



July 7, 2021

James Merrill
Life Safety Engineer at Department of Health and Human Services
Centers for Medicare and Medicaid (CMS)
Email: james.merrill@cms.hhs.gov

Dear Mr. Merrill,

About LeadingAge: We represent more than 5,000 aging-focused organizations that touch millions of lives every day. Alongside our members and 38 state partners, we address critical issues by blending applied research, advocacy, education, and community-building. We bring together the most inventive minds in our field to support older adults as they age wherever they call home. We make America a better place to grow old. For more information: www.leadingage.org

I am writing to ask CMS to act to prevent unnecessary nursing home resident disruptions and relocations, due to a regulatory requirement that is inconsistent with the evidence on fire and life safety. It is always the case that regulations should be based on the most current science and trusted expert views -- after the disruption, loss, and expense of the pandemic, even more so.

Under currently applicable rules, nursing homes will have to adopt a fire safety requirement by November 2021 that is no longer considered effective or necessary but that will cause significant disruption to the operations of many of our members.

In fact, the National Fire Protection Association (NFPA) Technical Committee on Healthcare Occupancies recognized the concern and updated the 2021 edition of the Life Safety Code® accordingly.

LeadingAge members wholeheartedly acknowledge the critical need to ensure that nursing home residents are safe. It is absolutely essential to make sure that the physical infrastructure of nursing home buildings provides maximum protection against fires. This is not about paperwork compliance; it is about saving vulnerable lives.

Background

Nursing home providers were surprised in 2016, when CMS adopted the 2012 Life Safety Code® (with the accompanying 2013 Guide to Alternative Approaches to Life Safety) and the "mandatory values" for nursing homes changed and became more restrictive.

To be clear, this was a change in scoring values, not in the level of fire and life safety provided. Suddenly, providers who had passed the Fire Safety Evaluation System (FSES) were rescored and found out of compliance. A facility that passed the previous FSES (2001) but failed the 2013 version is no less safe.

Realizing that more than 500 nursing homes across the country would not be able to pass the 2013 FSES, CMS allowed providers who had previously passed the FSES to request waivers of up to five years while experts worked to fix the problem. The issue is coming to a head because these time limited waivers will soon expire, despite the fact that a proposed revision to correct unintended consequences, published in 2019, was never reviewed or finalized.

Coming into strict compliance with the 2012 Life Safety Code® without the option of utilizing NFPA 101A (alternative approaches to life safety) would be very costly (upwards of \$4 million per affected facility) and more important, would not make a difference in fire and life safety. Providers who serve a high percentage of Medicaid beneficiaries – and thus, Medicaid nursing home residents – would be the most egregiously harmed if the waivers end with no action by CMS. At a time when providers and residents are working to come back from the shock of the pandemic, the harm is even greater.

Next Steps

I request that CMS do one of the following:

- adopt the 2021 edition of the Life Safety Code®;
- provide a categorical waiver permitting use of the updated construction section in Chapter 19 of the 2021 LSC; or
- finish the review process that was derailed by the pandemic and finalize the provision in the rule that was proposed in 2019, that would allow providers to default back to the “mandatory values” of the 2001 FSES.

None of these options would make residents less safe than they are now, in the event of a fire.

Further, I request that CMS Baltimore transparently let regional offices, state survey agencies, providers, and other stakeholders know the status and timeline related to the relevant sections of the 2019 proposed rule. We understand the final rule may be delayed due to the pandemic. If it is delayed, however, we request that the time limited waivers be extended until regulations can catch up with current NFPA requirements.

We would welcome the opportunity to discuss this issue with you. We are happy to arrange conversations with nursing home providers to illustrate the impact of no action from CMS. Please contact Janine Finck-Boyle (JFinck-Boyle@leadingage.org) to follow up.

Thank you,



Katie Smith Sloan
President and CEO
LeadingAge