

requires evacuation plans, fire exit drills, and fire procedures, and these will be applicable to the PACE program.

We also proposed to retain § 460.72(b)(2)(i), which permits a PACE center to meet fire and safety requirements imposed by the State in lieu of the 2000 edition of the LSC if we determine that the State code adequately protects patients. We have done this for two reasons: (1) To afford a PACE center 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 PACE centers are often located within buildings containing other providers already subject to this provision. For example, a PACE center may be located within a hospital. If the hospital is exempt from the LSC by virtue of meeting a State code, other participating providers within the same building should also be afforded this exemption.

Further, in some buildings it may be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we proposed to retain § 460.72(b)(2)(ii), which allows for the waiver of specific provisions of the 2000 edition of the LSC that, if rigidly applied, would result in unreasonable hardship on the organization. We may waive specific provisions only if the waiver does not adversely affect the health and safety of the patients and staff.

5. Conditions of Participation For Hospitals: 42 CFR 482.41 Condition of participation: Physical environment.

In the October 2001 proposed rule, we proposed only the changes to this section described in sections II.A and II.B of this preamble, for the reasons described therein.

6. Long-Term Care Facilities: 42 CFR 483.70 Condition of participation: Physical environment.

As with hospices, we proposed not to adopt chapter 18-section 3.4.5.3 of the 2000 edition of the LSC for LTC facilities such as SNFs. This section requires new nursing homes to have corridor smoke detection systems. We believe there is no technical justification for this new requirement because the 2000 edition of the LSC requires that new construction patient sleeping zones be provided with quick-response sprinklers. We believe that quick-response sprinklers activate quickly enough to serve a detection function, thus making corridor smoke detection unnecessary. The 1991, 1994, and 1997 editions of the LSC required quick-response sprinklers in new nursing homes, but did not require smoke detection. Therefore, we do not see any

technical reason to require smoke detection in new facilities and thus increase the cost of new construction without a parallel increase in safety.

7. Intermediate Care Facilities for the Mentally Retarded: 42 CFR 483.470 Condition of participation: Physical environment.

In the October 2001 proposed rule, we proposed to retain most of the provisions of the existing regulation for ICFs/MR. ICFs/MR will continue to be permitted to meet either the Residential Board and Care Occupancies chapter or the Health Care Occupancy chapter of the 2000 edition of the LSC, as appropriate.

We also proposed to retain the provision in § 483.470(j)(1)(ii) that allows the State survey agency to apply different chapters of the LSC to different buildings or parts of buildings so as not to place an undue burden on providers to have an entire building comply with the more stringent provisions of the Health Care chapter when they could instead meet the Board and Care for part of their facility, when appropriate.

We also proposed that, for ICFs/MR under Board and Care, the Evacuation Difficulty Index (EDI) must be determined by use of the Fire Safety Evaluation System for Board and Care Facilities (FSES/BC). In referring to the EDI, we proposed to remove the reference to Appendix F in § 483.470(j)(1)(iii). The FSES/BC is no longer an appendix of the LSC, but appears as its own NFPA document in the NFPA 101A Guide on Alternative Approaches to Life Safety. Additionally, we proposed to remove the reference to facilities of 16 beds or less from § 483.470(j)(1)(iii) to clarify that a larger facility could be subject to the Board and Care Chapter, and that its EDI would have to be calculated based on the FSES/BC. Again, this provision would allow certain ICFs/MR to meet the less restrictive Board and Care Chapter rather than the health care chapter.

In § 483.470(j)(2)(ii), we proposed to change “the Secretary” to “CMS” to more accurately reflect the statutory authority (this provision currently appears in § 483.470(j)(2)(i)(B)).

We also proposed in § 483.470(j)(3) that waivers of specific provisions of the 2000 edition of the LSC apply only to facilities that meet the LSC definition of a Health Care occupancy. There are no waivers for facilities under Board and Care, since the FSES/BC affords the flexibility of alternative arrangements for compliance.

III. Analysis of and Responses to Public Comments

We received approximately 160 timely public comments in response to the October 26, 2001 proposed rule. We received letters from State government officials, county government organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

A. General Comments

Comment: The majority of commenters expressed support of our adoption of the 2000 edition of the National Fire Protection Association (NFPA) Life Safety Code (LSC).

Response: We appreciate the support. Our current regulations allow health care providers to meet different editions of the LSC (that is, providers may meet the 1967, 1973 and 1985 editions of the LSC). These earlier editions are outdated and create confusion in the industry. The updated LSC includes new provisions vital to the health and safety of all our beneficiaries. This rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible.

B. Exceptions

Comment: Several commenters, while supporting the adoption of the LSC, urged us to adopt the LSC as written, with no exceptions. The commenters argued that by allowing exceptions to the NFPA LSC, we are violating the National Technology Transfer and Advancement Act (Pub. L. 104–113).

Response: Section 12 of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) codified an existing Office of Management and Budget (OMB) circular (OMB Circular A–119). Section 12 directs Federal agencies to use, to the extent not inconsistent with applicable law or otherwise impractical, technical standards that are developed or adopted by voluntary consensus standards organizations.

The National Technology Transfer and Advancement Act does not mandate that we use an entire code without exceptions if we determine it is impractical. We did not adopt the entire LSC as written because through our surveys, comments, and experience, we have determined that for the health and safety of patients and staff we could not adopt the LSC in its entirety.

We have “carved-out” two provisions from the LSC. These provisions are: (1) Roller latches; and (2) ambulatory facilities serving under four patients.