

## Case Law Update

Tennessee v. George Lane, et al., No. 02-1667, U.S. Supreme Court, May 17, 2004.

This suit was brought by George Lane and other paraplegics for damages and equitable relief, alleging that Tennessee and a number of its counties had denied them physical access to that State's courts in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), which provides: 'No qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity,' 42 U.S.C. 12132.

The court held that as it applies to the class of cases implicating the fundamental right of access to the courts, Title II constitutes a valid exercise of Congress' authority under Section 5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees.

This opinion appears to be limited to only those types of cases where a plaintiff's access to the courts is limited. Whether this applies to other types of "quasi-judicial" governmental proceedings remains to be seen. This ruling did not disturb Board of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, in which the Court ruled the Eleventh Amendment bars private money damages actions for state violations of ADA Title I, which prohibits employment discrimination against the disabled.

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# CLAIMS

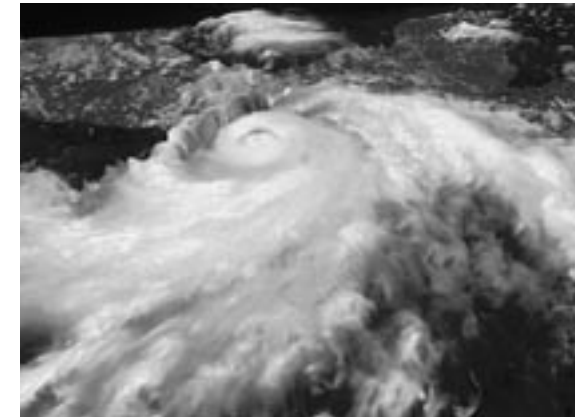
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## Communicator

Tom Gallagher - Chief Financial Officer  
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### Hurricane! Disaster and Emergency Response Planning for State Agencies

**H**urricane forecasters are predicting the current hurricane season to be especially active this year, with the National Oceanic Atmospheric Administration (NOAA) forecasting 12 to 15 tropical storms to form during the season that begins June 1 and ends Nov. 30. Of those storms, six to eight are predicted to become hurricanes. Dr. William Gray, the renowned hurricane forecaster at Colorado State University, and his team, which form the Tropical Meteorology Project, have estimated that the risk of a category 3 or higher hurricane striking the East Coast, including Florida, is 48 percent this year, while the Gulf Coast, including the Florida Panhandle, has a 38 percent chance of having a category 3 or higher storm making landfall this season. This relatively high probability of encountering a major storm in the next few months means that now is an excellent time to examine your agency's disaster plan.



#### Agencies conduct disaster planning to accomplish three major goals:

1. To protect lives and minimize property losses;
2. To provide for the rapid resumption of operations and services;
3. To ensure that adequate records and documentation are maintained to aid in post-disaster cost recovery activities.

#### For natural disasters such as hurricanes, agencies typically use four loss control strategies in their overall planning and response:

1. Mitigation,
2. Preparation,
3. Response and
4. Recovery.

The first two strategies, mitigation and planning, occur before the disaster occurs. The second two strategies, response and recovery, occur during and after the disaster has occurred. A comprehensive disaster plan will incorporate all of these strategies.

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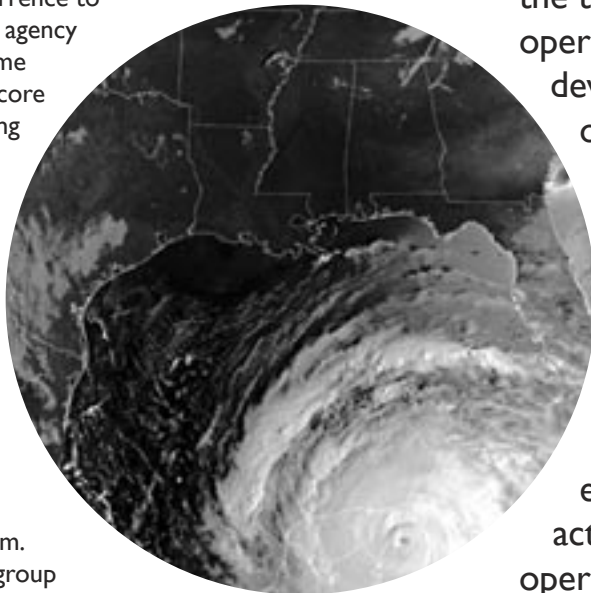
## Mitigation

Hazard mitigation concentrates on long-term methods to reduce the effects of a hazard by improving the agency's ability to withstand future hazards. In order to mitigate hazards effectively, an agency should address mitigation measures through planning, policy making, and implementation. Mitigation may be accomplished through a variety of means. Because most natural disasters are localized, mitigation may be accomplished by analyzing the areas that a particular hazard may occur in, and then either not occupying those areas (loss avoidance) or by implementing measures to counteract the effects of the hazard, such as installing hurricane shutters on the windows of buildings in coastal areas.



## Preparedness

Preparedness concerns the activities an agency takes prior to the disaster's occurrence to minimize the potential losses the agency may incur, and to minimize the time required to resume the agency's core operations or services. Depending on the severity of the event and the time available before its occurrence, an agency may take several actions to prepare for the event. These actions should be part of the agency's emergency response plan. The emergency response plan is the heart of an agency's preparations for a hurricane or other disaster, and is unique to the agency, due to the specialized functions the agency must perform. The plan should be written by a group representative of all parts of the agency, rather than an individual, and should be reviewed and approved by the agency's senior management. Once a plan has been written, it should be validated by the use of desk checks, walk-throughs, and simulations. Simulations are the best way to test the effectiveness of the agency's emergency response plan.



## Response

Emergency response includes all actions taken immediately after an emergency is detected and that are intended to minimize damage and speed the recovery from the emergency.

## Recovery

Recovery activities are generally divided into short-term and long-term categories. Recovery typically begins immediately after a reasonable level of order and safety is attained. Short-term recovery activities focus on providing immediate operating capabilities for essential activities until full operations can be resumed and on providing for temporary measures to protect people and property from further damage and usually take place in the hours or days immediately after an emergency. Long-term recovery activities focus on the overall restoration of operations for the agency and usually take place weeks or months after the emergency occurs.

## Summary

Anticipating and planning for hurricanes and other disasters are vital first steps in being prepared for an event. Before an emergency occurs, mitigation may reduce the potential for damage by improving an agency's ability to withstand damages through the use of methods such as segregation or duplication. Preparedness can minimize the losses an agency may incur and the time required to resume key operations, primarily through the development and implementation of the agency's emergency response plan. Once an emergency is detected, responses to the emergency according to the agency's emergency response plan are implemented to protect lives and minimize losses. After the emergency has passed, recovery activities are initiated to resume operations and services and to recover the costs associated with the emergency.

A longer version of this article that contains more detailed information may be viewed on the Risk Management Web site at [www.fldfs.com/Risk/RiskServices/index.htm](http://www.fldfs.com/Risk/RiskServices/index.htm).

The Risk Management staff wishes you success in your disaster planning process. If you have any questions regarding this article, please contact the Risk Services section at (850) 413-3121 or 293-3121 (Suncom).

## The Rising Costs of Prescription Drugs in Workers' Compensation

Pharmaceutical costs have risen more rapidly than any other type of medical cost and now represent a larger percentage of the total medical costs for workers' compensation, as well as commercial health insurance. Increasing prices, increased utilization and the availability of newer, higher-priced drugs have all contributed to the rising costs. Based upon current growth rates, it is expected that prescription drugs will comprise nearly 15 percent of total national health care spending by 2011.

In workers' compensation, utilization has a greater impact on drug costs than price. Utilization includes not only the number of prescriptions but also a movement toward new or more powerful drugs. Increased utilization can be attributed to an increase in the use of medications for treatments, aggressive marketing by pharmaceutical manufacturers, an aging work force and easy access through workers' compensation coverage. The most prescribed drugs by total paid in the workers' compensation industry were painkillers, followed by muscle relaxants and antidepressants. The most prescribed drugs in group health plans were cardiovascular agents, antidepressants and anti-infective agents.

Generic equivalents are not always prescribed for workers' compensation claims, and more than 50 percent of workers' compensation drug costs are associated with drugs that have no generic equivalent. This minimizes the savings opportunities from using generic equivalents.

Potential cost containment strategies are being utilized to help control the rising costs of pharmaceuticals. Pharmaceutical Benefits Managers (PBMs) offer several services to employers such as stricter utilization control with carved-out formularies; mail order, which enables the patient to acquire larger quantities of drugs for longer periods; and their ability to negotiate to deliver the best price.

Legislation is also used to establish pharmacy fee schedules. Cost containment through fee schedules is obtained through unit pricing, rather than utilization controls. Legislation can also be used to mandate use of generic drugs when appropriate. Brand-name drugs cost an average of more than 100 percent more than generics.

A key question to be addressed in the future is whether the drugs merely add to the total health care costs or if they will yield savings by replacing expensive surgeries or other costly treatments. Policymakers and carriers will continue to be pressured as utilization increases and drugs increase in price to address cost issues in the workers' compensation system.

(summarized from article "Prescription Drugs: Comparison of Drug Costs and Patterns of Use in Workers' Compensation and Group Health Plans," NCCI Holdings, Inc.)



## Comments, Questions...

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