

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  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
TODD YOUNG, INDIANA

RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
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  
SHELDON WHITEHOUSE, RHODE ISLAND  
MAGGIE HASSAN, NEW HAMPSHIRE  
CATHERINE CORTEZ MASTO, NEVADA

# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

February 1, 2019

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma:

Last November, I released *Sheltering in Danger*, an investigation that showed how nursing homes are inadequately prepared to protect vulnerable residents during natural disasters.<sup>1</sup> The report focused on nursing homes impacted by hurricanes, but the polar vortex now gripping the central United States—and recent nursing home evacuations—demonstrates it's not just hurricanes that pose a threat to elderly residents.

Senior citizens are uniquely vulnerable to extreme heat and extreme cold, which makes evacuations and sheltering in place all the more dangerous task during the peak of summer and depths of winter. Nursing homes and other facilities that care for elderly patients must be prepared for all types of extreme weather events.

The current onslaught of cold temperatures has put tremendous strain on infrastructure, leading to lapses in electricity, natural gas and transportation services.<sup>2</sup> In Michigan, the failure of a key natural gas compressor station led the state to call on residents to lower thermostats to 65 degrees Fahrenheit.<sup>3</sup> This temperature is outside of the 71–81 degree range that CMS requires nursing homes to maintain.

A central Illinois nursing home was forced to evacuate this week in bitter cold after an on-site service compressor malfunctioned due to sub-zero temperatures.<sup>4</sup> Last week, residents of a Newport, Rhode Island, nursing home were evacuated after a lengthy natural gas outage,<sup>5</sup> on a day when temperatures ranged from 6 to 26 degrees.<sup>6</sup> In both instances, it appears that residents

<sup>1</sup> Press Release, "Wyden Finds Nursing Homes Unprepared for Natural Disasters," U.S. Senate Committee on Finance (Nov. 2, 2018), available at <https://www.finance.senate.gov/ranking-members-news/wyden-finds-nursing-homes-unprepared-for-natural-disasters>.

<sup>2</sup> Douglas Belkin and Erin Ailworth, Polar Vortex Strains Systems; General Motors Halts Factories, *Wall Street Journal* (Jan. 31, 2019), available at <https://www.wsj.com/articles/polar-vortex-strains-systems-general-motors-halts-factories-11548946411>.

<sup>3</sup> Jason Hanna, "It's 9 below in Detroit. Michigan wants folks to lower their heat after a utility station caught fire," *CNN* (Jan. 31, 2019), available at <https://www.cnn.com/2019/01/31/us/michigan-extreme-weather-lower-thermostats-trnd/index.html>.

<sup>4</sup> Paul Swiech, "Power outage due to cold affects Hopedale Medical Complex," *The Pantagraph* (Jan. 30, 2019), available at [https://www.pantagraph.com/news/local/power-outage-due-to-cold-affects-hopedale-medical-complex/article\\_9ac4c015-11e9-59f3-9f5e-60d851cd4d1f.html](https://www.pantagraph.com/news/local/power-outage-due-to-cold-affects-hopedale-medical-complex/article_9ac4c015-11e9-59f3-9f5e-60d851cd4d1f.html).

<sup>5</sup> Sean Flynn, "St. Clare-Newport nursing home residents evacuated," *The Newport Daily News* (Jan. 22, 2019), available at <https://www.newportri.com/news/20190122/st-clare-newport-nursing-home-residents-evacuated>.

<sup>6</sup> According to National Centers for Environmental Information data collected at Newport State Airport for January 22, 2019.

escaped unharmed, but as the administrator of the Newport facility observed, “this could have been a nightmare.”<sup>7</sup>

Since the report’s release, the Centers for Medicare & Medicaid Services (CMS) has proposed rolling back emergency preparedness standards for nursing homes and other facilities by:

- Eliminating requirements for nursing homes and other medical facilities to document their collaborative planning efforts with government emergency preparedness officials.<sup>8</sup>
- Reducing the frequency of internal emergency plan reviews that nursing homes and other medical facilities must complete from once a year to once every two years.
- Scaling back emergency training requirements for employees at nursing homes and other medical facilities from once a year to once every two years.
- Lowering standards for the types of emergency drills that nursing homes and others medical facilities must conduct, and the frequency with which such emergency drills must be completed.

On November 20, 2018, I wrote to you raising concerns about the CMS regulatory rollback and have yet to receive a response.<sup>9</sup> CMS also has failed to act on its commitment to my staff to update its Emergency Preparedness guidance—also known as Appendix Z—to ensure that nursing home residents are kept within the 71–81 range during emergencies. *Sheltering in Danger* also specifically recommended ensuring that nursing homes must have sufficient capacity to ensure that safe temperatures are maintained during emergencies. These were just two of the 18 recommendations in the report, which is attached. Given the current situation:

1. What actions is CMS taking to ensure that nursing homes know that they are required to maintain the required temperatures during emergencies?
2. What actions is CMS taking to fulfill its obligation to formally update its guidance on the maintenance of safe temperatures and emergency energy, as discussed more fully in *Sheltering in Danger*?
3. What actions is CMS taking to respond to the other recommendations made in the report?
4. Does CMS intend to proceed with the regulatory rollbacks to the emergency planning standards that it announced last year?

Sincerely,



Ron Wyden  
Ranking Member

---

<sup>7</sup> Steph Machado, “Evacuation plan was key for nursing home during gas disaster,” WPRI (Jan. 24, 2019), available at <https://www.wpri.com/news/local-news/east-bay/evacuation-plan-was-key-for-nursing-home-during-gas-disaster/1724668171>.

<sup>8</sup> Medicare and Medicaid Programs: Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction, 83 Fed. Reg. 183 (Sept. 20, 2018), 47725-47728, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-09-20/pdf/2018-19599.pdf>.

<sup>9</sup> Press Release, “Wyden decries proposed weakening of nursing homes safety protections by the Trump Administration,” U.S. Senate Committee on Finance (Nov. 20, 2018), available at <https://www.finance.senate.gov/ranking-members-news/wyden-decries-proposed-weakening-of-nursing-homes-safety-protections-by-trump-administration>

## Part VI: Recommendations

*Based on the investigation's findings, the Minority staff makes the following recommendations to improve emergency preparedness at LTCs.*

### A. Temperature Protection of Elderly Populations

#### 1. **Revising the Safe and Comfortable Temperature Standard:**

Given the vulnerability of elderly populations to heat stress, CMS should reevaluate and revise its “safe and comfortable” temperature standard. New standards should reflect health- and evidence-based risks that high temperatures pose for this population. Heat index guidelines should be incorporated into the safe temperature range.

#### 2. **Applicability of the Safe and Comfortable Temperature Standard in Emergencies:**

CMS should reissue its Emergency Preparedness rules or issue guidance, such as an update to Appendix Z, to make clear the safe and comfortable temperature standard strictly applies during emergency situations.

#### 3. **Emergency Power Capable of Maintaining Safe Temperatures:**

CMS should adopt additional requirements to specifically require that emergency power capacity be capable of maintaining the safe and comfortable temperature standard.

#### 4. **Warnings for Alternative Temperature Controls:**

CMS, state and local officials should issue warning guidance on the use of alternative means of maintaining temperatures (i.e., spot coolers). Such guidance would help head off improper use of these alternatives, like the flawed installation of these units at Hollywood Hills. Such efforts can worsen, rather than improve, emergency conditions.

#### 5. **Caring for Senior Citizens in Heat Emergencies:**

Senior citizens are uniquely vulnerable to irreversible health consequences and death related to heat stress. CMS should make this risk visible by instituting requirements and guidance that require facilities caring for senior citizens to specifically prepare for heat emergencies, particularly those located in regions of the country where they are likely to occur. Such requirements should include training of staff in the signs, symptoms, and treatment of heat stress and protocols for monitoring residents' health and exposure, the facility's temperatures, and local heat index measurements.

#### 6. **Coordination with Electricity Providers:**

Because of the vulnerability of seniors to heat stress, CMS, state and local officials should coordinate with electricity providers to ensure that higher priority is given to nursing homes when considering requests to restore power during emergencies, especially those in which heat may be an aggravating factor. These planning efforts should include appropriate contingencies for facility evacuations if power cannot be restored in a timely manner.

## B. Sheltering-in-Place/Evacuations

### 1. Shelter-in-Place/Evacuation Warnings:

CMS and states should clarify the respective roles and responsibilities of government and long-term care facilities in regard to ordering, and responding to, mandatory shelter-in-place and evacuation orders. State and local governments should consider additional techniques and methods for providing emergency warnings to facilities to aid them in meeting their obligation to protect the health and safety of residents.

### 2. Shelter-in-Place/Evacuation Guidance and Research:

The research data examining *post-storm* sheltering-in-place versus evacuation is inadequate to inform decision-making for nursing home administrators. More research is needed—including the establishment of best practices—for making sheltering and evacuation decisions. Facility administrators need more guidance on how to make these decisions including the factors that need to be weighed against one another.

