

Submitter : Mr. James (Jimmy) Parker
Organization : James M. Parker, Architect / Attorney at Law
Category : Attorney/Law Firm

Date: 12/22/2006

Issue Areas/Comments

Background

Background

Although the long-term nursing facilities associated with municipalities and accredited hospitals are staffed and monitored to ensure competent patient care and environment, there are numerous private facilities who lack the initiative to expend resources and manpower on maintaining code compliance short of compulsion, and who may lack staff to manually evacuate patients in an unprotected environment.

Current Fire Safety Status

Current Fire Safety Status

The lack of retroactive provisions in normal code adoption process grandfathers non-conforming features which fails to extend health, safety, and welfare protections to the public in all except new facilities. This retroactive mandate is essential to extend the current desired level of protection to patients in existing facilities where those patients are not "left behind" in being encompassed within the umbrella of this protection for their lives. This action will also serve as an impetus for substandard facilities to either upgrade to meet the current health, safety, and welfare requirements of such facilities, or to abandon their charter to provide services which fail to protect their patients.

GENERAL

GENERAL

I am glad that HHS is being responsive to unprotected patients in facilities that are substandard in terms of current health, safety, and welfare protections from the current industry standards, and are seeking to remedy this inadequacy.

Installation

Installation

Not thought to be applicable as there should not be an expiration, but a mandated compliance date within say two years of the rule's adoption.

Maintenance

Maintenance

The features that this mandate will bring to the facilities will generally provide that other building safety features are provided such as fire alarm systems that connect directly to the fire protection service in the vicinity, and that audible and visual alarms will be provided for the hearing and visual impaired occupants.

Phase-in

Phase-in

I would recommend mandated compliance within two years of adoption, and would enforce that with a special task force in each state to personally visit each facility with a trained professional, examine the data used to develop the system design for the appropriate flow streams, and to provide stiff fines for failure to comply. Some rural locations that may not be on a central water supply may lack the water source to comply, but those located within 300 feet of a 6-inch water service line should be able to have sprinklers designed and installed.

Regulatory Impact Statement

Regulatory Impact Statement

The sprinkler systems should be inspected annually, or as required by NFPA 13.

Submitter : Mick Penticoff
Organization : Sioux Valley Regional Health Services
Category : Health Care Professional or Association
Issue Areas/Comments

Date: 12/22/2006

Phase-in

Phase-in

See Attachment

CMS-3191-P-109-Attach-1.DOC

Proposed Rule: CMS-3191-P Fire Safety Requirements for Long-Term Care Facilities, Automatic Sprinkler Systems

PHASE-IN

“Background” --- Thank you for allowing us to comment of the Phase-In-Period for the Automatic Sprinkler Systems in Long-Term Care Facilities. Our System has different levels of responsibility for Long-Term Care Facilities in 3 different states. Some of the facilities are owned, some are leased and some are managed. Many of them are aging facilities, but also, several have already been sprinklered or are in the process of budgeting for a sprinkler system sometime in the near future.

The actual planning/installation of a sprinkler system in a Long-Term Care Facility can be quite costly and some of our facilities just don't have the cash available to fund a project of this nature in a short period of time. In addition, our facilities get no additional reimbursement for this new expense.

Therefore, we would encourage you to adopt a phase-in period of no less than 7 years, but also that some consideration is given to a maximum phase-in period of 10 years. While we support the concept of making facilities even safer with sprinkler systems than they are now with the processes in place, the costs of doing so could put quite a burden on some of our facilities. However, as well, we do expect those who can to go ahead with the installation of a sprinkler system much sooner than the rulemaking would allow in an extended phase-in period.

Thank you for the opportunity to comment.

Mick Penticoff
Sioux Valley Hospitals & Health System
Regional Vice President
Regional Health Services
Sioux Falls, SD 57117-5039
Phone: (605) 328-5511
Fax: (605) 328-5501

Submitter : David Certner
Organization : AARP
Category : Other Association

Date: 12/22/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-3191-P-110-Attach-1.PDF



December 22, 2006

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

RE: **Medicare and Medicaid Program; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems**
42 CFR Part 483, CMS-3191-P
71 Federal Register 62957, October 27, 2006

To Whom It May Concern:

AARP appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) proposed rule regarding automatic sprinklers in long-term care (LTC) facilities.

AARP commends CMS for proposing a requirement that all long-term care facilities install automatic sprinkler systems and test, inspect, and maintain these systems. Automatic sprinklers can help save lives by containing a fire and preventing it from growing and spreading. The devastating nursing home fires in Tennessee and Connecticut in 2003 that killed 31 people illustrate the importance of the proposed new requirements -- these facilities did not have sprinkler systems that could have saved resident lives. We also appreciate CMS' recent addition to Nursing Home Compare of information on nursing homes' fire safety deficiencies and sprinkler status.

AARP also believes that CMS' proposed regulation can be further strengthened to better protect residents of LTC facilities. CMS should take steps that include retaining a smoke alarm requirement for LTC facilities, having a timely phase-in for the proposed sprinkler requirement, and ensuring strong enforcement of the proposed sprinkler requirement.

Current Fire Safety Status

Fire safety systems, such as automatic sprinklers and smoke alarms, are only part of the equation for ensuring resident safety in the case of a fire in a LTC facility. Sufficient numbers of adequately trained staff are a key part of resident safety. As CMS notes, fires often occur at night when staff levels are the lowest.

This was the case in both the Hartford and Nashville fires. CMS points out that the investigators in the Hartford fire found “that the facility’s staff did not fully implement the facility’s emergency plan, and that may have contributed to the number of fatalities in that fire.” A 2004 Government Accountability Office (GAO) report entitled “Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight” also notes that in the Hartford fire, the home failed to conduct required quarterly fire drills during the night shift. Tennessee included in its nursing home sprinkler law a requirement that nursing homes coordinate a fire drill with the local fire department at least once a year, recognizing the importance of such drills.

We strongly encourage CMS to ensure that facilities have sufficient numbers of staff on all shifts and that facilities provide sufficient training to such staff about the sprinkler requirement once a final rule is issued. In addition, we encourage CMS to conduct appropriate oversight to ensure that LTC facility staff are appropriately trained in *all* fire safety requirements. Effective oversight will be critical in ensuring resident safety.

Sunset Provision

AARP strongly opposes removing the requirement for smoke alarms when the new sprinkler requirement is phased in. We believe that all nursing homes should be required to have both sprinklers and smoke alarms. Analysis by the National Institute of Standards and Technology shows that using both smoke alarms and sprinklers in homes would reduce the fire death rate by 82 percent.

Smoke alarms complement the protection that sprinklers provide. These two fire protection systems serve independent, rather than redundant, functions. Sprinklers are triggered by heat, which causes the release of pressurized water to help contain the fire and prevent it from growing and spreading. Smoke alarms are triggered by the presence of smoke, and alert individuals to the presence of smoke and fire and the need to evacuate.

A high proportion of nursing home residents will have conditions such as a chronic obstructive pulmonary disease or emphysema which will make them susceptible to injury or death from smoke inhalation. The 2004 GAO report on fire safety notes that most of those who perished in the Hartford and Nashville disasters died of smoke inhalation. Fires that start in bedding and linens are more likely to develop as smoldering fires that produce copious amounts of deadly smoke well before air temperatures rise to the level needed to trigger sprinklers. Many residents will also have conditions that impair their ability to hear or comprehend audio alarms or to leave their beds or rooms without assistance.

