

CMS PROPOSES EXTENSION ON AUTOMATIC SPRINKLER REQUIREMENTS

In 2003, two fires in long-term care facilities resulted in 31 resident deaths. As a result of these two events, CMS analyzed the fire safety precautions in place in these facilities and determined that resident safety could be greatly improved by requiring that all long-term care facilities have automatic sprinkling systems installed throughout the buildings. Consequently, on August 13, 2008, CMS published a final rule that required all buildings with long-term care facilities must have automatic sprinkler systems installed throughout the facilities no later than August 13, 2013.

However, the response from some long-term care facilities subject to the new rule has been less than enthusiastic due to the fiscal hardships that compliance would impose. In many cases, affected long-term care providers will not be able to meet the August 13, 2013 deadline. In recognition of the dilemmas encountered by these providers (i.e., obtaining financing and old construction not easily modified for an automatic sprinkling system), CMS is offering a deadline extension, not to exceed two years.

To qualify for the extension, a provider must comply with ALL of the following conditions:

1. The facility is in the process of replacing or significantly modifying the building.
2. The facility can demonstrate it has the necessary financial resources to complete a building replacement or modification.
3. Prior to the extension deadline, the facility has submitted the required construction or modification plans to the State and local authorities for approval.
4. The facility agrees to complete interim steps to improve fire safety while construction is in progress. Such steps could include a fire watch, installation of temporary exits and smoke detection systems or additional smoke detection system in area under construction, increased fire safety inspections, additional training and awareness by staff, and additional fire drills.

The length of an extension may not be granted for the full two years based on a facility's circumstances and data submitted to CMS. CMS has proposed a provision for an additional one-year extension in instances where there is a substantial investment by the facility that may require additional time for completion of the new construction or modifications that will in the long-term be beneficial to the residents' safety and well-being.

It is important that providers are mindful that the proposed extension is a federal mandate and that state and local agencies may have requirements that are in contrast or addition to those proposed in this provision. Therefore, a review of state and local rules and regulations is highly recommended.

If you have questions or concerns regarding the foregoing or would like additional information, please contact your regular Hall Render attorney, or Todd Selby at tselby@hallrender.com or 317.977.1440; Brian Jent at bjent@hallrender.com or 317.977.1402; or David Bufford at dbufford@hallrender.com or 502.568.9368.