



# American Health Care Association

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December 21, 2006

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

The American Health Care Association (AHCA) is pleased to provide comments on the proposed rule for Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems. AHCA is the nation's leading long term care organization. AHCA and its membership are committed to performance excellence and Quality First, a covenant for healthy, affordable and ethical long term care. AHCA represents nearly 11,000 non-profit and proprietary facilities dedicated to continuous improvement in the delivery of professional and compassionate care provided daily by millions of caring employees to more than 1.5 million of our nation's frail, elderly and disabled citizens who live in nursing facilities, subacute centers and homes for persons with mental retardation and developmental disabilities.

AHCA is in full support of requiring all nursing facilities to be fully sprinklered. We will continue to work with Congress to obtain funding for this requirement and we ask for the support of the Centers for Medicare & Medicaid Services (CMS) in this endeavor. Previously introduced legislation would provide for accelerated depreciation as well as low-interest loans.

Following are our specific comments to the proposed rule.

### CMS Action

AHCA is strongly opposed to CMS adopting the National Fire Protection Association (NFPA) 2006 Life Safety Code as an alternative to the Proposed Rule Making for Mandating Sprinklers. CMS adoption of the 2006 Life Safety Code (or Code) would significantly increase the cost impact of the proposed rule beyond the cost impact for the proposed rule to mandate sprinklers. The proposed rule for sprinklers impacts approximately 22% of all nursing facilities or 3500 facilities, while adoption of the 2006 Code would impact 100% of all nursing facilities or approximately 16,000 facilities.

We agree that adoption of the 2006 Code will result in delaying the effective date of the rule and the effective date of having all nursing facilities fully sprinklered. We believe this would be a disservice to the residents of nursing facilities and their families.

THE AMERICAN HEALTH CARE ASSOCIATION IS COMMITTED TO PERFORMANCE EXCELLENCE AND QUALITY FIRST, A COVENANT FOR HEALTHY, AFFORDABLE AND ETHICAL LONG TERM CARE. AHCA REPRESENTS MORE THAN 10,000 NON-PROFIT AND FOR-PROFIT PROVIDERS DEDICATED TO CONTINUOUS IMPROVEMENT IN THE DELIVERY OF PROFESSIONAL AND COMPASSIONATE CARE FOR OUR NATION'S FRAIL, ELDERLY AND DISABLED CITIZENS WHO LIVE IN NURSING FACILITIES, ASSISTED LIVING RESIDENCES, SUBACUTE CENTERS AND HOMES FOR PERSONS WITH MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

Adoption of the 2006 Code would also result in adopting the newer editions of the 52 referenced standards used in the 2006 Code. CMS surveyors and facilities would need to understand the impact of these referenced standards and facilities would likely incur additional costs to comply with them.

As has occurred in the past, the adoption of a new edition of the Life Safety Code will result in significant political pressure on CMS to adopt the International Building Code as an alternative to the Life Safety Code. Alternatively, the adoption of a requirement for all facilities to be fully sprinklered would result in minimal political pressure from those who favor and lobby for the building codes.

AHCA supports regulating sprinklers through the federal rule-making process rather than deferring to state or local rule-making. One of the major reasons the federal government adopted the NFPA Life Safety Code and other fire safety requirements in 1970 for all new and existing nursing facilities was to assure an adequate and uniform level of fire/life safety in all nursing facilities. Even if all states adopt a mandatory requirement for sprinklers in all nursing facilities, if history repeats itself, states could adopt the requirements with amendments that CMS would have difficulty controlling and monitoring. States and local jurisdictions are subject to local political pressure resulting in a possible watering-down of the sprinkler requirements and longer phase-in periods. To defer to state and local jurisdictions for any portion of the fire protection system for nursing facilities would be counter-productive, especially for the most important fire safety feature in a nursing facility.

#### **A. Sunset Provision**

The proposed rule includes a sunset provision for the recently required smoke alarms/detectors for all nonsprinklered nursing facilities. The proposed sunset provision would be at the end of the phase-in period for the installation of the sprinklers. For a facility that installs a complete sprinkler system in the early years of the phase-in period (e.g. the first or second year), the facility would have to maintain the smoke detectors for several years after they install sprinklers. An unintended consequence of this proposal could be that facilities will delay installation until near the end of the phase-in period so that they do not have to comply with both requirements.

We recommend the sunset provision for the smoke alarms/detectors be facility-specific. That is, a facility would no longer be required to have and maintain the smoke alarms/detectors as described in paragraph (a)(7) (as referenced in the notice of proposed rule-making) after the new sprinkler system installation is completed and approved.

We believe that linking the sunset provision to the installation and approval of a facility's full sprinklering is a way for CMS to be proactive in encouraging the early installation of the sprinklers.

## **B. Installation**

One reason many nursing facilities in rural areas are not sprinklered is because they do not have access to a municipal water system that can provide an adequate volume of water to supply a fire sprinkler system in accordance with *NFPA 13, Standard for the Installation of Sprinkler Systems*. Both the 1999 NFPA 13, applicable to the 2000 NFPA Life Safety Code and the 2007 NFPA 13, (the most current edition) reduces the water supply requirements when Quick Response Sprinklers (QRS) are used. Even with the use of QRS, the water supply requirements are substantial in buildings of combustible construction and buildings using dry pipe sprinkler systems. The reason for the substantial water supply requirements is because the scope of NFPA 13 addresses both life safety and property protection. For example, NFPA 13 requires a water supply of approximately 6800 gallons for a combustible building using QRS heads. NFPA 13 only requires a water supply of approximately 1700 gallons for a building of noncombustible construction using QRS heads.

Many of the nursing facilities that are currently non-sprinklered are of combustible construction. Some of these facilities are not sprinklered because they comply with the CMS developed "sprinklered equivalency criteria" or Fire Safety Evaluation System and are deemed equivalent to the Code due to alternate protection provided; a few combustible buildings have waivers.

The scope of NFPA 13D and NFPA 13R (sprinkler installation standards for residential occupancies and one- and two-family dwellings and manufactured homes) address only life safety protection and the water requirements in both these standards are significantly less for a building of combustible construction. Clearly, property protection, combustible versus noncombustible, drives the water supply requirements in NFPA 13. We believe the focus of sprinklering in nursing facilities should be life safety protection, not property protection.

Because nursing facilities are very compartmented buildings, especially in patient sleeping compartments, the vast majority, if not all fires in nursing facilities will be controlled by the operation of a few sprinkler heads. NFPA data clearly supports the fact that the operation of only a few sprinkler heads will control a fire in a compartmented, light hazard occupancy such as a nursing facility.

There is significant cost associated with arranging for storage and usage of 6800 gallons of water and no concomitant increase in life safety. We recommend that the final rule allow for a reduced water supply requirement that will still provide an adequate level of life safety protection. As stated previously, NFPA 13 does allow a total water supply of approximately 1700 gallons for a building of noncombustible construction, regardless of the size of the building.

December 21, 2006

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**We recommend the sprinkling rule require a total stored water supply of 2000 gallons for any nursing facility that does not have access to a municipal water supply or the municipal water supply cannot meet the requirements by NFPA 13.**

The reduced water supply should be permitted when the nursing facility can demonstrate that the available water supply cannot meet the requirements of NFPA 13 for volume (gallons per minute) and therefore must provide a stored water supply such as a pressure tank or a fire pump with suction tank .The reduced water supply would result in a significant cost savings without compromising life safety for the occupants of a nursing facility.

