

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Parts 403, 416, 418, 460, 482, 483, and 485

[CMS-3047-F]

RIN 0938-AK35

### Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices that provide inpatient services, religious nonmedical health care institutions, critical access hospitals, and Programs of All-Inclusive Care for the Elderly facilities. Further, this final rule adopts the 2000 edition of the Life Safety Code and eliminates references in our regulations to all earlier editions.

**DATES:** *Effective Date:* These regulations are effective on March 11, 2003. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of March 11, 2003.

*Compliance Dates:* All health care facilities referenced in this rule must comply with the requirements of this final rule on September 11, 2003, except that compliance with § 403.744(c), § 416.44(b)(4), § 418.100(d)(4), § 460.72(b)(3), § 482.41(b)(1)(iv), § 483.70(a)(4), § 483.470(j)(2)(iii), and § 485.623(d)(5) is not required until March 13, 2006.

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#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. Life Safety Code

The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire. The Medicare and Medicaid regulations have historically incorporated by reference these requirements along with Secretarial

waiver authority. The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Social Security Act.

We have not updated the LSC regulations for several years. We published a proposed rule in the **Federal Register** on August 1, 1990 (55 FR 31196) proposing to eliminate the use of the 1967 and 1973 editions of the LSC. In the August 1990 proposed rule, hospitals, nursing homes, and intermediate care facilities for the mentally retarded (ICFs/MR) would be required to comply with either the 1981 or 1985 editions of the LSC, depending on the date the provider entered the program. The proposed rule did not include ambulatory surgery centers (ASCs), hospices, or end-stage renal disease (ESRD) facilities. The August 1990 proposed rule also made no reference to the Program of the All-Inclusive Care for the Elderly (PACE) facilities, Critical Access Hospitals, and religious nonmedical health care institutions (RNHCIs) because these provider and supplier types did not exist when we published the August 1990 proposed rule.

On October 26, 2001, we published a proposed rule proposing to withdraw the August 1, 1990 proposed rule because the NFPA published four new editions of the LSC since the publication of our August 1990 proposed rule. Some accrediting organizations had adopted the 1997 edition of the LSC. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which accredits over 4,000 hospitals, as well as ASCs, long-term care (LTC) facilities, and hospices that provide inpatient services has adopted the 1997 edition of the LSC. We had to update our requirements to a more recent edition of the LSC because the 1985 edition of the LSC had been superseded by later editions which incorporated the latest technology in fire protection.

*B. The Proposed Rule of October 26, 2001 (66 FR 54179)*

The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. The term "patient" represents the population in each of the provider-types discussed in this rule. We proposed not to grandfather any facility under these new provisions because the provisions would not impose an undue burden. Our intention is to ensure that patients and staff continue to experience the highest degree of fire safety possible.

In the past, our authority to grant waivers was critical to our ability to continuously improve fire safety in the Medicare and Medicaid programs and not impose an undue burden on providers. The Secretary has broad authority to grant waivers to hospitals under section 1861(e)(9)(C) of the Act, and to LTC facilities under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act. For all other providers we have authority under the Secretary's general rulemaking authority to establish specific health and safety standards as well as under section 1871 of the Act. The proposed rule allows the Secretary to grant waivers on a case-by-case basis if specific provisions of the LSC would result in unreasonable hardship on the provider, and if the safety of patients would not be compromised. The Secretary may also accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients. Further, the NFPA's Fire Safety Evaluation System (FSSES), an equivalency system, provides alternatives to meeting various provisions of the LSC, thereby achieving the same level of fire protection as the LSC.

In addition to the development of a proposed rule to adopt the 2000 edition of the LSC, we planned to propose a more efficient process that allows us to adopt future editions of the LSC in a more timely manner. We explored incorporating, by reference, the NFPA LSC without specific dates in the regulations text and publishing a **Federal Register** notice, instead of a proposed rule. We worked closely with the Office of the **Federal Register** (OFR) staff on our draft proposed approach; however, it has become clear that adoption of multiple successive editions of the LSC via reference is not possible. Changes in future editions of the LSC may be substantial, necessitating that we go through a proposed rule and public comment period. Moreover, we cannot automatically incorporate successive versions of the LSC because of the statutory restrictions of 5 U.S.C. section 552(a) and accompanying regulations at 1 CFR part 51. All LSC editions we adopt must include a specific edition and a copy of the edition cited must be on file at the OFR.

#### II. Provisions of the Proposed Regulations

##### A. General Description

In the October 26, 2001 proposed rule, we proposed to (1) require that all