency plan.[99] This method of emergency planning would establish procedures that reflect a nursing home's actual risks and encourage involvement beyond nursing homes and government agencies to include local stakeholders.[100] Florida's emergency preparedness regulations are instructive in this regard because they incorporate principles of responsive regulation by requiring nursing homes to collaborate with local officials by obtaining county approval of their emergency plans.[101] Despite this progress, significant challenges persist due to a lack of effective collaboration and limited guidance from AHCA on building meaningful community partnerships.[102]

Studies have shown that regional partnerships that integrate emergency planning, healthcare, and public health organizations can be uniquely positioned to support nursing homes in developing plans that are specific and detailed.[103] A regulatory framework that is responsive to environmental hazards might involve greater inspection frequency for facilities that have critical emergency preparedness deficiencies or have a disproportionate risk of exposure to specific weather events in their region (like hurricanes along the Atlantic and Gulf Coast states).[104] Additionally, partnerships with local stakeholders can be beneficial because they can offer facilities valuable insights beyond proper evacuation. For example, they can show a facility's exposure to risk and its structural ability to withstand flooding by looking at the facility's building code.[105]

State governments and agencies that oversee long-term care facilities are in the ideal position to encourage a risk-responsive regulation system, especially since CMS has limited its role in encouraging facilities to develop local community partnerships.[106] Interviews with facility staff after Hurricane Irma illustrated that effective collaborations between nursing homes and emergency officials were formed primarily by state efforts to host summits to encourage these relationships.[107] This role is appropriate for state agencies because there are already several statewide systems in place for disaster preparedness and quality assurance.[108] For example, state agencies can develop communication mechanisms to provide real-time support and guidance to individual facilities during emergencies.[109]

b. Public Reporting is Key in Collaborations & Partnerships

Public reporting mechanisms can be critical in connecting long-term care facilities with state agencies and local governments in preparing for natural disasters.[110] By publicly sharing preparedness data and procedures,

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[97] Conklin, *supra* note 7, at 509.
[98] Peterson, *supra* note 36, at 702.
[99] *See id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] Natalia Festa et al., *Evaluating California Nursing Homes' Emergency Preparedness for Wildfire Exposure*, 71 J. AM. GERIATRIC SOC'Y 895, 901 (2023).
[104] Natalia Festa et al., *Association of Nursing Home Exposure to Hurricane-Related Inundation With Emergency Preparedness*, 6 JAMA NETWORK OPEN 1, 8 (2023).
[105] *Id.*
[106] Peterson, *supra* note 36, at 703. The OIG also has recommendations for AHCA to increase collaboration with local agencies to identify areas where additional expertise or clarification may be needed to ensure the safety of nursing home residents. HHSOIG, No. A-04-18-08065, *supra* note 75, at 18.
[107] Peterson, *supra* note 36, at 703.
[108] *Id.*
[109] Wasserman & Konetzka, *supra* note 21, at 835.
[110] Conklin, *supra* note 7, at 507.

gaps in emergency readiness can be identified and addressed in collaboration with those involved.[111] Public reporting allows facilities to identify challenges in preparing for a natural disaster and develop solutions that promote resilience in long-term care facilities.[112] A key recommendation for enhancing collaboration is the wider adoption and training of nursing homes in the Incident Command System ("ICS").[113]

The Incident Command System is a uniform management model used to coordinate responses to emergency events, particularly natural disasters.[114] Although its application within the long-term care community is still evolving, ICS has been widely implemented in hospitals through the Hospital Incident Command System ("HICS") since the 1970s.[115] When faced with the challenges of a natural disaster, facility staff could use an ICS to create an organizational structure and road map to manage the incident efficiently and successfully respond to the emergency.[116] After recognizing the need for an organized emergency response system for nursing homes, the John A. Hartford Foundation funded a project between 2006 and 2008 that led to the Nursing Home Incident Command System ("NHICS"),[117] which preserved core components of the ICS (command, operations, planning, logistics, and finance & administration) while adapting to the distinct regulatory and care factors of long-term care facilities.[118] Specifically, the NHICS assists facilities in assigning staff to certain emergency roles and identifies what they need to carry out those roles.[119]

