



# Left in the Dark:

The impact of the  
2021 Texas Blackout  
on Long-Term Care  
Residents and the  
Need to Improve  
Emergency  
Preparedness

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**AN INVESTIGATION**  
BY THE MAJORITY STAFFS  
OF THE U.S. SENATE  
FINANCE COMMITTEE  
AND U.S. SENATE SPECIAL  
COMMITTEE ON AGING



# Note to Reader

The following report was developed by the Majority staffs of the Senate Committee on Finance and the Senate Special Committee on Aging at the direction of Chairman Wyden and Chairman Casey, respectively. This document has been printed for informational purposes. It does not represent findings or recommendations formally adopted by the Committees. References to “the Committees” refers to work conducted by the Finance and Aging Majority staff in furtherance of the investigation.

The report makes reference to long-term care facilities by different names.

References to “nursing home” should be understood to mean skilled nursing or nursing facilities participating in the Medicare and/or Medicaid programs, which are subject to federal regulations contained in 42 CFR §483.

References to “assisted living facilities” should be understood to mean facilities where older adults, people with disabilities or other people needing assistance with daily care live. Assisted living facilities are typically regulated by states through the departments of health, housing and/or commerce, but do not participate in the Medicare and Medicaid programs, so are not subject to federal oversight through the Social Security Act. Assisted living facilities are frequently located on the same grounds, and even within the same buildings, of nursing homes, as part of a continuum of care.

References to “long-term care facilities” should be understood to encompass both nursing homes and assisted living facilities.



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# FOREWORD



The Texas blackouts in February 2021 cast much of the state into darkness, leaving millions of residents without power for days as an arctic front blanketed the central United States with sub-freezing temperatures. Residents of nursing homes and assisted living facilities in Texas were hit hard by the direct and indirect effects of the blackout, including widespread water system failures that left nearly half the state’s residents without access to potable water.

More than 500 nursing homes in Texas reported incidents, including electricity outages, water shortages and evacuations, to the State’s health department. Another 600 assisted living facilities reported being affected. The Texas Long-Term Care Ombudsman, charged by federal and state law with representing the interest of residents, reported that more than 80 long-term care facilities were evacuated. The Texas Ombudsman, Patty Ducayet, said the winter storms and ensuing blackout were the worst disaster she has experienced in 15 years in the position.

This report tells the story of the older adults and people with disabilities living in long-term care facilities who were affected by this disaster. It shines a light on other disasters that have affected nursing homes in more than a dozen states since 2018, including our home states of Oregon and Pennsylvania. The report also highlights troubling findings by the Office of the Inspector General for the Department of Health and Human Services, which identified serious emergency preparedness shortfalls at nursing homes in eight states. Finally, the report lays out recommendations that seek to address the problems identified.

Disasters can affect residents of long-term care facilities directly—tornadoes tearing the roof off a nursing home, wildfires degrading air quality for residents with breathing difficulties, floods forcing hurried evacuations. Disasters can also affect facilities indirectly when electricity and water services are interrupted, whether the result of an arctic blast destabilizing the grid, a hurricane tearing down power lines, or an attacker seeking to destroy key infrastructure. The common theme is that no matter the cause of the emergency, long-term care facilities must be prepared to protect their residents, whether by sheltering in place with adequate supplies and a safe environment for residents or, when left with no safe options, evacuating.

While the timing and type of disasters cannot always be predicted, the risks can be anticipated and prepared for through robust assessments and plans, frequent training, and maintenance of equipment and supplies.

The report’s recommendations call for developing more inclusive disaster planning and management; improving the transparency related to nursing home emergency preparedness plans; and ensuring adequate staffing of nursing homes and the state agencies that oversee them. These recommendations draw on the report’s findings, as well as Senator Casey’s READI for Disasters Act, which calls for including older adults and people with disabilities in emergency planning and management. The report

also restates 18 recommendations Senator Wyden issued in his 2018 report, *Sheltering in Danger*, which has drawn support from patient advocates, a major nursing home industry group and federal regulators.

The findings and recommendations of this report are critical as the number of disasters and extreme weather events affecting our nation increases, a trend scientists attribute to climate change. In turn, more frequent disasters and extreme weather events have contributed to more frequent utility service failures, which are leaving larger numbers of people without power for longer periods of time. Congress sought to address these issues for the first time in nearly a generation through the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, but more work remains to be done.

The issues, lessons and recommendations that follow should also be considered in the context of the COVID-19 pandemic. One of the major contributing factors to the pandemic's tragic impact on nursing home residents and workers was a lack of preparation—not only by the facilities, but the federal and state governments that oversee them. The Committees reasonably believe that implementation of the recommendations contained in this report would have eased some of these effects, reducing the number of nursing home residents who died.

The report's findings should also be viewed through the lens of persistent health disparities experienced by communities of color in our nation's nursing homes. For example, research has found that racial and ethnic minorities are more likely to be residents of understaffed nursing homes. Understaffing contributes to lower quality of care, resulting in worse health outcomes, and can also hinder emergency preparedness and management. In addition, the COVID-19 pandemic took a disproportionate toll on communities of color, further exacerbating these disparities.

The challenges facing nursing homes and their residents were put into sharp relief during the pandemic, prompting us to introduce the Nursing Home Improvement and Accountability Act in 2021. That legislation proposed policies that balance robust oversight and greater transparency with sustainable support, such as increased funding and technical assistance—causes for which we will continue to fight.

With more than 1.1 million people living in nearly 15,000 nursing homes across our nation, these providers are a critical component of the nation's health care infrastructure. With recent projections showing that 80 million people aged 65 or older will be living in the United States by 2040—twice the number in 2000—we have a collective responsibility to work together to ensure nursing homes are delivering quality care.

These issues will not solve themselves; they require hard work, investment and compromise by Congress, federal and state regulators, and stakeholders. We hope that this report will contribute to that important discussion.

Sincerely,



Ron Wyden  
Chairman  
Senate Committee on Finance



Robert P. Casey, Jr.  
Chairman  
Senate Special Committee on Aging



## PART I: INTRODUCTION

In February 2021, winter storms descended on the central and southern plains of the United States, followed by an arctic front that resulted in a week of unusually cold temperatures for the region. In the days that followed, a series of system failures led to severe imbalances in electricity supply and demand. In response, grid operators took the extraordinary step of stopping the delivery of power to millions of customers.

Electrical outages occurred in Arkansas, Kansas, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Texas, according to congressional testimony of the North American Electric Reliability Corporation (NERC), which together with the Federal Energy Regulatory Commission (FERC), establishes and enforces reliability standards for the bulk power system.<sup>1</sup>

Texas experienced, by far, the most severe, long-lasting and widespread power outages, as the state’s balancing authority cut power to millions of customers—emergency actions on an unprecedented scale in the nation’s history.<sup>2</sup> As a result, an estimated 4 million customers, representing nearly 11 million people, lost power in the state.<sup>3</sup> More than 200 deaths and \$100 billion in financial losses have been attributed to storm and power outages in Texas.<sup>4</sup> Press reports have suggested the death toll related to the storm may be substantially higher.<sup>5</sup> The Texas blackout is considered to be among the most significant bulk power system failure in the nation’s history.

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<sup>1</sup> *Power Struggle: Examining the 2021 Texas Grid Failure, Before the Committee on Energy and Commerce*, 117th Cong. 17 (2021) (statement of James B. Robb) at 46, available at <https://www.govinfo.gov/content/pkg/CHRG-117hrg46582/pdf/CHRG-117hrg46582.pdf> [hereinafter, Energy and Commerce Hearing]. NERC is “a not-for-profit international regulatory authority with a mission to assure the effective and efficient reduction of risks to the reliability and security of the grid.”

<sup>2</sup> U.S. Federal Energy Regulatory Commission, *FERC, NERC and Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States* (November, 2021), at 9, available at <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and> [hereinafter, FERC Report].

<sup>3</sup> Garrett Golding, Anil Kumar, Karel Mertens, “Cost of Texas’ 2021 deep freeze justifies weatherization,” *Federal Reserve Bank of Dallas*, April 15, 2021, <https://www.dallasfed.org/research/economics/2021/0415>.

<sup>4</sup> Patrick Svitek, “Texas puts final estimate of winter storm death toll at 246,” *The Texas Tribune*, January 2, 2022, <https://www.texastribune.org/2022/01/02/texas-winter-storm-final-death-toll-246/amp/>. See also, *Id.*, and *supra*, note 2, FERC Report, at 9.

<sup>5</sup> Peter Aldhous, Stephanie M. Lee, Zahra Hirji, “The Texas Winter Storm and Power Outages Killed Hundreds More People Than the State Says,” *Buzzfeed News*, May 6, 2021, <https://www.buzzfeednews.com/article/peteraldhous/texas-winter-storm-power-outage-death-toll>; Zach Despart, “Death spike hints at undercount of freeze toll,” *Houston Chronicle*, February 27, 2022, retrieved from LexisNexis. Both articles cite statistical analyses of “excess mortality” during the storm and blackouts, which the Centers for Disease Control and Prevention describes as “the difference between the observed numbers of deaths in specific time periods and expected numbers of deaths in the same time periods.” See also U.S. National Oceanic and Atmospheric Administration, *U.S. Billion-Dollar Weather and Climate Disasters 1980-2022* (2023), at 5, available at <https://www.ncei.noaa.gov/access/billions/events.pdf>. NOAA similarly noted in *Northwest, Central, Eastern Winter Storm and Cold Wave*, “these extreme conditions also caused or contributed to the direct and indirect deaths of more than 210 people in Texas alone. This count does not include excess mortality that may be hundreds of additional deaths.”

## Long-Term Care Residents Were Hit Hard by the Texas Blackouts

Older adults and people with disabilities living around the state in long-term care facilities, including nursing homes and assisted living facilities, were severely affected by the storm and subsequent loss of power and water. More than 570 of the roughly 1,200 nursing homes in Texas reported emergencies to the state’s Health & Human Services Commission (Texas HHSC), according to data analyzed by the U.S. Senate Committee on Finance and the U.S. Senate Committee on Aging (“Committees”). More than 100 nursing homes lost power and more than 300 nursing homes lost access to potable water. At least 1,400 residents from at least 80 nursing homes and assisted living facilities were evacuated, according to data provided to the Committees by Texas HHSC and the Texas Long-Term Care Ombudsman (“Texas Ombudsman”). Two people at assisted living facilities died, according to testimony by Texas AARP before the Texas State House.<sup>6</sup>

The Texas Ombudsman, Patty Ducayet, told the Committees that the winter weather and subsequent blackouts were the “worst disaster” she has experienced in 15 years on the job, observing that, unlike past hurricanes where effects were centralized, the blackouts left the entire state in an emergency stance.<sup>7</sup> Charged by state and federal law with advocating for residents of long-term care facilities, the Texas Ombudsman voiced concern about the winter emergency’s impact on long-term care residents, citing risks including “transfer trauma” for those who were hurriedly evacuated, increased risk of COVID-19 transmission, the physical impacts of extreme cold on residents’ health, and water loss at facilities.<sup>8</sup>

Following the winter storm and blackouts, state Representative Ed Thompson (R-Pearland) introduced legislation that would have required nursing homes and assisted living facilities in Texas to have generators on site.<sup>9</sup> The State of Maryland adopted similar policies in 2006 following Hurricane Isabel, which left more than 1.2 million residents in the state without power in 2003, which one press account at the time described as the state’s worst outage in history.<sup>10</sup> The legislator who sponsored the measure said Hurricane Katrina underscored the need for such a bill.<sup>11</sup> Florida also put in place a generator requirement for long-term care facilities in 2018, following the death of residents at the Rehabilitation Center at Hollywood Hills in the days after Hurricane Irma.<sup>12</sup>

For his part, Representative Thompson first conceived of the legislation after visiting an assisted living facility in his district south of Houston that lost power during a hurricane, leaving residents reliant on oxygen unable to operate their breathing devices.<sup>13</sup> Representative Thompson told his colleagues that the events of February 2021 were much more significant and demanded action:

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<sup>6</sup> Texas House of Representatives, *Hearing Before the Committee on Human Services*, 87th Legislature, Regular Session (April 6, 2021) (testimony of Amanda Fredriksen), at 51:00, available at [https://tlchouse.granicus.com/MediaPlayer.php?view\\_id=46&clip\\_id=20107](https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=20107) [hereinafter, Texas House Hearing].

<sup>7</sup> Phone call between Patty Ducayet and the Majority staff of the U.S. Senate Committee on Finance and the U.S. Senate Special Committee on Aging (January 4, 2022); see also Appendix A, Ex. 1, Letter from Texas Nursing Home Ombudsman to Chairman Wyden and Chairman Casey, January 28, 2022, at 2 [hereinafter, Texas Ombudsman Letter]. In her letter, Ms. Ducayet described the events of February 2021 as “a disaster the scale of which I had never experienced before.”

<sup>8</sup> *Id.*, Texas Ombudsman Letter, at 2.

<sup>9</sup> H.B. 2325, Texas House of Representatives, 87th Legislature, available at <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB2325>.

<sup>10</sup> Md. Code Ann., Health—Gen. § 19-1812 (West 2022); Alec MacGillis, Chris Guy, Heather Dewar, “Isabel leaves a wet mess,” *Baltimore Sun*, September 20, 2003, retrieved from LexisNexis.

<sup>11</sup> *The Capital Gazette*, “Regional Digest—Costa optimistic about generator bill,” March 9, 2006, retrieved via LexisNexis.

<sup>12</sup> Alex Spanko, “Florida’s Nursing Home Generator Rule Finally Becomes Law,” *Skilled Nursing News*, March 26, 2018, <https://skillednursingnews.com/2018/03/florida-nursing-home-generator-rule-finally-becomes-law/>.

<sup>13</sup> *Supra*, note 6, Texas House Hearing (testimony of Ed Thompson), at 33:10.

We got phone calls from people from the panhandle all the way down to south Texas about this issue. ... It's [an issue] that certainly we had a lot of concern about before—and being in the area that we're in with hurricanes and the things that we deal with in our area—but it was clear to me that this was something that did impact everyone in Texas. And as a lot of you know, Texas is sort of known for its severe weather, no matter where you are.<sup>14</sup>

At the same hearing, Amanda Fredriksen, of Texas AARP, relayed stories the organization received from members following the storm and blackouts:

Every time there is some kind of a disaster, we hear from folks about what went wrong, what didn't work. ... We have, I believe, over 4,000 emails from members talking about what didn't work during [winter storm] Uri, and in those emails are numerous stories of people in nursing homes and assisted living facilities. ... One member in an assisted living facility ... talked about the facility being without power for three days, temperatures being in the 50s, no electricity. ... Others ... had to go and try and take their loved ones out of facilities because temperatures were below the 50s. Y'all can kind of get where this is going.<sup>15</sup>

The Texas winter storm and blackouts join a long list of weather-related emergencies that have affected nursing homes and other long-term care facilities where older adults and people with disabilities live. A great deal of public attention is rightfully paid to the toll that hurricanes take on nursing home residents, especially when the inadequate maintenance or execution of emergency preparedness plans lead to injury or death of residents. However, in recent years, floods, tornadoes, wildfires and arctic blasts are among the extreme weather events that have prompted evacuations of nursing homes and assisted living facilities; damaged or destroyed such facilities; and taken or threatened the lives of residents and workers.

## **The Texas Winter Storm and Blackouts in Context of More Frequent Extreme Weather**

It is tempting to view the 2021 winter storm and blackouts in a vacuum or as a stand-alone event. However, the events in Texas are more properly considered in the context of more frequent, severe and long-lasting power outages being triggered by increasingly common extreme weather events affecting every corner of the nation.

While severe, the arctic blast that hit Texas in February 2021 was not unprecedented: past cold weather events in the state resulted in similarly low temperatures for similar spans of time.<sup>16</sup> Federal regulators characterized the circumstances leading up to the 2021 blackouts as a “perfect storm” that severely affected the operations of three regional grid operators in the south-central United States.<sup>17</sup> However, the 2021 winter event was the fourth cold-weather-related event in the last 10 years to jeopardize the bulk electric system.<sup>18</sup> Moreover, a real risk remains that “another severe cold weather event ... could again hobble generating unit capacity,” an issue raised in a recent *Science* article that linked the Texas

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<sup>14</sup> *Id.*, at 34:33.

<sup>15</sup> *Id.* (testimony of Amanda Fredrickson), at 51:30.

<sup>16</sup> *Supra*, note 2, FERC Report, *see* “Appendix B: Comparison of Similar Severe Weather Events,” at 2.

<sup>17</sup> *Id.*, at 127. The three authorities were Electric Reliability Council of Texas (ERCOT), Midwest Independent System Operator (MISO), and Southwest Power Pool (SPP).

<sup>18</sup> *Id.*, at 9. *See also*, at 47-50. “...although the Event was unusually cold, severe cold and freezing precipitation are far from unprecedented for winter in the Event Area. For example, other prior cold weather events had lower average daily temperatures for some days during each event.”

freeze to warming temperatures in the Arctic.<sup>19</sup> Less than two years after the February 2021 blackout, the state’s electricity supply was once again threatened during a December 2022 arctic blast that resulted in 1.5 million people across the United States losing power.<sup>20</sup>

A senior Department of Energy researcher, testifying before the U.S. House of Representatives, compared the events of February 2021 to other disasters:

We must view the Texas outage in the context of numerous other storms that have devastated areas such [as] Puerto Rico, New Orleans, and other coastal regions over the past few decades. Additionally, winter storms and wildfires continue to cause seasonal power outages in other parts of the country.<sup>21</sup>

Indeed, the Texas winter storm—and subsequent blackout—was one of more than 89 weather- or climate-related events from 2017 to 2022 in the United States that caused damage exceeding \$1 billion (adjusted for inflation)—26 percent of such events that have taken place since 1980.<sup>22</sup> The Wall Street Journal and Washington Post have both reported in recent years on the challenges that climate change is posing for the reliability of U.S. utilities, including entities involved in the generation, transmission and distribution of electricity.<sup>23</sup> Both news organizations reported on the ways in which extreme temperatures, coupled with more frequent and intense extreme weather events, are resulting in power outages occurring more often, lasting longer and affecting more customers. U.S. Energy Information Administration (EIA) data show that U.S. electricity consumers, on average, experienced longer periods of electricity interruptions from 2017-2020 than they had during the previous four years.<sup>24</sup>

The increasing frequency of extreme weather events has prompted electric generators and distributors to disclose climate change risks to investors. For example, First Energy began including the “physical risk” of climate change among the business risks listed in annual reports filed with the Securities and Exchange Commission in 2010. First Energy stated at the time that climate change could result in “more frequent or more extreme weather events, changes in temperature and precipitation patterns,” which could, in turn, “affect some, or all of our operations,” and contribute to service disruptions for customers.<sup>25</sup> The company, which today is one of the nation’s largest investor-owned utilities with more

<sup>19</sup> *Id.*, at 193, see Key Recommendation 3. See also, Judah Cohen, et al., “Linking Arctic variability and change with extreme winter weather in the United States,” (September 1, 2021), available at <https://www.science.org/doi/10.1126/science.abi9167>.

<sup>20</sup> Deep Vakil, “U.S. regulators to probe power outages during historic winter storm,” *Reuters*, December 28, 2022, <https://www.reuters.com/world/us/us-regulators-probe-power-outages-during-historic-winter-storm-2022-12-28/>.

<sup>21</sup> *Lessons Learned from the Texas Blackouts: Research Needs for a Secure and Resilient Grid, Hearing Before the Committee on Science, Space and Technology*, 117th Cong. 5 (2021) (testimony of Juan Torres), at 44, available at <https://www.govinfo.gov/content/pkg/CHRG-117hhrg43633/pdf/CHRG-117hhrg43633.pdf> [hereinafter, Science, Space and Technology Hearing].

<sup>22</sup> NOAA National Centers for Environmental Information, “Billion-Dollar Weather and Climate Disasters,” 2023, available at <https://www.ncei.noaa.gov/access/metadata/landing-page/bin/iso?id=gov.noaa.nodc:0209268>; see Summary Statistics 1980-2022.

<sup>23</sup> Arian Campo-Flores, Katherine Blunt, “America’s Infrastructure Struggles With New Weather Forecast,” *Wall Street Journal*, November 15, 2021, <https://www.wsj.com/articles/america-infrastructure-climate-change-extreme-weather-rain-heat-11636755095>; Douglas MacMillan, Will Englund, “Longer, more frequent outages afflict the U.S. power grid as states fail to prepare for climate change,” *The Washington Post*, October 24, 2021, <https://www.washingtonpost.com/business/2021/10/24/climate-change-power-outages/>.

<sup>24</sup> U.S. Energy Information Administration, *U.S. electricity customers experienced eight hours of power interruptions in 2020* (November 10, 2021), available at <https://www.eia.gov/todayinenergy/detail.php?id=50316>. The committees note that electric system infrastructure has become a target for physical attacks by criminals and terrorists, posing another potential risk to system reliability. The U.S. Department for Homeland Security warned in January 2023 that “domestic extremists have been developing ‘credible, specific plans’ to attack electricity infrastructure since at least 2020.” Michael Kunzelman, Jonathan Drew, Rebecca Santana, “EXPLAINER: US power grid has long faced terror threat,” *The Associated Press*, December 5, 2022, <https://apnews.com/article/business-crime-shootings-race-and-ethnicity-vandalism-30655c9a64ffe1c3933bce0ac3b05616>. Cyber attacks, physical attacks, electromagnetic events and extreme weather were among the risks listed among risks that could affect U.S. power grids and lead to widespread outages, according to a recent Government Accountability Office (GAO) brief. GAO, *Electricity Grid Resilience*, GAO-21-105403 (September 2021), <https://www.gao.gov/assets/gao-21-105403.pdf>.

<sup>25</sup> FirstEnergy Corp., Form 10-K for the Fiscal Year Ended December 31, 2009, at 38, available at <https://www.sec.gov/Archives/edgar/data/20947/000103129610000011/form10k.htm>.

than 6 million customers in the Mid-Atlantic and Midwest, has continued to include similar climate change risk disclosure in its annual financial filings. In 2022, the company warned that “as extreme weather conditions increase system stress, we may incur costs relating to additional system backup or service interruptions, and in some instances, we may be unable to recover such costs.”<sup>26</sup>

Utilities have also taken to citing climate change and extreme weather events in regulatory filings to public utility commissions. PECO, the largest electric and gas utility in Pennsylvania, told the Public Utility Commission in a 2020 filing that it “has had to address the increasing frequency and severity of extreme weather events,” which it “expects to increase considering the scientific community’s consensus on the existence and significant adverse consequences of global climate change.”<sup>27</sup> PECO went on to identify 12 extreme weather events that took place in its southeastern Pennsylvania service territory since 2010 that had affected 10 percent or more of its roughly 1.7 million customers,<sup>28</sup> noting that the severity of the outages was unprecedented:

Significantly, the three largest storms in PECO’s history, which affected 2,173,087 customers in total, occurred in the last decade. In 2018, PECO’s service area experienced two major events, only five days apart, that affected more than 790,000 customers. In the wake of back-to-back winter storms Quinn and Riley in 2018, PECO had to replace or repair over 240 miles of conductors and approximately 1,796 cross-arms.<sup>29</sup>

NERC has also raised concerns about the reliability of the grid in multiple regions of the country, citing the increased effect that “extreme temperatures and prolonged severe weather conditions” are having on the bulk power system.<sup>30</sup> NERC added that “while a given area may have sufficient capacity to meet resource adequacy requirements, it may not have sufficient availability of resources during extreme and prolonged weather events.”<sup>31</sup> Among the other risks that NERC cited in its most recent reliability report included the rapidly changing electrical generation mix, a lack of back-up generation capacity, and insufficient transmission capacity.<sup>32</sup>

The increasing frequency of extreme weather events that result in sustained and widespread power outages demand greater attention to emergency preparedness for older adults and people with disabilities living in long-term care facilities. As the National Academy of Science, Engineering and Medicine noted in its 2022 review of nursing home care in the United States, “climate change poses a threat to facilities located in areas where severe weather events are becoming more common.”<sup>33</sup>

## Past Work of the Finance and Aging Committees

The Finance and Aging committees’ concern regarding the effect that the Texas blackout and other disasters have had on the residents of nursing homes is part of a long interest in the quality and safety

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<sup>26</sup> FirstEnergy Corp., Form 10-K for the Fiscal Year Ended December 31, 2021, at 18, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1031296/000103129622000013/fe-20211231.htm>.

<sup>27</sup> PECO Energy Co., *Petition of PECO Energy Company for Approval of Its Electric Long Term Infrastructure Improvement Plan for the Period January 1, 2021 through December 31, 2025*, July 2, 2022, Docket No. P-2020-, at 20, available at <https://www.puc.pa.gov/pdocs/1671114.pdf>.

<sup>28</sup> *Id.*, at 24.

<sup>29</sup> *Id.*

<sup>30</sup> North American Electric Reliability Corporation, *2022 Long-Term Reliability Assessment*, December 2022, at 5, available at [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_LTRA\\_2022.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2022.pdf).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, at 5-7.

<sup>33</sup> National Academies of Sciences, Engineering and Medicine, *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*, Washington, DC: The National Academies Press (2022), at 74-75. Available at <https://doi.org/10.17226/26526> [hereinafter, National Academies Nursing Home Report].

of nursing homes, both generally and in the context of emergency preparedness. What follows is a brief review of recent work Chairman Wyden and Chairman Casey have conducted in relation to emergency preparedness at nursing homes.

In 2018, then-Ranking Member Wyden released *Sheltering in Danger*, a comprehensive staff report examining critical safety failures at nursing homes in Texas and Florida during and after Hurricanes Harvey and Irma. The report found that these incidents, which in Florida resulted in the deaths of 12 nursing home residents at the Rehabilitation Center at Hollywood Hills, were not chance accidents. Instead, they were preventable tragedies that resulted from inadequate regulation and oversight, ineffective planning and communications protocols, and questionable decision-making by facility administrators.

The report issued 18 recommendations directed toward the Centers for Medicare & Medicaid Services (CMS), state survey agencies that oversee federally certified nursing homes, local disaster management agencies, and power companies. Among the report's key recommendations:

- Directing CMS to adopt additional requirements that specifically require emergency power capacity be capable of maintaining the safe and comfortable temperature standard;
- Calling for nursing homes to develop more robust emergency plans that are more rigorously reviewed by CMS and states; and
- Greater coordination between power companies, health providers and health regulators to ensure proper prioritization of electricity restoration when blackouts occur.

The chief medical officer for CMS testified before the Finance Committee in 2019 that the recommendations were “common sense.”<sup>34</sup> In response to written questions during the same hearing, the American Health Care Association, which represents roughly two-thirds of the nation's nursing homes, expressed support for the majority of the recommendations without modification.<sup>35</sup> More recently, the National Consumer Voice for Quality Long-Term Care, which advocates on behalf of residents, said it supports all of the report's recommendations.<sup>36</sup> Despite the broad-based support, more steps remain for CMS to fully implement the recommendations.

Chairman Casey has examined how to increase the involvement of older adults and people with disabilities, including those living in long-term care facilities, in disaster planning and management. He has drafted and introduced the Real Emergency Access for Aging and Disability Inclusion for Disasters Act (“READI for Disasters Act”), which would: ensure that people with disabilities and older adults have a voice at every stage of disaster management; require accessible information about planning for disasters; and make sure that shelters and temporary housing are accessible to older adults and people with disabilities. In 2021, he convened a hearing to further examine ways to increase inclusivity of disaster management.

In addition, Chairman Casey has been examining the severe understaffing at state survey agencies, which are charged by CMS with enforcing federal nursing home regulations, including emergency

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<sup>34</sup> *Not Forgotten: Protecting Americans from Abuse and Neglect in Nursing Homes, Hearing Before the Finance Committee*, 116th Cong. 282 (March 2019), at 43, available at <https://www.finance.senate.gov/imo/media/doc/41968.pdf>.

<sup>35</sup> Letter from David R. Gifford to Senator Chuck Grassley and Senator Ron Wyden, April 9, 2019, at 10-14, available at <https://www.finance.senate.gov/imo/media/doc/AHCA%20QFR%20for%20SFC%20March%206th%20hearing%20on%20Abuse%20in%20nursing%20homes%20FINAL.pdf>.

<sup>36</sup> Appendix A, Ex. 2, Letter from The National Consumer Voice (March 11, 2022), at 2, Appendix A [hereinafter, Consumer Voice Letter].

preparedness requirements. As discussed in Part IV of this report, states have reported that such understaffing is affecting their abilities to oversee nursing home compliance.

Chairman Wyden and Chairman Casey also introduced legislation, the Nursing Home Improvement and Accountability Act, which would modernize nursing homes by filling gaps in staffing, transparency, accountability, oversight and the structure and culture of nursing homes. In addition to increasing the overall quality of nursing home care, these steps would make nursing homes better able to prepare for, and respond to, emergencies. The bill would require nursing homes to meet minimum staffing standards, ensure a Registered Nurse is available 24 hours a day, require a full-time infection control and prevention specialist, and provide additional resources through Medicaid to support these care and staffing improvements. The bill would also increase transparency and accountability by improving data collection, providing better information to residents and their families, and enhancing the effectiveness of state surveys.

## Overview of the Report

This report is divided into four major sections:

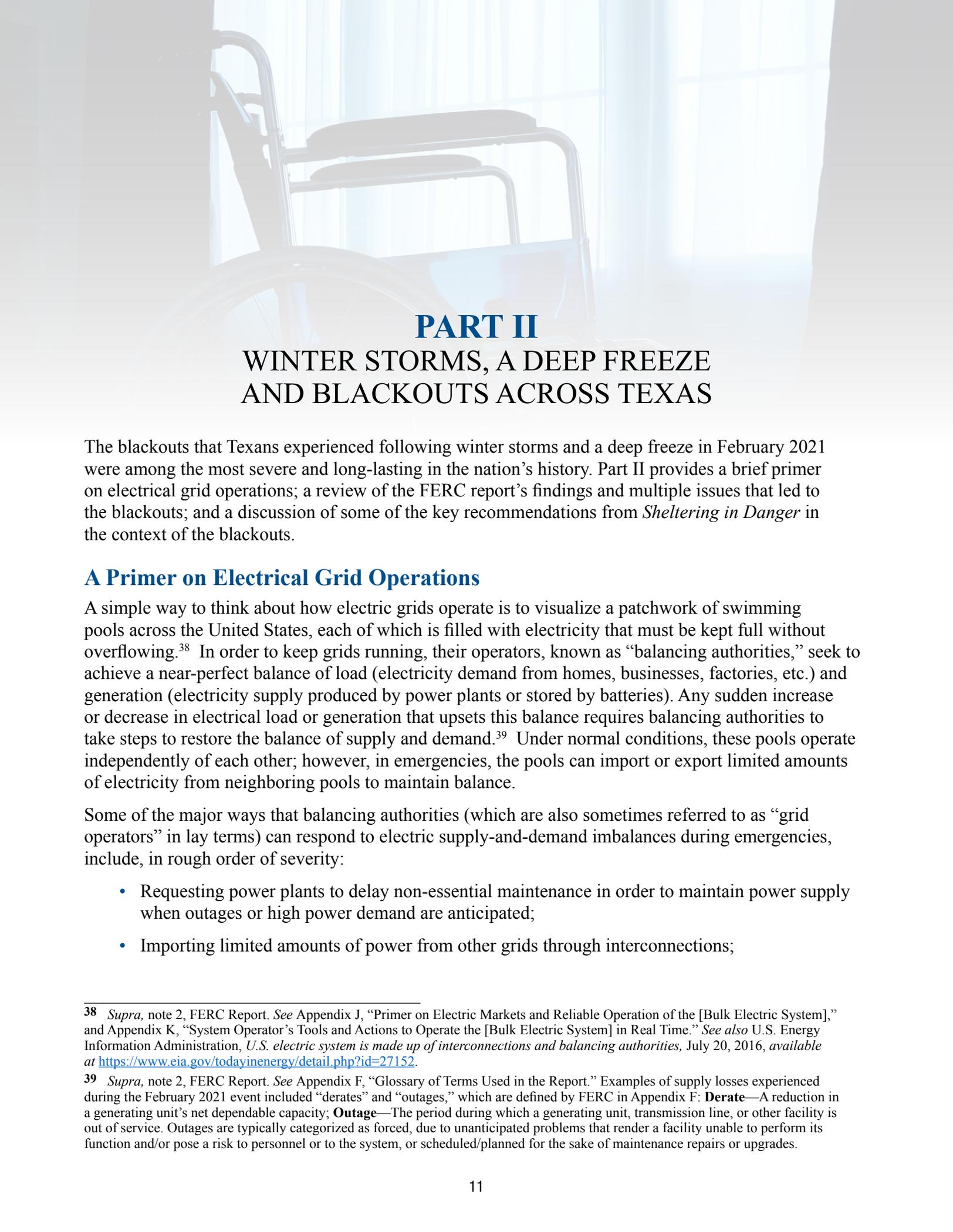
- **Part II** summarizes the issues that led to the widespread blackouts in Texas, largely derived from the findings and recommendations of a 300-page report issued by the Federal Energy Regulatory Commission (FERC), the independent federal agency overseeing the interstate transmission of electricity, natural gas and oil. The report (hereinafter “FERC report”) was prepared by FERC, NERC, regional entities charged with maintaining electric system reliability and other experts.<sup>37</sup> The section also reviews certain recommendations made by the Committees regarding emergency preparedness for nursing homes, coordination between electricity providers and health care facilities, and inclusive disaster planning for adults and people with disabilities.
- **Part III** analyzes data provided to the Committees by Texas HHSC in conjunction with stories of people who lived through the winter storm and ensuing blackouts, drawn from press reports, interviews, testimony and third-party reports.
- **Part IV** discusses the prevalence of disasters affecting nursing homes and assisted living facilities across the nation in recent years, drawing on examples of long-term facilities in 17 states that have been affected by weather-related emergencies since 2018.
- **Part V** reviews the findings of the Office of Inspector General for the Department of Health and Human Services audits examining emergency preparedness at nursing homes in eight states. An analysis of the data in these audits identified more than 2,200 instances of noncompliance with life safety and emergency preparedness requirements at 130 of the 134 nursing homes OIG visited.

The report also includes two appendixes:

- **Appendix A** contains correspondence the Committees cite in the report.
- **Appendix B** contains data from the Texas Health & Human Services Commission used in the preparation of this report.

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<sup>37</sup> *Id.*, see “Appendix A: February 2021 Cold Weather Grid Operations Inquiry Joint Team Members,” at 2.



## PART II

# WINTER STORMS, A DEEP FREEZE AND BLACKOUTS ACROSS TEXAS

The blackouts that Texans experienced following winter storms and a deep freeze in February 2021 were among the most severe and long-lasting in the nation’s history. Part II provides a brief primer on electrical grid operations; a review of the FERC report’s findings and multiple issues that led to the blackouts; and a discussion of some of the key recommendations from *Sheltering in Danger* in the context of the blackouts.

### A Primer on Electrical Grid Operations

A simple way to think about how electric grids operate is to visualize a patchwork of swimming pools across the United States, each of which is filled with electricity that must be kept full without overflowing.<sup>38</sup> In order to keep grids running, their operators, known as “balancing authorities,” seek to achieve a near-perfect balance of load (electricity demand from homes, businesses, factories, etc.) and generation (electricity supply produced by power plants or stored by batteries). Any sudden increase or decrease in electrical load or generation that upsets this balance requires balancing authorities to take steps to restore the balance of supply and demand.<sup>39</sup> Under normal conditions, these pools operate independently of each other; however, in emergencies, the pools can import or export limited amounts of electricity from neighboring pools to maintain balance.

Some of the major ways that balancing authorities (which are also sometimes referred to as “grid operators” in lay terms) can respond to electric supply-and-demand imbalances during emergencies, include, in rough order of severity:

- Requesting power plants to delay non-essential maintenance in order to maintain power supply when outages or high power demand are anticipated;
- Importing limited amounts of power from other grids through interconnections;

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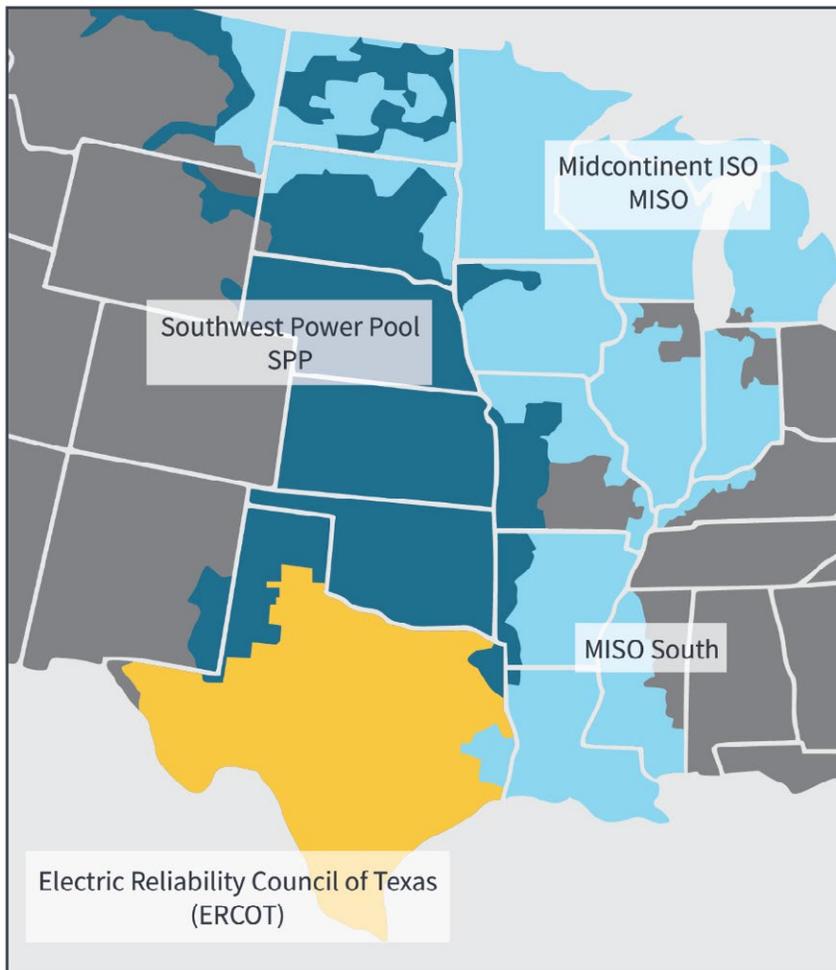
<sup>38</sup> *Supra*, note 2, FERC Report. See Appendix J, “Primer on Electric Markets and Reliable Operation of the [Bulk Electric System],” and Appendix K, “System Operator’s Tools and Actions to Operate the [Bulk Electric System] in Real Time.” See also U.S. Energy Information Administration, *U.S. electric system is made up of interconnections and balancing authorities*, July 20, 2016, available at <https://www.eia.gov/todayinenergy/detail.php?id=27152>.

<sup>39</sup> *Supra*, note 2, FERC Report. See Appendix F, “Glossary of Terms Used in the Report.” Examples of supply losses experienced during the February 2021 event included “derates” and “outages,” which are defined by FERC in Appendix F: **Derate**—A reduction in a generating unit’s net dependable capacity; **Outage**—The period during which a generating unit, transmission line, or other facility is out of service. Outages are typically categorized as forced, due to unanticipated problems that render a facility unable to perform its function and/or pose a risk to personnel or to the system, or scheduled/planned for the sake of maintenance repairs or upgrades.

- Requesting that customers voluntarily reduce power consumption during periods when supply is expected to dip or demand is expected to spike;
- Interrupting power delivery to reduce demand, a step known as “shedding load,” which was described in congressional testimony as “an unwelcome last-resort measure to avoid uncontrolled cascading outages,”<sup>40</sup>

The balancing authorities in each of the three operating regions—the Electric Reliability Council of Texas (ERCOT), the Midwest Independent System Operator (MISO) and the Southwest Power Pool (SPP)—used combinations of these emergency measures during the February winter storm event and arctic temperatures that followed. As the map below shows, ERCOT’s coverage area is entirely confined to Texas; MISO stretches from Montana to Michigan and south to Louisiana, covering the entirety or majority of Michigan, Wisconsin, Iowa, Illinois, Indiana, Arkansas, Louisiana and Mississippi; and SPP stretches from Montana down to northern Texas, including the majority of South Dakota, and the entirety of Nebraska, Kansas and Oklahoma.

**Figure 1: Map of Balancing Authorities in the Central United States**



Source: Federal Energy Regulatory Commission

<sup>40</sup> *Supra*, note 1, Energy and Commerce Hearing, at 47.

## Multiple Issues Affected Balancing Authorities During the February 2021 Winter Event

While the winter storms and arctic freeze that descended on the central United States were not without precedent, they nonetheless created extremely difficult operating conditions for balancing authorities, as demonstrated by this passage from the FERC report:

In ERCOT, the arctic air likewise moved into north Texas during the pre-dawn hours on Monday, February 8. On this day, the ERCOT meteorologist began to understand that the next week’s weather could be extremely cold, writing “[t]his is the most challenging, worrisome forecast since I joined ERCOT,” and comparing the expected polar vortex disruption to the 1989 and 2011 storms, both of which caused thousands of [megawatts] of unplanned generation outages in ERCOT.<sup>41</sup>

In the coming days, record electricity demand increased load on the systems at the same time that a series of unplanned outages reduced available electricity supply.<sup>42</sup> Taken together, the “most prominent problem . . . was balancing load against remaining available electric generation output,” the FERC report summarized.<sup>43</sup>

The FERC report attributed the generation loss in part to a lack of preparation on behalf of electric generators: “the extent to which the Event was caused by the failure of all types of generating units to prepare for extreme cold weather or associated freezing precipitation cannot be overstated.” The FERC report noted significant generation shortages among each of the major types of generating fuels: natural gas power plants accounted for 56 percent of megawatts lost during the event; wind turbines accounted for 23 percent; and coal plants accounted for 18 percent.<sup>44</sup> Across all ERCOT, SPP and MISO, “freezing issues and fuel issues combined to cause 75 percent of all unplanned generating unit outages, derates and failures to start during the Event,” according to the FERC report.<sup>45</sup>

Natural gas plants also encountered problems due to fuel supply shortages attributable to gas production being taken offline, the terms and conditions of contracts and low pipeline pressure that affected delivery.<sup>46</sup> The FERC report issued several recommendations calling on balancing authorities, electric generators, natural gas production and delivery systems, and state authorities to better prepare for future cold weather events.<sup>47</sup>

## ERCOT’s Structure Contributed to More Severe and Widespread Blackouts in Texas

ERCOT serves 26 million customers in Texas,<sup>48</sup> covers an area that includes the state’s five largest cities,<sup>49</sup> and accounts for 11 percent of U.S. retail electricity sales.<sup>50</sup> ERCOT’s structure and certain

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<sup>41</sup> *Id.*, at 72.

<sup>42</sup> *Id.*, at 127.

<sup>43</sup> *Id.*, at 127.

<sup>44</sup> *Id.*, at 163. *See also*, Figure 90. According to the FERC Report, nuclear and solar generation did not represent substantial percentages of the fleet in the event area.

<sup>45</sup> *Id.*, at 164.

<sup>46</sup> *Id.*, at 164-165; 172-175.

<sup>47</sup> *Id.*, at 183-240. *See also*, Figure 114 for a table of FERC’s recommendations.

<sup>48</sup> “About ERCOT,” Electric Reliability Council of Texas, <https://www.ercot.com/about>, last visited February 6, 2023.

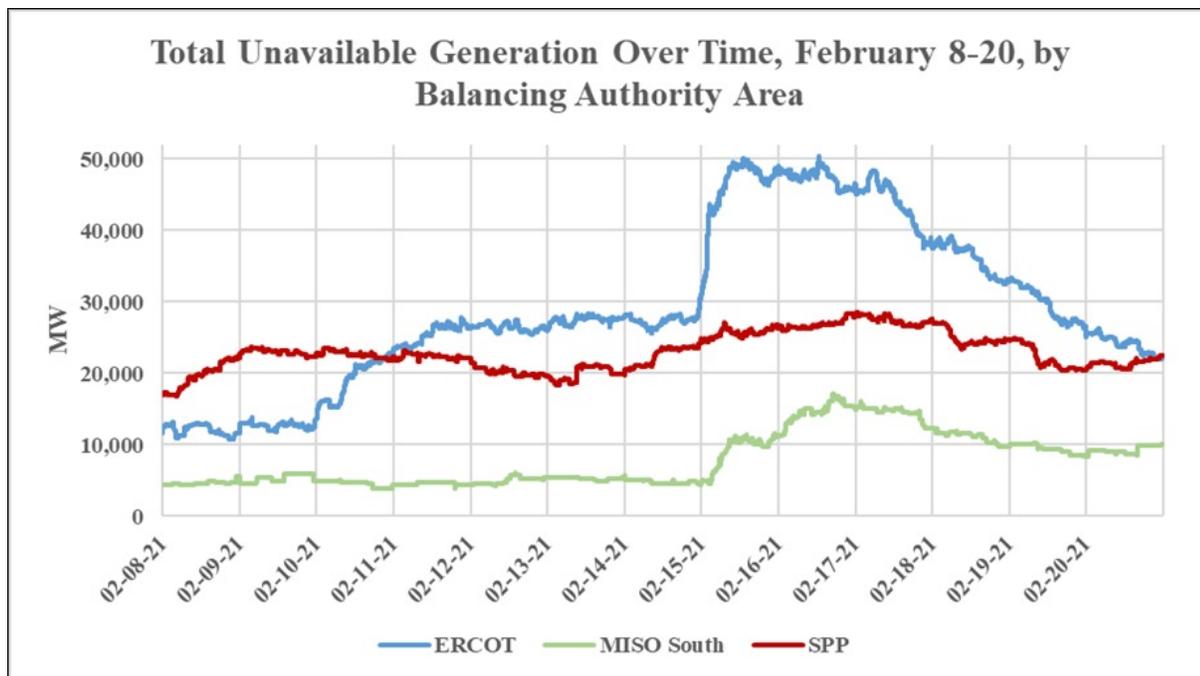
<sup>49</sup> The five largest cities in Texas, by population, are Houston, San Antonio, Dallas, Austin and Fort Worth.

<sup>50</sup> *Supra*, note 21, Science, Space and Technology Hearing, at 74.

operating limitations contributed to it being more severely impacted than neighboring grid operators, increasing the impact felt by Texans during the February 2021 winter event.

The additional difficulties experienced by ERCOT are due partly to its historical development as an electricity “island”<sup>51</sup> (or, as the FERC report describes it, “functionally separate”)<sup>52</sup> as well as its market structure.<sup>53</sup> In order to avoid having its electricity markets—i.e., the rates customers are charged—regulated by the federal government, ERCOT’s operating footprint is entirely contained within the state.<sup>54</sup> ERCOT’s relatively small size also means that generation outages disproportionately affect its ability to maintain system balance, and it has limited ability—particularly compared to other balancing authorities—to import electricity.<sup>55</sup>

**Figure 2: Unavailable Electricity Generation in the Electric Reliability Council of Texas, the Midwest Independent System Operator, and Southwest Power Pool (Measured in Megawatts, February 8-20)**



Source: Federal Energy Regulatory Commission

<sup>51</sup> Asher Price, “‘An electrical island’: Texas has dodged federal regulation for years by having its own power grid,” *USA Today*, February 17, 2021, <https://www.usatoday.com/story/news/nation/2021/02/17/texas-power-grid-why-state-has-its-own-operated-ercot/6782380002/>.

<sup>52</sup> *Supra*, note 2, FERC Report, at 24.

<sup>53</sup> *Supra*, note 21, Science, Space and Technology Hearing, at 74-75.

<sup>54</sup> Ashley J. Lawson, *Maintaining Electric Reliability with Wind and Solar Sources: Background and Issues for Congress*, Congressional Research Service (R45764), August 4, 2022, available at <https://www.crs.gov/Reports/R45764>. While not subject to economic regulation by FERC, ERCOT is subject to reliability standards set by NERC. According to the Congressional Research Service, “a colloquial definition of electric reliability is ‘having power when it is needed.’ Operators of bulk power system components, though, require specific and highly technical definitions for reliability. For purposes of regulation, these definitions are provided in the form of NERC reliability standards.”

<sup>55</sup> *Supra*, note 2, FERC Report, at 132.

The FERC report noted that ERCOT experienced “all-time winter peak demand” on the evening of Valentine’s Day, a record that remained standing because the system was forced to shed load—that is, cut power to customers—to maintain grid stability in the following days.<sup>56</sup> The FERC report also noted that the “magnitude of unplanned generating unit outages” on the ERCOT system, “coupled with its limited ability to import power to help offset generation shortages,” led to the severity of the blackouts in Texas compared to neighboring grids.<sup>57</sup> The FERC report recommended that ERCOT study whether it would be feasible to increase capacity to its system to assist during emergencies,<sup>58</sup> given that additional power import capacity likely would have reduced the need for ERCOT to cut power to its customers.

The generation shortfall led ERCOT to shed load “starting on February 15, 2021 and lasting nearly three consecutive days and, at its worst point, 20,000 [megawatts].”<sup>59</sup> (For reference, ERCOT states that one megawatt is roughly equivalent to the amount of electricity needed to power 200 households at peak demand,<sup>60</sup> although a number of factors such as square footage, efficiency and appliance usage affect individual household electricity consumption.) ERCOT data has shown the load shedding was due to the entire electric system being “within minutes of . . . collapse, necessitating the dramatic action they took.”<sup>61</sup> By comparison, Midwest Independent System Operator shed 2,700 megawatts of load, and the Southwest Power Pool shed 700 megawatts of load, at their respective peaks that month.<sup>62</sup>

In addition to households, nursing homes and other businesses, Texas natural gas production and processing facilities were among the industrial electricity consumers who were subject to load shedding by ERCOT and SPP, compounding problems for power generators.<sup>63</sup> Although these facilities are key fuel sources for the state’s power plants, they were “not identified as critical load or otherwise protected from manual load shedding,” further reducing natural gas output that had already been experiencing operational difficulties due to low temperatures and freezing equipment.<sup>64</sup> These issues added to the number of natural gas facilities that came offline due to power outages—the FERC report estimated that power supply loss accounted for 23.5 percent of the decline in natural gas production.<sup>65</sup> (The FERC report notes that power supply loss included both manual load shedding as well as power outages, largely at distribution level, caused by weather.)<sup>66</sup>

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<sup>56</sup> *Id.*, at 129. The committees note that ERCOT exceeded this level of demand during a similar arctic blast in December 2022; see Emily Foxhall, “Texas power grid holds amid record winter demand, but test isn’t over,” *The Texas Tribune*, December 23, 2022, <https://www.chron.com/news/houston-texas/article/ercot-power-winter-weather-17674735.php>.

<sup>57</sup> *Supra*, note 2, FERC Report, at 127. The FERC report found that ERCOT was only able to import 1,220 megawatts during the February 2021 event—less than 10 percent of the amount MISO and SPP were able to collectively import; for discussion, see footnote 197.

<sup>58</sup> *Id.*, see Recommendation 25, at 234.

<sup>59</sup> *Id.*, at 152-153.

<sup>60</sup> “Fact Sheet,” Electric Reliability Council of Texas, November 2021, available at <https://www.ercot.com/files/docs/2021/11/23/ERCOT%20Fact%20Sheet.pdf>, last visited February 6, 2023.

<sup>61</sup> Katherine Blunt, Russell Gold, “The Texas Power Grid Was Minutes From Collapse During Freeze, Operator Says,” *The Wall Street Journal*, February 24, 2021, <https://www.wsj.com/articles/texas-power-grid-was-minutes-from-collapse-during-freeze-operator-says-11614202063>. See also, Statement of Representative DeGette, *supra*, note 1, Energy and Commerce Hearing, at 2-3.

<sup>62</sup> *Supra*, note 2, FERC Report, at 152-153.

<sup>63</sup> *Id.*, at 82-93, for additional discussion of natural gas production and transportation disruptions. See also, “Effects on Natural Gas Infrastructure,” at 100-122.

<sup>64</sup> *Id.*, at 178.

<sup>65</sup> *Id.*, at 175. See also, Figure 99, “Natural Gas Production Event Causes, February 8-20, 2021,” at 176. See also, recommendations related to Grid Emergency Operations Preparedness, at 207. The FERC report notes that cutting power to natural gas production entities as part of an emergency response plan in situations that reduces natural gas-powered electricity harms grid reliability and, thus, “the purpose of the plan would be defeated.”

<sup>66</sup> *Id.*, at 172, see Loss of Power Supply to Natural Gas Infrastructure.

Texas is the largest producer and consumer of natural gas in the United States.<sup>67</sup> The Energy Information Administration reported that Texas’s natural gas production fell 15 percent in February 2021 compared to the previous month, contributing to a 7-percent month-to-month decline in U.S. production—both records.<sup>68</sup> The production declines contributed to dramatic increases in natural gas prices that month.<sup>69</sup>

## **A Lack of Preparation by Balancing Authorities and Electrical Generators Created Risks for Residents of Long-Term Care Facilities**

The FERC report noted that the widespread nature of the February 2021 blackouts and other, often related, utility malfunctions greatly escalated the scope of emergencies faced by nursing homes and other long-term care facilities in Texas:

In cities including Austin, Houston and San Antonio, over 14 million people were ordered to boil drinking and cooking water, and multiple cities ordered water conservation measures, due to broken pipes and power outages (which lowered water pressure). After the city of Denton, Texas, lost its gas supply, it was forced to cut power to nursing homes and water pumping stations.<sup>70</sup>

Part III of this report provides more detail on the experiences of individual nursing homes and long-term care facilities. Suffice it to say, reducing the frequency, size and duration of electricity disruption would reduce risk faced by residents of nursing homes and other long-term care facilities. It is therefore concerning that the FERC report noted that one contributing factor to the power emergencies in ERCOT, MISO and SPP was a lack of preparation by electrical generators:

Despite multiple recommendations [from FERC] since 2011 that generating units should take actions to prepare for the winter (including detailed recommendations for winterization plans), 49 generating units in SPP (15 percent), 26 in ERCOT (7 percent) and 3 units in MISO South (4 percent), did not prepare any winterization plans. As further evidence that generating units could be better prepared for winter, 81 percent of the generating unit outages, derates or failures to start occurred at temperatures above the unit’s ambient design temperature.<sup>71</sup>

As noted previously in the introduction of this report, the 2021 power emergency was not a one-off event. In 2011, a cold weather event led to “a controlled load shed of 4,000 MW [that] affected 3.2 million customers in Texas,” and “power losses also occurred in parts of New Mexico and Arizona.”<sup>72</sup>

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<sup>67</sup> “Frequently Asked Questions,” U.S. Energy Information Administration, last updated October 4, 2022, <https://www.eia.gov/tools/faqs/faq.php?id=46&t=8>.

<sup>68</sup> U.S. Energy Information Administration, *February 2021 weather triggers largest monthly decline in U.S. natural gas production*, May 10, 2021, available at <https://www.eia.gov/todayinenergy/detail.php?id=47896#:~:text=U.S.%20natural%20gas%20production%20in,most%20of%20the%20overall%20decline>.

<sup>69</sup> *Oil and Gas Journal*, “February Henry Hub gas spot price highest monthly average since 2014,” March 10, 2021, <https://www.ogj.com/general-interest/economics-markets/article/14199064/february-henry-hub-gas-spot-price-highest-monthly-average-since-2014>; Mark Watson, “ERCOT Tracker: Power, gas prices hit records during Feb. 14 winter storm,” *S&P Global*, March 10, 2021, available at <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/natural-gas/031021-ercot-tracker-power-gas-prices-hit-records-during-feb-14-winter-storm>; Kevin Crowley, Naureen S Malik, Mark Chediak, “Gas Sellers Reaped \$11 Billion Windfall During Texas Freeze,” *Bloomberg*, July 9, 2021, <https://www.bloomberg.com/news/articles/2021-07-09/gas-sellers-reaped-11-billion-windfall-during-texas-freeze#xj4y7vzkg>.

<sup>70</sup> *Supra*, note 2, FERC Report, at 10.

<sup>71</sup> *Id.*, at 166. Regarding past recommendations to ERCOT in relation to reliability concerns following generation outages during the 1989 and 2011 cold weather events. *See also, supra*, note 21, Science, Space and Technology Hearing (testimony of Sue Tierney), at 75-77 (testimony of Jesse Jenkins), at 107.

<sup>72</sup> *Supra*, note 1, Energy and Commerce Hearing, at 3.

The FERC report made equally clear that these issues and the potential weak links in electricity production and delivery systems are well-known:

Freezing issues arise because the generating units are not prepared for the cold temperatures, wind, or freezing precipitation to which they are exposed. Within the freezing issues, certain components and systems of the generating units freeze most often. . . . The top categories, such as frozen transmitters, sensing lines and instrumentation, frozen valves and inlet air systems, and wind turbine blade icing have repeatedly caused unplanned outages in multiple events. If these most vulnerable elements, deemed “cold-weather-critical components,” are better protected before future cold weather events, [generator owners and generator operators] could prevent outages, derates and failures to start.<sup>73</sup>

The FERC report also raised concerns about the effectiveness and oversight of electricity producers who certified their equipment was ready for winter:

Approximately 82 percent of the ERCOT entities that submitted a declaration of preparation for winter had at least one generating unit outaged or derated due to freezing issues, which raises questions about the efficacy of the ERCOT protocols and how the implementation of these protocols is evaluated by ERCOT and enforced by the [Public Utility Commission of Texas].<sup>74</sup>

## **The Committees’ Past Concern About Disaster Risks Faced by Long-Term Care Residents**

Providing recommendations addressing the specific issues that led to the Texas blackouts is beyond the scope of this report—the Committees refer readers to the 28 recommendations contained in the FERC report.<sup>75</sup> However, the Committees note that *Sheltering in Danger* previously underscored the important role of power providers in protecting residents, recommending greater coordination between CMS, state and local officials with electricity providers:

. . . to ensure that higher priority is given to nursing homes when considering requests to restore power during emergencies, especially those in which heat may be an aggravating factor. These planning efforts should include appropriate contingencies for facility evacuations if power cannot be restored in a timely manner.<sup>76</sup>

The Texas Ombudsman, Patty Ducayet, was asked about the issue of prioritization during the Texas House hearing, where she shared the concern of a Representative who raised the issue, while noting her view that long-term care facilities also need generators in place:

I’ve sat at the state operations command center. I know that the state agencies fight for restoration of facilities, including assisted living facilities. . . . Maybe there is more we can do there—I strongly support also prioritizing our long-term care facilities for restoration. I don’t think it’s enough.<sup>77</sup>

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<sup>73</sup> *Supra*, note 2, FERC Report, at 167.

<sup>74</sup> *Id.*, at 167.

<sup>75</sup> *Id.*, at 183-240. *See also* Figure 114 for a table of FERC’s recommendations.

<sup>76</sup> U.S. Senate Committee on Finance, *Sheltering in Danger*; November 2, 2018, at 72, available at [https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20\(2%20Nov%202018\).pdf](https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf); *see* Recommendation A(6), Coordination with Electricity Providers [hereinafter *Sheltering in Danger*].

<sup>77</sup> *Supra*, note 6, Texas House Hearing, at 1:03.

*Sheltering in Danger* also called on electricity providers to consider at-risk communities in their power restoration plans:

State and local officials and power providers should re-examine power restoration priority protocols with specific consideration of at-risk populations, including nursing homes and assisted living facilities. Allowances should be made for the extent to which individual facilities are required to have, and physically do have, emergency generation capacity to maintain temperature.<sup>78</sup>

The Aging Committee has similarly examined how disasters affect older adults and people with disabilities. In testimony, witnesses have repeatedly underscored the importance of maintaining power in nursing homes, assisted living facilities and other care settings.<sup>79</sup> Witnesses have also recommended developing policies that include older adults and people with disabilities in disaster management planning.<sup>80</sup> As noted previously, then-Ranking Member Casey introduced the READI for Disasters Act to improve the inclusion of people with disabilities and older adults in the preparation for, response to, recovery from, and mitigation of disasters.<sup>81</sup>

Following the blackout, ERCOT issued a 60-point checklist that proposed improvements on a range of issues from grid operation changes to changing communication strategies to better advise the public.<sup>82</sup> The recommendations included several proposals to increase communication with state and local government officials, including emergency managers:

- Assign a senior staff member to staff the State Operations Center as needed. This will improve the working relationship with state agencies during major events.
- Improve government agency alignment through responsiveness to the [Public Utilities Commission] and a partnership with the Texas Division of Emergency Management, Railroad Commission of Texas Energy Reliability Council, and others, including exchange of ideas, improved communications, and training.
- Create a Texas Municipal Officers ERCOT Advisory Board that will increase dialogue and create communications channels with counties, cities and other political subdivisions such as water districts, for the benefit of Texas residents.<sup>83</sup>

While these steps appear to be broadly in line with the Committees' previous findings and recommendations, ERCOT's proposed actions appear to fall short of specifically addressing issues faced by nursing home residents, older adults, people with disabilities, other at-risk communities or communications with health officials.

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<sup>78</sup> *Supra*, note 76, *Sheltering in Danger*, at 75. See Recommendation E(1), Power Restoration for At-Risk Communities, at 75.

<sup>79</sup> *Inclusive Disaster Management: Improving Preparedness, Response, and Recovery*, Hearing Before the Special Committee on Aging, 117th Cong. 10 (2021) (statement of Wanda Spurlock), at 63, available at [https://www.aging.senate.gov/imo/media/doc/SCA\\_11.18.21.pdf](https://www.aging.senate.gov/imo/media/doc/SCA_11.18.21.pdf).

<sup>80</sup> *Id.*, see statement of Senator Casey: "To ensure the safety of people with disabilities and older adults, they must be included in each phase of disaster management. That means in the preparation phase, response phase, the recovery and mitigation efforts that are undertaken." See also, *Disaster Preparedness and Response: The Special Needs of Older Americans*, Hearing Before the Special Committee on Aging, 115th Cong. 9 (2017), available at <https://www.govinfo.gov/content/pkg/CHRG-115shrg30022/pdf/CHRG-115shrg30022.pdf> [hereinafter, Aging Committee 2017 Disaster Preparedness Hearing].

<sup>81</sup> Real Emergency Access for Aging and Disability Inclusion for Disasters (READI) Act, S. 2658, 117th Cong. (2021), available at <https://www.congress.gov/bill/117th-congress/senate-bill/2658>.

<sup>82</sup> "Roadmap to Improving Grid Reliability," Electric Reliability Council of Texas, October 15, 2021, available at [https://www.ercot.com/files/docs/2021/10/18/ERCOT\\_Roadmap\\_October\\_15\\_2021\\_Update.pdf](https://www.ercot.com/files/docs/2021/10/18/ERCOT_Roadmap_October_15_2021_Update.pdf).

<sup>83</sup> *Id.*

In a letter responding to questions from the Committees, ERCOT’s chief executive officer, Pablo Vegas, said that the balancing authority “does not have a direct relationship with end-use customers,” adding that “utilities, not ERCOT, are responsible for deciding which customers may be disconnected, and for what duration, during rare extreme emergency conditions,” including “decisions relating to power restoration.”<sup>84</sup> He noted that “customers with special power needs may work directly with the [Public Utility Commission of Texas] to ensure they are prioritized,” noting that the Public Utility Commission’s rules “give assisted-living facilities, hospice facilities, nursing facilities, and end stage renal disease facilities the same level of priority as hospitals when it comes to restoring power.”<sup>85</sup> Mr. Vegas further pointed to reforms the balancing authority is undertaking to improve reliability, including (1) mandatory weatherization standards for power plants and natural gas infrastructure; (2) requiring natural gas infrastructure to register with utilities as critical load; (3) developing backup fuel sources for power generators; and (4) increasing the amount of generation reserves online.<sup>86</sup>

However, the risk of widespread blackouts in Texas remains. While ERCOT has taken steps to increase reliability over the last two years, such as paying generators to increase reserve capacity,<sup>87</sup> the grid operator repeatedly resorted to emergency actions to avoid blackouts in 2022.<sup>88</sup> ERCOT acknowledged these risks in November 2022 when it reported that blackouts could again occur this winter if conditions similar to 2021 developed.<sup>89</sup> A month later, ERCOT was forced to seek an emergency order from the Department of Energy to waive certain operating requirements to maintain grid stability during the December 2022 cold front that descended on the nation.<sup>90</sup>

It was the second time ERCOT had sought and received such an emergency order in less than two years—DOE had granted the same exception in February 2021 at ERCOT’s request as the winter emergency was unfolding.<sup>91</sup>

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<sup>84</sup> Appendix A, Ex. 3, Letter from Pablo Vegas to Peter Gartrell and Melissa Dickerson, February 9, 2023.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

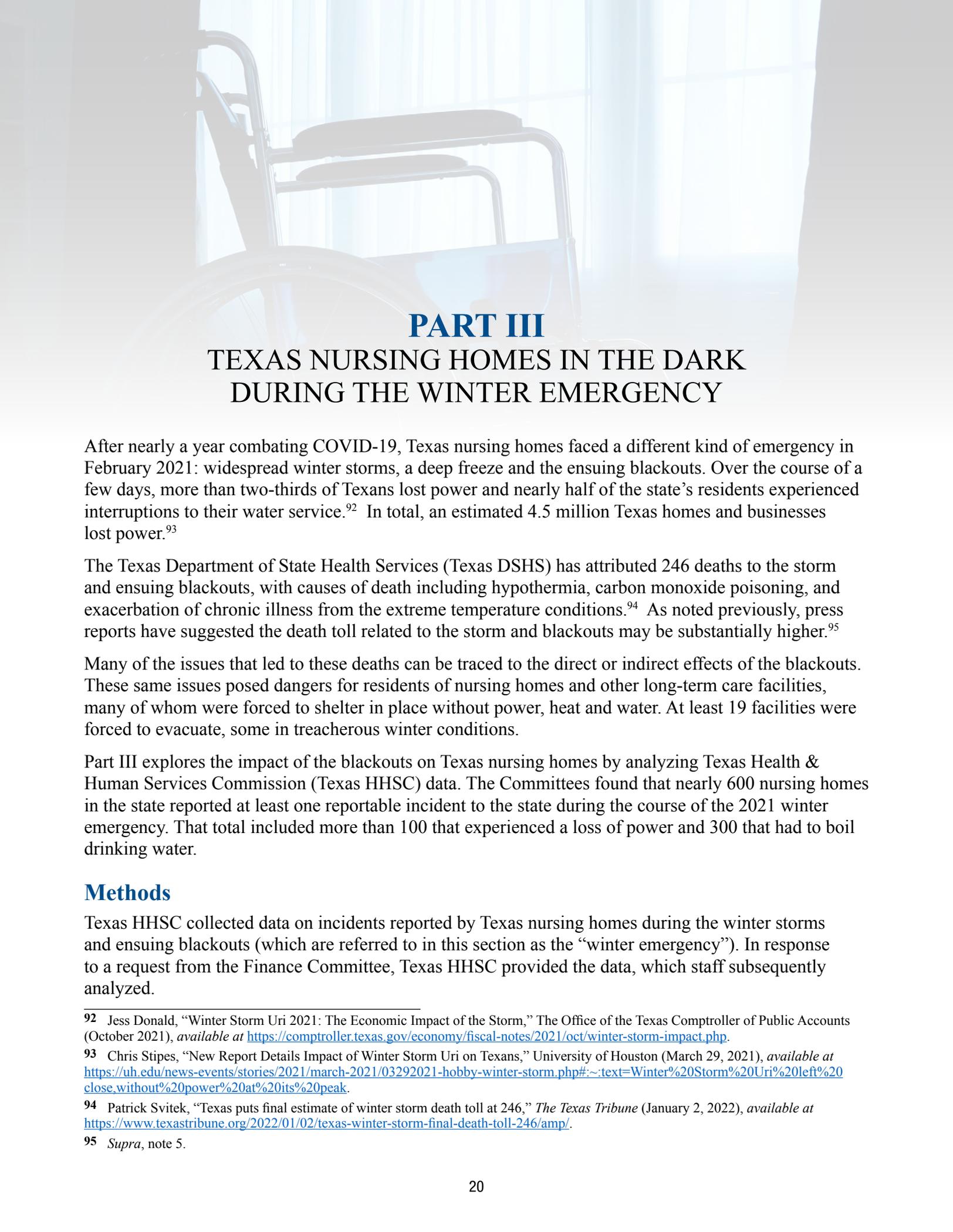
<sup>87</sup> Swati Verma, “Texas grid avoids summer blackouts with \$1 billion in extra spending,” *Reuters*, August 25, 2022, <https://www.reuters.com/business/energy/texas-grid-avoids-summer-blackouts-with-1-billion-extra-spending-2022-08-25/>.

<sup>88</sup> Robert Walton, “Texas narrowly avoids rolling blackouts after 2nd conservation plea by ERCOT this week,” *Utility Dive*, July 14, 2022, <https://www.utilitydive.com/news/texas-avoids-rolling-blackouts-ercot-conservation-plea/627253/>; Andrew Schneider, “December’s freeze highlighted ongoing weaknesses of Texas’ power grid, even without widespread blackouts,” *Houston Public Media*, January 2, 2023, <https://www.houstonpublicmedia.org/articles/news/energy-environment/2023/01/02/440202/decembers-freeze-highlighted-ongoing-weaknesses-of-texas-power-grid-even-without-widespread-blackouts/>.

<sup>89</sup> Mose Buchele, “Extreme winter weather could still lead to blackouts, Texas’ power grid operator says,” *KUT 90.5*, November 29, 2022, <https://www.kut.org/energy-environment/2022-11-29/energy-electricity-ercot-february-2021-storm>.

<sup>90</sup> “Federal Power Act Section 202(c): ERCOT,” U.S. Department of Energy, Order No. 202-22-3 (December 2022), available at <https://www.energy.gov/ceser/federal-power-act-section-202c-ercot-december-2022>; see also Shelby Webb, “ERCOT expected to make it through rest of Christmas freeze without issue, despite seeking federal approval to implement emergency measures on Friday,” *San Antonio Express-News Online*, December 24, 2022, retrieved via LexisNexis.

<sup>91</sup> “Federal Power Act Section 202(c)—ERCOT,” U.S. Department of Energy, Order No. 202-21-1 (February 15, 2021), available at <https://www.energy.gov/oe/articles/federal-power-act-section-202c-ercot-february-2021>.



## PART III

# TEXAS NURSING HOMES IN THE DARK DURING THE WINTER EMERGENCY

After nearly a year combating COVID-19, Texas nursing homes faced a different kind of emergency in February 2021: widespread winter storms, a deep freeze and the ensuing blackouts. Over the course of a few days, more than two-thirds of Texans lost power and nearly half of the state’s residents experienced interruptions to their water service.<sup>92</sup> In total, an estimated 4.5 million Texas homes and businesses lost power.<sup>93</sup>

The Texas Department of State Health Services (Texas DSHS) has attributed 246 deaths to the storm and ensuing blackouts, with causes of death including hypothermia, carbon monoxide poisoning, and exacerbation of chronic illness from the extreme temperature conditions.<sup>94</sup> As noted previously, press reports have suggested the death toll related to the storm and blackouts may be substantially higher.<sup>95</sup>

Many of the issues that led to these deaths can be traced to the direct or indirect effects of the blackouts. These same issues posed dangers for residents of nursing homes and other long-term care facilities, many of whom were forced to shelter in place without power, heat and water. At least 19 facilities were forced to evacuate, some in treacherous winter conditions.

Part III explores the impact of the blackouts on Texas nursing homes by analyzing Texas Health & Human Services Commission (Texas HHSC) data. The Committees found that nearly 600 nursing homes in the state reported at least one reportable incident to the state during the course of the 2021 winter emergency. That total included more than 100 that experienced a loss of power and 300 that had to boil drinking water.

## Methods

Texas HHSC collected data on incidents reported by Texas nursing homes during the winter storms and ensuing blackouts (which are referred to in this section as the “winter emergency”). In response to a request from the Finance Committee, Texas HHSC provided the data, which staff subsequently analyzed.

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<sup>92</sup> Jess Donald, “Winter Storm Uri 2021: The Economic Impact of the Storm,” The Office of the Texas Comptroller of Public Accounts (October 2021), available at <https://comptroller.texas.gov/economy/fiscal-notes/2021/oct/winter-storm-impact.php>.

<sup>93</sup> Chris Stipes, “New Report Details Impact of Winter Storm Uri on Texans,” University of Houston (March 29, 2021), available at <https://uh.edu/news-events/stories/2021/march-2021/03292021-hobby-winter-storm.php#:~:text=Winter%20Storm%20Uri%20left%20close,without%20power%20at%20its%20peak>.

<sup>94</sup> Patrick Svitek, “Texas puts final estimate of winter storm death toll at 246,” *The Texas Tribune* (January 2, 2022), available at <https://www.texastribune.org/2022/01/02/texas-winter-storm-final-death-toll-246/amp/>.

<sup>95</sup> *Supra*, note 5.

The Texas HHSC data included the names and provider numbers of the facilities that reported an incident, as well the location of the reporting facility. Texas HHSC categorized the self-reported incidents into the following types of incidents:

- blackouts/no electricity;
- generator issues/no generator;
- had to boil water;
- no water/water shortage/pipe break;
- sprinkler system damage/water damage; and
- evacuated resident(s).

The following analysis was supplemented with publicly available CMS data, press reports, interviews, testimony, third-party reports and information provided by the Texas Ombudsman to provide context for the experiences of residents. In addition, the Committees used the Texas HHSC data to create maps used in this part of the report to illustrate the effects and the scale of the emergency nursing homes faced.

### **Total Incidents: Nearly 1,200 Long-Term Care Facilities Reported Incidents**

Texas HHSC data show that at the time, 578 out of the 1,212 nursing homes reported one or more incidents during the winter emergency.<sup>96</sup> Of the roughly 80,000 nursing home residents in the state, nearly half—an estimated 39,000 residents—lived in nursing homes that reported an incident during the winter emergency, based on an analysis of Medicare’s data on the average number of residents per day in the affected homes.<sup>97</sup> In Harris County alone (the most populous county in the state, and home to Houston), more than 4,600 nursing home residents are estimated to have been living in facilities that reported incidents (see Figure 4). The breadth of the storm’s overall impact can be seen in Figure 3 and Table 1 below. In addition, the Texas Ombudsman told the Committees that 606 out of the 2,029 assisted living facilities (ALFs) in Texas experienced incidents during the storm.<sup>98</sup>

**Table 1: Incidents Reported by Texas Nursing Homes during the Winter Emergency**

Total Number of Texas Nursing Homes	1,212
Number of Homes Reporting Incidents During Winter Storm	578
Homes with Blackouts/No Electricity	118
Homes that Boiled Water for Drinking	317
Homes with Burst Pipes, Water Shortages, or No Water	111
Homes that Evacuated Residents	19

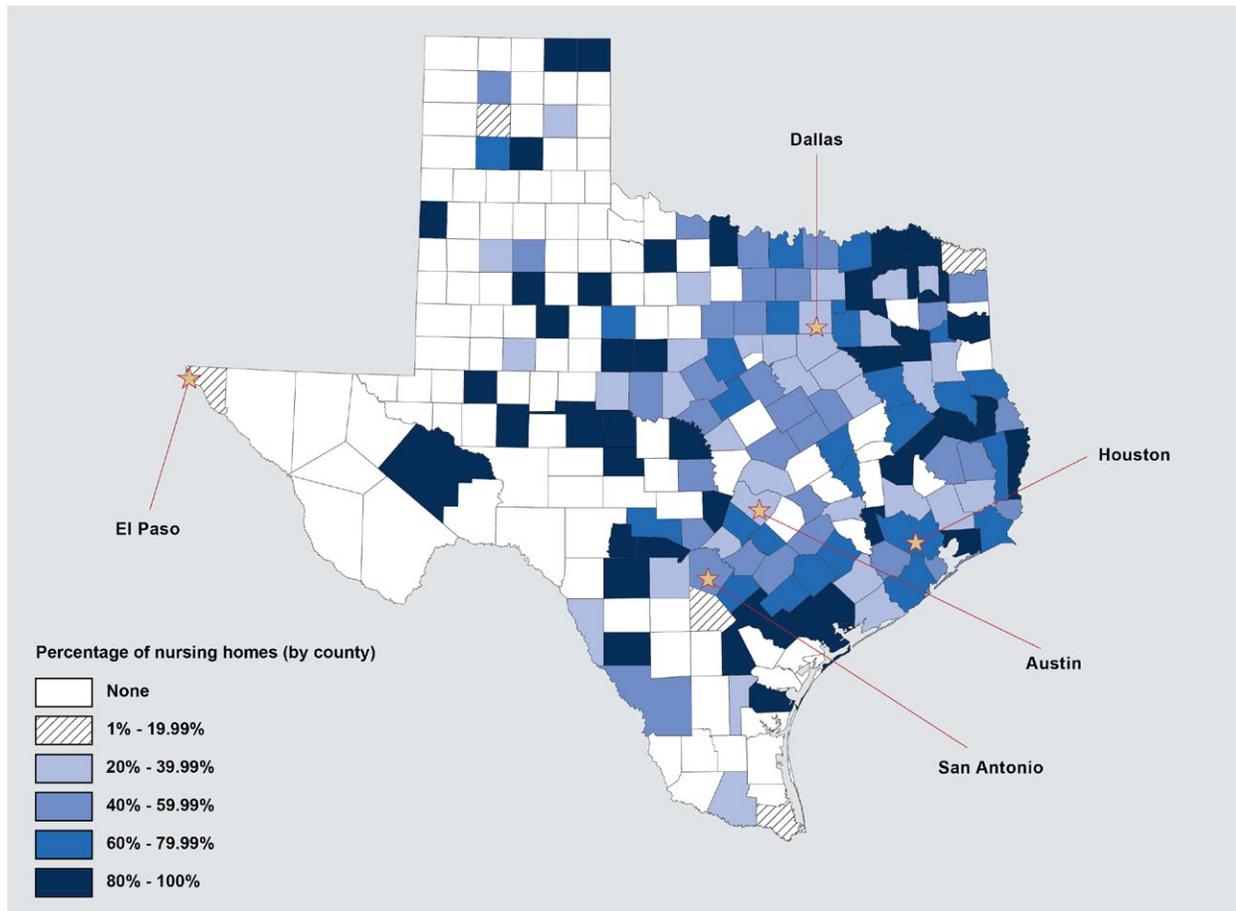
*Source: Texas Health & Human Services Commission*

<sup>96</sup> Appendix B. As the committees were finalizing this report, Texas HHSC provided updated data showing that 600 nursing homes reported incidents to the state during the winter emergency—an addition of 22 facilities to the data relied on to prepare this report. The updated data from Texas HHSC incorporated a review conducted by the department’s regional offices, which identified incidents that were omitted from the original count. These data, which can be found in Appendix 2, show that 139 nursing homes lost power, 327 nursing homes reported boiling water and 121 nursing homes reported burst pipes, water shortages or no water. The number of facilities that reported evacuating did not change.

<sup>97</sup> Data on file with the committees.

<sup>98</sup> *Supra*, note 7, Texas Ombudsman Letter, at 3.

**Figure 3: Percentage of Nursing Homes by County that Reported Incidents during the Winter Emergency**



## Electricity: 1 in 10 Nursing Homes Reported Power Outages

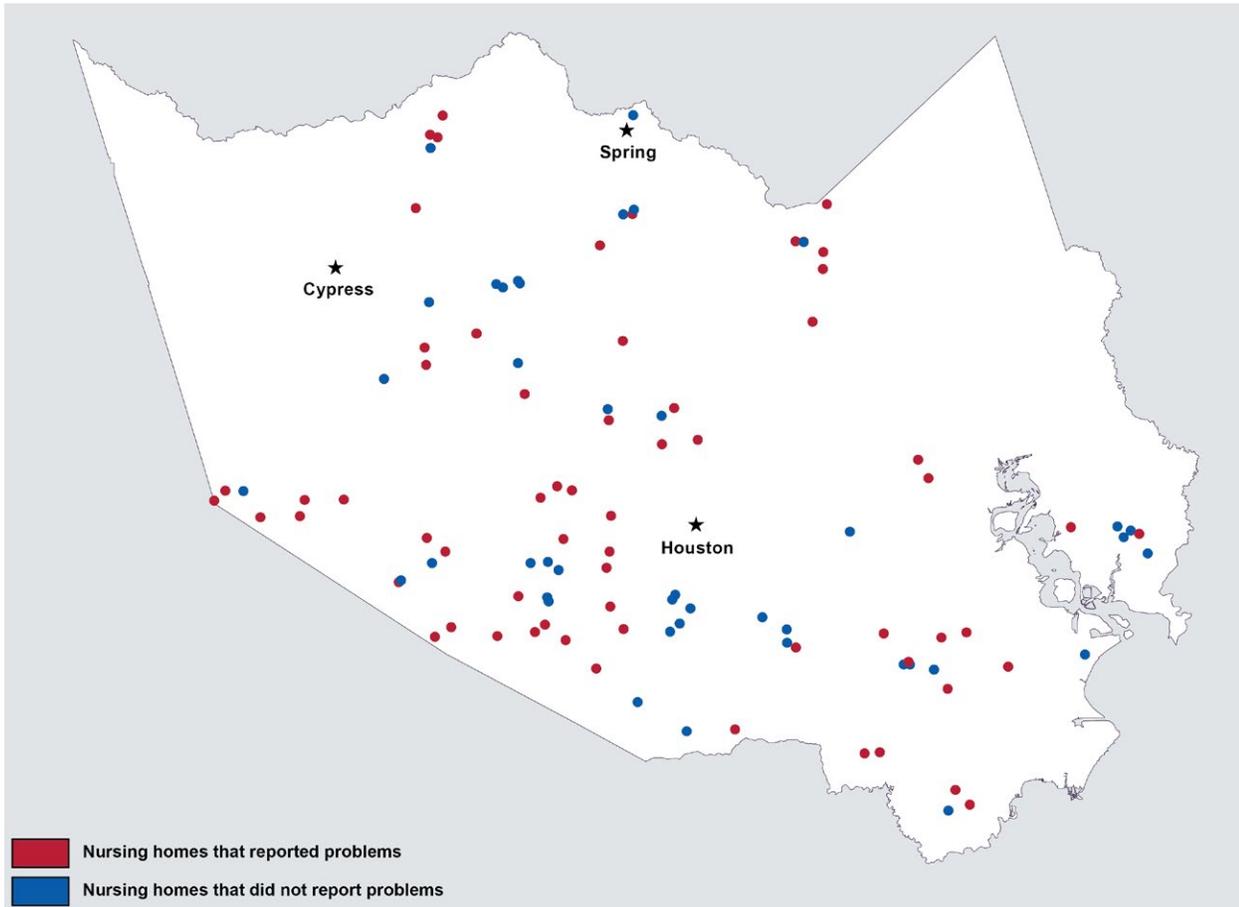
In total, 118 Texas nursing homes reported blackouts and or having no electricity during the winter emergency (see Figure 5). The widespread nature of the emergency and treacherous conditions left many facilities with no choice but to shelter residents in place, combating the cold in whatever way they could.

Sheltering residents in place is generally considered the best option for nursing home and other long-term care residents, given that it can reduce the stress and risk of evacuation on this medically fragile population.<sup>99</sup> However, facilities must be properly prepared to handle emergencies and staff must be properly trained to safely shelter residents in place, at the risk of doing more harm than good.<sup>100</sup> Susan Murphree, of Disability Rights Texas, underscored the importance of maintaining power for people with disabilities who reside in long-term care facilities, in a statement supporting state legislation that would have required nursing homes and assisted living facilities in Texas to install generators:

<sup>99</sup> *Supra*, note 76, *Sheltering in Danger*. For discussion of the considerations of the risks and benefits of sheltering in place, see Part IV(E), Policies and Procedures: Sheltering-in-Place and Evacuation, which references academic research, inspector general reports and Aging Committee testimony.

<sup>100</sup> *Id.* *Sheltering in Danger* made several recommendations related to planning for sheltering in place and caring for medically fragile long-term care residents during power outages and extreme temperatures. See recommendations A(5), Caring for Senior Citizens in Heat Emergencies; C(3), Emergency Plan Content—Evacuation/Shelter-in-Place Decision-Making; and C(4), Emergency Plan Content—Evacuation and Shelter-in-Place Capabilities.

**Figure 4: 64 of Harris County’s 108 Nursing Homes Reported Incidents during the Winter Emergency**



Facilities are expected to provide for the health and safety of residents they admit. For those who need ventilators, oxygen and individualized personal equipment to regulate their unstable body temperature, facilities should also be required to have and maintain power supplies sufficient and available to meet the needs of those individual residents. Without life sustaining equipment, those residents risk significant harm and possible death. This need should be addressed in each facility’s emergency plan and enforced.<sup>101</sup>

If facilities cannot safely shelter residents in place, residents’ lives are on the line. The Texas Ombudsman, Ms. Ducayet, reported to the Committees that 168 long-term care facilities “sheltered in place without a generator and reported operational problems that included no power, no water, burst pipes, or no transportation to evacuate.”<sup>102</sup> Internal temperatures at some facilities reportedly plunged into the 50s,<sup>103</sup> and Ms. Ducayet reported that a resident of an Austin assisted living facility “died as a result of exposure to cold temperatures inside the building.”<sup>104</sup> Although not regulated by Medicare,

<sup>101</sup> *Supra*, note 6, Texas House Hearing. See “Submitted Comments for House Bill 2525,” at 4, available at <https://capitol.texas.gov/tlodocs/87R/handouts/C3102021040608001/618ecf06-8741-4660-832f-54504dd11f74.PDF>. For further reading on the experience of people with disabilities during the 2021 winter emergency, see Disability Rights Texas, *The Forgotten Faces of Winter Storm URI* (April 6, 2021), available at <https://disabilityrightstx.org/wp-content/uploads/2021/04/apr-5-2021-DRTX-winter-survey-report-FINAL.pdf>.

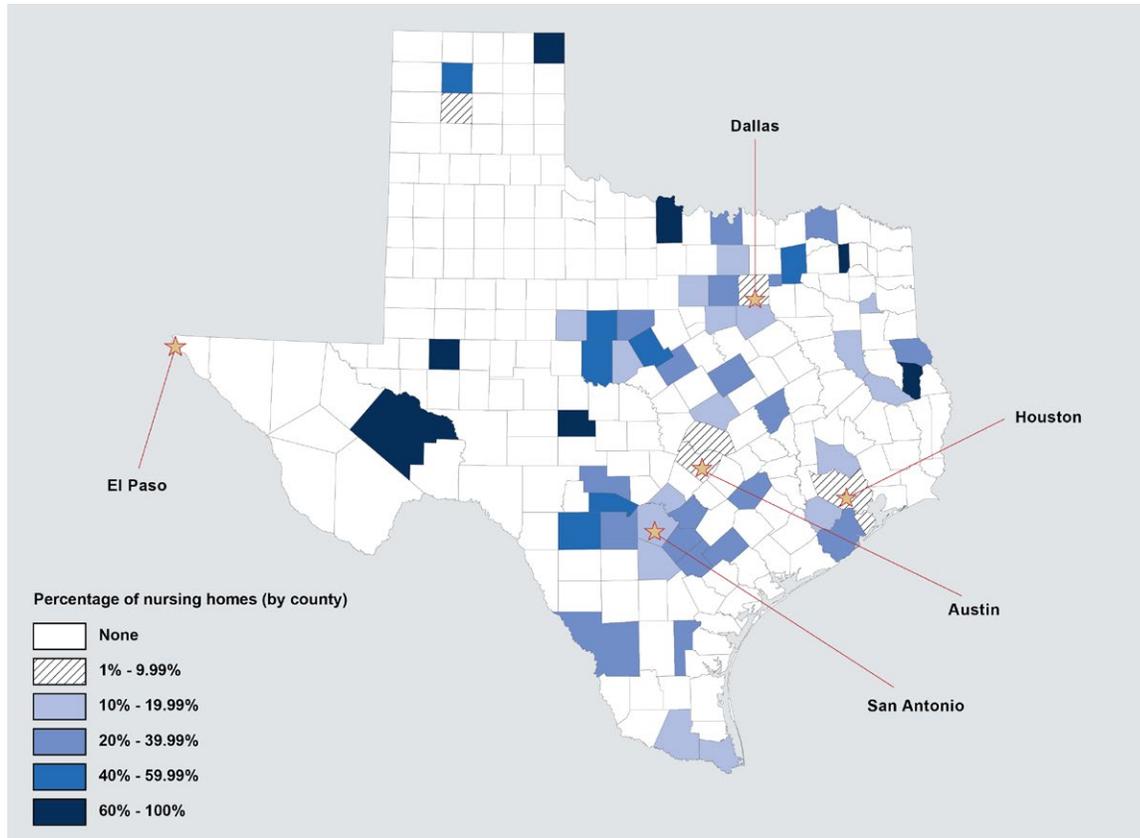
<sup>102</sup> *Supra*, note 7, Texas Ombudsman Letter, at 3.

<sup>103</sup> Sandy West, “Texas Winter Storm Exposes Gaps in Senior Living Oversight,” *Kaiser Health News*, March 10, 2021, <https://khn.org/news/article/texas-winter-storm-exposes-gaps-in-senior-living-oversight/>.

<sup>104</sup> *Supra*, note 7, Texas Ombudsman Letter, at 3.

assisted living facilities, which are home to older adults and people with disabilities, were similarly affected by the dangerous and sometimes deadly impacts of the storm and resulting blackouts.

**Figure 5: Percentage of Nursing Homes by County that Reported Blackouts or No Electricity during Winter Emergency**



As temperatures began to drop in La Marque, Texas, a small city south of Houston, one nursing home reported “piling blankets on residents and using socks as makeshift mittens,” to keep residents warm after losing electricity.<sup>105</sup> At an assisted living facility in Houston that lost power, one resident who relied on a wheelchair for mobility watched as other residents gathered outside to evacuate, wondering “if she would have to ‘throw herself out the window’ to survive,” since the elevators were non-functional.<sup>106</sup> After the storm, she recalled, “it never occurred to her that apartments marketed toward older adults would not have a generator or plans to help residents in an emergency.”<sup>107</sup> At another assisted living facility in Austin, Parmer Woods, that lost power and had no backup generator on site, staff had to quickly scramble to keep residents warm. Justin Wray, senior vice president of operations for the facility’s operator Pegasus Senior Living, reported that to keep residents warm, “ ‘we bundled them up a little bit more’ and served hot coffee and tea.”<sup>108</sup> The facility was unable to obtain a generator until

<sup>105</sup> Emily Foxhall, “Socks as mittens and extra blankets: Freeze forces Texas nursing homes to confront new disaster,” *Houston Chronicle*, February 19, 2021, <https://www.houstonchronicle.com/news/houston-texas/houston/article/One-fifth-of-Texas-nursing-homes-report-15958918.php>.

<sup>106</sup> *Supra*, note 103.

<sup>107</sup> *Id.*

<sup>108</sup> Eleanor Laise, “Power and water outages this week represent the latest crisis wave for Texas long-term-care homes,” *MarketWatch*, February 20, 2021, <https://www.marketwatch.com/story/power-and-water-outages-this-week-represent-the-latest-crisis-wave-for-texas-long-term-care-homes-11613756067> [hereinafter MarketWatch Blackout Article].

the next night, leaving residents with these limited interventions against the cold.<sup>109</sup>

Ms. Ducayet received reports of unsafe environments for residents across the state during the winter emergency. In one example, at a Texas assisted living facility that lost power, she reported that the common solution to dropping indoor temperatures was to pile blankets on the residents and keep them in bed. In a letter to the Committees, she wrote, “[t]his may have been the best we could do at the time, but it should sound alarm bells about the vulnerability of emergency response within facilities and the health risks that residents face in extreme weather events.”<sup>110</sup>

The conditions described by Ms. Ducayet were likely due to a lack of generators sufficient to maintain safe and comfortable temperatures at long-term care facilities when power was lost. An August 2022 report by Texas HHSC showed that while the majority of long-term care facilities reported having generators on hand, 75 percent of Texas long-term care facilities had three days or less of fuel available.<sup>111</sup> Moreover, many generators could not support the heating and cooling systems of the long-term care facilities. The survey found that 56 percent of the generators at nursing homes and 67 percent of generators at assisted living facilities were “configured to provide heating for at least part of the facility during a power outage.”<sup>112</sup> The survey further found that 51 percent of nursing homes’ generators and 63 percent of generators at assisted living facilities were “configured to [provide] cooling for at least part of the facility during a power outage.”<sup>113</sup> The lack of sufficient backup power maintained by Texas long-term care facilities appeared to be at issue again during the first week of February 2023. According to one press report, nursing homes and assisted living facilities in the Austin area were among tens of thousands of customers who lost electricity following an ice storm.<sup>114</sup>

CMS requirements do not prescribe that nursing homes have generators, only that they be able to maintain “safe and comfortable” temperatures of 71-81 degrees.<sup>115</sup> The temperature range is in place because older adults lose the ability to regulate their body temperatures as they age, making them more susceptible to extreme temperatures.<sup>116</sup> *Sheltering in Danger* called on CMS to adopt additional requirements to specifically require that nursing home’s emergency power capacity be capable of maintaining the safe and comfortable temperature standard.<sup>117</sup>

This recommendation is in line with testimony received by the Aging Committee in 2017 from Kathryn Hyer, a national expert on aging. Dr. Hyer told the Aging Committee that long-term care facilities ideally would have generators “to support medical needs and air conditioning,” which

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<sup>109</sup> *Id.*

<sup>110</sup> *Supra*, note 7, Texas Ombudsman Letter, at 3.

<sup>111</sup> Texas Health & Human Services Commission, *Generator Availability in Nursing Facilities and Assisted Living Facilities*, (August 2022), at B-14, available at <https://www.hhs.texas.gov/sites/default/files/documents/generator-availability-nf-and-alf-report-august-2022.pdf>.

<sup>112</sup> *Id.*, at B-13.

<sup>113</sup> *Id.*

<sup>114</sup> Avery Travis, “Some Austin nursing homes, assisted living facilities still without power,” *KXAN*, February 3, 2023, <https://www.kxan.com/investigations/some-austin-nursing-homes-assisted-living-facilities-still-without-power/>. See also, Jennifer Calfas, “Texas Storms Leave Hundreds of Thousands Without Power,” *Wall Street Journal*, February 2, 2023, <https://www.wsj.com/articles/texas-storms-leave-more-than-400-000-without-power-11675364067>; Katie Hall, “68,000 still without power in Austin Saturday as temperatures rise,” *Austin American-Statesman*, February 4, 2023, <https://www.statesman.com/story/weather/severe/2023/02/04/austin-energy-power-outage-saturday-central-texas-food-bank/69873356007/>; Paul J. Weber, Acacia Coronado, “Generators, spoiled food: Slow power repairs anger Austin,” *Associated Press*, February 6, 2023, <https://apnews.com/article/disaster-planning-and-response-austin-texas-power-outages-storms-68fb4e0406a5edacb897e32c5fdf3967>.

<sup>115</sup> *Supra*, note 76, *Sheltering in Danger*, at 45. See Part IV(A), Policies and Procedures: Temperature Control and Alternative Sources of Power.

<sup>116</sup> *Id.*, see Senior Citizens are Particularly Vulnerable to Extreme Heat, at 48.

<sup>117</sup> *Id.*, see Recommendation A(3), Emergency Power Capable of Maintaining Safe Temperatures.

would be “elevated to ensure continued operations during flooding,” with enough fuel on hand for 96 hours.<sup>118</sup> In her testimony, Dr. Hyer drew the comparison between the needs of nursing home residents and hospitals:

We also need to have [nursing homes] hardened and have generator capacity. Some buildings are very old. Many nursing homes in this country are very old. And I think we need to think about if we are going to allow capital to be used to replenish them or if we have got certificate of needs, replacing some of them, I think we need the new buildings to require generators with sufficient capacity to run air conditioning and other support systems for a period of time. And 96 hours is what hospitals are required to have.<sup>119</sup>

The winter emergency makes clear that whether it’s extreme cold or extreme heat, secondary power sources reduce the risks for residents, including exposure to unsafe temperatures and the need for facilities to evacuate. As noted above, CMS regulations do not specifically require nursing homes to have generators or a secondary power sources. CMS regulations also limit the range of secondary power sources that nursing homes can use, which appears to exclude renewable energy sources that may cost facilities less to install and maintain.

## **Water: More than 25 Percent of Nursing Homes Lost Access to Potable Water**

Nursing homes were not spared from the widespread water disruptions that took place during the winter emergency. As previously noted, the FERC report found that “over 14 million people were ordered to boil drinking and cooking water, and multiple cities ordered water conservation measures, due to broken pipes and power outages (which lowered water pressure).”<sup>120</sup> More than 1.4 million people—nearly five percent of the state’s population—were still experiencing water disruptions a week after power outages in the state began.<sup>121</sup>

Like other Texans, nearly a quarter of the state’s nursing homes lost access to potable water due to burst pipes, water outages and water shortages. Texas HHSC data show that 111 nursing homes reported water shortages, outages or pipe breaks, and 317 nursing homes were required to boil water.

Some of the water issues nursing homes experienced were due directly to ERCOT’s emergency actions. The balancing authority was forced to ask water utilities to reduce their power use to maintain grid stability. For example, on February 15, Austin’s water utility cut electricity to 48 sanitary sewer lift stations in response to an ERCOT order to reduce power use, which contributed to nine sanitary sewers overflowing during a 12-day period.<sup>122</sup> Two days later, the Austin water utility lost power at a water treatment plant, leading to an 11-hour outage.<sup>123</sup> An academic review of the winter emergency described these multi-factor issues as the “cascading effects” of the widespread power outages:

About 40% of natural gas production was not available during the crisis. Texas’ gas, electricity, and water systems are inter-linked so failures in one of them can lead to cascading effects on the others. The natural gas system relies on electricity, and the electrical system relies on gas. Thus, constrained gas limits the ability to generate electricity and constrained

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<sup>118</sup> *Supra*, note 80, Aging Committee 2017 Disaster Preparedness Hearing (testimony of Kathryn Hyer), at 10, 37, 38-39.

<sup>119</sup> *Id.*, at 16.

<sup>120</sup> *Supra*, note 2, at 10.

<sup>121</sup> Reese Oxner, Juan Pablo Garnham, “Over a million Texans are still without drinking water. Smaller communities and apartments are facing the biggest challenges,” *The Texas Tribune*, February 24, 2021, <https://www.texastribune.org/2021/02/24/texas-water-winter-storm/>.

<sup>122</sup> “Winter Storm Uri: After Action Report,” Austin Water (November 3, 2021), at 5, available at [https://www.austintexas.gov/sites/default/files/files/Water/AW\\_WinterStorm\\_Report.pdf](https://www.austintexas.gov/sites/default/files/files/Water/AW_WinterStorm_Report.pdf).

<sup>123</sup> *Id.*

electricity limits the ability to supply gas which in turn further limits the ability to generate power in a vicious circle. Power outages in turn can lead to failures in the water supply.<sup>124</sup>

Another factor affecting the availability of potable water was a lack of water pressure, which put water supplies at risk of contamination and triggered boil water notices across the state. For example, Austin’s water authority noted in an after-action report that peak water demand in February 2021 was more than double peak demand in February 2020. One issue that state officials identified as a contributing factor to these pressure problems was that many Texans, without power and in freezing conditions, left their faucets on to avoid burst pipes.<sup>125</sup> Governor Greg Abbott went so far as to urge “residents to shut off water to their homes to prevent more busted pipes and preserve pressure in municipal systems,” according to the *Associated Press*.<sup>126</sup>

Losing access to potable water is particularly problematic in a health care setting. Without water, residents are not only at risk for dehydration, but also at increased risk for infections—a major issue during the COVID-19 pandemic—since staff may not be able to wash their hands, and residents may not have access to functioning toilets or water for bathing. In total, 111 nursing facilities reported water shortages, outages, or pipe breaks (see Figure 6). Another 317 nursing facilities reported that they had to boil water (see Figure 7).

In Lockhart, a 14,000-person city south of Austin, burst pipes and the damages that ensued led one nursing home to evacuate all of its residents, ultimately resulting in its closure for more than seven months. To prevent the ice-cold water from flooding into resident’s rooms, “[b]lankets, sheets and anything that could be found were put in front of the resident’s doors and the staff used brooms and squeegees to move the flowing water towards shower drains,” according to a story in the local paper.<sup>127</sup> Management called residents’ families in hopes they could care for their loved ones at home, “but only four residents were able to go home to their families.”<sup>128</sup>

At Parmer Woods, the facility lost water the day after initially losing power, resorting to “‘creative measures,’ like melting snow to fill toilet tanks,” and relying on families to bring buckets of water from their pools.<sup>129</sup> Pegasus Senior Living, the company that operates Parmer Woods, had four facilities without water during the winter emergency.<sup>130</sup>

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<sup>124</sup> Joshua Busby, et al., “Cascading risks: Understanding the 2021 winter blackout in Texas,” *Energy Research & Social Science* 77 (July 2021), available at <https://www.sciencedirect.com/science/article/pii/S2214629621001997>.

<sup>125</sup> “How to Keep Pipes From Freezing Without Power,” CV Plumbing and Pools, available at <https://www.cvplumbingandpools.com/how-to-keep-pipes-from-freezing-without-power/>, last visited February 6, 2023. Burst pipes can occur when residential dwellings (or other buildings) go without heat during power outages in cold weather.

<sup>126</sup> Paul Webber, Jill Bleed, “Some electricity restored in Texas, but water woes grow,” *The Associated Press*, February 17, 2021, <https://apnews.com/article/texas-power-outages-icy-weather-186cf801ead7e2d21f001a99b3aaa936> [hereinafter Associated Blackout Article].

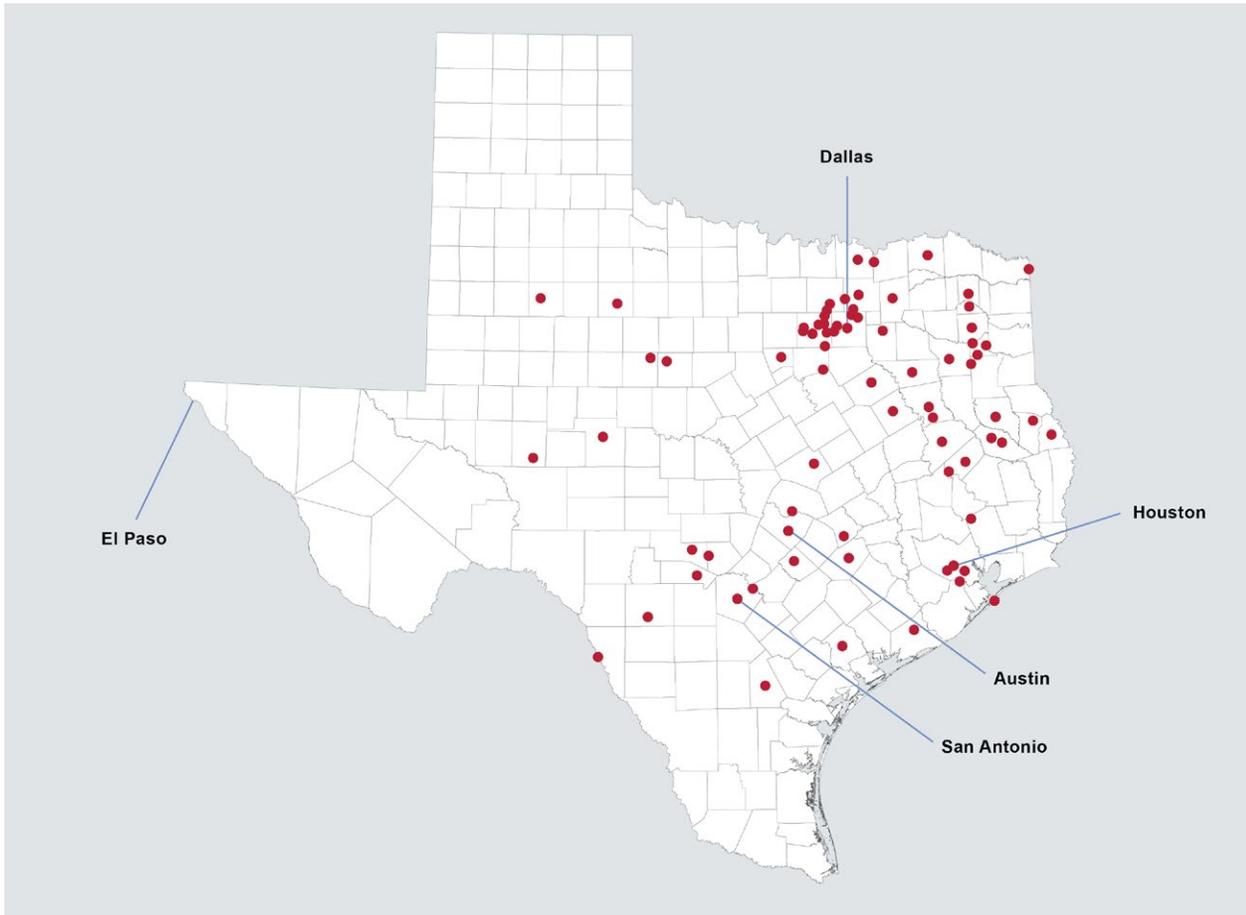
<sup>127</sup> LPR Staff, “The Long Trip Back: Nursing Home Reopens Months After Winter Storm,” *Lockhart Post-Register*, October 5, 2021, available at <https://post-register.com/the-long-trip-back-nursing-home-reopens-months-after-winter-storm/>.

<sup>128</sup> *Id.*

<sup>129</sup> *Supra*, note 108, MarketWatch Blackout Article.

<sup>130</sup> *Id.*

**Figure 6: Map of 111 Nursing Homes that Reported Water Shortages, Outages or Pipe Breaks during the Winter Emergency**



Ms. Ducayet relayed stories of assisted living facility residents who were without water. At one facility in Medina County, a rural county west of San Antonio the size of Rhode Island with a population of 51,000, water wasn't available for flushing toilets, showering or even drinking. Moreover, the facility only had two electric heaters to keep residents warm.<sup>131</sup> In Collin County, north of Dallas, a facility's pipes burst, leaving residents without water to drink, bathe or use in toilets.<sup>132</sup> Furthermore, the Texas Ombudsman was told that residents were sleeping on mattresses on the floor due to a collapsed ceiling. Ultimately, 21 residents were moved to a hotel; however, Ms. Ducayet was concerned about the facility's ability to provide the care needed for residents residing in a hotel.<sup>133</sup>

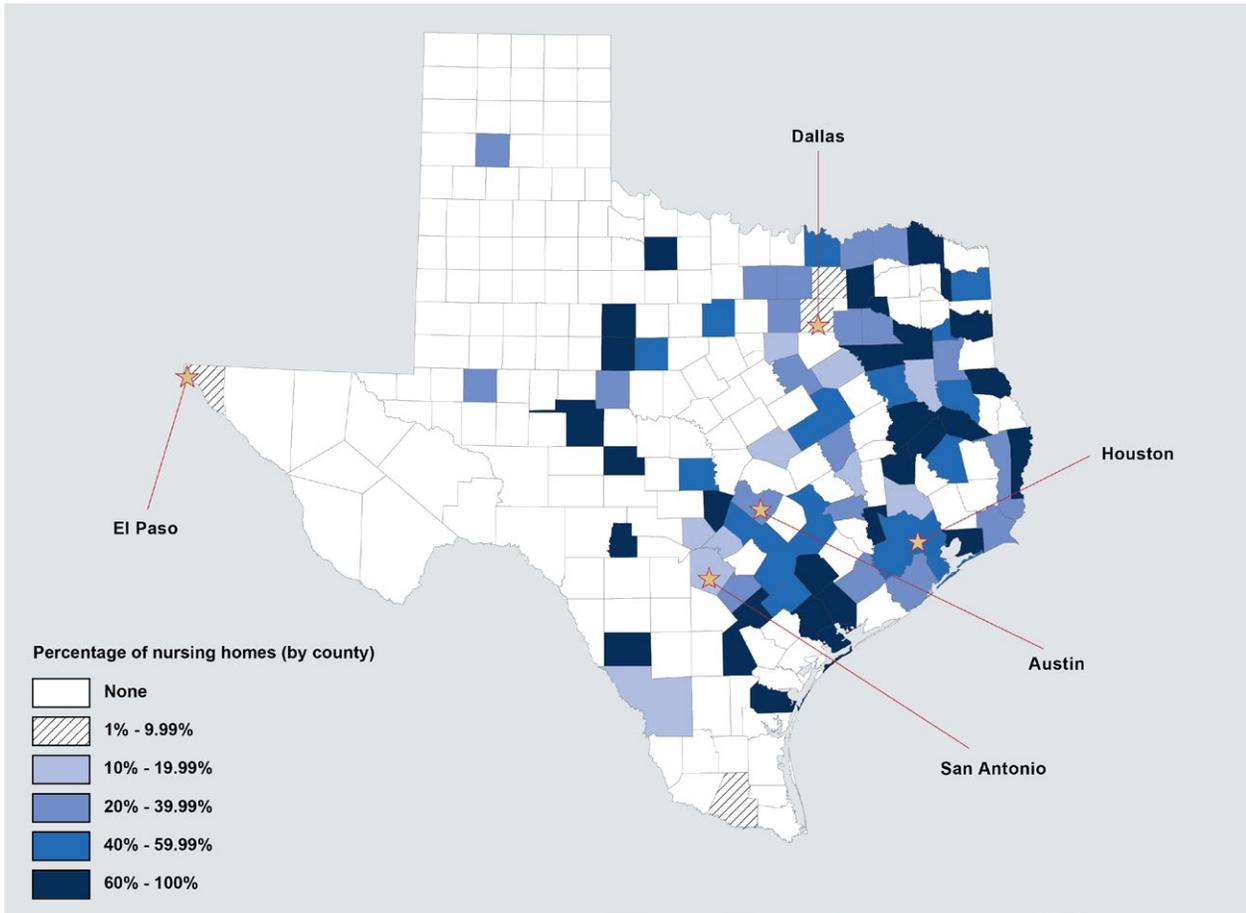
It is important to note that long-term care facilities were not the only health providers affected by water outages during the winter emergency. The *Associated Press* reported that hospitals across the state reduced their ability to treat patients:

<sup>131</sup> Appendix A, Ex. 3, Case Summaries from Texas Ombudsman to Chairman Wyden and Chairman Casey (2022), at 1, *see* Example 2 [hereinafter, Texas Case Summaries].

<sup>132</sup> *Id.*, at 2, *see* Example 3.

<sup>133</sup> *Id.*

**Figure 7: Percentage of Nursing Homes by County that Reported Needing to Boil Water during the Winter Emergency**



Some Austin hospitals lost water pressure and heat. But because the problem was statewide and affected other facilities, “no one hospital currently has the capacity to accept transport of a large number of patients,” said David Huffstutler, CEO of St. David’s South Austin Medical Center. Two of Houston Methodist’s community hospitals had no running water but still treated patients, with most non-emergency surgeries and procedures canceled for Thursday and possibly Friday, said spokeswoman Gale Smith. ... Texas Children’s Hospital’s main campus at the Texas Medical Center and another location had low water pressure, but the system was adequately staffed and patients had enough water and “are safe and comfortable,” spokeswoman Jenn Jacome said.<sup>134</sup>

Such disruptions to health facilities are detrimental to communities generally, but also to residents of long-term care facilities, who need care.

### **Evacuations: At Least 1,400 Residents in 80 Long-Term Care Facilities Were Evacuated**

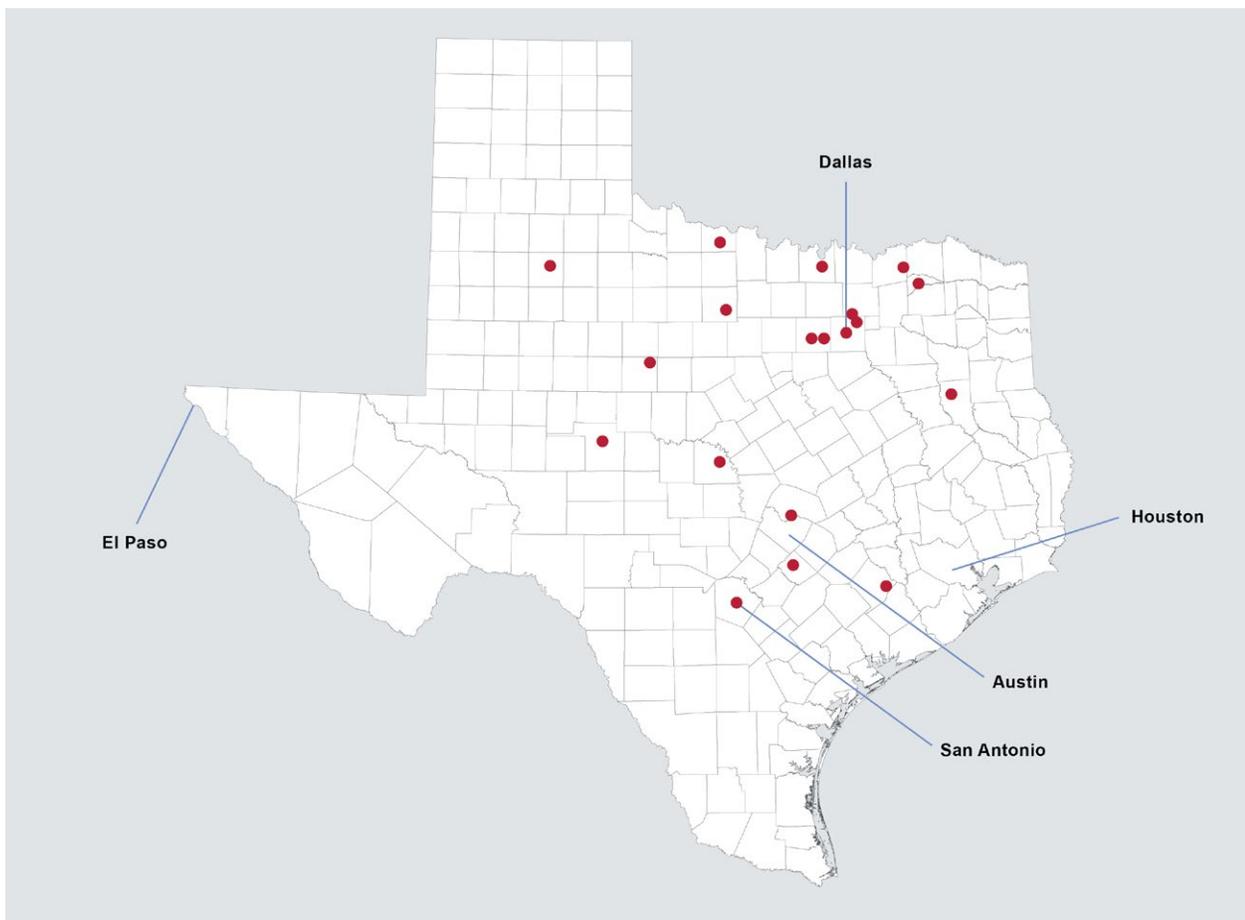
Texas HHSC data show that at least 19 nursing homes chose to evacuate residents during the winter emergency (see Figure 8). However, Ms. Ducayet told the Committees that 27 nursing homes fully or partially evacuated their buildings, and an additional 56 assisted living facilities fully or partially

<sup>134</sup> *Supra*, note 126, Associated Press Blackout Article.

evacuated their buildings.<sup>135</sup> In total, at least 1,400 residents were evacuated from long-term care facilities during the winter emergency.<sup>136</sup>

Many of the facilities that evacuated did so after they lost power, and either did not have a generator or the generator they had failed.<sup>137</sup> In some cases, the evacuations were not planned, such as when Gainesville Nursing and Rehabilitation, north of Dallas, decided to evacuate its 36 residents after the facility lost power and water. Residents were evacuated by a fire-rescue team that enlisted public school buses and drivers to relocate residents to a temporary shelter set up in a nearby college. “We had two buses and it probably took us four hours to move those 36 residents,” Gainesville Fire-Rescue Chief Twiner said. “We had to take some of their beds—there were beds at [the shelter] but it wasn’t enough.”<sup>138</sup>

**Figure 8: Texas HHSC Identified 19 Nursing Home Evacuations**



<sup>135</sup> *Supra*, note 7, Texas Ombudsman Letter, at 3.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Sarah Einselen, “Dozens of nursing home, senior living residents sheltered during winter storm,” *Gainesville Daily Register*, March 26, 2021, [https://www.gainesvilleregister.com/news/local\\_news/dozens-of-nursing-home-senior-living-residents-sheltered-during-winter-storm/article\\_5a72f79e-8e4e-11eb-98a0-bb760b63445d.html](https://www.gainesvilleregister.com/news/local_news/dozens-of-nursing-home-senior-living-residents-sheltered-during-winter-storm/article_5a72f79e-8e4e-11eb-98a0-bb760b63445d.html).

Appearing before the Texas House, Ms. Ducayet testified about “assisted living residents who had to go to homeless shelters for their evacuation sites.”<sup>139</sup> Brian Lee, executive director of Families for Better Care explained how these dire situations should be avoided, saying, “[o]nce again, facilities have been caught off-guard, not just by the pandemic but by this natural disaster. . . . The emergency management and preparation for long-term-care facilities is still fractured and is failing to protect residents from inclement weather.”<sup>140</sup>

Research has repeatedly shown that evacuations contribute to higher rates of morbidity and mortality among nursing home residents, the majority of whom are elderly and/or medically complex.<sup>141</sup> In addition to physical risks, evacuations pose significant mental health risks for long-term care residents. Residents of long-term care facilities may be at higher risk for developing and maintaining clinical levels of depression, anxiety and post-traumatic stress. They also may have already been contending with cognitive, emotional, physical and communication challenges prior to the disaster, which may be exacerbated post-disaster. A lack of advanced emergency planning, particularly during severe disasters, increases the risk that these residents will be exposed to chaos and horror, greater feelings of helplessness, as well as diminished social connections resulting in greater social isolation. Research shows such factors have the potential to impact long-term mental and physical health,<sup>142</sup> underscoring the need to address factors affecting the mental well-being of long-term care residents.

In testimony to the Texas House, Ms. Ducayet described these risks as “transfer trauma.”<sup>143</sup> Unplanned evacuations present additional risks to residents such as exposure to the elements; forgotten or misplaced medication and records; and use of transportation not designed to meet the needs of medically complex or disabled patients.<sup>144</sup> Ms. Ducayet acknowledged the difficult decisions some long-term care facilities were required to make on the fly during the winter emergency, while highlighting the risk unplanned evacuations posed for residents:

We know that some evacuations are inevitable—if there is damage to the facility because of a storm, wind or rain, sometimes you just have no choice. . . . [However], we know of assisted living residents that had to go to shelters—homeless shelters—for their evacuation site and churches [during the winter emergency], so not a good comparable place to go to, not another assisted living facility. Some dangerous outcomes have come from that.<sup>145</sup>

In addition to the stress evacuations place on residents, nursing home evacuations added to strains on the emergency response system and health care system. For example, in Hidalgo County, Dr. Ivan Menendez, the county’s health authority, told the local newspaper that, “[t]here are some nursing homes

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<sup>139</sup> Avery Travis, “Push to require backup generators at senior living facilities after Texas winter storm,” *KXAN*, April 6, 2021, <https://www.kxan.com/news/coronavirus/nursing-home-investigations/push-to-require-backup-generators-at-senior-living-facilities-after-texas-winter-storm/>.

<sup>140</sup> *Supra*, note 108, MarketWatch Blackout Article.

<sup>141</sup> *Supra*, note 76, *Sheltering in Danger*, at 62-64. For a discussion of this issue, see Weighing the Risks of Evacuating versus Sheltering-in-Place.

<sup>142</sup> George Bonanno, et al., “Weighing the Costs of Disaster: Consequences, Risks, and Resilience in Individuals, Families, and Communities,” *Psychological Science in the Public Interest* 11 no. 1 (January 1, 2010): 1, <https://journals.sagepub.com/doi/10.1177/1529100610387086>; Fran Norris, et al., “60,000 disaster victims speak: Part I. An empirical review of the empirical literature, 1981-2001,” *Psychiatry* 65 no. 3 (2002): 207, <https://pubmed.ncbi.nlm.nih.gov/12405079/>; J. Walsh, et al., “Peace of mind’s price tag: The psychological costs of financial stressors on older adults post disaster,” *Translational Issues in Psychological Science* 2 no. 4 (2016): 408, <https://doi.apa.org/doiLanding?doi=10.1037%2Ftps0000089>.

<sup>143</sup> *Supra*, note 6, Texas House Hearing (testimony of Patty Ducayet), at 1:03:09.

<sup>144</sup> *Supra*, note 76, *Sheltering in Danger*, at 59. See Policies and Procedures: Sheltering-in-Place and Evacuation.

<sup>145</sup> *Supra*, Texas House Hearing (testimony of Patty Ducayet), note 6, at 1:03:46.

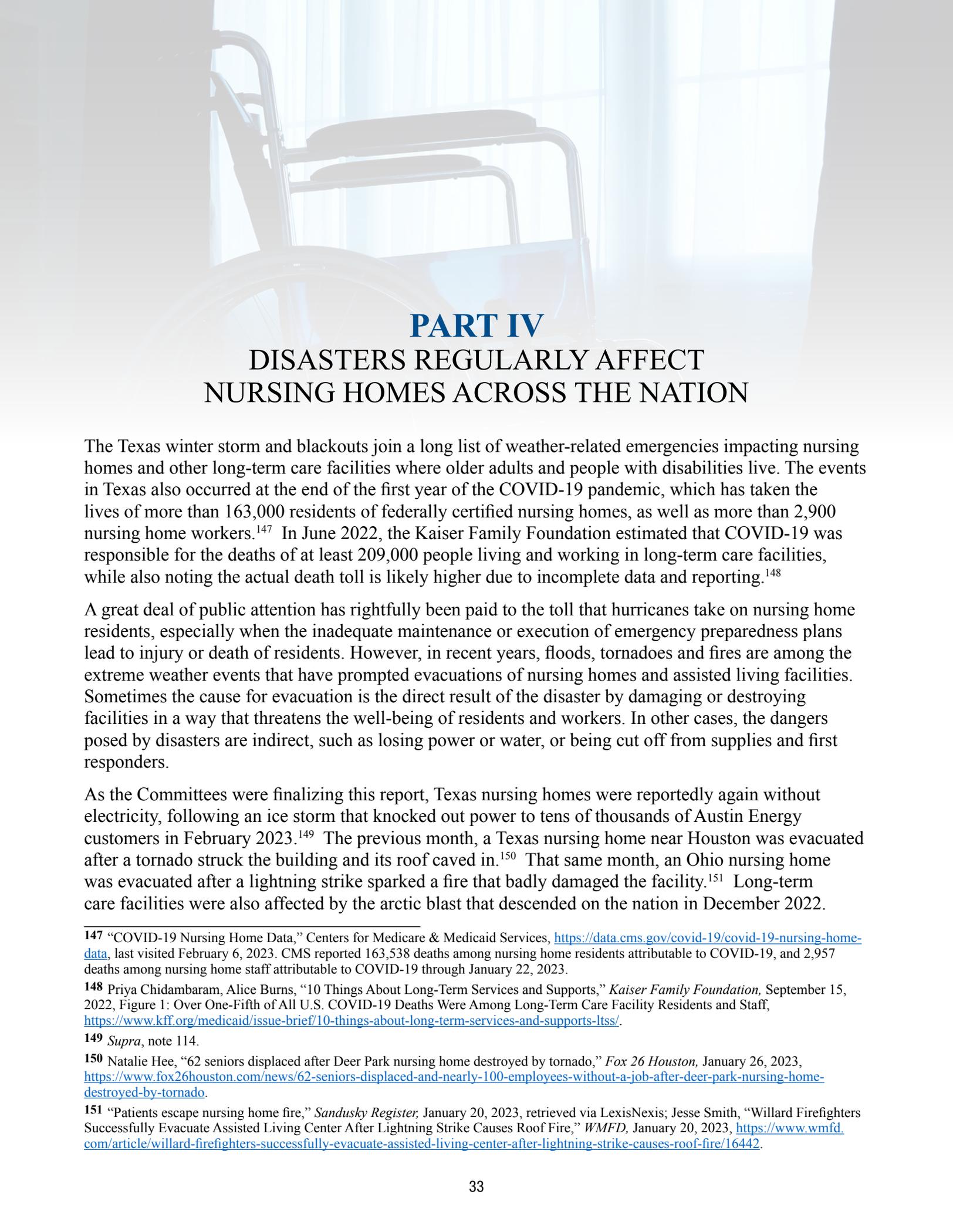
that are also without electricity and those that are significantly frail also require electrical equipment so they're also being sent to the hospital," which was contributing to a greater number of patients being admitted at hospitals.<sup>146</sup> These evacuation stories exemplify the types of scenarios that emergency preparedness plans are directly intended to prevent.

## Conclusion

The winter emergency posed serious dangers to older adults and people with disabilities living in long-term care facilities. However, the issues that emerged in February 2021 were not confined to Texas or to this event, as demonstrated in the following parts of this report. Part IV of this report demonstrates that disasters are a threat that residents of nursing homes and assisted living facilities face every year in cities and towns across the nation. Part V examines shortfalls in emergency preparedness in eight states, as viewed through the lens of a series of audits conducted by the Office of Inspector General for the Department of Health and Human Services.

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<sup>146</sup> Berenice Garcia, "Power Outages Lead to Uptick in Hospital Admissions in Hidalgo County," *The Monitor*, March 9, 2021, <https://myrgv.com/local-news/2021/02/16/power-outages-lead-to-uptick-in-hospital-admissions-in-hidalgo-county/>. Health Authorities are public health officials authorized by state statute. See "Health Authorities in Texas," Texas Health & Human Services Commission, <https://www.dshs.texas.gov/regional-local-health-operations/health-authorities-texas>, last visited February 6, 2023.



## PART IV

# DISASTERS REGULARLY AFFECT NURSING HOMES ACROSS THE NATION

The Texas winter storm and blackouts join a long list of weather-related emergencies impacting nursing homes and other long-term care facilities where older adults and people with disabilities live. The events in Texas also occurred at the end of the first year of the COVID-19 pandemic, which has taken the lives of more than 163,000 residents of federally certified nursing homes, as well as more than 2,900 nursing home workers.<sup>147</sup> In June 2022, the Kaiser Family Foundation estimated that COVID-19 was responsible for the deaths of at least 209,000 people living and working in long-term care facilities, while also noting the actual death toll is likely higher due to incomplete data and reporting.<sup>148</sup>

A great deal of public attention has rightfully been paid to the toll that hurricanes take on nursing home residents, especially when the inadequate maintenance or execution of emergency preparedness plans lead to injury or death of residents. However, in recent years, floods, tornadoes and fires are among the extreme weather events that have prompted evacuations of nursing homes and assisted living facilities. Sometimes the cause for evacuation is the direct result of the disaster by damaging or destroying facilities in a way that threatens the well-being of residents and workers. In other cases, the dangers posed by disasters are indirect, such as losing power or water, or being cut off from supplies and first responders.

As the Committees were finalizing this report, Texas nursing homes were reportedly again without electricity, following an ice storm that knocked out power to tens of thousands of Austin Energy customers in February 2023.<sup>149</sup> The previous month, a Texas nursing home near Houston was evacuated after a tornado struck the building and its roof caved in.<sup>150</sup> That same month, an Ohio nursing home was evacuated after a lightning strike sparked a fire that badly damaged the facility.<sup>151</sup> Long-term care facilities were also affected by the arctic blast that descended on the nation in December 2022.

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<sup>147</sup> “COVID-19 Nursing Home Data,” Centers for Medicare & Medicaid Services, <https://data.cms.gov/covid-19/covid-19-nursing-home-data>, last visited February 6, 2023. CMS reported 163,538 deaths among nursing home residents attributable to COVID-19, and 2,957 deaths among nursing home staff attributable to COVID-19 through January 22, 2023.

<sup>148</sup> Priya Chidambaram, Alice Burns, “10 Things About Long-Term Services and Supports,” *Kaiser Family Foundation*, September 15, 2022, Figure 1: Over One-Fifth of All U.S. COVID-19 Deaths Were Among Long-Term Care Facility Residents and Staff, <https://www.kff.org/medicaid/issue-brief/10-things-about-long-term-services-and-supports-1tss/>.

<sup>149</sup> *Supra*, note 114.

<sup>150</sup> Natalie Hee, “62 seniors displaced after Deer Park nursing home destroyed by tornado,” *Fox 26 Houston*, January 26, 2023, <https://www.fox26houston.com/news/62-seniors-displaced-and-nearly-100-employees-without-a-job-after-deer-park-nursing-home-destroyed-by-tornado>.

<sup>151</sup> “Patients escape nursing home fire,” *Sandusky Register*, January 20, 2023, retrieved via LexisNexis; Jesse Smith, “Willard Firefighters Successfully Evacuate Assisted Living Center After Lightning Strike Causes Roof Fire,” *WMFD*, January 20, 2023, <https://www.wmfd.com/article/willard-firefighters-successfully-evacuate-assisted-living-center-after-lightning-strike-causes-roof-fire/16442>.

In Tennessee, a nursing home had to evacuate after multiple pipes burst, forcing the facility to turn off power and water.<sup>152</sup> And on Christmas Day, a Houston television station broadcast video of a local assisted living facility with extensive flooding, with “water coming from the ceilings, flooded stairwells, [and] water leaking from the exterior of the building.”<sup>153</sup> The facility’s nearly 300 residents reportedly experienced intermittent power for days.<sup>154</sup>

In 2022 alone, flooding prompted evacuations of nursing homes in Illinois,<sup>155</sup> Montana<sup>156</sup> and Kentucky.<sup>157</sup> In another instance that year, an assisted living facility in Mississippi was evacuated after it was inundated with water during a flood.<sup>158</sup> *Sheltering in Danger* specifically called on CMS and states to ensure that long-term care facilities at risk of floods fully address these risks in their hazards assessments and include flood monitoring and secondary evacuation procedures in their emergency plans.<sup>159</sup>

In December 2021, separate tornadoes destroyed nursing homes in Kentucky—where residents were able to shelter safely—and Arkansas, where one resident died.<sup>160</sup> The same month, a Colorado nursing home and several assisted living facilities evacuated due to fast-moving wildfires.<sup>161</sup> In January 2019, a Rhode Island nursing home was evacuated in frigid cold after a regional gas outage.<sup>162</sup> The same month, an Illinois assisted living facility was evacuated when a compressor failed when temperatures reached 16 below zero.<sup>163</sup> And in 2018, families of a California assisted living facility destroyed during the Tubbs fire settled with the operator following a suit that included allegations of wrongful death, negligence and elder abuse.<sup>164</sup> Multiple nursing homes in Iowa were damaged or had to evacuate after a derecho caused

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<sup>152</sup> Glenn Tanner, “Frigid storm causes nursing home evacuation,” *The Paris Post-Intelligencer*, December 28, 2022, [https://www.parispi.net/news/local\\_news/article\\_f87eb3b2-86bb-11ed-8421-63e05e0aceba.html](https://www.parispi.net/news/local_news/article_f87eb3b2-86bb-11ed-8421-63e05e0aceba.html).

<sup>153</sup> Brooke Taylor, “Residents at a senior living community trapped after power outage and flooded elevators,” *ABC 13 Eyewitness News*, December 25, 2022, <https://abc13.com/houston-residents-trapped-tanglewood-senior-living-center-stuck-families-concerned/12614623/>.

<sup>154</sup> *Id.*

<sup>155</sup> Elliot Davis, “Illinois nursing home evacuated due to flooding,” *Fox 2 News*, July 26, 2022, <https://fox2now.com/news/illinois/illinois-nursing-home-evacuate-due-to-flooding/>.

<sup>156</sup> Christine Compton, “Hospitals and nursing homes in flood zones move patients to nearby, drier, cities,” *Billings Gazette*, June 14, 2022, [https://billingsgazette.com/news/hospitals-and-nursing-homes-in-flood-zones-move-patients-to-nearby-drier-cities/article\\_17264c0c-ec35-11ec-8c4d-f3a1d699b34a.html](https://billingsgazette.com/news/hospitals-and-nursing-homes-in-flood-zones-move-patients-to-nearby-drier-cities/article_17264c0c-ec35-11ec-8c4d-f3a1d699b34a.html).

<sup>157</sup> Beth Musgrave, “‘Safe and dry.’ Nursing homes in Eastern Kentucky evacuated. Some residents still in gyms,” *Lexington Herald-Leader*, August 1, 2022, retrieved via LexisNexis.

<sup>158</sup> Brendan Hall, “Residents at Brandon nursing home evacuated due to flooding, sheriff says,” *WLBT 3*, August 24, 2022, <https://www.wlbt.com/2022/08/24/residents-brandon-nursing-home-being-evacuated-due-flooding-sheriff-says/>.

<sup>159</sup> *Supra*, note 76, *Sheltering in Danger*. See Recommendation C(7), Planning for Floods.

<sup>160</sup> Natalie Neysa Alund, “‘Divine intervention’: A tornado destroyed the Mayfield Health and Rehabilitation facility in Kentucky. All of the residents survived,” *Louisville Courier-Journal*, December 14, 2021, <https://www.courier-journal.com/story/news/2021/12/14/kentucky-tornado-residents-survive-mayfield-nursing-home-annihilation/6502766001/>; Hannah Cain, Travis Pittman, “UPDATE: 1 dead at Monette, Ark., nursing home; Everyone accounted for,” *Associated Press*, December 13, 2021, <https://www.localmemphis.com/article/weather/severe-weather/state-of-emergency-issue-after-roof-collapse-on-a-nursing-home-in-monette-arkansas/522-118436df-e2c4-490e-8f28-25d6760e99e3>.

<sup>161</sup> Zach Newman, “Staff fight fires as dozens evacuated at nursing homes, medical facilities across Boulder County,” *9News*, December 30, 2021, <https://www.9news.com/article/news/local/wildfire/staff-fight-fires-nursing-homes-medical-facilities/73-61838970-4f74-48d2-9c6d-a22a18d2029e>.

<sup>162</sup> Steph Machado, “Evacuation plan was key for nursing home during gas disaster,” *WPRI*, January 24, 2019, <https://www.wpri.com/news/evacuation-plan-was-key-for-nursing-home-during-gas-disaster/>.

<sup>163</sup> Paul Swiech, “Power outage due to cold affects Hopedale Medical Complex,” *The Pantagraph*, January 30, 2019, [https://web.archive.org/web/20190131050916/https://pantagraph.com/news/local/power-outage-due-to-cold-affects-hopedale-medical-complex/article\\_9ac4c015-11e9-59f3-9f5e-60d851ed4d1f.html](https://web.archive.org/web/20190131050916/https://pantagraph.com/news/local/power-outage-due-to-cold-affects-hopedale-medical-complex/article_9ac4c015-11e9-59f3-9f5e-60d851ed4d1f.html).

<sup>164</sup> Phil Barber, “60 Santa Rosa seniors narrowly escaped the Tubbs Fire—lawsuits and tighter regulations followed,” *The Press Democrat*, October 27, 2022, <https://www.pressdemocrat.com/article/news/60-santa-rosa-seniors-narrowly-escaped-the-tubbs-fire-lawsuits-and-tighter/>.

widespread destruction in the state in 2020.<sup>165</sup> One of the nursing homes in Madrid, Iowa, was even forced to evacuate six residents with COVID-19, who would have otherwise been isolated.<sup>166</sup>

Recent hurricanes have similarly underscored the importance of robust emergency preparedness and the consequences when nursing homes are not prepared. For example, in 2022, thousands of Florida nursing home residents were evacuated ahead of Hurricane Ian, including one mid-storm rescue that required emergency crews to bring a boat into an Orlando facility that was flooding.<sup>167</sup> In 2021, seven Louisiana nursing home residents died after multiple facilities were evacuated to a warehouse, leading to criminal charges being filed against the company's owner.<sup>168</sup> And an investigative report raised concerns about the adequacy of emergency preparedness plans at North Carolina assisted living facilities and nursing homes, following a series of mid-storm evacuations during Hurricane Matthew in 2018.<sup>169</sup>

Oregon and Pennsylvania long-term care facilities have also been affected by disasters. In Oregon, the historic 2020 wildfires led to the evacuation of an estimated 60 long-term care facilities in at least five counties, destroyed an assisted living facility in Jackson County, and prompted state authorities to issue warnings to providers regarding poor air quality and dangers posed by fire cleanup to residents.<sup>170</sup> In Pennsylvania, multiple long-term care facilities evacuated due to flooding, which then-Governor Tom Wolf cited in an emergency declaration request.<sup>171</sup> The same year, a Crawford County, Pennsylvania, nursing home was evacuated after a tornado struck the facility, ripping off its roof.<sup>172</sup>

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<sup>165</sup> *KWWL*, "Alzheimer's care facility reopens with new features following derecho damage," February 23, 2021, <https://www.kwwl.com/news/cedar-rapids/alzheimer-s-care-facility-reopens-with-new-features-following-derecho-damage/article-fdf95af7-2c95-5c71-8389-e5102bc7e2c8.html>; *Iowa Starting Line*, "It's Even Worse Than You Think in Cedar Rapids," August 16, 2020, <https://iowastartingline.com/2020/08/16/cedar-rapids-is-even-worse-than-you-think/>.

<sup>166</sup> Ian Richardson, "With damaged roof, broken windows and no power, Madrid nursing home evacuates 72 residents, including 6 with COVID-19," *Des Moines Register*, August 11, 2020, <https://www.desmoinesregister.com/story/news/politics/2020/08/11/madrid-iowa-nursing-home-evacuates-after-derecho-storm-causes-damage/3347170001/>.

<sup>167</sup> Bobby Caina Calvan, Alina Hartounian, "Florida health care facilities evacuate patients after Ian," *The Associated Press*, September 29, 2022, <https://apnews.com/article/floods-hurricanes-health-hurricane-ian-storms-feafd6741badece7e416d9f1bfb2db73>; Stephanie Colombini, "Some nursing home residents are still displaced after Hurricane Ian," *WUSF*, October 6, 2022, <https://wusfnews.wusf.usf.edu/health-news-florida/2022-10-06/some-nursing-home-residents-are-still-displaced-after-hurricane-ian>; "Dozens rescued from nursing homes after Ian swamps Orlando," *ABC News*, September 29, 2022, video 4:46, <https://www.youtube.com/watch?v=ljxuqHhsoh4>.

<sup>168</sup> Doha Madani, "Louisiana nursing home owner charged after 7 residents died in Ida evacuation to warehouse," *NBC News*, June 22, 2022, <https://www.nbcnews.com/news/us-news/louisiana-man-charged-unsafe-nursing-home-hurricane-ida-rcna34859>. See also U.S. Department of Justice, "United States Files Complaint Against Bob Dean Jr. and Affiliated Corporate Entities for Financial Misconduct Stemming from Evacuation of Nursing Homes During Hurricane Ida," news release, January 12, 2023, <https://www.justice.gov/opa/pr/united-states-files-complaint-against-bob-dean-jr-and-affiliated-corporate-entities-financial>. The Department of Justice recently filed a complaint alleging that the nursing home chain's owner required facilities to make payments to industrial warehouses "he had acquired supposedly to serve as a hurricane evacuation center." The complaint alleges that instead of using the payments to prepare the warehouses for a hurricane, he funneled more than \$1 million into personal bank accounts.

<sup>169</sup> Carli Brosseau, "In harm's way: NC homes for frail, disabled fail to prepare for foreseeable disasters," *The News & Observer*, August 2, 2020, retrieved via LexisNexis; see also Twitter thread of Carli Brosseau, <https://twitter.com/carlibrosseau/status/1290394350002884608>.

<sup>170</sup> Tim Regan, "Senior Living Providers Respond to Wildfires, Smoke in Midst of Pandemic," *Senior Housing News*, September 14, 2020, <https://seniorhousingnews.com/2020/09/14/senior-living-providers-respond-to-wildfires-smoke-in-midst-of-pandemic/>; Allana Madden, "How Oregon assisted living facility residents and staff find support amid mass evacuations," *Portland Business Journal*, September 15, 2020, retrieved via LexisNexis; Allayana Darrow, "Furthering family legacy," *Mail Tribune*, November 19, 2020, <https://www.mailtribune.com/top-stories/2020/11/19/furthering-family-legacy/>; Oregon Department of Human Services, "Provider Alert re: Wildfire Clean Up Information," September 14, 2020 (NF-20-123), available at <https://www.oregon.gov/dhs/PROVIDERS-PARTNERS/LICENSING/AdminAlerts/nf-20-123-wildfire-clean-up-info.pdf>; Oregon Department of Human Services, "Provider Alert re: Wildfires Across the State," September 10, 2020 (NF-20-120), available at <https://www.oregon.gov/dhs/PROVIDERS-PARTNERS/LICENSING/AdminAlerts/nf-20-120-wildfires-across-oregon.pdf>.

<sup>171</sup> Letter from Governor Wolf to President Trump, November 2, 2018, available at [https://www.scribd.com/document/392210105/Letter-to-President#from\\_embed](https://www.scribd.com/document/392210105/Letter-to-President#from_embed).

<sup>172</sup> *CBS News*, "Tornado rips roof off Pennsylvania nursing home; 162 residents evacuate," October 3, 2018, <https://www.cbsnews.com/news/tornado-hits-conneautville-pennsylvania-nursing-home-evacuations-today-2018-10-03/>.

The breadth of disasters affecting nursing homes explains why one large provider lists fires, earthquakes and mudslides among the potential risks facing facilities it operates in the West, and hurricanes, tornadoes and flooding among risks for facilities in the Midwest and South.<sup>173</sup> “Such events could harm the patients and employees of our operating subsidiaries, severely damage or destroy one or more of our affiliated facilities,” the company stated in its annual financial disclosures filed with the Securities and Exchange Commission, adding that evacuations triggered by disasters pose “potentially fatal risks, for the patients.”<sup>174</sup> Indeed, while researchers have found that nursing home residents exposed to disasters have higher rates of morbidity and mortality than those who do not,<sup>175</sup> evacuations may pose even greater risks to the health of nursing home residents.<sup>176</sup> As such, the general consensus among emergency planners and LTC administrators is to all but default to sheltering in place unless a mandatory evacuation order is issued, or if changing circumstances dictate the need to evacuate.<sup>177</sup>

Given the predisposition of long-term care facilities to shelter in place, shortfalls in emergency preparedness are a major concern. These concerns are underscored by a recent research paper in the *Journal of the American Geriatrics Society* that raised concerns about the preparedness of California nursing homes for wildfires. The study found that nursing homes located within five kilometers (3.125 miles) of recent wildfires were *more* likely to have been cited for emergency preparedness deficiencies than those outside that radius. The authors wrote that the findings “suggest that nursing home emergency preparedness may not be responsive or well-aligned to wildfire exposure risk.” The authors went on to add that as the number of wildfires increases, the importance of preparedness will grow for these facilities:

Potential increases in the frequency and severity of wildfire episodes heighten the importance of ensuring adequate emergency preparedness for nursing homes with differential exposure risk. The poorer emergency preparedness of exposed nursing homes suggests that management and staff may either be unaware of or not appropriately incentivized to respond to surrounding wildfire risk.<sup>178</sup>

Such findings underscore the importance of emergency preparedness audits conducted by the Office of Inspector General for the Department of Health and Human Services. As discussed in Part V of this report, OIG has conducted audits in eight states examining how nursing homes are implementing federal emergency preparedness regulations, which went into effect in 2017. The audits also examine how state survey agencies, which are charged by CMS to enforce federal nursing home regulations, were overseeing those requirements. These audits add to OIG’s significant body of past work regarding emergency preparedness in nursing homes.<sup>179</sup>

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<sup>173</sup> The Ensign Group, Inc., Form 10-K for the fiscal year ended December 31, 2021, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1125376/000112537622000019/ensg-20211231.htm>, at 48.

<sup>174</sup> *Id.*

<sup>175</sup> David M. Dosa, et al., “Association Between Exposure to Hurricane Irma and Mortality and Hospitalization in Florida Nursing Home Residents,” *JAMA Network Open*, 3 no. 10: (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2771392>.

<sup>176</sup> Melissa Willoughby, “Mortality in Nursing Homes Following Emergency Evacuation: A Systematic Review,” *Journal of Post-Acute and Long-Term Care Medicine* 18 no. 8: (August 2017), [https://www.jamda.com/article/S1525-8610\(17\)30100-7/fulltext](https://www.jamda.com/article/S1525-8610(17)30100-7/fulltext).

<sup>177</sup> *Supra*, note 76, *Sheltering in Danger*, at 62-65. For additional discussion, see Weighing the Risks of Evacuating versus Sheltering-in-Place.

<sup>178</sup> Natalia Festa, et al., “Evaluating California nursing homes’ emergency preparedness for wildfire exposure,” *Journal of the American Geriatrics Society* (2022): 1-8, <https://agsjournals.onlinelibrary.wiley.com/doi/10.1111/jgs.18142>.

<sup>179</sup> See *supra*, note 76, *Sheltering in Danger*; at 3, 44, for additional discussion and past examples of OIG’s work on emergency preparedness in nursing homes.

Power disruptions pose a particular threat to nursing home residents, many of whom are older adults, people with disabilities or are medically fragile. Nursing home residents may have lessened ability to adapt to temperature changes, greater susceptibility to environmental stresses and may depend on equipment requiring electricity. Avoiding evacuations of nursing home residents is generally viewed as the best approach to minimize harm. However, sheltering in place can cause more harm when nursing homes are not properly prepared with sufficient supplies and alternative power sources, such as generators, that can maintain key equipment and safe temperatures.



## PART V

# WATCHDOG AUDITS IDENTIFY WIDESPREAD PREPAREDNESS SHORTFALLS

In recent years, the Office of Inspector General for the U.S. Department of Health and Human Services (OIG) examined how effectively eight different state survey agencies<sup>180</sup> have overseen implementation of new federal rules governing emergency preparedness<sup>181</sup> and life safety requirements for nursing homes.<sup>182</sup> HHS finalized its emergency preparedness rules in 2016, which went into effect in 2017, following years of concern regarding emergency preparedness in nursing homes.<sup>183</sup> Taken together, the OIG’s recent audits strongly suggest there is additional work to be done to ensure that long-term-care facilities across the nation are prepared to meet the threats they face from the wide range of emergencies and disasters discussed in Parts II and III of this report.

OIG identified multiple issues leading to the widespread compliance shortfalls in a summary report provided to the CMS earlier in July 2022:

These deficiencies occurred because of several factors, including inadequate oversight by management, staff turnover, inadequate oversight by State survey agencies, and a lack of any requirement for mandatory participation in standardized life safety training programs. As a result, residents, visitors, and staff at the nursing homes were at increased risk of injury or death during a fire or other emergency.<sup>184</sup>

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<sup>180</sup> Office of the Inspector General for the Department of Health and Human Services (HHS-OIG), “Audits of Nursing Home Life Safety and Emergency Preparedness in Eight States Identified Noncompliance With Federal Requirements and Opportunities for the Centers for Medicare & Medicaid Services to Improve Resident, Visitor, and Staff Safety,” A-02-21-01010 (July 2022), at 15, *available at* <https://oig.hhs.gov/oas/reports/region2/22101010.pdf> [hereinafter HHS-OIG Summary Audit].

<sup>181</sup> Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers Final Rule, 81 Fed. Reg. 180, 63860 (Sept. 16, 2016) (codified at 42 C.F.R. pts. 403, 416, 418, et al.), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-09-16/pdf/2016-21404.pdf> [hereinafter, Emergency Preparedness Rule]. The regulations went into effect on November 16, 2016. However, health care providers and suppliers affected by this rule were given one year after the effective date to comply and implement all regulations on November 15, 2017.

<sup>182</sup> Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities Final Rule, 81 Fed. Reg. 86, 26871 (May 4, 2016) (codified at 42 CFR pts. 403, 416, 418, et al), *available at* <https://www.federalregister.gov/d/2016-10043>.

<sup>183</sup> Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers Proposed Rule, 78 Fed. Reg. 249, 79081, *available at* <https://www.federalregister.gov/d/2013-30724>. For example, HHS noted that an OIG report conducted in response to a request from the U.S. Senate Special Committee on Aging found that in 2004 through 2005, 94 percent of nursing homes nationwide met the limited federal regulations for emergency plans then in existence, while only 80 percent met the federal standards for emergency training. The report, “Nursing Home Emergency Preparedness and Responses During Recent Hurricanes” (OEI-06-06-00020) can be found at <https://oig.hhs.gov/oei/reports/oei-06-06-00020.pdf>.

<sup>184</sup> *Supra*, HHS-OIG Summary Audit, note 180, at 4.

OIG noted in its July 2022 report that CMS has taken several steps to address the shortfalls identified in the audits. These steps include following up with certain nursing homes with repeated deficiencies through the Special Focus Facilities program, which targets poor-performing facilities for improvement; and updating Appendix Z, which sets out guidance of emergency preparedness requirements for states and providers.<sup>185</sup> While the Biden Administration announced in February 2022 that CMS is “examining and considering changes to emergency preparedness requirements” for nursing homes,<sup>186</sup> it has not detailed its plans.

As the Committees were completing this report, staff asked OIG to review the status of the recommendations that were issued as part of its state audits. In response, OIG reported in February 2023, that “OIG considers all the recommendations from the eight state audit series to be closed/implemented. In each case, CMS concurred.”<sup>187</sup> While acknowledging the progress OIG reported, the Committees believe the findings from the audits are instructive regarding common emergency preparedness shortfalls in our nation’s nursing homes. As the OIG noted, “The health and safety of residents and staff are at an increased risk if life safety and emergency preparedness requirements . . . are not followed.”<sup>188</sup> OIG’s response, including a list of the recommendations it issued, can be found in Appendix A of this report.

## Methods

This section of the report:

1. Summarizes the eight audits, drawing on data and qualitative examples contained within the reports and correspondence between the OIG and state survey agencies;
2. Provides data tables detailing the frequency of emergency preparedness; and
3. Provides a list of recommendations issued by the OIG to states in the audits.

To prepare this section, the Committees reviewed OIG audits conducted at nursing homes in California, Florida, Illinois, Iowa, Missouri, New York, North Carolina and Texas. OIG selected the facilities it audited from a non-statistical sample of nursing homes with the highest number of high-risk life safety and emergency preparedness citations.<sup>189</sup>

Although the rates of emergency preparedness citations at the nursing homes selected for audits may not be representative of the nursing home industry at large, the OIG informed the Committees that they were demonstrative of problems that occur across nursing homes in different geographic settings.<sup>190</sup> The Committees note that OIG surveyed 154 nursing homes—an average of 19 facilities in each of the eight states that were audited. If the OIG had surveyed the same number of facilities in all 50 states, the District of Columbia and Puerto Rico, it would account for 980 facilities—more than 6 percent of all nursing homes in the United States.

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<sup>185</sup> *Id.*, at 3, 13, 19.

<sup>186</sup> White House, “FACT SHEET: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes,” press release, February 28, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>.

<sup>187</sup> Appendix A, Ex. 4, Email from Nicolaus H. Janssen to Peter Gartrell, February 1, 2023.

<sup>188</sup> *Supra*, note 180, HHS-OIG Summary Audit, at 12.

<sup>189</sup> For example, see HHS-OIG, “Iowa Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness,” A-07-19-03238 (February 2021), at 3, available at <https://oig.hhs.gov/oas/reports/region7/71903238.pdf> [hereinafter HHS-OIG Iowa Audit].

<sup>190</sup> Phone calls with the HHS-OIG (December 2021, February 2022).

## States' Role Overseeing Emergency Preparedness in Nursing Homes

Housed within state health departments, survey agencies are integral to ensuring the health and safety of nursing home residents. These agencies have agreements with CMS, which charges them with oversight of the nation's 15,000 nursing homes, enforcing federal standards related to medical care, adequate staffing and safeguarding residents from abuse and neglect, among others. By conducting comprehensive inspections, known as standard surveys, every 15 months and promptly investigating complaints, state surveyors are the eyes and ears that ensure quality care is delivered.<sup>191</sup>

The OIG audits identified a series of gaps at survey agencies that led to recommendations for how the agencies can better protect the safety of residents. The recommendations fell into three broad categories:

1. Improving their enforcement of existing rules;
2. Providing additional technical assistance to providers, such as life safety and emergency preparedness training; and
3. Adding state-level requirements for carbon monoxide detectors, especially for facilities that rely on generators for emergency power.

In addition, the audits identified and reported on emergency preparedness deficiencies identified at the 154 nursing homes the OIG surveyed as part of its field work in 2018 and 2019. The audits identified more than 1,100 instances of non-compliance with emergency preparedness regulations throughout the eight states.<sup>192</sup> For example, the OIG found examples of nursing homes that:

- Could not locate emergency plans—in one case for 24 hours;
- Failed to properly conduct or document required emergency training exercises;
- Lacked key information like names and contacts in emergency communications plans;
- Did not adequately maintain emergency supplies such as diesel fuel for generators; and
- Used emergency plans that did not accurately reflect the resources at their facility.

The OIG traced these compliance shortfalls to issues at nursing homes such as inadequate internal oversight, as well as survey agencies, which are severely understaffed,<sup>193</sup> reducing their ability to conduct inspections and offer technical assistance to providers. The findings raise questions about the ability of nursing homes to police themselves and the ability of regulators to ensure that long-term-care facilities are meeting the safety needs of their residents. As noted previously, nursing home residents are often medically fragile, making them more susceptible to upheaval during disasters, as well as temperature extremes and exposure to the elements.

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<sup>191</sup> 42 U.S.C. §1396r(g)(2)(A); *see also* the State Operations Manual Chapter 7—Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, November 16, 2018, <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07pdf.pdf>, last visited February 7, 2023.

<sup>192</sup> *Supra*, note 180, HHS-OIG Summary Audit, at 8. The OIG identified emergency deficiencies in the following categories: (1) Emergency Plans, (2) Emergency Supplies and Power, (3) Plans for Evacuations, Sheltering in Place, and Tracking Residents and Staff During and After an Emergency, (4) Emergency Communications Plans and (5) Emergency Plan Training and Testing.

<sup>193</sup> HHS-OIG, “CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys,” OEI-06-19-00460 (January 2022), *available at* <https://oig.hhs.gov/oei/reports/OEI-06-19-00460.pdf> [hereinafter HHS-OIG State Performance Evaluation]. In this evaluation, HHS-OIG identified staffing shortages as a “root cause” of state survey agency performance problems. For additional discussion of connection between state survey agency staffing and resident safety at nursing homes, *see* Jayme Fraser, Nick Penzenstadler, Jeff Kelly Lowenstein, “Many nursing homes are poorly staffed. How do they get away with it?”, *USA TODAY*, December 1, 2022, <https://www.usatoday.com/in-depth/news/investigations/2022/12/01/skilled-nursing-facilities-staffing-problems-biden-reforms/8318780001/>.

## Inadequate Internal Oversight, Understaffing, and Staff Turnover Led to Poor Compliance

OIG determined that inadequate internal oversight, insufficient staffing levels and high staff turnover rates substantially contributed to poor compliance with emergency preparedness requirements.

For example, six of the eight audits identified “inadequate management oversight and staff turnover at the nursing homes,”<sup>194</sup> touching on a long-standing issue that worsened during the pandemic.<sup>195</sup> As OIG noted in response to comments from Missouri’s survey agency challenging aspects of its audit, “inadequate management oversight and high turnover are not deficiencies in and of themselves,” but “can be recognized for what they are: causes rather than findings.”<sup>196</sup> The Committee note that the recent National Academies of Sciences, Engineering and Medicine report on long-term care cited multiple studies that found racial and ethnic minorities are more likely to live in nursing homes that are understaffed, contributing to health disparities.<sup>197</sup>

The Missouri audit, conducted in 2018, found that 18 of the 20 nursing homes it visited were short-staffed.<sup>198</sup> OIG noted that nursing staff shortages and turnover would “affect the experience level of staff familiar with facility life safety and emergency preparedness procedures as well as the facility itself,” and ultimately “affect the health and safety of residents of these facilities.”<sup>199</sup> The audit also found that 10 of the 20 facilities had maintenance directors who had been in the position for less than a year, and that two nursing homes had vacant maintenance director positions,<sup>200</sup> which was also cause for concern:

This position is primarily responsible for maintaining facilities’ sprinkler systems, fire alarms, emergency lighting, and other life safety systems. Accordingly, the high turnover in this position that we observed at the majority of the nursing homes increased the risk to the health and safety of the residents of these facilities.<sup>201</sup>

The fact of high turnover and short-staffing in the industry underscores the importance of emergency planning and training to ensure preparedness. As then-Ranking Member Wyden put it in a 2018 letter to CMS:

... at any given point in time, many facilities will have front line and managerial staff who have very little experience working together, and may not have a clear understanding of their roles and responsibilities in an emergency response. In sports, a head coach would be

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<sup>194</sup> See “Report in Brief” for the audits regarding California (A-09-18-02009), Florida (A-04-18-08065), Missouri (A-07-18-03230), New York (A-02-17-01027), North Carolina (A-04-19-08070) and Texas (A-06-19-08001). Available at <https://oig.hhs.gov/reports-and-publications/oas/cms.asp>.

<sup>195</sup> For example, see Ashvin Gandhi, Huizi Yu, David C. Grabowski, “High Nursing Staff Turnover in Nursing Homes Offers Important Quality Information,” *Health Affairs* 40 no. 3 (March 2021): 384, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00957>; Lenny Bernstein, Andrew Van Dam, “Nursing home staff shortages are worsening problems at overwhelmed hospitals,” *Washington Post*, January 7, 2022, <https://www.washingtonpost.com/health/2021/12/28/nursing-home-hospital-staff-shortages/>.

<sup>196</sup> HHS-OIG, “Missouri Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness,” A-07-18-03230 (March 2020), at 19, available at <https://oig.hhs.gov/oas/reports/region7/71803230.pdf> [hereinafter HHS-OIG Missouri Audit].

<sup>197</sup> *Supra*, note 33, National Academies Nursing Home Report, at 52-55.

<sup>198</sup> *Supra*, note 196, HHS-OIG Missouri Audit, at 18.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

loath to field a team that has not practiced together for an important game ... [and nursing homes should not] go into an emergency without sufficient preparation and practice.<sup>202</sup>

However, as discussed in the following sections, the OIG found a troubling lack of compliance with federal regulations regarding the maintenance of emergency plans and emergency preparedness training in the facilities it visited.

## **Two-thirds of Audited Nursing Homes Maintained Inadequate Emergency Plans**

OIG identified 229 deficiencies at 94 nursing homes in eight states related to the adequacy and maintenance of emergency plans, including nursing homes that had no emergency plans at all.

Emergency plans are the starting point for emergency preparedness, setting out how a nursing home responds to an emergency, including the roles and responsibilities of different people within it. Federal regulations require nursing homes to have an emergency plan in place that is updated annually.<sup>203</sup> Emergency plans must include facility and community risk assessments, address emergency events and resident needs, detail the facility's continuity of operations plan and include information on coordination with emergency management agencies at the federal, state or local level.<sup>204</sup>

Among OIG's most troubling findings were that four nursing homes in three states—Florida (2), Illinois and New York—had no emergency plan at all. In another 29 facilities across eight states, nursing homes had not updated their emergency plans annually, as required by federal regulations. The types of problems that OIG identified with nursing homes varied from facility to facility but were generally consistent from state to state. For example, OIG found 40 deficiencies with emergency plans across 13 New York nursing homes—the highest number of the eight states it examined.<sup>205</sup> Among the deficiencies it identified in New York:

- 1 facility did not have an emergency plan in place;
- 4 facilities did not update their emergency plans annually;
- 9 facilities did not include a facility and community all-hazards risk assessment in their emergency plans;
- 9 facilities did not address emergency events;
- 6 facilities did not address resident population needs;
- 5 facilities did not address continuity of operations;
- 5 facilities did not provide for coordination with all government emergency management officials; and
- 1 facility did not have policies and procedures for emergency events based on the risk assessment.<sup>206</sup>

<sup>202</sup> Letter from Senator Ron Wyden to CMS Administrator Seema Verma, November 19, 2018, at 5. Available at <https://www.finance.senate.gov/imo/media/doc/111918%20Senator%20Wyden%20to%20Administrator%20Verma%20re%20Nursing%20Home%20Preparedness%20Rule.pdf>.

<sup>203</sup> 42 CFR §483.73(a).

<sup>204</sup> *Id.*

<sup>205</sup> HHS-OIG, "New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness," A-02-17-01027 (August 2019), at 23, available at <https://oig.hhs.gov/oas/reports/region2/21701027.pdf> [hereinafter HHS-OIG New York Audit].

<sup>206</sup> *Id.*, at 10.

In Missouri, OIG noted a serious lack of attention to detail by multiple nursing homes that used templates to incorporate CMS requirements into their emergency plans:

Several of the facilities used generic entries rather than facility-specific information in their emergency plans. For example, several facilities had the following statement in their emergency plans to document the planned use of a backup generator in the event of a power outage: “We also have a rigorously maintained generator.” One of the nursing homes whose emergency plan included this statement did not have a backup generator.<sup>207</sup>

In other cases, nursing homes failed to plan for potential hazards as required by CMS. During site visits conducted in Iowa between July and November 2019—just months before the COVID-19 pandemic began—the OIG found multiple nursing homes with deficient plans for controlling infectious diseases:

While conducting our onsite inspections, we noted that four facilities had not performed all-hazard risk assessments, and an additional three facilities did not include infectious diseases in their all-hazard risk assessment planning. . . . In addition, of the 13 nursing homes that did include infectious diseases in their all-hazard risk assessments, 7 categorized this as one of the top 5 risks but did not address it in their emergency plans.<sup>208</sup>

No matter the quality of an emergency plan, it is important that nursing home management and staff know where it can be located should an emergency occur. OIG found this basic threshold was not met at an Iowa nursing home, noting, “. . . the supervisor on duty could not locate the emergency plan and had to wait for the facility administrator to arrive and point it out. In one of the two facilities, that did not occur until the following day.”<sup>209</sup>

## **Inadequate Planning and Training for Evacuation, Sheltering in Place, Tracking Residents/Staff and Emergency Communications**

OIG’s audits documented 194 violations related to specific types of information that must be maintained in emergency plans. These violations were identified at 76 facilities across seven states. Federal regulations require nursing homes to maintain specific types of information in order to respond to disasters, such as procedures for evacuation, sheltering in place, tracking residents and staff during and after emergencies, and communicating with relevant authorities, medical personnel and families.<sup>210</sup> Other requirements include having plans in place to secure and maintain the availability of records, utilizing volunteers and implementing waivers for providing care at an alternate site.<sup>211</sup>

OIG’s audit of Florida found that a lack of clarity on procedures interfered with resolving issues with nursing home evacuation plans:

One agency indicated that all nursing homes were using the same transportation company. If these nursing homes needed to be evacuated at the same time, the transportation company would not be able to meet the combined demand. The agency stated that it did not know

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<sup>207</sup> *Supra*, note 196, HHS-OIG Missouri Audit, at 12.

<sup>208</sup> *Supra*, note 189, HHS-OIG Iowa Audit, at 14.

<sup>209</sup> *Id.*, at 11.

<sup>210</sup> 42 CFR §483.73(b).

<sup>211</sup> 42 CFR §483.73(b).

what the county emergency management agency's responsibility was for resolving this potential risk or for notifying the State agency.<sup>212</sup>

The Florida audit found similar problems regarding relocation sites for nursing home residents:

One county agency said that several nursing homes planned to evacuate to the same location. If these nursing homes all evacuated at the same time to the same nursing home, the receiving nursing home would not have the capacity to accommodate every evacuated resident. The agency stated that it did not know what the county emergency management agency's responsibility was for ensuring that the receiving nursing home can accommodate these patients or for notifying the State agency of this concern.<sup>213</sup>

The issues that OIG identified in Florida are similar to those identified in *Sheltering in Danger's* review, which concluded that "emergency plans must include logistically and legally executable transportation contracts to ensure safe and timely evacuations."<sup>214</sup> An evacuation contract with a company that may lack the capacity to transport residents is not logistically executable, nor is an agreement with another facility that may not have the capacity to receive residents.

In Illinois, OIG identified 47 deficiencies related to planning for evacuations, sheltering in place and tracking residents and staff during and after an emergency, the most of any of the states it audited.<sup>215</sup> Of the 15 nursing homes the OIG visited:

- 13 had at least one deficiency related to their emergency plans for evacuations, sheltering in place and tracking residents and staff;
- 4 had emergency plans that did not address evacuations and the needs of residents;
- 5 did not address sheltering in place;
- 3 did not address tracking residents and staff during and after emergencies;
- 4 did not address transferring residents during disasters;
- 3 did not address transferring medical records;
- 6 did not address sharing information about the condition and location of residents;
- 11 did not address using volunteers; and
- 11 did not address their role under a waiver to provide care at alternate sites.<sup>216</sup>

Nursing homes also are required to create and maintain an emergency communications plan with names and contact information for staff, organizations that can provide services, residents' physicians, other local nursing homes, government emergency management agency staff and the relevant state agency.<sup>217</sup> Nursing homes are required to update these plans annually, as well as maintain primary and alternate means of communication (for example, cell phones and radios), a way to communicate residents'

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<sup>212</sup> HHS-OIG, "Florida Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness," A-04-18-08065 (March 2020), at 16-17, available at <https://oig.hhs.gov/oas/reports/region4/41808065.pdf> [hereinafter HHS-OIG Florida Audit].

<sup>213</sup> *Id.*, at 17.

<sup>214</sup> *Supra*, note 76, *Sheltering in Danger*, at 74.

<sup>215</sup> HHS-OIG, "Illinois Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness," A-05-18-00037 (September 2020), at 21, available at <https://oig.hhs.gov/oas/reports/region5/51800037.pdf> [hereinafter HHS-OIG Illinois Audit].

<sup>216</sup> *Id.*, at 11.

<sup>217</sup> 42 CFR §483.73(c).

condition and location and a way to share emergency plan information with residents and their family members.<sup>218</sup> The OIG identified 331 communications plan deficiencies at 103 facilities across each of the eight states the OIG audited.

Safety experts underscore the importance of effective communications plans as an element of emergency planning. For example, the National Safety Council (NSC) observes in its emergency planning guide that “lines of communications between outside emergency response agencies and the on-site employees are the most critical part of an emergency response plan and one of the first to fail.”<sup>219</sup> The NSC stressed institutions must consider backup communications equipment and methods, ensure that the fact of emergencies are communicated to people with disabilities (such as people who are deaf) and that employees must be aware of the means for reporting emergencies, including the ready availability of key phone numbers.<sup>220</sup> Similarly, the Joint Commission, which accredits health care providers, defined an effective communication plan as one that “describes how and when it will communicate information to its staff, other health care organizations, community partners (such as fire, police, local incident command, public health departments) and relevant authorities (federal, state, tribal, regional, and local emergency preparedness staff).”<sup>221</sup> Communications plans should “account for the rapid evolution of an emergency or disaster.”

The OIG identified the largest number of communications plan deficiencies in California, with 88 total deficiencies spread among 18 of the 19 nursing homes OIG audited.<sup>222</sup> Of the nursing homes visited:

- 18 had one or more emergency communications plan deficiencies;
- 8 lacked an official emergency communications plan;
- 18 did not have required name and contact information;
- 1 did not update its plan at least once a year;
- 6 did not include a primary and alternate means of communication;
- 10 did not have plans to communicate occupancy, needs and ability to provide services;
- 3 did not address transferring medical records to another location;
- 6 did not have procedures to communicate the conditions and locations of residents; and
- 7 did not have procedures to share emergency plan information with residents and their families.<sup>223</sup>

Finally, OIG also found that nursing homes were not training to execute plans that were in place. Nursing homes are required to maintain a training and testing program related to their emergency plan and emergency procedures, as well as to provide updated training each year.<sup>224</sup> New staff, volunteers

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<sup>218</sup> *Id.*

<sup>219</sup> Richard T. Vulpitta, Dean R. Larson, “National Safety Council, On-Site Emergency Response Planning Guide for Office, Manufacturing, and Industrial Operations,” National Safety Council, 2nd Ed. (2011), at 8. The National Safety Council is a tax-exempt organization focused on safety research, training and education.

<sup>220</sup> *Id.*, at 8-9.

<sup>221</sup> “New and Revised Standards in Emergency Management,” The Joint Commission, at 3. See Standard EM.12.02.01 regarding contents of communication plans, available at <https://www.jointcommission.org/-/media/tjc/documents/standards/r3-reports/final-r3-report-emergency-management.pdf>.

<sup>222</sup> HHS-OIG, “California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness,” A-09-18-02009 (November 2019), at 18, available at <https://oig.hhs.gov/oas/reports/region9/91802009.pdf>, p. 18 [hereinafter HHS-OIG California Audit].

<sup>223</sup> *Id.*, at 12.

<sup>224</sup> 42 CFR 483.73(d).

and independent contractors must all receive initial training, and all staff must receive annual refresher training.<sup>225</sup> Further, nursing homes must complete one community-based, full-scale testing exercise annually, along with a second exercise that can be full-scale or smaller in nature (facility-based or “tabletop”). These exercises must be analyzed and, if necessary, the emergency plan must be revised based on the results.<sup>226</sup> When the Trump Administration considered rolling back the frequency and intensity of training requirements for nursing homes and other providers, the Joint Commission stressed their importance. In a letter to CMS, the Joint Commission noted that such “full-scale exercises provided value, as they prepared providers for difficult and challenging times.”<sup>227</sup>

The audits identified 245 deficiencies related to emergency plan training at 91 long-term-care facilities across each of the eight states. Missouri had both the greatest number of facilities with emergency plan training deficiencies (17) and the greatest number of deficiencies (46). The OIG found the following types of deficiencies in the state:

- 3 facilities lacked an emergency preparedness training and testing program or did not update it once a year;
- 3 did not adequately document that new staff had received initial training;
- 3 provided annual refresher training that either did not include or document the inclusion of all emergency plan elements;
- 2 did not conduct annual full-scale training exercises;
- 3 did not conduct a second training exercise; and
- 10 did not conduct either of the training exercises, or an analysis of them.<sup>228</sup>

## Widespread Deficiencies Related to Emergency Supplies and Power

Power outages were a major issue affecting Texas nursing home residents and workers during the winter emergency. More than 100 nursing homes reported power outages to Texas HHSC, while lack of adequate backup power resulted in additional problems, including inside temperatures in the 50s, freezing pipes and evacuations.

OIG’s audits identified 140 deficiencies related to emergency supplies or power at 71 nursing homes across eight states. Federal regulations require nursing homes to incorporate emergency supplies and backup power into their emergency plan.<sup>229</sup> Nursing homes are required to provide a source of alternative power—typically a generator—that can maintain temperatures well enough to protect residents, as well as maintain food storage, emergency lighting and sewage disposal in instances when residents shelter in place.<sup>230</sup> Generators must be installed in a safe location and facilities must perform regular maintenance checks, load tests and fuel quality tests.<sup>231</sup>

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<sup>225</sup> *Id.*

<sup>226</sup> 42 CFR 483.73(d)(iii).

<sup>227</sup> Letter from Margaret VanAmringe to CMS Administrator Seema Verma, November 19, 2018, at 10. *Available at* <https://www.regulations.gov/comment/CMS-2018-0106-0582>.

<sup>228</sup> *Supra*, note 196, HHS-OIG Missouri Audit, at 12.

<sup>229</sup> 42 CFR § 483.73(e). *See also*, “State Operations Manual Appendix Z—Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance,” Tag E-0041, at 103 [hereinafter Appendix Z].

<sup>230</sup> *Id.*, Appendix Z, *see* Tag E-0015, at 39.

<sup>231</sup> *Id.*

OIG noted one California nursing home that “could not determine the size of the generator fuel tank or confirm how long the generator could provide an alternate source of energy and had not completed its contract with a fuel vendor to provide emergency fuel.”<sup>232</sup> Meanwhile, OIG identified emergency supplies and power deficiencies at 19 out of 20 nursing homes it reviewed in New York.<sup>233</sup> The 59 deficiencies OIG identified at New York nursing homes were more than any other state it reviewed:

- 18 facilities did not adequately address the availability of emergency supplies or emergency power in their emergency plans;
- 9 facilities did not have sufficient water on hand (FEMA recommends 1 gallon per person, per day, for three days);
- 5 facilities did not have a generator system sufficient to power their air conditioning system (or other alternate means of air conditioning or a plan that specified at which indoor air temperature the facility should be evacuated if it is too hot);
- 5 facilities had generators located in an area susceptible to flooding;
- 1 facility had its generator located in a garage with a high fire load;
- 14 facilities had not properly tested and maintained their generator; and
- 7 facilities did not have sufficient generator fuel on hand to last 3 days or sufficient plans to obtain emergency fuel or evacuate the facility when fuel levels reached a specified low level.<sup>234</sup>

In many states, local emergency managers at the municipal or county level are tasked with evaluating (if not approving) the adequacy of emergency plans, including backup power. However, OIG flagged problems with this approach, noting the concerns of one Florida county emergency management agency that “did not have the engineering and electrical expertise or resources to properly validate a supplemental emergency plan.” The audit went on to note that “the agency stated that it did not know what the county emergency management agency’s responsibility was for obtaining this expertise.”<sup>235</sup>

These findings by OIG are examples of why *Sheltering in Danger* recommended that CMS, states and local governments reexamine their processes for reviewing and approving long-term care facilities’ emergency plans to ensure that they are complete, accurate and protective of residents’ health and safety.<sup>236</sup> The report also recommended that CMS and states should ensure that emergency managers have proper training and qualifications to carry out their roles and responsibilities. *Sheltering in Danger* also recommended that in instances where states delegate plan approval authority to local governments, they should provide guidance on plan requirements, facility regulatory history, review procedures and related documentation.<sup>237</sup> The report further recommended that CMS and states should re-examine their requirements for shelter-in-place preparations and operations to ensure that facilities can, in fact, safely shelter in place.<sup>238</sup>

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<sup>232</sup> *Supra*, note 222, HHS-OIG California Audit, at 10.

<sup>233</sup> *Supra*, note 205, HHS-OIG New York Audit, at 11.

<sup>234</sup> *Id.*, at 11.

<sup>235</sup> *Supra*, note 212, HHS-OIG Florida Audit, at 16.

<sup>236</sup> *Supra*, note 76, *Sheltering in Danger*. See Recommendation C(1), Effective Review and Approval of Emergency Plans.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*, see Recommendation C(4), Emergency Plan Content—Evacuation and Shelter-in-Place Capabilities.

## Staffing Shortages and Inadequate Funding Negatively Affect State and Local Oversight

States repeatedly raised concerns about shortages of surveyors who carry out nursing home oversight in response to OIG's findings and recommendations. States said staffing shortages affected their ability to carry out timely surveys, provide technical assistance for nursing homes and their level of coordination with local emergency management agencies. These concerns are in line with preliminary findings of an investigation Chairman Casey launched in September 2022,<sup>239</sup> as well as legislation Chairman Wyden and Chairman Casey jointly introduced in 2021, which are both discussed in greater detail below.

For example, OIG found that Illinois "performed abbreviated surveys of emergency preparedness plans and had insufficient personnel for its workload."<sup>240</sup> Inadequate staffing at the Illinois survey agency interfered with conducting an adequate review of emergency plans at long-term-care facilities, as well as an apparent misunderstanding of CMS requirements:

State agency officials said that low staffing levels created caseload thresholds that prevented surveyors from performing a thorough review of the emergency preparedness plan while also reviewing the facility grounds for life safety violations. Further, State agency officials stated that they believed a thorough review of the emergency preparedness plan was not required based on interpretive guidance from CMS. CMS staff informed OIG that it expects a thorough review of the emergency preparedness plan to be conducted.<sup>241</sup>

To better protect residents, OIG recommended that several survey agencies conduct additional surveys and provide additional technical assistance to nursing homes, such as compliance training for the emergency preparedness and life safety standards. In response to this recommendation, North Carolina wrote that while it appreciated OIG's recommendation of conducting "more frequent site surveys at nursing homes with a history of multiple high-risk deficiencies,"<sup>242</sup> funding limitations prevented it from doing so:

[North Carolina] meets the CMS requirements regarding the survey frequency of nursing homes including those with a history of multiple high-risk deficiencies. To exceed these requirements would necessitate additional funding from CMS. Over the last 5 years, [North Carolina's] CMS grant base budget funding has increased by only 2.25% despite there being additional workload, higher surveyor travel costs, and increased surveyor salary and benefit expenses. In order to perform additional survey work, additional federal and state funding would be required. Without the additional funding to conduct more frequent surveys, existing survey staffs' ability to meet current CMS survey requirements regarding the investigation of complaints or the timely completion of recertification surveys would be severely compromised.<sup>243</sup>

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<sup>239</sup> U.S. Senate Special Committee on Aging, "Casey Pushes for Information from State Nursing Home Inspectors Amidst Staffing Shortages, Widespread Inspection Delays," press release, September 13, 2022, <https://www.aging.senate.gov/press-releases/casey-pushes-for-information-from-state-nursing-home-inspectors-amidst-staffing-shortages-widespread-inspection-delays>; see also Kimberly Marselas, "Key senator pressures state survey agencies over staffing-related delays," *McKnight's Long-Term Care News*, September 13, 2022, <https://www.mcknights.com/news/key-senator-pressure-state-survey-agencies-over-staffing-related-delays/>.

<sup>240</sup> *Supra*, note 215, HHS-OIG Illinois Audit, at 4.

<sup>241</sup> *Id.*, at 13.

<sup>242</sup> HHS-OIG, North Carolina Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness, A-04-19-08070 (September 2020), at 16, available at <https://oig.hhs.gov/oas/reports/region4/41908070.pdf>.

<sup>243</sup> *Id.*, at 38.

Iowa echoed funding concerns in response to OIG’s recommendation that it conduct additional surveys at nursing homes with a history of multiple high-risk deficiencies. The state noted it “conducts nursing home survey and certification oversight consistent with CMS protocols” and that “[a]dditional federal and state funding would be needed to expand survey activities beyond those already conducted.”<sup>244</sup> Missouri similarly noted that “[c]urrent funding by CMS does not support the hiring of additional surveyors in order to increase the frequency of these surveys,” further adding that funding doesn’t meet its current needs:

For FFY’20, [Department of Health and Senior Services] has asked for an additional \$523,715 to assist in the retention of current surveyors and hiring of additional surveyors in order to meet current obligations. Without proper funding and commitment of additional survey staff, more frequent surveys cannot be completed unless other workload priorities are compromised, including the investigation of complaints.<sup>245</sup>

In January 2022, OIG more pointedly identified staffing issues in an audit that examined nursing home oversight nationally. The audit found that “of the performance failures related to survey timeliness (41 percent of all performance failures), nearly half had corrective action plans or other correspondence identifying staffing as the root cause or posed increased staffing as a solution to the performance failure.”<sup>246</sup> The audit further stated:

The most common staffing-related description centered on the inability to attract and retain surveyors, often due to not being able to offer high enough salaries to compete in local markets. As one example, Colorado had difficulty conducting recertification surveys within required timeframes and explained that 15 of the 47 surveyor positions were vacant. The corrective action plan cited long hours and low pay as the most common reasons for surveyor resignations, but a proposal was before the State legislature for a 3-percent salary increase, which it hoped would close the salary gap with the private sector.<sup>247</sup>

As noted above, the issues OIG identified are in line with preliminary findings of an investigation Chairman Casey launched in September 2022. Recurring themes raised by states include:

- Widespread staffing shortages, in some cases exceeding 50 percent;
- Difficulty retaining inspectors due to low salaries;
- Widespread use of contractors to fill staffing gaps; and
- Inability to conduct timely inspections due to short staffing.

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<sup>244</sup> *Supra*, note 189, HHS-OIG Iowa Audit, at 18, 41.

<sup>245</sup> *Supra*, note 196, HHS-OIG Missouri Audit, at 31.

<sup>246</sup> *Supra*, note 193, HHS-OIG State Performance Evaluation, at 11.

<sup>247</sup> *Id.*

Federal data show that 34 percent of the nation’s 15,000 nursing homes have gone more than 15 months without an annual inspection, exceeding the timeline set out in the Social Security Act. In addition, one in 10 nursing homes have gone more than three years without an inspection. States also have reported difficulty conducting timely inspections in response to complaints from patients and families, leaving residents at risk.<sup>248</sup>

Despite these challenges, Congress has not increased funding for survey and certification funding for nearly a decade, despite calls to do so by the Obama, Trump and Biden Administrations. Recognizing the challenges states survey agencies face, Chairman Casey secured \$100 million in the Coronavirus Aid, Relief and Economic Security (CARES) Act<sup>249</sup> to help survey agencies combat the COVID-19 pandemic, funding that is available through September 30, 2023.<sup>250</sup> Chairman Wyden and Chairman Casey also proposed a 25-percent funding increase for survey and certification activities in the Nursing Home Improvement and Accountability Act, which they introduced in 2021.<sup>251</sup> President Biden adopted the senators’ funding increase in his FY2023 budget request.<sup>252</sup>

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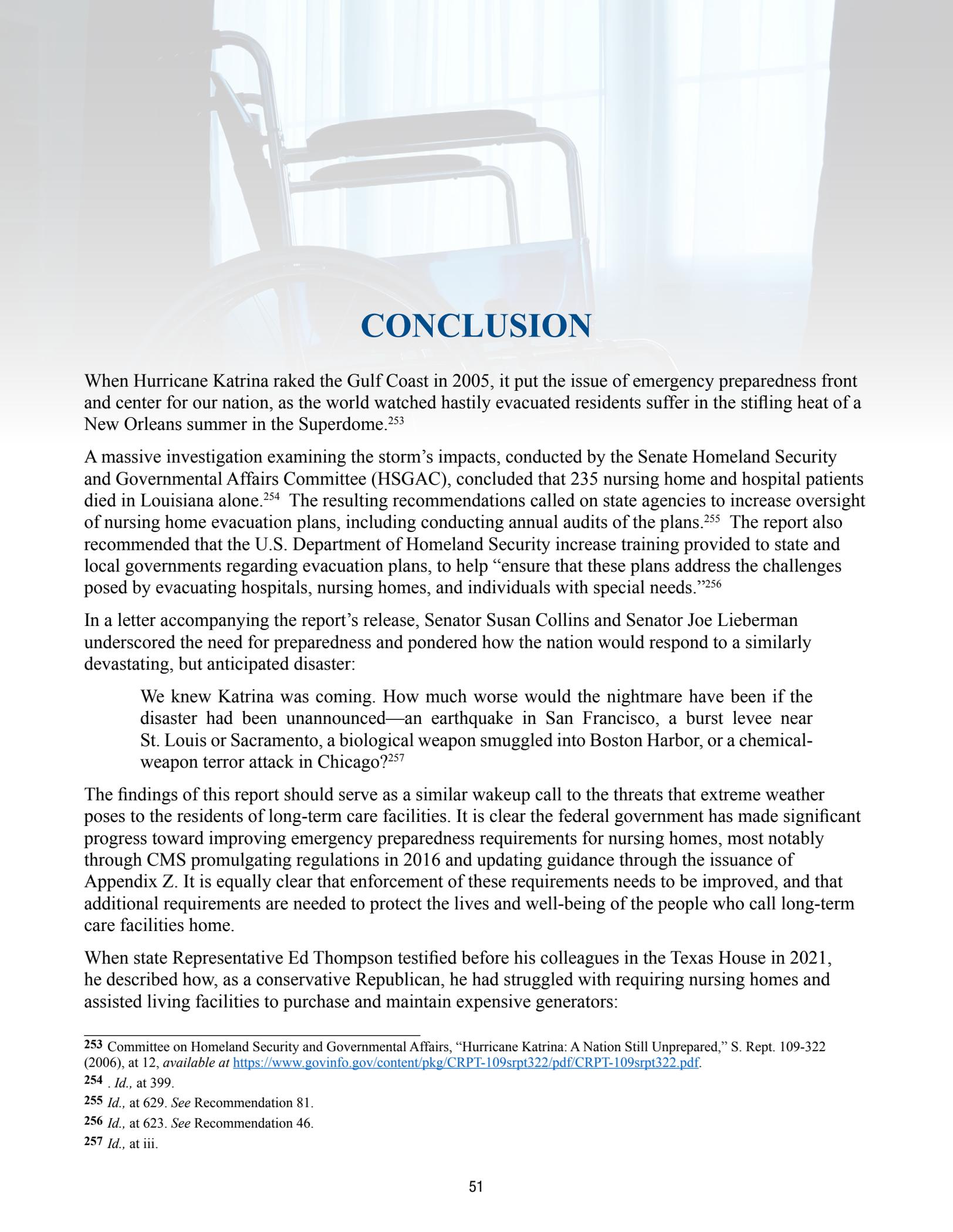
<sup>248</sup> As of February 6, 2023, 5,198 nursing homes had gone 15 months since their last recertification survey, and 1,586 nursing homes had gone 36 months since their last recertification survey, according to data obtained from the Overdue Recertification Surveys Report on CMS’s Quality, Certification & Oversight Reports database. Federal law requires annual surveys be carried out “not later than 15 months after the date of the previous standard survey,” and that the “statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.” *See* 42 U.S.C. §1396r(g)(2)(A).

<sup>249</sup> P.L. 116-136.

<sup>250</sup> Office of Senator Bob Casey, “In 2020, Casey Produces Results for PA Constituents,” press release, December 31, 2020, <https://www.casey.senate.gov/news/releases/in-2020-casey-produces-results-for-pa-constituents>.

<sup>251</sup> U.S. Senate Committee on Finance, “Wyden, Casey Unveil Comprehensive Bill to Improve Nursing Homes for Residents and Workers,” press release, August 10, 2021, <https://www.finance.senate.gov/chairmans-news/wyden-casey-unveil-comprehensive-bill-to-improve-nursing-homes-for-residents-and-workers>.

<sup>252</sup> “Justification of Estimates for Appropriations Committees for Fiscal Year 2023,” Center for Medicare & Medicaid Services, at 3, available at <https://www.cms.gov/files/document/fy2023-cms-congressional-justification-estimates-appropriations-committees.pdf>.



## CONCLUSION

When Hurricane Katrina raked the Gulf Coast in 2005, it put the issue of emergency preparedness front and center for our nation, as the world watched hastily evacuated residents suffer in the stifling heat of a New Orleans summer in the Superdome.<sup>253</sup>

A massive investigation examining the storm's impacts, conducted by the Senate Homeland Security and Governmental Affairs Committee (HSGAC), concluded that 235 nursing home and hospital patients died in Louisiana alone.<sup>254</sup> The resulting recommendations called on state agencies to increase oversight of nursing home evacuation plans, including conducting annual audits of the plans.<sup>255</sup> The report also recommended that the U.S. Department of Homeland Security increase training provided to state and local governments regarding evacuation plans, to help “ensure that these plans address the challenges posed by evacuating hospitals, nursing homes, and individuals with special needs.”<sup>256</sup>

In a letter accompanying the report's release, Senator Susan Collins and Senator Joe Lieberman underscored the need for preparedness and pondered how the nation would respond to a similarly devastating, but anticipated disaster:

We knew Katrina was coming. How much worse would the nightmare have been if the disaster had been unannounced—an earthquake in San Francisco, a burst levee near St. Louis or Sacramento, a biological weapon smuggled into Boston Harbor, or a chemical-weapon terror attack in Chicago?<sup>257</sup>

The findings of this report should serve as a similar wakeup call to the threats that extreme weather poses to the residents of long-term care facilities. It is clear the federal government has made significant progress toward improving emergency preparedness requirements for nursing homes, most notably through CMS promulgating regulations in 2016 and updating guidance through the issuance of Appendix Z. It is equally clear that enforcement of these requirements needs to be improved, and that additional requirements are needed to protect the lives and well-being of the people who call long-term care facilities home.

When state Representative Ed Thompson testified before his colleagues in the Texas House in 2021, he described how, as a conservative Republican, he had struggled with requiring nursing homes and assisted living facilities to purchase and maintain expensive generators:

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<sup>253</sup> Committee on Homeland Security and Governmental Affairs, “Hurricane Katrina: A Nation Still Unprepared,” S. Rept. 109-322 (2006), at 12, available at <https://www.govinfo.gov/content/pkg/CRPT-109srpt322/pdf/CRPT-109srpt322.pdf>.

<sup>254</sup> *Id.*, at 399.

<sup>255</sup> *Id.*, at 629. See Recommendation 81.

<sup>256</sup> *Id.*, at 623. See Recommendation 46.

<sup>257</sup> *Id.*, at iii.

You know, we can put generators out to keep our gas wells going, we can put generators out to keep oil wells pumping, I mean—I just, I just look at this from a standpoint of, you know, these people that they are stuck in some cases. And fortunately, I mean, some of these people could be moved during some of these events. But you look at this “SNOW-VID” event or a hurricane where the roads are flooded—you’re not going to be able to get these people out of these facilities if they’re not moved well prior to some of these weather events. And some of them come up very, very quickly. ... You can have a rainstorm in Houston that prevents people from being able to move really, really quickly.<sup>258</sup>

For Representative Thompson, it came down to how he would want his family treated:

I know there’s a lot of moving parts to this bill that we’ve got to work through and we’re willing to do that. We’re willing to work with operators and people that are doing this because I know it is an expense. ... I just, in good conscience can’t say, you know, it’s not worth it. ... My mother and dad are both deceased, you know, but if my mother and dad were in one of those facilities ... let’s say I lived in another state and I couldn’t get to them, I wouldn’t—I couldn’t—sleep at night thinking about this.<sup>259</sup>

The legislation was ultimately defeated, but as the new Texas Legislature got underway in January, Representative Thompson had reintroduced a revised version of his bill.<sup>260</sup>

It is unlikely that the nation will ever know the full extent of the impact that the Texas winter storms and blackout had on long-term care residents. As researchers cited in this report have found in past extreme weather events, exposure to the stress of being sheltered in place or evacuated during disasters significantly reduces the lifespan of long-term care residents. These impacts will only grow as climate change creates conditions conducive to more frequent extreme weather events such as hurricanes, wildfires, flooding, extreme heat and extreme cold.

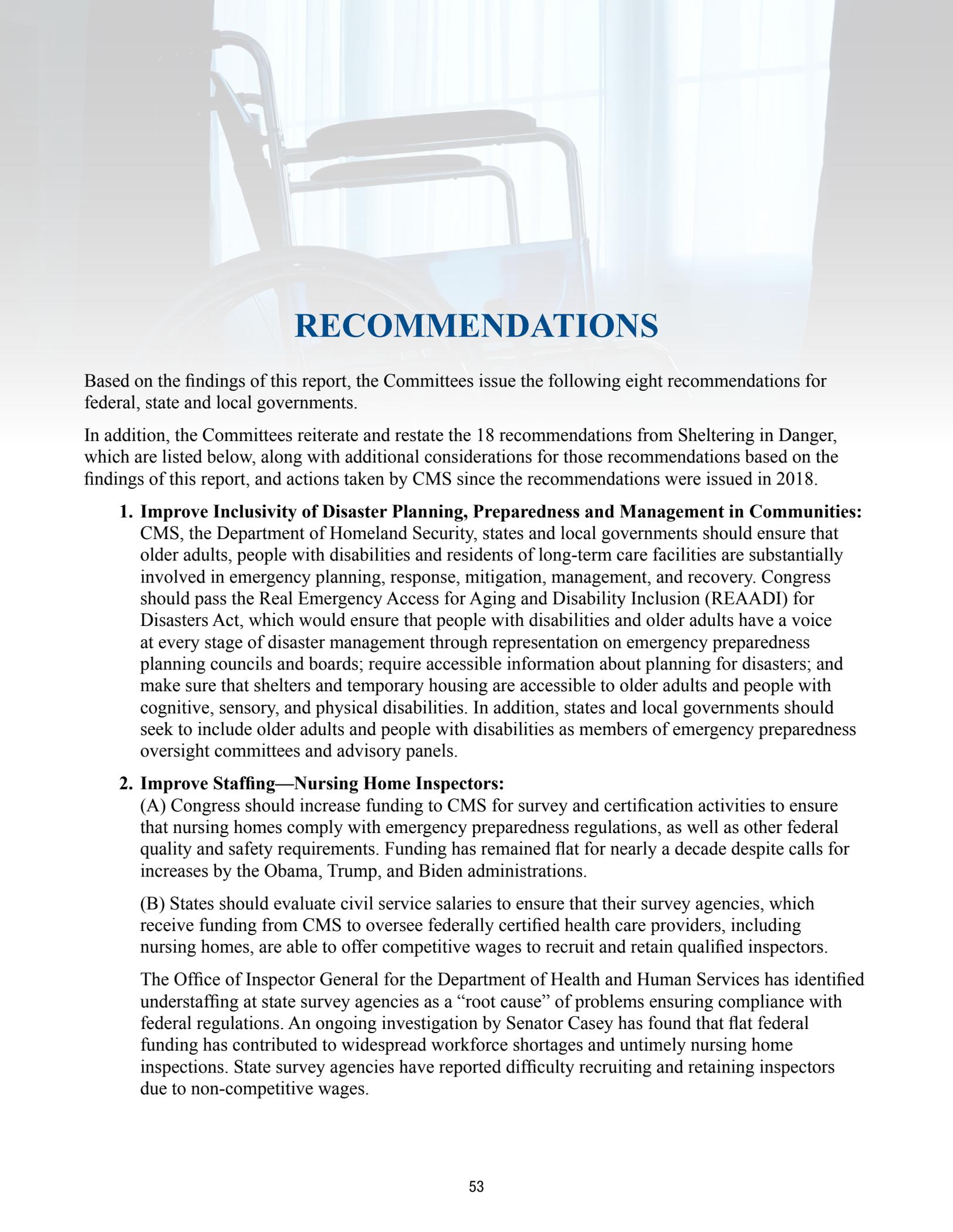
As the population of older adults and people with disabilities continues to increase, so too does the need to comprehensively consider how climate change and disasters affect these populations. Our nation owes it to the current generation of older adults, future generations of older adults, and people with disabilities, to ensure that the long-term-care facilities they call home are better protected from disasters than they are today.

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<sup>258</sup> *Supra*, note 6, Texas House Hearing, 38:06.

<sup>259</sup> *Id.*, at 39:30.

<sup>260</sup> An act relating to emergency generators or other power sources for nursing facilities and assisted living facilities, TX HB795, 88th Regular Session, available at <https://www.billtrack50.com/billdetail/1498418>.



## RECOMMENDATIONS

Based on the findings of this report, the Committees issue the following eight recommendations for federal, state and local governments.

In addition, the Committees reiterate and restate the 18 recommendations from *Sheltering in Danger*, which are listed below, along with additional considerations for those recommendations based on the findings of this report, and actions taken by CMS since the recommendations were issued in 2018.

### **1. Improve Inclusivity of Disaster Planning, Preparedness and Management in Communities:**

CMS, the Department of Homeland Security, states and local governments should ensure that older adults, people with disabilities and residents of long-term care facilities are substantially involved in emergency planning, response, mitigation, management, and recovery. Congress should pass the Real Emergency Access for Aging and Disability Inclusion (REAADI) for Disasters Act, which would ensure that people with disabilities and older adults have a voice at every stage of disaster management through representation on emergency preparedness planning councils and boards; require accessible information about planning for disasters; and make sure that shelters and temporary housing are accessible to older adults and people with cognitive, sensory, and physical disabilities. In addition, states and local governments should seek to include older adults and people with disabilities as members of emergency preparedness oversight committees and advisory panels.

### **2. Improve Staffing—Nursing Home Inspectors:**

(A) Congress should increase funding to CMS for survey and certification activities to ensure that nursing homes comply with emergency preparedness regulations, as well as other federal quality and safety requirements. Funding has remained flat for nearly a decade despite calls for increases by the Obama, Trump, and Biden administrations.

(B) States should evaluate civil service salaries to ensure that their survey agencies, which receive funding from CMS to oversee federally certified health care providers, including nursing homes, are able to offer competitive wages to recruit and retain qualified inspectors.

The Office of Inspector General for the Department of Health and Human Services has identified understaffing at state survey agencies as a “root cause” of problems ensuring compliance with federal regulations. An ongoing investigation by Senator Casey has found that flat federal funding has contributed to widespread workforce shortages and untimely nursing home inspections. State survey agencies have reported difficulty recruiting and retaining inspectors due to non-competitive wages.

### **3. Improve Staffing—Nursing Homes:**

CMS should promulgate mandatory minimum staffing standards for Skilled Nursing Facilities and Nursing Facilities following completion of its study to determine the level of staffing necessary to ensure safe and high-quality care. Congress should pass provisions in the Nursing Home Improvement and Accountability Act of 2021 targeted at improving staffing, such as providing additional federal resources through Medicaid to increase wages and improve recruitment and retention of staff. Research has repeatedly linked low staffing levels in nursing homes to poor quality care and patient safety violations. Increasing staff levels and reducing staff turnover would better equip nursing homes to respond to emergencies.

### **4. Increase the Transparency of Emergency Plans:**

CMS should evaluate the feasibility of requiring nursing homes to provide residents and their families with copies of the facility’s emergency preparedness plan during intake, and once annually after the facility has completed the federally required update of its emergency plan. CMS should also evaluate the feasibility of posting emergency plans on Care Compare to make them easily accessible for people considering nursing homes for themselves or their loved ones.

### **5. Incorporate Climate Change Risks into Emergency Preparedness:**

CMS should evaluate the feasibility of requiring nursing homes to incorporate climate change risks, such as the increasing incidence of extreme weather events, into emergency preparedness planning. If deemed feasible, CMS should issue regulations and guidance that directs nursing homes to consider the effects of climate change into their all-hazards assessment. Such requirements would be in line with findings from the most recent National Climate Assessment, a periodic report mandated by Congress in 1990. The climate assessment notes that “over decades or longer, emergency preparedness and disaster risk reduction planning can benefit from incorporating climate projections to ensure communities are prepared for changing weather patterns.”<sup>261</sup>

### **6. Incorporate Renewable Energy into Emergency Preparedness:**

CMS and states should ensure emergency power requirements for nursing homes offer flexibility for facilities to use clean energy for secondary emergency power sources, particularly as costs of renewable energy and energy storage continue to decline. CMS should work with the Internal Revenue Service and Department of Energy to offer guidance that educates nursing homes about the availability of federal tax credits, financing and grants that further reduce the costs of installing clean energy resources and improving energy efficiency through provisions in the Inflation Reduction Act, and other programs.

### **7. Ensure Equitable Emergency Preparedness:**

CMS should conduct a study that examines the equity of emergency preparedness in and among nursing homes. Such a study should consider factors such as payer mix of residents, racial and ethnic makeup of residents, the percentage of residents reliant on long-term services and supports, geographic location, climate change risks, and the social vulnerability index of the community where facilities are located. CMS should use the study to evaluate ways in which the agency and state partners can improve emergency preparedness for people of color, people living in poverty, and people with disabilities who live in nursing homes.

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<sup>261</sup> Kristie L. Ebi, et al., 2018: *Human Health. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, U.S. Global Change Research Program, Washington, DC, USA, pp. 572–603. doi: 10.7930/NCA4.2018.CH14. See Key Message 3, “Adaption Reduced Risks and Improves Health.” Available at <https://nca2018.globalchange.gov/chapter/health>.

## **8. Require Assisted Living Facilities to Have Emergency Power:**

States should consider requiring assisted living facilities to have emergency power and supplies during power outages sufficient to maintain safe temperatures and utilize medical equipment that requires electricity. States should consider similar requirements for other residential settings that cater to older adults and people with disabilities, but are not subject to federal regulation, such as memory care centers. The Committees believe such consideration is warranted given the increasing utilization of assisted living facilities.<sup>262</sup>

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<sup>262</sup> Judith Graham, “Assisted Living Facilities Pressed to Address Growing Needs of Older, Sicker Residents,” *Kaiser Health News*, December 5, 2022, <https://khn.org/news/article/assisted-living-facilities-pressed-to-address-growing-needs-of-older-sicker-residents/>; “U.S. Assisted Living Facility Market Size, Share & Trends Analysis Report By Age (More Than 85, 75-84, 65-74, Less Than 65), Region (West, South, Midwest), And Segment Forecasts, 2023 – 2030,” Grand View Research, <https://www.grandviewresearch.com/industry-analysis/us-assisted-living-facility-market>, last visited February 16, 2023; Caroline F. Pearson, et al., “The Forgotten Middle: Many Middle-Income Seniors Will Have Insufficient Resources For Housing And Health Care,” *Health Affairs* 38 no. 5 (April 24, 2019), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05233>.

## Recommendations from *Sheltering in Danger* and Additional Considerations

The findings of this report reinforce the need for full implementation of the recommendations that *Sheltering in Danger* made in 2018, which are restated below. While *Sheltering in Danger*'s recommendations were written in the context of hurricanes, heat emergencies and flooding, the findings of this report show they should be considered in the context of other types of emergencies and disasters that affect long-term care facilities. The Committees believe there is additional work to be done to meet the goals of each of the previously stated recommendations. The Committees have noted additional considerations, including instances of progress CMS has made toward meeting the recommendation's aim, for some of the recommendations below.

The previous recommendations from *Sheltering in Danger* have garnered broad-based support since they were released. CMS's Chief Medical Officer testified that the recommendations were "very common sense" in 2019. The American Health Care Association, which represents roughly two-thirds of the nation's nursing homes, and the National Consumer Voice, which represents long-term care residents, have both provided letters supporting the recommendations. Given this support, the Committees believe additional action should be taken to fully implement the recommendations.

The Committees note that CMS has taken steps toward implementing the recommendations, including by updating emergency preparedness requirements and guidance in Appendix Z of the State Operations Manual. The Committees are encouraged by CMS recently informing the Finance Committee in a letter that it is examining further updates to Appendix Z.<sup>263</sup> More broadly, CMS is "examining and considering changes to emergency preparedness requirements and is working to bolster the resiliency of the health care sector as part of an Administration-wide effort to be ready for the next pandemic and the next weather-related emergencies."<sup>264</sup> CMS's full letter and comments regarding actions it has taken to improve emergency preparedness can be found in Appendix A. The appendix also contains a review conducted by the Congressional Research Service of actions CMS has taken to fulfill *Sheltering in Danger*'s recommendations based on publicly available information.<sup>265</sup>

While it was beyond the scope of this report to conduct a comprehensive analysis of all the steps taken by federal, state and local governments, the long-term care industry, and the power industry, the Committees believe the findings of this report make clear more work remains to be done to protect long-term care residents during emergencies.

### A. Temperature Protection of Elderly Populations

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

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

***Additional Consideration:*** CMS has not revised the "safe and comfortable" temperature standard, which has been in place since the 1980s and is based on standards developed by heating and air-conditioning industry engineers—not medical experts.<sup>266</sup> The rule

<sup>263</sup> Appendix A, Ex. 6, Letter from Lee A. Fleisher to Senator Ron Wyden, February 8, 2023.

<sup>264</sup> *Id.*

<sup>265</sup> Appendix A, Ex. 7, Memo from Phoenix Voorhies, "Scan of CMS Emergency Preparedness Guidance, Appendix Z," February 9, 2023.

<sup>266</sup> *Supra*, note 76, *Sheltering in Danger*: For additional discussion of the "safe and comfortable" standard, see "The 'Safe and Comfortable Temperature' Rule for Long-Term Care Facilities."

also does not account for the effect that humidity has on the human body, as measured by the heat index. The National Oceanic and Atmospheric Administration has cautioned that temperatures as low as 80 degrees pose health risks to the general population when coupled with high humidity.

The Committees further reiterate that CMS should require facilities to use heat index in their all-hazards risk assessments. While CMS has updated Appendix Z to direct facilities to ensure safe temperatures during an emergency, it has made use of heat index optional rather than mandatory.

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

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

*Additional Consideration:* In 2019, CMS updated Appendix Z to note that facilities maintain safe temperatures “in those areas necessary to protect patients, other people in the facility, and for provisions stored in the facility during the course of an emergency.”

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

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

*Additional Consideration:* CMS has not acted to require facilities to have emergency power. The Committees reiterate this recommendation as a top priority for the agency, noting that multiple states have implemented, or are considering the implementation of, such requirements for long-term care facilities.

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

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

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

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

*Additional Consideration:* The experience of Texas long-term care residents during the 2021 blackout, and concerns regarding electric system reliability during arctic blasts, underscore the need for long-term care facilities to be prepared to protect residents in extreme cold.

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

Because of the vulnerability of seniors to heat stress, CMS, state, and local officials should coordinate with electricity providers to ensure that higher priority is given to nursing homes when considering requests to restore power during emergencies, especially those in which heat

may be an aggravating factor. These planning efforts should include appropriate contingencies for facility evacuations if power cannot be restored in a timely manner.

***Additional Consideration:*** Additional steps can be taken at the federal, state and local level to fulfill this recommendation. CMS updated Appendix Z in 2021 to specify that emergency plans should take into account contingency planning in the event that contractors are unable to re-establish power and essential utilities.

## **B. Sheltering-in-Place/Evacuations**

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

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

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z to clarify that facilities must follow state and local evacuation requirements, including mandatory evacuations.

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

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

***Additional Consideration:*** Additional research is needed to examine the risks that long-term care residents face due to climate change, increased incidence of extreme weather, and associated utility failures.

## **C. Emergency Plans**

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

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

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

CMS and states should expand emergency plan requirements to require identification of community resources, such as local hospitals, that can supplement the emergency capabilities of long-term care facilities, especially with regard to health and safety services. Plans should be

required to include evidence of coordination with those resources. Nursing homes and assisted living facilities are required to have their own preparedness plans and capabilities. However, communities and local emergency management-and-response entities must integrate—or better integrate—nursing homes and assisted living facilities into community-wide emergency planning strategies.

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z to instruct facilities to engage and coordinate with local and state health departments, as well as local health systems, to maintain an integrated response during an emergency.

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

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

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z in 2021 to clarify that facilities may have a general emergency plan that outlines roles and responsibilities of individuals, with reference to those individuals by their titles. In addition, CMS clarified in 2019 that each individual working in a facility should know the emergency plan and their role during emergencies.

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

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

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z in 2021 to clarify that staff, volunteers, and individuals providing services at a facility should be trained on how to shelter in place or evacuate, maintain continuity of care during an emergency, and transfer residents during mass casualty or surge events. In addition, CMS also revised Appendix Z to require facilities to identify the circumstances that require evacuation versus sheltering-in-place, to require triage and coordination of evacuation, and to strengthen transfer agreements with other facilities when evacuation is required.

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

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

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

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

## **7. Planning for Floods:**

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

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. This recommendation should also be considered in context of other disasters, such as wildfires, which are affecting areas that had not previously been considered in a risk zone. CMS updated Appendix Z in 2021 to direct facilities to select a comprehensive risk assessment tool that evaluates their risk and potential for all hazards, including floods. CMS should take additional action and require facilities to select appropriate all-hazards risk assessment tools based on their geographic location.

## **D. Communications and Communication Plans**

### **1. Coordinating Communication with State and Local Authorities:**

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

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z in 2021 to instruct facilities to engage and coordinate with state and local health departments, as well as local health systems, to maintain an integrated response during an emergency.

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

CMS emergency preparedness requirements should be revised to ensure that emergency communication plans identify and delineate the roles and responsibilities of administrators and staff at long-term care facilities expected to serve as points of contact during an emergency. Designated points of contact should be required to undergo training to ensure that they carry

out emergency plan protocols and effectively communicate emergency information to first responders, emergency management officials, power providers, and other external entities.

***Additional Consideration:*** CMS and states can take additional steps to fulfill this recommendation. CMS revised Appendix Z in 2021 to clarify that facilities may have a general emergency plan that outlines roles and responsibilities of individuals, with reference to those individuals by their titles. CMS also clarified in 2019 that each individual working in a facility should know the emergency plan and their role during emergencies.

## **E. Power Restoration Prioritization**

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

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





APPENDIX

A

# Exhibit 1



**Patty Ducayet**

State Long-Term Care Ombudsman

January 28, 2022

The Honorable Senator Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

The Honorable Bob Casey, Jr.  
Chairman  
Special Committee on Aging  
United States Senate  
G41 Dirksen Senate Office Building  
Washington, DC 20510-6050

Subject: Emergency Preparedness and the Impact of Winter Storm Uri on Texas Residents of Long-Term Care Facilities

Dear Senator Wyden and Senator Casey:

After meeting with staff members of the Senate Committee on Finance and Special Committee on Aging, I am writing to offer my perspective on 2021 Winter Storm Uri and recommend two actions that would help long-term care facilities prepare for future disasters and respond to emergencies. Serving as the Texas State Long-Term Care Ombudsman since 2007, I oversee the operations of the Texas Long-Term Care Ombudsman Program (Ombudsman Program) and represent the interests of approximately 125,000 older Texans who reside in a nursing facility or assisted living facility.

Long-term care ombudsmen are authorized by federal and state law to solve individual problems for residents and to recommend changes in policy and law to

P.O. Box 149030 • Austin, Texas 78714-9030 • Mail Code MC-W250 • 512-438-4356

[apps.hhs.texas.gov/news\\_info/ombudsman](https://apps.hhs.texas.gov/news_info/ombudsman)

benefit long-term care residents.<sup>1</sup> The Ombudsman Program is independent of the Texas Health and Human Services system in which it is housed. This independence is described in Section 712 of the Older Americans Act to ensure that long-term care ombudsmen advocate for the interests of long-term care residents and do not represent the interests of the long-term care industry or an agency that houses the Ombudsman Program.

The COVID-19 pandemic shined a light on problems within nursing facilities, including poor infection prevention and control practices; inadequate numbers of certified nursing aides (CNAs) and licensed and registered nurses; and insufficient training, wages, and benefits for direct care staff like CNAs.<sup>23</sup> These problems were well known and studied by some before the pandemic, but the problems caught the attention of the general public too.<sup>45</sup> Because of this broad public attention, I am optimistic that the pandemic can motivate state and federal agencies and lawmakers to implement meaningful improvements to ensure long-term care residents get the care they deserve.

As you know, in the midst of this pandemic that has disproportionately killed residents of long-term care facilities and older Americans, other emergencies have occurred.<sup>6</sup> In February 2021, a disaster the scale of which I had never experienced before affected nearly all of the State of Texas. Not only did facilities need to respond to extreme cold, loss of power and water, and travel hazards, they also needed to maintain a high standard of infection prevention and control practices under those conditions.

