



OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

FILED

AUG 19 2008

OFFICE OF
INSURANCE REGULATION

Docketed by:

IN THE MATTER OF:

Emergency- Natural Disaster

Early Prescription Refills

CASE NO.: 97286- 08-EO

Tropical Storm/Hurricane Fay

EMERGENCY ORDER

TO: All Health Insurers, HMOs, and other entities regulated by the Office of Insurance Regulation that may cover prescription medications.

THIS CAUSE having come before the Commissioner of the Office of Insurance Regulation as a result of the state of emergency created by Tropical Storm/Hurricane Fay, and being fully informed in the premises,

NOW THEREFORE, the Commissioner hereby **FINDS** as follows:

JURISDICTION AND FINDINGS OF FACT

1. The Office of Insurance Regulation (the "Office") has the duty, pursuant to Section 624.307(2), Florida Statutes, to enforce the provisions of the Insurance Code (Chapters 624-632, 634,635, 636, 641, 642, 648, and 651, henceforth, the "Code"). The Office shall have the powers and authority expressly conferred upon it by, or reasonably implied from, the provisions of the Code, pursuant to Section 624.307(2), Florida Statutes.

2. Section 120.569(2)(n), Florida Statutes, provides that “if an agency head finds that an immediate danger to the public health, safety or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order...”

3. This Emergency Order is being issued pursuant to Sections 120.569(2)(n), 252.46 and 252.63, Florida Statutes, because the facts as stated herein demonstrate that there is an immediate threat to the public health, safety and welfare, as a result of the direct effects of the statewide impact of Tropical Storm/Hurricane Fay. Further, this Emergency Order is being issued pursuant to Section 7 of Governor Charlie Crist’s Executive Order Number 08-170, declaring a state of emergency in Florida on August 16, 2008. Executive Order Number 08-170 is attached as Exhibit 1.

4. Tropical Storm/Hurricane Fay is threatening the state, and resulting in large scale evacuations.

5. In the ordinary course of business of health insurers and health maintenance organizations, contracts that include coverage for prescription medication have restrictions on such coverage so that covered medication is provided in thirty day batches, refillable every 30 days. Because of the storm damage, mass evacuations and the inability of many of the insureds to stay in their homes, these restrictions result in many storm victims being without the medications necessary for their health or their very lives. This Order provides temporary emergency relief to the insureds so that they are not left without their necessary medications during the remainder of this crisis.

6. The issuance of this Emergency Order and the procedural safeguards set forth herein are fair under the circumstances due to the potential grave harm described

above. As indicated in the Notice of Rights herein, Respondents are afforded an opportunity for a review of this Order. Procedures set forth therein will afford the Respondents an opportunity to challenge these actions.

7. Section 252.358, Florida Statutes provides, in part, that: "All health insurers, managed care organizations, and other entities that are licensed by the Office of Insurance Regulation and provide prescription medication coverage as part of a policy or contract shall waive time restrictions on prescription medication refills, which include suspension of electronic "refill too soon" edits to pharmacies, to enable insureds or subscribers to refill prescriptions in advance, if there are authorized refills remaining, and shall authorize payment to pharmacies for at least a 30-day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled by a pharmacist..." The issuance of Executive Order 08-170 activates the provisions of section 252.358, Florida Statutes.

WHEREFORE, pursuant to the Florida Insurance Code and other applicable statutes, including, Sections 120.569(2)(n) , 252.46(2), and 252.63 Florida Statutes, and Governor Charlie Crist's Executive Order Number 08-170, the Office finds that as a result of the direct effects of the statewide impact of Tropical Storm/Hurricane Fay, an immediate danger to the public health, safety and welfare exists so as to require the issuance of this Emergency Order.

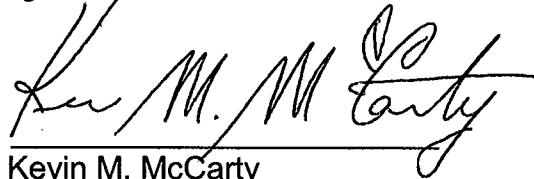
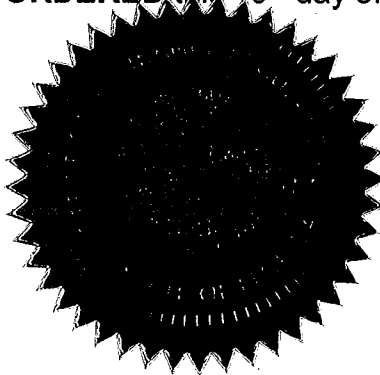
Accordingly, IT IS HEREBY ORDERED:

(1) All health insurers, HMO's and other licensees that provide prescription medication coverage as a part of any policy or contract shall, through September 18,

2008, waive restrictions on prescription medication refills to enable insureds to fill prescriptions in advance, and shall authorize payment to pharmacies for at least a thirty day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled.

(2) The provisions of this Emergency Order shall be liberally construed to effectuate the intent and purposes expressed therein and to afford maximum consumer protection.

DONE and ORDERED this 19th day of August, 2008.

Handwritten signature of Kevin M. McCarty in black ink.

Kevin M. McCarty
Commissioner
Office of Insurance Regulation

EXHIBIT:
Executive Order Number 08-170, August 16, 2008

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, *Florida Statutes*, and Rule 9.110, *Fla.R.App.P.* Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty (30) days of rendition of this Order.

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 08-170 (Emergency Management – Tropical Storm Fay)

I am issuing this Executive Order to declare a state of emergency due to the threat that Tropical Storm Fay imposes to the State of Florida and to ensure that timely precautions are taken to protect communities and the general welfare of this state. The National Hurricane Center projects that Tropical Storm Fay will continue moving westward and will be a threat to much of Florida in the coming days. The official forecast indicates that Fay may reach Category 1 hurricane intensity on Sunday evening before moving across central Cuba. Tropical storm force winds could reach the lower and middle Florida Keys by noon on Monday. Hurricane or tropical storm watches may be posted for the Florida Keys later tonight or early on Sunday.

As Governor it is my responsibility for meeting the dangers presented to this state and its people by this emergency. Therefore, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the State Emergency Management Act, and all other applicable laws, I promulgate the following Executive Order:

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

EXHIBIT

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

A. If necessary, invoke and administer the Emergency Management Assistance Compact, Part III, Chapter 252, Florida Statutes, and other compacts and agreements existing between the Florida and other states, and the further authority to coordinate the allocation of resources from such other states that are made available to Florida under such compacts and agreements so as best to meet this emergency.

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

C. Direct all state, regional and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the needs created by this emergency, and to place all such personnel under the direction and coordination of the State Coordinating Officer to meet this emergency.

D. Designate such Deputy State Coordinating Officers.

The State Coordinating Officer shall have the authority to enter such orders as may be needed to implement any or all of the foregoing powers.

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

Section 4. I also find that the special duties and responsibilities resting upon some state, regional and other state governmental bodies in responding to the emergency may require them to deviate from the statutes, rules, and orders they administer, and I give such agencies and other governmental bodies the authority to take formal action by emergency rule or order in accordance with section(s) 120.54(4) and 252.46(2), Florida Statutes, to the extent that such actions are needed to cope with this emergency. Without limiting the generality of the foregoing, I order the following:

A. I give all state agencies whose employees are certified by the American Red Cross, as disaster service volunteers within the meaning of section 110.120(3), Florida Statutes, the authority to release any such employees for such service as requested by the American Red Cross as needed to meet the emergency.

B. I authorize the Department of Transportation to waive the collection of tolls and other fees and charges for the use of the Turnpike and other public highways, to the extent such waiver may be needed to provide emergency assistance or facilitate the evacuation of the affected counties; to reverse the flow of traffic or close any and all highways and portions of highways as may be needed for the safe and efficient transportation of evacuees to those counties which the State Coordinating Officer may designate as destination counties for evacuees in this emergency; to suspend enforcement

of the registration requirements pursuant to section(s) 316.545(4) and 320.0715, Florida Statutes for commercial motor vehicles that enter Florida to provide emergency services, or transport equipment or personnel; to waive the hours of service requirements for such vehicles; and to waive by special permit the warning signal requirements in the Utility Accommodations Manual to accommodate public utility companies from other jurisdictions which render assistance in restoring vital services, to the extent such waivers are needed to meet this emergency. The Department shall also have the authority to waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment, services and supplies or fallen timber for harvesting, allowing the establishment of alternate size and weight restrictions for all such vehicles for the duration of the emergency. In doing so, the Department shall issue permits and such vehicles shall be subject to such special conditions as the Department of Transportation may endorse on any such permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or the carrier, owner, or driver of any vehicle from compliance with any restrictions other than those specified in this Executive Order, or from any statute, rule, order or other legal requirement not specifically waived herein or by supplemental order by the State Coordinating Officer.

C. I authorize the Executive Director of the Department Highway Safety and Motor Vehicles to suspend the International Registration Plan requirements pursuant to section 320.0715, Florida Statutes, and the license fees or taxes imposed on vehicles pursuant to Chapter 207, Florida Statutes, as its relates to commercial motor vehicles that

enter Florida to provide emergency assistance or services, or transport emergency equipment or personnel.

D. In accordance with section 465.0275, Florida Statutes, any pharmacist in areas or counties covered under this Executive Order are authorized to dispense up to a 30-day emergency prescription refill.

E. Pursuant to section 252.36(5), Florida Statutes, I give all state agency heads, regional and other state governmental bodies the authority to suspend the effect of any statute, rule or order, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources, include, but not limited to, any and all statutes, rules, ordinances, or orders which affect budgeting, leasing, printing, purchasing, travel, and the condition of employment and the compensation of employees, but any statute, rule or order shall be suspended only to the extent necessary to ensure the timely performance of disaster response functions as prescribed in the State Comprehensive Emergency Plan, or as directed by the State Coordinating Officer; however, any waiver of statutes, rules, or ordinances governing travel shall expire in thirty (30) days from the date of this Executive Order unless extended (in increments of no more than thirty days) by the agency.

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

G. I give all state agency heads, regional and other state governmental bodies the authority to abrogate the time requirements, notice requirements, and deadlines for final action on applications for permits, licenses, rates, and other approvals under any statutes

or rules under which such application are deemed to be approved unless disapproved in writing by specified deadlines, and all such time requirements that have not yet expired as of the date of this Executive Order are suspended and tolled to the extent needed to meet this emergency.

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

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

Section 7. All state agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously.

Section 8. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by states other than the State of Florida may render such services in Florida during this emergency for persons affected by this emergency with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross or the Florida Department of Health.

Section 9. Pursuant to section 501.160, Florida Statutes, it is unlawful and a violation of section 501.204 for a person to rent or sell or offer to rent or sell at an

unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 16 day of August 2008.



CHARLIE CRIST

ATTEST:



DEPARTMENT OF STATE



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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA