

Elder Centers Balk at New Regulations

Florida nursing homes, assisted-living facilities seek to stop changes after hurricane deaths

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Florida's elder-care industry is mounting legal challenges to new rules that Gov. Rick Scott ordered after eight patients from a nursing home that lost central air-conditioning died following Hurricane Irma.

Days after the deaths during hot weather last month, state regulators put in place new requirements for more generator capacity at elder-care facilities to ensure the buildings can stay cool in power outages.

But some groups representing nursing homes and assisted-living facilities argue that the breadth of the upgrades isn't justified, and the requirement that they make them within 60 days—or face \$1,000-a-day fines—is unrealistic.

"Everybody for the most part believes the governor has good intentions," said Shadrick Haston, the Florida Assisted Living Association's chief executive. "Everyone agrees that the timeline is a problem."

The assisted-living association and two other industry groups that also represent nursing homes filed petitions for review in a state appeals court. A three-judge panel denied the petitions by a 2-1 vote last Thursday. All three groups have separate challenges before the Florida Division of

Administrative Hearings, which is expected to issue a decision by Friday.

The two sides are fighting over Florida's rapid response to a long-recognized threat in a hot-weather state prone to hurricanes and power outages.

Proponents of earlier efforts to ensure safe temperatures in care facilities in a state with a large and growing senior population, including bills proposed after hurricanes more than a decade ago, say the measures died under industry pressure.

The state administration says the widespread power losses at elder-care facilities after Irma show that the new rules are needed to keep vulnerable patients safe. Industry groups say they back the broad thrust of the state's push, but argue that the particulars of the rules are an unjustified response to a singular event.

Temperatures inside the nursing facility, the Rehabilitation Center at Hollywood Hills in Hollywood, Fla., were stifling after it went several days without power to its central air-conditioning system in mid-September, according to accounts by visitors. Outdoor temperatures that week reached the low 90s.

A state health regulator said several of the eight patients who died Sept. 13 had dangerously high body temperatures, one as high as 109.9 degrees. Police are also investigating six additional deaths among evacuated patients.

Mr. Scott, a Republican, moved to shut the facility, while the home challenged the move, calling the state's allegations "completely devoid of

any factual" claims.

The new rules require nursing homes and assisted-living facilities to have generators and sufficient fuel to keep the temperature under 81 degrees for at least 96 hours after a power outage. This represents a step-up for facilities that might have emergency generators strong enough to power lighting and medical equipment, but not enough to run central air conditioning.

"The inability for this nursing home in Broward County to protect life has shined the light on the need for emergency action," Mr. Scott said in announcing the new rules Sept. 16.

Carmen Veroy, whose father with Alzheimer's disease and elderly mother were evacuated from the Rehabilitation Center at Hollywood Hills the same day eight of its residents died, said the state's rules came too late. Frail nursing-home residents cannot always ask for help, as is the case with her father, said Ms. Veroy, a resident of Hollywood.

A rash of deaths in nursing homes and hospitals after Hurricane Katrina ravaged the Gulf Coast in 2005, and damage to hospitals and nursing homes from Hurricane Sandy in 2012, led to new federal health disaster-preparation rules, which were completed last year.

The federal rules, effective Nov. 15, require nursing homes to have an alternative-energy source to maintain safe temperatures. Unlike the Florida rules, the federal ones don't require generators and don't apply to assisted-living facilities, which tend to have less-sick patients.

The Florida Health Care Association estimates that new state rules on preparing for power outages could cost the state's nursing homes \$230 million, or about \$350,000 for a 120-bed home. This poses a challenge for an industry operating on thin profit margins, said Kristen Knapp, a spokeswoman for the association, which hasn't filed suit to stop the rules, as have some other industry groups.

The groups also say the compressed timeline to add generators is unnecessary given that the hurricane season, which began June 1, reaches its official end Nov. 30.

More than 285 of the state's nearly 4,000 assisted-living centers and nursing homes have sought 180-day waivers on implementing the rules, but the state had yet to grant any as of Monday.

Gov. Rick Scott's office said elder-care facilities should have ample resources to make the upgrades, and that industry groups "should focus solely on keeping seniors safe and not on lawsuits."

Florida lawmakers tried to sharpen emergency-generator requirements in 2006, but efforts died in the Legislature. Lawmakers who were engaged in the push, including bill author Dan Gelber, a Democrat who has since retired from the Legislature, say the measure crumbled under pressure from the nursing-home lobby. The industry has long wielded more power in the Legislature than patients, said Brian Lee, the state's ombudsman for long-term-care residents at the time.

Ms. Knapp, of the Florida Health Care Association, said the industry continues to support efforts to bolster emergency preparedness, but would like state funding to help cover the costs.

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