The GAO report notes that in the case of the Hartford, CT fire "...the lack of smoke detectors in resident rooms may have contributed to a delay in both staff response and fire department notification; earlier detection of these fires may have helped to limit the number of fatalities..." In addition, the report documents that smoke detectors can prevent deaths that a sprinkler system alone would not, as in the case of a 2003 nursing home fire in Nevada. According to the report, "A resident smoking in bed while on oxygen started a fire at 2:20 a.m. Staff were alerted by the in-room smoke detector, and the fire was extinguished before it caused a significant amount of damage. While the resident who started the fire subsequently died as a result of the fire, no other deaths were reported. Although the facility was equipped with automatic sprinklers, the buildup of heat from the fire had not reached a level sufficient to activate the sprinklers."

Finally, Tennessee (TN) law now requires that any new nursing home be fully sprinkler equipped and include a smoke alarm and/or smoke detector in each patient room prior to licensure. We strongly urge CMS to ensure this level of protection – sprinklers and smoke alarms -- for all nursing home residents nationwide. Appropriate oversight is also needed to make sure that sprinkler systems are properly installed, tested, and maintained to help ensure resident safety.

Phase-In

AARP recognizes that facilities will need an appropriate amount of time to phase-in the new proposed sprinkler requirement. We strongly encourage CMS to adopt a timeframe that is significantly sooner than the 5-10 year timeframes discussed by CMS. We note that nursing homes in TN were largely successful in meeting their sprinkler requirement in 2 ½ years. CMS may want to consider how the timeline for phase-in might vary depending on whether the facility is one story or a multi-story building. Largely because of the challenges evident in the response to the Nashville fire, which was in a multi-story nursing home, TN required these facilities to meet the new sprinkler requirement in a period of 19 months.

In addition, CMS should make relevant updates to a facility's sprinkler status and compliance on the Nursing Home Compare website as the final rule is implemented. It may also be helpful to report aggregate annual statistics on the percentage of nursing homes in versus out of compliance on Nursing Home Compare. Having public information on the Nursing Home Compare website serves as an important incentive for nursing homes to move promptly to install sprinklers and meet the new requirement.

CMS Action

While AARP supports the federal regulation of sprinklers in nursing homes, we do not want to pre-empt a state's ability to require higher standards than the federal standards. Nursing home residents in any state should be guaranteed a certain minimum standard for fire safety. Meeting federal standards should also not obviate the need to meet state or local requirements.

We encourage CMS to consider adopting the 2006 edition of the Life Safety Code. While CMS notes the potential delay in implementation of the 2006 edition due to the rulemaking process and phase-in period, the 2004 GAO report notes that the process of adopting NFPA's 2000 standards in 2003 took CMS about 16 months. Adopting the 2006 edition of the Life Safety Code would reference more current editions of key design and installation documents, including a more recent edition of NFPA 13, *Standard for the Installation of Sprinkler Systems*, and NFPA 25, *Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*.

Timely and effective oversight on the part of CMS and state survey and certification agencies will be critical to the ability of this new requirement to help save lives. The proposed rule does not discuss the enforcement of the proposed new sprinkler requirement. We assume that it would be enforced through the regular survey and certification process. It would be helpful for CMS to discuss and clarify enforcement of this requirement in the final rule, including the penalties that facilities would face for not implementing the sprinkler requirement. Once the final rule is issued, CMS should ensure that state surveyors are appropriately trained and enforce the new sprinkler requirement. We ask that CMS instruct states to monitor compliance with the phase-in and modify survey standards to require states to test that sprinklers and smoke alarms are working properly during inspections.

Regulatory Impact Statement

AARP recognizes that the cost of implementing this sprinkler requirement will vary greatly by facility and that some facilities may need additional resources to comply with the proposed sprinkler requirement. AARP supports federal legislation, the Nursing Home Fire Safety Act (H.R. 4491 and S. 3489 in the 109th Congress), that would authorize loans and grants to nursing homes to finance retrofitting the facilities with automatic fire sprinkler systems. Facilities may also look at other ways to pay for the necessary retrofitting, such as facilities in a particular state or area using economies of scale and working together to jointly secure the services of an entity to retrofit their facilities. Facilities may also want to look at how facilities in states with existing sprinkler requirements financed their retrofitting.

Page 5

We support CMS' decision to not exempt small facilities from the sprinkler requirement. We agree that all LTC facility residents – regardless of the size of the facility in which they reside -- should be protected by the same minimum fire safety requirements.

Thank you for considering our comments on this critical safety issue for nursing home residents. If you have any questions, please call Rhonda Richards on our Federal Affairs staff at (202) 434-3770.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a stylized flourish extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy

Submitter : Mr. John Schlue
Organization : Colorado Dept. of Public Health & Environment
Category : State Government

Date: 12/22/2006

Issue Areas/Comments

Background

Background

Background:

The Division agrees with HHS assertion that:

- Residents should be consistently protected from fire, regardless of the location in which they receive care.
- Since adoption in 1971, the Life Safety Code has been effective in improving fire safety in health care facilities.

CMS Action

CMS Action

CMS Action:

The Division agrees with the CMS action plan:

- There is a significant need to improve fire safety in long term care facilities in a timely manner
- To proceed with Federal rulemaking to require sprinklers in existing facilities, rather than the time-consuming processing of adopting the 2006 edition of the Life Safety Code.
- Deferring to State and Local jurisdictions would not be advantageous in accomplishing the goal of sprinkler installation, within existing facilities, in a timely manner.

Current Fire Safety Status

Current Fire Safety Status

no comment

GAO Report

GAO Report

GAO Report:

The Division agrees with GAO report findings:

- Fire safety standards for unsprinklered facilities be strengthened, and
- sprinklers are the single most effective fire protection feature in long term care facilities.

GENERAL

GENERAL

The Health Facilities and Emergency Medical Services Division of the Colorado Department of Public Health and Environment supports the above action that requires nursing homes, not fully protected by fire sprinklers, to be renovated with this essential fire protection feature. The Division appreciates the opportunity to provide input on the proposed sprinkler installation requirement for existing long term care facilities.

John Schlue

Acting Division Director

Health Facilities and Emergency Medical Services Division

Installation

Installation

Installation:

The Division agrees with the proposed requirement that existing long-term care facilities be required to install approved, supervised automatic sprinkler systems, throughout all portions of the facility, in accordance with NFPA 13 (Standard for the Installation of Sprinkler Systems) 1999 edition.

Maintenance

Maintenance

Maintenance:

- Proper inspections, tests and maintenance of sprinkler systems is critical to ensure that

each system functions properly on a continuous basis.

- The Division agrees with the proposed requirement that existing long-term care facilities be required to test, inspect and maintain supervised automatic sprinkler systems, after installation, in accordance with NFPA 25 (Standard for the Inspection, Testing and Maintenance of Water Based Fire Protection Systems).

