

into the facility without meeting the requirements of 10.3.2(2) and 10.3.3 (regarding fire resistant furniture) if a single station smoke detector is placed in the sleeping room where the furniture is located. The cost to the facility is estimated at \$100 per sleeping room where patient-owned furniture is located. We estimate approximately 18,498 smoke detectors would need to be installed at a total cost of \$1,849,800.

In the October 2001 proposed rule, we proposed to retain our existing authority to waive provisions of the 2000 edition of the LSC, on a case-by-case basis, and thereby reduce the exposure to additional cost and burden for those facilities with unique situations that may justify the application of waivers. We may grant a waiver for a specific LSC requirement if (1) We determine that the waiver would not adversely affect patient and staff health and safety; and (2) we determine that it would impose an unreasonable hardship on the facility to meet a specific LSC requirement. Generally, a provider may request a waiver from its State agency. The State agency will review the request and make a recommendation to our appropriate regional office. Our regional office will review the waiver request and the State agency's recommendation and make a final decision. We cannot grant a waiver if patient safety is compromised in any way. A State may also request that the State fire and safety code be applied to all its facilities rather than the 2000 edition of the LSC we proposed in the October 2001 proposed rule. State law must impose the State fire and safety code. The State must submit the request to our appropriate regional office. The regional office will forward the request to our central office for a final determination.

We proposed to retain our authority to apply the Fire Safety Evaluation System (FSES) as an alternative approach to meeting the requirements of the LSC, as well as accept alternative State fire and safety codes as we discussed in section I.B in the October 2001 proposed rule.

D. Discussion of Fire Safety Requirements for Individual Providers and Suppliers

In the October 2001 proposed rule, we proposed changes to the requirements that affect all provider types, as described in sections II.A and II.B of this preamble. We proposed changes for distinct types of providers that include the following:

1. *Religious Nonmedical Health Care Institutions—Benefits, Conditions of Participation, and Payment:* 42 CFR 403.744 Condition of participation: Life safety from fire.

We proposed to retain the provisions of the existing interim final regulation for RNHCIs published in the **Federal Register** on November 30, 1999 (64 FR 67028), except as they conflict with the 2000 edition of the LSC and are not within the exceptions detailed in section II.B of this preamble (regarding our exceptions to the LSC).

2. *Ambulatory Surgery Centers:* 42 CFR 416.44 Condition for coverage: Environment.

We proposed to change the terminology in § 416.44 (b)(1) to reflect that the LSC refers to ASCs as Ambulatory Health Care Centers. We proposed that all ASCs meet the provisions applicable to Ambulatory Health Care Centers in the 2000 edition of the LSC, except as detailed in section II.B of this preamble, regardless of the number of patients the facility serves.

We believe the protection provided in the Ambulatory Health Care Centers chapter is necessary to protect the health and safety of patients who are incapable of taking action of self-preservation. We do not believe that the Business Occupancy chapter of the LSC (applied by some authorities having jurisdiction to ASCs treating fewer than four patients at a time) affords an adequate level of protection to patients in an ASC.

We also proposed to retain the discretion to accept compliance with fire and safety codes imposed by a State, if we determine that the State's fire and safety code will adequately protect patients in ASCs. We have included this provision in § 416.44 (b)(3).

3. *Hospice Care:* 42 CFR 418.100(d) Condition of participation: Hospices that provide inpatient care directly.

In the October 2001 proposed rule, we proposed that all inpatient hospices meet the provisions applicable to nursing homes in the 2000 edition of the LSC, with the exceptions discussed in section II.B of this preamble, regardless of the number of patients they serve. This is not a change in requirements, but merely a clarification that, for LSC purposes, an inpatient hospice is considered a nursing home, and not another type of occupancy.

We also proposed not to adopt for hospices chapter 18—section 3.4.5.3 of the 2000 edition of the LSC. This section requires new nursing homes to be equipped with corridor smoke detection systems. We believe there is no technical justification for this requirement because the 2000 edition of the LSC requires that newly constructed patient sleeping zones be provided with quick-response sprinklers. Quick-response sprinklers activate quickly enough to serve a detection function,

thus making corridor smoke detection unnecessary. The 1991 and 1994 editions of the LSC required quick-response sprinklers in new nursing homes but did not require smoke detection. Therefore, we see no technical reason to require corridor smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

We also proposed, in § 418.100(d)(3), to permit a hospice to meet a fire and safety code imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We proposed to do this for two reasons: (1) To afford hospices the benefit of meeting a State code in lieu of the Federal requirements where the State code offers adequate protection; and (2) because we recognize that hospices are often located within buildings containing other providers already subject to this provision. For example, a hospice may be located entirely within a skilled nursing facility (SNF). If the SNF is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exception.

We also proposed to remove § 418.100(d)(4), the requirement that blind and nonambulatory patients may not be housed above the street level floor unless the building is fully sprinklered or has achieved a passing score on the FSES comparison, which is less stringent than the LSC. The provision is redundant since any facility that meets the requirements of the 2000 edition of the LSC would, by definition, achieve a passing score on the FSES comparison. In addition, this requirement was removed from the SNF regulations in 1989; however, we did not remove it from the parallel hospice regulations.

4. *Programs of All-Inclusive Care for the Elderly (PACE):* 42 CFR 460.72 Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing interim final regulation for PACE that we published in the **Federal Register** on November 24, 1999 (64 FR 66234). PACE centers will continue to be required to meet the LSC specifications for the type of facilities in which the programs are located (that is, hospitals, office buildings, etc.).

We also proposed to require that a PACE center meet the requirements for use of fire alarm systems in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section of the LSC also