DEC - 1 2003

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-3191-P Mail Stop C4-26-05
7500 Security Boulevard
Baltimore MD 1244-1850

Re: CMS-3191-P
"Background"

To Whom It May Concern:
We would like to comment on your recent decision to require all existing nursing facilities to be retrofitted with fire sprinkler systems. We, of course, commend you on your decision to improve fire safety requirements to protect the elderly. However, we are somewhat curious as to your decision to limit the options to fire sprinklers alone when there are alternative methods which can provide the same level of fire safety but at significantly lower costs (30 to 50%) and with much less disruption to your business or the patients welfare. This is especially true in a retrofit situation where installing sprinklers will involve significant demolition/reconstruction as well as extensive patient relocations that will materially impact your occupancy.

One of these alternatives is our product, FireFree88 which is a water-based coating that can withstand extreme temperatures (in excess of 2000F degrees) for an extended period of time (over two hours). Firefree 88 has been successfully and fully tested and approved and is the first coating to bring a true fire barrier to a wide variety of materials including sheetrock, wood, lath and plaster, concrete, sheet metal, tin, foam, composite panels, and advanced materials such as fiberglass, carbon graphite... Ff88 has been used successfully in several elderly care facilities. (Please see Exhibit A attached.)

In the case of a retrofit where there will be high costs associated with installing a sprinkler system. Such installation will involve a **large amount of demolition and reconstruction with large associated costs of additional material and labor** (opening walls and ceilings, installing and running pipes, repatching, taping, repainting...). As a result of these additional costs, the installation of sprinkler systems the costs can escalate to $12 or more per sq. ft. In addition, such demolition/reconstruction efforts will force **extensive displacement and relocation of your patients, resulting in material disruption of your patients and business/occupancy**. (Please see Exhibit B attached.) This will also lead to an increased burden on the communities existing water system. Additionally since sprinklers are a mechanical system, they are subject to failure. In many cases water pressure will be unavailable (accidents, cold weather...) or insufficient (multiple fires, overwhelmed water lines...). Other factors to consider regarding sprinklers are the loss of water in case of accident, catastrophe or bad weather, and the availability of existing water systems to handle new sprinkler systems.

In retrofit situations the installation of Firefree 88, which is applied simply as a paint, can be accomplished much faster and with less disruption to your patients care. In addition, the initial cost benefits provided by Firefree 88 can run as high as 30 to 50%. There

would be no need for massive relocations. What could take weeks or months to accomplish with a sprinkler installation can be done in days with the coating.

Firefree 88's performance is truly unique in that it is the first and only coating to pass the fire industry's most stringent tests, including the ability to prevent both fire penetration (ASTM E-119) and vertical flame spread/flashover (UBC 26-3 and UBC 8-2 room corner tests), for this wide variety of materials. As a result, Firefree 88 has the proven ability to prevent room materials (walls, ceilings.) to become fuel to the fire, thus preventing the occurrence of flashovers and containing the fire to the room of origin, resulting in saving lives and preserving the structural integrity of the property.

Firefree 88 is non-toxic, environmentally friendly and applies as easily as paint. Because of its ease of application and minimum inconvenience to occupants, Firefree 88 is a very cost effective method to provide fire protection, often resulting in 30% to 50% savings compared to traditional methods, which often requires massive amounts of material and labor as well as extensive disruption to occupants.

Please review the attached examples of similar installations and the informational DVD that accompany this letter. If we can be of service to the committee or if you need additional information, please let me know by calling myself or Steve Beck our President at 415-459-6488. In the meantime feel free to visit our website at www.firefree.com for additional information.

Best regards,

George M. Alves
Director of Corporate Development
Firefree Systems, Inc.

Exhibit A

Case History

Elderly Care Facility

Project: Woodside Senior Citizens Residence
Castro Valley, CA
Architect: Barker Associates
Menlo Park

Initial Scope: **Required 1 hr. Fire Rating of Ceilings and Walls in an Existing Residential Care Facility.**

The initial repair scope required the removal of all existing plaster in order to install a new finished interior that meets traditional rated drywall ceilings and walls. The inclusion of this scope was initially quoted for an additional $80,000.00 and would require 10 weeks of additional labor and result in relocation of the senior patients and residents and the subsequent loss of income for that period of time.

Solution: **Install FireFree 88 of sufficient mil thickness to obtain the 1 hr. fire rating.**

FireFree 88 was approved and installed in a work period of 3 separate weekends or approximately 6 working days. This was accomplished without the relocation of residents. The project was completed at a cost savings of $54,000.00 which was further augmented by an earlier completion date and the unnecessary additional 2 months of ongoing construction costs.

Exhibit B

Fire Sprinkling Systems in Existing Long Term Care Facilities

Meeting the needs for elderly care for today and the future is going to be a continual concern and an uphill battle as our nation's demographics reflect the growing number of elderly. Residential care facilities make up a very large part in helping to serve our communities and offer alternatives to health care for that portion of citizens that need it the most. Individuals who own and those who operate and staff these facilities do so because they believe what they are doing serves as their contribution to society and that their service allows our elderly a certain level of dignity and care they have rightfully earned.

Any additional legislative cost burden must be reasonable and effective since added costs could well mean the difference in a facility staying open or closing its doors because of economic hardship. In addition, every lost bed or residence places that much more of a burden on the remaining facilities and/or raises the cost for elderly health care and quite possibly eliminates this option for the young families that provide for their parents care.

It is a known fact that elderly care facilities, in general, present some very unique problems regarding fire emergencies and required response time.

- Evacuation of the facility.
    - From the time a fire starts in a room it takes approximately 3 minutes for the room to reach flashover and the fire to spread throughout the structure.
- Individual nature or physical situation of a patient.
    - Patient disorientation in an emergency.
    - Non-ambulatory patients.
    - Medical support systems that must be maintained and accompany the patient during the emergency.
    - Alzheimer patients.
- Staffing & Training.
    - Understaffing.
    - Under trained to handle the demands of an emergency.
- One Story Facilities vs Multi-Level Facilities.
    - Rapid patient egress from multi-level facilities can be overwhelmed by the simultaneous demand for patient evacuation and the need for access by fire fighters and fire fighting equipment during a disastrous fire.

It is apparent that no one product is the cure all when it comes to fire safety. Each product serves only to reduce the potential for major injuries and death by fire. Walls may still be breached and fire will not be contained without an active response. The installation of rated fire separation walls (1 Hour and 2 Hour) requires special attention to adequate blocking, nailing and fire caulking of electrical and plumbing penetrations, etc. Sprinklers, by their nature, only purchase time for evacuation, fire department response and emergency medical service if required. Sprinklers as a sole source for fire protection presents its own built in set of problems.

- Sprinklers are subject to failure in an earthquake or other similar impact type disaster.
- Sprinklers can frequently be overwhelmed as contents and building materials add to the flame spread in a large fire.
- Sprinklers are a mechanical system and as such are subject to both human and mechanical error.
    - Over 40 million defective sprinkler heads have been the subject of a recall process.
    - Maintenance personnel have been known to shut down systems and forgot to reactive the system.
- Sprinklers are subject to interruptions in water services or inadequate water pressures.
    - Accidents
    - Cold Weather
    - Multiple fires
- The additional demolition and reconstruction of existing interior assemblies, costs related to the relocation and care of patients, extended construction timeframes, utility supply upgrades (such as street excavation, additional water connections, upsizing of supply lines and code required safety and monitoring systems) can increase the initial costs for a designed sprinkler system to well over $12.00 per sq. ft.
- Sprinklers when installed in older facilities are subject to demolition and the resulting disturbance of construction materials that may contain lead or asbestos products, as well as dust and molds. All of which can be detrimental to the resident/patients health.
- Sprinkler systems can, in some instances, create additional insurance costs based on the propensity for flooding due to any activation whether it is by malfunction or following fire related event.

