

Submitter : Mr. Frank Perez

Date: 12/20/2006

Organization : Long Beach Memorial Med. Cntr.

Category : Hospital

Issue Areas/Comments

GENERAL

GENERAL

Working as a stationary engineer in a major medical center, I am acutely aware of the reality of moving any number of non ambulatory patients, or even moderately ambulatory individuals in the event of a fire situation. One would like to assume that staff available would be sufficient to transport all patients to a safe location but even during fully staffed hours, initial response would be less than optimally coordinated, and time is of the essence in a situation such as this. Sprinkler systems are an excellent tool to afford staff and rescue personnel that much needed time to effect an effective evacuation of the affected areas and minimize the overall scope of damage to the structure and threat to the safety to the most vulnerable of patients.

Submitter : Edwin Berkel
Organization : Mehlville Fire Protection District
Category : Local Government

Date: 12/20/2006

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.

Submitter : Mr. Steve Griffin

Date: 12/21/2006

Organization : Bay Area Adult Day Care Inc.

Category : Individual

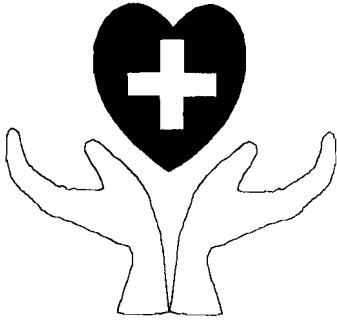
Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-3191-P-93-Attach-1.DOC



Adult Loving Care

December 20, 2006

Adult Loving Care
9241 SPID
Corpus Christi, TX
78418
Ph: (361) 937-9370
Fax: (361) 937-9371

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

Action: Proposed Rule

Background

The different types of long term facilities affected by the proposed rule change are nursing facilities (NF), adult day care centers (ADC), assisted living facilities (ALF), and ICFMR/RC. ADC is the only type of long term care center that is only open during the day time, and must have its maximum staff available at that time. The GAO reports totally ignore the different environment that ADC has compared to the rest of long term care, and the assumption of night time residence in long term care facilities permeates the background material which is not valid for ADC. Also ADC centers are far smaller in size than other long term care facilities.

CMS Action

I would submit that ADC is the one exception to strengthening beyond existing rules.

Installation

For ADC centers that may be a very small part of a larger building, it's the larger building that creates the greatest fire risk if it has no sprinkler system. The ADC may only be two rooms (one large and one small) in the entire structure. Egress through an unprotected structure becomes very important.

Phase-in

Providing fire protection without undue burden on long term facilities. Please be aware that a large ADC center may have a yearly gross income of \$750,000, a medium sized one \$450,000 and a small one only \$200,000. This is a small fraction of what most other long term facilities operate at. The size of the facilities for ADC are correspondingly much smaller than other long term facilities. This brings into question the impact on ADC where the need for ADC to meet the same rules for nursing and assisted living facilities is questionable to begin with.

Overall Impact

This section totally ignores the uniqueness of ADC compared to the rest of long term care. Where is the analysis for a typical ADC center of 4,000 square feet, with no beds for residents, whose gross income is \$450,000. Or a small ADC center of 3,000 square feet with a gross income of \$200,000.

There is no adequate documentation of the large impact on existing ADC centers.

Anticipated Effects

Wonderful analysis for everything except ADC centers. There is no documented case of a client at an ADC center ever having died because of a fire in the ADC.

The existing rules will eventually cause all ADC centers to adopt sprinkler systems.

Number and Size of Affected Facilities

This analysis only focuses on facilities other than ADC. I estimate that there are over 1,000 ADC centers in Texas without sprinkler systems, which is probably only half of such ADC centers in the country. So instead of 3,688 facilities affected by this rule change, there are actually 5,688 facilities. And one third of them are ADC centers.

Table 3 should have two more columns. One should be for facilities with no beds (ADC) and greater than 10,000 sq. ft., and the other should state that facilities with no beds (ADC) under 10,000 sq. ft. are not included in this rule change.

The inclusion of ADC data into the rest of the tables as recommended for Table 3 above should be done before making any decision on the rule change.

Conclusion

This rule will apply to ADC centers and will have a significant impact on them. The complete blindness in this proposal to the differing circumstances of ADC and the impact on ADC is cause for great concern.

And how can this rule change improve on no deaths due to fire in any ADC center?

I think the current rules of requiring sprinkler systems in new ADC facilities, ADC facilities undergoing renovation, and facilities that are bought or sold for ADC, is adequate to ensure that no death due to fire will ever occur in an ADC center as long as all the other existing mandated fire systems are in good working order.

Working smoke alarms in ADC, which provide early detection of fire, are far better at preventing fire injury for ADC clients. Fire sprinklers in an ADC would only come into play after clients should already have evacuated the center.

Steve Griffin

Submitter : Mr. gerald tremblay
Organization : City Of Glenn Heights Texas
Category : Local Government

Date: 12/21/2006

Issue Areas/Comments

Background

Background

Building Official/Building Inspector 25 yrs
For the protection of bed ridden people sprinkler systems installed will help protect life when fires occur.

Current Fire Safety Status

Current Fire Safety Status

to protect life of bed ridden people

Submitter : Mr. Arthur Londensky

Date: 12/21/2006

Organization : Township of South Brunswick Code Enforcement

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

The State of New Jersey Division of Codes and Standards proposed Amendments to the New Jersey Uniform Construction Code and Uniform Fire Code in Septemeber of 2006 to require retrofitting of all existing nursing homes within 3 years of adoption. Comments were accepted for 60 days and the amendment was released by the Commissioner of the Department of Community Affairs in the beginning of December.

Submitter : Mr. Rolland Grigsby
Organization : Bldg Codes and City Council Member
Category : Local Government

Date: 12/21/2006

Issue Areas/Comments

Background

Background

Community of 300 or less with the major population in a local Nursing Home.

Current Fire Safety Status

Current Fire Safety Status

The Nursing Home has fire protection with Inadequate pressures for fire flow.

GENERAL

GENERAL

It would be great if in the 21 century that all small cities, counties, states could afford having all the amenities, but this is impossible. Dictating requirements would not be acceptable in many communities.

Maintenance

Maintenance

Small communities with Nursing Homes would be required to improve the infrastructure, which would require grants for assistance.

Regulatory Impact Statement

Regulatory Impact Statement

Unless the State Fire Marshall or other designate agencies have annual inspections, most facilities in the rural areas will get neglected.

Submitter : Ronald Lynn
Organization : Clark County
Category : Local Government

Date: 12/21/2006

Issue Areas/Comments

Background

Background

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

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.

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.

Submitter : Mr. Steven Wolf
Organization : Eldercare, Inc.
Category : Long-term Care

Date: 12/21/2006

Issue Areas/Comments

GENERAL

GENERAL

This legislation sounds like motherhood and apple pie. In general, I am in favor of it. Exceptions to the rule, however, should and must be recognized.

This legislation has the potential of putting my 2 SNF's out of business because I simply cannot afford to install sprinkler systems.

Further, my facilities are built to be fireproof...flexicore (cement) ceilings and floors, all brick construction, etc. Our 'severely hazardous' areas are sprinklered. We have smoke detectors in all resident rooms and elsewhere throughout our facilities. In other words, our facilities are exceptions to the rule, yet our facilities have not been EXEMPTED from the rule as there has been NO MECHANISM TO DO SO.

We are so ridiculously underfunded by the State of Illinois, that there are absolutely no company funds available to install a full sprinkler system.

Please, therefore, amend this legislation to allow for exceptions to the rule, for both financial hardship reasons and for facilities deemed to be safe without a full sprinkler system.

When considering this request, keep in mind also that smoke detectors are designed to save lives, while sprinklers are designed to save property. Yes, sprinklers can save lives in certain circumstances, but typically smoke detectors will go off before sprinkler systems, thereby being more effective in evacuation situations.

Thank you for your consideration.

Submitter : Mr. Arthur Tirolly
Organization : Tirolly and Associates
Category : Individual

Date: 12/21/2006

Issue Areas/Comments

Background

Background

Fire protection engineer and sprinkler design manager

GENERAL

GENERAL

see attachment

CMS-3191-P-99-Attach-1.DOC

CMS-3191-P-99-Attach-2.DOC

File Code CMS-3191-P - Fire Sprinkler for extended care facilities.

BACKGROUND

I am a licensed fire protection designer with over 40 years in the study of the benefits of sprinkler system to minimize the loss of life and the protection of property from the hazards of fire.

GENERAL

Innovations in special sprinklers for residential occupancies and cost effective materials to reduce costs of the sprinkler installation have increased the effectiveness. The installation of fire sprinklers designed in accordance with NFPA 13 has been required in the state of Ohio for over 30 years as a result of a nursing home fire with over 20 fatalities. Legislation required that all Nursing Homes with over 16 clients would require sprinklers. This is necessary when the clients can not leave on their own accord within a few minutes should a fire occur requiring the building to be evacuated. The great value of the sprinkler system is the water spray applies suppression to hold the fire in check confined to a small area or provide complete extinguishment. Sprinklers have been required by Ohio state code for nearly 30 years for new and remodeled structures used as nursing homes and hospitals. Originally all existing facilities were retrofitted within a five year period.

INSTALLATION

The installation usually does not create an undue hardship to the ownership of the facility. Unit costs for retrofit will usually cost no more than \$4.00 per square foot. This would cost about \$400-500 per patient as a one time cost. With the latest innovations for installation materials with CPVC plastic pipe and quick response sprinklers the installation is not difficult.

CONCLUSION

With these considerations the retrofit of extended care facilities should be mandated for the life safety of the occupants where patients are not ambulatory to evacuate the premises without assistance.

Arthur Tirolly, M SFPE
Tirolly and Associates
216-621-8899

Submitter : Mr. Clifford Kendall
Organization : City of Petaluma
Category : Local Government

Date: 12/21/2006

Issue Areas/Comments

Background

Background

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

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.

Phase-in

Phase-in

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.

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.

Sunset Provision

Sunset Provision

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 : Ms. Karla Ashenhurst
Organization : Ministry Health Care
Category : Health Care Provider/Association

Date: 12/21/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-3191-P-101-Attach-1.PDF

CMS-3191-P-101-Attach-2.PDF

CMS-3191-P-101-Attach-3.PDF

MINISTRY HEALTH CARE

Sponsored by the Sisters of the Sorrowful Mother

December 20, 2006

Electronic Submittal to CMS
Re CMS-3191-P
Sprinkler Systems and Long Term Care Facilities
Seeking a 5-year Phase-In

To Whom It May Concern:

Please accept our comments on CMS-3191-P, requiring sprinkler systems in long-term care facilities.

Patient safety in our long-term care facilities is indeed critically important. We are diligent in our efforts to protect our patients from dangers, including smoke and fire. No one can argue with the efficacy of sprinkler systems in long-term care facilities.

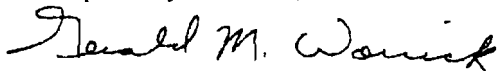
However, the rule as proposed would pose an extreme financial hardship on our facilities. We ask that you consider adjusting the rule to allow for a five year phase-in period and by providing funding for installation of sprinklers for facilities that are not profitable. We believe the current CMS cost estimates are inaccurately low. Our facilities are physically aged in a way that makes retrofitting them with sprinklers cost prohibitive. In one instance, we are contemplating building an entirely new facility (with sprinklers). A five year phase-in of the sprinkler rule would allow us to consider that rebuilding option.

We also believe an exception needs to be made for combined facilities. Combined facilities (hospitals contiguous to long-term care facilities) already conform to the regulations for hospitals, which allow a grandfather provision for sprinklers. We believe the grandfather provisions should be in place for long-term care facilities attached to hospitals.

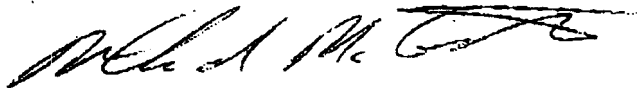
We are located in rural and underserved areas of Wisconsin. These are not profitable facilities – it is a daily financial challenge to maintain them so we may provide care to those who would not otherwise have access to care in their own communities.

Thank you for allowing us to jointly submit these comments on behalf of our facilities.

Respectfully submitted,



Gerald Worrick
President
Door County Memorial Hospital



Chad McGrath
Administrator
Dr. Kate Convalescent Center

Sponsored by Ministry Health Care
www.ministryhealth.org

Where caring makes the connection.

Ministry Health Care, Inc., 11925 West Lake Park Drive, Suite 100, Milwaukee, WI 53224-3014
Telephone: (414) 359-1060 Fax (414) 359-1033

CMS-3191-P-102

Submitter : Ms. Karla Ashenhurst
Organization : Ministry Health Care
Category : Health Care Provider/Association

Date: 12/21/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-3191-P-102-Attach-1.PDF

MINISTRY HEALTH CARE

Sponsored by the Sisters of the Sorrowful Mother

December 20, 2006

Electronic Submittal to CMS
Re CMS-3191-P
Sprinkler Systems and Long Term Care Facilities
Seeking a 5-year Phase-In

To Whom It May Concern:

Please accept our comments on CMS-3191-P, requiring sprinkler systems in long-term care facilities.

Patient safety in our long-term care facilities is indeed critically important. We are diligent in our efforts to protect our patients from dangers, including smoke and fire. No one can argue with the efficacy of sprinkler systems in long-term care facilities.

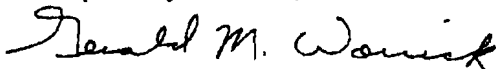
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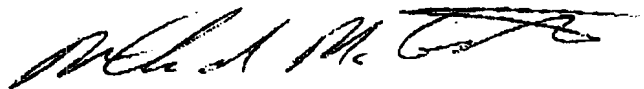
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Respectfully submitted,



Gerald Worrick
President
Door County Memorial Hospital



Chad McGrath
Administrator
Dr. Kate Convalescent Center

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Where caring makes the connection.

Ministry Health Care, Inc., 11925 West Lake Park Drive, Suite 100, Milwaukee, WI 53224-3014
Telephone: (414) 359-1060 Fax (414) 359-1033

Submitter : Mr. Sanford Mall
Organization : Elder Law Section Council, State Bar of MI
Category : Other Association

Date: 12/21/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

Installation

Installation

See Attachment, please.

Phase-in

Phase-in

See attachment, please.

CMS-3191-P-103-Attach-1.DOC

ELDER LAW AND DISABILITY RIGHTS SECTION

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December 21, 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 Elder Law and Disability Rights Section Council of the State Bar of Michigan is very pleased to support CMS's intent to require retrofitting of automatic fire-suppression sprinkler systems in nursing facilities. We strongly concur with comments you have received on this topic from the National Citizens' Coalition for Nursing Home Reform. We particularly urge you to adopt the briefest conceivable phase-in period for these requirements, and we'd further urge you to not sunset the present requirement for smoke alarm systems, which provide useful, perhaps critical, fire and smoke protection redundancy.

PHASE-IN

Prompt retrofitting of contemporary fire-suppression sprinkler systems in nursing homes is particularly critical in Michigan, a state that has lagged far behind other jurisdictions in adopting these common-sense protections.

Currently Michigan has the dubious distinction of ranking last among the 50 states for the number of fully-sprinklered nursing homes---only 36% of Michigan's nursing homes have complete sprinkler systems, compared to a national average of more than 80%. According to a 2004 GAO report, compliance with current fire safety regulations by Michigan nursing facilities is poor; 92% of all Michigan nursing homes were cited for fire safety violations in their then most-recent survey. Four Michigan residents died in nursing home fires in 2005, dozens more were forced to hastily evacuate their facilities in adverse climate conditions, and many were hospitalized for smoke inhalation. It does not require a fanciful imagination to grimly expect that a nursing home fire, at least as horrific as those suffered in the 2003 Nashville, TN and Hartford, CT nursing home fire disasters, could happen next in Michigan.

The Honorable Leslie Norwalk
December 21, 2006
Page 2

We urge you to adopt the briefest conceivable phase-in period for these regulations, and we consider 18 months to be a reasonable timeframe. A phase-in of 5, 7, or 10 years, as contemplated in the proposed rule, extends present risks far too long. It'll be a deservedly public embarrassment for government officials to explain and apologize for fire-related injuries or deaths that result from a failure of publicly-financed long-term care to meet basic protective standards common in nearly every other realm of public accommodation. Speed in implementing these standards is essential; further deliberation and delay are not.

SUNSET PROVISION

We believe that retention and continued maintenance of existing smoke and fire alarm systems provides useful additional early warning of smoke and fire hazards that can save lives and prevent injuries. Given the relatively high failure rates of some sprinkler designs, it seems prudent to retain smoke alarm systems in order to ensure robust fire and smoke detection redundancy in facilities where the risks to frail and disabled residents are high, and the vigilance and response capabilities of under-trained, over-stretched staffs are, too often, demonstrably and distressingly low.

Very truly yours,

Sanford J. Mall
Chair, Elder Law and Disability Rights Section
State Bar of Michigan

Submitter :

Date: 12/21/2006

Organization : American Association for Justice

Category : Other Association

Issue Areas/Comments

GAO Report

GAO Report

See Attachment

GENERAL

GENERAL

See Attachment

Installation

Installation

See Attachment

CMS-3191-P-104-Attach-1.PDF



December 22, 2006

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

Re: Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems (File Code CMS-3191-P); Comments on "CMS Action" and "Sunset Provision"

Dear Secretary:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Centers for Medicare & Medicaid Services (CMS) Notice of Proposed Rulemaking (NPRM) requiring all long term care facilities to be equipped with automatic sprinkler systems. *See* 71 Fed. Reg. 62957.

