

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

**Suspension of Certain Rules and Statutes
and Policy Provisions Based on State of
Emergency- Natural Disaster**

Early Prescription Refills

CASE NO.: 78190-04-CO

EMERGENCY ORDER

**TO: All Health Insurers, HMOs, and other entities regulated by the
Office of Insurance Regulation that may cover prescription medications.**

THIS CAUSE having come before the Commissioner of the Office of Insurance Regulation as a result of the state of emergency created by Hurricane Frances, Hurricane Charley, and subsequent tropical storms, and being fully informed in the premises,

NOW THEREFORE, the Commissioner hereby **FINDS** as follows:

JURISDICTION AND FINDINGS OF FACT

1. The Office of Insurance Regulation (the "Office") has the duty, pursuant to s. 624.307(2), Florida Statutes, to enforce the provisions of the Insurance Code (Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, henceforth, the "Code"). The Office shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of the Code, pursuant to s. 624.307(2), Florida Statutes.

2. Section 120.569(2)(n), Florida Statutes, provides that "if an agency head finds that an immediate danger to the public health, safety or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order..."

3. This Emergency Order is being issued pursuant to sections 120.569(2)(n), and 252.46, Florida Statutes, because the facts as stated herein demonstrate that there is an immediate threat to the public health, safety and welfare, as a result of the direct effects of the statewide impact of Hurricane Frances, Hurricane Charley, and subsequent tropical storms. Further, this Emergency Order is being issued pursuant to S. 8, paragraphs A and F of Governor Jeb Bush's Executive Order Number 04-192, declaring a state of emergency in Florida on September 1, 2004, and the Supplemental Order of the State Coordinating Officer entered on September 2, 2004. Executive Order 04-192 is attached as **Exhibit 1**.

4. On September 2, 2004, the State Coordinating Officer under Executive Order 04-192, issued a Supplemental Order related to Hurricane Frances, and determined that the Office will be hindered in the proper performance of its duties and responsibilities in meeting this emergency without the authority to suspend certain statutes in the Florida Insurance Code and the rules that implement the Florida Insurance Code governing the rate and form filings relating to insurance, and the running of the time for the cancellation of homeowners, automobile, health, and other types of insurance coverage subject to the Florida Insurance Code. The Supplemental Order gives the Office authority to issue emergency rules and orders as outlined specifically in the Order. See **Exhibit 1**. The Supplemental Order is attached as **Exhibit 2**.

5. By this Order, and in accordance with the authority listed in the paragraphs above, the Commissioner of the Office of Insurance Regulation is suspending the operation of certain statutes in the Florida Insurance Code and the rules that implement the Florida Insurance Code governing the rate and form filings relating to insurance, and certain provisions found in policies and group policies for health insurance and health maintenance organizations.

6. Florida Governor Jeb Bush has found that Hurricane Frances, alone and in combination with the destruction by Hurricane Charley, threatened the State of Florida with a catastrophic disaster and therefore declared that a state of emergency exists in the State of Florida and on September 1, 2004, Florida Governor Jeb Bush, issued Executive Order 04-192, declaring a state of emergency and activated the State Comprehensive Emergency Management Plan.

7. On August 10, 2004, the Governor issued Executive Order 04-182 to declare a state of emergency because of Hurricane Charley. Hurricane Charley came ashore in the southwestern portion of the State as a Category 4 hurricane and devastated communities in the southwestern and central portions of the State; the State is now trying to recover from the impact of Hurricane Charley.

8. Hurricane Frances has affected a number of communities in the State of Florida with extreme weather conditions, which has created an immediate danger to the lives, and property of persons in those communities. Multiple deaths in Florida have been attributed to Hurricane Frances.

9. A subsequent tropical storm is threatening the state, and resulting in large scale evacuations.

10. In the ordinary course of business of health insurers and health maintenance organizations, contracts that include coverage for prescription medication have restrictions on such coverage so that covered medication is provided in thirty day batches, refillable every 30 days. Because of the storm damage, mass evacuations and the inability of many of the insureds to stay in their homes, these restrictions result in many storm victims being without the medications necessary for their health or their very lives. This Order provides temporary emergency relief to the insureds so that they are not left without their necessary medications during the remainder of this crisis.

11. The issuance of this Emergency Order and the procedural safeguards set forth herein are fair under the circumstances due to the potential grave harm described above. As indicated in the Notice of Rights herein, Respondents are afforded an opportunity for a review of this Order. Procedures set forth therein will afford the Respondents an opportunity to challenge these actions.

WHEREFORE, pursuant to the Florida Insurance Code and other applicable statutes, including, s.s 120.569(2)(n) and 252.46(2), Florida Statutes, s. 8, paragraphs A and F, of Governor Jeb Bush's Executive Order Number 04-192, and the Supplemental Order of the State Coordinating Officer entered on September 2, 2004, the OFFICE finds that as a result of the direct effects of the statewide impact of Hurricane Charlie, Hurricane Frances and subsequent tropical storms, an immediate danger to the public health, safety and welfare exists so as to require the issuance of this Emergency Order.

Accordingly, IT IS HEREBY ORDERED:

(1) All health insurers, HMO's and other licensees that provide prescription medication coverage as a part of any policy or contract shall, through November 30, 2004, waive restrictions on prescription medication refills to enable insureds to fill prescriptions in advance, and shall authorize payment to pharmacies for at least a thirty day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled.

(2) The provisions of this Emergency Order shall be liberally construed to effectuate the intent and purposes expressed therein and to afford maximum consumer protection.

DONE and ORDERED this 10th day of September, 2004.




Kevin M. McCarty
Commissioner
Office of Insurance Regulation

EXHIBITS:

1. Executive Order 04-192, September 1, 2004
2. Supplemental Order, September 2, 2004

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to S. 120.68, *Florida Statutes*, and Rule 9.110, *Fla.R.App.P.* Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty (30) days of rendition of this Order.



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STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001



JEB BUSH
GOVERNOR

EXECUTIVE ORDER NUMBER 04-192 (Emergency Management)

WHEREAS, on August 10, 2004, the Governor issued Executive Order 04-182 to declare a state of emergency because of Hurricane Charley; and

WHEREAS, Hurricane Charley came ashore in the southwestern portion of the State as a Category 4 hurricane and devastated communities in the southwestern and central portions of the State; and

WHEREAS, the State is now trying to recover from the impact of Hurricane Charley, although it may take years to do so; and

WHEREAS, on September 1, 2004, the National Hurricane Center advised that Hurricane Frances has continued to strengthen into a Category 4 hurricane, with sustained surface winds exceeding 135 mph, and that it may strengthen even further; and

WHEREAS, Hurricane Frances threatens a number of communities in the State of Florida with extreme weather conditions which pose an immediate danger to the lives and property of persons in those communities; and

WHEREAS, it is likely that Hurricane Frances will strike those communities within a matter of days, making the orderly evacuation of persons from those communities vital to the safety of the residents; and

WHEREAS, special equipment, personnel and other resources in addition to those needed for Hurricane Charley may be required in order to ensure the timely evacuation of persons from the threatened communities and the safe movement of the evacuees to other communities in the State acting as destinations for the evacuees; and

WHEREAS, emergency measures in addition to those needed for Hurricane Charley may be needed to protect the lives and property of persons in the threatened communities, and the general welfare of the State of Florida; and

WHEREAS, central coordination and direction of the use of such resources for the local evacuation measures are needed to ensure the timely evacuation of the threatened communities;

EXHIBIT

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NOW, THEREFORE, I, JEB BUSH, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. Because of the foregoing conditions, I hereby find that Hurricane Frances, alone and in combination with the destruction by Hurricane Charley, threatens the State of Florida with a catastrophic disaster. I therefore declare that a state of emergency exists in the State of Florida, and that the evacuation of multiple counties in the State may be necessary because of Hurricane Frances. I further find that central authority over the evacuation of these counties is needed to coordinate these evacuations, that these evacuations exceed the capability of the local governments in these communities, and that shelters in other counties are needed to accommodate the evacuees. I therefore declare that a state of emergency also exists in all destination counties that open shelters to accommodate evacuees from the communities threatened by Hurricane Frances.