DEC 1 1 2006

RESIDENTIAL FIRE SAFETY INSTITUTE

"FIRE SAFETY FOR HOMES TO HIGH-RISES"

Director:
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Stanton, IA 51573

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Maple Grove, MN 55311

Phone: 763/416-0527
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e-mail: rfsimgr@comcast.net

Web site: firesafehome.org

✤ Operation Life Safety ✤
Flagship program of the RFSI

November 14, 2006

Centers for Medicare & Medicaid Services
Department of Health & Human Services
ATTN: CMS-3191-P
P.O. Box 8012
Baltimore, MD 21244-8012

Dear Sir/Madam:

While the Residential Fire Safety Institute (RFSI) is a strong advocate of fire sprinklers, we do not believe there is justification for them to displace the early warning provided by smoke detectors. A sprinkler head is released by heat and a smouldering, low-heat fire can produce a great deal of toxic smoke before the sprinkler is activated.

We in the fire service have seen numerous studies showing the effectiveness of fire sprinklers, and we agree wholeheartedly with them; however, these studies have been done with the assumption that smoke detection is part of the fire safety system (see NFPA studies and reports on the effectiveness of fire sprinklers).

My personal experience [firefighter, fire code inspector, fire investigator, state fire marshal and state building code commissioner (Iowa)] has convinced me that we must have "systems" and not rely on a single device or method. Simply put, cars have horns, but no matter how good the honker we need brakes as well. Seat belts are good, but seat belts and air bags are better.

A long-established fact is that more fire deaths and injuries take place in the bedroom than any other room. Early warning is essential, particularly in the case of nursing facilities where many residents are of limited mobility. The sprinkler is designed to contain or suppress the fire, preventing flashover, but things can go wrong. A sprinkler head can be blocked by storage, there are times when the system may be temporarily down for repairs, a sprinkler head can be damaged or vandalized. And even with a fully-functional sprinkler system, evacuation (or moving patients to another portion of the building) is often necessary and in those cases early awareness of the event is critical.

As state fire marshal, I often heard the argument that a sprinkler system has a flow alarm. True, it does—when a sprinkler head is activated an alarm will sound. But it is possible for smoke to fill a room or a corridor before the 150 degree temperature needed to activate the sprinkler is reached.

Our most vulnerable citizens need and deserve a fire safety system that offers both early warning and early suppression. To rely soley on one or the other is a mistake.

I would refer you to the NIST website (www.smokealarm.nist.gov) for their statistics and assessment of the US fire problem and the importance of early smoke detection.

I hope these few thoughts have been of assistance.

Sincerely,

Roy L. Marshall
Director, RFSI

The RFSI is a public interest group dedicated to reducing residential fire deaths and injuries through the advocacy of fire sprinklers, smoke alarms, carbon monoxide detectors and fire-safe behavior.

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DEC 1 1 2006

STATE OF MARYLAND

DEPARTMENT OF STATE POLICE

OFFICE OF THE STATE FIRE MARSHAL

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

1201 Reisterstown Road
Pikesville, Maryland 21208-3899
410-653-8980
Fax 410-653-8988
Toll Free 800-525-3124

Colonel Thomas E. Hutchins
Secretary

William E. Barnard
State Fire Marshal

November 20, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3191-P
P.O. Box 8012
Baltimore, MD 21244-8012

To whom it may concern:

It has come to the attention of the Office of the Maryland State Fire Marshal consideration is being given to require the installation of fire sprinkler systems in all existing long-term care facilities. This requirement, CMS-3191-P, will ensure the same level of fire sprinkler protection that is required in all newly constructed facilities. We fully support this initiative.

The Office of the Maryland State Fire Marshal has long been a proponent and advocate for the installation of fire sprinkler systems. Maryland law requiring these life saving systems in newly constructed multi-family and townhouse residential units since the early 1990's has helped reduce fire related injury and death in these occupancies substantially. The proposed requirement to install fire sprinkler systems in all existing long-term care facilities will similarly reduce the chance of injury or death to facility residents, one of the most at-risk segments of our society.

Please accept this endorsement of the proposed action. If you desire additional information on our support for this initiative, please contact me at your earliest convenience.

Sincerely,

William E. Barnard, CFPS
State Fire Marshal

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Jim Doyle
Governor

Helene Nelson
Secretary

State of Wisconsin

Department of Health and Family Services

OFFICE OF QUALITY ASSURANCE

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FAX: 608-267-0352
TTY: 888-701-1251
dhfs.wisconsin.gov

November 10, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3191-P
Baltimore, MD 21244-8012

re: **42 CFR 483**
CMS proposed rule: 3191-P
LTC sprinkler protection

Dear Centers for Medicare & Medicaid Services (CMS):

The Wisconsin Department of Health and Family Services forwards the following comments regarding the proposed rule to require all long term care (LTC) facilities, participating within the Medicare and/or Medicaid programs, to be fully sprinkler protected. The proposed rule requests public comment on the duration of the phase-in period to install sprinklers.

The Department support's the sprinkler protection effort for all LTC facilities, and recommends a 5 year phase-in period for the following reasons:

(1) Wisconsin has experience with a 5 year phase-in period mandated via our Administrative Rules. Example: Assisted living providers were given a 5 year phase-in period to install a complete detection system, with a deadline of January 1, 2002. The industry agreed to the phase-in period as sufficient time to plan, budget, and install these systems. The Department, Legislative rule committee, and fire protection community agreed to the timeframe as reasonable, yet not excessive.
(2) Wisconsin's LTC industry currently is approximately 76% fully sprinkler protected. The remaining facilities break down to 21% partially protected and 3% not sprinkler protected. A 5 year phase-in would not create a sprinkler contractor monopoly in Wisconsin.
(3) 24 percent of Wisconsin's LTC industry is not fully sprinkler protected. These facilities were predominantly constructed during the 1960's and 1970's. The remaining useful life of these structures is at a cross roads, and many facility board level discussions entertain the topic of replacing the existing structure with a new facility. A mandate to fully sprinkler protect an old structure would provide motivation to decision makers to proceed to a new replacement facility or invest for the long term within the existing structure.

(4) Longer phase-in periods of 7 or 10 years are not recommended. Unfortunately, longer time frames entertain delay and experience has shown that without an incentive, many facilities delay decision making until the last few years of a phase-in period.
(5) The 5 year phase-in period is a reasonable time frame given that similar health care facilities, for example hospitals, have retroactively added sprinkler protection without any detrimental effects. Three story hospitals have demonstrated that one floor (approx. 70,000 sq. ft) per year to retroactively add sprinkler protection is a reasonable timeframe without adding any installation premiums or cost overcharges.
(6) The 5 year phase-in period will aid Life Safety Code (LSC) surveyor consistency by simplifying code requirements. The LTC industry continues to encourage consistency in enforcement. Fully sprinkler protected facilities will eliminate options, consolidate code requirements, and aid efficiency in survey activities.