AAJ, with 55,000 members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, promote injury prevention, and foster the disclosure of information critical to public health and safety. AAJ's comments pertain to the sections of the NPRM entitled "CMS Action" and "Sunset Provision." AAJ believes that CMS must ensure that its regulations do not override state or local requirements that provide added protections for residents of long term care facilities beyond those included in the federal rules. AAJ also requests that CMS revise or withdraw its proposal to sunset the smoke detector installation requirement, because both smoke detectors and sprinklers are necessary to prevent multiple deaths from fires in nursing homes and other long term care facilities.

CMS Action

I. If CMS Regulates the Installation of Automatic Sprinkler Systems Through Federal Rulemaking, the Agency Must Ensure That Its Regulations Do Not Override State or Local Laws that Provide Additional Protections to Residents of Long Term Care Facilities

A. Federal Regulation Should Serve as a Floor, Not Ceiling

CMS asks for comment regarding the agency's decision to regulate the installation of automatic sprinklers in long term care facilities through federal rulemaking rather than defer this issue to state and local jurisdictions. AAJ supports the agency's decision to regulate this area

through federal rulemaking so long as CMS regulations do not prevent states and localities from enforcing laws that provide added protections to residents of long term care facilities, in addition to those afforded under federal law.¹ Federal regulation serves as the minimum standard – it is the floor and not the ceiling for regulation.

Federal regulation is designed to address national problems through national solutions as the states work to advance more novel policies and experiment with ideas.² State and local governments must maintain flexibility to meet their constituents' needs while allowing the federal government to establish a basic level of protection for all citizens, which has been crucial to sustaining the appropriate balance of power between federal and state governments. With no reasonable compelling need for national uniformity, CMS must ensure that it does not take any actions that impair this balance and impede the ability of state and local governments to provide protections that exceed those included in federal regulations.

CMS did not state that automatic sprinkler systems should be the maximum protection for long term care facility residents based upon potential problems with the use of multiple fire protection devices or the use of smoke detectors. On the contrary, smoke detectors would add substantial protection and aid in the prevention of multiple death fires. The only apparent reason for not mandating additional protection appears to be driven by financial concerns.³ State and local governments have a better understanding of the resources of the long term care facilities operating in their jurisdictions. They should be able to use their expertise to determine whether facilities in their jurisdictions should require additional fire protection.

B. State and Local Agencies Often Can Provide Better Oversight of Issues Affecting Nursing Homes and Long Term Care Facilities

CMS has had a poor oversight record regarding nursing home fire safety. The Government Accountability Office (GAO) issued a report detailing weaknesses in federal standards and oversight of nursing home fire safety, which are illustrated by the government's reaction to the deadly nursing home fires in Hartford, Connecticut and Nashville, Tennessee.⁴ Although they had done so in previous multiple-death nursing home fires, neither CMS nor the National Fire Protection Association (NFPA) investigated either fire to assess the adequacy of

¹ For example, CMS must continue to allow state and local governments to require long term care facilities to install smoke detectors even though the proposed federal rules mandate the installation of automatic sprinkler systems only. *See* Section II *infra*.

² David F. Welsh, *Environmental Marketing and Federal Preemption of State Law: Eliminating the "Gray" Behind the "Green,"* 81 Cal. L. Rev. 991, 1017 (July, 1993) (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

³ Several previous CMS proceedings addressed financial concerns association with fire protection devices. *See, e.g.,* Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities, 68 Fed. Reg. 1374 (issued Jan. 10, 2003); Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities; Amendment, 71 Fed. Reg. 55326 (issued Sept. 20, 2006) (to be codified at 42 CFR Parts 403, 416, 418, 460, 482, 483, and 485).

⁴ United States Government Accountability Office, *Recent Fires Highlight Weaknesses in Federal Standards and Oversight*, GAO-04-660 (July 2004) ("GAO Report").

the current fire safety standards.⁵ While NFPA was on-site following the Hartford fire, the organization did not conduct a full investigation or publish its own report.⁶ As a result, both groups lacked the firsthand knowledge to determine the degree to which the multiple deaths were due to problems with the federal fire safety standards.⁷

Even more disturbing are the examples of crucial fire safety deficiencies that the federal government missed or did not cite, which are listed in Appendix II to the GAO Report.⁸ This lengthy list of deficiencies includes problems with sprinkler systems – the very issue that CMS is seeking to regulate in this proceeding.⁹ While CMS has made efforts to improve its oversight, it is unclear whether these efforts have led to any notable improvements.

In contrast, employees of state and local agencies have a personal stake in the community. They are likely to be more familiar with the homes and their management and, therefore, better able to encourage compliance with regulations. Given the intent of federal regulation, the problems with federal oversight, and the potential for better state and local oversight, AAJ believes that CMS must ensure that any regulations allow state and local agency requirements that exceed those listed in the federal rules.

⁵ *Id.* at 17.

⁶ *Id.*, n.24.

⁷ *Id.* This is in stark contrast to the investigation and oversight conducted by the National Transportation Safety Board (NTSB), which has teams with specialized accident investigation skills on call twenty-four hours a day and that remain at the accident site for approximately seven to ten days. Agencies like the National Highway Transportation Safety Administration and the Federal Railroad Administration work with the NTSB to assist the investigation, and factual accident reports are generally available within six months after the incident. See What is the National Transportation Safety Board?, <http://www.nts.gov/publictn/2005/SPC0502.pdf>.

⁸ GAO Report at 45-48.

⁹ For example, CMS state surveyors did not cite or missed the following fire safety deficiencies related to sprinkler systems:

- Atlanta, GA – Approximately 95 percent of the building was not protected by an automatic sprinkler system, even though the building construction type required complete sprinkler protection.
- Boston, MA – Home failed to provide complete sprinkler protection for a three-story wood frame building. Beauty salon closet was missing sprinkler. Sprinkler in storage area was obstructed.
- Chicago, IL – Home failed to properly maintain sprinkler system. Home did not replace six sprinklers on known recall list.
- Dallas, TX – Home failed to ensure that there were no obstructions to the water flow of installed sprinklers. Home failed to ensure that replacement sprinklers and a wrench of appropriate size were available in the main sprinkler room.
- Denver, CO – Several sprinklers on known recall list were not replaced. Four large coffee pots on the top shelf of the store room could obstruct the spray pattern of the adjacent sprinkler. Two hoses from the floor-cleaning machine were hanging on the sprinkler piping in the basement housekeeping room.

Id. at 45-47.

Sunset Provision

II. CMS Should Not Sunset Its Requirement for Smoke Alarms

AAJ applauds the CMS for requiring nursing homes and other long term care facilities to install automatic sprinkler systems but asks that CMS revise its proposed rule, because it also phases out the installation of smoke detectors in all long term care facilities. *Both* smoke alarms and automatic sprinklers are necessary to maintain public safety in long term care facilities.¹⁰ Aside from the fact that automatic sprinklers may malfunction or may not reach certain living areas,¹¹ smoke detectors and sprinklers have different, complementary benefits to offer long term care facility residents. Smoke detectors provide the earliest warning of possible fire and are the best available technology to prevent injury due to smoke inhalation. Early warning is crucial to provide as much time as possible to evacuate populations with mobility issues or cognitive impairment.

The GAO's report on the Hartford and Nashville fires revealed that the absence of smoke alarms may have delayed the notification of staff and activation of the buildings' fire alarms and may have led to unnecessary deaths.¹² The majority of the deaths from both fires were due to smoke inhalation rather than burns.¹³ In particular, in the Hartford fire, where the absence of smoke detectors contributed to a delay of up to five minutes or more, that short period could have meant the difference between life and death.¹⁴ Both incidents illustrated the importance of smoke detectors and, as a result, 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.¹⁵

The Healthcare Financial Administration (HFCA, the predecessor of CMS) acknowledged the need for "different combinations of fire protection features" as "sprinklers may generate serious secondary smoke hazards which must be overcome by other fire protection methods."¹⁶ While sprinklers are effective against multiple death fires, they are less effective against single death fires.¹⁷ The American Hospital Association believes that "since smoke is the greatest threat to life institutional fires, emphasis should be placed on limiting smoke

¹⁰ The need for both devices is painfully illustrated by the recent fire in a Missouri group home for elderly and mentally disabled that killed ten people and injured twenty-four others. The group home had smoke alarms but no sprinklers, and it is unclear how many lives would have been saved if the home had *both* fire prevention mechanisms. Marcus Kabel, *Arson to be Ruled Out in Group Home Fire*, Washington Post, (Nov. 29, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/28/AR2006112800168.html>.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 11.

¹⁴ *Id.* at 19.

