

Federal Sprinkler Requirement May Present Issues for State-Licensed Entities

On August 13, 2008, the Centers for Medicare and Medicaid Services (CMS) published a final rule entitled "Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems" ([the Regulation](#)). The Regulation requires that all federally certified long-term care facilities utilize a supervised automatic sprinkler system by August 13, 2013. Sprinkler systems must comply with the 1999 edition of the National Fire Protection Association's (NFPA) "Standard for the Installation of Sprinkler Systems" (NFPA 13). While this regulation may be old news to some in the long-term care industry, issues have arisen of late that call into question the exact scope of this regulation. Namely, to what extent does the Regulation apply to buildings that house both federally certified (e.g. skilled nursing facilities) and state licensed facilities (e.g. assisted living facilities)? Will surveyors confine surveys to the federally certified facility's space? These are important questions because CMS has stated that August 13, 2013 is a firm deadline, and that facilities not in compliance with the Life Safety Code and the Regulation on that date will face sanctions. No waivers will be granted after that date.

The Regulation purports to apply to all federally certified long-term care facilities as well "distinct part nursing home units" that are located within other entities such as hospitals. As such, whether a federally certified long-term care facility is a "distinct part" of another entity is the critical inquiry. Under the State Operations Manual, Appendix I: Survey Procedures and Interpretive Guidelines for Life Safety Code Surveys (Appendix I), for a facility to be deemed a "distinct part," it must be separated from the other parts of a building by a two-hour fire wall. If and when the surveyors encounter a code-compliant two-hour fire wall, they will not survey the building beyond that fire wall. If the surveyors do not find a code-compliant, two-hour fire wall, they will survey the entire physical structure for compliance with the Life Safety Code and the Regulation, including those portions of the building that are not part of the federally certified program. All issues of noncompliance with the Life Safety Code and the Regulation will be cited, including the lack of a sprinkler system installed in accordance with NFPA 13. Note that a floor-ceiling assembly does not suffice as a code-compliant, two-hour fire wall.

Providers occupying structures originally designed with a code-compliant, two-

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hour fire separation are not necessarily out of the reach of the Regulation. Even if a building had proper two-hour fire separation, it is possible that the separation has been compromised by building maintenance or renovation. Facilities should not rely solely on state surveyor findings with regard to the sufficiency of the two-hour fire wall as we are aware of an instance in which a federal surveyor disagreed with state survey findings. It is advisable to have an outside consultant evaluate the sufficiency of the fire wall. Furthermore, Appendix I notes that other buildings on a campus, which are wholly separate structures from the building housing a federally certified long-term care facility, may also be within the purview of the Regulation if the residents of the facility have "customary access" to the building (e.g. a cafeteria, gym, chapel, etc.).

Currently, CMS will consider waiver requests for facilities required to install sprinkler systems. Waivers will not be granted after August 13, 2013. Facilities that are found to be noncompliant after that date will face the possibility of immediate sanctions, up to and including decertification. Because of the firm deadline for compliance set by CMS, it is critical that providers with both federally certified and state licensed facilities under the same roof verify their compliance with the Regulation and Appendix I. Facilities not in compliance will need time to remedy the shortcomings of their structures. Failing to address these concerns now may prove to be costly on August 13, 2013.

We have learned during recent meetings between DHS and various provider associations that CMS will be focusing its attention, as it relates to the Life Safety Code in general, on state facilities in the Western (Eau Claire area) and Northern (Rhineland area) regions, although, of course, facilities in all parts of the state will be subject to scrutiny.

If you have questions about these issues, please contact your Reinhart Boerner Van Deuren s.c. attorney or one of our [Long-Term Care Facilities, Assisted Living, and Senior Housing attorneys](#).

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