Appreciate the opportunity to provide comments regarding the proposed rule.

Sincerely,

David R. Soens, Fire Authority, PE, RA
Provider Regulation and Quality Improvement Section

Cc: Debra Bursaw
Lora Quinn

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DEC 12 2006

December 1, 2006

Centers for Medicare & Medicaid Services
Dept, of Health and Human Services
Attention: CM5-3191-P

I am writing to support the Proposed Rule to require that all long term care facilities install fire sprinkler systems.

The 1991 edition of the Life Safety Code required new and renovated long term facilities to have automatic sprinklers. The increased installations of automatic sprinklers have reduced the risk of fatalities in a fire.

The "GAO" report cited sprinklers as the most effective fire protection for long term care facilities. The NFPA Automatic Sprinkler Systems Handbook along with NFPA 13, offer guidelines for professional design and installation to ensure that the sprinkler systems will operate properly.

With advancements in the design and engineering field and a well trained skilled workforce available, all long term care facilities without fire sprinklers, should be required to install sprinklers within three (3) years.

Having over 30 years experience in the fire protection industry and knowledge of successful 1 and 2 year phase in periods, the three years should allow ample time for the owners of these long term care facilities to be in compliance, and insure the safety of its residents.

I commend the CMS and HMS for their actions.

FIRE SPRINKLERS SAVE LIVES

Respectfully,

Thomas McNamara

Thomas McNamara
41960 Stanberry
Sterling Heights, MI 48313

SPRINKLER FITTERS AND APPRENTICES

LOCAL 483

OF THE UNITED ASSOCIATION OF PLUMBERS, PIPEFITTERS AND SPRINKLER FITTERS OF THE UNITED STATES AND CANADA AFL-CIO

® 73

Zebleski Printing Co.

December 13, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention – CMS-3191-P
PO Box 8012
Baltimore, Maryland 21244-8012

Reference: ***Fire Code CMS-3191-P/Sprinkler Requirements for Long Term Care Facilities***

Dear Sir or Madam:

Please accept this letter of support for the above referenced regulation on behalf of Sprinkler Fitters, UA Local 483, of Hayward, California. Our Local Union represents 850 Sprinkler Fitters, who are the trades men and women who install, repair and maintain fire suppression systems in our area.

Given our experience in this field, we know the health and safety risks that exist in facilities that lack adequate fire suppression systems. We can also fully attest to the fact that sprinkler systems SAVE lives. This matter is long overdue and we applaud your agency for taking the action and initiative to propose this regulation.

We strongly support the proposed rule and submit that affected facilities should be given no more than five (5) years to comply with the new requirements. This should provide the industry with ample time to address this situation, plan the needed work and arrange for the appropriate installation projects. From our considerable experience in planning and building these systems, this is clearly an adequate time frame; any longer would pose undue and unacceptable risks for the persons living in these facilities.

The elderly in this country should get better treatment and this rule will help ensure that they are getting the basic protection they deserve by requiring long term care facilities to have proper fire sprinkler systems in case of a fire hazard. Thank you for your attention to this very important matter.

Sincerely

SPRINKLER FITTERS & APPRENTICES

STANLEY M. SMITH
Business Manager/Financial Secretary

SMS/sh
OPEIU-AFL-CIO (127)

2525 Barrington Court • Hayward, California 94545
Telephone (510) 785-8483 • Fax (510) 785-8508
www.sprinklerfitters483.org

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Pipefitters Local Union 120
6305 Halle Drive
Cleveland, Ohio 44125

PIPEFITTERS LOCAL UNION 120 Cleveland, Ohio

A CENTURY OF PRIDE AND PERFORMANCE

phone (216) 447-3408
fax (216) 524-2385
Ashtabula Office
(440) 964-7581

December 13, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3191-P, P.O.
Box 8012, Baltimore, MD 21244-8012

Re: file Code CMS-3191-P/Sprinkler Requirements for Long-Term Care Facilities

Dear Sir or Madam:

Please accept this letter of support for the above –referenced regulation on behalf of United Association Local Union #120, Cleveland, Ohio. Our Local Union represents approximately twelve hundred sprinkler fitters, who are the trades men and women who install, repair and maintain fire suppression systems in our area.

Given our experience and expertise in his field, we know the health and safety risks that exist in facilities that lack adequate fire suppression systems. We can also fully attest to the fact that sprinkler systems SAVE lives. This matter is long overdue and we applaud your agency for taking the action and initiative to propose this regulation.

We strongly support the proposed rule and submit that affected facilities should be given no more than 5 years to comply with the new requirements. This should provide the industry with ample time to address this situation, plan the needed work and arrange for the appropriate installation projects. From our considerable experience in planning and building these systems, this is clearly an adequate time frame; any longer would pose undue and unacceptable risks for the persons living in these facilities.

The elderly in this country should get better treatment and this rule will help ensure that they get the basic protection they deserve by requiring long-term care facilities have proper fire sprinkler systems in case of a fire hazard. Thank you for your attention in this matter.

Sincerely,

Edward J. Gallagher

Edward J. Gallagher
Business Mgr./F.S.T.

MINNESOTA
HEALTH & HOUSING
ALLIANCE

PROMOTING EXCELLENCE AND INNOVATION IN OLDER ADULT SERVICES

December 18, 2006

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-3191-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear CMS:

The Minnesota Health & Housing Alliance represents approximately 235 not-for-profit nursing homes in Minnesota. We are the largest association of nursing home providers in the state, and every day our members provide services to more than 20,000 nursing home residents. We are pleased to present these comments on the proposed rule that would require automatic sprinkler systems in all certified nursing facilities (Re: CMS-3191-P).

"GAO Report"
The discussion of the GAO report in the preamble mentions that the two facilities in Tennessee and Connecticut that had the disastrous fires were not sprinklered, but it does not mention whether they had smoke alarms in the resident rooms. This would seem to be a key piece of information. If they did, then smoke alarms are clearly less effective than sprinkler systems. If they did not, then these two fires cannot be used to demonstrate the superiority of sprinkler systems over smoke alarms.

"Current Fire Safety Status"
CMS attributes the low number of fire-related deaths in the period from 1990 to 2002 to the increasing use of automatic sprinkler systems. CMS points out that there were no multiple-death fires (i.e., fires that resulted in more than one or two resident deaths) during this period of time. CMS's argument would be valid if the number declined during this period as more facilities installed automatic sprinkler systems, but it is simply misleading to assert that the automatic sprinkler systems are the cause of this number being zero when the number was zero before the increase in the systems.

"CMS Action"

2550 University Avenue West, Suite 350S · Saint Paul, Minnesota 55114-1900
(651) 645-4545 · Fax (651) 645-0002 · Toll Free (800) 462-5368 · www.mhha.com

CMS requests comments on the relative necessity, advantages and disadvantages of relying upon federal regulation versus deferring to state or local jurisdictions. The most significant justification for deferring to state jurisdictions is that the state governments are best equipped to determine whether a requirement to install automatic sprinkler systems is the best approach to ensuring the safety of residents, given the complex interaction between staffing levels, staff training, existing smoke alarms, construction types and materials, and other factors that might affect resident safety. No one questions whether automatic sprinkler systems are effective when maintained properly. The question is whether this rule is the best approach. The proposed rule still relies upon an enforcement of a requirement to maintain the automatic sprinkler system, just as current rules rely upon an enforcement of existing requirements to have smoke alarms in resident rooms, staff that are trained on the procedures to follow in the event of a fire, and so forth.