How a nursing home responds to an emergency will depend not just on the existence of an emergency preparedness plan, but also on the leadership capabilities of the facility's management team.[120] Indeed, a compliant plan is only as effective as the individual's ability to execute it under emergency circumstances, which is reliant on the level of training they receive.[121] The success of such training can be incentivized by public reporting, like an incident command structure.[122] Training long-term care facility staff on incident command structures could help forge collaborations with government agencies by better integrating the facility's plan into the existing emergency management systems.[123]

CMS has also used public reporting before to improve care in long-term care facilities by developing its Nursing Home Quality Initiative, which included a set of publicly reported "quality measures" for all nursing homes to follow across the country.[124] The initiative encouraged nursing home stakeholders from all levels of government to collaborate on emergency preparedness plans and identify common challenges to implementing quality improvement projects.[125] This initiative demonstrated that public reporting can effectively drive improvements in the level of care that long-term care residents receive by focusing on areas needing reform, like training.[126] During the initiative, educational workshops, teleconference calls, and interactive sessions about quality measures were provided to nursing homes, which were useful in preparing staff for an emergency.[127] State

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[111] *Id.*
[112] *Id.*
[113] *Id.* at 506.
[114] *The Nursing Home Incident Command System*, FLA. HEALTH CARE ASS'N, https://www.fhca.org/facility_operations/incident_command_system/1000 (last visited Apr. 16, 2025).
[115] *Id.*
[116] CAL. ASS'N HEALTH FACILITIES, NURSING HOME INCIDENT COMMAND SYSTEM 1 (2017).
[117] *The Nursing Home Incident Command System*, *supra* note 114.
[118] CAL. ASS'N HEALTH FACILITIES, *supra* note 116, at 3.
[119] *See id.* at 2, 3. NHICS recognizes the following essential responsibilities for staff: people who lead and manage all of the activities necessary to support goals and objectives, people that do and get the stuff to support those goals, people who collect relevant information, analyze, and plan, and those offering financial, administrative, and clerical support. *Id.*
[120] Wasserman & Konetzka, *supra* note 21, at 833.
[121] *Id.*
[122] Conklin, *supra* note 7, at 506.
[123] *Id.*
[124] *Id.* at 507.
[125] *See* Stephanie Kissam et al., *Approaches to Quality Improvement in Nursing Homes: Lessons Learned from the Six-State Pilot of CMS's Nursing Home Quality Initiative*, 3 BMC GERIATRICS 2, 2–3 (2003).
[126] *Id.* at 7.
[127] *Id.* at 5.

agencies are uniquely positioned to not only offer practical guidance but also design public reporting structures that encourage facilities to improve emergency preparedness in facilities.

c. Judicial Remedies

One way for nursing homes to be held more accountable for emergency preparedness is through a general negligence tort theory for failing to safely evacuate and protect residents during emergencies.[128] However, a plaintiff's main barrier to recovery on this theory is that both the federal and state governments play large roles in emergency preparedness, making it difficult for courts to apply liability solely to the facility.[129] The federal government authorizes funding and regulates hospitals and long-term care facilities, while state governments issue evacuation orders and also play a role in the regulation of facilities through state agencies.[130] Indeed, it would be counterintuitive to hold facilities solely liable if they have been compliant with federal and state emergency preparedness requirements.[131]

The decision to evacuate residents during a storm is not a common one, so a standard of care cannot be determined by any common standards or practices.[132] The standard of care for evacuations is especially difficult to determine because the mode of evacuation for a particular resident involves balancing several factors such as the resident's medical condition and the predictions about the severity of the climate emergency.[133] The biggest issue in attributing liability to the government in these circumstances stems from issues in proximate cause, as the health care professionals and facility staff are usually the ones dealing directly with residents.[134] Additionally, healthcare professionals do not commonly encounter unique issues that arise in evacuations, like the quality and mode of transportation.[135] State legislatures can help solve this issue by defining the responsibility of the state and local government in times of natural disasters.[136] Addressing legal liability concerns can help encourage long-term care facilities to have evacuation plans in place to protect residents during a natural disaster.[137] Having the legislature strictly define liability could also help volunteers who often offer hands-on support to facilities during natural disasters.[138] By creating these state laws, legislatures can afford some protection to volunteers working to keep long-term care residents safe during natural disasters.[139]