When I understood the scope and scale of Storm Uri, I worried how residents moved within a building or evacuated to other locations would avoid the spread of COVID-19. In fact, statewide new confirmed cases of COVID-19 declined in February 2021 and confirmed cases of COVID-19 *significantly declined* in long-term

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<sup>1</sup> Older Americans Act, §711 and §712 (United States Code, Title 42, §3058f and §3058g)

<sup>2</sup> Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic [Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic | U.S. GAO](#)

<sup>3</sup> [The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes \(nih.gov\)](#)

<sup>4</sup> [Nursing home staffing crisis: Omicron worsens pressure on workers - The Washington Post](#)

<sup>5</sup> Weber, L (2021, August 25) Nursing Homes Keep Losing Workers, *The Wall Street Journal*

<sup>6</sup> [As U.S. Covid Deaths Near 800,000, 1 of Every 100 Older Americans Has Perished - The New York Times \(nytimes.com\)](#)

care facilities, including 14 days after the storm began and throughout March.<sup>78</sup> I attribute this success to vaccine efficacy and the state's prioritization of long-term care residents for vaccination.

### February 2021 Storm Uri

2021 Storm Uri began on February 13, 2021. It affected at least 537 out of the state's 1,209 nursing facilities (NFs) and 606 out of the state's 2,029 assisted living facilities (ALFs). In a facility with power disruption and no generator to operate the heat, residents experienced low indoor temperatures and the common solution was to pile on blankets and stay in bed. This may have been the best we could do at the time, but it should sound alarm bells about the vulnerability of emergency response within facilities and the health risks that residents face in extreme weather events.

Of the facilities that reported problems:

- Fifty-six (56) ALFs evacuated an entire facility or transferred some residents to a different location. Forty-one (41) of those facilities evacuated over 560 residents. Of the facilities that evacuated, 22 facilities had no power and no generator. Twenty-eight (28) facilities reported running on generator power and were able to shelter in place. Another 168 facilities sheltered in place without a generator and reported operational problems that included no power, no water, burst pipes, or no transportation to evacuate. One resident in Austin died as a result of exposure to cold temperatures inside the building.
- Twenty-seven (27) NFs evacuated an entire facility or transferred some residents to a different location. Nineteen (19) of those facilities evacuated 871 residents. Another 156 facilities reported sheltering residents in place and running on generator power when power was out for extended periods or during rolling blackouts. At least five facilities evacuated due to low temperatures and the facility generators were not connected to the facility's heating, ventilation, and air conditioning (HVAC) system. Five other facilities relied on generators for power, but those generators were not connected to

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<sup>7</sup> See Cumulative and New Confirmed Cases Over Time by County data at <https://dshs.texas.gov/coronavirus/AdditionalData.aspx>

<sup>8</sup> See Provider-reported COVID-19 Case Counts at <https://www.hhs.texas.gov/services/health/coronavirus-covid-19/texas-covid-19-case-count-vaccination-data>

HVAC systems, and the facilities sheltered in place anyway. At least two other facilities evacuated after generators failed.

### Potential for Harm to Residents

Evacuations are stressful and can be dangerous for residents. Experts have written about the effects of transfer trauma from evacuations and other transfers, including increased depression, crying, withdrawal; anxiety, fearfulness, loss of trust, insecurity; anger, resistance; and sleep disturbance, appetite changes, and a potential increase in falls. Negative outcomes from transfer trauma include weight loss, delirium, the need for more medical care, and death. Evacuation also runs the risk of death through travel. It was dangerous to drive for days after the 2021 Storm Uri for vast areas of Texas, and in 2005 it was deadly when 23 residents died after their bus caught fire while evacuating from Hurricane Rita.

Storm Uri raised important questions about keeping residents at a safe temperature when power was out in a facility. The National Institutes of Health (NIH) describes that an elderly person whose body temperature reaches at or below 95° F can experience health problems.<sup>9</sup> Moreover, residents of a long-term care facility may be more susceptible to problems from cold temperatures depending on the person and their health conditions. The NIH recommends an indoor thermostat setting of at least 68-70° F to ensure a living environment is warm enough for older adults. The World Health Organization recommends a minimum temperature of 64.4° F, but also states that a higher indoor temperature may be necessary for older people.<sup>10</sup>

For nursing facilities, Appendix PP of the Centers for Medicare and Medicaid Services State Operations Manual explains safe and comfortable indoor temperature requirements and acknowledges the temperature may not stay within the required range during periods of severe weather.<sup>11</sup> A nursing facility must still ensure that resident health and safety is not adversely affected and take all necessary steps to ensure resident comfort. If the facility cannot ensure resident health and safety, the facility must transfer vulnerable residents to another facility, emergency location, or hospital. During a power outage or other emergency affecting its heating and

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<sup>9</sup> U.S. Department of Health & Human Services, National Institutes of Health, National Institute on Aging: [Hypothermia | National Institute on Aging \(nih.gov\)](https://www.nia.nih.gov/health/hypothermia)

<sup>10</sup> National Center for Biotechnology Information, U.S. National Library of Medicine, National Institutes of Health: [Low indoor temperatures and insulation - WHO Housing and Health Guidelines - NCBI Bookshelf \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/26111111/)

<sup>11</sup> CMS State Operations Manual Appendix PP – Guidance to Surveyors for Long Term Care Facilities, Rev. 11-22-17: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-State-Operations-Manual.pdf>

cooling systems, nursing facilities should regularly monitor the building's indoor temperature, body temperature of all residents, and be aware of any changes in a resident's condition that would require further assessment, care, or medical attention.

A generator connected to an HVAC system can keep residents a comfortable temperature and avoid having to unnecessarily evacuate a building. Every year, Texas experiences hurricanes and other severe weather. Some evacuations will be necessary to protect the health and safety of residents; for example, due to structural damage caused by water or wind. However, power loss from a hurricane or other emergency quickly runs the risk of dangerous temperatures in a facility. In that situation, if a generator powers the HVAC system, residents can shelter in place and avoid transfer trauma and dangerous indoor temperatures.

#### Texas State and Federal Laws Do Not Thoroughly Address Emergency Power

Neither federal nor Texas state regulation requires a long-term care facility to power HVAC systems with backup power. Nursing facility requirements include maintaining safe temperatures and powering emergency systems like a fire alarm, emergency lighting, and life sustaining devices like a resident's mechanical ventilator. For the resident in a nursing facility meeting only these minimum requirements, a generator won't power their room lighting, heat or air conditioning, or the outlets to power their lifelines to information such as a phone, clock, or television. Some Texas NFs and ALFs have chosen to purchase generators and connect them to the building's HVAC systems, but we don't know how many facilities have this capability or where those facilities are located.

In Florida, 14 residents died of heat exposure when temperatures soared after Hurricane Irma knocked out power. Subsequently, Florida implemented requirements of all its ALFs and NFs to maintain safe temperatures with a generator that can power the facility's HVAC systems. It is my understanding that no additional funding was provided to facilities in order to comply with the new requirement, which leads me to believe that facilities in other states could implement a similar generator requirement.

Having a working generator onsite with amply fuel to operate its HVAC system is essential to protecting residents in the event of extreme weather and other disasters that temporarily cut power to a facility. While there is a cost to purchasing, maintaining, and fueling a generator to power HVAC in a long-term care facility, evacuating when sheltering would be possible with a generator has greater risks and potentially much higher costs to the health and lives of residents.

### Texas Assisted Living Facility Rules Require Communication with Residents Related to Evacuations

A Texas ALF must maintain an evacuation summary, which summarizes the facility's emergency preparedness and response plan. The summary must be provided to residents and a resident's legally authorized representative (LAR) annually, on request, and when the plan changes. The summary must include:

- the name, address, and contact information for each receiving facility or pre-arranged evacuation destination;
- the procedure for safely transporting residents and others evacuating;
- the name or title, and contact information, of the facility staff member to contact for evacuation information;
- the facility's primary and alternate mode of communication to be used during a disaster or emergency;
- the facility's procedure for notifying residents, facility staff, LARs, and other care providers about facility actions affecting residents during a disaster or emergency, including an evacuation, and for maintaining ongoing communication with them for the duration of the event;
- training that is available to a resident, LAR, and others, on the facility's procedures in an emergency; and
- the facility's procedures for when a resident evacuates with a person other than a facility staff member.

A national requirement for nursing facilities and residential care communities like assisted living facilities to have an evacuation summary plan seems achievable and reasonable. It would inform residents of a facility's plan and what to expect during an evacuation.

### Recommendations

The Texas Office of the State Long-Term Care Ombudsman recommends that regulations for long-term care facilities require a facility to:

1. Have an operational emergency generator or comparable emergency power source and a sufficient amount of fuel to operate the generator or power source and maintain the air temperature at not less than 71 degrees Fahrenheit and not more than 81 degrees Fahrenheit for a minimum of 72 hours during a power outage.

2. Require all long-term care facilities to maintain an evacuation summary plan and distribute this plan to all residents and a resident's legally authorized representative (LAR). The plan must include specified elements and be given to the resident and LAR annually, on request, and when significant changes are made to the plan.

### Conclusion

As an advocate for older Texans living in long-term care facilities, I am aware of complex challenges that facilities and residents face together in an emergency situation. Planning ahead, having needed supplies that include emergency power for HVAC, and ensuring good communication before, during, and after an emergency will make facilities safer as our state faces the next major disaster. I urge your support of my recommendations and for the committees you chair to consider other practical improvements in the regulation of long-term care facilities that care for hundreds of thousands of older Americans.

I hope to be a resource to your committee and staff. If you have any questions, you may reach me at [patricia.ducayet@hhs.texas.gov](mailto:patricia.ducayet@hhs.texas.gov) or 512-438-4356.

Sincerely,



Patty Ducayet

# Exhibit 2

March 11, 2022

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Bob Casey, Jr.  
Chairman  
Special Committee on Aging  
United States Senate  
G41 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Wyden and Chairman Casey:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) is a national non-profit organization that advocates on behalf of nursing home residents and other consumers of long-term care. Our membership consists primarily of consumers of long-term care and services, their families, long-term care ombudsmen, individual advocates, and citizen advocacy groups. We have over 40 years' experience advocating for quality nursing home care.

Consumer Voice has long advocated for strong and effective emergency preparedness in the country's nursing homes. Nursing facilities must be prepared for all potential disasters and emergencies because both natural and man-made emergencies can leave them without power and interrupt critical care that is necessary for nursing home residents. Facilities can go days without access to heating and cooling systems, placing residents at risk.

Following Hurricanes Katrina and Rita and the deaths of many nursing home residents, we appreciated that more comprehensive federal regulations were developed and became effective in 2016. However, these federal regulations do not go far enough in ensuring resident safety during emergencies and disasters, and dangerous gaps in protections remain. The November 2018 investigative report by the minority staff of the U.S. Senate Finance Committee, *Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents At Risk During Hurricanes Harvey and Irma*, examined

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*The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c)(3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.*

these gaps and presented a detailed set of recommendations to better protect nursing home residents.

Consumer Voice agreed with these recommendations when the report was released in 2018. Almost four years later, we continue to support the report's recommendations for two reasons: there has been little if any progress in their implementation, and they remain every bit as pertinent, necessary, and critical today as they were in November 2018.

While we support all the changes proposed in the report, we have highlighted four key recommendations in this letter. The current status and importance of these four points illustrate how essential the entire set of recommendations is to the safety and well-being of residents.

## 1. Temperature Protection of Elderly Populations

### Recommendations

- Revising the safe and comfortable temperature standard
- Applicability of the safe and comfortable temperature standard in emergencies
- Emergency power capable of maintaining safe temperatures

### Status:

Not implemented in federal law, regulation nor guidance

### Importance:

- **Revising the safe and comfortable temperature standard:**

Residents are highly susceptible to heat-related illnesses due to medical conditions. They can suffer heat stroke and dehydration, and even die, due to extreme heat.<sup>1</sup> Yet despite the vulnerability of residents to heat stress, the current regulations do not take heat index into consideration. Temperature requirements must factor in the heat index in order to adjust for the susceptibility of older adults to hyperthermia.

- **Applicability of the safe and comfortable temperature standard in emergencies**

The rules related to emergency preparedness are very vague about the temperature of the facility during a disaster/emergency. They simply say, "Temperatures to protect resident health and safety."<sup>2</sup> The current nursing home requirements of participation are more specific, requiring "Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71 to 81°F."<sup>3</sup>

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<sup>1</sup> Long-Term Care Resident Outcomes Following a Natural Disaster. [Pamela Z. Cacchione](#), PhD, APRN, BC, [Lisa M. Willoughby](#), PhD, [Joanne C. Langan](#), PhD, RN, and [Kennith Culp](#), PhD, RN. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4391199/>

<sup>2</sup> 42 CFR § 483.73(b)(1)(ii)(A)

<sup>3</sup> 42 CFR § 483.10(i)(6)

The emergency preparedness regulations should clarify that the temperature range during an emergency must be maintained at 71-81°F, adjusted for heat index.

- **Emergency power capable of maintaining safe temperatures**

The current regulatory language regarding emergency preparedness requires alternate sources of energy that maintain temperatures to protect resident health and safety (see above.) This language is vague, ambiguous and subject to interpretation. This lack of clarity can have disastrous consequences, as it did at the Rehabilitation Center at Hollywood Hills in Florida following Hurricane Irma when temperatures in the facility were 95°F, 96°F and in one resident's room, 100°F.<sup>4</sup>

This language should be replaced by the specific temperature range mandated by the federal nursing home requirements of participation noted above – 71-81°F and adjusted for heat index.

## **2. Power Restoration Prioritization**

### Recommendations

- Coordination with electricity providers and power restoration for at-risk communities

### Status:

Not implemented in federal law, regulation nor guidance with one exception. The Pandemic and All-Hazards Preparedness and Advancing Innovation Act (PAHPAI) was passed in 2019 directing states to indicate in their emergency plans how they will partner with health care facilities, including nursing homes and other long-term care facilities, to promote and improve public health preparedness and response. However, while this was a step in the right direction, PAHPAI does not specifically require states to recognize nursing homes as a top priority – along with hospitals – for power restoration.

### Importance

As was just stated, unlike hospitals, nursing homes are not considered a top priority for power restoration after a natural disaster. Consequently, facilities can go days without power, placing residents at risk of harm and even death, as was the case at Hollywood Hills. Yet nursing home residents can be just as vulnerable during power outages as hospital patients. In fact, in some cases there is very little difference between a hospital patient and a nursing home resident because the acuity level and care needs of residents have increased. An individual can be a hospital patient one day and a nursing home resident the next. Giving nursing homes higher priority is

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<sup>4</sup>Inside the Hollywood Hills nursing home: Soaring temperatures, dying patients and a nurse asleep. Where were the people in charge? Sun-Sentinel. August 26, 2019.

essential to ensure power is restored quickly, thereby decreasing the possibility of adverse and/or tragic health outcomes for residents as the result of a disaster.

### **3. Sheltering-in-Place/Evacuations**

#### Recommendation:

- Shelter-in-place/evacuation warnings

#### Status:

Not implemented in federal law, regulation nor guidance

#### Importance:

There is currently no requirement nor guidance about who is responsible for deciding whether residents should be evacuated or sheltered-in-place. It is unclear if this is the role or responsibility of state government, local government, the facility administrator, or the facility operator. Facilities are left to make their own decisions about whether to shelter in place or evacuate. Once again, lack of clarity is problematic. It can cause confusion, which means the decision may not be made in a timely manner. This can then create delays that force residents to remain in place even if evacuation would better protect residents in a particular situation.

### **4. Emergency Plans**

#### Recommendation:

- Effective review and approval of emergency plans

#### Status:

Not implemented in federal law, regulation nor guidance

#### Importance:

While there are requirements for what should be included in a facility's emergency plan, there are no requirements directing facilities to confer with emergency management experts and relevant local agencies in creating the plan. Without such consultation, plans may not be realistic or viable. Further, there is also no federal requirement for anyone to approve the plan to make sure it is feasible and based on information about the community. When surveyors survey for compliance, they only check to see if the plan contains the required components – not that the plan is accurate, appropriate, workable, and protective of residents' health and safety.

The emergency plan is the foundation of a facility's response to an emergency. An inadequate emergency plan places residents at risk of harm and even death.

An emergency can occur at anytime, anywhere in the country. When it does, the complex medical conditions of many nursing home residents, combined with the overall susceptibility of older adults to extreme temperatures, make residents particularly vulnerable. Comprehensive, effective emergency preparedness is therefore imperative.

Yet five years after the tragic deaths of residents at Hollywood Hills, we cannot guarantee at either the national or state level that nursing home residents will be safe during a disaster. With the exception of a small step related to power restoration prioritization in PAHPAI, the gaps in emergency preparedness so clearly laid out in *Sheltering in Danger* remain unaddressed. The situation is quite literally a disaster waiting to happen.

The clock is ticking. To fail to act when we know what needs to be done is unacceptable.

Sincerely,



Lori Smetanka  
Executive Director



Robyn Grant  
Director of Public Policy & Advocacy

# Exhibit 3

February 9, 2023

*Via Email*

Mr. Peter Gartrell  
Chief Investigator  
U.S. Senate Special Committee on Aging  
Washington, D.C. 20510  
[REDACTED]

Ms. Melissa Dickerson  
Investigator  
U.S. Senate Committee on Finance  
Washington, D.C. 20510  
[REDACTED]

Re: Inquiry Regarding Emergency Preparedness for Nursing Homes and Long-Term Care Facilities

Dear Mr. Gartrell and Ms. Dickerson:

I write in response to your email of January 23, 2023, in which you note concerns regarding the availability of electric service to nursing homes and long-term care facilities and in which you request additional information about measures ERCOT has taken to improve emergency preparedness for residents of these facilities. Thank you for the opportunity to provide my perspective.

As the independent system operator for the region that serves most of Texas, ERCOT's most fundamental purpose is to direct the planning and operation of the electric transmission grid to ensure continuous, reliable electric service to all Texans. Electricity is essential to everyday life, and when the supply of electric power is insufficient to meet system demand, lives can be severely impacted. This is especially true for those residing in nursing homes and other long-term care facilities, who often depend on equipment powered by electricity to sustain life's basic functions, and ERCOT is committed to ensuring their safety.

With these critical interests in mind, ERCOT has been working closely with state policymakers to carry out several reforms over the past two years. These reforms have been adopted with the aim of ensuring the availability of electric power for all Texans, including those in nursing homes and long-term care facilities, during extreme weather events. Some of the most significant reforms include the following:

- Adopting mandatory weatherization standards for electric power generators and natural gas infrastructure that serves those generators, with each generator subject to inspection once every three years;
- Establishing requirements for owners of natural gas infrastructure to register with their utilities as critical loads to minimize the likelihood of power loss to gas supply facilities during a power shortage;
- Developing a "Firm Fuel Supply Service" to incentivize the availability of alternative fuel sources and the use of gas storage facilities in the event of a shortage of natural gas supply;

- Operating the power grid in a more conservative manner by increasing the amount of generation reserves online and available at all times.

In addition, the Public Utility Commission of Texas (PUCT) has recently provided recommendations to the Texas Legislature regarding changes to the ERCOT wholesale electricity market that would further ensure the availability of dispatchable generation during extreme weather conditions. ERCOT will continue to work with state policymakers during the current legislative session on this and any other necessary reforms.

While ERCOT plays a central role in directing the operation of the power grid at all times, ERCOT does not have a direct relationship with end-use customers. Customers instead have direct relationships with load serving entities (such as municipalities, electric cooperatives, or retail electric providers), who sell power to the customer, and with the transmission and distribution utilities that own the wires and other physical infrastructure that deliver power to each customer. Those utilities, not ERCOT, are responsible for deciding which customers may be disconnected, and for what duration, during rare extreme emergency conditions. This includes decisions relating to power restoration. Customers with special power needs may work directly with the PUCT to ensure they are prioritized, and PUCT's rules give assisted-living facilities, hospice facilities, nursing facilities, and end stage renal disease facilities the same level of priority as hospitals when it comes to restoring power.

With respect to communications, ERCOT provides broad, public notice of conditions that could threaten power grid reliability through a variety of public channels, including but not limited to press releases, website postings, email subscription lists, and social media. ERCOT's press releases are routinely picked up and distributed by local television, radio, and newspaper outlets across the state. ERCOT also communicates directly with state, local, and federal officials. Effective communication is critical to emergency response and ERCOT prioritizes consistent communication with the public at all times, but especially during emergencies.

While ERCOT does not regulate or control the availability of power for any customers, including nursing homes and other long-term care facilities, ERCOT understands the importance of ensuring the delivery of power to these particularly vulnerable groups. To that end, ERCOT will continue to work with Texas policymakers to pursue measures that will ensure the reliable operation of the Texas power grid during extreme weather conditions.

If you need additional information, or if you would like to discuss further, please do not hesitate to contact me directly. Thank you again for your inquiry.

Sincerely,

/s/ Pablo Vegas

Pablo Vegas  
President and Chief Executive Officer



# Exhibit 4



## ***Texas Ombudsman Case Summaries During February 2021 Storm Uri***

### Case Example 1 – Dallas County

On February 17, an ombudsman received a call from a family member or a resident of an assisted living facility. The person lived in a memory care unit for people with dementia; the caller reported that power was out and the residents' rooms were cold. Emergency response planning had not been communicated from management to family members.

The ombudsman contacted the executive director of the facility to learn what the facility's plan was. The director stated that a skilled nursing facility on the same property had a working generator that powered its heat but did not power heat at the assisted living facility. The ombudsman expressed concern regarding temperatures dropping dangerously low and asked about the facility's emergency plan in relation to indoor temperatures. The director stated that the skilled nursing facility had enough vacant rooms to temporarily accommodate its assisted living facility residents. The director stated notifications to family members had begun. The ombudsman notified the caller of the option to move temporarily to the skilled nursing facility and the caller was satisfied with the solution.

### Case Example 2 – Medina County

On February 25, an ombudsman received complaints that residents of an assisted living facility had no heat or water at home. Water was reportedly unavailable to flush toilets, take a shower, or drink. The facility was using two electric heaters that residents reported were not keeping them warm enough. During the day, the day activity and health service provider gave the residents bottled water and warm clothing. The ombudsman reported these issues to the state survey agency and a surveyor was onsite on March 1 and 2. The facility temporarily moved residents on March 1 from the building with insufficient heat to another building operated by the same owner, but on March 3, the owner had residents return to the building without repairs made to the building's heating system. With continued oversight by the state survey agency, the facility eventually repaired its water and heat on March 5.

Case Example 3 – Collin County

An assisted living facility experienced burst pipes and was without city water to drink or use for laundry, bathing, and toilets. On February 18, a complainant reported that a portion of the ceiling collapsed and that some residents were sleeping on mattresses on the floor. Residents were reportedly given bottled water to drink and melted snow was used to flush toilets. On February 19, over 80 residents, including residents from a memory care unit for people living with dementia, were evacuated due to the building conditions. Residents were sent to many different locations, including nursing homes, other assisted living facilities, unlicensed facilities, behavioral health hospitals, home with family, and to a hotel.

Twenty-one residents were moved to a hotel. When the ombudsman became aware of their location, the ombudsman contacted facility management about its plans to care for residents. Facility management reported there were six staff providing services to residents living in the hotel. Staff were reported to check on residents every two hours and were ordering food from local fast-food restaurants. The facility had no plans to move residents to another facility but instead to keep residents at the hotel until they returned to the original facility in a few months. Concerned about the facility's ability to provide the care needed for residents residing in a hotel, the ombudsman consulted with the state survey agency. Based on the details provided by the ombudsman and an onsite investigation, the state survey agency determined that residents' safety was at risk and required all residents moved immediately out of the hotel and into a residential care community. Nineteen of the residents in the hotel paid for care with Medicaid and needed to find placement at another Medicaid facility. Ombudsmen met with each resident and supported their decisions, helping some to move to other areas of the state. The ombudsman also coordinated with Medicaid managed care organizations to ensure there wasn't a gap in the resident's coverage or care. All 21 residents moved within 72 hours to a new facility. By February 22, the ombudsman visited each of the residents in their new facility. Residents reported they were getting good care, good food, and liked the conditions in their new facilities better than their previous one.

# Exhibit 5

**From:** [Janssen, Nicolaus H \(OIG/IO\)](#)  
**To:** [Gartrell, Peter \(Aging\)](#)  
**Subject:** Status of HHS-OIG Recommendations (8 State Audit Series on NH Emergency Preparedness/Life Safety)  
**Date:** Thursday, February 2, 2023 1:18:19 PM  
**Attachments:** [HHS-OIG Nursing Home Life Safety Recommendation Status \(Aging Committee Request\) February 2023 .docx](#)

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Hi Peter,

**OIG considers all the recommendations from the eight state audit series to be closed/implemented.** In each case, CMS concurred. I've attached a listing of the recommendations in case useful in your report. Let me know if you have questions.

Nico

Nicolaus Janssen  
Program Analyst, Congressional Affairs  
U.S. Department of Health and Human Services  
Office of Inspector General

Cell: [REDACTED]

## Department of Health and Human Services (HHS), Office of Inspector General (OIG)

### Nursing Home Life Safety and Emergency Preparedness Audit Series – Recommendations

At Request of the Senate Special Committee on Aging  
February 2023

**STATUS: OIG considers all recommendations from the eight state audits to be closed/implemented.**

Following is each audit report's recommendations.

#### [New York Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-02-17-01027 – Issued August 20, 2019\)](#)

We recommended that the New York State Department of Health:

- follow up with the 20 nursing homes to ensure corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- work with CMS and other States' survey agencies to develop standardized life safety training for nursing home staff,
- conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies, and
- instruct all nursing homes to install carbon monoxide detectors as required by New York State law and modify its survey procedures to include a check for carbon monoxide detectors.

#### [California Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-09-18-02009 – Issued November 13, 2019\)](#)

We recommended that the California Department of Public Health:

- follow up with the 19 nursing homes to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- conduct more frequent site surveys at nursing homes to follow up on deficiencies,
- ensure that all surveyors consistently enforce CMS requirements, and
- work with CMS to develop life safety training for nursing home staff.

#### [Life Safety and Emergency Preparedness Deficiencies Found at 18 of 20 Texas Nursing Homes \(A-06-19-08001 – Issued February 6, 2020\)](#)

We recommended that the Texas Health and Human Services Commission follow up with the 18 nursing homes to verify that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report.

[Florida Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-04-18-08065 – Issued March 6, 2020\)](#)

We recommended that the Florida Agency for Health Care Administration:

- follow up with the 20 nursing homes to ensure corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report;
- work with CMS to develop standardized life safety training for nursing home staff;
- conduct more frequent surveys at nursing homes with a history of multiple high-risk deficiencies and follow up to ensure that corrective actions have been taken;
- provide additional training to nursing homes to ensure that their State emergency plan is submitted and approved without delay;
- continue to follow up with nursing homes to ensure that they implement their supplemental emergency plans;
- work with county emergency management agencies to develop a process to monitor the submission and approval of State emergency plans and supplemental emergency plans;
- expand State agency guidance to include all Federal emergency preparedness requirements in addition to the State emergency plan requirements; and
- increase communication and collaboration with the county emergency management agencies to:
  - clarify roles and responsibilities;
  - make them aware of pending, or newly licensed, nursing homes in their counties;
  - identify areas where additional expertise may be needed to ensure that nursing homes meet CMS and State requirements and to ensure the safety of nursing home residents; and
  - provide county emergency management agencies with survey results, to the extent possible, from individual nursing homes to identify specific vulnerabilities.

[Missouri Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-07-18-03230 – Issued March 13, 2020\)](#)

We recommended that the Missouri Department of Health and Senior Services:

- follow up with the 20 nursing homes to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- work with CMS to develop standardized life safety training for nursing home staff,
- conduct more frequent surveys at nursing homes that have a history of multiple high-risk deficiencies and follow up to ensure that corrective actions have been taken, and
- expand training of nursing home staffs with specific attention to the updating of emergency preparedness plan templates to address facility-specific preparations.

[Illinois Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-05-18-00037 – Issued September 17, 2020\)](#)

We recommended that the Illinois Department of Public Health:

- follow up with the 15 nursing homes to verify that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report,
- conduct more thorough emergency preparedness reviews in accordance with Appendix Z for the safety and protection of nursing home residents and staff,
- work with CMS to develop emergency preparedness training and expand life safety training sessions to accommodate all nursing home management,
- consider increasing staffing levels to address caseload thresholds for State surveyors, and
- consider modifying its survey procedures to check for carbon monoxide alarms required by Illinois law.

[North Carolina Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-04-19-08070 – Issued September 18, 2020\)](#)

We recommended that the North Carolina Department of Health and Human Services:

- follow up with the 18 nursing homes to verify that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report;
- work with CMS to develop life safety training for nursing home staff;
- conduct more frequent site surveys at nursing homes with a history of multiple high-risk deficiencies;
- work with LEM agencies to develop a process to monitor the submission of emergency plans;
- increase collaboration with LEM agencies to:
  - clarify roles and responsibilities;
  - make them aware of pending, or newly licensed, nursing homes in their counties; and
  - provide LEM agencies with survey results, to the extent possible, from individual nursing homes to identify specific vulnerabilities; and
- increase collaboration with RHCs and communication with nursing home administrators to ensure nursing homes are aware of resources available to them.

[Iowa Should Improve Its Oversight of Selected Nursing Homes' Compliance With Federal Requirements for Life Safety and Emergency Preparedness \(A-07-19-03238 – Issued February 16, 2021\)](#)

We recommended that the Iowa Department of Human Services, Iowa Medicaid Enterprise:

- follow up with the 20 nursing homes to ensure that corrective actions have been taken regarding the life safety and emergency preparedness deficiencies identified in this report;
- work with CMS to develop standardized life safety training for nursing home staff;
- conduct more frequent surveys at nursing homes that have a history of multiple high-risk deficiencies; and
- require nursing homes and inspection contractors to: (1) tag systems that are critical to the health and safety of nursing home residents when they have found that these systems may not work as required when needed and (2) notify the State agency.

# Exhibit 6

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop 00-00-00  
Baltimore, Maryland 21244-1850



CENTER FOR CLINICAL STANDARDS AND QUALITY

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February 8, 2023

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Chairman Wyden:

In response to your staff's request on January 12, 2023, for more information regarding efforts at the Centers for Medicare & Medicaid Services (CMS) to address emergency preparedness in long-term care (LTC) facilities, we are providing the attached document. Thank you for the opportunity to respond to the recommendations outlined in the Senate Finance Committee's report titled *Sheltering in Danger: How Poor Emergency Planning and Response put Nursing Home Residents at Risk During Hurricanes Harvey and Irma*.

The healthcare provider and supplier requirements for participation in the Medicare and Medicaid programs are key components of the emergency preparedness standards for the planning, preparing, and staff training for potential emergency situations. CMS issued a final rule on September 8, 2016, "Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers" (81 Fed.Reg. 63,859), updating and improving upon the emergency preparedness requirements for LTC facilities and other providers and suppliers participating in Medicare and Medicaid. The final rule is explained in depth in guidance found in Appendix Z of the CMS State Operations Manual (Pub. 100-07).

Both the pandemic and the increase in natural disasters have demonstrated how critical proactive emergency preparedness is to keeping residents of LTC facilities safe. CMS is examining and considering changes to emergency preparedness requirements and is working to bolster the resiliency of the health care sector as part of an Administration-wide effort to be ready for the next pandemic and the next weather-related emergencies. Since 2016, CMS has updated the final rule, and has made multiple updates to guidance to clarify the requirements for facilities' emergency preparedness and the safety of their patients as explained in the attached document. We are always interested in feedback on how to further update our guidance to improve quality of care and patient safety. CMS anticipates further revisions to Appendix Z in the future, including potential development of additional tools and resources for providers and suppliers and we will keep you posted on any further developments.

Further, CMS has worked with the Assistant Secretary for Preparedness and Response (ASPR) throughout implementation of these policies. The Technical Resources Assistance Center and Information Exchange (TRACIE) has developed a single-source page for resources and technical assistance for the requirements for each facility type, including long-term care facilities. The TRACIE Assistance Center provides best practices and tools for risk assessments and other emergency preparedness considerations and resources for providers.

Please see the attached description of updated guidance in Appendix Z and let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee A. Fleisher', with a long horizontal line extending to the right.

Lee A. Fleisher, M.D.  
Chief Medical Officer and Director of the Center for  
Clinical Standards and Quality  
Centers for Medicare & Medicaid Services

## UPDATED APPENDIX Z GUIDANCE

For your reference, the information below primarily focuses on revisions that were made to guidance information found in Appendix Z of the State Operations Manual in [2019](#) and in [2021](#). However, in some cases, information about the overall regulatory requirement is provided for context.

### **Emergency Preparedness Programs and Plans and Risk Assessments**

Pursuant to the final rule (81 Fed. Reg. 63859) and as discussed in Appendix Z, all long-term care (LTC) facilities must develop an all-hazards emergency preparedness program and plan, which must be reviewed and updated at least annually. See 42 C.F.R. § 483.73(a) and (d). As required in the regulation, Appendix Z notes that the plan must address the resident population, including, but not limited to, persons at-risk; the type of services the LTC facility has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans. The guidance explains that this approach includes preparedness for natural, man-made, or facility emergencies. The emergency plan is developed based on facility- and community-based risk assessments that assist a facility in anticipating and addressing facility, patient, staff and community needs and support continuity of business operations. Plans must be based on a documented risk assessment and include strategies for addressing emergency events identified by the risk assessment.

To help facilities ensure that their plans address geographic and other conditions, including those related to temperature, CMS made clarifications to Appendix Z in 2021. The guidance provides that, based on the community threat and the hazard identification process, facilities should select a comprehensive risk assessment tool that evaluates their risk and potential for hazards. The comprehensive risk assessment should include all risks that could disrupt the facility's operations and necessitate emergency response planning to address the risk mitigation requirements and ensure continuity of care. Using an all-hazards approach helps facilities consider and prepare for a variety of risks which may impact their healthcare settings. Facilities should categorize the various probable risks and hazards identified by likelihood of occurrence and further create supplemental risk assessments based on the disaster or public health emergency. CMS further clarified that surveyors will review the risk assessments to determine if the facility has a risk assessment that is both facility-based and community based. Further, the risk assessment should describe the process facilities use to assess and document potential hazards that are likely to impact their geographical region, community, facility and patient population.

### **Roles, Responsibilities, and Succession Planning**

The regulations at 42 C.F.R. § 483.73(a)(3) require that the emergency plan address, among other things, the continuity of operations including delegations of authority and succession plans. During times of emergency, facilities must have employees who are capable of assuming various critical roles in the event that current staff and leadership are not available. At a minimum, there should be a qualified person who “is authorized in writing to act in the absence of the administrator or person legally responsible for the operations of the facility.” In 2021, CMS clarified in Appendix Z that facilities may have a general plan that outlines the roles and responsibilities of the different individuals (e.g. incident commander, public information officer, patient liaison, etc.) and refers to those individuals by their titles. If the facility chooses to follow this process without individual name identification, the individual serving in the role at the time a survey is performed should be able to adequately describe their role and responsibility during an

## UPDATED APPENDIX Z GUIDANCE

emergency. In addition, with respect to individuals with whom facilities may contract, in 2019, CMS clarified in Appendix Z that the expectation is that each individual knows the facility's emergency program and their role during emergencies. CMS recognizes the importance of incorporating all staff into the emergency planning process and specifically assigning roles and responsibilities. If a surveyor asks one of these individuals what their role is during a disaster, or any relevant questions, then the expectation is that the individual can describe the emergency plans and their role.

### **Training and Drills**

Under the regulations at 42 C.F.R. § 483.73(d), facilities must develop and maintain an emergency preparedness training and testing program based on their emergency plan, the facility's risk assessment and the communications plan. LTC facilities must conduct exercises to test the emergency plan at least twice per year, including unannounced staff drills using the emergency procedures. Facilities and all staff must participate in an annual full-scale exercise that is community-based, or if not feasible, conduct an annual individual, facility-based functional exercise. Facilities must conduct an additional annual exercise that may include a second full-scale exercise, a mock disaster drill, or a tabletop exercise or workshop designed to challenge an emergency plan.

Additional explanation and specificity was provided in Appendix Z in 2021 with respect to testing and training requirements. The guidance states that the intent is that staff, volunteers, and individuals providing services at the facility are familiar and trained on the facility's process for responding to an emergency. Training should include individual-based response activities in the event of a natural disaster, such as what the process is for staff in the event of a forecasted hurricane. It should also include the policies and procedures on how to shelter-in-place or evacuate. Training should also include how the facility manages the continuity of care to its patient population, such as triage processes and transfer/discharge during mass casualty or surge events.

Recognizing the need to match training to all identified hazards, CMS also amended Appendix Z in 2021 to specify that during surveys, surveyors should refer to a facility's risk assessment to determine if the training and testing program reflects risks and hazards identified within the facility's program.

### **Collaboration with the Community**

The regulations at 42 C.F.R. § 483.73(a)(4) require LTC facilities to include a process for cooperation and collaboration with emergency preparedness officials to maintain an integrated response during a disaster or emergency situation. Therefore, in Appendix Z, CMS clarifies that LTC facilities include a process for engaging in collaborative planning for an integrated, communitywide response. Facilities must have a means of providing information about the facility's needs and its ability to provide assistance to the authority having jurisdiction. In 2021, revisions were made in Appendix Z to state that generally, in small community emergency disasters, reporting the facility's needs will be coordinated through established processes to report directly to local and state emergency officials. Reporting needs may include, but are not limited to: shortages in personal protective equipment (PPE); need to evacuate or transfer patients; requests for assistance in transport; temporary loss of part or all facility function; and

## UPDATED APPENDIX Z GUIDANCE

staffing shortages. As part of a comprehensive approach to meeting the health, safety and security needs of its staff and patient population during an emergency or disaster, the emergency preparedness program must also address how the facility would coordinate with other healthcare facilities, as well as the whole community during an emergency or disaster.

Changes to Appendix Z were also made to state that facilities are expected to engage and coordinate with their local health systems (including any emergency-related Alternate Care Sites), and their local and state health departments, and federal agency staff. They are also encouraged to engage with their healthcare coalitions, as applicable. Facility awareness of the state's emergency preparedness programs ensures coordination occurs with the community. Coordination should be pre-planned and facility management should know the state and local emergency contacts. Further, facilities should identify their primary and alternate means of communication in their emergency preparedness communication plan.

When evaluating potential interruptions to the normal supply of essential services, the facility should take into account the likely durations of such interruptions. Arrangements or contracts to re-establish essential utility services during an emergency should describe the timeframe within which the contractor is required to initiate services after the start of the emergency, how they will be procured and delivered in the facility's local area, and that the contractor will continue to supply the essential items throughout and to the end of emergencies of varying duration. However, CMS recognizes that contractors may be subject to the same hardships as the community they serve, and there are no guarantees in the event of a disaster that the contractor would be able to fulfill their duties. Therefore, in 2021, CMS updated the guidance in Appendix Z to specify that the emergency plan should take into account contingency planning, such as evacuation triggers in the event essential resources provided by the contractor cannot be fulfilled.

### **Sheltering in Place and Evacuation**

CMS regulations at 42 C.F.R. § 483.73(b) contain requirements related to sheltering in place and evacuation. In Appendix Z, CMS states that facilities are expected to include in their policies and procedures the criteria for determining which patients and staff would be sheltered in place. When developing policies and procedures for sheltering in place, facilities should consider the ability of their building(s) to survive a disaster and what steps they could take to facilitate sheltering in place or transferring of patients to alternate settings. The plan should take into account the appropriate facilities in the community to which patients could be transferred in the event of an emergency. Facilities must determine their policies based on the type of emergency and the types of patients, staff, volunteers and visitors that may be present during an emergency. Based on its emergency plan, a facility could decide to have various approaches to sheltering some or all of its patients and staff.

Appendix Z states that mobility is an important part in effective and timely evacuations, and therefore facilities are expected to properly plan to identify patients who would require additional assistance, ensure that means for transport are accessible and available and that those involved in transport, as well as the patients and residents are made aware of the procedures to evacuate. If the patient population has limited mobility, facilities should have an approach to address these challenges during emergency events.

## UPDATED APPENDIX Z GUIDANCE

In 2019, recognizing the importance of state and local leaders' determinations on evacuation and shelter-in-place orders, CMS updated Appendix Z to clarify that facilities are required to follow all state/local mandates or requirements with regard to evacuations. If a local community, region, or state declares a state of emergency and is requiring a mandatory evacuation of the area, facilities should abide by these laws and mandates as applicable.

Subsequently, in 2021, CMS further clarified in its Appendix Z that a facility should identify within its policies and procedures the circumstances under which it would invoke particular procedures (e.g. evacuate or shelter), and actions that may vary based on the type of hazard. The procedures should include who would initiate the emergency preparedness response. A facility's policies and procedures should also outline a contingency plan in the event patients require evacuation but are unable to be transferred due to a community-wide impacted emergency. In addition, language was added stating that surveyors should ask facilities how they would handle a patient who refused to evacuate because leaving a patient in an unsafe environment is not acceptable. Appendix Z also states clearly that triage and coordination of evacuation requires planning and communication of plans within the facility and with entities that assist in providing services such as transportation and life-saving equipment.

CMS also clarified in 2021 that facilities should include in their planning and revisions of existing plans, contracts and inventory of supply needs; availability of personal protective equipment; critical care equipment; and transportation options/needs to be prepared for surge events. Facilities must consider in their development of policies and procedures, the needs of their patient population and what designated transportation services would be most appropriate.

There are requirements for facilities to have policies and procedures that include prearranged transfer agreements with other facilities and providers to receive patients in the event of limitations or cessation of operations to maintain the continuity of services to facility patients. The revisions to Appendix Z issued in 2021 noted that when developing transfer agreements, facilities should take into account the patient population and the ability for the receiving facility to provide continuity of services, and to be able to have contingency plans if a particular facility is not able to accommodate a patient. The facility is responsible for the tracking of residents, and thus any written arrangements should account for the patient population, number of patients and ability for the receiving facility or facilities to continue care.

A comprehensive approach to meeting the health and safety needs of a patient population should encompass the elements for emergency preparedness planning based on the "all-hazards approach" and be specific to the location of the facility. For instance, a facility in a large flood zone should have included these elements in their overall planning in order to meet the health, safety, and security needs of the staff and of the patient population.

### **Temperature**

Conditions of participation under the Medicare program for LTC facilities require a comfortable and safe temperature level (42 C.F.R. § 483.10(i)(6)). Facilities that were initially certified after October 1, 1990 must maintain a temperature range of 71 degrees Fahrenheit (min) to 81 degrees Fahrenheit (max). As part of its emergency preparedness, facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained

## UPDATED APPENDIX Z GUIDANCE

during an emergency situation, as necessary, if there were a loss of the primary power source. In 2019, CMS updated Appendix Z to provide additional guidance and support improvements to facilities' emergency preparedness programs, including with respect to heating and cooling and temperatures. We note that facilities must ensure safe temperatures are maintained in those areas necessary to protect patients, other people in the facility, and for provisions stored in the facility during the course of an emergency. Further, if unable to meet the temperature needs, a facility should have a relocation or evacuation plan (that may include internal relocation, relocation to other buildings on the campus or full evacuation). The relocation/evacuation should take place in a timely manner so as not to expose patients and residents to unsafe temperatures.

Temperature-related hazards are a critical part of emergency planning. In 2021, CMS updated Appendix Z to address the use of heat indices as part of an all-hazards approach. Facilities can consider using a heat index or heat risk assessment to identify situations which present concerns related to patient care and safety. As facilities are required to maintain safe temperatures under the conditions of participation, heat risk assessments would be considered additional risk assessments.

Emergency preparedness policies and procedures must determine the most appropriate alternate sources of energy to maintain temperatures to protect resident health and safety (42 C.F.R. § 483.73(b)(1)(ii)(A)). Regardless of the alternate sources of energy a facility chooses to utilize, it must be used in accordance with local and state laws, manufacturer requirements, as well as applicable life safety code requirements. Further, in 2021, guidelines were updated to state that if portable generators are used, they should be connected and provide emergency power to a facility's electrical system circuits via a power transfer system as recommended by the generator manufacturer. A power transfer system typically consists of a generator power supply cord, power inlet box mounted outside, and transfer switch connected to the facility electrical panel. With respect to permanently installed generators, surveyors are referred to applicable National Fire Protection Association (NFPA) Codes and Standards.

# Exhibit 7



**MEMORANDUM**

February 9, 2023

**To:** Senate Finance Committee and Senate Special Committee On Aging  
Attention: Melissa Dickerson, Peter Gartrell

**From:** Phoenix Voorhies, Analyst in Health Care Financing, [REDACTED], [REDACTED]

**Subject:** Scan of CMS Emergency Preparedness Guidance, Appendix Z

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As you requested, this memorandum includes results of a scan that the Congressional Research Service (CRS) performed that identified Centers for Medicare & Medicaid Services (CMS) guidance directly related to recommendations offered in the in the 2018 Senate Finance Committee report, *Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents at Risk During Hurricanes Harvey and Irma*.<sup>1</sup>

Our scan was limited to CMS guidance pertaining to the oversight process of federal emergency preparedness requirements for nursing homes, found within Appendix Z of the CMS State Operations Manual.<sup>2</sup> To provide context for the guidance language that was identified, this memo provides a brief summary of federal requirements for nursing homes and federal oversight activities.

Given that oversight and emergency preparedness of federally-certified nursing homes is of general interest to Congress, the information included in this memorandum may be provided to other congressional requesters or incorporated into other CRS products. Your confidentiality as a requester would be preserved in any case.

## Background & Terms Used

This memorandum uses—and cites CMS guidance that uses—the terms “long-term care facilities” (LTCFs) and “nursing homes” interchangeably to refer to federally-certified facilities providing nursing home services. Among other responsibilities, CMS is required to oversee certain institutional care settings that participate in Medicare or Medicaid, which CMS refers to as LTCFs. To differentiate participating LTCFs in each program, federal law designates Medicare LTCFs as skilled nursing facilities (SNFs) and Medicaid LTCFs as nursing facilities (NFs). The majority of federally-certified LTCFs participate in both

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<sup>1</sup> U.S. Congress, Senate Committee on Finance, *Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents at Risk During Hurricanes Harvey and Irma*, 115th Cong., November 2018. Available at [https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20\(2%20Nov%202018\).pdf](https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf).

<sup>2</sup> CMS, “State Operations Manual Appendix Z - Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance,” Issued on April 16, 2021. Available at [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_z\\_emergprep.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_z_emergprep.pdf).

programs and thus constitute SNFs and NFs. The more commonly used term nursing home is often substituted for LTCF and the SNF/NF designations to describe these federally-certified settings.

Other types of residential settings that provide housing and services (e.g., assisted living facilities) generally do not provide the type of skilled nursing or continuous care offered in nursing homes. These settings are considered community-based, not institutional. As such, they are not subject to federal Medicare and Medicaid requirements.

## **Federal Compliance and Related Agency Guidance on Conditions of Participation (CoPs)**

In order to participate in Medicare or Medicaid, nursing homes are required to adhere to a set of federal requirements, the CoPs. CoPs include a broad array of requirements, such as the scope of services, patient rights (e.g., freedom from abuse), and the organizational environment and structure of the facility — including, but not limited to, staff qualifications, clinical records management, and/or infection control. Certain CoPs are explicitly required by the Social Security Act (SSA) under Title XVIII (Medicare), Section 1819, and Title XIX (Medicaid), Section 1919. These statutory provisions are nearly identical. Pursuant to the same sections of the SSA, the HHS Secretary is also permitted to establish other CoPs that are not explicitly required by statute. The consolidated CoPs for Medicare and Medicaid nursing homes as established by the HHS Secretary can be found at 42 C.F.R. Part 483, Subpart B.

## **Federal Compliance and Related Agency Guidance**

To determine whether federally certified nursing homes are in compliance with the CoPs, the HHS Secretary is required under federal law to work in collaboration with state agencies, known as State Survey Agencies (SAs), to inspect nursing homes. Generally, SAs perform an initial compliance survey after a nursing home has been operational for a short period of time. After certification of a nursing home, SAs are required by law to perform regular, unannounced inspections (known as standard surveys) as well as abbreviated standard surveys in response to any indicators of particular concern, which can include complaints from residents or other entities, or a change in a nursing home's ownership or management.

While SAs generally perform the surveys, CMS provides essential performance-related guidance. Such guidance addresses the practical aspects of surveying, including the process for notifying a facility that a survey has begun, to more complex actions, such as how to interpret compliance with CoPs, assess degrees of noncompliance, and decide what, if any, remedial actions should be taken when a nursing home has failed to comply with a CoP. CMS-issued guidance to SAs also serves as a form of communication to other stakeholders (e.g., nursing homes operators), as to how CMS interprets and determines compliance with the CoPs. The CMS communication to the other stakeholders occurs through various avenues, such as press releases and memoranda.

## **Appendix Z**

Appendix Z is the interpretive guidance for federal providers (e.g., Medicare-certified nursing homes, hospitals, and ambulatory surgical centers) for compliance and survey process of emergency preparedness requirements. For nursing homes, Appendix Z provides guidance for the regulatory requirements found at 42 C.F.R. § 483.73. Appendix Z was added to the State Operations Manual in June 2017, following a 2016 final rule<sup>3</sup> that established emergency preparedness requirements for participating federal health

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<sup>3</sup> Centers for Medicare & Medicaid Services, "Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers," 81 *Federal Register* 63859, 2016.

care providers. The guidance has been updated three times since its addition; the most recent update was in April 2021.<sup>4</sup>

In addition to specifying the parameters for compliance, Appendix Z also develops emergency preparedness "tags," known as E-Tags, which correspond to a given requirement or set of similar requirements and are used to identify instances of noncompliance of emergency preparedness standards. Instances of noncompliance identified with E-Tags are made available to the public on the CMS website on a rolling basis as noncompliance is reported to CMS by SAs.

## CRS Scan of CMS Emergency Preparedness Guidance in Appendix Z

As requested, CRS performed a complete review of the interpretive guidance, Appendix Z, and scanned it for language that directly relates to the recommendations made in the 2018 Senate Finance Committee report, *Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents at Risk During Hurricanes Harvey and Irma*.

**Table 1** lists the report recommendations and results of our scan. The text in the first column is directly from the 2018 report. The text in the second is text pulled from the CMS guidance based on our review. As requested, if some or all of the language identified was newly published by CMS in the most recent update to Appendix Z (April 16, 2021), we have bolded that text. In order to cite the guidance, CRS has included the corresponding E-Tag.

If CRS was unable to find guidance within Appendix Z that directly relates to the recommendation, then we have notes that there was "No specific guidance located in Appendix Z." Although CRS has attempted to be comprehensive, we cannot guarantee that every relevant citation of guidance is included here.

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<https://www.federalregister.gov/documents/2016/09/16/2016-21404/medicare-and-medicaid-programs-emergency-preparedness-requirements-for-medicare-and-medicaid>.

<sup>4</sup> CMS, "State Operations Manual Appendix Z - Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance," Issued on April 16, 2021. Available at [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_z\\_emergprep.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_z_emergprep.pdf).

**Table I. Recommendations from 2018 Senate Report and Related Center for Medicare & Medicaid Services (CMS) Emergency Preparedness Guidance**

Recommendations in Part VI of <i>Sheltering in Danger</i> <sup>a</sup>	Related CMS Guidance found in Appendix Z <sup>b</sup>
<p><b>A: Temperature Protection of Elderly Populations</b></p> <p>I. Revising the Safe and Comfortable Temperature Standard: Given the vulnerability of the elderly populations to heat stress, CMS should reevaluate and revise its “safe and comfortable” temperature standard. New standards should reflect health and evidence-based risks that high temperatures pose for this population. Heat index guidelines should be incorporated into the safe temperature range.</p>	<p>“<b>Risk Assessment Considerations:</b> Based on the community threat and hazard identification process, facilities should select a comprehensive risk assessment tool that evaluates their risk and potential for hazards. The comprehensive risk assessment should include all risks that could disrupt the facility’s operations and necessitate emergency response planning to address the risk mitigation requirements and ensure continuity of care.</p> <p>Using an all-hazards approach helps facilities consider and prepare for a variety of risks which may impact their healthcare settings. Facilities should categorize the various probable risks and hazards identified by likelihood of occurrence and further create supplemental risk assessments based on the disaster or public health emergency. For example: For power loss and potential disruptions of services: Facilities can consider using a heat index or heat risk assessment to identify situations which present concerns related to patient care and safety.” (E-0006)</p>

## Recommendations in Part VI of Sheltering in Danger<sup>a</sup>

2. Applicability of the Safe and Comfortable Temperature Standard in Emergencies:  
CMS should reissue its Emergency Preparedness rules or issue guidance, such as an update to Appendix Z, to make clear the safe and comfortable temperature standard strictly applies during emergency situations.

## Related CMS Guidance found in Appendix Z<sup>b</sup>

**“Risk Assessment Considerations: Based on the community threat and hazard identification process, facilities should select a comprehensive risk assessment tool that evaluates their risk and potential for hazards. The comprehensive risk assessment should include all risks that could disrupt the facility’s operations and necessitate emergency response planning to address the risk mitigation requirements and ensure continuity of care.**

**Using an all-hazards approach helps facilities consider and prepare for a variety of risks which may impact their healthcare settings. Facilities should categorize the various probable risks and hazards identified by likelihood of occurrence and further create supplemental risk assessments based on the disaster or public health emergency. For example: For power loss and potential disruptions of services: Facilities can consider using a heat index or heat risk assessment to identify situations which present concerns related to patient care and safety.” (E-0006)**

“Facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained during an emergency situation, as necessary, if there were a loss of the primary power source. Facilities are not required to heat and cool the entire building evenly, but must ensure safe temperatures are maintained in those areas deemed necessary to protect patients, other people who are in the facility, and for provisions stored in the facility during the course of an emergency, as determined by the facility risk assessment. If unable to meet the temperature needs, a facility should have a relocation/evacuation plan (that may include internal relocation, relocation to other buildings on the campus or full evacuation). The relocation/evacuation should take place in a timely manner so as not to expose patients and residents to unsafe temperatures.” (E-0015)

3. Emergency Power Capable of Maintaining Safe Temperatures:

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

“Facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained during an emergency situation, as necessary, if there were a loss of the primary power source. Facilities are not required to heat and cool the entire building evenly, but must ensure safe temperatures are maintained in those areas deemed necessary to protect patients, other people who are in the facility, and for provisions stored in the facility during the course of an emergency, as determined by the facility risk assessment. If unable to meet the temperature needs, a facility should have a relocation/evacuation plan (that may include internal relocation, relocation to other buildings on the campus or full evacuation). The relocation/evacuation should take place in a timely manner so as not to expose patients and residents to unsafe temperatures.” (E-0015)

## Recommendations in Part VI of Sheltering in Danger<sup>a</sup>

### 4. Warnings for Alternative Temperature Controls:

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

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

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

### 6. Coordination with Electricity Providers:

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

## **B: Sheltering-in-Place/Evacuations**

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

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

## Related CMS Guidance found in Appendix Z<sup>b</sup>

"Facilities are not required to upgrade their alternate energy source or electrical systems, but after review of their risk assessment may find it prudent to make modifications. Regardless of the alternate sources of energy a facility chooses to utilize, it must be in accordance with local and state laws, manufacturer requirements, as well as applicable LSC requirements (for example, hospitals are required to have an essential electric system with a generator that complies with NFPA 99 – Health Care Facilities Code and associate reference documents)." (E-0015)

No specific guidance located in Appendix Z.

No specific guidance located in Appendix Z.

No specific guidance located in Appendix Z.

## Recommendations in Part VI of Sheltering in Danger<sup>a</sup>

## Related CMS Guidance found in Appendix Z<sup>b</sup>

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

No specific guidance located in Appendix Z.

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

### C: Emergency Plans

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

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

“Surveyors should also consider the volume of documentation provided by the facility and working with the facility when reviewing the Emergency Preparedness Program as facilities have the flexibility to determine how to format the documentation of their program. It is critical to understand that responses to emergency incidents may be the same process for multiple hazards or risks. For instance, the evacuation response to flooding and to fire emergencies may be the same. Therefore, facilities are not required to have a policy and procedure for each hazard, however, the facility should clearly identify within their policies and procedures under which circumstance the facility would evacuate, shelter, etc. and any potential considerations that may be different based on a particular hazards (e.g. is PPE required to evacuate during a biological threat); and should also include documentation on who would initiate the emergency preparedness response.” (Introduction)

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

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

“Facilities are expected to include in their policies and procedures the criteria for determining which patients and staff would be sheltered in place. When developing policies and procedures for sheltering in place, facilities should consider the ability of their building(s) to survive a disaster and what proactive steps they could take prior to an emergency to facilitate sheltering in place or transferring of patients to alternate settings if their facilities were affected by the emergency. For example, if it is dangerous to evacuate or the emergency affects available sites for transfer or discharge, then the patients would remain in the facility until it was safe to effectuate transfers or discharges. The plan should take into account the appropriate facilities in the community to which patients could be transferred in the event of an emergency. Facilities must determine their policies based on the type of emergency and the types of patients, staff, volunteers and visitors that may be present during an emergency. Based on its emergency plan, a facility could decide to have various approaches to sheltering some or all of its patients and staff.” (E-0022)

3. Emergency Plan Content—Evacuation/Shelter-in-Place Decision-Making: CMS and states should establish clear roles, responsibilities, and qualifications for decision-makers charged in emergency plans with making evacuation and shelter -in place decisions. Such standards should also require documented protocols for making and reassessing such decisions, and include basic factors that facilities should consider.

**“Finally, a facility’s policies and procedures should also outline a contingency plan in the event patients require evacuation but are unable to be transferred due to a community-wide impacted emergency. See also, tag E-0022 for policy and procedure requirements addressing shelter in place.” (E-0019).**

“Emergency plans must include a means for sheltering all patients, staff, and volunteers who remain in the facility in the event that an evacuation cannot be executed. In certain disaster situations (such as tornadoes) , sheltering in place may be more appropriate as opposed to evacuation and would require a facility to have a means to shelter in place for such emergencies. Therefore, facilities are required to have policies and procedures for sheltering in place which align with the facility’s risk assessment.

Facilities are expected to include in their policies and procedures the criteria for determining which patients and staff would be sheltered in place. When developing policies and procedures for sheltering in place, facilities should consider the ability of their building(s) to survive a disaster and what proactive steps they could take prior to an emergency to facilitate sheltering in place or transferring of patients to alternate settings if their facilities were affected by the emergency. For example, if it is dangerous to evacuate or the emergency affects available sites for transfer or discharge, then the patients would remain in the facility until it was safe to effectuate transfers or discharges. The plan should take into account the appropriate facilities in the community to which patients could be transferred in the event of an emergency. Facilities must determine their policies based on the type of emergency and the types of patients, staff, volunteers and visitors that may be present during an emergency. Based on its emergency plan, a facility could decide to have various approaches to sheltering some or all of its patients and staff.” (E-0022)

“Facilities should also have in place policies and procedures which address emergency situations in which a declaration was not made and where an I 35 waiver may not be applicable, such as during a disaster affecting the single facility. In this case, policies and procedures should address potential transfers of patients; timelines of patients at alternate facilities, etc. **We would expect that state or local emergency management officials might designate such alternate sites, and would plan jointly with local facilities on issues related to staffing, equipment and supplies at such alternate sites. This requirement encourages providers to collaborate with their local emergency officials in proactive planning to allow an organized and systematic response to assure continuity of care even when services at their facilities have been severely disrupted. Health department and emergency management officials, in collaboration with facility staff, would be responsible for determining the need to establish an alternate care site as part of the delivery of care during an emergency.” (E-0026)**

**“The training provided by the facility must be based on the facility’s risk assessment policies and procedures as well as the communication plan. The intent is that staff, volunteers and individuals providing services at the facility are familiar and trained on the facility’s processes for responding to an emergency. Training should include individual-based response activities in the event of a natural disasters, such as what the process is for staff in the event of a forecasted**

**hurricane. It should also include the policies and procedures on how to shelter-in-place or evacuate. Training should include how the facility manages the continuity of care to its patient population, such as triage processes and transfer/discharge during mass casualty or surge events.” (E-0037)**

“Facilities that conduct an individual facility-based exercise will need to demonstrate how it addresses any risk(s) identified in its risk assessment. For example, an inpatient facility might test their policies and procedures for a flood that may require the evacuation of patients to an external site or to an internal safe “shelter-in-place” location (e.g. foyer, cafeteria, etc.) and include requirements for patients with access and functional needs and potential dependencies on life-saving electricity-dependent medical equipment. An outpatient facility, such as a home health provider, might test its policies and procedures for a flood that may require it to rapidly locate its on-duty staff, assess the acuity of its patients to determine those that may be able to shelter-in-place or require hospital admission, communicate potential evacuation needs to local agencies, and provide medical information to support the patient’s continuity of care. **If the facility uses fire drills based on their risk assessment (e.g. wild fires) as a full-scale community based exercise in one given year (which is also a requirement for some providers/suppliers under Life Safety Code), the facility is encouraged to choose in the following year a different hazard in their risk assessment to conduct an exercise in order to ensure variability in the training and testing program. The intent of the requirements under the emergency preparedness condition for participation/condition for coverage, or requirement for LTC, is to test the facility’s ability to respond to any emergency outlined within their risk assessment. The purpose of testing the facility’s emergency program is to identify gaps in response which could result in adverse events for patients and staff and to adjust plans, policies and procedures to ensure patient and staff safety is maintained regardless of the type of emergency which occurs.” (E-0039)**

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

**“Finally, a facility’s policies and procedures should also outline a contingency plan in the event patients require evacuation but are unable to be transferred due to a community-wide impacted emergency. See also, tag E-0022 for policy and procedure requirements addressing shelter in place.” (E-0019).**

“Emergency plans must include a means for sheltering all patients, staff, and volunteers who remain in the facility in the event that an evacuation cannot be executed. In certain disaster situations (such as tornadoes), sheltering in place may be more appropriate as opposed to evacuation and would require a facility to have a means to shelter in place for such emergencies. Therefore, facilities are required to have policies and procedures for sheltering in place which align with the facility’s risk assessment.

Facilities are expected to include in their policies and procedures the criteria for determining which patients and staff would be sheltered in place. When developing policies and procedures for sheltering in place, facilities should consider the ability of their building(s) to survive a disaster and what proactive steps they could take prior to an emergency to facilitate sheltering in place or transferring of patients to alternate settings if their facilities were affected by the emergency. For example, if it is dangerous to evacuate or the emergency affects available sites for transfer or discharge, then the patients would remain in the facility until it was safe to effectuate transfers or discharges. The plan should take into account the appropriate facilities in the community to which patients could be transferred in the event of an emergency. Facilities must determine their policies based on the type of emergency and the types of patients, staff, volunteers and visitors that may be present during an emergency. Based on its emergency plan, a facility could decide to have various approaches to sheltering some or all of its patients and staff.” (E-0022)

“Facilities should also have in place policies and procedures which address emergency situations in which a declaration was not made and where an I 35 waiver may not be applicable, such as during a disaster affecting the single facility. In this case, policies and procedures should address potential transfers of patients; timelines of patients at alternate facilities, etc. **We would expect that state or local emergency management officials might designate such alternate sites, and would plan jointly with local facilities on issues related to staffing, equipment and supplies at such alternate sites. This requirement encourages providers to collaborate with their local emergency officials in proactive planning to allow an organized and systematic response to assure continuity of care even when services at their facilities have been severely disrupted. Health department and emergency management officials, in collaboration with facility staff, would be responsible for determining the need to establish an alternate care site as part of the delivery of care during an emergency.” (E-0026)**

**“The training provided by the facility must be based on the facility’s risk assessment policies and procedures as well as the communication plan. The intent is that staff, volunteers and individuals providing services at the facility are familiar and trained on the facility’s processes for responding to an emergency. Training should include individual-based response activities in the event of a natural disasters, such as what the process is for staff in the event of a forecasted**

**hurricane. It should also include the policies and procedures on how to shelter-in-place or evacuate. Training should include how the facility manages the continuity of care to its patient population, such as triage processes and transfer/discharge during mass casualty or surge events.” (E-0037)**

“Facilities that conduct an individual facility-based exercise will need to demonstrate how it addresses any risk(s) identified in its risk assessment. For example, an inpatient facility might test their policies and procedures for a flood that may require the evacuation of patients to an external site or to an internal safe “shelter-in-place” location (e.g. foyer, cafeteria, etc.) and include requirements for patients with access and functional needs and potential dependencies on life-saving electricity-dependent medical equipment. An outpatient facility, such as a home health provider, might test its policies and procedures for a flood that may require it to rapidly locate its on-duty staff, assess the acuity of its patients to determine those that may be able to shelter-in-place or require hospital admission, communicate potential evacuation needs to local agencies, and provide medical information to support the patient’s continuity of care. **If the facility uses fire drills based on their risk assessment (e.g. wild fires) as a full-scale community based exercise in one given year (which is also a requirement for some providers/suppliers under Life Safety Code), the facility is encouraged to choose in the following year a different hazard in their risk assessment to conduct an exercise in order to ensure variability in the training and testing program. The intent of the requirements under the emergency preparedness condition for participation/condition for coverage, or requirement for LTC, is to test the facility’s ability to respond to any emergency outlined within their risk assessment. The purpose of testing the facility’s emergency program is to identify gaps in response which could result in adverse events for patients and staff and to adjust plans, policies and procedures to ensure patient and staff safety is maintained regardless of the type of emergency which occurs.” (E-0039)**

No specific guidance located in Appendix Z.

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

## Recommendations in Part VI of *Sheltering in Danger*<sup>a</sup>

## Related CMS Guidance found in Appendix Z<sup>b</sup>

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

No specific guidance located in Appendix Z.

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

### 7. Planning for Floods:

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

“A comprehensive approach to meeting the health and safety needs of a patient population should encompass the elements for emergency preparedness planning based on the “all-hazards” definition and specific to the location of the facility. For instance, a facility in a large flood zone, or tornado prone region, should have included these elements in their overall planning in order to meet the health, safety, and security needs of the staff and of the patient population. Additionally, if the patient population has limited mobility, facilities should have an approach to address these challenges during emergency events.” (E-0001)

## E: Power Restoration Prioritization

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

No specific guidance located in Appendix Z.

State and local officials and power providers should re-examine power restoration priority protocols with specific consideration of at-risk populations, including nursing homes and assisted living facilities.

**Source:** Compiled by CRS staff using the criteria detailed in this memo.

**Notes:** As requested, if some or all of the language identified was newly published by CMS in the last update to Appendix Z (April 16, 2021), we have bolded that text. In order to cite the guidance, CRS has included the corresponding E-Tag.

- a. U.S. Congress, Senate Committee on Finance, *Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents at Risk During Hurricanes Harvey and Irma*, 115th Cong., November 2018. Available at [https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20\(2%20Nov%202018\).pdf](https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf).
- b. CMS, “State Operations Manual Appendix Z - Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance.” Issued on April 16, 2021. Available at [https://www.cms.gov/Regulations-and-Guidance/Manuals/downloads/som107ap\\_z\\_emergprep.pdf](https://www.cms.gov/Regulations-and-Guidance/Manuals/downloads/som107ap_z_emergprep.pdf).





APPENDIX

B

## **Note Regarding Data in Appendix B**

The data that follow were provided to the Committees by the Texas Health & Human Services Commission (Texas HHSC).

As the Committees were finalizing this report, Texas HHSC provided updated data showing that 600 nursing homes reported incidents to the state during the February 2021 winter emergency—an addition of 22 facilities to the data the Committees relied on to prepare this report.

The updated data from Texas HHSC incorporated a review conducted by the department's regional offices, which identified incidents that were omitted from the original count the Committees received.

The data that follow is the updated data, which show that 139 nursing homes lost power, 327 nursing homes reported needing to boil water, and 121 nursing homes reported burst pipes, water shortages or no water. The number of facilities that reported evacuating did not change.

Exhibit 1: Copy of Updated 2021 Winter\_Storm\_Affected\_Nursing\_Facilities\_With\_Regions-02.03.23 (for report).xlsx

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Region	Facility	ID	City	County	Black out/No Electricity	Generator Issues/No Generator	Boil Water/Shortage/Pipe Break	No Water/Water Shortage/Pipe Break	Sprinkler System Damage/Fire Watch	Evacuation	Count of Reported Issue Categories	Licensed Capacity	Licensed Only
1	Abri at Stephenville (AKA Senior Care at Stephenville)	455906	STEPHENVILLE LE	Erath					1		1	122	
3	Aczel at College Station	676437	College Station	Brazos			1		1		2	116	
4	Advanced Rehab and HC Of Athens	675424	ATHENS	Henderson			1	1			2	120	
5	Advanced Rehabilitation Center of Bowie	455949	BOWIE	Montague					1		1	180	
6	Advanced Rehabilitation Center of Wichita Falls	675852	WICHITA FALLS	Wichita					1		1	180	
7	Alameda Oaks Nursing Center	455687	CORPUS CHRISTI	Nueces			1				1	146	
8	Alamo Heights for Clinically Complex Care	455510	San Antonio	Bexar	1	1					2	143	
9	Alamo Heights Health & Rehabilitation	455467	SAN ANTONIO	Bexar	1	1					2	237	
10	ALLEGANT WELLNESS AND REHAB	676452	FORT WORTH	Tarrant	1						1	60	
11	Alpine Terrace	675906	KERRVILLE	Kerr			1				1	60	
12	Amario Center for Skilled Care	676347	AMARILLO	Potter	1						1	122	
13	Amisad Nursing and Rehabilitation Center	455536	UNALDE	Uvalde				1			1	200	
14	Arbor Grace	675814	KILGORE	Rusk			1	1	1		3	127	
15	Arbor Terrace	675832	SAN ANGELO	Tom Green			1	1			2	126	
16	Arbrook Plaza	675930	Arlington	Tarrant			1				1	120	
17	Arden Place	675791	houston	Harris			1				1	200	
18	Arden Place of Richland Hills	675840	richland hills	Tarrant			1				1	114	
19	Arden Wood	675789	houston	Harris			1				1	174	
20	ARLINGTON RESIDENCE AND REHABILITATION CENTER	4555872	ARLINGTON	Tarrant			1		1		2	118	
21	ARLINGTON VILLAS REHABILITATION AND HEALTHCARE CENTER	675916	ARLINGTON	Tarrant			1		1		2	168	
22	ARMY RESIDENCE COMMUNITY	675697	SAN ANTONIO	Bexar	1						1	91	
23	Ashford Gardens	675423	HOUSTON	Harris	1		1				2	202	
24	ASHFORD HALL	455748	IRVING	Dallas					1		1	330	
25	Ashton Medical Lodge	676430	MIDLAND	Midland					1		1	144	
26	Ashton Park	676057	TEXAS CITY	Galveston			1				1	100	
27	Athens Healthcare & Rehab. Center	675264	ATHENS	Henderson			1	1			2	82	
28	AUSTIN HEALTHCARE & REHAB	675459	AUSTIN	Travis			1				1	120	
29	Autumns Winds Living & Rehab	676301	SCHERTZ	Guadalupe				1			1	96	
30	Avalon Place - Kirbyville	675220	KIRBYVILLE	Jasper					1		1	114	
31	Avalon Place Trinity	675900	TRINITY	Trinity			1				1	118	
32	AZLE MANOR HEALTH CARE AND REHABILITATION	676003	AZLE	Tarrant					1		1	142	
33	Bandera Nursing and Rehab	676233	BANDERA	Bandera				1			1	118	
34	Bandera Nursing and Rehabilitation Center	675377	BANGS	Brown	1						1	48	
35	Baron Valley Rehabilitation and Healthcare Center	675908	Austin	Travis			1				2	126	
36	Bay Villa Healthcare Ctr.	455582	BAY CITY	Matagorda				1			1	105	
37	Bayou Manor	676282	HOUSTON	Harris			1				1	37	
38	Baywind Village	675323	League City	Galveston			1				1	107	
39	Baywood Crossing	676309	Pasadena	Harris			1				1	124	
40	BEACON HARBOR HEALTHCARE AND REHABILITATION	675579	ROCKWALL	Rockwall					1		1	180	
41	Beaumont Health Care Center	455561	BEAUMONT	Jefferson			1				1	82	
42	Beaumont MNR	675620	BEAUMONT	Jefferson			1				1	120	
43	BEDFORD WELLNESS & REHABILITATION	455798	BEDFORD	Tarrant					1		1	120	
44	BENBROOK NURSING & REHABILITATION CENTER	675906	BENBROOK	Tarrant	1	1					2	115	
45	Bethany Senior Living	676481	Port Lavaca	Galhoun			1				1	130	
46	Birchwood Nursing & Rehab	675938	Cooper	Della						1	1	100	
47	Bluebonnet Nursing & Rehab.	675306	Kames City	Kames			1				1	120	
48	Bluebonnet Rehab At Ennis	675150	Ennis	Ellis							1	136	
49	Bonne Vie	676444	Port Arthur	Jefferson					1		1	140	
50	Booker Hospital District dba Twin Oaks Manor	45F197	Booker	Lipscomb							1	61	

A	B	C	D	E	F	G	H	I	J	K	L	M	N
51	Brenham Nursing & Rehab	675799	BRENHAM	Washington			1		1		2	128	
52	Brenwood Terrace Healthcare	676045	PARIS	Lamar			1	1	1		3	119	
53	Briarcliff HC of Greenville	675668	GREENVILLE				1				1	120	
54	Briarcliff Health Center	675142	Tyler	Hunt			1				1	230	
55	Briarcliff Nursing and Rehabilitation Center	675162	MCALLEN	Hidalgo	1		1				1	194	
56	Bridgcrest Rehabilitation Suites	676362	HOUSTON	Harris			1				1	130	
57	Bridgemoor of Fort Worth	676449	FORT WORTH	Tarrant			1	1			2	70	
58	Bridgemoor of Webster	676460	WEBSTER	Harris			1				1	70	
59	Bridgport Medical Lodge	675691	Bridgport	Wise			1				1	152	
60	Brighton Senior Living of Katy	676195	Katy	Harris			1		1		2	130	
61	Brighton Senior Living of Tomball	676244	Tomball	Harris			1				1	135	
62	Brightpointe at Lytle Lake	676416	Ablene	Taylor	1		1				1	120	
63	Brookdale Alamo Heights	675542	San Antonio	Bexar			1				1	46	
64	Brookdale Galleria	675834	HOUSTON	Harris			1	1			3	56	
65	BROOKDALE GUADALUPE RIVER PLAZA	675654	KERRVILLE	Kerr	1	1					2	64	
66	Brookdale Trinity Towers	675773	CORPUS CHRISTI	Nueces			1				1	75	
67	Brookshire Residence	675700	BROOKSHIRE	Waller			1				1	130	
68	Brownsville Nursing and rehabilitation	676083	BROWNSVILLE	Cameron	1						1	120	
69	BRUSH COUNTRY NURSING AND REHAB	675118	AUSTIN	Travis			1	1			3	118	
70	Buena Vida Nursing and Rehab	455390	San Antonio	Bexar			1				1	222	
71	Burleson NR	675144	Burleson	Johnson	1						2	120	
72	Burleson St Joseph Manor	675887	BRYAN	Brazos			1		1		1	81	
73	Caney Creek Nursing and Rehabilitation	455699	WHARTON	Wharton			1		1		2	120	
74	Canton Oaks	676300	CANTON	Van Zandt			1				1	120	
75	Capstone Healthcare Estates Veterans Memorial	676252	HOUSTON	Harris			1				1	120	
76	Care Choice of Boerne	675678	BOERNE	Kendall			1		1		2	74	
77	Care Nursing & Rehabilitation	676046	brownwood	Brown			1		1		1	97	
78	Castle Pines Health & Rehab	675960	LUFKIN	Angelina			1				1	120	
79	Cedar Creek Nursing and Rehabilitation	675529	BANDERA	Bandera	1						1	62	
80	Cedar Hills Geriatric Center	675931	CAMP WOOD	Real			1		1		2	86	
81	Cedar Hollow Rehabilitation Center	676488	Sherman	Grayson			1				1	142	
82	Chandler Nursing Center	455910	Chandler	Henderson			1				1	90	
83	Chelsea Gardens	676334	MISSOURI CITY	Fort Bend			1				2	60	
84	Cheyenne Medical Lodge	457178	MESQUITE	Dallas			1				1	139	
85	CHISOLM TRAIL NURSING AND REHAB	675063	LOCKHART	Caldwell			1	1			3	96	
86	CHRISTIAN CARE CENTER	455617	MESQUITE	Dallas	1		1				2	180	
87	CIBOLO CREEK	676240	BOERNE	Kendall			1		1		1	120	
88	Cinamon Place Health & Rehabilitation Center	676087	CORPUS CHRISTI	Nueces			1				1	120	
89	Citizens Medical Center	675086	VICTORIA	Victoria			1	1			1	20	
90	CITYVIEW NURSING AND REHABILITATION CENTER	675622	FORT WORTH	Tarrant					1		1	210	
91	Clarksville Nursing Center	455985	CLARKSVILLE	Red River			1				1	132	
92	Cleveland Healthcare	455952	CLEVELAND	Liberty			1		1		2	142	
93	Clyde Nursing Center	675038	CLYDE	Callahan	1		1	1			2	46	
94	Coleman Healthcare Center	675009	COLEMAN	Coleman	1						1	54	
95	College Park Rehabilitation and Care Center	676212	WEATHERFO RD	Parker	1						1	120	
96	Colonial Care Center	675971	SCHULENBU RG	Fayette	1	1	1				3	90	
97	COLONIAL MANOR ADVANCED REHAB & HEAL	675044	PHARR	Hidalgo	1						1	123	
98	Colonial Manor New Braunfels	455020	New Braunfels	Comal	1						2	154	
99	Colonial Manor Nursing Center	455631	CLEBURNE	Johnson	1				1		1	140	
100	Colonial Pines Healthcare Center	675358	SAN AUGUSTINE	San Augustine	1			1			2	107	

A	B	C	D	E	F	G	H	I	J	K	L	M	N
101_04	Community Care Center	455577	CROCKETT Houston								2		104
102_02	Concho Nursing & Rehab	455737	Eden Concho						1		2		66
103_06	Concho Health Care	675648	CONROE Montgomery						1		2		108
104_06	Continuing Care at Eagles Trace	676336	HOUSTON Harris						1		2		44
105_05	Cometstone Garden LLP	676196	TEMPLE Bell						1		1		130
106_02	Coronado Nursing Center	675746	ABILENE Taylor						1		2		188
107_08	Corpus Christi Nursing and Rehabilitation Center	676107	CORPUS CHRISTI Nuces						1		1		120
108_03	COTTONWOOD NURSING AND REHABILITATION LP	675292	Denton Denton						1		1		60
109_08	Country Care Manor	675947	LA VERNIA Wilson	1							1		91
110_04	Country View	675105	Terrill Kaufman						1		1		115
111_06	Courtyards of Pasadena	676165	PASADENA Harris								1		196
112_01	Cresbyton	675291	CROSBYTON Cosby							1	1		63
113_05	Crosroads Nursing and Rehabilitation	676385	HEARNE Robertson						1		2		80
114_03	CROWLEY NURSING & REHAB	676176	CROWLEY Tarrant						1		1		120
115_03	CRYSTAL CREEK AT PRESTON HOLLOW	675893	DALLAS Dallas						1		1		57
116_06	Cypress Pointe	676482	Houston Harris						1		1		124
117_06	CYPRESS HC & REHAB	676226	SAN MARCOS Hays						1		1		174
118_06	Cypress Woods	675566	ANGLETON Brazoria						1		1		105
119_06	Cypresswood TX Healthcare	455615	Houston Harris						1		1		202
120_02	De Leon Nursing And Rehabilitation	675319	De Leon Comanche	1							1		96
121_03	DeLeon Medical Lodge	676209	Decatur Wise						1		1		124
122_06	Deerbrook Skilled Nursing	676263	HUMBLE Harris						1		2		124
123_03	DENISON NURSING AND REHABILITATION LP	455663	Denison Grayson						1		1		71
124_03	DENTON REHABILITATION AND NURSING CENTER	675136	DENTON Denton						1		1		186
125_03	DESOTO LTC PARTNERS INC	455894	DESOTO Dallas	1							1		116
126_08	DEVINE HEALTH & REHABILITATION	675489	DEVINE Medina	1							1		100
127_01	Devine Health and Rehabilitation	675498	AMARILLO Randall						1		1		120
128_03	Discovery Village at Southlake	676351	Southlake Tarrant						1		1		41
129_05	DIVERSICARE OF LULING	675075	Luling Caldwell						1		2		60
130_03	DOWNTOWN HEALTH AND REHABILITATION CENTER	455651	FORT WORTH Tarrant						1		1		161
131_03	DUNCANVILLE HEALTHCARE AND REHABILITATION	676178	DUNCANVILLE Dallas						1		1		124
132_06	Eagle Lake Rehab	676361	Eagle Lake Colorado							1	1		80
133_08	Eagle Pass Nursing & Rehabilitation	675617	PASS Maverick								1		114
134_06	East View	676081	HOUSTON Harris						1		1		125
135_03	EDGEWOOD REHABILITATION AND CARE CENTER	676326	MESQUITE Dallas						1		2		142
136_02	Electra Healthcare Center	675021	ELECTRA Wichita						1		1		64
137_04	Elkhart Oaks Care Center	675217	ELKHART Anderson						1		2		98
138_03	EMERALD HILLS REHABILITATION AND HEALTHCARE CENTER	676127	NORTH RICHLAND HILLS Tarrant	1							1		118
139_05	Epic Nursing and Rehabilitation	676295	Comacana Navarro						1		2		124
140_02	Evergreen Healthcare Center	675035	BURKBURNE TT								1		60
141_05	Fairfield Nursing and Rehabilitation	676123	FAIRFIELD Freestone						1		2		101
142_06	Faith Memorial Nursing Home	675321	PASADENA Harris						1		1		112
143_06	Falcon Ridge Rehabilitation	676382	Hutto Williamson								1		140
144_06	Fall Creek Rehab and Healthcare	676412	HUMBLE Harris						1		1		126
145_01	Five Points Nursing and Rehab	676455	AMARILLO Potter						1		1		120
146_08	FLORESVILLE RESIDENCE AND REHABILITATION	675469	FLORESVILLE E						1		1		144
147_04	Focus Care of Gilmer	675602	GILMER Upshur						1		2		112
148_06	Focus Care at Burnett Bay	675649	Baytown Harris						1		1		120
149_06	Focus Care at Webster	675646	Webster Harris						1		1		120
150_06	Fourand Care at Beachnut	675000	HOUSTON Harris						1		2		146