"Sunset Provision"
It obviously makes sense not to require the smoke alarms in resident rooms if the facility is fully sprinklered. It also makes sense not to require the smoke alarms if the resident corridors as well as the resident rooms are sprinklered. The requirement should sunset when a facility has an automatic sprinkler system in the resident corridors (and smoke compartments) and resident rooms, regardless of the sprinkler status in the rest of the facility.

"Phase-In"
We recommend a phase-in period of between seven and ten years. This recommendation is based primarily on practicality. In Minnesota, the proposed requirement will affect primarily rural facilities. Based on information provided by the Engineering section of the Minnesota Department of Health, there are 98 (out of nearly 400) facilities that are partially sprinklered, and 62 are in rural counties (per Medicare reimbursement groupings). Among the group that is not sprinklered at all, the rural preponderance is even more striking—25 out of 31 are rural. In total, there are 87 rural facilities and 42 metro facilities that will be affected by this rule—more than 30 percent of all facilities.

The map below shows the geographical distribution of the most financially distressed facilities in Minnesota. MHHA considers these facilities to be at risk of closure—their operating margins are a negative five percent or worse. For most of them, this distress has lasted three or four years. All of the rural facilities that will be affected are in areas of the state where the percentage at risk is substantially higher than the Twin Cities metropolitan area.

MINNESOTA
HEALTH & HOUSING
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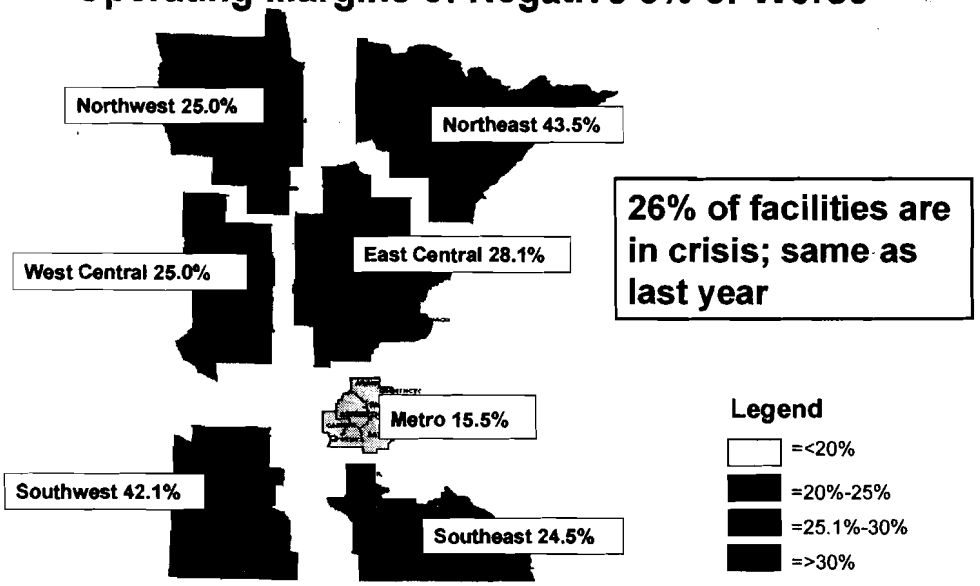
Percent of Nursing Facilities at Risk of Closure Operating Margins of Negative 5% or Worse



Data from 2005 Long-Term Care Imperative Financial Survey

CMS is aware of the complex processes that will be involved when a facility decides to move to a fully sprinklered building rather than installing an automatic sprinkler system in an antiquated physical plant. There was one step in the process, however, that CMS did not mention. Nearly all states have a moratorium on new construction or require a certificate of need, and in many states a major renovation that would install the system would also require state approval through either of these two processes. This could easily add from six months to two years to the facility's timeline, depending on how frequently the state moratorium or certificate of need processes occur.

Another argument in favor of a longer phase-in period is the need for funding from state Medicaid programs. Although some states may be able to provide adequate funding quickly, other states face significant limits on their budgets. A longer phase-in period makes it more likely that a state can afford to fund the installation costs.

Respectfully submitted,

Darrell R. Shreve

Darrell R. Shreve, Ph.D.
Vice President for Health Policy

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National Fire Protection Association

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Phone: 617-770-3000 • Fax: 617-770-0700 • www.nfpa.org

December 13, 2006

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-3191-P, Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 1244-1850

SUBJECT: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems.

(CMS – NPRM 42 CFR Part 483 [CMS-3191-P] RIN 0938-AN79)

Dear Sir or Madam:

NFPA applauds the efforts of CMS to move towards an effort to require the retroactive installation of automatic sprinklers in existing long term care (LTC) facilities. Many provisions of NFPA 101, *Life Safety Code*, mandate the installation of sprinklers in a retroactive manner in many circumstances and conditions.

We have thoroughly reviewed the NPRM and we appreciate the opportunity to provide you with our comments. We have identified three main issues that are shown in our General Comments section. Our specific comments for each subject in the NPRM then follow.

If you have any questions on our written comments or on any other aspects associated with this important rule making, please contact Robert Solomon, PE at 617.984.7464 or by email at rsolomon@nfpa.org.

Sincerely,

James M. Shannon
President and CEO
NFPA

JMS:RES:jtm

C: N. McNabb
R. Solomon

ENCL: NFPA Comments

NFPA's General Comments

NFPA Urges adoption of 2006 Edition of NFPA 101. Although the 2000 Edition of NFPA 101 as referenced by CMS provides many safety enhancements to the residents and staff, there are additional provisions in the 2006 Code, some of which have already been embraced by CMS, that will work to further streamline the regulations. These include:

- The subject of this NPRM, namely the retroactive imposition of automatic sprinklers in the stock of existing long term care facilities. As explained in the NPRM, this provision has been included in the 2006 edition of NFPA 101 that was issued in July of 2005.

- NFPA made a similar recommendation to adopt the proposed 2006 edition of NFPA 101 in April of 2005 when CMS issued an interim/final rule on installation of smoke detectors/smoke alarms in existing, unsprinklered long term care facilities. The smoke alarm/detection rule was a stop gap measure pending the current plan to require the installation of sprinklers in existing facilities.

- The other item considered in the April 2005 interim/final rule concerned the installation and use rules for alcohol based hand rubs – ABHR's. The CMS rules, when released in their final version in 2006, are essentially identical to what the 2006 edition of NFPA 101 had when it was issued in July of 2005.

- The 2006 edition of NFPA 101 has further clarified and expanded upon the requirements surrounding the concepts of "minor" and "major" renovation. This concept would not only work to improve safety in the stock of existing LTC facilities, but also in the other healthcare facilities that are regulated by CMS.

- The 2006 edition of NFPA 101 provides a very comprehensive and updated approach to patient sleeping and treatment suites. These changes represent not only a series of provisions to keep patients safe in those areas, but it is also representative of best practice and operational approaches used by healthcare professionals.