## C. Emergency Plans

### 1. Effective Review and Approval of Emergency Plans:

CMS, states, and local governments must re-examine their processes for reviewing and approving long-term care facilities' emergency plans to ensure that they are complete, accurate, and protective of residents' health and safety. CMS and states should ensure that emergency plans actually address the specific hazards identified in the facility's hazards assessments. The quality of the underlying hazards assessments also must be verified. CMS and the states should ensure that emergency managers have proper training and qualifications to carry out their roles and responsibilities. If states delegate plan approval authority to local governments, they should provide guidance on plan requirements, facility regulatory history, review procedures, and related documentation.

### 2. Emergency Plan Content—Community Resources:

CMS and states should expand emergency plan requirements to require identification of community resources, such as local hospitals, that can supplement the emergency capabilities of long-term care facilities, especially with regard to health and safety services. Plans should be required to include evidence of coordination with those resources. Nursing homes and assisted living facilities are required to have their own preparedness plans and capabilities. However, communities and local emergency management-and-response entities must integrate—or better integrate—nursing homes and assisted living facilities into community-wide emergency planning strategies.

### 3. Emergency Plan Content—Evacuation/Shelter-in-Place Decision-Making:

CMS and states should establish clear roles, responsibilities, and qualifications for decision-makers charged in emergency plans with making evacuation and shelter-in-place decisions. Such standards should also require documented protocols for making and reassessing such decisions, and include basic factors that facilities should consider.

**4. Emergency Plan Content—Evacuation and Shelter-in-Place Capabilities:**

CMS and states should re-examine their requirements for shelter-in-place preparations and operations to ensure that facilities can, in fact, safely shelter-in-place. Such requirements should ensure that facilities have the appropriate operational procedures to shelter-in-place. For example, facilities that shelter-in-place should be able to increase medical monitoring of residents and monitor post-event conditions such as flooding. Evacuation planning and capacity should similarly address likely evacuation scenarios, including weather warnings, regional emergencies, and secondary, post-event evacuations.

**5. Emergency Plan Content—Emergency Transportation Contracts**

Emergency plans must include logistically and legally executable transportation contracts to ensure safe and timely evacuations. Contracts should take into account the facility's likely evacuation scenarios, and be rooted in the definitions and procedures governing natural disaster bulletins. CMS and state licensing agencies must review emergency transportation contracts to ensure they are appropriately tailored to each facility's geography, size and the patient population's medical needs.

**6. Integrating Medical Staff into Emergency Planning:**

CMS should modify its emergency preparedness requirements and guidance to ensure that medical directors and health care staff at long-term care facilities are integrated into the emergency planning process and resulting emergency plans. Medical directors and other key medical personnel should have an active role regarding shelter-in-place and evacuation decisions, and any related operations. Medical directors and other key personnel also should be responsible for the development of clinical protocols and policies aimed at monitoring and mitigating the health risks to residents during emergency conditions. Senior medical staff should be present in the facility throughout an emergency until conditions are deemed safe. Emergency training and education should be required for all frontline staff commensurate with their roles in the care of patients and the facilities' emergency plans.

**7. Planning for Floods:**

CMS and states should ensure that long-term care facilities in coastal areas at risk of storm surge, and those that are in or near federally designated flood zones, fully address these risks in their hazards assessments and include flood monitoring and secondary evacuation procedures in their emergency plans.

**D. Communications and Communication Plans****1. Coordinating Communication with State and Local Authorities:**

Facility communication plans must be developed in stricter coordination with local and state emergency planners and agencies. These plans must reflect which entities or emergency officials will be contacted, what form of communication will be used, and in what priority order such communications will be made. Similarly, state and local authorities must provide clear and consistent guidance and procedures to nursing homes and assisted living facilities regarding emergency communications. Such guidance and procedures should be approved and coordinated within the state annually, such as prior to hurricane season. Such guidance should be intended to limit *ad hoc* procedures, redundant communications, and delays or confusion in the emergency response.

**2. Effective Communication of Emergency Information to Authorities:**

CMS emergency preparedness requirements should be revised to ensure that emergency communication plans identify and delineate the roles and responsibilities of administrators and staff at long-term care facilities expected to serve as points of contact during an emergency. Designated points of contact should be required to undergo training to ensure that they carry out emergency plan protocols and effectively communicate emergency information to first responders, emergency management officials, power providers, and other external entities.

**E. Power Restoration Prioritization**

**1. Power Restoration for At-Risk Communities:**

State and local officials and power providers should re-examine power restoration priority protocols with specific consideration of at-risk populations, including nursing homes and assisted living facilities. Allowances should be made for the extent to which individual facilities are required to have, and physically do have, emergency generation capacity to maintain temperature (see recommendation A(3) above).