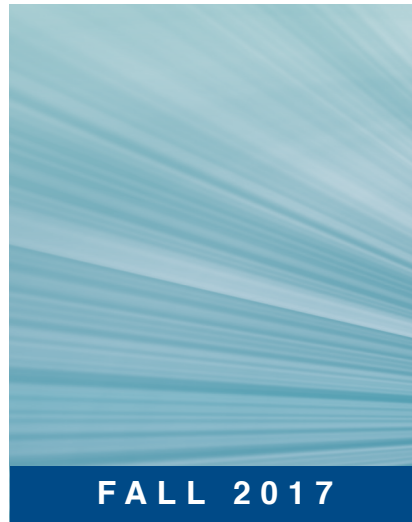


SPECIAL ISSUE

brief



When Disaster Strikes: Emergency Preparedness in Seniors Housing

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I. EXECUTIVE SUMMARY

Seniors housing and care providers face unique challenges in preparing for and responding to mass disasters. Senior communities serve residents with a wide range of needs, from active and independent seniors to bedbound patients who require 24-hour care. Accordingly, a provider's disaster preparedness plan must take into account the full range of resident needs and abilities at the community. Disaster plans will vary depending on the type of provider and the location of the community, but response plans will generally include certain common provisions, such as relocation and transportation of residents, communication with families, staff, and government agencies, emergency supplies, and back-up energy. Implementation of any plan, amid the chaos of an unfolding disaster, requires flexibility, common sense, quick thinking and a true concern for the welfare of residents.

II. INTRODUCTION

Natural and man-made disasters have dominated the news media in the second half of 2017, during which time the country has seen several mass disasters of historic proportions. In August, Hurricane Harvey inundated portions of Texas and Louisiana, forcing widespread evacuations throughout the region. In September, Hurricane Irma swept through the Caribbean and Florida, prompting the evacuation of over 150 assisted living and skilled nursing facilities across Florida alone. The Florida evacuations involved the relocation of over 13,000 senior care residents, which experts believe may be the largest-ever mass evacuation of licensed senior care facilities in the nation.¹ In early October, Northern California experienced the worst series of wildfires in its history,² which destroyed over 7,800 structures, killed 42 people, and impacted dozens of seniors housing and senior care communities in Northern California.

¹ "Moving Florida's Many Seniors Out of Irma's Path Has Unique Risks," Washington Post, Sept. 9, 2017.

² California Statewide Fire Summary, http://calfire.ca.gov/communications/communications_StatewideFireSummary.

Fortunately, reports tended to show that emergency preparations in the affected regions were, for the most part, effective. Despite the ferocity of Hurricanes Harvey, Irma, and the California wildfires, the death tolls from these disasters were significantly lower than initially feared.

However, when one disaster plan fails, it has the potential to eclipse all the success stories. For example, the coverage devoted to the loss of life at Hollywood Hills Rehabilitation Center in Florida, where ten skilled nursing residents died of heat-induced trauma after the facility's back-up cooling system failed, overshadowed the stories of thousands of residents of senior living properties who were successfully protected from harm. Tragedies such as this underscore how critical it is for providers to have an adequate disaster plan in place, and to be able to implement it effectively. The cost of compliance is trivial when compared to the potential liability for not doing so.

For licensed operators, state and federal licensing rules require providers to implement emergency and disaster plans. However, state and federal requirements do not set forth all the details of such plans, and satisfying state/federal requirements does not necessarily guarantee that a plan will be adequate when actual disaster strikes. Providers should conduct their own risk analyses when creating or updating their disaster plans.

The Hollywood Hills events illustrate how a provider's disaster plan can technically comply with licensing rules but nonetheless fall short in an actual emergency. In a press release issued after the facility was evacuated by state authorities, Hollywood Hills noted that it had a disaster plan in place at the time of the hurricane, and that it followed all of its protocols "up to and through the evacuation" of its residents.³ However, despite the protocols, fragile residents were kept for days in a non-climate-controlled setting until body temperatures of some residents rose to dangerous levels, in some cases over 107 degrees. Worse, the facility was located across the street from a major medical center which was in operation during and after the hurricane, and which could have accepted residents at any point after the facility lost power to its cooling system. Regardless of what the facility's disaster plan was, it is evident that its implementation was woefully inadequate to address the actual emergency conditions the facility faced when Irma struck.