Section 2. I hereby incorporate Executive Order 04-182, as amended, by reference into this Executive Order, and all mission assignments and orders issued by the State Coordinating Officer and Deputy State Coordinating Officers in connection with Hurricane Charley under the authority of Executive Order 04-182, as amended, are hereby ratified and extended as if issued on this date. Executive Order 04-182, as amended, is also hereby extended, so that its date of expiration will coincide with the expiration of this Executive Order.

Section 3. I hereby designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency and as my Authorized Representative. In exercising the powers delegated by this Executive Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. In accordance with Sections 252.36(1)(a) and 252.36(5), Florida Statutes, I hereby delegate to the State Coordinating Officer the following powers, which he shall exercise as needed to meet this emergency:

- A. The authority to activate the Comprehensive Emergency Management Plan;
- B. The authority to invoke and administer the Statewide Mutual Aid Agreement, and the further authority to coordinate the allocation of resources under that Agreement so as best to meet this emergency;

C. The authority to invoke and administer the Emergency Management Assistance Compact and other Compacts and Agreements existing between the State of Florida and other States, and the further authority to coordinate the allocation of resources from such other States that are made available to the State of Florida under such Compacts and Agreements so as best to meet this emergency;

D. The authority to seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;

E. The authority to distribute any and all supplies stockpiled to meet the emergency;

F. In accordance with Sections 252.36(5)(a) and 252.46(2), Florida Statutes, the authority to suspend existing statutes, rules, ordinances, and orders for the duration of this emergency to the extent that literal compliance with such statutes, rules, ordinances, and orders may be inconsistent with the timely performance of disaster response functions;

G. The authority to direct all state, regional and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the needs created by this emergency, and to place all such personnel under the direct command of the State Coordinating Officer to meet this emergency;

H. The authority to activate the Continuity of Operations Plans of all state, regional and local governmental agencies;

I. The authority to seize and utilize any and all real or personal property as needed to meet this emergency, subject always to the duty of the State to compensate the owner;

J. The authority to order the evacuation of all persons from any portions of the State threatened by the disaster, the authority to direct the sequence in which such evacuations shall be carried out, and the further authority to regulate the movement of persons and traffic to, from, or within any location in the State to the extent needed to cope with this emergency;

K. The authority to reverse the flow of traffic on any and all highways or portions of highways of the State Highway System as needed to facilitate the evacuation of the affected communities;

L. The authority to regulate the return of the evacuees to their home communities;

M. The authority to designate such Deputy State Coordinating Officers as the State Coordinating Officer may deem necessary to cope with the emergency; and

N. The authority to enter such orders as may be needed to implement any or all of the foregoing powers.

Section 4. I hereby order the Adjutant General to activate the Florida National Guard for the duration of this emergency, and I hereby place the National Guard under the authority of the State Coordinating Officer for the duration of this emergency.

Section 5. I hereby direct each county in the State of Florida, at the discretion of the State Coordinating Officer, to activate its Emergency Operations Center and its County Emergency Management Plan, as needed to ensure an immediate state of operational readiness, and I further direct each county in the State, at the discretion of the State Coordinating Officer, to open and activate all shelters to accommodate all evacuees.

Section 6. I hereby direct all state, regional and local agencies to place any and all available resources under the authority of the State Coordinating Officer as needed to meet this emergency.

Section 7. I hereby designate all state, regional and local governmental facilities including, without limiting the generality of the foregoing, all public elementary and secondary schools, all Community Colleges, and all State Universities, for use as shelters to ensure the proper reception and care of all evacuees.

Section 8. I find that the special duties and responsibilities resting upon some state, regional and local agencies and other governmental bodies in responding to the disaster may require them to deviate from the statutes, rules, ordinances, and orders they administer, and I hereby give such agencies and other governmental bodies the authority to take formal action by emergency rule or order in accordance with Sections 120.54(4) and 252.46(2), Florida Statutes, to the extent that such actions are needed to cope with this emergency. Without limiting the generality of the foregoing, I hereby order the following:

A. I hereby give all agencies of the State, including the collegial bodies within those agencies, the authority to suspend the effect of any statute, rule, ordinance, or order of any state, regional, or local governmental entity, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources, to include, without limiting the generality of the foregoing, any and all statutes and rules which affect budgeting, printing, purchasing, leasing, and the conditions of employment and the compensation of employees, but any such statute, rule, ordinance, or

order shall be suspended only to the extent necessary to ensure the timely performance of disaster response functions.

B. I hereby direct the Department of Transportation to waive the collection of tolls and other fees and charges for the use of the Turnpike and all other transportation facilities, regardless of whether such facilities are components of the State Highway System, to the extent such waiver may be needed to facilitate the evacuation of the affected communities; to reverse the flow of traffic on any and all highways or portions of highways of the State Highway System as may be needed to facilitate the evacuation of the affected communities; to close any and all highways or portions of highways as may be needed for the safe and efficient transportation of evacuees to those counties the State Coordinating Officer may designate as destination counties for evacuees in this emergency; to waive fuel taxes levied on vehicles registered in other States that are owned or operated by governmental agencies of those States, or by public utility companies or parties under contract with them, and to waive by special permit the registration requirements and the hours of service requirements for such vehicles; to waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment, services and supplies, and by special permit to designate alternate size and weight restrictions for all such vehicles for the duration of the emergency; and to waive by special permit the warning signal requirements in the Utility Accommodations Manual to accommodate public utility companies from other jurisdictions which render assistance in restoring vital services, to the extent such waivers are needed to meet this emergency.

C. At the request of the Director of Emergency Management of any county, I hereby direct the Department of Health to take over the operation of all shelters in that county that are intended for use by those evacuees with special personal, medical or psychological needs, and to station licensed medical professional and paraprofessional personnel at those shelters as needed to provide appropriate reception and care for such evacuees.

D. I hereby give all agencies of the State the authority to allow overnight stays by employees of the State who travel a distance of less than fifty (50) miles for the performance of official duties in connection with this emergency, and the authority to allow employees of the State reimbursement for the cost of meals during Class C travel incurred in connection with this emergency.

E. I hereby give all agencies of the State responsible for the use of state buildings and facilities the authority to close such buildings and facilities in those portions of the State affected by the emergency, to the extent needed to meet this emergency.

F. I hereby give all agencies of the State, including the collegial bodies within those agencies, the authority to abrogate the time requirements, notice requirements, and deadlines for final action on applications for permits, licenses, rates, and other approvals under any statutes or rules under which such applications are deemed to be approved unless disapproved in writing by specified deadlines, and all such time requirements that have not yet expired as of the date of this Executive Order are hereby suspended and tolled to the extent needed to meet this emergency.

G. I hereby give all agencies of the State with employees certified by the American Red Cross as disaster service volunteers within the meaning of Section 110.120(3), Florida Statutes, the authority to release any such employees for such service as requested by the American Red Cross as needed to meet the emergency.

Section 9. I hereby find that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies may be inadequate to pay the costs of this disaster. In accordance with Section 252.37(2), Florida Statutes, to the extent that funds appropriated to the agencies of the State and to local agencies may be inadequate to defray the costs of this disaster, I hereby direct the transfer of sufficient funds from any unappropriated surplus funds, or from the Working Capital Fund, or from the Budget Stabilization Fund.

Section 10. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by States other than the State of Florida shall be allowed to render such services in the State of Florida during this emergency for persons affected by the disaster, with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross.

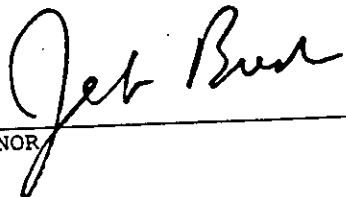
Section 11. In accordance with Sections 501.160(2) and 501.160(3), Florida Statutes, I hereby place all persons on notice that it is unlawful for any person in the State of Florida to rent or sell, or offer to rent or sell at an unconscionable price, any essential equipment, services, or supplies whose consumption or use is necessary because of the emergency. Such services shall include, without limiting the generality of the foregoing, any rental of hotel, motel, or other transient lodging facilities, and any

rental of storage facilities. In accordance with Section 501.160(1)(b), Florida Statutes, any price exceeding the average price for such essential equipment, services, or supplies for the thirty (30) days immediately preceding the date of this Executive Order shall create a presumption that the price is unconscionable unless such increase is caused by actual costs incurred in connection with such essential equipment, services, or supplies, or is caused by national or international economic trends.

Section 12. All state agencies that enter emergency final orders or rules, or take other final actions based on the existence of this emergency shall advise the State Coordinating Officer in writing of the action taken as soon as practicable, but in no event later than the expiration of sixty (60) days from the date of this Executive Order.

Section 13. This Executive Order shall be deemed to have taken effect on September 1, 2004, and all actions taken by the Director of the Division of Emergency Management with respect to Hurricane Frances before the issuance of this Executive Order are hereby ratified. This Executive Order shall expire sixty (60) days from the date hereof unless extended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 1st day of September, 2004.


GOVERNOR

ATTEST:

SECRETARY OF STATE

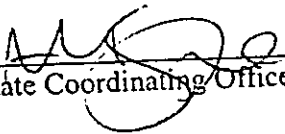
SUPPLEMENTAL ORDER (Hurricane Frances)

In accordance with the authority vested in me as State Coordinating Officer under Executive Order 04-192, I hereby determine that the Office of Insurance Regulation will be hindered in the proper performance of its duties and responsibilities in meeting this emergency without the authority to suspend certain statutes in the Insurance Code and the rules that implement the Insurance Code governing the rate and form filings relating to insurance, and the running of the time for the cancellation of homeowners, automobile, health, and other types of insurance coverage subject to the Insurance Code. Therefore, the following statutes in the Insurance Code are hereby suspended to the extent needed to meet this emergency:

1. The requirements of the Insurance Code and the rules that implement the Code are hereby suspended to the extent needed to give the Office of Insurance Regulation the authority to issue such emergency rules and orders as may be needed to place a moratorium on the cancellation of homeowners, automobile, health, and other types of insurance coverage governed by the Insurance Code. This waiver shall be automatically extended when Executive Order 04-192 is extended, but shall expire in any event ninety (90) days after the issuance of Executive Order 04-192.

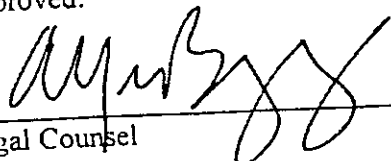
2. The requirements of the Insurance Code and the rules that implement the Code are hereby suspended to the extent needed to give the Office of Insurance Regulation the authority to issue such emergency rules and orders as may be needed to place a moratorium on rate and form filings relating to insurance. This waiver shall be automatically extended when Executive Order 04-192 is extended, but shall expire in any event ninety (90) days after the issuance of Executive Order 04-192.

September 2, 2004



State Coordinating Officer

Approved:



Legal Counsel

EM Tracker No. _____



FINAL ORDER INDEX FORM

INDEX NO.: OIR-04

DOAH NO.:

ATTORNEY: Bob Prentiss

STYLE: IN THE MATTER OF: Suspension of Certain Rules and Statutes
and Policy Provisions Based on State of Emergency – Natural
Disaster
Early Prescription Refills.

TYPE: EMERGENCY ORDER

DATE FILED: 09-10-04

CASE NO.: 78190-04

DIVISION: Office of Insurance Regulation

SUBJECT:

STATUTE: