

## Long-Term Care Survey Alert

### Special Fire Safety Focus: How Fireproof Is Your Facility? Surveyors Will Be Turning Up The Heat

Cover key safety and regulatory vulnerabilities in 10 steps.

The recent deadly fire in a National Healthcare facility in Nashville underscored an ominous reality: Providers that follow the letter of life safety codes may not be doing enough to protect their residents from harm - or their facility from serious legal repercussions if a fire occurs.

"In the current regulatory and liability climate, a nursing facility that experiences a tragedy such as fire can still face regulatory or civil liability - even if [the facility] followed federal and state requirements," cautions attorney **Joseph Bianculli** in Arlington, VA.

For example, the Nashville nursing facility was in compliance with state regulations that allow older buildings to operate without sprinkler systems. Even so, the state survey agency or plaintiffs attorney can assert that a fire or other tragedy was theoretically preventable, Bianculli says. "They can argue that the facility could have implemented physical plant improvements or at least operational ones, such as restricting admission of residents who may be dangerous." Thus, to be on the safe side for residents' sake and to sidestep regulatory and legal woes, consider taking these 10 steps:

**1. Make fire safety an integral part of the facility's quality assurance process.** But conduct safety audits in a way that allows the facility to be covered by the state's quality assurance privilege so you don't provide a roadmap for malpractice attorneys, suggests Bianculli. "Generally speaking, the quality assurance committee's minutes and notes are privileged from discovery in civil litigation and surveys," he says. (Consult with legal counsel about how that works in your individual state.) **Tip:** Empower a safety committee to look at and do something about safe smoking, as well as evacuation plans and fire safety, suggests **Annaliese Impink**, associate general counsel for Atlanta-based **Mariner Healthcare**.

**2. Stay a step ahead of surveyors on the Life Safety Code (LSC).** Tune in to the **Centers for Medicare & Medicaid Services'** Oct. 9 surveyor training on the LSC ([www.cms.internetstreaming.com](http://www.cms.internetstreaming.com)). The Web cast gives a good heads up on implementation of the 2000 LSC, which went into effect in September. CMS experts remind health care facilities that alcohol gel hand rub dispensers can be mounted in patients' rooms near the door but never in exit corridors.

**3. Perform a careful physical plan review looking for needed fire safety improvements.** Make sure clutter or objects in the exit corridors wouldn't impede evacuation if the area were filled with smoke, advises **Raymond Forsell**, a fire safety expert in Burlington, VT. **Tip:** Conduct the plant review using the CMS form 2786 as a checklist ([www.cms.hhs.gov/forms/cms2786W.pdf](http://www.cms.hhs.gov/forms/cms2786W.pdf)), Forsell advises.

And once you've done the review, make a careful risk-benefit decision related to safety improvements, such as retrofitting buildings with sprinkler systems. To weigh the risks, "look at your population, the facility's layout, the age of the building and the likelihood that something could go wrong," suggests Impink. For example, is the facility smoke-free? Do you have a lot of immobile or cognitively impaired residents? Will retrofitting the facility with fire safety save money in terms of resident safety, regulatory compliance and liability insurance? **Tip:** Even if your facility has sprinklers, consider upgrading those in resident sleeping areas to the quick response sprinkler heads, suggests Forsell. "These come on more quickly when there's fire and make a fire more survivable," he says.

**4. Consider operational issues, such as placement of immobile residents.** If physical plant improvements, such

as sprinklers, are not economically or technically feasible, look at operational changes to protect residents. "For example, the media report regarding the Nashville fire highlighted the need for firefighters to enter the burning upper level to rescue non-ambulatory residents," Bianculli notes. Some states now require residents in multi-story dwellings to be able to self-evacuate. **Tip:** Teach staff to check often to see that the sprinklers are secured in the open position and don't appear damaged, suggests **Robert Solomon**, assistant vice president for building and life safety codes for the **National Fire Protection Association (NFPA)**. "For example, sometimes people paint over the sprinklers, which can affect the sprinklers' performance in a fire," he says.

**5. Have written fire procedures that all staff understand and practice.** Staff should know and carry out their part of the plan, according to the NFPA. That includes doctors, nursing staff, kitchen staff, housekeeping, maintenance, volunteers and others, the NFPA advises. **Tips:** Evaluate the results of routine fire and emergency drills. Time how long it takes to get every last resident out of the building. Are you meeting the mandatory evacuation time? Did everyone know what to do during the fire or other emergency drill?

**6. Conduct regular audits looking for residents' access to flammable materials.** For example, Bianculli handled a case recently where a resident burned to death and the survey agency found matches and cigarettes under her pillow.

**7. Invite your local fire department to do some fire drills, and enlist their help in planning for the worst.** That way, you'll know how they work and the fire department will be familiar with your facility should a fire occur, suggests Forsell.

**8. Enforce clear policies and rules for smoking.** Facilities can establish rules requiring supervised smoking by residents. You can also ask residents to wear fire retardant coverings when smoking.

Beware, however: Facilities that deny residents the right to smoke have been handed F tags for violating residents' rights. "And facilities that try to go smoke-free can prevent new residents from smoking, but not residents admitted before the new smoking rules went into effect," Impink says.

**Tip:** Don't forget to impose and enforce smoking policies for employees. A fatal fire at an unlicensed nursing facility in San Antonio was caused by a caregiver who fell asleep while smoking a cigarette.

**9. Consider discharging residents who pose a significant risk of starting a fire.** These include residents who continue to engage in unsafe smoking in spite of a plan to provide adequate supervision - or residents with behavioral issues who somehow continue to obtain matches or lighters from visitors. Before attempting to discharge the person, however, the facility has to make (and document) reasonable attempts to intervene and supervise the person, Impink advises.

When facilities do successfully issue a notice of discharge in such cases (and the process isn't always a slam-dunk), they have an obligation to discharge the resident to a safe environment. The transfer destination may be a facility that is better equipped to supervise smokers, says **Howard Sollins**, attorney with **Ober/Kaler** in Baltimore, MD. "Such facilities may provide designated supervised smoking areas and have elaborate procedures for monitoring residents' access to and use of matches and lighters and handling of lit cigarettes."

**10. Dispute any unfair survey deficiencies related to fire safety.** Challenge even D-level deficiencies related to fire safety if you have any basis for doing so.

Otherwise, if your facility does have a fire, plaintiff's attorneys or surveyors could point to the deficiency as evidence of a history of fire safety issues, notes **Barbara Miltenberger**, an attorney with **Husch & Eppenberger** in Jefferson City, MO.

For example, Miltenberger's firm represented one facility that got a D-level deficiency for having a blocked fire door during construction. Yet the deficiency had resulted from surveyors' confusion, as the nursing facility had obtained the approval of the local fire marshal and state survey agency to designate another door as the fire exit during the renovations.



"The facility disputed and eliminated the deficiency because it didn't want the fire safety-related issue all over the Internet and in the statement of deficiencies available for public viewing," Miltenberger reports.