#### **Phase-In**

Since 2003, AHCA has been encouraging those facilities that are not fully sprinklered to do so as soon as possible. We would like to see all nursing facilities fully sprinklered sooner rather than later. Nevertheless, there are some realities that CMS must consider when determining the phase-in period:

- We agree that it will take significant time for a facility to plan and install an automatic sprinkler system;
- In some areas of the country, it is difficult to locate a reputable sprinkler-installation company with competent workers;
- It may be financially impractical to install sprinklers in an existing facility and there must be adequate time allowed to get a new building approved and constructed; and
- Facilities will need varying amounts of time to obtain the financing necessary to complete a sprinkling project.

It is possible that, through no fault of a particular facility, they are unable to meet the phase-in deadline. If a facility can adequately demonstrate their efforts to meet the deadline, we recommend that a waiver be granted until such time as the facility can be fully sprinklered.

The American Health Care Association appreciates consideration of these comments and recommendations.

Sincerely,



Bruce Yarwood  
President & CEO



*United Association* of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of the United States and Canada

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General Office File Reference: WPH

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William P. Hite  
General President

Patrick R. Perno  
General Secretary-Treasurer

Stephen F. Kelly  
Assistant General President

December 21, 2006

**VIA U.P.S. OVERNIGHT**

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 21244-1850

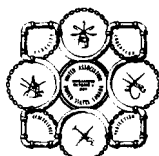
**Re: *File Code CMS-3191-P***  
***Automatic Sprinkler Requirement for Long Term Care Facilities***

Dear Madam or Sir:

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO ("United Association") appreciates the opportunity to comment on the Proposed Rule requiring all long-term care facilities to be equipped with automatic sprinkler systems, which was published on October 27, 2006.

The United Association is an international labor union that represents over 325,000 plumbers, pipefitters and sprinklerfitters in the United States. Our membership includes the skilled tradespeople who will be doing much of the sprinkler installation made necessary by the adoption of the proposed rule. Our sprinklerfitter members take pride in the importance of automatic sprinkler systems to saving lives. We applaud CMS for proposing this rule, which has crucial life-saving potential for the frail populations of the nation's long-term care facilities.

As requested, the United Association's comments will focus on the duration of the phase-in period under the rule. The United Association believes that the rule should be fully implemented as soon as possible. We believe that a phase-in period of no more than five years is clearly sufficient to permit the timely installation of the necessary equipment to comply with the new rule. A longer phase-in time period unduly prolongs the exposure of this vulnerable population to the unacceptable risk of grievous injury or death.



## **Safety Concern**

The number one reason the United Association suggests a phase-in period of no more than five years is that the proposed rule is absolutely necessary due to the life-threatening hazard that is posed by having elderly individuals in long-term care facilities that are not equipped with automatic sprinklers. This hazard should be rectified as soon as possible.

As if to highlight this point, even as we were preparing these comments, a tragic fire killed ten elderly and/or mentally ill individuals on November 27, 2006 in a group home in Anderson, Missouri. Media reports indicated that the home had fire alarms but no sprinklers, and that Missouri law requires only certain types of long-term care facilities to have automatic sprinkler systems.

This recent tragedy highlights once again the need to have a federal rule that would protect long-term care residents in every state from unnecessary death. Because of the crucial importance of this rule from a public safety perspective, it should be implemented as soon as possible.

It is well known that the elderly represent a rapidly expanding segment of the population of this country – a trend that will continue for the foreseeable future as the Baby Boom generation ages. With an increasing demand for long-term care, it is even more critical that the safety of these facilities be upgraded in the manner proposed in this rule.

## **Feasibility of Five-Year Implementation**

From our sprinklerfitter members' considerable experience in planning and installing automatic sprinkler systems, we believe that a phase-in period of no more than five years will provide the industry with ample time to plan and accomplish the needed work to comply with the new requirement. We note that the requirement that existing buildings be retrofitted with automatic sprinklers has already been legislated by a number of state and local governments. Based upon our members' experience with these precedents, we know the work can be done, and done right, within a five year period.

A partial listing of these prior legislative initiatives includes:

- **Alabama** (three years to retrofit all nursing homes);
- **San Jose, California** (three years to retrofit all high rise commercial and residential buildings);
- **Boulder, Colorado** (five years to retrofit most residential buildings, health care facilities, dormitories, and hotels);
- **Connecticut** (four to five years to retrofit all hotels, motels and housing for the elderly more than four stories in height);

- **Champaign, Illinois** (retrofit all dormitories, nursing homes and high-rise buildings within five years);
- **Evanston, Illinois** (retrofit all existing dormitories, hospitals, non-owner occupied rooming/lodging houses and nursing homes within three years);
- **Massachusetts** (three years to retrofit all places of assembly with occupancy of 100 people or more);
- **Harrisburg, Pennsylvania** (retrofit all business and apartment buildings over 75 feet in height, and all hotels and motels, within five years);
- **Rhode Island** (retrofit all places of assembly with maximum occupancy of 150 or more within four years);
- **Tennessee** (retrofit nursing homes within three years).

See, e.g., [www.nfsa.org/news/2004archive.html](http://www.nfsa.org/news/2004archive.html); <http://www.nfsa.org/info/retrofit.html>.

We also note that H.R. 4491, the Nursing Home Fire Safety Act of 2005 (109<sup>th</sup> Congress, Dec. 8, 2005) included a “sense of Congress” that “within five years, every nursing facility in America should be equipped with automatic fire sprinklers in order to ensure patient, resident, and staff safety.” Although this bill has not yet been enacted into law, we believe that the proposed “sense of Congress” reflects a consensus that the required retrofitting can feasibly be accomplished within five years. Furthermore, it is our understanding that the American Health Care Association, the largest nursing home industry group, agreed to the five year time frame that was included in H.R. 4491, indicating that a significant portion of the industry believes that it is feasible to retrofit existing long-term care facilities within five years.

### **Cost Considerations**

CMS’s preamble to the proposed rule indicates that CMS has estimated that the cost of implementation of the proposed rule will be higher the shorter the phase-in period allowed. We would like to point out several mitigating points which should be considered in CMS’s analysis:

- CMS’s conclusion that a shorter time frame will cost more seems to rest on an assumption that a longer time frame would allow facilities to accomplish the sprinkler retrofit more economically as part of periodic renovations which would otherwise occur over the longer time frame. But the extent to which other renovations would inevitably occur during a longer phase-in is speculative. Moreover, to the extent that it is less expensive to combine the retrofitting of sprinklers with other renovations, a five-year phase-in period may lead some facilities to undertake renovations sooner than otherwise contemplated, but this may save those facilities the costs of future renovations that will not then be required.
- There may be other cost savings to the industry that result from the shorter time frame which would offset the possible increased costs. For example, materials costs across our industry have risen in recent years and will presumably continue to rise faster

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

December 19, 2006

**File Code CMS-3191-P/Sprinkler Requirement  
for Long-Term Care Facilities**

To Whom It May Concern:

We are writing in support of the above-referenced regulation on behalf of United Association, Local Union 699 Sprinkler Fitters and Apprentices, Seattle, Washington. Our Local Union represents 142 Apprentice Level Sprinkler Fitters, who are the trades men and women who install, inspect, service and maintain fire suppression systems in seven counties in the Puget Sound region of our state.

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. It has been well documented that sprinkler systems SAVE lives and property. As we look to the future, we thank your agency for taking the action and initiative to propose this new regulation.