Phase-in

Phase-in

Phase-In:

The Division agrees with the concept of a phase-in period timeframe:

- The program should be implemented without undue burden on long-term care facilities.
- Affected facilities should be encouraged to complete the installation as soon as possible, however, the allowed phase-in period should be a maximum of three (3) years from the date of adoption. CMS should be allowed to grant an individual facility a reasonable time extension, with presentation of cause.
- The Division does not believe a three (3) year phase-in period will result in an undue burden on a facility. In 1993, the State of Colorado adopted regulations for the Assisted Living Residence Program that required sprinkler system installation in existing large facilities. The requirement allowed a facility three (3) years to plan, design and install the sprinkler system.
- A phase-in period of five (5), seven (7) or ten (10) years would not achieve the action plan goal of improved fire safety in long term care facilities within a timely manner.

Regulatory Impact Statement

Regulatory Impact Statement

Maintenance:

- Proper inspections, tests and maintenance of sprinkler systems is critical to ensure that each system functions properly on a continuous basis.
- The Division agrees with the proposed requirement that existing long-term care facilities be required to test, inspect and maintain supervised automatic sprinkler systems, after installation, in accordance with NFPA 25 (Standard for the Inspection, Testing and Maintenance of Water Based Fire Protection Systems).

Sunset Provision

Sunset Provision

no comment

CMS-3191-P-112

Submitter : Mr. Paul Reinhart
Organization : Michigan Department of Community Health
Category : State Government

Date: 12/22/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-3191-P-112-Attach-1.PDF

CMS-3191-P-112-Attach-2.PDF



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

December 22, 2006

Centers for Medicare and Medicaid Services
Department of Health and Human Services,
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Sir:

In response to proposed rule Docket Number and Title, CMS-3191-P – Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems, the State of Michigan submits the following comments on the identified subtopics for your review.

Background

Michigan does not object to the federal decision to proceed with this proposed rule prior to the adoption of the NFPA 2006 LSC.

Michigan proposes that oversight of the installation of automatic sprinkler systems be retained at the State level.

Installation

Michigan proposes to retain oversight of the installation of automatic sprinkler systems at the State level. The State would prefer to evaluate a requirement for supervised automatic sprinkler systems.

Phase-In

Michigan supports an expedited phase-in period, preferably 18 to 24 months. Consistent with this Proposed Rule's recognition that some facilities may determine that relocation is an alternative to installing sprinklers in the current facility, Michigan proposes federal financial participation (FFP) to support this rule.

Maintenance

Michigan proposes to regulate the installation and operation of automatic sprinkler systems at the State level. The testing and inspection standards of NFPA 25 will be taken under advisement.

Regulatory Impact Statement

A significant number of facilities in Michigan will be impacted by this proposed rule. Some facilities may determine that new facility acquisition is necessary when evaluating the automatic sprinkler system costs. Michigan proposes FFP for the implementation of this rule.

Response: CMS 3191-P
December 19, 2006
Page 2

Thank you for the opportunity to comment on this important matter. Michigan supports the federal efforts to move forward with this proposal prior to the adoption of the NFPA 2006 LSC standards. We request that adequate federal funding be considered for this important, life-saving, initiative.

Sincerely,

A handwritten signature in black ink that reads "Paul Reinhart". The signature is written in a cursive style with a large, prominent initial "P".

Paul Reinhart, Director
Medical Services Administration

Submitter : Ms. Terry Jackson
Organization : Comal County Senior Citizen's Foundation
Category : Other Health Care Professional

Date: 12/22/2006

Issue Areas/Comments

GENERAL

GENERAL

I'm writing as the Director of a newly licensed Day Activity and Health Service facility (Adult Day Care). We are a non-profit organization licensed to serve 60 clients. Last summer we renovated an existing building. Following renovation we were told we'd need a sprinkler system in place to become licensed. The additional renovation cost our agency in excess of \$40,000.

Our facility is the only licensed Adult Day Care in our County (Comal). A study conducted by the Robert Wood Johnson Foundation estimated that our region could sustain 3 Adult Day Care centers at our capacity. However, the cost to establish our facility, WITH THE ADDITION OF THE SPRINKLER SYSTEM, will be cost-prohibitive for any other agencies. The addition of the sprinkler system delayed our opening and licensure for over 3 months. Our Medicaid contract was finalized just last week and reimbursement will begin on January 1, 2007--a full 6 months behind schedule. In the meantime, we've continued to pay normal operating expenses including rent, utilities, and insurance.

As a non-profit entity, we were able, through very dedicated efforts, to secure grant funding. Our total contributions exceeded \$200,000.00. These funds helped pay for the sprinkler system and the 6 month delay in Medicaid reimbursement. We hope our facility will become viable and self-sufficient within the next year. However, raising these funds is simply not an option for "for-profit" agencies.

The services Adult Day Cares provide fill an underserved "niche". We receive very low reimbursement rates compared to nursing home facilities. We offer a true "bargain" for Medicaid and an even more important function for families: We keep their loved ones at home with them rather than prematurely institutionalizing them. Without our facilities, that service niche would disappear and families will be faced with the decision to institutionalize their loved ones and face the financial burdens associated with the action.

We do not provide 24 hour services. All Adult Day Care facilities have fire alarm systems in place as a condition of licensure. I ask that you consider the safety factors we already have in place at our facilities and reconsider the additional requirement of the sprinkler systems.

I have had first-hand experience with raising funds to cover the sprinkler system's cost. I am certain that no "for-profit" agencies could have recovered from the blow we received, as grant funding isn't an option for them.

Please do not jeopardize our ability to perform this needed service. I thank you for your consideration and am available for any questions you may have.

Sincerely,

Terry Jackson,
Director, My Friend's Haus
830-626-8611

Submitter : James McIntyre
Organization : Polyurethane Foam Association
Category : Other Association

Date: 12/22/2006

Issue Areas/Comments

Installation

Installation

The Polyurethane Foam Association submits the attached comments regarding the proposed rule.

CMS-3191-P-114-Attach-1.DOC

MCINTYRE LAW FIRM, PLLC

**ATTORNEYS AND COUNSELORS AT LAW
MADISON OFFICE BUILDING
1155 15TH STREET, N.W.
SUITE 1101
WASHINGTON, D.C. 20005
TELEPHONE (202) 659-3900
FAX (202) 659-5763**

December 22, 2006

<http://www.cms.hhs.gov/eRulemaking>

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

Re: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems – Sunset Provision

To Whom It May Concern:

The Polyurethane Foam Association (PFA) submits the following comments in response to proposed rule CMS-3191-P. On October 27, 2006 the Centers for Medicare & Medicaid Services (CMS) proposed requiring all long term care facilities to be equipped with sprinkler systems. The PFA has serious safety concerns regarding addition of a sunset provision in 42 C.F.R. § 483.70(a)(7)(iv), which would permit long term care facilities to discontinue the use of smoke detectors if they have installed automatic sprinkler systems. This proposed rule would provide a phase-in date, to be determined in the future, at which time all long term care facilities would need to have an automatic sprinkler system. Upon reaching that phase-in date, long term care facilities would no longer be required to have smoke detectors in their buildings, unless some other law or regulation required smoke detectors.

