

## Long-Term Care Survey Alert

### Reader Question: Will The GAO Nursing Home Fire Safety Report Fan The

**Question:** Our facility read a **General Accounting Office** report (GAO-04-660) that ties recent nursing home resident deaths to lack of automatic sprinklers, which aren't required in all nursing facilities in all states. The report advises the **Centers for Medicare & Medicaid Services** to "improve oversight of nursing home fire safety, such as reviewing the appropriateness of exemptions to federal standards granted to unsprinklered facilities and strengthen the fire safety standards and ensure thorough investigations of any future multiple-death nursing home fires in order to reevaluate the adequacy of fire safety standards." CMS agrees with GAO's recommendations.

**That leads us to wonder:** Could surveyors use the GAO report and CMS' agreement with it as a basis for citing nursing facilities that have not retrofitted with automatic sprinkler systems, even though the facilities aren't required to do so under state law (or current federal requirements)? If a surveyor did cite the facility in such a case, might the facility beat the deficiency at IDR or upon appeal?

**Answer:** As the GAO notes, there is no federal requirement for sprinklers for all nursing facilities. Therefore, if state law does not require older buildings built under previous life safety codes to have automatic sprinklers, then there is no legal basis to cite a federal deficiency - or to impose a federal sanction (and presumably the same is true under state law).

Thus, a surveyor's opinion that sprinklers would be beneficial is not a sufficient legal basis for a deficiency or sanction. What happens at IDR depends on the vagaries of the state's IDR process; some are not effective in removing even obviously wrong citations, and if the state agency conducting the IDR is the same agency that cited the deficiency, then IDR might not work.

Yet, assuming the facts of the case are limited to a citation for no sprinklers where there is no federal or state requirement, an appeal of a sanction to the Departmental Appeals Board would be a winner - probably very early in the case without need for a full-fledged hearing. However, keep in mind that providers can appeal only "remedies" at the federal level. That means if CMS imposes no remedy, things can get tricky (see related story, p. 94). State appeals also could be an option.

Editor's Note: Read the GAO report, "Recent Fires High-light Weaknesses in Federal Standards and Oversight," at [www.gao.gov](http://www.gao.gov).

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