A	B	C	D	E	F	G	H	I	J	K	L	M	N
151_04	Focused Care at Clarksville	455944	CLARKSVILLE E	Red River			1				1		120
152_08	Focused Care at Corpus	675670	Corpus Christi	Nueces			1				1		94
153_02	Focused Care at Fort Stockton/Fort Stockton Living and Rehab	675722	FORT STOCKTON	Pecos	1						1		120
154_05	Focused Care at Hamilton	675140	Hamilton	Harrison	1						1		82
155_02	Focused Care at Hogan Park	675910	MIDLAND	Midland	1						1		106
156_06	Focused Care at Humble	675127	HUMBLE	Harris	1						1		134
157_04	Focused Care at Huntsville	675433	HUNTSVILLE E	Walker	1						2		86
158_02	Focused Care at Midland	675985	MIDLAND	Midland	1						1		112
159_04	Focused Care at Mount Pleasant	455900	MOUNT PLEASANT	Titus				1			1		122
160_04	Focused Care at Orange	676094	Orange	Orange				1			1		120
161_06	Focused Care at Pasadena	676050	Pasadena	Harris	1			1			3		125
162_05	FOCUSSED CARE AT STONEBRIAR	675733	Austin	Travis	1			1			1		134
163_04	Focused Care at Summer Place	676210	Beaumont	Jefferson	1			1			1		132
164_06	Focused Care at Westwood	676118	Houston	Harris	1			1			2		125
165_05	Focused Care of Waxahachie	455991	WAXAHACHIE E	Ellis				1			1		152
166_05	Fortress Nursing and Rehabilitation	455689	College Station	Brazos				1			1		120
167_03	Forum Parkway Health & Rehabilitation	676405	Bedford	Tarrant	1			1			1		139
168_03	FOUNDERS PLAZA NURSING & REHAB	676248	WYLLIE	Collin	1			1			1		106
169_05	Franklin Nursing Home	675897	FRANKLIN	Robertson	1						1		90
170_06	Friendship Haven	675744	FRIENDSWO OD	Galveston				1			1		160
171_03	FT WORTH SOUTHWEST NURSING CENTER	675817	FORT WORTH	Tarrant	1						1		198
172_03	FT. WORTH WELLNESS & REHABILITATION	455457	FORT WORTH	Tarrant				1			1		104
173_03	GAINESVILLE NURSING & REHAB	675087	GAINESVILLE E	Cooke						1	1		112
174_08	Ganado Nursing & Rehabilitation	676242	GANADO	Jackson	1						1		91
175_03	GARDEN TERRACE ALZHEIMERS CENTER OF EXCELLENCE	675650	FORT WORTH	Tarrant				1			1		120
176_05	Giddings Residence and Rehabilitation Center	675564	GIDDINGS	Lee				1			2		84
177_03	GLENVIEW WELLNESS & REHABILITATION	455494	NORTH RICHLAND HILLS	Tarrant				1			2		163
178_04	Golden Villa	675490	ATLANTA	Cass	1			1			1		120
179_05	Golden Year Nursing and Rehab	675406	MARLIN	Falls	1						1		86
180_05	Goldthwaite Health & Rehab Center	676068	Goldthwaite	Mills				1			1		94
181_03	Good Samaritan Society - Denton Village	455627	Denton	Denton	1						1		80
182_03	Good Samaritan Society - Lake Forest Village	455685	Denton	Denton	1						1		88
184_02	Grace Care Center Cypress	676208	Houston	Harris	1			1			2		125
185_02	Gracie Oaks Care Center	455893	HENRIETTA	Clay	1						3		120
186_02	Granbury Care Center	455968	GRANBURY	Young	1						1		174
187_02	Hendrick Skilled Nursing Facility	455915	GRANBURY	Hood				1			1		20
188_02	Homeplace Manor	675058	ABILENE	Taylor				1			2		60
189_03	Greenbrier Health Care Center	675877	HAMLIN	Jones	1			0			1		114
190_04	Greenbrier Nursing & Rehab	675267	Arlington	Tarrant	1			1			2		120
191_05	Greenview Manor	455638	TYLER	Smith	1						1		128
192_04	Greenville Gardens	675367	WACO	McLennan	1						1		103
193_04	Greenville health and Rehab	675020	GREENVILLE E	Hunt	1			1			2		120
194_04	Groveton Nursing Home	676172	GROVETON	Hunt				1			2		47
195_06	Gulf Health Care Center n Galveston	675254	GALVESTON	Galveston	1			1			3		150
196_04	Gulf Healthcare	675172	Port Arthur	Jefferson	1			1			2		150
197_11	Hartlingen Nursing and Rehabilitation Center	675608	HARLINGEN	Cameron	1						1		120
198_05	Hays Nursing and Rehabilitation Center	455960	San Marcos	Hays	1			1			2		116
199_05	Heartstone Nursing and Rehabilitation	455771	Round Rock	Williamson				1			1		120
200_02	Hendrick Skilled Nursing Facility	455683	ABILENE	Taylor				1			2		20

A	B	C	D	E	F	G	H	I	J	K	L	M	N
201_03	HERITAGE AT TURNER PARK HEALTH & REHAB NURSING	455733	GRAND PRAIRIE	Dallas				1			1		164
202_03	HERITAGE HOUSE AT KELLER REHAB & NURSING	675153	KELLER	Tarrant	1		1				2		120
203_04	Heritage House of Marshall	676187	MARSHALL	Harrison			1				1		125
204_04	Heritage House of Paris	676294	PARIS	Lamar	1						1		90
205_03	HERITAGE OAKS	675112	ARLINGTON	Tarrant			1				1		204
206_06	HERITAGE PARK OF KATY NURSING AND REHAB	676221	KATY	Waller			1				1		118
207_05	HERITAGE PARK REHAB & SKILLED NURSING	455599	AUSTIN	Travis			1				1		197
208_05	Hico Nursing and Rehabilitation	675468	HICO	Harrison			1				1		80
209_03	Highland Meadows	676387	Rockwall	Rockwall			1				1		120
210_08	Highland Nursing Center	46E341	San Antonio	Bezar			1				1		59
211_06	Highland Park Care Center	675493	HOUSTON	Harris			1				1		120
212_04	Highland Pines Nursing	675133	LONGVIEW	Gregg	1		1				2		171
213_04	Holiday Nursing Center	455550	CENTER	Shelby	1		1				2		137
214_03	Hollymead	676369	Flower Mound	Denton				1			1		112
215_03	HOME FOR AGED MANSONS CLINIC NURSING CEN	000237	ARLINGTON	Tarrant			1				1		90
216_02	Homeplace Manor	675058	HAVILIN	Jones	1		0				1		60
217_02	Homestead Nursing And Rehabilitation Of Baird	675964	BAIRD	Calahan			1				2		74
218_05	Homestead Nursing and Rehabilitation of Itasca	675712	ITASCA	Hill			1				2		82
219_04	Honey Grove	675066	HONEY	Fannin						1	1		102
220_06	Houston Transitional Care Center	676435	HOUSTON	Harris			1				2		70
221_04	Huntington Health and Rehab	676183	HUNTINGTON	Angellina				1			1		112
222_04	Huntsville Healthcare	675691	HUNTSVILLE	Walker			1				1		92
223_03	HURST PLAZA	455850	Hurst	Tarrant					1		1		106
224_03	IMMANUELS HEALTHCARE	676052	FORT WORTH	Tarrant				1			2		84
225_05	Indian Oaks Living Center	675909	HARKER HEIGHTS	Bell			1				2		199
226_08	INSPIRATION HILLS REHABILITATION CENTER	675138	SAN ANTONIO	Bezar					1		1		134
227_03	INTERLOCHEEN HEALTH AND REHABILITATION CENTER	455835	ARLINGTON	Tarrant			1				1		122
228_02	Iowa Park Healthcare	675483	IOWA PARK	Wichita					1		2		77
229_03	Irving Nursing and Rehabilitation	675374	Irving	Dallas	1				1		1		88
230_04	Jacksonville Healthcare Center	675011	JACKSONVILLE	Cherokee	1					0	1		53
231_08	John Paul II Nursig Home	45E409	Kennedy	Karnes			1				1		64
232_03	Keller Oaks Healthcare Center	676023	Keller	Tarrant			1				2		147
233_04	Kemp Care Center	675802	Kemp	Kaufman			1				2		124
234_08	Kennedy Health and Rehabilitation	676173	KENEDY	Karnes	1			1			1		60
235_04	Kennedy Health and Rehab	455855	Lufkin	Angellina				1			1		145
236_05	Killeen Nursing and Rehab	676438	Killeen	Bell			1				2		120
237_05	Kingsland Hills Care Center	676035	Kingsland	Llano			1				1		122
238_08	Kirkwood Manor	455732	NEW BRAUNFELS	Comal			1				2		162
239_02	KPC Promise	455901	Wichita Falls	Wichita					1		1		72
240_08	La Bahia	675372	Goliad	Goliad					1		1		90
241_03	LA DORA NURSING AND REHABILITATION CENTE	675534	BEDFORD	Tarrant				1			2		52
242_06	Lake Jackson HCC	455477	LAKE JACKSON	Brazoria	1						1		120
243_03	Lake Lodge Nursing & Rehabilitation	455903	Lake Worth	Tarrant			1				2		140
244_06	Lakes at Texas City	455490	TEXAS CITY	Galveston			1				1		120
245_01	Lakeside Rehab CC	675993	LUBBOCK	Lubbock					1		1		93
246_03	LAKEWEST REHABILITATION AND SKILLED CARE	676276	DALLAS	Dallas	1			1			2		118
247_05	Lampasas Nursing and Rehabilitation Center	455613	Lampasas	Lampasas					1		1		68
248_05	Lampstand Nursing and Rehabilitation	676019	Bryan	Brazos					1		1		140
249_01	Lamun, Lusk VA Home	675874	BIG SPRING	Howard					1		1		160
250_03	LANCASTER LTC PARTNERS INC	675910	LANCASTER	Dallas	1						1		120

A	B	C	D	E	F	G	H	I	J	K	L	M	N
251_04	Larkspur	675519	LUFKIN	Angellina									
252_11	Las Palmas Healthcare Centerx	675415	MCALLEN	Hidalgo	1		1	1	1		3		120
253_02	Las Ventanas de Socorro	676383	Socorro		1		0	0			1		120
254_06	Laurel Court	675495	ALVIN	Brazosa			1		1		2		126
255_06	LBJ MEDICAL	676486	Johnson City	Blanco			1				1		125
256_04	Legacy at Town Creek	675988	PALESTINE	Anderson			1				1		199
257_01	Legacy Rehab and Living	676010	AMARILLO	Randall					1		1		150
258_04	Legend H&R Greenville	675774	GREENVILLE	Hunt	1			1	1		3		126
259_04	Legend Healthcare Paris	676049	PARIS	Lamar					1		1		120
260_05	LEGEND OAKS HC & REHAB KYLE	676272	KYLE	Hays			1				1		126
261_04	Legend Oaks Healthcare & Rehab Center	676048	GLADEWAT	Ujshur			1	1			2		100
262_03	Legend Oaks Healthcare and Rehabilitation - Fort Worth	676426	Fort Worth	Tarrant	1						2		132
263_05	Legend Oaks North Austin	676238	AUSTIN	Travis			1				1		124
264_03	LIFE CARE CENTER OF HALTOM	675935	FORT WORTH	Tarrant	1		1				2		127
265_11	Live Oak Nursing & Rehabilitation Center x	675104	GEORGE WEST	Live Oak	1	1		1			4		100
266_03	LONGMEADOW HEALTHCARE CENTER	675185	JUSTIN	Denton	1						1		120
267_04	Longview Hill	455684	LONGVIEW	Gregg				1			2		198
268_04	Mabank Nursing Center	676458	Mabank	Kaufman			1				1		57
269_04	Magnolia Manor	455538	GROVES	Jefferson			1		1		2		138
270_03	MANSFIELD MEDICAL LODGE	676143	MANSFIELD	Tarrant				1			1		118
271_03	MARINE CREEK NURSING AND REHABILITATION	675779	FI Worth	Tarrant					1		1		170
272_04	Marshall Manor N&R	455646	MARSHALL	Harrison			1				1		179
273_04	Marshall Manor West	455679	MARSHALL	Harrison			1				1		118
274_06	Mason Creek Transitional Care Center Katy	676194	KATY	Harris			1		1		2		125
275_03	MATLOCK PLACE HEALTH & REHABILITATION CENTER	676141	ARLINGTON	Tarrant			1	1			2		148
276_03	MCKINNEY HEALTHCARE AND REHABILITATION	675004	MCKINNEY	Collin			1	1			1		125
277_01	McLean Care Center	675973	MCLEAN	Gray					1		1		84
278_02	Meadow Creek N&R	676031	San Angelo	Tom Green			1	1			2		80
279_04	Meadow Lake	676286	TYLER	Smith	1	1					3		30
280_03	MEADOWBROOK CARE CENTER	675151	VAN ALSTYNE	Grayson					1		2		60
281_06	Memorial City Health & Rehab Ctr.	676258	HOUSTON	Harris			1				1		187
282_08	Memorial Medical Nursing Center	455597	SAN ANTONIO	Bexar			1				1		135
283_01	Memorial Nursing and Rehab	45F199	Dumas	Moore	1						1		56
284_02	Menard Manor	676020	MEABARD	Menard			1				2		40
285_05	Mendon of Temple	676364	Temple	Ball	1	1					2		60
286_02	Merkel Nursing Center	676053	MERKEL	Taylor			1		1		2		66
287_02	Mesa Springs Healthcare Center	675645	ABILENE	Taylor			1				1		89
288_03	MESQUITE TREE NURSING CENTER	675033	MESQUITE	Dallas			1				1		144
289_03	Mesquite Village Healthcare Centre	676480	Mesquite	Dallas			1				1		149
290_05	Mesa LTC Nursing and Rehabilitation	675903	MEXIA	Limestone			1				1		66
291_01	Mt Castilla	675942	LUBBOCK	Lubbock					1		1		95
292_02	Midland Medical Lodge	676179	MIDLAND	Midland	1		1				2		125
293_03	MILLBROOK HEALTHCARE AND REHABILITATION	676188	LANCASTER	Dallas					1		1		124
294_08	Minador	676303	Corpus Christi	Nueces			1				1		41
295_04	Mont Belvieu Rehabilitation & Healthcare Center	110342	Mont Belvieu	Chambers			1				1		124
296_05	Monument Hill Nursing & Rehabilitation	455715	LA GRANGE	Fayette			1	1			3		104
297_08	MORNINGSIDE MANOR	455523	SAN ANTONIO	Bexar	1				1		2		147
298_04	MRC Creekside	675864	HUNTSVILLE	Walker			1		1		2		66
299_04	MSHC The Waterton at Cowhorn Creek	675949	TEXARKANA	Bowie				1			1		76
300_02	Mulberry Manor	455744	STEPHENVILLE	Erath					1		1		102

A	B	C	D	E	F	G	H	I	J	K	L	M	N
301.04	Mullican Care center	675439	SAVOY	Farrith			1	1			2	112	
302.08	Normandy Terrace Nursing & Rehab	675823	SAN ANTONIO	Bexar	1		1				1	320	
303.03	North Pointe Nursing & Rehabilitation	675983	Wauauga	Tarrant	1						1	126	
304.08	Northeast Rehab 7 Health	455754	SAN ANTONIO	Bexar			1				1	120	
305.02	Northern Oaks Living & Rehabilitation Center	455934	ABILENE	Taylor				1	1		2	96	
306.08	Northgate	455804	SAN ANTONIO	Bexar	1						1	120	
307.03	Northgate Plaza	675967	Living	Dallas			1	1			2	120	
308.08	Oak Park Nursing And Rehabilitation Center	455789	SAN ANTONIO	Bexar			1	1			3	170	
309.06	Oak Village	676307	LAKE JACKSON	Brazoria	1						1	74	
310.05	Oakcrest Nursing and Rehabilitation Center	676291	AUSTIN	Travis			1	1			2	67	
311.06	Oakmont Healthcare & Rehab at Katy	455703	Katy	Harris	1						2	130	
312.06	Oakmont Healthcare & Rehab at Katy	455725	Humble	Harris			1				1	134	
313.04	Oakwood Manor	675394	VIDOR	Orange			1	1			2	100	
314.05	Onion Creek Nursing and Rehab	676271	AUSTIN	Travis			1	1			2	125	
315.03	ONPOINTE TRANSITIONAL CARE AT TEXAS HEAD	676407	ARLINGTON	Tarrant			1	1			2	54	
316.04	Overton Healthcare Cntr	675408	OVERTON	Rusk	1			1	1		4	100	
317.04	Palestine Healthcare Center	455665	PALESTINE	Anderson			1	1			1	102	
318.01	Palo Duro Nursing Home	455641	CLAUDE	Amestrong				1			1	86	
319.02	Palo Pinto Nursing Center	455961	MINERAL WELLS	Palo Pinto			1				2	106	
320.03	Palomino Place	676422	Merquite	Dallas				1			1	120	
321.06	Paradigm at First Colony	455812	MISSOURI CITY	Fort Bend			1				1	150	
322.06	Paradigm at Westbury	675612	HOUSTON	Harris			1	1			2	148	
323.06	Paradigm at Woodwind Lakes	675685	HOUSTON	Harris			1				1	180	
324.04	Paris Healthcare	455831	PARIS	Lamar				1	1		2	96	
325.04	Park Highlands & Rehab.	675460	ATHENS	Henderson			1	1			2	132	
326.06	Park Manor Cypress Station	675986	HOUSTON	Harris			1	1			2	125	
327.06	Park Manor of Cyfar	675818	HOUSTON	Harris			1	1			2	120	
328.06	Park Manor of Humble	675991	HUMBLE	Harris				1			1	125	
329.06	Park Manor of Quail Valley	676073	MISSOURI CITY	Fort Bend			1	1			2	125	
330.06	Park Manor of Southbelt	675619	HOUSTON	Harris			1	1			2	120	
331.06	Park Manor the Woodlands	676273	THE WOODLAND S	Montgomery			1				2	124	
332.06	Park Manor Tomball	676165	TOMBALL	Harris			1	1			2	250	
333.05	Park Place Care Center	675915	GEORGETO WN	Williamson					1		1	116	
334.04	Park Place Nursing & Rehab	676005	TYLER	Smith			1	1			2	120	
335.02	Park Plaza Nursing & Rehab	675982	SAN ANGELO	Tom Green			1	1			2	90	
336.03	PARK VIEW CARE CENTER	455606	FORT WORTH	Tarrant	1						1	179	
337.01	Park View Nursing Care Center	676079	MOLESHOE	Bailey				1	1		1	74	
338.08	Parklane West Healthcare Center	675509	SAN ANTONIO	Bexar			1				1	124	
339.06	Parkview Manor	675922	WEIMAR	Colorado				1			1	94	
340.05	Parkview Nursing and Rehabilitation	675458	LOCKHART	Caldwell						1	1	118	
341.06	Parkway Place	675777	HOUSTON	Harris			1				1	42	
342.04	Parkwood in the Pines	455673	LUFKIN	Angellia			1				1	140	
343.03	PECAN MANOR NURSING AND REHABILITATION	675270	KENNEDALE	Tarrant			1				1	58	
344.03	Pecan Tree Rehab and Healthcare Center	675550	Gainesville	Cooke	1						1	122	
345.08	Pecan Valley Rehabilitation and Healthcare	676250	SAN ANTONIO	Bexar	1			1			2	124	
346.03	PENNSYLVANIA NURSING AND REHABILITATION CENTER	675034	FL Worth	Tarrant	1						1	123	
347.04	Petal Hill (The Clairmont Tyler)	455685	TYLER	Smith	1						2	120	
348.03	Pilot Point Care Center	675802	Pilot Point	Denton	1				1		3	63	
349.04	Pine Grove NC	675230	LIVINGSTON	Shelby			1				1	120	
350.04	Pine Ridge	676000	LIVINGSTON	Polk			1				1	120	

A	B	C	D	E	F	G	H	I	J	K	L	M	N
351 04	Pine Tree Lodge	675177	LONGVIEW	Gregg							2		92
352 04	Pincrest Nursing & Rehab	675289	TYLER	Smith			1	1			2		120
353 04	Pincrest Retirement Community	676124	LUFKIN	Angelina			1	1			2		51
354 04	Pittsburg Nursing Center	675037	Pittsburg	Camp				1			1		102
355 03	Pleasant Manor Healthcare and Rehabilitation	675089	Wahatchie	Ellis	1						1		132
356 03	PLEASANT VALLEY HEALTHCARE AND REHABILITATION	675305	GARLAND	Dallas				1			1		124
357 08	Port Lavaca Nursing & Rehabilitation Center	455999	LAVACA	Calloun			1				1		148
358 01	Post Nursing & Rehab	675718	POST	Garza				1			75		75
359 08	Prolet Nursing and Rehabilitation	455709	POTEET	Atascosa	1						1		Closed
360 03	PRESBYTERIAN VILLAGE NORTH SPECIAL CARE	676135	DALLAS	Dallas				1			1		172
361 03	Princeton Medical Lodge	455903	Princeton	Collin			1				2		138
362 04	Providence Park Rehab	676184	Tyler	Smith			1				1		125
363 05	QUERENCIA AT BARTON CREEK	676198	AUSTIN	Travis			1				2		42
364 03	Rambling Oaks Courtyard Extensive Care Community	676168	Highland	Denton				1			2		70
365 04	Rayburn	676269	JASPER	Village			1				2		107
366 02	REAGAN COUNTY CARE	518701	Big Lake	Reagan			1				1		42
367 02	Regency House	675787	San Angelo	Tom Green			1				2		120
368 06	Regent Care Center of Kingwood	676160	KINGWOOD	Montgomery			1				2		194
369 11	Regent Care Center of Laredo	675030	LAREDO	Webb	1						2		186
370 08	Regent Care Center of Oakwell Farms	675633	San Antonio	Bevar							1		194
371 03	REMARKABLE HEALTHCARE OF FORT WORTH	676285	FORT WORTH	Tarrant			1				1		120
372 03	REMARKABLE HEALTHCARE OF PRESTONWOOD	676363	CARROLLTO	N Denton				1			1		120
373 08	Remington Transitional	676216	SAN ANTONIO	Bevar			1				1		60
374 03	Renaissance Care Center	675441	Gainesville	Cooke					1		1		91
375 08	Relama Manor Nursing Center	455575	Corpus Christi	Nuecos			1				1		176
376 11	Relama Manor Nursing Center Alice	675309	ALICE	Jim Wells							1		136
377 11	Relama Manor Nursing Center Edinburg	675414	EDINBURG	Hidalgo	1						2		96
378 11	Relama Manor Nursing Center Laredo West	455528	LAREDO	Webb	1		1				2		198
379 08	Relama Manor Nursing Center San Antonio North	455817	SAN ANTONIO	Bevar				1			1		132
380 08	Relama Manor Nursing Center San Antonio West	675002	SAN ANTONIO	Bevar						1	1		135
381 08	Relama Manor Nursing Center-Victoria South	455726	VICTORIA	Victoria			1				1		142
382 11	Relama Manor/Laredo South	675396	LAREDO	Webb	1		1				2		112
383 04	Reunion Plaza Senior Care Center	675888	TYLER	Smith							1		99
384 06	Richard A. Anderson Texas State Veterans Home	455888	HOUSTON	Harris			1				1		120
385 03	RICHLAND HILLS REHABILITATION AND HEALTHCARE CENTER	455576	FORT WORTH	Tarrant			1				2		92
386 06	Richmond Health Care Center	676008	RICHMOND	Fort Bend	1						2		92
387 04	Ridgecrest HC and Rehab	676275	FORNEY	Kaufman					1		1		116
388 03	RIDGMAR MEDICAL LODGE	676101	FORT WORTH	Tarrant			1				1		155
389 02	Rising Star Nursing Center	675632	RIISING STAR	Eastland	1						1		60
390 08	River Ridge Nursing and Rehab	675672	CORPUS CHRISTI	Nuecos			1				1		120
391 04	Rock Haven Nursing Home	676340	NACOGDOCHES	Nacogdoche						1	1		60
392 04	Rockcreek Health and Rehab	676235	SULPHUR SPRINGS	Hopkins			1				1		120
393 04	Rose Haven Retreat	675603	ATLANTA	Cass			1				1		108
394 04	Rose Trail (Colonial Tyler Care Center)	455429	TYLER	Smith	1						2		172
395 03	Royse City Medical Lodge	676217	Royse City	Rockwall	1						1		144
396 02	Sage Crest Alzheimer's Care	676091	SAN ANGELO	Tom Green			1				2		72
397 02	San Angelo Nursing & Rehab	676100	ANGELO	Tom Green			1				3		125
398 08	San Antonio Residence and Rehabilitation	455742	SAN ANTONIO	Bevar	1						1		106
399 06	San Jacinto Manor	675392	DEER PARK	Harris			1				1		96
400 05	SAN MARCOS NURSING & REHAB	676651	MARCOS	Hays			1				1		129

A	B	C	D	E	F	G	H	I	J	K	L	M	N
401.08	San Rafael Nursing and Rehabilitation Center	675717	Corpus Christi	Nueces			1				1		178
402.03	San Remo	676256	Richardson	Collin				1			2		112
403.05	San Saba Nursing and Rehabilitation	676399	San Saba	San Saba					1		1		72
404.02	Santa Fe Health and Rehabilitation	455957	WEATHERFO	Parker					1		1		120
405.06	SCC at Clear Brook Crossing	676333	HOUSTON	Harris			1				1		128
406.06	Seabreeze	675222	Texas City	Galveston			1				1		107
407.05	SEDONA TRACE HEALTH AND WELLNESS	456674	Austin	Travis			1				2		119
408.02	Senior Care at Holland Lake	675633	WEATHERFO	Parker					1		1		120
409.03	SENIOR CARE BELTLINE	675822	GARLAND	Dallas						1	1		120
410.02	Senior Care Center - Wichita Falls	676144	WICHITA FALLS	Wichita				1			1		144
411.08	Senior Care of Corpus Christi	455697	CORPUS CHRISTI	Nueces			1				1		121
412.05	Senior Care of Hewitt	676213	HEWITT	Mclennan					1		1		140
413.04	Senior Care Stallings Court	676147	NACOGDOCHES	Nacogdoches			1	1			2		120
414.04	Senior Rehab	675541	PORT ARTHUR	Jefferson			1				2		199
415.04	Senior Suites Care & Rehab	676142	EMORY	Rains			1		1		1		68
416.01	Senior Village Nursing Home	675954	PERRYTON	Ochiltree			1				1		60
417.06	Seven Acres	676152	HOUSTON	Harris			1				2		144
418.04	Seven Oaks	675271	Borham	Fannin			1				1		108
419.02	Seymour Rehab and Healthcare	675942	SEYMOUR	Baylor			1				2		90
420.04	Shady Acres	676055	MOULTON	Newton			1				2		84
421.08	Shady Oak Nursing & Rehab	676030	MOULTON	Lavaca			1				1		61
422.04	Shady Shores (Hillsdale N&R)	676344	HEMPHILL	Sabine			1				1		90
423.02	Shannon	455691	SAN ANGELO	Tom Green						1	1		28
424.08	Shiner Nursing & Rehab	675938	SHINER	Lavaca			1				1		95
425.04	Silsbee Convalescent	675338	SILSBEE	Hardin					1		1		67
426.02	Silver Spring	676376	ABILENE	Taylor			1				2		120
427.08	Silver Tree Nursing and Rehabilitation Center	676121	SCHERTZ	Guadalupe			1				1		120
428.01	Snyder Oaks Care Center	675646	SNYDER	Scurry			1				1		80
429.06	Solera at West Houston	676310	HOUSTON	Harris			1				2		112
430.03	SOUTH DALLAS NURSING & REHABILITATION	675940	DALLAS	Dallas			1				2		91
431.04	South Place	455634	ATHENS	Henderson			1		1		2		112
432.08	Southbrooke Manor Nursing & Rehab	675159	EDNA	Jackson			1				1		120
433.08	Southeast Nursing & Rehab	675883	SAN ANTONIO	Bexar			1				1		116
434.01	Southern Specialty	676028	LUBBOCK	Lubbock			1				1		144
435.04	Southeast Rehab	675962	LUFKIN	Angelina			1				2		150
436.05	Southpark Meadows N&R	676299	AUSTIN	Travis			1				1		120
437.04	Spindletop Nursing and Rehab	455757	BEAUMONT	Jefferson			1				2		148
438.06	SPJST Rest. Home #2	676298	NEEDVILLE	Fort Bend			1				2		58
439.06	Spring Branch Transitional	675764	HOUSTON	Harris			1				1		198
440.04	Spring Creek	675595	Beaumont	Jefferson			1				2		98
441.08	St Francis Nursing Home	456410	San Antonio	Bexar			1				1		143
442.05	St. Anthony's Care Center	676462	Waco	Mclennan			1				1		120
443.06	St. James House at Baytown	675999	BAYTOWN	Harris			1				1		105
444.08	Stevens Healthcare of Yoakum	455544	Yoakum	DeWitt			1				1		106
445.08	Stockdale Residence and Rehabilitation Center	675477	STOCKDALE	Wilson			1				2		68
446.08	Stone Oak Care Center	675968	SAN ANTONIO	Bexar			1				2		152
447.04	Stonereek N&R	675729	SAN AUGUSTINE	San Augustine							2		90
448.03	STONEMERE REHABILITATION CENTER	676352	FRISCO	Collin			1				2		136
449.01	Stonewall LC	676077	ASPERMONT	Stonewall			1				1		53
450.06	Sugar Land Healthcare Center	675538	SUGAR LAND	Fort Bend			1				1		150

A	B	C	D	E	F	G	H	I	J	K	L	M	N
451_04	Summer Meadows	455678	LONGVIEW	Gregg	1						2	115	
452_04	Summit N&R (Trinity N&R)	675846	SAN AUGUSTINE	San Augustine	1			1			2	88	
453_06	Sunset Home	675826	CLIFTON	Beauregard					1		1	128	
454_06	Sweeney House	675344	SWEENEY	Brazoria	1						1	94	
455_06	Sylvan Shores Health and Wellness	110401	La Porte	Harris	1						1	124	Yes
456_03	Terence of Denison	458806	DENISON	Grayson	1						1	136	
457_04	Terrill Healthcare	675879	TERRELL	Kaufman	1			1			1	94	
458_08	Texan Nursing & Rehab of Gonzales	675124	GONZALES	Gonzales	1						1	80	
459_02	Texas Christian Care Center	455965	WICHITA FALLS	Wichita					1		1	309	
460_03	TEXOMA HEALTHCARE CENTER	455973	SHERMAN	Grayson	1			1			2	179	
461_04	The Arboretum of Winnie	675798	WINNIE	Chambers	1						1	120	
462_05	The Atbour at Westminster	676099	AUSTIN	Travis	1			1			2	90	
463_03	The Belmont at Twin Creeks	676237	Allen	Collin	1				1		1	112	
464_04	The Bradford @ Brookside	675539	LIVINGSTON	Polk	1				1		2	125	
465_05	The Brazos of Waco	676409	WACO	McMinn	1						1	123	
466_03	The Carlyle at Stonebridge Park	676249	Southlake	Tarrant	1			1			2	112	
467_04	The Center At Grande	676443	TYLER	Smith	1						1	96	
468_06	The Colonades	676207	PEARLAND	Brazoria	1						1	180	
469_08	The Courtyard Rehabilitation and Healthcare Center	675766	VICTORIA	Victoria	1			1			3	56	
470_06	The Forum at Memorial Woods	455854	Houston	Harris	1						2	93	
471_06	The Gardens of Belaire	455975	BELLAIRE	Harris	1			1			3	46	
472_06	The Hallmark	676423	HOUSTON	Harris	1						1	32	
473_03	The Hamson at Heritage	676317	Fort Worth	Tarrant	1				1		4	120	
474_03	THE HEALTHCARE RESORT OF PLANO	676395	PLANO	Collin	1			1			2	70	
475_06	The Heights of Tomball	675701	TOMBALL	Harris	1						1	150	
476_04	The Heights of Tyler	676262	TYLER	Smith	1						1	120	
477_08	The Heights on Huebner	676224	SAN ANTONIO	Bexar					1		1	120	
478_06	The Heights on Valley Ranch	676476	Porter	Montgomery	1						1	122	
479_03	THE HILLCREST OF NORTH DALLAS	676315	DALLAS	Collin	1			1			1	120	
480_03	THE HOMESTEAD OF DENISON	675212	DENISON	Grayson	1				1		2	140	
481_03	THE HOMESTEAD OF SHERMAN	676120	SHERMAN	Grayson	1						2	132	
482_03	THE LEGACY AT WILLOW BEND	676189	PLANO	Collin	1					1	1	60	
483_03	THE LODGE AT BEAR CREEK	676408	GRAPEVINE	Tarrant	1						1	100	
484_03	The Madison on Marsh	676128	CARROLLTON	N							1	125	
485_05	The Manor Healthcare	675307	MEXIA	Limestone	1				1		1	66	
486_03	THE MEADOWS HEALTH AND REHABILITATION CENTER	455463	DALLAS	Dallas	1				1		1	186	
487_02	The Oaks At Redford Hills Healthcare Center	675330	Ablene	Taylor	1			0			1	116	
488_03	The Oaks at White Settlement	455416	FORT WORTH	Tarrant							1	265	
489_08	The Palms Nursing and Rehabilitation	455557	Corpus Christi	Nueces	1			1			1	204	
490_03	THE PLAZA AT RICHARDSON	676098	RICHARDSON	N					1		1	124	
491_08	The Sarah Roberts French Home	456629	San Antonio	Bexar	1				1		1	60	
492_03	THE STAYTON AT MUSEUM WAY	676305	FORT WORTH	Tarrant	1						1	46	
493_05	The Village at Heritage Oaks	675581	Conciana	Navarro	1			1			2	107	
494_08	THE VILLAGE AT INCARNATE WORD	456918	San Antonio	Bexar	1						1	60	
495_03	THE VILLAGES OF DALLAS	675611	DALLAS	Dallas	1			1			1	160	
496_03	THE VILLAGES ON MACARTHUR	676368	IRVING	Dallas	1				1		1	124	
497_08	THE VISTA AT BLUE SKIES OF TEXAS WEST	675786	SAN ANTONIO	Bexar	1						1	64	
498_06	the Vosswood Nursing Center	675880	HOUSTON	Harris	1						2	224	
499_03	The Watermark at Broadway Cityview	455810	Forth Worth	Tarrant	1						1	122	
500_04	The Waterston Plaza Senior Care	676193	TYLER	Smith	1						1	92	

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501_06	TLC East Nursing and Rehabilitation	675546	Temple	Bell			1	1			2	138	
502_06	Tombal Rehab. & Nursing	675714	TOMBALL	Harris			1				1	126	
503_03	Town East H&R	676146	MESQUITE	Dallas			1				1	130	
504_03	TOWN HALL ESTATES ARLINGTON INC	676080	ARLINGTON	Tarrant	1						1	116	
505_04	Treviso	676368	LONGVIEW	Gregg					1		1	140	
506_06	Trinity Care Center	675546	Round Rock	Williamson						1	1	179	
507_04	Trinity Nursing and Rehab (Diboll)	675907	Diboll	Angelina	1				1		2	82	
508_08	TRINITY NURSING AND REHABILITATION OF COM	675871	Comfort	Kendall				1			1	76	
509_04	Trinity Rehab & Healthcare	676439	Trinity	Trinity			1				2	76	
510_06	TruCare Living Care	676229	COLUMBIUS	Colorado					1		1	104	
511_04	Trucare Living Center	676267	PALESTINE	Anderson			1				2	120	
512_08	TruCare Living Centers - Seima	676406	Seima	Bevar	1				1		2	128	
513_04	Truman W Smith, CCC	1013802	Gladewater	Upshur				1			2	120	
514_08	Twin Pines North	676532	VICTORIA	Victoria							1	90	
515_08	Twin Pines Nursing & Rehab.	675638	VICTORIA	Victoria			1				1	200	
516_06	University Place	675667	HOUSTON	Harris	1			1			2	60	
517_08	Uvalde Healthcare and Rehabilitation Center	675532	Uvalde	Uvalde	1						1	115	
518_02	Valley View Care Center	675782	ANSON	Jones			1				2	86	
519_04	Van Health Care	455856	VAN	Van Zandt					1		1	60	
520_06	VIBRALIFE OF KATY REHABILITATION CENTER	676454	KATY	Harris			1				1	70	
521_06	Vila Toscana at Cypress Woods	676239	HOUSTON	Harris			1				1	120	
522_03	Vintage Healthcare Center	675939	DEANTON	Denton			1				1	106	
523_08	Vista De Mer Health & Rehabilitation	455359	CORPUS CHRIS TI	Nueces			1				1	Closed	
524_03	WALNUT PLACE	675765	DALLAS	Dallas	1					1	2	308	
525_08	Wainut Springs Health & Rehab	675666	Seguin	Guadalupe	1						1	113	
526_08	Wainside Nursing & Rehabilitation	455724	KERRVILLE	Kerr				1			1	179	
527_04	Walkins LG State VA Home	676311	TYLER	Smith			1				1	100	
528_03	WEDGEWOOD NURSING HOME	455972	FORT WORTH	Tarrant						1	1	128	
529_03	WELLINGTON OAKS NURSING AND REHABILITATION LP	455674	Fort Worth	Tarrant				1			1	Closed	
530_04	Wells LTC	676103	WELLS	Cherokee	1		1				3	90	
531_11	Weslaco Nursing and Rehabilitation Center	676037	WESLACO	Hidalgo	1						1	120	
532_02	Wesley Court Health Center	676090	ABILENE	Taylor			1				2	30	
533_05	Wesley Woods Health and Rehabilitation	676211	WACO	McLennan	1						1	120	
534_06	West Houston Rehab	676381	HOUSTON	Harris			1				1	124	
535_06	West Jemisch Health Care	675643	HOUSTON	Harris			1				2	116	
536_06	West Oaks Nsg & Rehab	675454	HOUSTON	Harris	1						2	138	
537_05	West Rest Haven	676386	WEST SETTLEMEN	McLennan	1						1	120	
538_03	WEST SIDE CAMPUS OF CARE	455592	T	Tarrant	1				1		2	234	
539_02	West Texas LTC Partners	676068	SAN ANGELO	Tom Green			1				2	166	
540_06	Westshore Healthcare & Rehab	455800	HOUSTON	Harris			1				1	180	
541_05	Weston Inn Nursing and Rehabilitation	675438	WACO	McLennan					1		1	151	
542_05	Weston Inn Nursing and Rehabilitation	675797	Temple	Bell					1		1	120	
543_03	WESTRIDGE NURSING AND REHABILITATION LP	675809	Lancaster	Dallas	1						1	110	
544_05	Westview Manor and Rehabilitation Center	455554	MCGREGOR	McLennan					1		1	186	
545_08	WHISPERING OAKS REHAB & NURSING	675134	CUERO	DeWitt	1						1	98	
546_04	Whispering Pines Lodge	675386	Longview	Gregg	1						2	116	
547_08	Whispering Springs Rehabilitation and Healthcare Center	675773	Sanco Springs	Dimit							1	100	
548_03	WHITE SETTLEMENT NURSING CENTER	455475	WHITE SETTLEMEN	Tarrant			1				3	108	
549_04	Whitehall Rehab and Nursing	675624	CROCKETT	Houston			1				2	113	
550_05	William R. Courtney Texas State Veterans Home	675657	TEMPLE	Bell			1				1	160	

A	B	C	D	E	F	G	H	I	J	K	L	M	N
551_03	WILLIAMSBURG VILLAGE HEALTH CARE CAMPUS	675756	DESOTO	Dallas					1		1		242
552_04	Willowbrook Nursing Center	455700	Nacogdoches				1				2		166
553_05	Will-O-Bell	676028	BARTLETT	Bell	1			1			1		90
554_02	Willow Park Rehabilitation and Care Center	676365	WILLOW PARK	Parker					1		1		125
555_04	Willow Rehab & Nursing	676007	KILGORE	Gregg			1				1		118
556_02	Willow Springs Health & Rehabilitation Center	675550	ABILENE	Taylor	0		0		1	1	2		96
557_03	WILLOWBEND NURSING AND REHABILITATION CENTER	675272	MESQUITE	Dallas					1		1		162
558_04	Willowcreek Healthcare	676477	Vernon	Franklin	1				1		1		95
559_05	Willowpark N&R	675525	Clifton	Bosque					1		1		110
560_06	Winchester Lodge	676264	ALVIN	Brazoria	1						1		94
561_02	Winderest Health & Rehabilitation	676219	ABILENE	Taylor			1		1		2		120
562_08	Winderest Nursing and Rehabilitation	455533	San Antonio	Bexar					1		1		180
563_06	Windsong Care Center	675557	PEARLAND	Brazoria	1			1			3		138
564_08	Windsor Calallen	676391	CORPUS CHRISTI	Nueces			1				1		120
565_03	WINDSOR GARDENS	455832	LANCASTER	Dallas					1		1		150
566_06	Windsor Houston	676337	HOUSTON	Harris			1				1		120
567_08	Windsor Mission Oaks	675409	SAN ANTONIO	Bexar					1		1		150
568_08	Windsor Nursing and Rehabilitation Center of Corpus Christi	676321	CORPUS CHRISTI	Nueces					1		1		120
569_04	Windsor Place	675755	DAINGERFIELD	Morris				1			1		117
570_08	Windsor Quail Valley	676371	MISSOURI CITY	Fort Bend			1				1		120
571_04	Windsor Rehabilitation & Care Center	675808	TERRELL	Kaufman					1		1		108
572_04	Winfield Rehab and Nursing	675976	CROCKETT	Houston			1				2		83
573_02	Writers Healthcare	675847	Winters	Runnels			1		1		2		48
574_02	Westena Place	675893	ABILENE	Taylor			1		1		2		123
575_06	Woodland Manor	675229	Comroe	Montgomery	1						1		146
576_04	Woodville Nursing and Rehab	675120	WOODVILLE	Tyler					1		1		93
577_08	Wooldge Place Nursing Center	675637	CORPUS CHRISTI	Nueces			1				1		120
578_05	Yokum Nursing & Rehab	675376	CORSICANA	Navarro			1				1		0
579_08	Yorktown Nursing and Rehabilitation Center	675071	Yorktown	DeWitt							1		82
580_04	Bracliff Skilled Nursing Facility	676051	Carthage	Parola	1						1		91
581_04	Buckner Westminster Place	676167	Longview	Gregg	1				1		2		20
582_04	Colonial Nursing Center	675563	Lundale	Smith	1			1			3		90
583_04	Country Trails Wellness & Rehab	675678	Grand Salina	Van Zandt					1		1		1120
584_04	Crestwood Health & Rehabilitation Center	675587	Wills Point	Van Zandt				1			1		1117
585_04	Focused Care of Center	675598	Center	Shelby	1						1		196
586_04	Greenbrier Nursing and Rehab of Palestine	675293	Linden	Cass			1				1		2131
587_04	Heritage at Longview	455669	LONGVIEW	Rusk	1				1		1		1173
588_04	Heritage at Longview	455669	LONGVIEW	Gregg	1				1		2		140
589_04	Oak Manor of Commerce Nursing and Rehab	675788	Commerce	Hunt	1						1		1116
590_04	Oak Manor of Commerce Nursing and Rehab	675788	JACKSONVILLE	Cherokee			1				1		1120
591_04	Twin Oaks Health & Rehabilitation Center	675183	LLE	Lumberton					1		1		1120
592_04	Village Creek Rehabilitation & Nursing Center	675975	Houston	Harris			1				1		1125
593_06	Legend Oaks-Northwest Houston	676137	Houston	Harris			1				1		198
594_06	Brookdale Willowbrook Place	676238	Houston	Harris			1				1		1124
595_06	Copperfield Healthcare	676230	Houston	Harris			1				1		1150
596_06	Brigginfield at Rivershire	676420	Comroe	Montgomery			1				1		170
597_06	Clarewood House Extended Care	676021	HOUSTON	Harris			1				1		1125
598_06	Park Manor of Westchase	676059	HOUSTON	Harris			1				1		1114
599_06	The Concierge	676068	Houston	Harris			1				1		1114
600_06	Spanish Meadows Nursing & Rehab	676064	Katy	Fort Bend			1				1		1125
601_03	Whiteboro Health and rehab	675856	Whiteboro	Grayson				1		1			100