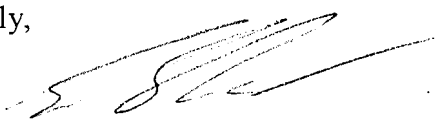
We strongly support the proposed rule and submit that affected facilities should be given no more than 5 years to comply with the new requirements. This should provide the industry with ample time to address this situation, plan the required work and arrange for the installation of these projects.

From our experience in the planning and installing of these systems, this is an adequate time frame; any longer would pose undue and unacceptable risks for the persons living and working in these facilities.

Let us go a step further and point out that 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 to have proper fire sprinkler systems in their facilities.

Thank you for your attention to this matter.

Sincerely,



GARRETT SHERWOOD



December 18, 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 Requirement for Long-Term Care Facilities**

To Whom It May Concern:

We are proud to support the above-referenced regulation on behalf of United Association, Local Union 699 Sprinkler Fitters and Apprentices, Seattle, Washington. Our Local Union represents 430 Journey Level Sprinkler Fitters, who are the trades men and women who install, inspect, service and maintain fire suppression systems in seven counties in the Puget Sound region of our state.

The extraordinary record of sprinkler performance has been amassed primarily as a result of the high quality of performance of the fire sprinkler industry. Stringent standards of manufacturing, design, and installation along with rigid inspection procedures of components and systems have given the sprinkler industry a reputation for unparalleled excellence.

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. It has been well documented that sprinkler systems SAVE lives and property. As part of this effort, we thank your agency for taking the action and initiative to propose this new 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 required work and arrange for the installation of these projects.

From our considerable experience in the planning and installing of these systems, this is an adequate time frame; any longer would pose undue and unacceptable risks for the persons living and working in these facilities.

Let us go a step further and point out that the elderly in this country should be entitled to safer long-term care facilities.

Thank you for your attention to this matter.

Sincerely,



Randy Scott  
26821 309th Ave SE.

Ravensdale WA 98051

206-300-9225

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William P. Hite  
General President

Patrick R. Perno  
General Secretary-Treasurer

Stephen F. Kelly  
Assistant General President



# UNITED ASSOCIATION

of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of  
the United States and Canada

Founded 1889

Letters should  
be confined to  
one subject

UA Local Union:

Local 699

December 19, 2006

Subject:

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

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

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## File Code CMS-3191-P/Sprinkler Requirement for Long-Term Care Facilities

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To Whom It May Concern:

**Our seniors** are generally considered vulnerable to fires because they're less mobile than most tenants. It is crucial that we protect these fragile citizens, therefore please accept this letter of support for the above-referenced regulation on behalf of United Association, Local Union 699 Sprinkler Fitters and Apprentices, Seattle, Washington. Our Local Union represents 585 Sprinkler Fitters, who are the trades men and women who install, inspect, service and maintain fire suppression systems in seven counties in the Puget Sound region of our state.

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. It has been well documented that sprinkler systems SAVE lives and property. As we look to the future, we thank your agency for taking the action and initiative to propose this new 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 required work and arrange for the installation of these projects.

From our experience in the planning and installing of these systems, this is an adequate time frame; any longer would pose undue and unacceptable risks for the persons living and working in these facilities.

**Let us go a step further and point out that 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 to have proper fire sprinkler systems in their facilities.

Thank you for your attention to this matter.

Sincerely,

Michael K. Dahl  
Business Manager,  
Local 699 Sprinkler Fitters and Apprentices

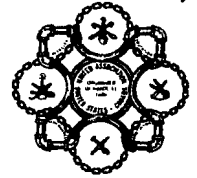




# SPRINKLER FITTERS UNION UA LOCAL 268

AFFILIATED WITH AFL-CIO

[www.sprinklerfitters268.org](http://www.sprinklerfitters268.org)



1544 S. 3rd STREET  
ST. LOUIS, MISSOURI 63104

12/12/06

Phone: (314) 241-8023  
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Centers for Medicare & Medicaid Services  
Department of Health & Human Services  
P.O. Box 8012  
Baltimore, MD 21244-8012  
Attention: CMS-3191-P

To Whom It May Concern:

I am writing this letter in support of the above referenced regulation on behalf of the members of Sprinkler Fitters Local 268. These members install, inspect and maintain fire sprinkler systems in eastern Missouri and southwestern Illinois.

Recently there was a fire in at the Anderson Guest House in southwest Missouri. The Anderson Guest House was a privately owned and operated group home where mentally disadvantaged residents were living. Ten people died in the early morning fire. The home was built before sprinklers were required and therefore the owners of the facility chose not to install fire sprinklers. These deaths could have been prevented. This fire occurred less than one month after newspaper articles announced CMS would be looking at a proposed rule to require sprinkler systems to reduce nursing home deaths.

We strongly support the proposed rule and believe that affected facilities should be required to complete the installation of the sprinkler systems within a five year period. We believe that the five year period is an adequate amount of time given the fact that the residents of these facilities are among the nation's most vulnerable residents. A former St. Louis Fire Chief once stated "A sprinkler system is the ultimate in fire protection. It is on duty 24 hours a day, does not need to be staffed and operates automatically. It puts out fires in the earliest stages and prevents the build up of deadly smoke." As a member of the Missouri Fire Safety Advisory Board, serving under three governors, I could not have said it any better.

I thank you and congratulate you for your attention to this matter. The nation's most vulnerable residents deserve this basic protection. If I can be of any further assistance, I can be reached at the above number.

Sincerely,

Michael R. Mahler

Business Manager

Sprinkler Fitters Local 268

**CMS-3191-P/ Sprinkler Requirements for Long Term Care Facilities**



# PILKINGTON

Dec 15, 2006

To whom it may concern:

In regards to a letter I received about C M S Rule regarding Sprinkler systems in long term Care Facilities.

I have never visited one but am surprised there is not a Fire Protection system in all Facilities of this sort. I hope I will never need to be committed to such a Facility but it would be a comfort to know that I would not burn to death.

Sincerely

Kenneth Anthony  
Retired Sprk. Fitter  
Local 821 of Fla.

**CENTER FOR MEDICARE ADVOCACY, INC.**  
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**DATA PROJECT DIRECTOR**  
Larry S. Glatz

December 21, 2006

**OF COUNSEL**

Sally Hart\*

\*Admitted in other jurisdictions

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

Re: CMS-3191-P  
Medicare and Medicaid Programs;  
Fire Safety Requirements for Long-  
Term Care Facilities, Automatic  
Sprinkler Systems

Dear Colleagues:

The Centers for Medicare & Medicaid Services proposes to require all long-term care facilities to be equipped with sprinkler systems at some as yet undetermined date in the future. The Center for Medicare Advocacy submits brief comments on four points.

**Sunset Provision**

CMS proposes that CMS would not enforce the requirement for battery-operated smoke alarms in facilities that met the sprinkler requirement. 71 Fed. Reg. 62,957, at 62,960.

We oppose this change. It is our understanding that smoke alarms and sprinklers serve different functions. Facilities need to have smoke detectors, hard-wired or battery-operated (and preferably, a combination of the two), even when they are fully sprinklered.

In an editorial in *Nursing Homes* magazine (March 10, 2005), Richard Licht, Technical Director of the Alliance for Fire and Smoke Containment and Control, described a then-recent GAO recommendation calling for the installation of sprinklers as insufficient to

protect nursing home residents and recommended, instead, a more balanced approach to fire safety that also includes “properly functioning detection and containment devices.” Richard Licht, “Many nursing homes need better fire and smoke protection,” *Nursing Homes* magazine (Mar. 10, 2005).

