



OFFICE OF INSURANCE REGULATION

**FILED**

SEP 5 2008

KEVIN M. McCARTY  
COMMISSIONER

OFFICE OF  
INSURANCE REGULATION  
Docketed by: WCS

**IN THE MATTER OF:**

**Emergency- Natural Disaster**

Early Prescription Refills

**CASE NO.: 97568- 08-EO**

Hurricane Ike  
\_\_\_\_\_ /

**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 Ike, 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 Section 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 Section 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), 252.46 and 252.63, 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 Ike. Further, this Emergency Order is being issued pursuant to Section 4 of Governor Charlie Crist’s Executive Order Number 08-187, declaring a state of emergency in Florida on September 5, 2008. Executive Order Number 08-187 is attached as Exhibit 1.

4. Hurricane Ike is threatening the state, and may result in large scale evacuations.

5. 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.

6. 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.

7. Section 252.358, Florida Statutes provides, in part, that: "All health insurers, managed care organizations, and other entities that are licensed by the Office of Insurance Regulation and provide prescription medication coverage as part of a policy or contract shall waive time restrictions on prescription medication refills, which include suspension of electronic "refill too soon" edits to pharmacies, to enable insureds or subscribers to refill prescriptions in advance, if there are authorized refills remaining, and shall authorize payment to pharmacies for at least a 30-day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled by a pharmacist..." The issuance of Executive Order 08-187 activates the provisions of section 252.358, Florida Statutes.

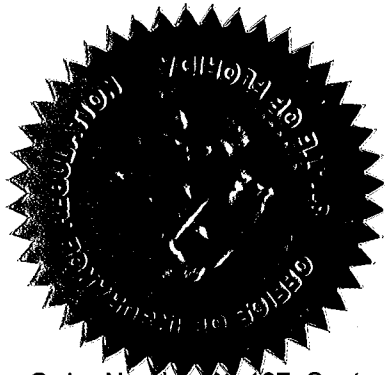
**WHEREFORE**, pursuant to the Florida Insurance Code and other applicable statutes, including, Sections 120.569(2)(n) , 252.46(2), and 252.63 Florida Statutes, and Governor Charlie Crist's Executive Order Number 08-187, the Office finds that as a result of the direct effects of the statewide impact of Hurricane Ike, 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 October 5, 2008, 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 5<sup>th</sup> day of September, 2008.



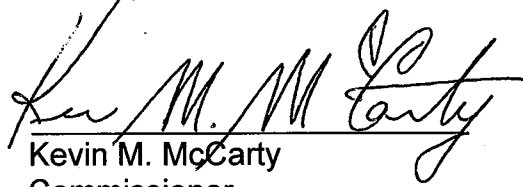
  
Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation

EXHIBIT:  
Executive Order Number 08-187, September 5, 2008.

## NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 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

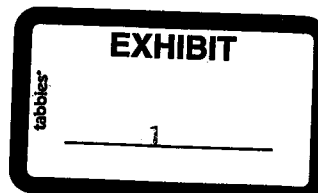
## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 08-187 (Emergency Management – Hurricane Ike)

I am issuing an Executive Order to declare a state of emergency due to the threat Hurricane Ike poses to the State of Florida and to ensure timely precautions are taken to protect communities and the general welfare of this state as well as initiate measures to provide assistance to other states in need.

On September 3, 2008, Hurricane Ike became the fifth hurricane of the season and the fourth tropical system to threaten the state within the last four weeks. The National Hurricane Center is forecasting that Ike may make landfall along the eastern coastline of the Florida peninsula as a major hurricane. Ike is likely to produce sustained hurricane force winds exceeding 115 miles per hour, flash flooding, rip currents, storm surge and tornadic activity. Rough surf and large waves produced by Hurricane Ike could cause moderate to major coastal flooding and beach erosion. The National Hurricane Center forecasts Ike to produce significant rainfall causing flooding in communities already inundated by heavy rainfall from Tropical Storm Fay.

As Governor, I am responsible to meet the dangers presented to this state and its people by this emergency. Therefore, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the State Emergency Management Act (Chapter 252, Florida Statutes), and all other applicable laws, I promulgate the following Executive Order:



Section 1. Based on the foregoing, I declare that this event threatens the State of Florida with a major disaster, and proclaim a state of emergency exists for the entire state.

Section 2. I designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency and direct him to activate the state's Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency. Pursuant to section 252.36(1)(a), Florida Statutes, I delegate to the State Coordinating Officer the authority to exercise those powers delineated in sections 252.36(5)-(10), Florida Statutes, which he shall exercise as needed to meet this emergency, subject to the limitations of section 252.33, Florida Statutes. In exercising the powers delegated by this Order, the State Coordinating Office shall confer with the Governor to the fullest extent practicable. The State Coordinating Officer shall also have the authority, as necessary to best meet this emergency, to:

A. Invoke and administer the Emergency Management Assistance Compact, Part III, Chapter 252, Florida Statutes, and other compacts and agreements existing between Florida and other states and to coordinate the allocation of resources from other states that are made available to Florida under such compacts and agreements.