While PFA agrees with the need for sprinkler systems in such facilities, we also believe that by permitting the phasing out of smoke detectors for facilities that install mandated automatic sprinkler systems, the proposed rule raises serious safety concerns. This is true for two closely related reasons. First, furniture and bedding products currently in use by many long term care facilities have been specially constructed to resist ignition and to smolder for extended time before catching fire, which could result in the inhalation of smoke. Second, the change to § 483.70(a)(7)(iv) imprudently eliminates a

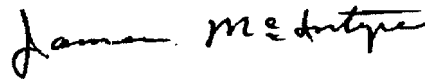
warning and prevention system with regard to smoke and mandates only a responsive fire suppression system with regard to fire. Such a change could put the lives of residents and staff of long term care facilities at risk.

The risk of death by smoke inhalation would significantly increase under the proposed rule. Under the proposed rule, a serious smoke scenario may not be detected in its early stages because of the lack of smoke detectors. Automatic sprinkler systems are not designed to react to smoke density or to signal danger to facilitate escape from potentially life-threatening situations.

For the above stated reasons, PFA recommends that CMS delete the sunset provision portion of the new rules, and continue to mandate the presence of smoke detectors in long term care facilities, as well as automatic sprinkler systems.

Sincerely,

McINTYRE LAW FIRM, PLLC

A handwritten signature in black ink that reads "James T. McIntyre". The signature is written in a cursive style with a prominent initial "J" and "M".

James T. McIntyre
Counsel to PFA

Submitter :

Date: 12/22/2006

Organization :

Category : Individual

Issue Areas/Comments

Background

Background

As a professional in the field of public safety through building and fire prevention codes, I support an objective to require America's remaining nursing homes to be fully protected with fire sprinkler systems.

In putting this proposal forward, HHS should recognize and discuss the critical role of State and local application of comprehensive building codes in the history of establishment of fire sprinkler requirements in long term care facilities. The rulemaking also does not describe or discuss any efforts the agency has made or contemplated to work cooperatively with State and local building and fire enforcement authorities in achieving this objective.

In portraying the history of the integration of fire sprinkler standards in nationally recognized building codes, HHS should recognize that State and locally applied building codes began requiring installation of sprinklers in new construction decades before HHS included a similar requirement in federal regulation.

HHS should recognize the extensive degree to which the International Building Code is now adopted as a model building code by local, State and Federal jurisdictions across the entire country.

Nearly 40 years ago Congress granted HHS the authority to recognize a state enforced building code in lieu of creating regulatory overlay in applying the Life Safety Code. HHS should discuss why the agency has not yet acted on this authority to eliminate unnecessary regulation that duplicates and complicates provisions of State and local building safety and fire prevention code.

Current Fire Safety Status

Current Fire Safety Status

This rulemaking should correctly recognize the contribution of model codes other than the Life Safety Code on the establishment of fire sprinkler requirements in new facility construction and renovation of existing facilities.

GAO Report

GAO Report

I support a phased-in approach to ensuring that all pre-existing long-term care facilities are fully protected with fire sprinkler systems as would be required in new construction under America's predominant building safety and fire protection codes.

With respect to the effects of Federalism through this national regulation, HHS should more fully review and discuss its regulatory obligations under Executive Order 13132. This requirement addresses prior consultation with sub-federal authorities before taking actions that have considerable impact on State and local governmental authority.

Maintenance

Maintenance

HHS should recognize that the edition of NFPA 13 cited in this rulemaking is older than that cited by jurisdictions using the latest editions of the International Building Code and International Fire Code, thus creating additional conflict in jurisdictions utilizing this country's predominantly applied comprehensive building code.

Regulatory Impact Statement

Regulatory Impact Statement

HHS should recognize that the edition of NFPA 25 cited in this rulemaking is older than that cited by jurisdictions using the latest editions of the International Building Code and International Fire Code, thus creating additional conflict in jurisdictions utilizing this country's predominantly applied comprehensive building code.

Regulatory Impact Statement

I request that HHS present a full analysis of Federalism as required by Presidential Executive Order 13132.

In assessing the cost of imposing this regulation as a Federal rule, HHS should not presume the nature of future state and local code adoptions of the 2006 edition of the Life Safety Code in reducing the calculation of the costs attributable to this requirement as a Federal rule.

Submitter : Mr. James O'Reilly
Organization : Mr. James O'Reilly
Category : Local Government

Date: 12/23/2006

Issue Areas/Comments

Phase-in

Phase-in

Phase In

24 Jewett Drive
Cincinnati OH 45215
513 761-9398
December 22, 2006

Comment via Regulations.Gov
CMS-3191-P

Dear Colleagues:

I write to disagree with your proposed ten year phase in period for the sprinkler fire safety requirements of your modified regulations. I urge you to allow no more than five years after the final rule is issued.

For background, and not as endorsement of these personal views, I chair the Public Safety Committee of the City Council of the City of Wyoming, Ohio, and in that role I have taken first-responder training at the Ohio Fire Academy and through the Incident Command System training. I am a law professor and have authored 32 books including *Lawyer's Guide to Elder Injury & Accident Compensation* (2d Ed., American Bar Assn. Press, 2006), which addresses nursing home fire risks. I am general editor of the National Safety Council's *Accident Prevention Manual*, 14th edition. I have lectured and published extensively on safety and the elderly in various periodicals. I have family members who live in nursing homes and have had other relatives residing in long term care facilities. I formerly headed the 16,000-member American Bar Assn. Section of Administrative Law and am updating the second edition of my textbook on the Administrative Rulemaking process for West/Thomson. I am an AARP member and pay close attention to AARP information. These are my own views.

First do no harm, as Hippocrates' oath says. Dr. McClellan and CMS physicians took the oath to secure the patient's health as a primary professional goal. CMS exists for the benefit of the persons who rely on our Medicare/Medicaid system. Please put their lives and life-safety first as a primary value. Sprinklers save lives of helpless elders, delays in installing sprinklers risk their deaths. Make that your guiding light principle.

Second, the preamble to the rule does not justify the ten year window. The statements about the technical barriers are not a basis for granting ten years of lax safety to the nursing home industry, when the identical work can be completed within five years. As a public elected official with a city budget responsibility, I am familiar with the retrofit costs, and I believe that five years is an adequate compliance period. The preamble does not justify allowing the risk of deaths to be spread out over ten years. The preamble does not justify extending the compliance date beyond what would be a technical and engineering time period for feasible compliance, of five years.

Third, it is at best awkward style and at worst inadequate notice to commenters to use the term, to be determined, in 42 C.F.R. 483.70(a)(8)(i). I urge CMS to change to be determined to five years after the effective date of this section.

Finally, the market will respond favorably to a time that is within sight; the market will relax and procrastinate with a time period that is a decade long. Retrofit or alternate facility locations may be the choices to which the facility managers will move, but they should be stimulated to do so and CMS's change to a 5 year window will stimulate their response. It does not make sense to reward inaction and postponed investment in life safety equipment, but a ten year delay would do so.

I encourage the change to a 5 year phase in and hope you will carefully consider the true value of my relatives' lives compared to the economic rate of return of the regulated providers. Thank you.

James T. O'Reilly

Submitter : Barb Richmiller
Organization : Alzheimer's Assoc.
Category : Nurse

Date: 12/23/2006

Issue Areas/Comments

GENERAL

GENERAL

As a Registered Nurse with 30 years of experience in long term care of Veterans, and as an employee of the Alzheimer's Assoc, I know that few of our patients would escape a nursing facility fire. Most would die of smoke inhalation. Not being able to get your breath is a frightening death. I support sprinklers. Yes, they cost money; our loved ones are worth it.

Submitter : Mr. Joseph Higgins
Organization : Boro of Woodcliff Lake NJ
Category : Local Government

Date: 12/25/2006

Issue Areas/Comments

GENERAL

GENERAL

I am in charge of Emergency planning for my town. I fully support the idea of requiring automatic fire sprinklers in Nursing Homes. Joseph A. Higgins, Jr.
Emergency Management Coordinator Woodcliff Lake NJ email= EMCoordinator@wclnj.com 201-391-1091 office
188 Pascack Rd. Woodcliff lake Nj 07677

Submitter : Mr. William Cottrell

Date: 12/26/2006

Organization : Cottrell Associates

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

I am a professional engineer, and am fully aware of the importance of building codes. I do not support any effort to require sprinklers to be installed in existing nursing homes retroactively. Very often, legislation is passed which gives little thought to the cost impact of such legislation.

I speak with some knowledge in this area, as I serve on the board of a small (82 bed) nursing home. The cost of installing a sprinkler system in a building such as the one of which I speak might be beyond what the home could afford, requiring it to close its doors. Has any thought been given to the impact that such a circumstance would have on caring for the elderly, if many of the homes without systems were forced to close?

In New York State, nursing homes are closely monitored by the Dept. of Health. There are numerous safeguards and safety plans in place at the facility to which I refer, in the event of a fire. Are we just going to say categorically that all these efforts on the part of professionals in their field to prevent loss of life in case of a fire, are insufficient and every existing nursing home must have a sprinkler system to be safe? The thought is ludicrous.

I am totally against this idea.

Submitter : Mr. Kyle Pitsor

Date: 12/26/2006

Organization : National Electrical Manufacturers Association

Category : Device Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment, in Microsoft Word format, which provides comments on Background, GAO Report, and Sunset Provision, as well as a conclusion.

CMS-3191-P-120-Attach-1.DOC



December 26, 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: Comments on CMS Request for Comments on Proposed Fire
Safety Requirements for Long Term Care Facilities, Automatic Sprinkler
Systems, published at 71 Federal Register No. 208, page 62957-62971, October 27, 2006

The National Electrical Manufacturers Association (NEMA) appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services' (CMS) Proposed Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems, published at 71 Federal Register No. 208, page 62957-62971, October 27, 2006 (Proposed Rule).

NEMA is the trade association of choice for the electrical manufacturing industry, which includes makers of fire alarm systems and smoke alarm devices. Founded in 1926 and headquartered near Washington, D.C., its 430 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity. These products are used in utility, medical imaging, industrial, commercial, institutional, and residential applications. Domestic production of electrical products sold worldwide exceeds \$120 billion. Its headquarters is located in Rosslyn, Virginia.

NEMA has a keen interest in the outcome of the Proposed Rule that cannot be adequately represented by any other party commenter for several reasons. Among NEMA's members are firms representing fully ninety percent of the manufacturers in the life safety industry. Those member firms have worked tirelessly over many years with scientific, engineering, technology, fire prevention, and policy professionals in the private and public sectors domestically and abroad to develop and enhance life safety systems that best protect the public's health, general welfare, and safety. As such, NEMA strongly supports the requirement in the CMS proposal to include an automatic sprinkler system requirement for all long term care facilities to improve fire safety in a timely manner.

However, NEMA believes that the Proposed Rule is seriously flawed because, contrary to the requirements of the Life Safety Code, which CMS supports, CMS proposes to phase out or "sunset" the mandate for smoke alarms in resident rooms in nursing homes. The CMS proposal must be modified to continue to require smoke alarms despite the phase-in of sprinklering in its proposal in order to comply with the Social Security Act.

**National Electrical
Manufacturers Association
www.nema.org**

1300 North 17th Street, Suite 1752
Rosslyn, VA 22209
703.841.3200
Fax 703.841.5900

Background

In the Background section of the CMS October 27, 2006 proposal, CMS recites the Department's long standing principle that long term care facilities participating in the Medicare and Medicaid programs must meet the provisions of the National Fire Protection Association's (NFPA) Life Safety Code (LSC). NEMA applauds the CMS's approval of the LSC. However, CMS appears to have overlooked the fact that the LSC, at least since 2003, has required in Chapter 32 (for new residential board and care occupancies) and Chapter 33 (for existing residential board and care occupancies) that these facilities are "...protected with approved smoke alarms installed in each sleeping room..." CMS acknowledges in the Proposed Rule, 71 F.R. at 62958 (October 27, 2006) that it has "adopted the LSC to ensure that patients and residents are consistently protected from fire, regardless of the location in which they receive care." CMS states further that "since adopting and enforcing the 1967 and subsequent editions of the LSC, there has been a significant decline in the number of multiple death fires, indicating that the LSC has been effective in improving fire safety in health care facilities." *Id.* Yet the Proposed Rule's actual effect would be to depart from the LSC without explanation. This inconsistency with CMS' own stated policies risks rendering the smoke detector phase-out provision of the Proposed Rule "arbitrary and capricious."¹

GAO Report

The Proposed Rule discusses the Government Accountability Office (GAO) report entitled "Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight" (GAO-04-660, July 16, 2004 (hereinafter "GAO Report")), which examined Federal fire safety standards and enforcement procedures, and results from the fire investigations of two long term care facility fires in Hartford and Nashville in 2003 that resulted in 31 total resident deaths. The drafters of the Proposed Rule recited that CMS immediately responded to GAO's advice in a quickly published "Interim Final Rule" requiring smoke alarms, at a minimum, "in resident sleeping rooms". However, CMS now concludes in the Proposed Rule that GAO's recommendations requiring smoke alarms are now "moot," since the Proposed Rule would require sprinklering of all facilities. Such material change was declared without explanation beyond the conclusion that "smoke alarms can only warn facility staff and residents of the fire. They cannot suppress a fire or prevent it from spreading to other areas." Proposed Rule, 71 F.R. at 62970 (October 27, 2006). CMS summarily concluded that "containing a fire reduces the threat to residents in other portions of the building and allows facility staff to focus their energy on the area that is most affected by the fire, without worry about the fire spreading to other areas and threatening other residents." *Id.* CMS fails to explain why smoke alarms will be supplanted despite the facts that the GAO report concluded that they provide the very different safety function of an "alert". In GAO's documented reviews involving both the Nashville and Hartford fires, GAO investigators cited local and state fire officials' determinations that smoke alarms in resident rooms would probably have provided

¹ Under the APA, an agency's decision must not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

Under the arbitrary and capricious prong of this standard, an agency must ensure that it has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Moreover, "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when the agency does not act in the first instance." *Id.*

nursing home staff additional precious minutes to begin implementing an evacuation scheme, especially for frail, elderly residents with limited, or no mobility. GAO stated:

“the lack of smoke detectors in resident rooms may have contributed to a delay in both staff response and fire department notification; earlier detection of these fires may have helped to limit the number of fatalities... In recognition of the importance of smoke detectors, Tennessee is now requiring all newly licensed nursing homes to have smoke detectors in resident rooms and the Hartford facility is voluntarily installing smoke detectors in all resident rooms” GAO Report, at 19-20

GAO’s footnote 25 is even more revealing:

In contrast, the presence of smoke detectors in resident rooms made a significant difference in a December 2003 nursing home fire in Nevada. A resident smoking in bed while on oxygen started a fire at 2:20 a.m. Staff were alerted by the in-room smoke detector, and the fire was extinguished before it caused a significant amount of damage. While the resident who started the fire subsequently died as a result of the fire, no other deaths were reported. Although the facility was equipped with automatic sprinklers, the buildup of heat from the fire had not reached a level sufficient to activate the sprinklers.