Mr. Licht first reported that nursing homes do not have enough staff. As a consequence, “Reliance on nursing staff to assume the role of emergency responders requires closer scrutiny.” He also noted that statistics of the National Fire Protection Association indicate that sprinklers “fail to operate satisfactorily approximately 20% of the time in healthcare facilities for various reasons, including lack of maintenance and water supply.” Moreover, even when sprinklers operate successfully, their role is controlling fire, not extinguishing it.

Mr. Licht concluded that “properly functioning detection and containment devices are as important as the protection offered by fully functional and properly maintained sprinkler systems.” He described as “essential” having “redundant protection systems and a balanced fire protection design approach in these facilities, rather than relying mainly on automatic sprinkler systems and nursing staff for rescue.”

The Alliance for Fire and Smoke Containment and Control (AFSCC), the association with which Mr. Licht works, “was established in 1999 by building enforcement, construction, design, and manufacturing professionals in response to the need for a well-coordinated, educational effort to promote the value of a balanced fire protection design in the built environment.” AFSCC, Mission, on its homepage, <http://www.afscc.org/index.htm>. See also “Balanced Approach to Fire Safety; When it comes to protecting people and property, a mix of ACTIVE AND PASSIVE FIRE PROTECTION MEASURES is the best choice,” *Building Operating Management* 32 (Nov. 2004), <http://www.afscc.org/Papers/BOM%20article.pdf>.

As CMS notes, CMS, in response to the GAO report *Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight*, GAO-04-660 (July 16, 2004), <http://www.gao.gov/new.items/do4660.pdf> (71 Fed. Reg., at 62,959), published an interim final rule, “Fire Safety Requirements for Certain Health Care Facilities; Amendment,” that required facilities to install “battery-operated smoke detectors in resident sleeping rooms and public areas, unless they have a hard-wired smoke detector system in resident rooms and public areas or a sprinkler system installed throughout the building” (70 Fed. Reg. 15,229 (March 25, 2005)).

It does not make sense to us to eliminate the requirement for smoke detectors that facilities may have just installed, especially when such a system is complementary, and not redundant, to sprinklers. Moreover, even if the systems were redundant, redundancy is appropriate, under these circumstances, to save lives.

## **Phase-In**

CMS asks what the phase-in period should be for the installation of automatic sprinklers, and, for purposes of illustration, suggests 5-year, 7-year, and 10-year phase-in periods. 71 Fed. Reg. 62,957, at 62,966.

The Center believes that all three timeframes are too long. The consequences of not having sprinklers are too dire for residents – the 2003 fires in Connecticut and Tennessee, by themselves, accounted for 31 deaths – to allow such lengthy phase-in periods.

We suggest that the phase-in period be no longer than 18 months. In addition, during any phase-in period, the 3,688 unsprinklered facilities nationwide that will be affected by the sprinkler requirement should be required to take additional measures to protect residents. For example, since CMS acknowledges that fires often occur at night, “when staffing levels are lowest,” (71 Fed. Reg., at 62,959), CMS should require unsprinklered facilities to increase their staffing at night to ratios that are sufficient to protect residents. If one staff member can only assist six residents evacuate, for example, then facilities without sprinklers should be required to have at least one staff member for each six residents.

## **Maintenance**

CMS proposes to require that facilities installing sprinkler systems “test, inspect, and maintain” them “in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*.” 71 Fed. Reg., at 62,963, proposed §483.70(8)(ii).

While the Center supports a requirement for testing, inspecting, and maintaining sprinkler systems, we want to assure that standards for testing, inspecting, and maintaining systems keep pace with new requirements, as they are updated and enacted.

## **Necessity of federal regulations**

CMS proposes federal regulations to assure “the same minimum level of fire safety regardless of what State or locality [residents] reside in.” 71 Fed. Reg., at 62,971.

While we support the decision to enact federal regulations to assure a meaningful level of fire safety nationwide (71 Fed. Reg., at 62,970-971), we strongly oppose any effort to pre-empt more stringent state regulations. As CMS notes, many states already require facilities to have sprinklers throughout their buildings. 71 Fed. Reg., at 62,970. We do not want those states to go backwards and reduce existing protections for residents.

These comments are submitted by the Center for Medicare Advocacy, a private, non-profit organization founded in 1986, that provides education, analytical research, advocacy, and legal assistance to help older people and people with disabilities obtain necessary health care. The Center focuses on the needs of Medicare beneficiaries, people



December 22, 2006

Center for Medicare and Medicaid Services  
Department of Health and Human Services  
Attn: CMS-3191-P  
Mail Stop C4-26-05  
7500 Security Blvd.  
Baltimore, Maryland 1244-1850

Subject: Open Comments Related to CMS -3191-P

To Whom It May Concern:

Please find enclosed an original copy and two draft copies of open comments related to the  
aforementioned proposed rule.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in cursive script that reads 'James A. Marotta'.

James A. Marotta  
Vice President, Center for Aging



## Open Comments to the Centers for Medicare and Medicaid Centers

### Subject: [CMS-3191-P] Fire Safety Requirements for Long Term Care Facilities Automatic Sprinkler Systems

Submitted By:  
Park Ridge Living Center  
(An affiliate of Unity Health System)  
1555 Long Pond Road  
Rochester, New York 14626  
585-723-7205

#### ***“Background”***

Park Ridge Living Center, a 120-bed long term care facility located in Rochester, New York, was constructed in 1972. Since 1972, the facility has maintained compliance with all regulations as established under the Life Safety Code provisions. Under the provisions, the facility has not been required to be equipped with a fully automatic sprinkler system. The facility has met construction standards based on the size of the building and the types of materials used in the construction of the building. Additionally, the facility has met the applicable requirements by installing sprinklers in renovated sections of the building due to major renovations. However, the scope of major renovation has been limited during the thirty-five years of operation.

#### ***“GAO Report”***

The facility has maintained compliance with applicable requirements through the utilization of a hard-wired smoke detection system in resident sleeping rooms and public areas. Additionally, this detection system is ‘online’ with Town of Greece Fire Department allowing for continuous monitoring and immediate response should activation occur.

#### ***“Phase-In”***

The facility supports an appropriate phase-in period for the installation of an automatic sprinkler system. However, the phase-in requirement must account for significant planning, capital resources, and installation. In addition, the most significant challenge would be the planning and mobilization of residents for temporary relocation. In the case of Park Ridge Living Center, the facility is confronted with another significant challenge. Due to its 1972 construction, the facility will need to address abatement of asbestos-containing material that was utilized for fire proofing purposes. It has been determined that the installation of an automated sprinkler system could not be accomplished without the safe, appropriate removal of asbestos containing materials in the areas above the ceilings on each floor. The scope of work includes the removal of ceiling tiles and grid work, encapsulation of designated areas, removal of asbestos containing materials, continuous air monitoring and sampling, and reinstallation of approved fire proofing materials. As a three-story building, it is estimated that abatement project work would be completed in 30 days for each floor (90 days total). This abatement would be required prior to installation of an automatic sprinkler system. Based on the scope of work, **the facility advocates for a ten-year phase-in period as outlined in this section of the proposed rules.**

***“Overall Impact”***

The facility has engaged both architectural and environmental remediation consultants to solicit feedback on the scope of required work for both asbestos abatement and installation of an automatic sprinkler system. Based on preliminary estimates of December 2006, the financial impact of planning and installation of an automatic sprinkler system and associated asbestos abatement is as follows:

\$907,670	Removal of sprayed-on, asbestos fire proofing
36,560	Air monitoring and sampling
265,000	Reinstallation of approved fire proofing protection
<u>399,750</u>	Installation of automated sprinkler system (\$6.15 per square foot; 65,000square feet)
\$1,608,980	
160,898	Construction Contingency (10%)
<u>160,898</u>	Design Contingency (10%)
<u>\$1,930,776</u>	Total Financial Impact to Facility

All project work would be completed in compliance with local, state, and federal regulations. A required Certificate of Need application would be developed and submitted to the New York State Department of Health (Bureau of Architectural and Engineering Review) for approval.

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**SPSC**  
*Sleep Products  
Safety Council*

December 22, 2006

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

To Whom It May Concern:

On behalf of over 650 mattress producers nationwide, the Sleep Products Safety Council (SPSC) is commenting regarding proposed rule CMS-3191-P which impacts fire safety requirements for long-term care facilities.

On October 27, 2006 the Centers for Medicare & Medicaid Services (CMS) proposed requiring all long-term care facilities to be equipped with automatic sprinkler systems. An additional sunset provision was included that allows the use of smoke detectors to be discontinued if/when the facility has installed a sprinkler system.

The SPSC agrees with the need for sprinkler systems in these facilities, but phasing out use of smoke detectors raises serious safety concerns. Both mattresses and upholstered furniture – widely used in these facilities -- have been constructed to resist ignition and could smolder for an extended period of time before catching fire (if at all), which could result in serious smoke inhalation by patients. If the early-warning system is not there to detect smoke, the lives of residents and staff of long-term care facilities would be at risk. Sprinkler systems are not designed to react to smoke density or to signal danger, so escape from a potentially life-threatening situation may not be possible.

We therefore request that the CMS omit the sunset provision of the new rule and mandate instead the dual use of smoke detectors and sprinkler systems given they respond to different threats. Thank you very much.

Sincerely,



Patricia Martin  
Executive Director

21

# **SPRINKLER FITTERS U.A. LOCAL UNION 542**

P.O. Box 58161 • 227 Stanton Avenue • Pittsburgh, PA 15209  
Office 412-822-8040 • Fax 412-822-8042



**PITTSBURGH, PA**

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 United Association Local Union 542, Pittsburgh Pennsylvania. Our Local Union represents 200 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 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 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.

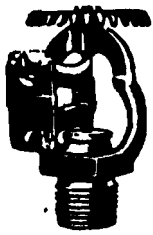
The elderly in this country should get better treatment and this rule will help ensure that they get the basic protection they deserve by requiring long-term care facilities have proper fire sprinkler systems in case of a fire hazard. Thank you for your attention in this matter.

Sincerely,

Timothy E. Helch  
Business Manager  
U. A. Local Union 542

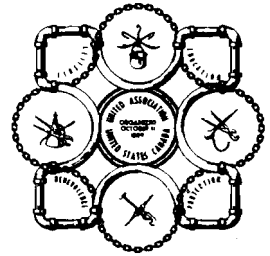
THE/jf





**LOCAL UNION 676 U.A.  
SPRINKLER FITTERS and APPRENTICES  
OF CONNECTICUT, RHODE ISLAND & WESTERN MASSACHUSETTS**

81 MARKET SQUARE • NEWINGTON, CONNECTICUT 06111  
Telephone 860-666-4447 Fax 860-666-4436



MICHAEL R. LIVINGSTONE  
BUSINESS MANAGER

PAUL D. LUNNEY  
BUSINESS AGENT

December 22, 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/Spinkler Requirements for  
Long-Term Care Facilities

Dear Sir or Madam:

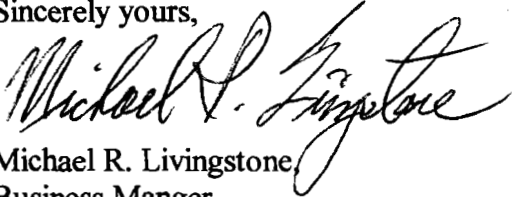
I am writing this letter of support for the above-referenced regulation on behalf of United Association Local Union 676, 81 Market Square, Newington, Connecticut 06111. Our Local Union represents 375 sprinkler fitters, who are the trades men and women who install, repair and maintain fire suppression systems in our area.

At the Greenwood Convalescent Home in Hartford Connecticut in 2003, approximately 15 patients lost their lives to fire in a partially sprinkled facility. This is an example of the danger created with the lack of Sprinkler Systems or improperly installed sprinkler systems. We know Sprinkler Systems SAVE lives. This matter is long overdue and we commend 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 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 yours,

A handwritten signature in cursive script that reads "Michael R. Livingstone". The signature is written in black ink and is positioned above the typed name.

Michael R. Livingstone  
Business Manger,  
Local 676

MRL:jap

# Maryland State Pipe Trades Association



8509 Ardwick—Ardmore Road Landover, Maryland 20785 Phone: (301) 341-7124 Fax: (301) 341-7126

December 22, 2006

## Via First Class Mail

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

Re: **File Code CMS-3191-P**  
**Proposed Rule – Sprinkler Requirements for Long Term Care Facilities**

Dear Sir or Madam:

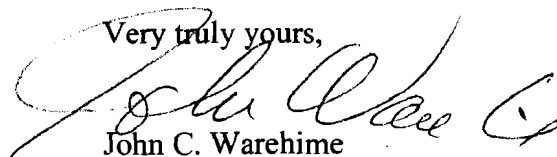
Fire Sprinklers Save Lives! Given this fact, I am writing to support the adoption of the proposed rule requiring all long-term care facilities to be equipped with sprinkler systems. Your agency should be commended for taking the initiative to propose such an important rule that will save so many lives.

As a long time member of Sprinkler Fitter U. A. Local 536, I am acutely aware of the dangers that exist in facilities that do not have sprinkler systems. Nursing home residents are an especially vulnerable population and it is our public duty to take all possible steps to protect our elderly citizens. In addition to the paramount importance of saving lives, the installation of sprinkler systems is an investment, not an expense, especially when compared to property damage costs caused by fire. Protecting against loss of these necessary facilities is a public responsibility. The cost of fire sprinkler retrofit is minimal when compared to the alternative; loss of life and loss of property.

In the best interest of our elderly citizens, I strongly encourage you to adopt this important rule. The industry should be given no more than five (5) years to comply and upgrade all nursing facilities with sprinkler systems. There is simply no good excuse or delay to prevent our most vulnerable citizens from having the basic safety protections they need and deserve.

Thank you for your attention to this very important matter.

Very truly yours,



John C. Warehime  
Marketing Representative



**American Hospital  
Association**

Liberty Place, Suite 700  
325 Seventh Street, NW  
Washington, DC 20004-2802  
(202) 638-1100 Phone  
www.aha.org

December 19, 2006

Leslie Norwalk  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W., Room 445-G  
Washington, DC 20201

**RE: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care  
Facilities, Automatic Sprinkler Systems [CMS—3191—P]**

Dear Ms. Norwalk:

On behalf of our nearly 5,000 member hospitals, health systems, and other health care organizations, and our 37,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the proposed rule that would require all long-term care facilities to be equipped with sprinkler systems.

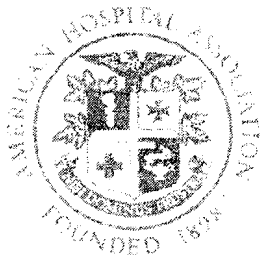
We strongly support the safety goals of this proposal, and we have found that most of our member hospitals operating skilled nursing facilities and/or nursing homes already have installed automatic sprinkler systems throughout their facilities, including the long-term care section. We agree with the provision that would require new sprinkler systems to, at a minimum, comply with the 1999 standards set forth in the National Fire Protection Association's (NFPA) Life Safety Code. We also concur that all sprinkler systems in long-term care facilities need to be tested and maintained in accordance with NFPA standards.

Due to the significant costs associated with installing sprinkler systems and the burden it may place on some rural facilities, we urge CMS to utilize a five-year phase-in schedule for this regulation, as discussed in the proposed rule.

If you have any questions, please feel free to contact Rochelle Archuleta, AHA senior associate director, at 202-626-2320 or [rarchuleta@aha.org](mailto:rarchuleta@aha.org).

Sincerely,

Rick Pollack  
Executive Vice-President







DEC 22 2006

December 22, 2006

Leslie V. Norwalk, Esq.  
Acting Administrator  
Attention: CMS-3191-P  
Department of Health and Human Services  
Room 445-G Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

RE: CMS-3191-P, *Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems*

Dear Ms. Norwalk:

The American Association of Homes and Services for the Aging (AAHSA) appreciates the opportunity to submit comments on the Centers for Medicare and Medicaid's (CMS') Proposed Rule: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems, published in the Federal Register on October 27, 2006.

The members of AAHSA serve two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our members offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities, and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

AAHSA supports the requirement that nursing facilities be fully sprinklered. Nursing facility residents, staff and public safety personnel all deserve the highest level of protection from the risks presented by fire. Given the significant cost to those facilities that are not yet fully sprinklered, we will continue to work with Congress to obtain financial assistance, such as low-interest loans, to meet this requirement. We hope the Centers for Medicare & Medicaid Services will join in supporting this effort.

Following are AAHSA's comments.

**CMS Action**

**ISSUE:** CMS decision to proceed with rulemaking separate from the 2006 LSC.

**RECOMMENDATION:** AAHSA concurs with CMS' decision to proceed with rulemaking separate from the 2006 LSC. Since adoption of the full 2006 LSC would not only require

sprinkler system installation, but would also mandate the newer editions of the 52 referenced standards contained in the Code, implementation would have to allow for training and understanding by CMS surveyors and facilities of the expectations related to the newer editions of these referenced standards. We agree that adoption of the 2006 Code would result in a further delay in requiring automatic sprinkler systems in long-term care facilities, a disservice to the residents and staff of nursing facilities.

Increased concurrent costs would also have to be considered in adopting the 2006 LSC. In the Proposed Rule Regulatory Impact Statement (IV.B.2.), CMS bases cost estimates on impact to the 21% - 22% of facilities that are currently partially sprinklered or lacking sprinkler systems. Adoption of the 2006 Code would potentially impact all nursing facilities resulting in significantly higher expenditures than will be incurred by implementation of this Proposed Rule, but would be particularly significant for those homes that are not currently fully sprinklered. The Phase-in section of the Rule recognizes that the affected facilities are likely "...to need to reallocate resources and secure additional capitol resources..." to meet this requirement. These facilities would not only have to secure the resources needed to meet the automatic sprinkler requirement, but would also have to assure sufficient funding for any additional costs associated with adoption of the 2006 LSC. The potential result is further financial burden and postponement of full sprinkler installation.

**ISSUE:** Regulation of installation of automatic sprinkler systems through Federal rulemaking vs. deferral to State and local jurisdictions.

**RECOMMENDATION:** AAHSA supports CMS' decision to regulate the installation of automatic sprinkler systems through Federal rulemaking rather than deferring to State and local jurisdictions.

It is AAHSA's understanding that a key rationale for the Federal government's initial decision to incorporate the NFPA Life Safety Code into the Requirements of Participation for Long Term Care Facilities was to assure the implementation of reliable and consistent fire and/or life safety standards and protections. Deferral to State and local jurisdictions would be contrary to this intent, i.e., even if all States accepted and/or approved the mandate for automatic sprinkler systems in nursing facilities, it could not be assured the requirement would be adopted universally without amendment or exception.

#### **A. Sunset Provision**

**ISSUE:** Sunset provision for smoke alarms that would correspond to the phase-in date of the sprinkler installation requirement.

**RECOMMENDATION:** AAHSA recommends that the sunset provision for smoke alarms in resident sleeping rooms and public areas, as required by the Final Rule, *Fire Safety Requirements for Certain Health Care Facilities; Amendment*, be facility-specific.

CMS is proposing that the sunset provision correspond to the close of the phase-in period for sprinkler installation. As proposed, it appears that facilities would be required to continue to comply with the smoke alarm requirements until the end of the phase-in period regardless of when full sprinklering is accomplished, e.g., within the 1<sup>st</sup> or 2<sup>nd</sup> year. If this is the case, linking the sunset provision to the closing date for achieving full sprinklering may create an unintentional incentive for some facilities to defer installation so they do not have to maintain and comply with both requirements simultaneously.

## **B. Installation**

**ISSUE:** Installation of approved, supervised automatic sprinkler systems throughout facilities in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*.

**RECOMMENDATION:** It is AAHSA's understanding that some rural nursing facilities are not currently sprinklered because they do not have access to a municipal water system that can provide an adequate volume of water to supply a fire sprinkler system in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*. AAHSA also understands that the costs associated with arranging for storage and usage of the proposed required amount of water can be prohibitive, and that for these facilities, it is possible to allow a reduced water supply that would result in significant cost savings without compromising life safety.

AAHSA cannot offer specifics at this time regarding the total water supply that should be maintained by these facilities. However, we recommend that CMS give careful consideration to evidence-based proposals that may be submitted in response to this provision, e.g., when Quick Response Sprinklers (QRS) are used, and that the Final Rule allow for certain circumstances when an adequate level of life safety protection can be assured with maintenance of a more reduced water supply.

## **C. Phase-In**

**ISSUE:** Appropriate phase-in timeframe for the installation of an automatic sprinkler system.

**RECOMMENDATION:** AAHSA appreciates CMS' recognition that the installation of automated sprinkler systems, particularly for older and/or rural facilities, can be a complicated undertaking and that there must be a practical timeframe for phasing in the mandate. We concur that a substantial amount of time will be needed for facilities to plan and install sprinkler systems; to ensure that installation can be accomplished by qualified firms, including those with expertise in asbestos abatement, which may be necessary in older buildings. Also, that many facilities will need time to obtain necessary financing and/or to allow for a capital project to secure resources to implement this requirement. For example, some facilities responding to CMS' encouragement in the Final Rule, Fire Safety Requirements for Certain Health Care Facilities; Amendment, that they "...go beyond the minimum requirement..." installed multiple station interconnected smoke alarms rather than battery operated detectors. One partially sprinklered facility that opted to install a hard-wired system reported an installation cost of approximately \$55,000, and now must consider how to secure funding to meet the automated sprinkler requirement. Another facility reported having plans for installation of a fire suppression system underway since April 2005, with a projected cost of \$1.3 million. A third facility reported the unanticipated consequence of increased insurance premiums because of "replacement costs." Finally, many states currently have a moratorium on new construction and/or require a certificate of need. A major renovation

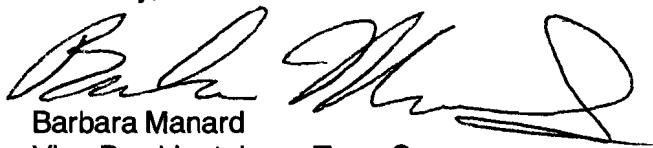
that would include installation of a sprinkler system may also require approval through these processes, potentially extending the time needed for project completion.

It is also possible that, for some facilities, there will be a decision as to the practicality of installing sprinkler systems in their existing buildings. For these facilities, the provision of appropriate care and services related to the transfer of residents will be a consideration, as well as the issues and logistics associated with retaining and/or accommodating existing staff, and locating, securing or constructing a facility.

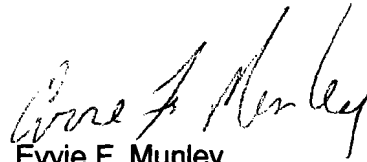
AAHSA will continue to encourage those facilities that are yet not fully sprinklered to become so as soon as practicably possible. However, in view of all of the circumstances referenced, CMS should consider allowing a phase-in period of up to seven years.

Again, AAHSA appreciates the opportunity to express our views on this Proposed Rule.

Sincerely,



Barbara Manard  
Vice President, Long-Term Care  
Health Strategies



Evvie F. Munley  
Sr. Health Policy Analyst

# NCCNHR National Citizens' Coalition for Nursing Home Reform

Barbara J. Hengstebeck, President  
Alice H. Hedt, Executive Director

1975-2005: Working Together for Quality Long-Term Care

1828 L Street, NW Suite 801  
Washington, DC 20036-5104  
202.332-2275; Fax 202.332-2949  
www.nursinghomeaction.org

DEC 22 2006

December 22, 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, DC 20201

Re: CMS-3191-P

Dear Ms. Norwalk:

The National Citizens' Coalition for Nursing Home Reform and the undersigned organizations are pleased to support CMS's intent to require retrofitting of automatic sprinklers in long-term care facilities and to provide you with our comments on issues raised in the October 27, 2005 Notice of Proposed Rulemaking, *Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems*. In addition, we would like to take this opportunity to thank CMS for the recent addition of sprinkler status and Life Safety Code compliance data to Nursing Home Compare. Your responsiveness to requests for this information is providing consumers an important new tool to assess the safety of individual nursing facilities.

While we strongly endorse CMS's proposal to require all nursing home providers to install automatic sprinklers throughout their facilities, we are very concerned about several aspects of the NPRM:

- It would not only delay implementation of the 2006 Life Safety Code but also compliance with the most recent National Fire Protection Association standards for installation and maintenance.
- Proposals for a lengthy phase-in period for sprinkler installation, if adopted, could leave residents in many facilities at risk of dying in fires well over a decade from now.

Thanks to better standards and regulations, fire deaths in nursing homes have declined significantly since the Senate Special Committee on Aging investigated the tragedy in the 1970s. Nevertheless, the occurrence of 2,300 structural fires in long-term care facilities each year is alarming, particularly as they occur in combination with chronic, epidemic rates of low staffing and staff turnover. (The NFPA Life Safety Code Handbook, Tenth Edition, calls staff

action “an integral part of the life safety features required in a health care facility” that can “readily influence the outcome of a fire.”) Until federal regulations require nursing homes to comply with current, recognized life safety protections, multiple death fires such as those in Nashville and Hartford in 2003 will almost certainly – needlessly – occur again. Our comments below include recommendations to expedite compliance with the 2006 LSC and the most recent NFPA Standards 13 and 25.

## **CMS Action**

### ***1. CMS requests public comment on whether it should proceed with its proposal to require automatic sprinklers without adopting the 2006 Life Safety Code.***

NCCNHR and the undersigned organizations make the following recommendations:

- To expedite retrofitting of existing facilities with sprinklers, CMS should issue a final rule requiring all nursing homes to become fully sprinklered within 18 months of the regulations’ publication date. We believe this is a reasonable length of time for facilities to come into compliance when they have been given ample notice by CMS and the NFPA’s adoption of the 2006 LSC that sprinklers will be enforced.
- By July 1, 2007, CMS should publish a proposed rule to implement the 2006 Life Safety Code. Federal regulations currently require nursing homes to comply with a LSC edition that is six years old and has been superseded by two new LSC editions. The historically long lag time in CMS adoption of new LSC requirements has resulted in most nursing homes being chronically noncompliant with the latest safety practices. CMS has not adequately justified why it should take three to 10 years for nursing homes to come into compliance with requirements that most businesses – with less vulnerable clients – have met for years.

### ***2. CMS requests the public to comment on its decision to regulate installation of sprinklers through federal rulemaking rather than deferring to state and local jurisdictions and to address the necessity, advantages and disadvantages of both approaches.***

The necessity of allowing the most effective regulation of fire safety in nursing homes – whether it is federal, state or local – is the vulnerability of the nursing home population. Residents are typically physically disabled and often have mild to severe dementia. Physical and chemical restraint are still common in many nursing homes, increasing residents’ helplessness and inability to evacuate or call for help in an emergency. Moreover, short-staffing – particularly on the night shift – and high turnover and failure to train all staff increase the danger to residents when there are no automatic alarms or fire suppression systems.

CMS’s preamble to the proposed regulations provides compelling reasons why federal regulations should not preempt state and local jurisdictions’ authority to impose stronger life safety requirements on nursing facilities:

- “We believe that the low number of fire-related fatalities each year is attributable to the increasing use of automatic sprinkler systems in long term care facilities as a fire protection method. *State and local jurisdictions often adopt new editions of the LSC when they are published. Therefore, a building constructed in 1991 likely met the requirements of the 1991 edition of the LSC. Beginning with the 1991 edition of the*

*LSC, all newly built facilities were required to have automatic sprinkler systems.”*  
(page 62959)

- “The effectiveness of automatic sprinkler systems has prompted some states, including Virginia, Connecticut, and Tennessee, to require that all long term care facilities have sprinklers.”

Some state governments and local jurisdictions have moved far more quickly than the federal government to implement new codes and standards and to pass fire safety legislation when multiple death fires created public demand for stronger regulation. This has improved safety for residents in those jurisdictions and provides an opportunity for advocates for fire safety and nursing home quality to lobby state and local legislators to strengthen local and state codes and enforcement. The federal government should not impede responsible state and local governments from exercising their obligations to protect their constituents in nursing homes, just as they enforce other public health and safety requirements.

Even so, only about 12 states require all nursing homes to have sprinklers, and the 2004 GAO report on fire safety found wide variability among states in citing fire safety deficiencies – from fewer than 10 percent of facilities in Kentucky to almost 90 percent in North Dakota. (*Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight*, Government Accountability Office, July 2004)

Thus, we concur with CMS’s justification (on page 62971) for publishing these regulations: “State and local governments have, in the past, made very different decisions about fire safety requirements in long-term care facilities. For example, some states, such as Tennessee and Virginia, already require all long-term care facilities to have sprinklers throughout their buildings. In contrast, other states, such as Arkansas and Nebraska, do not have such requirements, resulting in 25 percent or more of their long-term care facilities completely lacking sprinklers. This level of variability is not acceptable because residents of long-term care facilities should be assured the same minimum level of fire safety regardless of what state or locality they reside in. Federal regulation is the most efficient and expedient manner for achieving the goal of uniform nationwide minimum fire safety standards. . .”

### **Sunset Provision**

***CMS proposes to sunset the March 2005 interim rule requiring nursing facilities that do not have automatic sprinklers or hard-wired smoke detectors to install (at minimum) battery-operated smoke detectors in resident rooms and public areas.***

While we understand CMS’s rationale, eliminating any requirement for smoke detectors in resident rooms would place residents at or near the point of origin of fires unnecessarily at risk for potentially fatal burns or inhalation of smoke or other gases that were emitted before the fire was suppressed. The ability to automatically suppress a fire does not obviate the need for detecting it before injuries occur – particularly in a facility where most of the occupants are too physically or mentally frail to sound an alarm or escape; many may be physically or chemically restrained; and typically, few staff are on duty. Smoke alarms are designed to activate before heat rises to a level that would trigger an automatic sprinkler and can prevent injuries and deaths that would occur even with an automatic suppression system.

There is another reason for requiring smoke detectors as a backup for sprinklers. *USA Today* reported last February that four sprinkler recalls in seven years had identified 45 million defective sprinkler heads, about a tenth of all sprinklers installed since 1991.

NCCNHR and the undersigned organizations recommend that CMS require, at minimum, that all existing facilities maintain or install automatic smoke alarms in resident rooms and corridors. We further recommend that these be hard-wired devices connected to central alarm systems. This approximates the level of protection that Congress set for federal employees when they are traveling on public business.<sup>1</sup>

### **Installation and Maintenance**

***CMS proposes to implement the sprinkler requirement by requiring facilities to comply with NFPA 13, Standard for the Installation of Sprinkler Systems, and NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. However, it would require compliance with versions published in 1999 and 1998, respectively, rather than the current editions.***

NCCNHR and the undersigned organizations recommend:

- Requiring all nursing homes without sprinkler systems to install automatic sprinklers throughout all parts of the facility in compliance with the 2007 edition of NFPA 13, *Standard for the Installation of Sprinkler Systems*. According to the NFPA, these are “the most recent and widely available standards,” and it cites important, substantial improvements in design and installation requirements since older standards were published.
- Requiring all nursing homes to maintain sprinklers in compliance with the 2002 edition of NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*. According to the NFPA, this edition includes important improvements in inspection and maintenance requirements that should be implemented for all nursing facilities.

### **Phase-in**

***CMS proposes a variety of phase-in strategies with potential phase-in periods of five, seven or 10 years after publication of final regulations to allow facilities “time to reprioritize and redistribute resources.”***

The 31 deaths that created the momentum for these regulations occurred in 2003. The proposed phase-in periods would find most of the affected nursing homes installing automatic sprinklers at least a decade after the deaths of those residents. It is possible and in fact likely that some of these facilities would experience multiple death fires themselves while waiting for the sprinkler requirement to be imposed on them. This is simply wrong. The 3,800 or so unsprinklered and partially sprinklered nursing homes that will be affected by these rules know that they have to install automatic sprinklers. If they begin now to reprioritize and redistribute resources, they can easily comply with the regulations within 18 months after final regulations are published and should be required to do so.

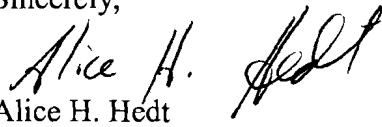
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<sup>1</sup> The 1990 Hotel and Motel Fire Safety Act prohibits federal employees on public business from staying in public accommodations more than three stories in height that are not equipped with hard-wired, single-station smoke detectors in guest rooms and automatic sprinkler systems with a sprinkler head in each room.

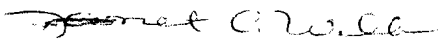


Medicaid and Medicare have provided the foundation for nursing home industry growth and profitability for 40 years. We urge CMS not to delay further in requiring facilities that receive federal funds to install the single most effective device to prevent fire deaths: automatic sprinklers.

Sincerely,



Alice H. Hedt  
Executive Director



Janet C. Wells  
Director of Public Policy

**On behalf of:**

American Federation of State, County and Municipal Employees  
Area Agencies on Aging Association of Michigan  
Area 10 Agency on Aging Ombudsman Program, Ellettsville, Indiana  
Arkansas Advocates for Nursing Home Residents  
Bay Aging Long Term Care Ombudsman, Urbanna, Virginia  
Area V Agency on Aging Long Term Care Ombudsman Program, Butte, Montana  
Center for Advocacy for the Rights and Interests of the Elderly (CARIE), Philadelphia  
Central Alabama Aging Consortium  
Citizens for Long Term Care, Delaware  
Coalition of Institutionalized Aged and Disabled, New York  
Coalition to Protect America's Elders, Florida  
Connecticut Citizens Coalition for Nursing Home Reform  
Connecticut Long Term Care Ombudsman Program  
Consumers Union  
Delaware County Ombudsman Program, New York  
Delaware Long Term Care Ombudsman Program  
District of Columbia Long Term Care Ombudsman Program  
District Ombudsman, Memphis, Tennessee  
East Tennessee Human Resource Agency Ombudsman Program  
Elder Law of Michigan  
Families USA  
Hawaii Long Term Care Ombudsman Program  
Health Care for All Coalition, Hartford, Connecticut  
Homes for the Aged Committee, Commission on Senior Adults, Southfield, Michigan  
Houston-Galveston Area Agency on Aging, Texas  
Illinois Association of Long Term Care Ombudsmen  
Illinois Long Term Care Ombudsman Program  
Kentuckians for Nursing Home Reform  
Lincoln Trail Long Term Care Ombudsman Program, Kentucky

Mid and South Pinellas County Ombudsman Program, Florida  
Louisiana Long Term Care Ombudsman Program  
Manor Care Chevy Chase Family Council, Maryland  
Massachusetts Advocates for Nursing Home Reform  
Michigan Long Term Care Ombudsman Program  
Michigan Campaign for Quality Care  
Michigan Olmstead Coalition  
Michigan Poverty Law Program  
Middle Georgia Long-Term Care Ombudsman Program  
Missouri State Long Term Care Ombudsman Program  
National Academy of Elder Law Attorneys  
National Association of Local Long Term Care Ombudsmen  
National Association of State Long-Term Care Ombudsman Programs  
Nevada Long Term Care Ombudsman Program  
New Hampshire Office of the Long-Term Care Ombudsman  
Northern Virginia Long Term Care Ombudsman Program  
Northwest Missouri Regional Ombudsman Program  
Nursing Home Ombudsman Agency of the Bluegrass, Kentucky  
Ohio Association of Regional Long Term Care Ombudsmen  
Oklahoma Long Term Care Ombudsman Program  
Orange County Long Term Care Ombudsman Services, California  
Pro Seniors Inc., Long Term Care Ombudsman Program, Southwestern Ohio  
Pueblo Area Agency on Aging, Colorado  
Resident Councils of Washington  
Seattle and King County Long Term Care Ombudsman Program, Washington  
Service Employees International Union  
Southern Area Agency on Aging Ombudsman Program, Martinsville, Virginia  
St. Lawrence County Long Term Care Ombudsman Program, New York  
Tennessee Long Term Care Ombudsman Program  
Texas Advocates for Nursing Home Residents  
United Senior Action of Indiana  
Valley Program for Aging Services Long Term Care Ombudsman Program, Virginia  
Virginia Long Term Care Ombudsman Program  
Voices for Quality Care, Maryland  
Washington State Long Term Care Ombudsman Program  
Whatcom, Skagit San Juan & Island Counties Ombudsman Program, Washington