

August Deadline Approaches for Nursing Homes

On August 13, 2008, the Centers for Medicare and Medicaid Services (CMS) published a new final rule regarding all nursing homes in the United States called the "Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems". This final rule has a number of important requirements for nursing homes (also called "long term care facilities" regarding fire sprinkler protection as follows:

- All nursing homes will be required to have a sprinkler system installed by August 13, 2013.
- The fire sprinkler systems will need to meet the 1999 edition of NFPA 13.
- All existing sprinkler systems in nursing homes will need to be evaluated to determine if they meet the 1999 edition of NFPA 13. Those that do not will need to meet the 1999 edition of NFPA 13 by August 13, 2013.
- No waivers will be provided for Fire Safety Equivalency Systems (FSSES).
- All sprinkler systems need to be inspected, tested and maintained in accordance with the 1998 edition of NFPA 25.

When this rule was adopted back in 2008, the people that run nursing homes were given five years to comply. While many forward thinking operators of nursing homes took advantage of the time to make sure that they will be in compliance, we are sure that there are many that did not plan ahead so well. The fire sprinkler industry is likely to see a flurry of activity in nursing homes this summer.

It is interesting to note that the new rule did not grandfather older sprinkler systems. In other types of similar legislation, buildings that had been previously sprinklered would have been exempted from any retrofit requirements to meet a newer edition of NFPA 13. But in this case, that did not happen. Systems that were installed under older editions of NFPA 13 will need to be reviewed and see if they still comply with the 1999 edition of the standard.

One of the big changes to NFPA 13 in the 1991 edition was a shift in the hydraulic design criteria and a serious reduction in the number of systems that could be designed using the pipe schedule method of pipe sizing. This may have a serious effect on nursing homes with sprinkler systems designed prior to the 1991 edition. For example, a nursing home with space that was designed as Ordinary Hazard Group 2 under the 1989 edition of NFPA 13 with standard response sprinklers might have been hydraulically calculated for a density/area of 0.19 gpm per sq ft over 1500 sq ft [as was permitted by that standard in Figure 2-2.1.1(b)]. But the 1999 edition of NFPA 13 would require that density/area to be 0.2 gpm per sq ft over 1500 sq ft. This change in density might require pipes to be increased in size to make sure that the water supply is still adequate.

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A similar problem might be with a large nursing home that was sprinklered using the pipe schedule method for pipe sizing. In the 1999 edition of NFPA 13, the use of pipe schedule systems is severely limited. Many of the old pipe schedule systems would need to be replaced, or at least re-calculated to prove that the pipe sizes would still permit the water supply to get the necessary density to the proper sprinklers.

It is unfortunate that the CMS referenced the 1999 edition of NFPA 13 in their ruling. While this is understandable for bringing older editions "up to code" it is unfortunate that the ruling also applies to newly installed systems. Since the rule was passed in 2008, it would have been good if they had at least adopted the 2007 edition of NFPA 13, which has many improvements and clarifications over the 1999 edition.

Enforcement of a specific older edition of NFPA 13 has always been a source of conflict between enforcement authorities and the sprinkler industry. Many of the changes in new editions of a standard reflect clarifications of intent for the same exact situation in a previous edition (the closest thing we can get to a Formal Interpretation anymore under the new NFPA system). But many authorities will ignore this new information because it's not "in the book".

From a legal perspective, these authorities that are putting on blinders and refusing to acknowledge the newer editions are failing to do their jobs and are failing to enforce the NFPA standards correctly. We recognize that the 1999 edition of NFPA 13 is specifically referenced in the law, but we constantly try to educate authorities to the fact that they need to enforce the whole standard, not just the pieces and parts that they feel like enforcing. Section 1-2 of the 1999 edition specifically states, "Nothing in this standard is intended to restrict new technologies or alternate arrangements, provided the level of safety prescribed by this standard is not lowered."

The 2007, 2010 and 2013 editions of NFPA 13 are "alternate arrangements" that are the same level of safety or higher than the 1999 edition. Therefore, an authority that is enforcing the 1999 edition of the standard is required by the 1999 edition to consider "alternate arrangements" that are the same level of safety or better. In other words, an authority that does not consider alternate arrangements, like the new editions of the standard, is failing to properly enforce the 1999 edition of NFPA 13.

In some states, the local authorities that are responsible for enforcing the Medicare and Medicaid rules have already stated that they are going to allow the use of newer editions of the standard, consistent with the version of NFPA 13 that is being used for other new construction in their state. In other places, the sprinkler contractor may need to have a discussion with the local enforcement authority before using a newer edition of NFPA 13 as their design document.

When the rules were passed five years ago, the CMS appeared to be adamant that there were going to be no exceptions and no extension of the deadline beyond August 13, 2013. However, as the deadline approaches, the NFSA has become aware of a movement to give some last minute nursing home operators some more time to comply. It would appear possible that the CMS will extend the deadline a little farther out, but only for a small number of nursing homes that meet certain other safety criteria. These nursing homes will not be given a way out of the sprinkler requirements, but they may be given a little more time to comply.

The best bet is for any nursing home that does not comply with the rules to work as quickly as possible to make sure that they comply. Any sprinkler

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contractor with a nursing home as a client is encouraged to follow up with their client to make sure that they are in full compliance with this rule.

Nursing homes that are not in compliance will find that they will not be able to obtain reimbursement from Medicare and Medicaid for services provided to patients. This economic incentive should be enough to get nursing homes to comply as quickly as possible.

For more information on protecting nursing homes with sprinklers, you can go to the American Health Care Association (AHCA) website at www.ahcancal.org and click on "Facility Recourses". Then click on "Fire and Life Safety" to see a great deal of information on sprinklers and nursing homes.

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