- The 2006 edition of NFPA 101 makes reference to more current editions of key design and installation documents including:

    - NFPA 13, *Standard for the Installation of Sprinkler Systems*, 2002

    - NFPA 25, *Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*, 2002

- NFPA 70, *National Electrical Code*®, 2005
- NFPA 72, *National Fire Alarm Code*®, 2002
- NFPA 80, *Standard for Fire Doors and Other Opening Protectives*, 2004
- NFPA 99, *Standard for Health Care Facilities*, 2005

NFPA recommends use of current standards. If CMS elects to not move forward with adoption of the 2006 edition of NFPA 101, then the proposed rule needs to be changed to reflect the use of more current editions of the sprinkler installation standard, NFPA 13, *Installation of Sprinkler Systems* and the inspection standard, NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*. Availability of the 1999 edition of NFPA 13 will not necessarily be easy. The same holds true of the 1998 edition of NFPA 25. The current editions of those Standards – NFPA 13, 2007 and NFPA 25, 2002 are readily available, including for free viewing on the NFPA Web Site (www.nfpa.org). System designers, as well as the contractors who will be working with facility owners and operators will have more familiarity with those current editions.

NFPA recommends a more aggressive phase in period. The phase in period that is decided in the final rule will be a key to the success of the proposed rule. As noted in the NPRM, retrofit costs will be a measurable percentage of the capital improvement budgeting process for the facility owners and operators. For this reason, NFPA is recommending a phase in period of three (3) years from the time the rule is made final until the facilities sprinkler retrofit program is completed.

In addition, NFPA is also recommending that effective immediately upon issuance of the final rule, that any facility that is already equipped with a water based fire protection system subject to the requirements of NFPA 25 (automatic sprinklers, standpipes, water storage tank, fire pump) will be, within six months, required to adhere to the 2002 edition of NFPA 25. There is no advantage or benefit in delaying implementation of NFPA 25 during the sprinkler phase in period.

NFPA's Specific Comments:

Section I. Background – No Comments

Section I. GAO Report – NFPA agrees with the idea of sun setting the previous rule on smoke alarms/smoke detectors upon completion of the sprinkler system installation proposed in this new rule. For clarification, NFPA in no way endorses the example "March 16, 2016" date shown on Page 62959, middle column.

Section I. Current Fire Safety Status – No Comment

Section I. CMS Action. NFPA requests that CMS reconsider its decision to not proceed with adoption of the 2006 edition of NFPA 101. We have included a summary of items that would improve both the level of performance and enforcement of various issues between the 2000 and 2006 edition of NFPA 101. **See our Exhibit A.** The most significant of those differences are discussed in our introductory comments.

Given the relatively recent introduction and mandate to use the 2000 edition of NFPA 101 for facilities regulated by CMS, NFPA suggests that a comment period to adopt the 2006 code could be completed in less than 18 months. Another option may be to proceed with development and implementation of a sprinkler retrofit rule and to concurrently proceed with another proposed rule to adopt the 2006 edition of NFPA 101.

With regard to the necessity of having a federal regulation to mandate installation of automatic sprinklers in all LTC facilities, there appears to be near unanimous consent from all of the affected interests including the owners and operators of the facilities that a sprinkler retrofit rule is necessary. The information produced by CMS on the Hartford and Nashville fires, the results of the previously mentioned GAO study in July of 2004 and NFPA's own fire investigation report on the Hartford fire (July, 2005) provided ample arguments for requiring automatic sprinklers.

A goal of CMS should be to streamline and provide a consistent and adequate level of safety to the occupants that reside in the stock of LTC facilities. The CMS model of providing fire safety to the residents in LTC facilities through application and enforcement of NFPA 101 dating back to 1970, has resulted in high levels of protection to the occupants.

CMS needs to take the lead and mandate the retroactive installation criteria. Unfortunately, most states are unlikely to develop a retrofit law or rule until, or unless a multiple fatality, large loss fire with a large number of deaths occurs. The CMS approach to using NFPA 101 to set a level, consistent and enforceable approach to life safety will serve the LTC residents quite well. It is highly likely that any number of combinations could be established if the concept is left to the devises of each state. Areas to be covered, the type of system to be installed, the time period in which to complete the installation and the year/edition of the applicable installation standard are just a few of the variables that would be discussed. Protection measures for the residents of LTC facilities has been, and should continue to be, a primary function of the federal government.

Section II A. Sunset Provision. NFPA agrees that the recently issued smoke alarm rule can be sunsetted once the sprinkler retrofit criteria and rule is in place. The final rule should make clear, however, that:

1) The smoke detector provisions of NFPA 101 (2000): must still be met regardless of the presence of sprinklers.

2) The final compliance date is not going to be subject to extension or amendment.

Section II B. Installation. While this section adequately describes the base criteria of the various chapters of NFPA 13, we note that the proposed rule makes reference to the 1999 edition of NFPA 13 – the same edition referenced in the 2000 edition of NFPA 101. NFPA recommends that the 2007 edition of NFPA 13, issued in July of 2006, be referenced in the final rule. Our **Exhibit B** is a copy of the 2007 edition of NFPA 13.

CMS should strive to make available, and to mandate, the most recent and widely available standards for the design and installation regulations. In the most optimum scenario, where LTC facility sprinkler retrofit commences in 2007, CMS would have in their regulations an 8 year old standard that had been revised on two separate occasions (2002, 2007). The following provides a summary of differences between the 1999 and 2007 editions of NFPA 13.

- The definition of Compartment, Small Room and Room Design Method (Light Hazard) have all been modified to permit single openings with no lintel up to 36 inches, to permit full height doors and the opening size without lintels has been limited to a maximum of 8 feet in width.

- Additional requirements have been provided for proper design and calculation of anti-freeze systems to ensure that where these systems are larger than 40 gallons capacity that they are calculated with the Darcy-Weisbach equation to account for the appropriate viscosity of the solution.

- Permits the protection of multiple attached building with a single system provided system limits are not exceeded. This allows campus style arrangements or multiple adjacent attached wings of a building to be protected with a single sprinkler system, and more importantly a single water supply. Prior to the 2007 edition, NFPA 13 required that if you had a nursing home with fire walls to permit a larger building area, a separate sprinkler system was required for each building.

- Permits small separate (non-attached) buildings to be supplied from an adjacent sprinkler system where acceptable to the local AHJ. Addresses the protection of small "out" buildings that serve the main building/structure.

- Provides accurate design criteria for steeply pitched wood truss/wood joist spaces based upon full scale fire tests.

- Updates all of the seismic criteria to meet or exceed ASCE 7-05 and therefore ensure compliance with the appropriate building code.

- Provides the requirements for the underground fire main serving the sprinkler system.

- Provides a dedicated section in chapter 8 addressing residential sprinklers and their installation rules including specific obstruction rules.

- Provides requirements for the proper design criteria for residential sprinklers in NFPA 13 applications.

In addition, a companion Automatic Sprinkler Systems Handbook based upon the 2007 edition of NFPA 13 will be available May, 2007.

Section II C. Phase In. NFPA recommends that the final rule establish a three year phase in period. The three year window as we propose would mean that the automatic sprinkler system installation is one hundred percent complete, installed and operational within three years of the final rule issuance.

CMS correctly points out in its proposed rule the need for a facility to determine what level of effort is likely to be needed to have a system designed, specified and installed. Our three year recommendation is based on the fact that several national organizations such as NFPA and AHCA had previously called for action to commence with regard to sprinklers in existing facilities as early as October 2003. Press releases, policy positions and overwhelming acceptance of code change proposals to mandate sprinklers in the stock of existing LTC facilities has continued since then. See our **Exhibit C** for examples of this effort.

The sprinkler retrofit idea has been widely discussed, debated and has been the subject of countless articles and information directed to LTC facility owners and operators for three plus years already. Assuming a six month period (ideally) between the end of the comment period and issuance of the final rule, and adding in another 3 years in the actual phase in period, this would in effect have given providers an actual phase in of almost 7 years (October 2003 – June 2010) if the final rule is issued in June 2007).

CMS should account for the public discussion and debate on this subject when establishing the three year phase in period. Although the proposed rule provides an analysis of the cost based on estimates of partially or unsprinklered properties in the Regulatory Impact Statement, Anticipated Effects Section on P-62967-62968 for other than a 3 year period, NFPA recommends that the analysis also be considered for the 3 year period. See our comments on that section.

Section II D. Maintenance. Similar to our earlier comments, NFPA recommends that a more current and widely available edition of NFPA 25 be referenced. The current edition of NFPA 25 is 2002. In addition, this edition has a companion handbook associated with it. See our **Exhibit D1 and D2** for a copy of the current edition of NFPA 25 and its companion handbook.

The following provides a summary of differences between the 1998 edition and the 2002 edition.

- Specific criteria for the inspection of sprinklers focusing on issues such as empty glass bulbs and dry type sprinklers.
- Improved language related to the inspection, testing and maintenance of pressure relief valves on diesel fire pumps
- Revised language on test results and evaluation
- Complete re-write of the water tank chapter providing clarification of requirements and recognizing interior inspection of tanks by means of a certified commercial diver (thus limiting system impairment and the cost of draining and re-filling the tank)
- Updated procedures on obstruction inspection and investigation

As previously stated, NFPA also recommends that LTC facilities already equipped with water based fire protection systems be required to utilize the current edition of NFPA 25 upon issuance of the final rule, rather than at the end of any predetermined phase in period. LTC facilities should be directed to utilize the 2002 edition of NFPA 25 upon their next regularly scheduled inspection, test or maintenance activity.

Section III. Collection of Information Requirements. No Comments.

Section IV. Regulatory Impact Statement. A. Overall Impact. It is the opinion of NFPA that a 10 year and 7 year phase in is too liberal and should not be considered. While a 5 year phase in period is reasonable, as previously noted in our comments, a 3 year phase in should be given serious consideration given the extensive awareness of this initiative since October of 2003. If it is determined that the 3 year phase in will not be considered, then NFPA would fully support the 5 year phase in. Periods beyond that do not seem reasonable.

Section IV. Regulatory Impact Statement. B. Anticipated Effects.

1. **Benefits. Decreasing Life Loss.** NFPA agrees with the overall analysis provided. In the most ideal of circumstances, the annualized life loss due to fire would be zero. The "average" loss of five residents per year, while not necessarily being acceptable, does point to the overall levels of protection that have been provided by adherence to NFPA 101 and that has been provided by LTC operators. With that said, however, it is the potential for certain circumstances to result in large loss, multiple fatality fires as evidenced in 2003. These events, simply put, can not be tolerated.

   Occupancies that enjoy very favorable performance with respect to their fire safety record are not normally subjected to substantial retroactive regulations – until a catastrophic event occurs that causes a new look at the cache of safety features available. High rise buildings, hotels, the broad category of assembly occupancies and more recently, nightclub type assembly occupancies have all been subjected to retroactive sprinkler protection rules following some major catastrophic fire event. Even before the September 2003 Nashville LTC facility fire, NFPA committees, as well as the public at large had been considering changing the NFPA Life Safety Code to require sprinklers in all existing LTC facilities as a result of the Hartford fire. In essence, it is most often the large, multi-fatality fire events that can trigger such changes. Certainly the two fires in 2003 met that level of impact on LTC facilities.

   As noted in the analysis as well as countless widespread media outlets, the US population is living longer, thus driving up the number of LTC facility beds that will become necessary in the coming years. It will be absolutely crucial that not only are the newly constructed facilities properly protected, but also that the stock of existing facilities be protected sooner rather than later.

   Decreasing Loss of Property: No Comments

   Decreasing Fire Recovery Disruption and Time: NFPA agrees with the information provided. It should also be noted that fewer residents would have to be relocated to other areas during a fire event in the facility.

2. **Costs. Phase In Period.** See our Comments under Section II C. In addition, we also have the following items to consider under the analysis shown on p. 62967. At present, 38 states do adopt NFPA 101. The CMS analysis provides information on states that have, or may adopt either the 2003 edition or 2006 edition of NFPA 101 as well as those states – such as Tennessee and Connecticut that have developed their own LTC sprinkler provisions. A consideration not specifically mentioned concerns what, if any phase in periods may have accompanied those state rules or for any jurisdiction that has, or will adopt the 2006 edition of NFPA 101.

   Although NFPA 101 does not specify a phase in period for the retroactive sprinkler protection in the 2006 edition of the Code, it would be the prerogative of the adopting authority – state or other local AHJ – to determine if a phase in period would accompany any such adoption. The numbers presented in Table 3 and Table 4 do not appear to have any assumptions about other such possibilities for a state based phase in period.

   Installation Costs per Square Foot: No Comments

   Cost Estimates: No Comments

   Maintenance: See our comments in Section II. D. with regard to use of the 2002 edition of NFPA 25.

Section IV. Regulatory Impact Statement. C. Alternatives Considered

1. **Maintain Current Fire Safety Requirements.** Previous discussion in the preamble, the rule itself as well as other available resources such as the GAO report, the NFPA fire investigation report on the Hartford Fire and the documentation provided to revise the 2006 edition of NFPA 101 collectively and even individually, provide ample arguments against the status-quo. NFPA has firsthand knowledge of only one LTC provider that objected to the change in the 2006 edition of NFPA 101. NFPA encourages CMS to carry out its plan to issue a retroactive sprinkler rule for LTC facilities.

2. **Exempt Small Facilities.** NFPA agrees that small facilities should not be exempt from this regulation.

3. **Require Immediate Compliance.** Although immediate compliance might be ideal, NFPA agrees that it is simply not a practical approach. As noted in our comments to Section II. B, seven years and 10 years are too long. While five years, the maximum suggested by CMS is achievable, NFPA firmly believes that three years is a distinct option. This is based on the immense awareness of this subject since October of 2003, availability of changes to NFPA 101, the GAO Report, the NFPA fire investigation report, as well as exposure of

this subject in numerous trade publications and mainstream news outlets such as *USA Today*.

Section IV. Regulatory Impact Statement. B. Conclusion. No Comments.

PART 483 – REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

As a point of information, any person with access to the internet can view on line, copies of the current editions of NFPA 13, NFPA 25 and NFPA 101. This is a free access available to anyone. The URL link for this is: http://www.nfpa.org/freecodes/free_access_document.asp

EXHIBITS FOR CMS COMMENTS

EXHIBIT A: Summary of Changes for Healthcare Occupancies: NFPA 101, 2000 Edition and NFPA 101, 2006 Edition.

EXHIBIT B: NFPA 13, *Standard for the Installation of Sprinkler Systems*, 2007 Edition.

EXHIBIT C: Samples of publicly available information concerning nursing homes and sprinklers.