HHS has also been encouraged to accept a standard for the quality and mode of transportation so that liability can be properly assigned to a facility that breaches that standard of care.[140] The Administration for Strategic Preparedness and Response ("ASPR") is an operating agency of the U.S. Public Health Service within HHS that focuses on preventing, preparing, and responding to the adverse health effects of natural disasters.[141] Through its initiative, the Technical Resources Assistance Center and Information Exchange ("TRACIE"), ASPR provides a centralized, peer-reviewed collection of materials tailored to a wide range of healthcare and emergency

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[128] Conklin, *supra* note 7, at 505.
[129] *Id.*
[130] David H. Slade, *Who is Liable for Disaster Planning? Malpractice Liability for Hospital Administrative Plans*, 29 J. LEG. MED. 219, 233 (2008).
[131] *Id.*; *Generator Status Map Dashboard*, FLA. AGENCY FOR HEALTH CARE ADMIN., https://bi.ahca.myflorida.com/t/ABICC/views/GeneratorStatusMap/GeneratorStatusMap? (last updated Apr. 5, 2025) (showing that all nursing homes and skilled nursing facilities in Florida are compliant with state law mandating compliance with emergency backup plans).
[132] Slade, *supra* note 130, at 234.
[133] Conklin, *supra* note 7, at 513.
[134] Slade, *supra* note 130, at 235.
[135] *Id.* at 234.
[136] *Id.* at 235 ("These questions are best addressed by the legislature, as public policy is broadly implicated. A disaster, by nature, will result in injury and death, and it must be decided who should be responsible for the consequences.").
[137] Conklin, *supra* note 7, at 508.
[138] Slade, *supra* note 130, at 234.
[139] *Id.*
[140] Conklin, *supra* note 7, at 513.
[141] ADMIN. FOR STRATEGIC PREPAREDNESS & RESPONSE, https://aspr.hhs.gov/Pages/Home.aspx (last visited Apr. 22, 2025) ("ASPR was established to respond to national disasters from Hurricane Katrina to infectious disease outbreaks . . . and played a crucial role during the COVID-19 pandemic.").

preparedness topics.[142] The ASPR TRACIE Topic Collections contain resources (e.g., fact sheets, technical briefs, articles, webinars, and toolkits) that are especially valuable for local stakeholders, like long-term care facilities, seeking guidance to develop emergency preparedness plans.[143] Since 2009, ASPR has shifted its attention to developing a "crisis standard of care," noting that the coordination of emergency response system planning is critical to limiting patient mortality.[144] The Topic Collection on a crisis standard of care provides guidance on decision-making during an emergency, providing that standards of care proposed under such circumstances must be "reasonable" despite the unique challenges of preparing for natural disasters.[145]

However, recent HHS restructuring efforts and proposed funding cuts aligned with President Trump's "Make America Healthy Again" initiative, which aims to reduce "bureaucratic sprawl," risks undermining critical resources built by offices like ASPR.[146] The restructuring under Trump's administration moves the ASPR from reporting directly to the health secretary to being housed under the Center for Disease Control ("CDC"), which, according to former head of ASPR Dawn O'Connell, could limit the agency's scope.[147] O'Connell noted that moving the ASPR to the CDC could hinder their ability to quickly respond to emergencies, as they did during the COVID-19 pandemic.[148] Policymakers should exercise caution when considering further cuts to public health preparedness offices like ASPR, whose guidance remains essential to protecting older adults during emergencies.

d. Leveraging Civil Money Penalties ("CMPs") for Emergency Preparedness Training and Resident Support

To address the challenges that long-term care facilities face in meeting emergency preparedness standards, states should consider more strategic use of CMP funds to enhance staff training on emergency preparedness regulations and provide resident support during the emergency. CMP funds, collected from nursing homes that fail to comply with federal standards, can be allocated by states to initiatives that protect and assist residents in emergencies.[149] This approach not only prepares facilities for natural disasters but also mitigates the financial burden associated with emergency compliance.[150]

Cost is often a significant factor contributing to nursing home deficiencies in emergency preparedness.[151] For example, the expense of installing a generator can range anywhere from $350,000 to $500,000,[152] creating a substantial financial burden for long-term care facilities. While CMP funds cannot be used directly to purchase generators,[153] facilities can relieve their financial burden by using these funds to cover other critical emergency preparedness needs such as joint staff training of facility staff and surveyors, technical assistance for facilities, and training for long-term care ombudsman or other advocacy organizations.[154] By using the CMP funds

