

# Life Safety Code

## Temporary Waivers, FSES, and Annual Waivers

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# Take Aways

- Changes in Department Structure
- Changes in process
- Changes in enforcement
- Sprinkler deadline August 13, 2013

# Changes in Department Structure

- Plan review and certification have been combined
- Mixing of views and approaches
- Streamlining of process?

# Changes in process

- Annual waivers
- FSES
- Survey follow up

# Changes in enforcement

- More difficult to get annual waivers
- Closer scrutiny of FSES's
- Less leniency by CMS

# So . . .

- Pay very close attention to dates
- Push for confirmation on acceptance
- Get professionals involved earlier
- Get your sprinklering done, if necessary.

# The Life Safety Survey

- Every nursing home receiving Medicare and/or Medicaid reimbursement must undergo an unannounced annual survey
- Annual survey done between 9-15 month window
- State survey personnel assess compliance with federal quality of care and fire safety standards
- Surveyors must pass a self-paced computer based course and five days of classroom instruction
- Surveyors report the scope and severity deficiencies in CMS's Online Survey Certification and Reporting system database



# The Life Safety Code

- Life Safety Code 101 (2000 Ed.)
- Promulgated by the National Fire Protection Association (NFPA)
- NFPA is not a government agency
- Life Safety Code is not the only code facilities must meet
- Other examples: International Building Code, (BOCA, Standard Building Code, Uniform Building Code), Local Codes
- Codes generally address different types of structures
- Codes are issued periodically (every 2 -4 years)

# The Life Safety Survey

- Ten most frequently cited;
  - K-18. Corridor doors must be at least fire resistance rated for 20 minutes and resist the passage of smoke (non-sprinklered building)
  - K-29 Hazardous areas must be separated by appropriate level of fire rated construction
  - K-62 Sprinkler system maintenance
  - K-147 Emergency plan compliance
  - K-38 Emergency egress way accessible, clear and free of obstruction at all times
  - K-25 Smoke barrier construction failures
  - K-56 Sprinkler system installation
  - K-50 Fire drills
  - K-144 generators inspected/tested
  - K-67 Ventilation equipment.

# How Do I Prepare for a Survey?

- Review past surveys
- Evacuation plans – posted and staff familiar with them?
- Fire extinguishers hung and appropriate signage?
- Emergency lighting tested and documented?
- Fire protection systems tested and documented?
- All penetrations properly fire stopped?

# How Do I Prepare for a Survey?

- Preparing for the surveyor's arrival
  - Ladders on each floor for surveyor use?
  - Flashlights on each floor for surveyors use?
  - Do all doors close and latch?
  - Any doors held open by wedge or cord?
  - Documentation of fire drills?
  - Documentation of testing?

# Major Systems

- Automatic Sprinkler and Standpipe Systems
- Fire Pumps
- Fire Alarm Systems
- Fire and Smoke Dampers
- Emergency Electrical Systems
- Fire and Smoke Wall Integrity

# Addressing a survey

- Timing becomes critical
- The number of times that your facility has passed surveyors is irrelevant
- A comprehensive review by a professional early in the process will save money

# Timing

- 90 days after your initial survey date (health usually) CMS must impose a denial of payment unless the facility has achieved substantial compliance or has a waiver in place.
- A blown appeal can mean lots of lost \$.

# The Life Safety Code

- Three options for non-compliance:
  - Correct the alleged deficiency
  - Fire Safety Evaluation System (FSES)
  - Waiver (temporary or Annual)
- Path you choose will depend on cost and what is feasible.



# Fire Safety Evaluation System

- FSES provides alternative approaches to life safety based on the 2000 *Life Safety Code*. It is intended to be used *with* the *Life Safety Code*, not as a substitute
- Section 1.5 of the *Life Safety Code* permits alternative compliance with the *Code* under equivalency concepts where such equivalency is approved by the authority having jurisdiction
- The methodologies contained herein can be used to help determine equivalency where used as part of the technical documentation submitted to the authority having jurisdiction

# Fire Safety Evaluation System

- Looks at Building components and evacuation characteristics.
- Must be done by a knowledgeable, third party.
- More detail is required.
- Must be done and submitted with the plan of correction.

# Fire Safety Evaluation System

- The entire residence is evaluated unless
  - Portions are separated by 2 hour construction
  - Zones are created by the smoke barrier walls.
- Safety parameters are evaluated
  - Fire alarm system, smoke detection, construction, automatic suppression, exit access, finishes
  - A single weighted value is assigned

# Waivers

- **Annual**
  - Must reapply for a waiver after the next survey or after a change
  - Does not require corrective action
- **Temporary**
  - Time limited (extended plan or correction date)
  - Stays penalties while corrective action is being completed
  - Interim measures
  - Watch your expiration date

# Annual Waivers

- The **provider** must demonstrate that:
  - the waiver would not adversely affect patient and staff health and safety; and
  - it would impose an unreasonable hardship on the facility to meet a specific LSC requirement.
  - *now* looking for measures above and beyond.

# Annual Waivers

- **When to use?**
  - Financial hardship
  - Inability to make the corrections to the building/physical plant
  - Extremely hard/expensive correction to a deficiency causing minimal risk to safety

# Annual Waivers

- **Requests for an Annual Waiver must include:**
  - IDPH's Annual waiver request form
  - Narrative detailing why waiver would not adversely affect the health and safety of residents and staff
  - A detailed financial statement that clearly shows that correction of the deficiency would pose a significant financial burden to the facility

# Annual Waivers

- **Requests for an Annual Waiver must include:** *(continued)*
  - An FSES, along with Table 5, Alternates, must be submitted to assure the FSES cannot pass
  - Identify the additional Life Safety features, above the minimum required, that will be provided to attain an equivalent level of life safety should the waiver be granted



# Annual Waivers

- Provide detailed information on the deficiency being waived and why it cannot be corrected
  - Plans/drawings/narrative clearly identifying deficiency
  - A current detailed signed cost estimate from a licensed architect, engineer or contractor for correcting the deficiency

# Annual Waivers

- Annual waivers must be requested every year
  - All required information must be re-done and resubmitted for consideration
  - No guarantee that an annual waiver will be granted or continue to be granted in the following years

# Annual Waivers

- FSES may be required, even if you won't pass.
- A waiver will not be granted “if patient safety is compromised in any way.”

# Annual Waivers

- Interplay between IDPH and CMS about standards, review, recommendations, and approvals for Annual Waiver requests

# Temporary Waivers

- Commitment to correct the deficiency, just need additional time to accomplish the correction.
- The “additional time” of a temporary waiver allows a facility to set aside the LSC deficiency and close the survey cycle, thereby avoiding CMP, DPNA, and termination remedies.
- Once the correction is made, no more temporary waivers, Annual Waivers or FSES should be required

# Temporary Waivers

- Correction of deficiencies over an extended period of time
- Time and budget drive correction of major LSC deficiencies
- Time period is dependant on the scope of the deficiency being corrected

# Temporary Waivers

- How much “additional time” is available under a temporary waiver?
  - 90 days, 6 months, 1 year, many years?
- Extensions or “stacking” temporary waivers
- Temporary waiver is not available if the “correction” of the deficiency is “***perform an FSES***”

# Temporary Waivers

- **Interim measures** during the additional time for correction
  - above and beyond existing requirements of LSC
  - Tailored to the LSC deficiency
  - Facility must **do** the interim measures and document



# Temporary Waivers

- **Requests for a Temporary Waiver must include:**
  - IDPH’s temporary waiver form
  - Interim Life Safety measures that will put into place
  - Develop a phased construction plan for correction of deficiency?
    - Multi-year plan if reasonable and required

# Temporary Waivers

- **Requests for a Temporary must include:**

*(continued)*

- Letter of Commitment
- Company/corporate letterhead
- Signed by corporate officer
- Commits the provider to develop an acceptable phased correction action plan for the deficiency within 3-8 months of RO acceptance of temporary waiver
  - Time may vary depending on scope of the plan
- Phased construction plan will be developed and submitted to the SA at the end of the 3-8 month period
  - The plan must be detailed (drawings, specifications, etc.) and reasonable

# Temporary Waivers

- **Requests for a Temporary Waiver must include:** *(continued)*

- The letter of commitment must indicate that a detailed status letter will be submitted to the SA
  - Every 60 days from the approval date of the temporary waiver
  - Identify the progress of the development of the phased construction plan to date
  - Identify the remaining steps necessary to complete the phased construction plan

# Temporary Waivers

- **Requests for a Temporary Waiver must include:** *(continued)*
  - Once SA/RO accepts the providers phased construction plan the provider will implement the phased construction plan
    - Another temporary waiver will be issued for construction
  - SA/RO will monitor progress of the construction to assure the provider is on schedule

# Temporary Waivers

## Tougher scrutiny:

- Unjustifiable delays in completion of the phased construction may result in revocation of the temporary waiver
  - In turn causes enforcement remedies (CMP, DPNA) and *even termination from Medicare program*
- No guarantees that temporary waivers will continued to cover deficiencies in years to come
  - If CMS *mandates* correction, the issue then falls under CMS's time constraints and cost will not be a factor (ex. – mandate for fully sprinklered buildings)

# 2013 Sprinkler Mandate

- On August 13, 2008, CMS published the final rule to require all certified long term care facilities to be fully sprinklered by
- **August 13, 2013**

# 2013 Sprinkler Mandate

- **Fully sprinklered means fully sprinklered in accordance to NFPA 13, 1999 Edition**
  - Complete coverage includes, but is not limited to: entire facility; all closets; storage areas; walk-in coolers and freezers; overhangs; electrical rooms; elevator hoist ways
- **It is the facility's responsibility to fully understand and comply with this rule!**
  - If you do not understand what “fully sprinklered” means or are not sure, seek help from a consultant

# 2013 Sprinkler Mandate

- Keep in mind...sprinkler installations must be submitted to the IDPH for review and approval prior to starting the work.
  - Be sure to factor this time into your schedule
- Good sprinkler contractors are limited
  - As the deadline approaches, more and more contractors will be busy and may not be able to complete your project by the deadline
  - Be proactive....there will be no extensions or exceptions!



# 2013 Sprinkler Mandate

- There will be no waiver and/or FSES provision for fully sprinklered after the August 13, 2013 deadline.
- It is imperative you ensure that your facility is fully sprinklered in accordance with the regulation on August 1, 2013.
- Failure to do so is likely to result in enforcement remedies, including but not limited to termination.