

are nationally recognized, such as the International Building Code and International Fire Code. Referencing only the NFPA's LSC in the final rule creates conflict for many jurisdictions that enforce other equivalent or more stringent fire and life safety requirements. By not referencing other applicable codes, CMS favors one code to the detriment of other codes.

*Response:* We continue to specifically cite the LSC because under sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act, nursing homes must meet the provisions of "such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association \* \* \*." To avoid confusion and to be consistent for all provider types we require the LSC for all inpatient facilities. This is especially applicable for facilities with mixed occupancies. For example, a health care facility's west wing could be a nursing home while the rest of the facility is a hospital. It would be impractical as well as burdensome for the facility to follow the LSC for the nursing home and another health and safety code for the hospital. The regulation reflects this by requiring a single code for all inpatient health care facilities.

However, if a State's own fire and safety code would "adequately protect patients" and the State code is imposed by State law, the State may submit a request in writing to its CMS regional office. The CMS regional office will forward the request to the CMS central office. The CMS central office will make a final decision on whether the State code may be used in place of the NFPA LSC.

*Comment:* Several commenters support CMS's authority to "accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients." However, these same commenters stated that the CMS must have a system in place to evaluate any State code to determine that the requirement provides adequate protection for patients and staff.

*Response:* We appreciate the support for accepting State fire and safety codes in addition to the LSC. If a State chooses to use its fire and safety code rather than the LSC, it must be imposed by State law and adequately protect patients and staff. Any State that chooses this option should send the request to its CMS regional office. The regional office will forward the request to the CMS central office. The central office will make the final determination and respond in writing as to whether the State fire and safety code adequately protects patients and staff.

#### *E. Ambulatory Surgical Centers (ASCs)*

*Comment:* Some commenters believe that we should allow grandfathering for Ambulatory Surgical Centers (ASCs) that meet previous editions of the LSC. Some commenters stated that, at the very least, we should permit ASCs to postpone compliance with the 2000 edition of the LSC until the ASC undertakes a major renovation. The commenters stated that compliance with the 2000 edition of the LSC, especially for smaller ASCs would impose a financial burden. One commenter asked us to phase-in the requirements because it would be a financial hardship for most ASCs to comply with the 2000 edition of the LSC. The commenter suggested that we consider a couple of approaches for phasing in the 2000 edition of the LSC. For ASCs already Medicare-certified, the 2000 edition of the LSC would only need to be met if the ASC underwent a major renovation, or we could implement a timeline for full compliance to the 2000 edition of the LSC (for example, 5 years).

*Response:* It is not our intent to impose a retroactive requirement for ASCs. For existing ASCs, most provisions in the 2000 edition of the LSC are similar to past editions. Furthermore, existing facilities in compliance with early editions of the LSC are not required to upgrade to a later edition of the LSC for certain provisions. For example, an existing ASC is not required to upgrade its Type I Essential Electrical System (EES). Chapter 21–2.9.2 references NFPA 99, Standard for Health Care Facilities. This provision states that ASCs "shall be provided with an EES in accordance with NFPA 99, Standard for Health Care Facilities." Under NFPA 99 existing ASCs are able to continue to use existing electrical and medical gas systems that are in compliance with the earlier editions of the LSC provided the ASC continues to meet the edition of the LSC requirements when it was constructed. The referencing to the NFPA 99 for certain provisions (that is, EES, and medical gas) should relieve some burden for ASCs.

In addition, an ASC may also request a waiver for a specific provision of the LSC further reducing the exposure to additional cost and burden for ASCs with unique situations that can justify the application of waivers and will not endanger the health and safety of patients. A waiver may be granted 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. All waivers are determined on a case-by-case basis. An ASC may request a waiver from its State Agency. The State Agency will review the request and make a recommendation to the appropriate CMS regional office. The CMS regional office will review the waiver request and the State agency's recommendation and make a final decision on the waiver request. A waiver cannot be granted if patient safety is compromised in any way.

*Comment:* A few commenters objected to the requirements in the 2000 edition of the LSC that ASCs must have a Type I Essential System (EES) and upgrade their medical gas capabilities. Most of the ASCs, especially smaller ASCs, do not have a Type I EES or meet the medical gas requirement in the 2000 edition of the LSC. The commenters stated that the change to a Type I EES and to upgrade their medical gas capabilities will be a financial hardship on the ASCs.

*Response:* Only new facilities will be required to have a Type I EES or upgrade its medical gas capabilities. Existing ASC facilities in compliance with early editions of the LSC for EES and medical gas requirements are not required to upgrade to the 2000 edition of the LSC. Per chapter 21–2.9.2 and chapter 21–3.2.2, an ASC facility shall be in compliance with "NFPA 99, Standard for Health Care Facilities." Under NFPA 99 existing ASCs may continue to use existing electrical and medical gas systems that are in compliance with earlier editions of the LSC provided the ASC continues to meet the earlier edition of the LSC requirements when it was constructed. If the ASC fails to meet the earlier LSC requirements, the ASC must upgrade to the 2000 edition of the LSC. An ASC must also meet the 2000 edition of the LSC if its EES or medical gas system undergo alteration, modernization, or renovation.

*Comment:* Three commenters requested that ASCs be exempt from the fire-rated wall standards in Chapter 19–3.6.1 and the vertical opening standard in Chapter 19–3.1 of the 2000 edition of the LSC. The commenters explained that ASCs would be unable to comply with these requirements because most ASCs do not control spaces outside of their leased area.

*Response:* The commenters may have misunderstood which chapters apply to ASCs. Chapters 20 and 21 apply to ASCs, not chapter 19. This confusion may have been caused because we improperly cited chapter 19 in the ASC regulatory text. We deleted all chapter