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[142] *Welcome to ASPR TRACIE*, DEP'T HEALTH & HUM. SERVS. (Sept. 15, 2015), https://asprtracie.hhs.gov/.
[143] *Comprehensively Developed Topic Collections*, DEP'T HEALTH & HUM. SERVS. (Sept. 15, 2015), https://asprtracie.hhs.gov/technical-resources/topic-collection.
[144] *Topic Collection: Crisis Standards of Care*, DEP'T HEALTH AND HUM. SERV. (Sept. 15, 2025), https://asprtracie.hhs.gov/technical-resources/63/crisis-standards-of-care/0.
[145] *Id.*
[146] Press Release, Dep't Health & Hum. Servs., HHS Announces Transformation to Make America Healthy Again (Mar. 27, 2025), https://www.hhs.gov/press-room/hhs-restructuring-doge.html.
[147] Selena Simmons-Duffin et al., *The Trump Administration Restructures Federal Health Agencies, Cuts 20,000 Jobs*, NPR NEWS (Mar. 27, 2025), https://www.npr.org/sections/shots-health-news/2025/03/27/nx-s1-5342414/hhs-doge-rif-rfk-job-cuts.
[148] *Id.*
[149] *Examples of Allowable Uses of Civil Money Penalty (CMP) Reinvestment Funds*, CMS (Aug. 8, 2024), https://dphhs.mt.gov/assets/sltc/CMP/ExamplesAllowableUsesCMPReinvestmentFunds.pdf.
[150] Conklin, *supra* note 7, at 511.
[151] *Id.*
[152] *Id.*
[153] *Examples of Allowable Uses of Civil Money Penalty (CMP) Reinvestment Funds*, *supra* note 149 ("Funding cannot be used for meeting regulatory requirements [citing to Emergency Preparedness Regulations in federal code].").
[154] *Id.*

strategically in this way, facilities could redirect resources toward meeting costly infrastructure requirements aimed at keeping residents safe during emergencies.

V. Conclusion

In the past years the rate of natural disasters has increased, specifically impacting those suffering from high-risk factors.[155] Disasters, like hurricanes, disproportionately affect the most vulnerable in our communities, and long-term care facilities stand at the center of this reality.[156] Moreover, older adults living in areas consistently prone to disaster become further burdened by stress, trauma, and the financial instability associated with natural disasters.[157] Due to the growing concerns of climate change, preparing for emergencies is now known as a critical element of nursing home operations, but government audits and repeated failures show that there continues to be gaps in emergency preparedness.[158] While federal regulations provide a general framework for emergency preparedness,[159] it's ultimately the leadership within each facility, supported by proactive state agency involvement, that determines the standard of care that residents receive during a natural disaster.[160]

As Hurricane Irma revealed, the most effective responses during natural disasters comes from nursing homes having local collaborations and state-facilitated partnerships.[161] Emergency preparedness regulations that emphasize leadership training and integrate long-term care facilities into broader emergency management systems are essential in protecting older adults.[162] Additionally, using public reporting to collaborate with nursing home stakeholders fortifies emergency preparedness efforts and further incentivizes facilities to prioritize and refine their natural disaster response.[163] By fostering collaboration between state, federal, and local governments, long-term care facilities can work together to ensure that older adults are not left behind when emergencies strike. Preparing for a natural disaster protects older adults' dignity and demands a system that effectively responds with compassion and competence.

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[155] Christine E. Cerniglia, *Systemic Injustice: The Need for Disaster and Pandemic Preparedness Legislation*, 99 U. DET. MERCY L. REV. 53, 54–56 (2021).
[156] Kopicki & Wohlforth, *supra* note 5 ("[O]lder facilities, which often serve low-income residents, may be built to lower standards or on sites subject to flooding, and may have fewer staff and resources to cope with disasters.").
[157] Cerniglia, *supra* note 155, at 62.
[158] Peterson, *supra* note 36, at 702.
[159] *Nursing Homes*, *supra* note 30.
[160] HHSOIG No. A-04-18-08065, *supra* note 42, at 3.
[161] Peterson, *supra* note 36, at 703 (As a result of interactions of facility staff with local officials, administrators "perceived they were more successful at anticipating their facility and resident needs, and those who faced unexpected challenges during the hurricane had local resources to call upon for help").
[162] Wasserman & Konetzka, *supra* note 21, at 831.
[163] Conklin, *supra* note 7, at 507–08.