CMS omits any discussion of the GAO’s evaluation and emphasis on the important, differing role that smoke alarms can play in nursing home safety, while at the same time, citing its adherence to the weight of what it considers GAO’s thoughtful and expert recommendations. (See, e.g., CMS comment on GAO report, page 41.) Moreover, CMS completely disregards the admonition among the GAO report’s conclusions that: “...commonsense features such as smoke detectors in resident rooms have been shown to be effective in alerting staff to a fire while it is still relatively manageable...” GAO Report, at 40. The GAO Report is part of the record in this rulemaking.

Sunset Provision

The result of the Proposed Rule’s sunset provision for required smoke alarms is the elimination of a basic fire safety *alert system* feature significantly different than installed sprinklering systems. Such outcome is in direct conflict with the Life Safety Code, NFPA 101 and the GAO recommendations. NEMA notes again that the LSC, at least since 2003, has required in Chapter 32 (for new residential board and care occupancies) and Chapter 33 (for existing residential board and care occupancies) that nursing homes are “...protected with approved smoke alarms installed in each sleeping room...” Yet CMS states in the Proposed Rule 71 F.R. at 62960:

Facilities that are fully sprinklered in accordance with NFPA 13 are exempt from the smoke alarm requirement. Once all facilities install sprinkler systems in accordance with the 1999 edition of NFPA 13, as we are proposing to require, all facilities would be exempt from the requirements of paragraph (a)(7). We believe that it is proper to state, in regulation, that the smoke alarm requirement would cease to be

effective upon the phase-in date of the sprinkler requirement.

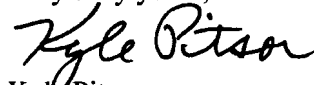
Therefore, we propose to add a sunset provision to the smoke alarm requirement. (Emphasis added)

CMS' citation to NFPA 13 for **installation of sprinklers** as its reference authority for its phase out of smoke alarms is inapposite. NFPA 13 governs, in minute detail, the installation, testing, and maintenance of sprinklering systems, and contains no directives or requirements for smoke alarms, such as those detailed in the LSC referenced above. CMS does not explain its reasoning to sunset this important requirement, which is inexplicable given CMS's support for the Life Safety Code. If CMS were to promulgate a final rule without deleting the sunset provision for smoke detectors, it would run afoul of both its mandate from Congress to protect nursing home residents, and its well-settled obligations under the Administrative Procedure Act not to act in an arbitrary and capricious manner. See, National Fuel Gas Supply Corp. v. F.E.R.C., 468 F.3d 831 (DC Cir. 2006)

Conclusion

NEMA strongly supports the requirement in the CMS Proposed Rule to include an automatic sprinkler system requirement for all long term care facilities to improve fire safety in a timely manner. NEMA opposes CMS's Proposed Rule where it would sunset the requirement for smoke detectors. NEMA knows of no authority that supports the proposition that installation of sprinklering systems moots the necessity for smoke detectors as a safety alert system.

Very truly yours,



Kyle Pitsor

Vice-President, Government Relations

Submitter : Ms. Rebecca Baker
Organization : Ms. Rebecca Baker
Category : Individual

Date: 12/26/2006

Issue Areas/Comments

Background

Background

This section lacks recognition of the all-important role of model building and fire codes and their enforcement by state and local governments for the improvement of fire safety in health care facilities. Having performed many inspections on these facilities during construction and renovation, the safety services provided by local governments are comprehensive, cost effective and commendable.

Current Fire Safety Status

Current Fire Safety Status

This rulemaking should correctly recognize the contribution of model codes other than the code named in the rule on the establishment of fire sprinkler requirements in new facility construction and renovation of existing facilities.

GAO Report

GAO Report

There is a common objective among various levels of government - that being safety. The agency is strongly encouraged to work with state and local building and fire officials to better achieve this goal by recognizing the International Building and Fire Codes. A cooperative approach would effectively eliminate duplication and conflicting requirements.

With respect to the effects of Federalism through this national regulation, HHS should more fully review and discuss its regulatory obligations under Executive Order 13132. This requirement addresses prior consultation with sub-federal authorities before taking actions that have considerable impact on State and local governmental authority.

GENERAL

GENERAL

As a building safety professional working for a local government, I support that nursing homes be fully sprinklered. In fact, the ICC building and fire codes used by state and local governments have required sprinkler systems for new and major remodels of long-term care facilities since the 1970s -- long before the federal government.

Phase-in

Phase-in

Cost Estimates: Retrofitting sprinklers in this age of buildings will certainly require testing for asbestos prior to any work beginning. The figures provided (\$4.10 to \$6.15 per square foot) do not appear to reflect that asbestos will likely be found in many, if not most locations. Asbestos abatement is an expensive undertaking.

Submitter : Cindy Meyer

Date: 12/26/2006

Organization : City of Vancouver Development Review Services

Category : Local Government

Issue Areas/Comments

Background

Background

As a professional in the field of public safety through building and fire prevention codes, I support an objective to require America's existing nursing homes, that currently do not have automatic fire suppression systems, to be fully protected with fire sprinkler systems.

Current Fire Safety Status

Current Fire Safety Status

As the nations three model code agencies merged to create one model code development process and their nationwide and international members have recognized the need for a single code standard, the federal government also needs to make recognition of the International Code Council family of compatible codes and references of ANSI, NFPA and a number of other recognized standards as the standard for construction and life safety. Consistency and compatibility should be a major factor for the development of any standard requiring retro-fit of existing structures for structural and fire-life safety requirements.

GAO Report

GAO Report

I support a phased-in approach to ensuring that all pre-existing long-term care facilities are fully protected with fire sprinkler systems as would be required in new construction under America's predominant building safety and fire protection codes.

GENERAL

GENERAL

This is a regulation that has meaning, depth and purpose and should not be delayed.

Maintenance

Maintenance

These care facilities charge their residents a lofty sum for residency and care. There should not be a presumption that the cost of retrofitting a care facility outweighs the preservation of life, and to a lesser importance property protection, that the installed fire protection system will provide. In addition, the most current and scientific best practices/codes should be the standard of installation, that being the current edition of the ICC Fire Code and associated standards.

Phase-in

Phase-in

Rather than a phase-in of the standard and/or installation, as protection of life is monumental, the federal government should set up a low interest loan fund, where it is demonstrated that a facility owner cannot financially make a capital outlay to have a system installed have a funding option available to them.

Regulatory Impact Statement

Regulatory Impact Statement

Use of the ICC International Fire Code and associated standards provides for a regular maintenance program. This standards is used consistently in all health care facilities and other buildings where automatic fire protection systems are installed.

Sunset Provision

Sunset Provision

Regulatory impact will be minimal at the local level as required permit and inspection fees will recover most costs incurred to implement the mandate. Also, in the long term it will be less expensive financially and emotionally to local services and the community than dealing with a loss of life and facility for a fire in an unprotected facility.