- NFPA News Release – October 2003
- *The Hill* – October 2003
- *NFPA Journal*, First Word – March 2004
- *Nursing Homes Magazine* – May 2004
- AHCA News Release – August 2004
- *Nursing Homes Magazine* – September 2004
- Business Briefing: *Hospital Engineering and Facilities Management* – May 2005.
- *USA Today* – October 2005

EXHIBIT D: D1: NFPA 25, *Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems,* 2002 Edition.

D2: NFPA 25 Handbook, 2002 Edition.

EXHIBIT A

Summary of Changes for Healthcare Occupancies: NFPA 101, 2000 Edition and NFPA 101, 2006 Edition.

NFPA 101 Life Safety Code 2000-2006 Changes Affecting Health Care (HC) and Ambulatory Health Care (AHC) Occupancies		
	2006 Reference	**Subject**
1	3.3.168.1 6.1.6.1	**Definition–Ambulatory Health Care Occupancy.** Definition expanded to include emergency or urgent care for patients who, due to the nature of their injury or illness, are incapable of taking action for self-preservation under emergency conditions without the assistance of others.
2	4.8 18/19.7.1 20/21.7.1	**Emergency Plan.** Emergency plan provisions expanded.
3	4.6.7 Chapter 43	**Rehabilitation.** Existing building must meet requirements for the existing occupancy in order to proceed with rehabilitation provisions of new Chapter 43. Degree to which the rehabilitation must meet the provisions for new construction varies incrementally as the project moves up along the rehabilitation continuum of repair / renovation / modification / reconstruction.
4	6.1.14	**Multiple Occupancies.** Offers two protection schemes: protect as mixed occupancies or protect as multiple occupancies. Health care separation of 2-hr not permitted to be reduced for presence of sprinklers.
5	7.2.1.4.1.6 18/19.2.2.2.9.2	**HC Sliding Doors.** Horizontal-sliding doors permitted for health care areas with occupant load <10, obviating need for side-hinged, break-away feature
6	7.2.2.4.4.5	**2¼-in. Handrail Clearance.** Handrail clearance increased from 1½ in. to facilitate handrail use.
7	7.2.2.5.4.1	**Stairway Marking Threshold.** Threshold for new stairs changed from five or more stories to three or more stories.
8	7.2.2.5.4.1(H)	**Tactile Stairway Signage.** Floor level designation on stairway marking signs must also be tactile.
9	7.2.4.3.8	**Horizontal Exit Doors.** New doors in horizontal exits must be installed in accordance with NFPA 105, that is, they must be smoke leakage-rated doors.
10	7.8.1.3(1)	**Stairway Illumination.** Minimum of 10 ft-candle illumination required on new stairs during conditions of stair use.
11	7.9.3	**Periodic Testing of Emergency Lighting Equipment.** Self-testing / self-diagnostic battery-operated emergency lighting equipment permitted.
12	7.10.1.3	**Tactile Exit Door Signage.** Tactile signage required at each exit door (not just doors to exit enclosures).
13	9.6.3.4 18/19.3.4.3	**Positive Alarm Sequence.** Permitted as technological improvement over presignal systems which are prohibited

Exhibit A

NFPA 101 Life Safety Code 2000-2006 Changes Affecting Health Care (HC) and Ambulatory Health Care (AHC) Occupancies		
	2006 Reference	**Subject**
	20/21.3.4.3	in health care occupancies.
14	10.2.2.2 18.3.3.3 20.3.3→38.3.3.3.3	**Interior Floor Finish.** Criteria for interior floor finish strengthened.
15	18/19.1.1.4.3.1	**HC Major Rehabilitation and Minor Rehabilitation Defined.** Codified with respect to modification of more than 50 percent, or more than 4500 ft^2, of the area of the smoke compartment. Affects when sprinklers must be provided as part of smoke compartment rehabilitation.
16	18/19.2.3.4(2) 18.2.3.5(2) 18/19.3.2.6 20/21.2.3.3 20/21.3.2.6	**Alcohol-Based Hand-Rub Dispensers.** Provides criteria for safe use of ABHR in corridors ≥ 6 ft wide so as to facilitate infection control efforts.
17	18/19.2.3.4(3) 18.2.3.5(3)	**HC Other Corridor Projections.** Provides criteria for safe use of items like charting stations or computer screens that project ≤ 6 in. in corridors ≥ 6 ft wide.
18	18/19.2.5.6	**HC Suites.** Comprehensive, self-contained set of provisions provide clarity and completeness to the issues of sleeping suites and non-sleeping suites.
19	18.3.7.7(6)	**HC Smoke Barrier Door Bottom Clearance.** Limited to ≤ ¾ in.
20	18.4.3	**HC Nonsprinklered Existing Smoke Compartment Rehabilitation.** Provisions reinstated from pre-1981 editions because Chapter 18 provisions are otherwise predicated on presence of sprinklers. For example, 18.2.6 permits 150 ft travel distance, but 18.4.3.4.1(2) limits same to 100 ft if rehabbed smoke compartment is not sprinklered.
21	19.3.5.1	**Sprinklering of Existing Nursing Homes.** Sprinklers required.
22	20/21.3.2.1	**AHC Self-Closing Hazardous Area Doors.** Hazardous area doors required to be self-closing or automatic-closing.
23	20/21.3.7.2	**AHC Smoke Barriers on Every Story.** Every story, not just the facility as a whole, must be divided into at least two smoke compartments.
24	20/21.3.7.11	**AHC Smoke Barrier Door Vision Panels.** Smoke barrier doors required to have fire-rated vision panel.

Exhibit A

MINNESOTA
HEALTH & HOUSING
ALLIANCE

PROMOTING EXCELLENCE AND INNOVATION IN OLDER ADULT SERVICES

December 18, 2006

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-3191-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear CMS:

The Minnesota Health & Housing
homes in Minnesota. We are the la
every day our members provide ser
pleased to present these comments o
systems in all certified nursing facilit

tely 235 not-for-profit nursing
ne providers in the state, and
ing home residents. We are
require automatic sprinkler

"GAO Report"
The discussion of the GAO report in the preamble mentions that the two facilities in Tennessee and Connecticut that had the disastrous fires were not sprinklered, but it does not mention whether they had smoke alarms in the resident rooms. This would seem to be a key piece of information. If they did, then smoke alarms are clearly less effective than sprinkler systems. If they did not, then these two fires cannot be used to demonstrate the superiority of sprinkler systems over smoke alarms.

"Current Fire Safety Status"
CMS attributes the low number of fire-related deaths in the period from 1990 to 2002 to the increasing use of automatic sprinkler systems. CMS points out that there were no multiple-death fires (i.e., fires that resulted in more than one or two resident deaths) during this period of time. CMS's argument would be valid if the number declined during this period as more facilities installed automatic sprinkler systems, but it is simply misleading to assert that the automatic sprinkler systems are the cause of this number being zero when the number was zero before the increase in the systems.

"CMS Action"

CMS requests comments on the relative necessity, advantages and disadvantages of relying upon federal regulation versus deferring to state or local jurisdictions. The most significant justification for deferring to state jurisdictions is that the state governments are best equipped to determine whether a requirement to install automatic sprinkler systems is the best approach to ensuring the safety of residents, given the complex interaction between staffing levels, staff training, existing smoke alarms, construction types and materials, and other factors that might affect resident safety. No one questions whether automatic sprinkler systems are effective when maintained properly. The question is whether this rule is the best approach. The proposed rule still relies upon an enforcement of a requirement to maintain the automatic sprinkler system, just as current rules rely upon an enforcement of existing requirements to have smoke alarms in resident rooms, staff that are trained on the procedures to follow in the event of a fire, and so forth.

