

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; Hurricane Wilma**

Early Prescription Refills

CASE NO.: 83759-05-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 Wilma, 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 Wilma. Further, this Emergency Order is being issued pursuant to Governor Jeb Bush's Executive Order Number 05-219, declaring a state of emergency in Florida on October 19, 2005. Executive Order 05-219 is attached as Exhibit 1.

4. 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 relating to insurance, and certain provisions found in policies and group policies for health insurance and health maintenance organizations.

5. Hurricane Wilma is threatening the state, and may result in large scale evacuations.

6. 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 thirty days. Because of 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 this crisis.

7. 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.

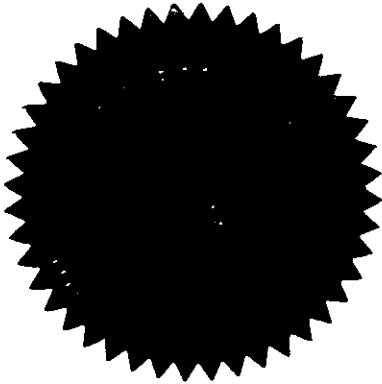
**WHEREFORE**, pursuant to the Florida Insurance Code and other applicable statutes, including, s.s 120.569(2)(n) and 252.46(2), Florida Statutes, and Governor Jeb Bush's Executive Order Number 05-219, the OFFICE finds that as a result of the direct effects of the impact of Hurricane Wilma, an immediate 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 December 18, 2005, 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 20<sup>th</sup> day of October, 2005.



Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation

EXHIBIT:  
Executive Order 05-219, October 19, 2005

### 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.

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 05-219

**WHEREAS**, on July 7, 2005, Executive Order 05-139 declared a state of emergency because of Hurricane Dennis, which passed near the Keys and West Coast of the State of Florida, made landfall on the Panhandle of the State of Florida as a Category Three Hurricane on July 10, 2005, and caused millions of dollars worth of damage to property and rendered homes and other buildings unsuitable for use and habitation; and

**WHEREAS** on August 24, 2005, Executive Order 05-176 declared a state of emergency because of Hurricane Katrina, which made landfall in South Florida on August 25, 2005, as a Category One Hurricane, causing hundreds of thousands of dollars worth of damage to property in Monroe County, and later devastated the Gulf Coast, causing additional property damage in the Panhandle of Florida; and

**WHEREAS**, on September 18, 2005, Executive Order 05-183 declared a state of emergency because of Tropical Depression 18, which became Hurricane Rita and grazed the Florida Keys as a Category Two Hurricane on September 20, 2005, causing hundreds of thousands of dollars worth of damage to property in Monroe County; and

**WHEREAS**, the State of Florida is now trying to recover from the cumulative impact of Hurricane Rita, Hurricane Katrina, Hurricane Dennis and the 2004 hurricanes, and to provide assistance to evacuees from Gulf Coast areas devastated by Hurricane Katrina; and

**WHEREAS**, on October 18, 2005, the National Hurricane Center advised that Hurricane Wilma formed in the northwestern Caribbean Sea, or about 500 miles to the south of Key West, Florida, with sustained surface winds of 80 miles per hour; and

**WHEREAS**, on October 19, 2005, the National Hurricane Center has advised that Hurricane Wilma has strengthened further to Category 5 hurricane status (175 mph), and has

the potential to make landfall as a Category 4 (135 mph) in or near the Florida Keys or southwest Florida by Saturday, October 22, 2005.

**WHEREAS**, the National Hurricane Center has also advised that Hurricane Wilma could produce in excess of 6 inches of rainfall across portions of the Florida peninsula; and

**WHEREAS**, Hurricane Wilma threatens a number of communities in the State of Florida with extreme weather conditions that pose an immediate danger to the lives and property of the residents of those communities; and

**WHEREAS**, it is likely that Hurricane Wilma will strike those communities, so that the immediate evacuation of persons from those communities is vital to the safety of the residents; and

**WHEREAS**, special equipment, personnel and other resources may be needed 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**, 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; and

**WHEREAS**, additional emergency measures may be needed to protect the lives and property of the people in the threatened communities and the general welfare of the State of Florida;

**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 Wilma, alone and in combination with the destruction caused by Hurricane Rita, Hurricane

Katrina, Hurricane Dennis and the 2004 hurricanes, threatens the State of Florida with a major 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 Wilma. 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 Wilma.

Section 2. I hereby incorporate Executive Order 05-183 by reference into this Executive Order. All mission assignments and orders issued by the State Coordinating Officer and Deputy State Coordinating Officers in connection with Hurricane Rita under the authority of Executive Order 05-183, are hereby ratified and extended as if issued on this date. Executive Order 05-183 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 subject to the limitations of Section 252.33, Florida Statutes, 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 to and from such other states that are made available 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 as directed by the State Coordinating Officer.**

B. 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.

C. 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 suspend enforcement of Florida registration, weight limits, and fuel tax requirements for apportioned vehicles and the hours of service requirements for such vehicles and any vehicles transporting emergency equipment, services and supplies; 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.

D. 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.

E. 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.

F. 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.

G. 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.

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 or from the Budget Stabilization Fund. As directed by the State Coordinating Officer, agencies of the State of Florida and local agencies receiving these funds shall timely seek reimbursement for the State of Florida as provided under Section 252.929, Florida Statutes, the Emergency Management Assistance Compact, and other compacts, agreements, and laws.

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 or the Florida Department of Health.

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, the consumption or use of which 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 October 19, 2005, and all actions taken by the Director of the Division of Emergency Management with respect to Hurricane Wilma 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 19th day of October, 2005.

*John Bush*  
GOVERNOR

ATTEST:

*Glenda E. Hood*  
SECRETARY OF STATE

DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA  
2005 OCT 19 PM 8:23

FILED