The National CONSUMER VOICE for Quality Long-Term Care
formerly NCCNHR

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Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services7500 Security Boulevard
Baltimore, MD 21244

RE: File Code CMS-3277-P

Dear Administrator Tavenner:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) appreciates the opportunity to comment on these proposed regulations related to fire safety requirements. The Consumer Voice is a national non-profit organization that advocates for quality care on behalf of long-term care consumers across all care settings. Our membership consists primarily of consumers of long-term services and supports, their families, long-term care ombudsmen, individual advocates, and citizen advocacy groups. The Consumer Voice has almost 40 years' experience advocating for quality care.

Our comments are presented below.

HEALTH CARE OCCUPANCIES: LONG-TERM CARE FACILITIES
Life Safety Code

- **Adoption of 2012 edition of Life Safety Code**

  With some exceptions discussed below, we support the adoption of this more recent and updated edition. There have been many advances in safety and technology since the 2000 edition that will serve to better protect nursing home residents. Adopting a more up-to-date version of the LSC is long overdue.

- **Specific provisions within 2012 Life Safety Code**

  Sprinklers in high-rise buildings

  CMS is soliciting public comment to determine if other provider types besides hospitals are or may be located in a high-rise building and whether 12 years is enough time for the installation of sprinklers in such buildings.

In response to CMS's solicitation for information on other provider types located in high-rise buildings, a significant amount of nursing homes, particularly in urban settings, are or are located within buildings that exceed 7 stories.

In addition, we are deeply troubled that CMS is asking whether 12 years is enough time for the installation of sprinklers in high-rise buildings; the question should instead be whether it is too much time.

We adamantly oppose giving existing nursing homes greater than 7 stories 12 years to install sprinklers. Such an extended time period leaves nursing home residents at grave risk of injury and death from fire. The maximum amount of time these facilities should be given to come into compliance is five years - the same time frame given to other nursing facilities under the CMS rule that went into effect August 13, 2013. CMS itself points out why sprinklers in these buildings are so important: *high rise buildings require more time to evacuate and sprinklers would allow additional time to safely evacuate a facility*." According to the National Fire Protection Association (NFPA), in buildings with properly installed sprinkler systems, the death rate per fire can be reduced by 83% and property damage decreased by 69%." Every day that passes without sprinklers is a day that places residents in jeopardy.

Corridors

We support this new provision that would allow fixed furniture to be placed in the corridor. Such furniture would give residents a place to rest when walking down the hallway, thereby encouraging more residents to walk since they could sit down if necessary. In addition, this furniture would make the nursing home less institutional and sterile and more home-like. At the same time, allowing medical equipment to be stored in the corridors would make nursing homes much more institutional rather than less, and would be a step back in the movement toward making nursing homes more like home. We recommend that CMS prohibit medical equipment in corridors as part of the in existing and new health care occupancies.

Cooking Facilities, Furnishings & Decorations and Fireplaces

In general, we support each of these elements because they would promote person-centered care and a more home-like atmosphere. Additionally, cooking facilities can help boost residents' appetite and prevent weight loss, while furnishing/decorations can improve residents' quality of life by making residents' rooms feel more comfortable and familiar.

However, we believe several changes or additions should be made to the proposed language:

- **Cooking facilities**

Because the cooking facilities are open to the corridor, the following measures should be added:

- If the switch to deactivate the cook top or range is the same switch that activates the cook top or range, it should be hidden from view. This would make it less likely that a resident might see it and accidentally turn on the cook top or range.
- There must be a staff person present in the cooking facility at all times when the range hood and/or stovetop are in use.
- The cooking facility area should be screened off when not in use to prevent resident access.

- **Furnishings & Decorations**

  Permitting residents to attach photographs, paintings and other art directly to the walls, ceilings and non fire-rated doors, and to bring in their own furniture will help residents to feel more at home and surrounded by possessions that are important and meaningful to them.

  Nevertheless, even with flame retardant requirements, we are concerned that decorations still pose a risk to residents in rooms that are not protected by an automatic fire sprinkler system and limiting the amount of wall, ceiling and door space that can be covered fails to adequately address this danger. For this reason, we urge CMS to permit decorations only in rooms that have sprinklers. This should not impact residents' abilities to decorate their rooms since nursing homes are required to be fully sprinklered. Furthermore, with sprinkler protection there would be no need to mandate the percentage of the wall, celling and/or door that could be covered.

- **Fireplaces**

  To increase the safety of residents, we recommend that two smoke detectors be located no closer than 20 feet and not further than 25 feet from the fireplace. This standard is the same as the one for cooking facilities.

- **CMS exceptions to 2012 edition of Life Safety Code**

  We strongly support CMS's proposal to:

  - Require all health care facilities that provide care to one or more residents to comply with relevant requirements of the 2012 edition of the LSC instead of only applying these requirements to facilities of 4 or more. Residents in facilities of 4 or fewer deserve the same level of safety as those in larger facilities with more residents. We

agree with CMS that this basic requirement is needed to assure a core level of safety and quality for all residents, regardless of where they receive health care services.

- Prohibit the use of roller latches. Advocates have observed that these latches fail to adequately close doors. CMS is right to bar their use since the agency notes that fire investigations have shown that roller latches are an unreliable door latching mechanism and have failed to provide adequate protection to residents in their rooms during an emergency.
- Retain the requirement for evacuation or a fire watch when a sprinkler system is out of service for more than four hours rather than the 10 hours permitted under the 2012 edition of the LSC. Although we think the number of hours should be less than four, we believe that 10 hours leaves residents exposed to danger for too long.

  A fire watch is extremely important, yet simply calling for a fire watch is not sufficient given the extreme vulnerability of residents during any time period when there is no sprinkler system in place. We urge CMS to set forth standards relating to the fire watch. Such standards should include requirements for a written fire watch plan; a minimum number of staff to conduct a fire watch; training; frequency of facility tours/checks; and documentation.

2012 Edition of NFPA 99 (Health Care Facilities Code)

- **Adoption of 2012 Edition of the NFPA 99**

  We adamantly object to Chapter 4 of the 2012 edition of NFPA 99, which provides guidance on how to apply NFPA 99 requirements based upon risk "categories." According to this risk-based approach, facilities would determine the appropriate level of protection required in various parts of the facility based upon each area's risk to residents.

  <u>This a recipe for disaster:</u>

  - Facilities have a strong incentive to assess an area as being a low risk to residents in order to avoid more stringent requirements. There is nothing to prevent them from doing so since there appears to be no external verification of the accuracy of a facility's self- assessment.

  - For a variety of reasons, including lack of adequate monitoring by staff, residents have the potential to be in any part of the facility at any time. Consider this scenario: A resident ends up alone with a lighted cigarette in an area of the nursing home assessed as low risk. The situation is now high risk but there are only low risk

protections in place, thereby exposing the resident to danger. The best and safest way to protect residents is to assure that fire safety requirements are implemented equally throughout the facility.

- The risk assessment would be conducted by "qualified" personnel, yet no qualifications are presented in the proposed rule.

CMS should reject this Chapter.

RESIDENTIAL BOARD AND CARE OCCUPANCIES

Life Safety Code

- **Adoption of 2012 edition of Life Safety Code**

  In general we support the increased safety protections the LSC requirements would bring to these facilities. According to the National Fire Protection Association's 2012 report, "Structure Fires in Residential Board and Care Facilities," there were an estimated 1,920 structure fires in residential board and care facilities reported to U.S. fire departments each year, with associated annual losses of 10 civilian deaths, 61 civilian injuries, and $8 million in direct property damage. These data show a clear need to improve the safety measures in residential board and care homes.

  We particularly commend CMS for including the proposed regulations requiring sprinklers, smoke alarms and the presence of staff when residents needing evacuation assistance are present. These essential safeguards are needed to provide at least a minimum level of safety.

  At the same time, we urge CMS to revise or eliminate the provisions listed below:

  - CMS notes that the LSC requirements for residential care facilities differ according to evacuation capability, with more rigorous standards for facilities where occupants, residents and staff as a group are unable to reliably move to a point of safety in a timely manner. We recognize that board and care occupancies vary greatly, but we are very concerned about a process that permits facilities to assess their own evacuation capacity. As noted above, facilities have a strong incentive to underestimate their evacuation capability in order to avoid more stringent requirements. Moreover, the needs of residents can change rapidly, turning a facility from a "prompt evacuation capability" to a "slow evacuation capability." It is not realistic to think that a facility will reassess its evacuation capability on an ongoing basis and comply with stricter standards when necessary. CMS should not adopt these provisions of the 2012 LSC, which would undermine its efforts to improve safety.

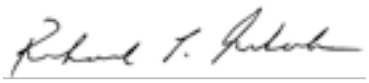
- The proposed rule for sprinkler systems and smoke alarms to be installed in all new facilities must be extended to existing facilities as well. Residents in existing facilities are just as much at risk as residents in new facilities and should be assured the same level of protection. Existing facilities can be given a period of time, not to exceed five years, in which to make the necessary renovations.

Thank you for your consideration of these comments.

Sincerely,

Robyn Grant
Director of Public Policy and Advocacy

CC:



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