

Long-Term Care Survey Alert

Life Safety Survey: Caught Short With The Feds' Sprinkler Deadline? Here's How To Proceed

Hundreds are left scrambling toward compliance.

Nursing homes marked a deadline five years in the making on Monday, August 13, 2013: the federal deadline to have fully automated sprinklers in place. If you are still pulling your fire-safety system toward compliance, you will need to act fast and stay informed to stave off civil monetary penalties (CMPs) and other sanctions.

On August 16, the **Centers for Medicare & Medicaid Services** (CMS) issued a Survey & Certification memo (S&C-13-55-LSC) confirming the proposed August 13 deadline.

"All nursing homes must be fully sprinklered as of August 13, 2013, in order to participate in Medicare or Medicaid," said CMS in the memo's summary.

Background: A final rule published on August 13, 2008, set forth the requirement that all Medicare- or Medicaid-certified nursing homes had to have automatic sprinkler systems installed throughout their buildings no later than August 13, 2013 (73 FR 47075 - Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems), in accordance with National Fire Protection Association (NFPA) 101, Life Safety Code (LSC), 2000 Edition, and NFPA 13, Installation of Sprinkler Systems, 1999 Edition.

Hundreds of facilities aren't ready for the new requirement. CMS reports that as of June 2013 approximately 1,280 nursing homes nationwide are not fully sprinklered.

Nursing homes in Illinois and New York that aren't in compliance are advised to be proactive in lining up a sprinkler contractor now, to avoid further delays in the rush toward compliance. That's because these states ranked first and second, respectively, in having the most facilities that are either totally without sprinkler systems or only partially sprinklered (214 in Illinois and 213 in New York).

No Extension In Sight

Earlier in the year, CMS issued a proposed rule that would have permitted the agency to grant a time-limited extension for a building that was a "building replacement" or "a building undergoing major modification," but because a final rule has not followed to date, CMS confirms that "a deficiency will be issued if the facility is not in compliance with the regulation in force at the time of the survey."

The agency explains that it currently lacks the authority to extend the deadline or offer waivers related specifically to the 2008 Fire Safety final rule.

Facilities that do not have in place a complete automatic sprinkler system as defined by the NFPA 13, 1999 edition will be cited under deficiency tag K-056 (sprinkler system installation). The absence of a sprinkler system would always be cited at the F level or higher, explains **Jason T. Lundy**, of **Polsinelli Shughart, PC**, in Chicago, IL.

Whether the agency will follow through with a final rule allowing "time-limited extensions" to the sprinkler requirement is uncertain.

Best advice: So far, CMS recommends that facilities that are undergoing building replacements or major modifications "maintain close communication with the state survey agency and CMS."

"Certain information will be of value to us as we continue to work on this matter," hedges CMS in the memo, referring readers to "Attachment Two, Useful Information About Planned Replacement or Major Modification Situations." In particular, facilities that are working on full compliance should supply the name, address, CCN, owner and other data if they are planning to build a replacement facility soon, or make major modification to unsprinklered areas of the facility in addition to the installation of a complete sprinkler system.

The agency also requests that the report to state and federal authorities include details about what replacement facilities or modifications are planned. For example, when does the facility expect to gain necessary construction approvals and to begin construction? If major modifications to unsprinklered areas are planned, what kinds of modifications are planned and what is the anticipated timetable to commence and complete construction? To bolster your case that you are making good progress, you may want to include such details as bid estimates received, financial commitment documentation, and architectural plans, experts say.

Double-check: Some facilities that think they are in compliance may still face K-56 sanctions, suggests Lundy. According to the NFPA 13, 1999 edition, complete coverage includes the entire facility, including but not limited to sprinklers in all closets, storage areas, walk-in coolers and freezers, electrical room, overhangs, and elevator hoist areas.

Timing matters: If you are in an open enforcement cycle that began before August 13, surveyors should not cite facilities that are not fully sprinklered. Rather, that inspection should fall to the next regular annual survey, says **Evie Munley** of Leading Age.

If you do find yourself facing a survey that includes a life safety inspection, be prepared to issue a plan of correction □ and to take quick action to come into compliance.

Three-month window: You will probably be able to avoid a civil monetary penalty if your plan "ensures by means of appropriate and timely investment, contracts in place, and completed plans for installation, that full sprinkler status will be achieved within three months of the survey," says CMS.

Facilities that fail to be compliant within three months of a citation will be subject to the denial of payment for new admissions. Termination from Medicare and Medicaid awaits facilities that can't pass the sprinkler compliance test at the end of the sixth month post survey.

CMS warns, however, that sprinkler status could shut facilities down much more quickly if shortcomings are severe. Citation at immediate jeopardy levels (J, K or L) could place the facility at risk of termination within 23 days. Such circumstances will be "rare," says the agency, "but [are] possible if there are grave circumstances in place."