



American Health Care Association

1201 L Street, NW, Washington, DC 20005-4046
Main Telephone: 202-842-4444
Main Fax: 202-842-3860 2nd Main Fax: 202-842-3924
Writer's Telephone:
Writer's E-Mail:
www.ahca.org

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May 12, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

Dear Secretary Dortch:

Re: Amendment of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills; WP Docket No. 10-72

The American Health Care Association/National Center for Assisted Living (AHCA/NCAL) hereby submits comments on the Federal Communications Commission (FCC) Notice of Proposed Rulemaking to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill.

AHCA/NCAL represents nearly 11,000 non-profit and proprietary nursing and rehabilitation centers, assisted living communities, and homes for persons with developmental disabilities. These long term care (LTC) facilities serve approximately 2.5 million frail, elderly and disabled Americans and employ more than one million caregivers every day. Our extremely vulnerable population compels us to be well-prepared for emergencies and disasters. All LTC facilities conduct drills and exercises to assure employee competence in the time of an emergency.

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.¹

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.²

Communications are a major component of emergency preparedness. Thus, AHCA/NCAL supports the FCC's proposed amendments to allow amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. Further, AHCA/NCAL strongly urges the FCC to permit employee operation of amateur stations during non-government-sponsored emergency drills and tests when the health and safety of long term care residents are at stake.

BACKGROUND

Amateur radio operators provide essential communications links and facilitate relief actions in disaster situations. Their importance during disasters are well known and current rules state that "no provision of these rules prevents the use by an amateur station of any means of radio communication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available."³ However, entities are precluded from appropriately including amateur radio operator employees in their emergency drills and tests because 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.*"⁴

As indicated above, AHCA/NCAL supports FCC's proposed amendment to its rules to allow employee amateur radio operators to participate in government-sponsored emergency drills and tests and we ask that the amendment be broadened to apply to non-governmental entities, specifically LTC facilities, as that also would serve the public interest. LTC facilities have critical responsibilities for the health and safety of their residents and face terrifying challenges in emergency situations. Thus, they are required by federal and state law to prepare for emergencies, which include staff drills aimed at

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

² 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).

³ See 47 C.F. R. § 94.403

⁴ See 47 C.F.R. § 97.113(a) (3) (emphasis added).

ensuring that staff can access and cope with all plans and tools utilized in such emergencies.

AHCA/NCAL RECOMMENDATION

AHCA/NCAL believes that amending the current rules to allow amateur radio operators who are employees to participate in government-sponsored and non-government sponsored emergency and disaster tests and drills in order to assess communications capabilities, including amateur radio, in order to improve emergency preparedness and response is 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 frail older Americans each day -- a group at particularly high risk during disasters. The widespread devastation resulting from the 2005 hurricane season revealed that nursing homes, assisted living communities, and homes for people with developmental disabilities (DD) 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 home for people with DD, leaving them without electricity and telephone services because of the 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.

In short, LTC residents were an afterthought. Vulnerable, medically frail, elderly and disabled residents were largely dependent upon the limited capability of 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 protections. It should not matter whether the LTC facility is government-owned, not-for-profit or proprietary.

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 as 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).⁵

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).⁶

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.⁷ Clearly, the 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

⁵ 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.

⁶ 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.

⁷ See CMS website at

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

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.).⁸

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 Katrina⁹ 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 communications during emergencies.¹⁰ However, we are perplexed by the rule prohibiting employees from participating in emergency preparedness drills and tests since successful preparation for emergencies always involves drills and tests. We are hard-pressed to see any benefit associated with denying, based on employment status, amateur operators participation in drills designed to prepare them for actual emergency situations, particularly since they are permitted to conduct emergency communications using the amateur radio system.

⁸ See CMS website at

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

⁹ 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).

¹⁰ 47 C.F.R. § 97.403.

IV. Conclusion: Amend the Rules to Allow Employee Amateur Radio Operators to Participate in Government-sponsored and Non-government-sponsored Drills to Assess Communications Capabilities and Improve Emergency Preparedness and Response.

AHCA/NCAL strongly agrees that amending the rules to allow that amateur radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill is appropriate and necessary. The FCC should not limit these changes to government-sponsored drills and tests. Specifically, employees of LTC facilities should be allowed to transmit messages during facility disaster and emergency drills and tests in order to assess communications capabilities, including amateur radio, in order to improve emergency preparedness and response. LTC facilities, 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.¹¹

On behalf of the extensive and broad-based membership of AHCA/NCAL, we appreciate the opportunity to provide our input to the FCC.

Respectfully submitted,



Bruce Yarwood
President & CEO

¹¹ See CMS web site at http://www.cms.hhs.gov/SurveyCertEmergPrep/downloads/S&C_EPChecklist_Provider.pdf.