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


The American Health Care Association (AHCA) represents more than 12,000 non-profit and proprietary skilled nursing centers, assisted living communities, sub-acute centers and homes for individuals with intellectual and development disabilities. By delivering solutions for quality care, AHCA/NCAL aims to improve the lives of the millions of frail, elderly and individuals with disabilities who receive long term or post-acute care in our member facilities each day.

These comments are submitted on behalf of AHCA member nursing centers and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

General Comments

AHCA appreciates the opportunity to provide comments on the proposed rule Medicare and Medicaid Programs: Fire Safety Requirements for Certain Health Care Facilities. AHCA is particularly pleased the proposed rule recognizes the significant fire safety advances incorporated in nursing centers through installation of automatic sprinklers (73 FR 47075) and smoke alarms and the resulting increased patient safety.

1) AHCA supports the Center for Medicare & Medicaid Services (CMS) in its proposal to adopt the requirements in NFPA 101-2012 Edition (LSC). The adoption of this code reflects the current fire safety approaches recognized by consensus, clarifies several issues and is beneficial in some ways to facilities.

2) AHCA believes NFPA 99 should only be adopted as it is currently referenced through 2012 LSC. The LSC clarifies the application of NFPA 99. We also believe Chapter 12 of NFPA 99 provides a better approach than the current proposed rule for emergency
preparedness.

3) AHCA supports the use of categorical waivers for code requirements when newer editions of the applicable codes provide equally effective means for ensuring life safety compared to requirements of earlier editions. AHCA supports quicker adoption of the more recent editions of the codes.

4) The proposed rule does not adequately address the burden and costs associated with adoption of the codes and standards. These updated and revised codes and standards have additional and modified testing and record keeping requirements. These changes result in a two-fold burden for providers: (a) reaching a full understanding of CMS’s compliance expectations; and (b) the increased cost burden associated with additional inspection, testing, and maintenance (ITM) requirements. AHCA requests CMS develop and publish a list of the modified/updated and new ITM requirements. Also, AHCA requests CMS provide an analysis of the estimated costs associated with the modified/updated and new requirements, which reflects the costs associated with meeting these modified/updated and new ITM requirements.

5) As specified in proposed §403.744 (a)(1)[i], the adoption of the LSC is based on an issue date of August 11, 2011. NFPA 99 has the same issue date specified. It must be clarified if the issue date specified is the date for incorporation of Tentative Interim Amendments (TIAs) and which TIAs are adopted. Typically all TIAs issued prior to adoption date of the code are applicable. Based on this issue date there are some TIAs that may be incorporated that will have an effect on facilities. The following is a discussion of the effects of some of the TIAs:

a. TIAs were issued after the LSC and NFPA 99 issue date that provide positive inputs to the application of the codes. AHCA recommends adoption of all of these TIAs with the adoption of the LSC and NFPA 99-2012 Edition and the referenced documents. These TIAs include:

i. LSC TIA 12-2 issued October 30, 2012 clarifying requirements for smoke detectors for cooking in smoke compartments with less than 30 people.

ii. LSC TIA 12-3 issued October 22, 2013 clarifying sprinkler requirements for door-locking arrangements.

iii. NFPA 99 TIAs 12-3 through 12-6. All potentially affect the design and operation of LTC facilities. For example, if TIA 12-6 is not adopted occupants on oxygen masks would be limited in where they could go in a facility complying with cultural change objectives.

b. TIA 11-1 was issued for NFPA 25 prior to August 11, 2011. AHCA discourages adoption of any TIAs related to antifreeze solutions for existing systems. Adoption of this TIA, or any other related TIA, severely limits antifreeze solutions that can be utilized in antifreeze sprinkler systems. Adoption of this TIA would make it such that existing antifreeze systems could not be utilized in extreme cold weather climates, because there is no acceptable concentration or listed solution for use in systems. Generally, the
The use of antifreeze solutions is predominantly in areas that are not regularly accessed by patients (e.g., overhangs, attics, porte-cochères) and their use would not result in any danger to patients.

6) The application of NFPA 99 criteria to existing buildings is not clear. AHCA believes that NFPA 99 should not apply to existing facilities except for maintenance and record keeping provisions specifically required for existing facilities. NFPA 99 offers various approaches that require interpretation relative to its application to existing facilities. Examples include:

a. Section 1.3.2.1 requires “Only the altered, renovated or modernized portion of an existing system or individual component shall be required to meet the installation or equipment requirements stated in the code.”

b. Section 6.1.2 specifies specific sections applicable to existing buildings. Some of these sections relate to existing equipment and installation.

c. Other NFPA 99 Chapters specifically exempt existing installations.

d. In addition, the interaction of NFPA 99 and LSC Chapter 43 is not clear. The NFPA 99 terms “altered, renovated, or modernized” do not correspond with the LSC categories of rehabilitation work or LSC Section 18.4.3 for renovations of existing non-sprinklered smoke compartments.

7) The LSC exception for health care occupancy facilities with fewer than four residents would be inapplicable to CMS facilities affected by this proposed rule. Recognizing this is similar to the existing approach by CMS, it is still troublesome in that criteria for health care occupancies could now be applied to any area with inpatient access even though it could be limited to one person. In its strict application, supporting areas such as medical and dental offices that are contiguous to and separated from health care facilities would be required to comply with health care criteria. The exception to allow less than four inpatients who are incapable of self-preservation should be maintained.