Submitter : Mr. William Mania
Organization : Michigan Campaign for Quality Care
Category : Consumer Group

Date: 12/26/2006

Issue Areas/Comments

GENERAL

GENERAL

Please see attached.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

Submitter : Ms. Alison Hirschel
Organization : Michigan Poverty Law Program
Category : Attorney/Law Firm

Date: 12/26/2006

Issue Areas/Comments

GAO Report

GAO Report

CMS is soliciting public comment on the decision to regulate the installation of automatic sprinkler systems through Federal rulemaking rather than deferring to state and local jurisdictions. Since Michigan ranks last in the country in the percentage of fully sprinklered nursing facilities, Michigan nursing facility residents cannot look to state or local government to ensure they are protected by sprinklers which have long been recognized as the most effective fire suppression mechanism. Without federal action, Michigan residents remain in grave danger compared to similar populations in other states.

GENERAL

GENERAL

These comments are submitted by both the Michigan Campaign for Quality Care and the Michigan Poverty Law Program. The Michigan Campaign for Quality Care is a statewide grassroots organization of consumers who seek better care, better quality of life and better choices for Michigan's long term care consumers. The Michigan Poverty Law Program is the statewide back-up center for Michigan's legal services advocates who provide free legal services to low income Michigan citizens. Because Michigan nursing home residents are at especially grave risk of death or injury from fires, both the Michigan Campaign for Quality Care and the Michigan Poverty Law Program have made improved fire safety in nursing homes a major priority. We therefore strongly endorse CMS's proposal to require all nursing facilities to install automatic sprinklers throughout their buildings. In our comments below, we urge CMS to:

- * Require all nursing facilities to comply with the proposed rule within 18 months of the regulation's publication date; and to
- * Rescind the sunset provision for battery-operated smoke detectors since smoke detectors continue to play a vital role in fire safety.

We understand that only 36 percent of Michigan nursing facilities are fully sprinklered, compared to a national average of more than 80 percent. Moreover, according to the 2004 GAO report on fire safety, 92.1 percent of Michigan's 431 nursing homes were cited for fire safety violations in their most recent survey at that time. (Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight, GAO, July 2004). In 2005, four Michigan nursing facility residents died in two separate nursing home fires and dozens of other residents were hospitalized or forced to evacuate the facilities. Despite these recent tragedies, a state proposal to use Medicaid funds to assist nursing homes to install sprinkler systems has been put on hold. Michigan residents remain at tragic risk of death or injury in fires like the catastrophic fires in Connecticut and Tennessee nursing facilities in 2003 that resulted in 31 deaths. Since both Michigan's nursing facility industry and its state government have failed to protect Michigan residents appropriately, we look to CMS to provide the swiftest and most comprehensive protection possible and therefore strongly support regulation through federal rulemaking rather than state or local initiatives.

Installation

Installation

CMS proposes to add a sunset provision to the March 2005 interim rule requiring nursing facilities that do not have automatic sprinklers or hard-wired smoke detectors to install (at a minimum) battery-operated smoke detectors in resident rooms and public areas. The sunset would correspond to the phase-in date of the sprinkler installation requirement. We request that this requirement be retained because we believe it will continue to safeguard residents in a number of important ways.

First, we understand that sprinklers and smoke detectors provide fire safety protection in crucial but different ways. Smoke alarms are designed to activate before heat rises to a level that would trigger an automatic sprinkler and can therefore provide essential early notice of an impending tragedy. This is particularly important in nursing facilities where residents who suffer from cognitive and physical impairments may be unable to alert staff or emergency personnel that a fire has begun and at which there may be too few staff on duty to observe fires promptly. (Indeed, in the Ishpeming, Michigan fire in December, 2005 that claimed two lives, a resident with communication difficulties did call 911 but the dispatcher was unable to understand the resident. When the dispatcher subsequently called the facility to investigate if there was a fire in the building, staff was unaware that the fire had already started by the resident's room and initially advised the dispatcher that there was no emergency.) Moreover, the fact that smoke detectors provide early notice of smoke or fires will protect residents near the point of origin of the fire who would be at risk of injury or death even before a sprinkler system could suppress the fire.

In addition, USA Today has reported troubling statistics concerning defective sprinklers. According to a report in February, four sprinkler recalls in seven years identified 45 million defective sprinkler heads. This number represents approximately one tenth of all sprinklers installed since 1991.

As noted in the comments submitted by the National Citizens Coalition for Nursing Home Reform, Congress has already recognized the importance of having both sprinkler systems and smoke detectors. The 1990 Hotel and Motel Fire Safety Act prohibits federal employees on public business from staying in public accommodations more than three stories in height that are not equipped with hard wired, single station smoke detectors in guest rooms and automatic sprinkler systems with a sprinkler head in each room. Since smoke detectors continue to provide a crucial but different form of fire protection to residents and since sprinkler systems, like all systems, sometimes fail, retaining the requirement that facilities maintain smoke detectors in all resident rooms and public areas is an important and low cost way to ensure comprehensive fire protection to an especially vulnerable population.

Maintenance

Maintenance

CMS is soliciting comments on the proposed phase-in period for these regulations. While we are strongly supportive of and grateful for the proposed requirement, we are deeply concerned that the five, seven, or ten year period contemplated in the regulations for phase-in is far too long. Indeed, this requirement is already significantly overdue and delaying implementation will continue to place residents at unnecessary risk. We believe 18 months from publication of the final rule is an appropriate phase-in period and should be sufficient for facilities to reprioritize and redistribute resources.

Facilities that are not fully sprinklered have already been put on notice that this requirement was likely to be promulgated and should already be planning for the installation of sprinkler systems throughout their buildings. The Background section of the proposed regulation demonstrates that CMS has no doubt about the efficacy and importance of sprinkler systems in preventing multiple death fires in nursing facilities. The federal government should not continue to pour millions of dollars of Medicaid and Medicare funds into nursing facilities that do not make prompt efforts to install these essential protections.

Submitter : Mr. William Mania
Organization : Michigan Campaign for Quality Care
Category : Consumer Group

Date: 12/26/2006

Issue Areas/Comments

GENERAL

GENERAL

Please see attached.

CMS-3191-P-125-Attach-1.DOC

CMS-3191-P-125-Attach-2.DOC



MICHIGAN CAMPAIGN FOR QUALITY CARE

William Mania, Chairperson

5886 Highgate Avenue

East Lansing, Michigan 48823

(517) 324-5754

www.campaignforqualitycare.org

December 26, 2006

The Honorable Leslie Norwalk
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G
200 Independence Avenue, SW
Washington, D.C. 20201

Re: CMS-3191-P

Dear Ms. Norwalk:

The Michigan Campaign for Quality Care is a statewide grassroots organization of consumers who seek better care, better quality of life and better choices for Michigan's long term care consumers. The Michigan Poverty Law Program is the statewide back-up center for Michigan's legal services advocates who provide free legal services to low income Michigan citizens. Because Michigan nursing home residents are at especially grave risk of death or injury from fires, both the Michigan Campaign for Quality Care and the Michigan Poverty Law Program have made improved fire safety in nursing homes a major priority. We therefore strongly endorse CMS's proposal to require all nursing facilities to install automatic sprinklers throughout their buildings. In our comments below, we urge CMS to:

- ▲ **Require all nursing facilities to comply with the proposed rule within 18 months of the regulation's publication date; and to**
- ▲ **Rescind the sunset provision for battery-operated smoke detectors since smoke detectors continue to play a vital role in fire safety.**

We understand that only 36 percent of Michigan nursing facilities are fully sprinklered, compared to a national average of more than 80 percent. Moreover, according to the 2004 GAO report on fire safety, 92.1 percent of Michigan's 431 nursing homes were cited for fire safety violations in their most recent survey at that time. (*Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight*, GAO, July 2004). In 2005, four Michigan nursing facility residents died in two separate nursing home fires and dozens of other residents were hospitalized or forced to evacuate the facilities. Despite these recent tragedies, a

state proposal to use Medicaid funds to assist nursing homes to install sprinkler systems has been put on hold. Michigan residents remain at tragic risk of death or injury in fires like the catastrophic fires in Connecticut and Tennessee nursing facilities in 2003 that resulted in 31 deaths. Since both Michigan's nursing facility industry and its state government have failed to protect Michigan residents appropriately, we look to CMS to provide the swiftest and most comprehensive protection possible and therefore strongly support regulation through federal rulemaking rather than state or local initiatives

CMS Action

CMS is soliciting public comment on the decision to regulate the installation of automatic sprinkler systems through Federal rulemaking rather than deferring to state and local jurisdictions. Since Michigan ranks last in the country in the percentage of fully sprinklered nursing facilities, Michigan nursing facility residents cannot look to state or local government to ensure they are protected by sprinklers which have long been recognized as the most effective fire suppression mechanism. Without federal action, Michigan residents remain in grave danger compared to similar populations in other states.

Sunset Provision

CMS proposes to add a sunset provision to the March 2005 interim rule requiring nursing facilities that do not have automatic sprinklers or hard-wired smoke detectors to install (at a minimum) battery-operated smoke detectors in resident rooms and public areas. The sunset would correspond to the phase-in date of the sprinkler installation requirement. **We request that this requirement be retained because we believe it will continue to safeguard residents in a number of important ways.**

First, we understand that sprinklers and smoke detectors provide fire safety protection in crucial but different ways. Smoke alarms are designed to activate before heat rises to a level that would trigger an automatic sprinkler and can therefore provide essential early notice of an impending tragedy. This is particularly important in nursing facilities where residents who suffer from cognitive and physical impairments may be unable to alert staff or emergency personnel that a fire has begun and at which there may be too few staff on duty to observe fires promptly. (Indeed, in the Ishpeming, Michigan fire in December, 2005 that claimed two lives, a resident with communication difficulties did call 911 but the dispatcher was unable to understand the resident. When the dispatcher subsequently called the facility to investigate if there was a fire in the building, staff was unaware that the fire had already started by the resident's room and initially advised the dispatcher that there was no emergency.). Moreover, the fact that smoke detectors provide early notice of smoke or fires will protect residents near the point of origin of the fire who would be at risk of injury or death even before a sprinkler system could suppress the fire.

In addition, *USA Today* has reported troubling statistics concerning defective sprinklers. According to a report in February, four sprinkler recalls in seven years identified 45 million defective sprinkler heads. This number represents approximately one tenth of all sprinklers installed since 1991.

As noted in the comments submitted by the National Citizens Coalition for Nursing Home Reform, Congress has already recognized the importance of having *both* sprinkler systems and smoke detectors. The 1990 Hotel and Motel Fire Safety Act prohibits federal employees on public business from staying in public accommodations more than three stories in height that are not equipped with hard wired, single station smoke detectors in guest rooms *and* automatic sprinkler systems with a sprinkler head in each room. Since smoke detectors continue to provide a crucial but different form of fire protection to residents and since sprinkler systems, like all systems, sometimes fail, retaining the requirement that facilities maintain smoke detectors in all resident rooms and public areas is an important and low cost way to ensure comprehensive fire protection to an especially vulnerable population.

Phase-In

CMS is soliciting comments on the proposed phase-in period for these regulations. **While we are strongly supportive of and grateful for the proposed requirement, we are deeply concerned that the five, seven, or ten year period contemplated in the regulations for phase-in is far too long. Indeed, this requirement is already significantly overdue and delaying implementation will continue to place residents at unnecessary risk. We believe 18 months from publication of the final rule is an appropriate phase-in period and should be sufficient for facilities to “reprioritize and redistribute resources.”** Facilities that are not fully sprinklered have already been put on notice that this requirement was likely to be promulgated and should already be planning for the installation of sprinkler systems throughout their buildings. The Background section of the proposed regulation demonstrates that CMS has no doubt about the efficacy and importance of sprinkler systems in preventing multiple death fires in nursing facilities. The federal government should not continue to pour millions of dollars of Medicaid and Medicare funds into nursing facilities that do not make prompt efforts to install these essential protections.

Sincerely,

William Mania
Statewide Chairperson
Michigan Campaign for Quality Care

Alison Hirschel, Esq.
Elder Law Support Attorney
Michigan Poverty Law Program
611 Church Street, Suite 4A
Ann Arbor, MI 48104
(734) 998-6100

Submitter : Mr. Cleve Johnson
Organization : Mt Dept Of Health & Human Services, QAD
Category : State Government

Date: 12/26/2006

Issue Areas/Comments

GAO Report

GAO Report

I applaud CMS's proposal to proceed with rule making separate from taking action to adopt the 2006 LSC and require all long term care facilities to be protected by a complete automatic sprinkler system proceed with rule making separate from the 2006 LSC. I also think that it is necessary for CMS to assure that all health care facilities have the same regulations for life and safety and be enforced on a consistent basis. This may not occur if it is left up to the individual states. If the states have developed more stringent standards than the Federal rules, that is the prerogative of the states and should not be interfered with.

Maintenance

Maintenance

The proposed rule would only require long term care facilities to install a sprinkler system throughout their facilities. CMS should also require the installation of a complete supervised automatic sprinkler system in other inpatient health care facilities such as hospitals and especially critical access hospitals with swing beds. In our state we are seeing smaller facilities that are a long term care facility combined with a critical access hospital (CAH) closed and the long term care residents are being placed in the hospital swing beds. In these instances we have the same long term care or nursing home residents in a facility that does not have the same services and if the facilities are not included in this rule making process, they will not be offered the same level of protections as the other nursing homes. This is an issue that is starting to be seen in Region 8 and there is no doubt that it will progress to other areas that have critical access hospitals. In addition, there are other rural hospitals with only swing beds that probably have minimal staffing and if they are not sprinklered, they have the same potential for death and injury from fire that long term care facilities have.

Phase-in

Phase-in

There should be a phase-in period for facilities to install a complete sprinkler system but a 7-10 year period is not realistic if there is such a concern for the safety of long term care facility residents. As stated in the action part of the proposal, CMS decided there would be a delay of possibly 18 months if the latest edition of the LSC was adopted and a further delay for a phase-in period of 3-10 years. If there is such a concern for minimizing a delay the phase-in period should be 3-5 years. One good reason for that is that facilities should have taken notice that the sprinkler requirement was coming and if a 10 year phase in is provided it is very possible that a number of facilities will wait until the last possible moment to get the process going. The rule should also make it clear whether or not a waiver would be possible if the system was not installed in a timely manner.