B. Seek direct assistance with any and all agencies of the United States Government as may be needed to meet the emergency.

C. Direct all state, county, 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 direction and coordination of the State Coordinating Officer.

D. Designate such Deputy State Coordinating Officers.

E. Enter such orders as may be needed to implement any or all of the foregoing powers.

Section 3. I order the Adjutant General to activate the Florida National Guard for the duration of this emergency, and I place the National Guard under the coordination and direction of the State Coordinating Officer for the duration of this emergency.

Section 4. I also find that the special duties and responsibilities resting upon some state, county, regional and local governmental agencies in responding to the emergency may require them to deviate from the statutes, rules, ordinances and orders they administer, and I delegate to such agencies the authority to waive or deviate from such statutes, rules, ordinances or orders the extent that such actions are needed to cope with this emergency. Any waiver of statutes, rules, ordinances or order shall expire in thirty (30) days from the date of this Executive Order unless extended (in increments of no more than thirty days) by the agency.

Without limiting the generality of the foregoing, I order the following as needed to meet this emergency:

A. I give all state agencies whose employees are 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.

B. I authorize the Department of Transportation (Department) to waive the collection of tolls and other fees and charges for the use of the Turnpike and other public highways, to the extent such waiver may be needed to provide emergency assistance or facilitate the evacuation of the affected counties; to reverse the flow of traffic or close any and all highways and portions of highways as may be needed for the safe and efficient transportation of evacuees to those counties which the State Coordinating Officer may designate as destination counties for evacuees in this emergency; to suspend enforcement of the registration requirements pursuant to section(s) 316.545(4) and 320.0715, Florida Statutes for commercial motor vehicles that enter Florida to provide emergency services or supplies, to transport emergency equipment, supplies or personnel, or to transport FEMA mobile homes or office style mobile homes into or from Florida; to waive the hours of service requirements for such vehicles; 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. The Department shall also have the authority to waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment, services and supplies or fallen timber for harvesting, allowing the establishment of alternate size and weight restrictions for all such vehicles for the duration of the emergency. In doing so, the Department shall issue permits and such vehicles shall be subject to such special conditions as the Department may endorse on any such permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or the carrier, owner, or driver of any vehicle from compliance with any restrictions other than those specified in

this Executive Order, or from any statute, rule, order or other legal requirement not specifically waived herein or by supplemental order by the State Coordinating Officer.

C. I authorize the Executive Director of the Department Highway Safety and Motor Vehicles to suspend the International Registration Plan requirements pursuant to section 320.0715, Florida Statutes, and the license fees or taxes imposed on vehicles pursuant to Chapter 207, Florida Statutes, as they relate to commercial motor vehicles that enter Florida to provide emergency assistance or services, or transport emergency equipment or personnel.

D. In accordance with section 465.0275, Florida Statutes, pharmacists are authorized to dispense up to a 30-day emergency prescription refill of maintenance medication to persons who reside in an area or county covered under this Executive Order and to emergency personnel who have been activated by their state or local agency but who do not reside in an area or county covered by this Executive Order.

E. I give all state agency heads responsible for the operation and public use of state buildings and facilities the authority to close such buildings and facilities in those portions of the state affected by this emergency.

F. I give all state, county, regional and local governmental agency heads 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 application are deemed to be approved unless disapproved in writing by specified deadlines. All such time requirements that have not yet expired as of the date of this Executive Order are suspended and tolled.

Section 5. I designate all state, county, regional and local governmental facilities including, but not limited to, public elementary and secondary schools, community colleges, and state universities, at the discretion of the State Coordinating Officer for use as shelters to ensure the proper reception and care of all evacuees.

Section 6. I find that the demands placed upon funds regularly appropriated to state, county, regional and local governmental agencies may be inadequate to pay the costs of this disaster. In accordance with section 252.37(2), Florida Statutes, I direct the transfer of sufficient funds from any unappropriated surplus or from the Budget Stabilization Fund.

Section 7. All state, county, regional and local governmental agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously or as soon as is practicable.

Section 8. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by states other than the State of Florida are authorized to render such services in Florida during this emergency for persons affected by this emergency 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 9. Pursuant to section 501.160, Florida Statutes, it is unlawful and a violation of section 501.204, Florida Statutes, for a person to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services,

provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

Section 10. All actions taken by the Director of the Division of Emergency Management with respect to this emergency before the issuance of this Executive Order are ratified. This Executive Order shall expire sixty (60) days from this date 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 5 day of September 2008.

*Charlie Crist*  
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CHARLIE CRIST

ATTEST:

*[Signature]*  
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DEPARTMENT OF STATE

**FILED**  
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DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA