

The revised total cost estimate for all facilities to meet this requirement is \$15,162,305.

(5) 19.7.5.2 & 19.7.5.3—Upholstered Furniture—These provisions allow patient-owned furniture to be brought 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. This gives the facility a more home-like atmosphere. In the October 2001 proposed rule, we estimated that 18,498 smoke detectors would need to be installed at approximately \$100 per smoke detector. We estimated in the proposed rule that the total cost to be in compliance with this provision was \$1,849,800.

We revised this cost estimate because we believe 19,262 smoke detectors need to be installed rather than the 18,498 we estimated in the October 2001 proposed rule. We did not change our estimate of the cost of the smoke detector (that is, \$100 per smoke detector). The total amount to be in compliance with this provision is \$1,926,200.

(6) 19.3.6.3.2—Roller Latches—We “carved out” the exception the LSC allowed for roller latches in existing buildings. In the October 2001 proposed rule we estimated the total cost for all facilities to remove exiting roller latches was \$30,754,540 (\$190 per door for 161,866).

We revised the estimate and 190,303 roller latches must be replaced at a cost of \$250 per roller latch, for a total cost estimate of \$47,575,750. We are phasing in this requirement over 3 years. Thus, we estimate that it will cost \$15,858,583 for the first year and \$15,858,583 for each of the next 2 years.

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, further reducing the exposure to additional cost and burden for facilities with unique situations that can justify the application of waivers, which we determine will not endanger the health and safety of patients.

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

IV. Provisions of the Final Regulations

For the most part, this final rule adopts the provisions of the October 26, 2001 proposed rule. Those provisions of this final rule that differ from the October 2001 proposed rule follow. In

response to comments, we are revising § 485.623(d) to require all critical access hospitals (CAHs) to meet the applicable provisions of the 2000 edition of the LSC. The provision of the adopted 2000 edition of the LSC that does not apply to a CAH is chapter 19, “Existing Health Care Occupancies,” section 19.3.6.3.2 (exception No. 2), roller latches.

We deleted the reference to chapter 19 (that is, 19.3.6.3.2) under the ASC regulatory text because it was improperly cited for ASCs. We cited chapter 19.3.6.3.2 because all roller latches must be replaced in existing health care occupancies. However, Chapter 19 does not apply to ASCs. ASCs are under chapter 20 (that is, new ASCs) and chapter 21 (that is, existing ASCs).

We also decided to include chapter 5, the performance based option provision. We do not expect many providers to choose this option. However, we would like all providers to have the alternative to use the performance based option if the provider believes it would be useful for it to comply with the LSC. In addition, we have provided for a 3-year phase in period for the requirements regarding roller latches and emergency lighting.

The final rule will continue to allow other options besides the prescriptive requirements of the LSC. Health care facilities may choose the FSES, and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific requirement. 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. A provider 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. We cannot grant a waiver if patient safety is compromised in any way.

A State may also choose to use its fire and safety code rather than the LSC if the State fire and safety code is imposed by State law and adequately protect patients. Any State that chooses this option must 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. Lastly, we no longer exempt new nursing homes or new hospices providing inpatient care from chapter 18.3.4.5.3 of the LSC. Several commenters opposed the proposed exception to remove the smoke detector requirement for hospices and nursing facilities. Many commenters believe smoke detectors are an inexpensive requirement for new facilities and they provide an extra layer of protection. We agree and removed the exception from the regulations text in hospices at § 418.100(d) and nursing facilities at § 483.70(a).

V. Collection of Information Requirements

This rule does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

A. Introduction

This final rule adopts the 2000 edition of the LSC. The objective is to provide safety to life during fires and other emergencies. Adoption and use of the 2000 edition of the LSC will bring us up-to-date in requiring the latest and best technology in fire protection for our beneficiaries. These requirements are designed to protect all patients and staff. The 2000 edition of the LSC also protects property and can reduce the dollar loss associated with a fire. For example, the 2000 edition of the LSC requires that any new construction install quick-response sprinkler systems increasing the level of protection to our beneficiaries. Adopting the 2000 edition of the LSC and removing references to all older editions of the LSC will eliminate confusion as to which edition a health care facility must follow. This is particularly important when a facility has multiple buildings constructed at differing times or a single building with multiple wings or additions constructed at different times. Instead of each building complying with different editions of the LSC, this final rule requires all the buildings to comply with the same edition of the LSC. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems.

B. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and