¹⁵ *Id.*

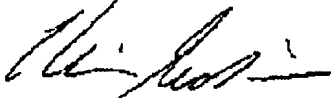
¹⁶ Medicare and Medicaid; Automatic Extinguishment Systems for New Long-Term Care Facilities, 45 Fed. Reg. 50268 (proposed July 28, 1980) (to be codified at 42 C.F.R. pts. 405 and 442).

¹⁷ *Id.*

propagation and movement rather than on sprinklers which actually generate smoke when activated.”¹⁸ Although the HFCA responded to this comment by expressing the impact of sprinklers on reducing the overall fire hazard, that does not change the threat of smoke inhalation and the benefits that would be derived from the utilization of *both* smoke detectors and automatic sprinklers.¹⁹

AAJ appreciates this opportunity to submit comments in response to the Agency’s Notice of Proposed Rulemaking regarding automatic sprinkler systems in nursing homes. If you have any questions or comments, please contact Gerie Voss, AAJ’s Regulatory Counsel at (202) 965-3500 ext. 748.

Sincerely,



Lewis S. “Mike” Eidson
President
American Association for Justice

/gv

¹⁸ *Id.*

¹⁹ *Id.*

Submitter : Mr. Troy Carter
Organization : Adult Day Care Association of Texas
Category : Health Care Provider/Association

Date: 12/21/2006

Issue Areas/Comments

Background

Background

The Texas Adult Day Service Association represents more than 344 licensed Day Activity and Healthcare Services (DAHS) facilities in Texas that provide transportation, hot meals, snack, and skilled nursing services to an average of 20,000 Medicaid clients a day throughout the state of Texas. We appreciate this opportunity to provide written comments to CMS regarding proposed rule (CMS-3191-P) to require all long term care facilities to be equipped with sprinkler systems.

Current Fire Safety Status

Current Fire Safety Status

Our major concerns regarding this proposed CMS rule are as follows:

The proposed CMS rule, although only requested public comment on the duration of a phase-in period to allow long term care facilities to install such system, does not take in consideration Adult Day Services facilities that do not provide 24 hour care. In State of Texas for this reason DAHS facilities have not been required to install sprinkler systems but are required to have monitored and inspected fire alarm system.

The CMS rule would force a considerable financial hardship on those DAHS facilities that operate multiples facilities and to the many small providers.

The CMS rule does not provide an exception for DAHS facilities under 5,000 sq ft that have a fire alarm system that are currently operating under state license.

The CMS Rule could force the Adult Day Care industry in Texas to be in a crisis. Participants will have a lack of access to these community base services programs because providers will not be able to deal with spiraling increase in cost and opt out of doing business with the state

GAO Report

GAO Report

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GENERAL

GENERAL

The Healthcare System in Texas ranks at the bottom of the list in reimbursement rates and levels of care. CMS should not look at these community base services like Day Activities & Health Services facilities as a burden on the federal budget are threat to the safety to the client we serve but as a saving and safe alternative for the government for over 30 years of services. If the 20,000 individuals that are served in our DAHS facilities on a daily basis were in a nursing home or hospital it would cost the State of Texas 10 billion dollars annually. Because these individuals are attending DAHS the saving to the state is \$2.5 million a day. (\$3,000,000 vs. \$528,000)- Nursing home cost \$150.00/daily rate vs. Current DAHS Rate of \$26.40.

Installation

Installation

CMS should consider a review of the cost associated with proposed rule requirement and add an exception for DAHS facilities

Then consider possible funds to assist with this cost for providers to meet these requirement through grants and/or guaranteed approved SBA low interest loans.

Phase-in

Phase-in

CMS should consider a possible 5 (five) to 7 (seven) year duration phase-in period to allow Medicaid reimbursement rates to come in-line with increase cost to show up on annual cost reports.

Sunset Provision

Sunset Provision

Community base Providers such as DAHS facilities in Texas face a number of operational challenges in dealing with the CMS Proposed rule.

A) DAHS Providers operational costs have increased 25% to 32% since 2003. But have only received 1% increase in our Medicaid reimbursement rates over the same time period.

B) DAHS Providers transportation costs have increased over 125% since 2003 this reflex the ever increasing price of gasoline. (Average gas prices \$1.13 a gallon

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in 2003, current gas prices are \$2.25).

C) Currently (utilities) rates although it varies from region to region have doubled in most cases for these Providers since 2003 with a current average of \$395.00 during winter months and \$700.00 currently during the summer months. In 2003 these cost average of \$245.00 and \$455.00 respectfully.

D) DAHS Providers are at risk as all Community base Providers are at risk of losing its stable workforce. With cost being transferred to meet the proposed CMS rule these well trained attendants who have not gotten any salary or benefit increases since 2002 will start leaving our organization for better opportunities.

E) With the role out of Star-Plus Managed Care to additional counties throughout the State of Texas, our DAHS Providers will experience some administrative cost increases related to the change from Fee-for-Service to managed care.

These operational challenges are on going and need immediate attention. Our DAHS Providers along with other Community base service Providers are increasingly absorbing cost that we have no control over and are unable to pass these costs down to our customers and this CMS Proposed rule would add to these forever increasing cost.

Submitter : Mr. Douglas Myers
Organization : Pasadena Fire Department (California)
Category : Individual

Date: 12/21/2006

Issue Areas/Comments

Current Fire Safety Status

Current Fire Safety Status

As a Fire Prevention Officer I have had to witness, directly or indirectly, several fire deaths in these types of facilities during my 23 years of service. Every life loss in these facilities significantly impacts every fire personnel across the nation, knowing these are all preventable deaths and injuries if automatic fire sprinklers had been installed. I fully support the Rule and urge you to do the same. I would also remove any references to a specific edition and mandate compliance be based on the most current edition developed and approved by NFPA. I specifically purchased a residence with fire sprinklers knowing the integrity and performance history, first hand, of these systems. It's a great comfort knowing my family, guest, and grandparents are protected with the best life safety system component in addition to smoke alarms.

Respectfully
Douglas Myers
Fire Prevention Officer

Submitter : William Andrews
Organization : William Andrews
Category : Individual

Date: 12/21/2006

Issue Areas/Comments

Background

Background

Virginia required all existing nursing homes to have sprinkler protection in the 1990's. Federal facilities (such as Veterans' Administration) are not within state's authority to mandate such essential safety standards. Sprinklers and smoke detector have proven record of saving lives (and reducing injuries and property damages).

CMS Action

CMS Action

The Federal government should set safety standards for facilities getting substantial federal funds, and has responsibility for safety of federal facilities. Disabled veterans deserve safe facilities, not using excuse of federal exemption over state safety codes.

Current Fire Safety Status

Current Fire Safety Status

Old facilities lack safety standards recognized as essential preparation for reducing fire injuries, deaths, and damages. Smoke detectors warn occupants, yet often staffing inadequate to quickly evacuate so many disabled occupants (as typical in nursing homes at night). Most fire fatalities are from smoke. Sprinklers automatically control fire, and allow extra time to evacuate (or shelter in safe rooms remote from fire).

GAO Report

GAO Report

CMS should enact regulations to require sprinklers in all federal nursing homes by 2012, giving preferential treatment to private facilities with sprinklers (reducing federal funding to those without sprinklers or equal automatic fire suppression in patient areas).

GENERAL

GENERAL

Sprinklers should protect all federally funded nursing homes; especially those with substantial disabled veterans population. Smoke detectors are needed (in addition to sprinklers) to provide early warning (especially in very smokey emergencies when not enough heat to activate sprinklers quickly).

Installation

Installation

Current smoke detector requirement needs to be changed to continue to require at least battery-powered smoke detectors in rooms with over 4 beds, egress corridors, and rooms along egress path (not need in enclosed stairwells where no storage allowed unless protected by sprinklers).

Maintenance

Maintenance

Sprinkler systems need to be installed in all patient areas of nursing homes, with automatic alarm (per NFPA 13 standard as of 1999). At least battery-powered smoke detectors to be provided in rooms with more than 4 beds, and large rooms & corridors along escape path from patient areas.

Phase-in

Phase-in

All federal nursing homes to be sprinklered by 2012. Federal funds to be limited to private nursing homes without sprinklers after 2015. At least battery-powered smoke detectors (as noted above) to be provided by 2010.

Regulatory Impact Statement

Regulatory Impact Statement

Sprinkler system to be maintained per NFPA 25 standard. Smoke detectors and fire alarms to be maintained per NFPA 72 standard. Federal and local safety officials to be notified when sprinklers or fire alarm system expected to not be operational for more than 1 hour. Adequate substitute safety procedures, devices, or systems to be implemented if facility to continue occupancy by more than 20 disabled persons.

Sunset Provision

Sunset Provision

Regulations should set minimum safety standards of federal facilities equivalent to the best of at least 1/3 of the states; within 5 years. Federal funding to private facilities which fail to meet federal safety standards will get less such funding to promote those who comply and encourage others to provide essential safety.