8) AHCA recommends that CMS implement joint surveyor-provider training programs for the new regulations. AHCA would welcome involvement in the development of these joint training programs.

9) AHCA recommends that CMS develop Surveyor Guidance for the 2012 LSC. Such Guidance is necessary due to significant changes from the 2000 LSC to the 2012 LSC and reference standards. AHCA continues to offer assistance in the development of the Guidance and at a minimum requests an opportunity to review and comment on a draft version of the Guidance.

10) AHCA wants to clarify that the proposed regulation requires that outside windows in patient/resident sleeping rooms in existing buildings are not required have to comply with sill heights not exceeding 36 inches (Page 21556 “Outside Window or door Requirements) . Our interpretation is that the proposed regulation requires sill heights for outside windows to comply with the requirements of the 2000 LSC. The 2000 LSC requires window sill heights to not exceed 36 inches in new buildings and additions and has no requirements for
sill heights in existing buildings. Requiring sill heights in existing building to comply would have dramatic implications and cost estimated at exceeding $200 million. Sill height requirements should not apply to existing buildings.

11) On page 21558 under “State Fire Codes” are we correct that S & C Memo 08-34 “Compliance with State Fire and Safety Code in lieu of the Life Safety Code” will still be applicable once the 2012 Life Safety Code is adopted?

Comments Specific to Long Term Care

1) Corridor projections: The proposed rule states that projections into corridors must not exceed the 4-in. limit prescribed in ADA to supersede the 6-in. allowance in the 2012 LSC. It is not clear why 6 in. projections are not permitted if alternative means are provided to comply with the intent of ADA such as vertical barriers (e.g., guards) that would allow someone to detect the presence of a projection exceeding 4 in. (but not exceeding 6 in.) prior to the time that the projection is a hazard to that person. AHCA requests the allowance for a 6 in. projection be maintained.

2) Fire watches: The CMS rule mentions the increased reliance upon sprinklers in the 2012 LSC as the basis for retaining the requirement for evacuation or a fire watch when a sprinkler system is out of service for more than 4 hours in a 24-hour period. NFPA 25, however, permits a 10 hour outage, therefore permitting an entire work day without providing alternative protection. It is not clear why CMS must exceed the criteria established in the consensus standard. The 10-hour outage was determined through the NFPA 25 consensus standard process and recognizes that many structures rely on the safety provided by automatic sprinklers. Based on NFPA documentation, the change was made because the NFPA committee thought 4 hours was too stringent and impractical. The 10-hour outage criteria in NFPA 25 should be retained.

3) Sprinkler protection for swing beds: The proposed rule does not address if a hospital that is not fully sprinklered provides swing beds for SNF level care, do the more stringent requirements of S&C-13-55-LSC apply to the hospital? Automatic sprinklers should be provided in all areas where swing beds are located to assure Medicare and Medicaid beneficiaries have the same level of fire safety protection regardless of where they are located, a hospital or a nursing home.

Comments Specific to Intermediate Care Facilities for Individuals with Intellectual Disabilities

1) Attic sprinkler installation: AHCA recommends a phase-in of five years for this requirement. Also, AHCA requests a rate adjustment be given to those facilities undergoing the change so the costs do not negatively impact patient care.

2) Smoke alarms: The LSC is a consensus document developed to provide life safety for occupants. AHCA supports adoption of the code without adding additional criteria for smoke alarms in existing facilities. In particular, we have concerns about requiring all existing facilities to update their fire alarm systems to include areas outside of sleeping
areas. AHCA recommends a comprehensive study be conducted to evaluate the efficacy of this change as well as the cost to retrofit facilities prior to any phase-in of this requirement.

3) Corridor projections: The proposed rule states that projections into corridors must not exceed the 4-in. limit prescribed in ADA to supersede the 6-in. allowance in the 2012 LSC. It is not clear why 6 in. projections are not permitted if alternative means are provided to comply with the intent of ADA such as vertical barriers (e.g., guards) that would allow someone to detect the presence of a projection exceeding 4 in. (but not exceeding 6 in.) prior to the time that the projection is a hazard to that person. AHCA requests the allowance for a 6 in. projection be maintained.

4) Proposed §483.470 Fire watches: The CMS rule mentions the increased reliance upon sprinklers in the LSC-2012 edition as the basis for retaining the requirement for evacuation or a fire watch when a sprinkler system is out of service for more than 4 hours in a 24-hour period. NFPA 25 however permits a 10 hour outage, therefore permitting an entire work day without providing alternative protection. It is not clear why CMS must exceed the criteria established in the consensus standard. The 10-hour outage was determined through the NFPA 25 consensus standard process and recognizes that many structures rely on the safety provided by automatic sprinklers. Based on NFPA documentation, the change was made because the NFPA committee thought 4 hours was too stringent and impractical. The 10-hour outage criteria in NFPA 25 should be retained.

Again, thank you for the opportunity to provide comments on this proposed rule. Please contact me at lbentley@ahca.org with any questions.

Sincerely,

Lyn C. Bentley, MSW
Senior Director, Regulatory Services