CMS Issues Final Rule Bringing Long Awaited Solution to the FSES Problem

Most organizations have never heard of an "FSES" much less had to complete and submit one as part of their annual life safety survey. However, for a small group of providers across the country, the FSES (Fire Safety Evaluation System) had been a critical tool in documenting Life Safety Code® compliance through an equivalent means. When an unforeseen amendment to the mandatory safety values in the 2013 edition of NFPA 101A (FSES) left many providers without an effective equivalency tool, some facilities faced significant construction projects resulting in massive costs and operational disruption to maintain strict Life Safety Code® compliance. This was the only option even though organizations that passed the previously adopted 2001 edition of 101A, but failed the 2013 edition, were no less safe.

After many years of advocacy, review by CMS and multiple time limited waiver extensions, CMS issued a final rule on July 29th that will finally address the problem and allow the FSES to again be a realistic tool for long term care facilities that had utilized it in the past.

The CMS final rule essentially permits nursing homes that were Medicare or Medicaid certified before July 5, 2016, <u>and</u> previously utilized an FSES as a mechanism to determine equivalency, to utilize the mandatory values found in the 2001 edition of NFPA 101A. The more restrictive mandatory values found in the 2013 edition of NFPA 101A will not apply. This is important since the 2013 edition of the NFPA 101A is the edition currently adopted by CMS.

While this issue only directly affects a minority of nursing homes and LeadingAge members, it has been an extremely consequential issue for those providers that were impacted. LeadingAge has long advocated on behalf of its members affected by the problem and is pleased that CMS has finalized a solution.

The full text can be found starting on page 298 of the final rule:

2022-16457.pdf (federalregister.gov)