³ Press release, September 13, 2017, at <http://hollywoodhillsrehab.com/statement.shtml>, last accessed Oct. 23, 2017.

Developing an emergency preparedness plan is an important start, and a legal requirement for licensed providers, but it is only the first step in an ongoing process. Providers should review their disaster plans periodically, conduct emergency drills, and revise the plans as necessary to keep up with current standards and best practices. Lessons learned from the series of disasters in 2017, some of which are discussed in this brief, should be considered for incorporation into updated disaster plans.

Unlicensed providers should also implement and maintain disaster preparedness plans. Although they may not have an obligation under state or federal licensing requirements to implement a disaster preparedness plan, failure to do so may result in civil liability if a plaintiff shows that the provider's lack of an adequate or accessible emergency plan was below an acceptable standard. While we found no reported instances of such litigation in the seniors housing context, plaintiffs have sued cities under the theory that a disaster plan discriminated against disabled persons, and in at least one case, have won.⁴

An effective disaster response plan must be customized to take into account a community's geographic setting and its potential exposure to different types of disasters. Some types of disasters may be preceded by a warning that can vary in length from minutes to days, such as hurricanes, floods, tornadoes, and extreme temperatures. Others may come with little or no warning, like earthquakes, fire, terrorism/shooter incidents, poisonings, or infectious disease outbreaks. Regardless of the types of risk addressed, however, disaster plans generally contain a common set of core elements, as described below.

III. ELEMENTS OF A DISASTER RESPONSE PLAN

Most licensed senior care properties are required by applicable laws or regulations to have a disaster plan. Even for unlicensed residences, the elements of disaster plans required by or recommended for licensed properties should be considered as a basis for the formulation of their plans. Listed below are examples of disaster plan requirements or recommendations for nursing, assisted living and continuing care properties. The plans typically are quite comprehensive and the listings below are of necessity limited in scope and detail.

⁴ See, e.g., *Brooklyn Ctr. for Independence of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013), in which the court held that New York City's evacuation and emergency plan during Hurricane Sandy did not reasonably accommodate disabled residents.

A. Nursing Facilities

Federal regulations for skilled nursing facilities published in September 2016⁵ require disaster planning that includes the following elements, among others:

An emergency plan that:

- is reviewed and updated at least annually;
- includes a community-based risk assessment;
- identifies strategies for addressing emergency events;
- covers continuity of operations; and
- includes a process for cooperation with officials.

Policies and procedures that provide for:

- the subsistence needs for staff and residents;
- food, water, medical, and pharmaceutical supplies;
- alternate sources of energy to control temperature, lighting, fire systems, sewage and waste disposal;
- a system to track the location of on-duty staff and sheltered residents;
- safe evacuation;
- sheltering in place; and
- arrangements with other care facilities and other providers.

In addition, the disaster plan must include a communication plan and a training program, including unannounced staff drills.

B. Assisted Living Residences

The Florida Health Care Association's Disaster Preparedness Guide for Assisted Living Facilities⁶ provides a comprehensive review of issues to consider and steps to take, and includes the following topics:

- ***Types of Disasters (with specific recommendations for each):*** Fire, Tornado, Hurricane, Extreme Temperatures, Floods, Geologic Hazards, Bomb Scare Plan, Community Hazardous Accidents, Bio-Terrorism, Pandemic/Epidemic;
- ***General Overview of Preparations:*** advance planning, monitoring forecasts, decision-making, timing;

⁵ Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; Final Rule; 81 Fed. Reg. 63,860 (Sept. 16, 2016).

⁶ <http://www.fhca.org/images/uploads/pdf/ALF%20Disaster%20Guide.pdf>.

- ***Sheltering in Place:*** strengthening/protecting the building, staff coverage, water supply, frequent resident monitoring;
- ***Evacuation:*** preparation of residents, supplies/records for transport, shutting down plant systems, reentry plan;
- ***Transportation:*** preparation of own vehicles; arrangements for hired carriers
- ***ALF as Emergency Shelter:*** preparing, caring for evacuees;
- ***Business Operations:*** insurance, systems back-up, FEMA and public grant assistance; and
- ***Communication:*** with families and authorities; record-keeping procedures.

C. Continuing Care Retirement Communities

The California Health and Safety Code Section 1771.10 requires that a continuing care retirement community “adopt a comprehensive disaster preparedness plan specifying policies for evacuation, relocation, continued services, reconstruction, organizational structure, insurance coverage, resident education, and plant replacement.” In addition, elements of a typical plan prepared in response to this requirement include:

- Resident Education and Training
- Staff Education and Training
- Emergency Information
 - identification of and prior arrangements with service providers; alternate relocation sites
 - utility shut-off locations
- Emergency Equipment and Supplies: medications, food, maintenance
- Immediate Response Protocols:
 - call 911 to report the emergency
 - check the status of on-site staff members
 - locate first aid kit, flashlights, two-way radios, note pad and battery-operated radio
 - establish a command center at the Front Desk.
 - staff report to the Front Desk to implement the emergency response
 - establish teams of two to conduct welfare status checks on residents
 - account for all staff, residents and visitors
 - check utilities function, safety to minimize any danger
 - monitor the emergency generator

IV. SPECIAL IMPLEMENTATION ISSUES

A. Evacuate or Shelter in Place?

The 2017 hurricanes in Florida and Texas highlighted the dilemma of whether to evacuate or shelter in place, and when to make the decision. The Mayor of Houston, criticized for not issuing a mandatory evacuation order, responded that the evacuation of millions of people itself would have caused unnecessary harm and hazard on the roadways. In Florida, it was unclear where the storm would land and whether moving to another part of the state would expose people to greater harm than their original location. In the California fires, evacuation decisions had to be made with little or no notice.

For senior care communities, the decision is further complicated by the fact that the move itself can harm those residents whose health condition makes them particularly vulnerable. The phenomenon of “transfer trauma” is well-documented in the skilled nursing field and may be equally applicable to higher acuity assisted living residents.

Research has shown that, with certain vulnerable elderly populations, evacuation during a disaster can cause more harm than sheltering in place. A 2011 study⁷ of more than 36,000 nursing home residents exposed to a hurricane since Katrina in 2005, found that residents who were evacuated were far more likely to have serious or deadly health conditions develop within 30 days than those who sheltered in place.

Obviously, the resident population of an independent living community is less likely to be adversely affected by the evacuation process, but in a community with multiple levels of care, it may be appropriate to treat different residents differently, based on their fragility. Time permitting, more careful preparation for and supervision of the transfer of higher acuity residents is warranted.

When public officials issue a mandatory evacuation order, senior living communities have little choice but to evacuate all residents, despite potential concerns about transfer trauma for the more vulnerable.

⁷ *To Evacuate or Shelter in Place: Implications of Universal Hurricane Evacuation Policies on Nursing Home Residents*; David Dosa, MD, MPH et al., *J Am Med Dir Assoc.*, Feb. 2012.

B. Uncooperative Residents

In most every group of residents, just as in the general population, there is some percentage who will refuse to evacuate, despite the recommendation of the senior living operator or the mandate of public officials.

Even where there is a public evacuation order, it is probably never appropriate for an operator to attempt to physically force a resident to leave the premises. Such an action could constitute a criminal battery. If the operator cannot enlist the services of a police officer or other official to remove the resident, it may be necessary to create clear documentation of the recommendation and/or order to evacuate and the resident's refusal to do so, and let the resident remain on the premises.

In at least one case in Florida, a provider left some uncooperative independent living residents to fend for themselves during the hurricane after relocating all the other residents and staff from the community. Fortunately, residents needing care tended to cooperate with the evacuation process. One manager stated that if uncooperative residents needing daily care were to refuse to relocate, he would not ask staff to risk their lives by staying behind with those residents. In some cases, managers who left uncooperative residents behind after the buses departed were able to persuade family members to come and get them. In general, while the police would try to persuade uncooperative residents to evacuate, they did not go so far as to take them into custody.

V. TIPS AND LESSONS LEARNED FROM THE FLORIDA HURRICANE AND CALIFORNIA FIRES

In the course of preparing this article, the experiences of managers from three different companies operating in Florida during Hurricane Irma were compiled, which collectively had to evacuate or shelter in place the residents from 17 senior living communities. In addition, representatives of two companies that evacuated over 1000 residents from five senior living communities in the California fires shared their perspectives. The tips and lessons learned from their experiences are summarized below:

A. Emergency Management Planning and Training


Florida senior living communities typically have emergency plans, sometimes required by applicable regulations, covering all manner of emergencies, including storms, power outages, active shooter events, resident elopements, and the like. Plans include escape routes, relocation destinations, back-up destinations, agreements in place for alternative housing, services and transportation, and training of staff and residents, all of which make the response to an actual emergency more likely to be successful. Instructing residents to prepare a “go bag” of essential personal items, such as medications and toiletries, and having it available at the door for a quick exit, is a common practice that has proven effective.

In the California fires, evacuations took place in the middle of the night, without any significant notice. One group of residents was transferred to a community shelter at about 3 a.m., and a few hours later the shelter itself had to be evacuated. Fires were spreading rapidly in winds gusting up to 75 miles per hour and changing direction without notice. In the chaotic circumstances of a rush to exit buildings and relocation to public evacuation centers, one manager recommended having identification wristbands available for residents.

B. Advance Arrangements with Others

It is important to have advance arrangements with transportation providers, hotels or other alternative sites for relocation, restoration and clean-up vendors, and emergency services agencies. Even where arrangements could not be made in advance, cooperation among colleagues in the industry was essential to accommodating residents’ needs on short notice.

Many residents were evacuated to other senior living properties owned by the same company or to other non-owned properties with vacancies, or willing to accommodate residents on air mattresses in an assembly area. One provider bought 100 beds for residents sleeping in an assembly area of another property. In California, a brand new assisted living property experienced the “fastest fill-up on record” after accommodating 80 residents who had been evacuated from another property that burned to the ground. Many independent living residents offered their spare bedrooms or living room sofas to evacuees.



Ideally, having a written contract with private vendors can secure priority service at a time when everyone is clamoring for their attention. Some bus providers were known to demand exorbitant advance payments to guarantee timely service on short notice. Emergency services personnel should know who you are, and what levels of care are present on the premises, and have facility plans in hand when responding in an emergency. Some managers noted that assisted living properties may not be “on the radar” of emergency responders to the same degree as health facilities such as skilled nursing centers. In the California fires, emergency services agencies provided buses and ambulances to assist with the evacuation. In one case, staff members using their own vehicles to evacuate residents were not allowed back into the fire zone to pick up more residents, but emergency vehicles completed the evacuation.

C. Equipment and Physical Plant

Generators to provide electricity in the event of a power loss are an essential part of any emergency plan. There should be sufficient power to provide for air conditioning and essential services, particularly in the care facilities. For independent living residents, establishing a centralized place of refuge on site, such as a dining or assembly area, is helpful in circumstances where the entire building does not have power or service availability.

Shortly after Hurricane Irma, Florida imposed a rule for licensed settings requiring generators capable of providing power for all services with a 96-hour fuel capacity. The requirement is being challenged, in part because of the short 60-day implementation requirement, coupled with the cost to install and maintain such backup capabilities.

One manager recommends that generators be positioned several feet above the ground to avoid being disabled by rising waters caused by storm surges. Also, after vacating a property, be sure to go back and check for leaking refrigerators, ice machines and other appliances that can cause additional damage. And don't forget to stop or forward the mail if planning to be gone for a while.

Getting back into an evacuated building can be a major undertaking, particularly if there has been any damage. Having a prior relationship with a disaster restoration company can

be especially valuable. For licensed properties, inspections by government officials may be needed to clear potential hazards caused by structural damage, mold, smoke or ash residue.

D. Communication

Running and frequently updating an emergency banner on your web site can help keep families and the public informed of key developments before, during and after the event, thereby relieving staff of many of the phone calls that otherwise might divert their attention from resident service. Topics can include whether an evacuation will take place, the status and details of relocation activities, damage reports, and when residents can return. Others have used social media to provide families with daily briefings on any developments. One operator regretted not changing the message on the property's telephone answering machine before evacuating.

E. Staff

Staff and their families are also affected by a threatened or actual disaster. For them to be able to devote their time and attention to residents, it may be necessary to accommodate the families of staff, and their pets, whether evacuating or sheltering in place. One manager reported needing to take care of dogs, cats, birds and a pig, including allocating indoor space for them and all their needs. One provider has made arrangements for staff members to borrow money from their retirement plans, or other sources, to help repair damage to their homes.

In the California fires, two properties included staff housing on site and all of those employees immediately responded in the middle of the night to assist the reduced overnight shift that was on duty with resident evacuations. In some cases, employees lost their homes to the fire.

Management staff at the property level need to be given sufficient authority from the corporate headquarters to make timely decisions when facing emergent circumstances on the ground.

F. Resident Needs

It is important to frequently monitor the condition and needs of residents, particularly those in care settings. One manager noted that even the needs of independent living residents were greater than anticipated, due to stress caused by the anticipation of disaster, and the disruption caused by the evacuation itself. A greater-than-normal level of staffing, or allotment of a longer-than-anticipated time to get things done, may be needed for all residents.

In some cases, independent living residents evacuated themselves using their own cars. Some evacuated to the alternative site designated by management or public officials, but some left to be with family, friends or sought other accommodations without telling management where they were going. In the California fires, it took one manager a few days to find out that a resident had evacuated to Europe without telling anyone.

If needing to relocate to an alternate residence, such as a hotel, one provider found it helpful to create a wellness office on site and bring in home health or home care aides to assist residents. One manager believed it was critically important to have an alternate site that would accept independent living residents' pets, as this was a major reason that some hesitated to evacuate.

G. Go/No-Go Decision

One manager noted that, in the tension-filled week preceding the hurricane's landfall, "everybody is a meteorologist" with an opinion about whether to evacuate or shelter in place. Typically, operators waited for public officials to issue a mandatory evacuation notice. When such an order is issued, there is little choice but to comply.

However, exigent circumstances may result in some deviation from strict compliance. In one case, a same-day evacuation order came too late prior to the landing of the hurricane. The community operator needed at least 1 to 2 days' notice to bring out the buses, load them and drive the estimated 12 hours (twice the usual time) to the relocation destination. In another case, it was necessary to evacuate two days before public officials issued a mandatory order, because that was the only day that buses were available.



H. Morale

Managers of properties that experienced the Florida hurricane reported a surprisingly positive attitude, among both residents and staff, in the face of challenging and difficult conditions. Whether sheltering in place, evacuating, or receiving others who had been evacuated, residents and staff alike exhibited a great deal of pride and a collective spirit of cooperation and accomplishment. One manager described the mood as a “party” atmosphere. The California fires similarly produced a spirit of camaraderie and helpfulness among residents and staff. While a few residents complained about such things as the power being out too long, over 99% appeared to feel good about themselves and their response to the emergency. The presence of staff’s families seemed to enhance this feeling of bonding among residents and staff.

V. CONCLUSION

Regardless of the combination of housing and services your organization provides to seniors, all communities should have a disaster plan in place that addresses sheltering, evacuation, and relocation for each type of resident (independent, assisted, skilled nursing, hospice, etc.) at the community. Thorough evaluation of a community’s risks in various disaster scenarios will provide needed guidance in the frantic and uncertain moments before, during, and after a mass disaster. Once implemented, disaster plans should be revisited periodically and updated as needed. Most providers will never have to deploy their plans in an actual disaster, but for those who do, a carefully thought out response may make the difference between life and death for a provider’s residents and staff.



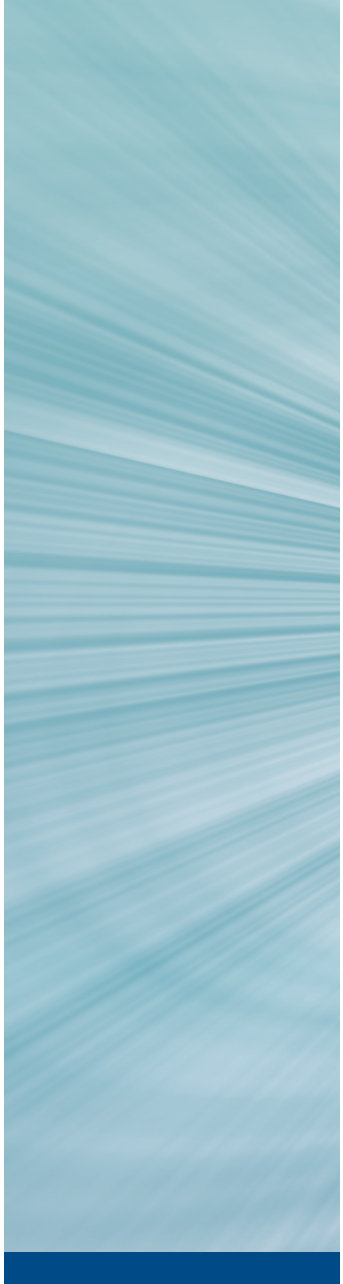
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