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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Wireless Telecommunications Bureau and Public
Safety and Homeland Security Bureau Seek
Comment on Request by American Hospital
Association for Blanket Waiver to Permit Hospitals
to Use Amateur Radio as Part of Emergency
Preparedness Drills

WP Docket No. 10-54

To:

The Federal Communication Commission

COMMENTS

In response to the *Public Notice* in the captioned proceeding,¹ the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) hereby submits comments on the American Hospital Association's (AHA) request for a blanket waiver of Section 97.113(a)(3) of the Commission's rules² to permit hospitals to utilize Amateur Radio operations as part of emergency preparedness drills.

AHCA/NCAL represents nearly 11,000 non-profit and for-profit providers of long term care (LTC) services for our nation's frail, elderly and disabled citizens who live in nursing facilities, assisted living residences, subacute centers, and homes for persons with developmental disabilities. Nursing facilities and intermediate care facilities for persons with developmental disabilities (ICFs/DD) are required, by federal regulation, to have emergency plans in place and to carry out unannounced staff drills using those procedures.³

Assisted living facilities, which are regulated at the state level, also have emergency plans in place and an increasing number of states require them. About one million frail elderly Americans live in facilities licensed under state law as assisted living/residential care facilities including about 131,000 receiving long term care services under the federal-state Medicaid program.⁴

All LTC facilities conduct drills and exercises to assure employee competence in the time of an emergency. **AHCA/NCAL supports AHA's request for a blanket waiver and asks that the same waiver be applied to LTC facilities.**

BACKGROUND

Section 97.113(a) (3) specifically prohibits amateur stations from transmitting communications "in which the station licensee or control operator has a pecuniary interest, *including communications on behalf of an employer.*"⁵ Given the public interest in facilitating government-sponsored emergency preparedness and disaster drills, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau have provided a process for requesting a waiver of Section 97.113(a)(3) to permit named amateur radio operators to participate in specified government-sponsored drills by transmitting messages on behalf of identified employers.⁶

The waiver must be requested prior to the drill, and employees may not transmit amateur

¹ *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Request by American Hospital Association for Blanket Waiver to Permit Hospitals to Use Amateur Radio as Part of Emergency Preparedness Drills*, WP Docket No. 10-54, *Public Notice*, DA 10-365 (rel. Mar. 3, 2010) ("*Public Notice*").

² 47 C.F.R. § 97.113(a) (3).

³ CMS Regulation 483.75(m) Disaster and Emergency Preparedness for nursing facilities and 483.470(h) (1) for ICFs/DD.

⁴ For more information see: "Assisted Living State Regulatory Review 2010," National Center for Assisted Living, Washington, D.C., (www.ncal.org); "Residential Care and Assisted Living Compendium: 2007," U.S. Department of Health and Human Services, Nov. 30, 2007 (<http://aspe.hhs.gov/daltcp/reports/2007/07alcom.htm>); and "State Medicaid Reimbursement Policies and Practices in Assisted Living," National Center for Assisted Living, September 2009 (www.ncal.org).

⁵ See 47 C.F.R. § 97.113(a) (3) (emphasis added).

⁶ See *Amateur Service Communications during Government Disaster Drills*, *Public Notice*, 24 FCC Rcd 12872, 12872 (WTB/PSHSB/EB 2009).

communications on their employer's behalf unless the waiver request has been granted.⁷ In its request for a blanket waiver, AHA states that hospitals seeking accreditation from the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) must prepare an emergency operations plan setting forth how the hospital will communicate during emergencies, and establish back-up communications links (which, among other means of communications, may include amateur radio stations) to communicate essential information if primary communications systems fail.

AHA also stated that hospitals seeking accreditation are required to test their emergency operations plans twice annually. According to AHA, waiver relief should be available for these non-government-sponsored exercises because it is in the public interest to ensure that hospital communications operate effectively during emergencies. AHA also states that requiring separate waiver requests would be administratively burdensome on hospitals and the Joint Commission. AHA thus requested a blanket waiver for hospitals seeking Commission accreditation, until such time as the Commission adopts a final order in response to a forthcoming Notice of Proposed Rulemaking that will seek comment on potential changes to Section 97.113(a)(3).

As indicated above, AHCA/NCAL supports AHA's request for a blanket waiver and asks that the same waiver be applied to LTC facilities. LTC facilities have the same critical responsibilities for the health and safety of their residents and face the same terrifying challenges in emergency situations. Thus, they are required by federal and state law to prepare for emergencies, which include unannounced staff drills aimed at ensuring that staff can access and cope with all plans and tools utilized in such emergencies.

As with the hospitals, requiring separate waiver requests would be administratively burdensome on LTC facilities and would deprive employee staff amateur radio operators of the opportunity to assure themselves, the facility and the residents that that facility communications will operate effectively during emergencies.

AHCA/NCAL RECOMMENDATION

AHCA/NCAL believes that granting the requested blanket waiver is consistent with the underlying purpose of the Amateur Radio Service and would serve the public interest; and that expanding the blanket waiver to include LTC, i.e., nursing facilities, assisted living facilities and ICFs/DD would be consistent with the underlying purpose of the Amateur Radio Service and would serve the public interest.

DETAILED COMMENTS

I. LTC Facilities and Emergencies

LTC facilities provide healthcare services to approximately 2.5 million each day frail older Americans -- a group at particularly high risk during disasters. The widespread devastation resulting from the 2005 hurricane season revealed that nursing homes and assisted living communities were not incorporated into local and national emergency response systems. Following several hurricanes during that season, utility services did not understand the special needs of the frail elderly and those with disabilities in nursing homes, assisted living communities, and ICFs/DD, leaving them without electricity and telephone services because of a lack of prioritization. Hurricane Katrina especially focused national attention on the disproportionate vulnerability and mortality of elders during disasters. When Katrina hit, only 15 percent of the population in New Orleans was age sixty and older, yet data from Knight-Ridder found that 74 percent of hurricane-related deaths were in that age group.

⁷ Id.

In short, long term residents were an afterthought. Vulnerable, medically frail elderly and disabled residents were largely dependent upon the limited capability of each individual LTC providers and individual disaster plans, which were not coordinated with governmental emergency efforts. The problems that came to light in our national response to Hurricanes Katrina and Rita demonstrated unequivocally that fragile individuals who live in LTC settings need the same protections that are afforded to hospital residents.

Since Hurricanes Katrina and Rita, the Department of Health and Human Services Office of the Assistant Secretary for Preparedness & Response plan more comprehensively and integrate long term care into their planning, gap analyses, and other emergency preparedness activities. It is imperative that other agencies, including the FCC, likewise afford LTC residents the same protections afforded to hospital patients.

II. LTC Facilities Must Have Emergency Plans and Conduct Drills

The Centers for Medicare & Medicaid Services (CMS) require nursing facilities and ICFs/DD to have emergency plans and to train and drill on those plans. Federal nursing home regulations mandate the following:

- The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such a fire, severe weather, and missing residents. 42 CFR Section 483.75(m)(1); and
- The facilities must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. 42 CFR Section 483.75 (m) (2).⁸

Similarly, ICF/DD regulations mandate the following:

- The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients. 42 CFR 483.470(h)(1);
- Ensure that all personnel on all shifts are trained to perform assigned [emergency] tasks; and 42 CFR .470(i)(1)(i); and
- Evaluate the effectiveness of emergency and disaster plans and procedures. 42 CFR 483.470(i)(1)(iii):⁹

According to CMS, effective health care provider emergency planning includes training staff on their role in the emergency plan, testing the plan, and revising the plan as needed.¹⁰ Clearly, the

⁸ These regulations are further expanded in guidance; specifically F- Tag 517 and F- Tag 518. In executing the survey process, the surveyors consult the guidelines provided by CMS. This guidance is known as the Long Term Care Survey, September 2007, Guidance To Surveyors, F-Tags. F-Tag is a designation that CMS uses for the purpose of identifying a portion of each requirement of participation. These are very detailed instructions to surveyors that seek to assure that every aspect of the regulations is being followed. The F-Tags provide suggested issues, questions and avenues of investigation that might be taken by surveyors. Deficiencies are meted out for failing to meet the requirements of the regulation and guidance.

⁹ ICFs/DD have a similar compliance and enforcement program as nursing facilities. Their guidance provisions are known as W-Tags. The regulations cited above are implemented in guidance as W-Tags 438, 442 and 444.

¹⁰ See CMS website at

http://www.cms.hhs.gov/SurveyCertEmergPrep/03_HealthCareProviderGuidance.asp#TopOfPage.

best emergency plan is of little value if facility staff are unfamiliar with the plan and it has not been practiced and tested.

As noted earlier, assisted living facilities, which are regulated at the state level, also have emergency plans in place and an increasing number of states require them. Washington state, for example, requires that “boarding homes” (its licensure term for assisted living) “develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to: (i) On-duty staff persons' responsibilities; (ii) Provisions for summoning emergency assistance; (iii) Plans for evacuating residents from area or building; (iv) Alternative resident accommodations; (v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and (vi) Emergency communication plan.” (See: <http://apps.leg.wa.gov/wac/default.aspx?cite=388-78A-2700>.)

Another example is New Jersey, which requires assisted living facilities to “develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, and natural disasters.” New Jersey’s regulations specify that, in addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, other natural disaster, bomb threat, or nuclear accident (a total of 12 drills). All staff are required to participate in at least one drill annually, and selected residents may participate in drills. (See: N.J.A.C. 8:36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs.)

III. Communications: Important Element of Emergency Planning

Communications is a vital component of LTC facility emergency plans and having more than one communication plan is critical since primary communications may fail. The fatal weakness of many failed emergency plans is the assumption that communications and public service infrastructures will still be in place in the aftermath of a disaster. Local health care providers and facilities, as well as local police, ambulance services, and others involved in search and rescue, will require some backup communication capacity.

LTC facilities clearly should have backup communication plans in place as is evidenced by CMS’ *Emergency Preparedness Checklist*, which states:

Communication Infrastructure Contingency: Establish contingencies for the facility communication infrastructure in the event of telephone failures (e.g., walkie-talkies, ham radios, text messaging systems, etc.).¹¹

Since amateur radio is viewed as one of the most effective communications options in a disaster when primary communications systems fail, many LTC facilities would like to utilize amateur radio as their backup communication methodology. Individuals’ use of the amateur radio system played an important role in coping in the wake of Hurricane Katrina¹² and could do so in similar disaster situations.

AHCA/NCAL is appreciative that the Amateur Radio Service rules expressly permit an amateur radio station “to use any means of radiocommunications at its disposal” to provide essential

¹¹ See CMS website at

http://www.cms.hhs.gov/SurveyCertEmergPrep/downloads/S&C_EPChecklist_Provider.pdf.

¹² See *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, WC Docket No. 06-63, *Order*, 22 FCC Rcd 10541, 10576 (2007).

communications during emergencies without first obtaining prior Commission approval.¹³ However, we are perplexed that drill-specific waivers are required to permit LTC employees with amateur radio licenses to participate in emergency preparedness drills.¹⁴ Obtaining such waivers is extremely time consuming and burdensome and LTC facilities are unlikely to be able to acquire such waivers. We are hard-pressed to see any benefit associated with requiring prior approval before amateur operators can participate in drills designed to prepare them for actual emergency situations, particularly since they are permitted to conduct emergency communications using the amateur radio system without prior Commission approval.

IV. Conclusion: Approve Expanded Blanket Waiver that Includes LTC

AHCA/NCAL strongly agrees that a blanket waiver is appropriate and necessary. The grant of the blanket waiver should not be limited to hospitals and should include LTC facilities. These facilities, like hospitals, must assure the safety of their residents who are in great part frail and disabled. These facilities must be prepared for disasters and emergencies of all kinds. According to the CMS checklist, facilities should conduct exercises or drills that are designed to test individual essential elements, interrelated elements, or the entire plan at least semi-annually.¹⁵

Based on the foregoing, a blanket waiver of Section 97.113(a)(3) to include all hospitals and all LTC facilities should be granted expeditiously to permit both hospitals and LTC facilities to use amateur radio operators who are their employees to transmit communications on behalf of the facility as part of emergency preparedness drills.¹⁶

Respectfully submitted,



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American Health Care Association

April 2, 2010

¹³ 47 C.F.R. § 97.403.

¹⁴ *Id.*

¹⁵ See CMS web site at http://www.cms.hhs.gov/SurveyCertEmergPrep/downloads/S&C_EPChecklist_Provider.pdf.

¹⁶ *Public Notice* at 1.