"Sunset Provision"
It obviously makes sense not to require the smoke alarms in resident rooms if the facility is fully sprinklered. It also makes sense not to require the smoke alarms if the resident corridors as well as the resident rooms are sprinklered. The requirement should sunset when a facility has an automatic sprinkler system in the resident corridors (and smoke compartments) and resident rooms, regardless of the sprinkler status in the rest of the facility.

"Phase-In"
We recommend a phase-in period of between seven and ten years. This recommendation is based primarily on practicality. In Minnesota, the proposed requirement will affect primarily rural facilities. Based on information provided by the Engineering section of the Minnesota Department of Health, there are 98 (out of nearly 400) facilities that are partially sprinklered, and 62 are in rural counties (per Medicare reimbursement groupings). Among the group that is not sprinklered at all, the rural preponderance is even more striking—25 out of 31 are rural. In total, there are 87 rural facilities and 42 metro facilities that will be affected by this rule—more than 30 percent of all facilities.

The map below shows the geographical distribution of the most financially distressed facilities in Minnesota. MHHA considers these facilities to be at risk of closure—their operating margins are a negative five percent or worse. For most of them, this distress has lasted three or four years. All of the rural facilities that will be affected are in areas of the state where the percentage at risk is substantially higher than the Twin Cities metropolitan area.

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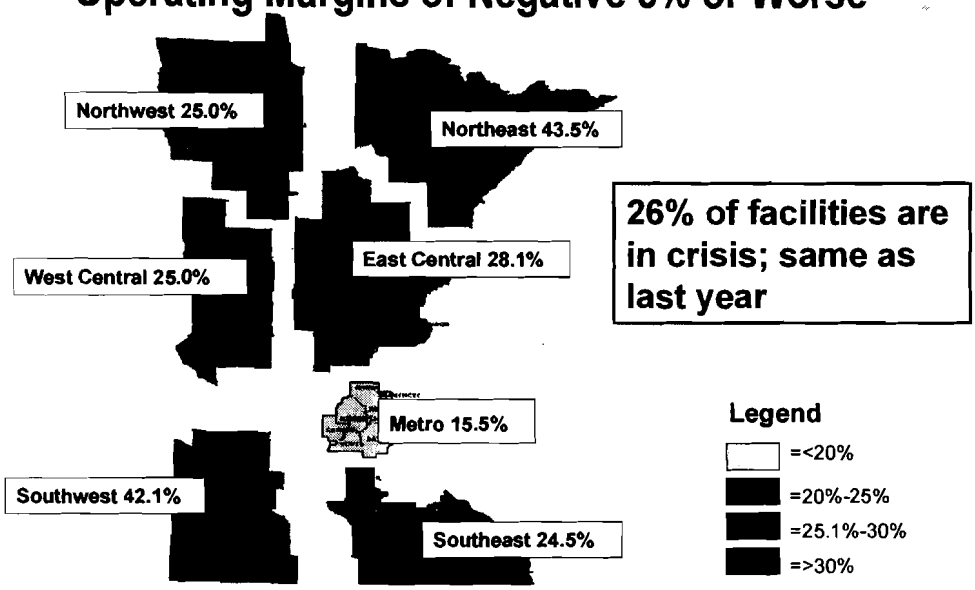
Percent of Nursing Facilities at Risk of Closure
Operating Margins of Negative 5% or Worse



Data from 2005 Long-Term Care Imperative Financial Survey

CMS is aware of the complex processes that will be involved when a facility decides to move to a fully sprinklered building rather than installing an automatic sprinkler system in an antiquated physical plant. There was one step in the process, however, that CMS did not mention. Nearly all states have a moratorium on new construction or require a certificate of need, and in many states a major renovation that would install the system would also require state approval through either of these two processes. This could easily add from six months to two years to the facility's timeline, depending on how frequently the state moratorium or certificate of need processes occur.

Another argument in favor of a longer phase-in period is the need for funding from state Medicaid programs. Although some states may be able to provide adequate funding quickly, other states face significant limits on their budgets. A longer phase-in period makes it more likely that a state can afford to fund the installation costs.

Respectfully submitted,

Darrell R. Shreve

Darrell R. Shreve, Ph.D.
Vice President for Health Policy

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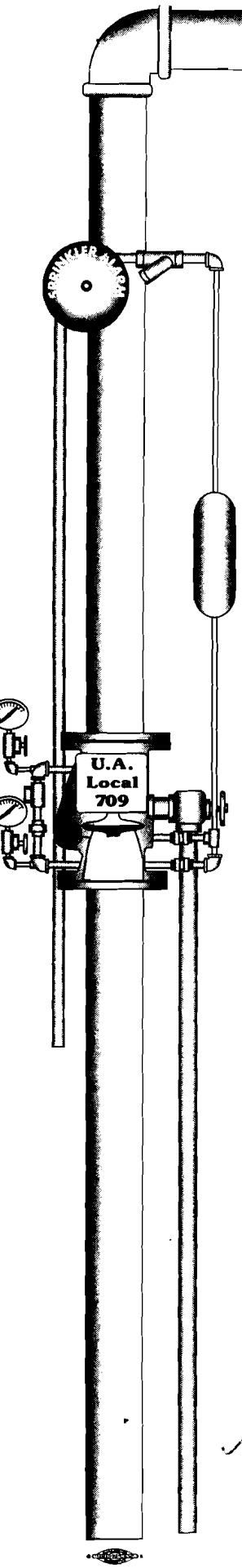

Sprinkler Fitters Local 709

Affiliated with AFL-CIO

SAL A. CHIARAVALLOTI, Business Manager

December 20, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3191-P
P.O. Box 8012
Baltimore, MD 21244-8012

Re: File Code CMS-3191-P/Sprinkler Requirements for Long-Term Care Facilities

Dear Sir or Madam:

Please accept this letter of support for the above-referenced regulation on behalf of Sprinkler Fitters UA Local Union 709, Los Angeles, California. Our Local Union represents 965 Sprinkler Fitters, who are the tradesmen and women who install, repair, maintain, inspect and service fire suppression systems in our area.

Given our experience and expertise in this field, we know the health and safety risks that exist in facilities that lack adequate fire suppression systems. We can also fully attest to the fact that sprinkler systems **SAVE LIVES AND PROPERTY**. This matter is long overdue and we applaud your agency for taking the action and initiative to propose this regulation.

We strongly support the proposed rule and submit that affected facilities should be given no more than 5 years to comply with the new requirements. This should provide the industry with ample time to address this situation, plan the needed work and arrange for the appropriate installation of said projects. From our considerable experience in planning and building these systems, this is clearly an adequate time frame; any longer would pose undue and unacceptable risks for the persons living in these facilities.

The elderly in this country should be given better treatment and this rule will help ensure that they get the basic protection they deserve by requiring long-term care facilities to have proper fire sprinkler systems in case of a fire hazard, thus ensuring them safe living quarters for their years to come. Thank you for your attention in this matter.

Sincerely,

Sal A. Chiaravalloti
Business Manager
Sprinkler Fitters UA Local 709
12140 RIVERA ROAD * WHITTIER, CALIFORNIA 90606
TEL: (562) 698-9909 * FAX: (562) 698-7255