

# ***State Code for Health Care Facilities Meeting Minutes***

July 15, 2009

Paul Cooke called to the meeting order at 1:35 on July 15, 2009 at South Metro Fire Rescue Authority Headquarters in Centennial, CO.

The following people were in attendance:

Becky Baker, CCICC; Paul Cooke, CSFCA; Jesi Dobosz, CDPHE; Gail Finley, CHA; Steve Gasowski, CDFS; Rob Geislinger, FMAC; Kevin Klein, CDFS; Roberta Robinette, CSFCA; Jerry Stricker, FMAC; Steve Suter, University of Colorado Hospital; Augie Trujillo, University of Colorado Hospital

Paul stated that this meeting was called to discuss the issues surrounding fire code enforcement in health care facilities and examine solutions to these issues. He and Gail Finley of the Colorado Hospital Association (CHA) had met a couple of times on these issues and decided it was necessary to call together additional stakeholders to try to come up with a solution to these issues.

Gail gave some background:

- She used to work for CDPHE, and the issue dates back to that time.
- Since working for CHA, she's been approached by architects and builders about adopting one code for health care facilities. Currently in Colorado, hospitals that are certified with CMS (Centers for Medicare and Medicaid Services) are required to adhere to the LSC (Life Safety Code), as well as ICC (International Code Council) Codes.
- Often the requirements of these two codes don't match or are redundant, causing health care facilities to make changes after construction that can be very costly.
- There is a huge rate of turnover of CEOs in the health care industry, which further complicates matters as they are often unaware of the code issues.

The problem has been exacerbated by the fact that until recently, CDPHE was not doing plan reviews on new construction and major renovations, but when it came time for the CMS survey, the hospitals were being presented with notice of deficiencies. These deficiencies are proving to be quite costly for the hospitals.

To date, no state has been successful in adopting one code for health care facilities. Other federal agencies have adopted I-Codes, yet CMS continues to require use of the LSC.

Becky Baker distributed an article from the December 2008 issue of Building Safety Journal, titled "Restoring the Health of Medical Care Facilities – Recognizing State Building Codes as Meeting Federal Requirements" [incorporated herein by reference].

- Perhaps we need to find out how I-Codes don't meet the needs of CMS.
- Becky commented that it's time to challenge the use of both codes. Someone has to spearhead this effort – why not this group?
- A large group of people are impacted by this – the changes they are required to make are at a huge cost.

Paul asked what issues it would create if we sought legislation to adopt the ICC as the codes for health care facilities.

- Where states have a state code, CMS regulations procedurally allow the state to make application to enforce the state code instead of the LSC.
- Jesi Dobosz responded that if CMS doesn't accept this, we'd be back at square one. We also have to consider the fiscal impact to CDPHE.
- Gail asked why there are two codes. The response was that there used to be several codes, which all rolled into I-Codes in 1994. The LSC isn't a construction code, so as it is, the ICC codes must be used for construction.
- Jesi said CDPHE is stuck with the code and can't just make changes.
- Jesi asked the rhetorical question, what are health care facilities that aren't CMS certified subject to? She will research this.

The consensus (with the exception of CDPHE, which did not take a position) is that it would be beneficial to adopt one code for health care facilities.

- The magnitude of this change isn't something CDPHE could handle at this point. They might support it, but couldn't spearhead it.
- The cost of using two codes also has to be considered. This is costing the health care industry millions of dollars, let alone time.

It was also the consensus that the group should continue meeting as a working group to further explore the possibility of either adopting the ICC as the state codes for health care facilities or amending the CMS regulations to allow a blanket exception from compliance with the LSC for states that enforce the ICC codes.

Gail will contact the American Hospital Association (AHA) to see if they're looking at this at all. We need to get a nation-wide perspective. She'll do some more research.

Kevin Klein will contact the National Association of State Fire Marshals (NASFM) to see how other SFM's are dealing with the issue and if anyone has been granted a waiver to enforce a code other than the LSC.

- Jesi suggested that if there's a legislator who's concerned with this issue, they could put in a request with NCSL to research it.

- Any information we can gather will be helpful: examples of how two codes don't work well, financial impact, patient safety, etc.
- We should include other stakeholders in this discussion, such as Colorado Association of Architects and Engineers.
- We need to find out whether the LSC requirement is statutory (federal) or agency rule making.

The next meeting will be scheduled for Wednesday, August 12 at 1:30 at South Metro Fire Rescue Authority.

Respectfully submitted,

Paul L. Cooke, Executive Director  
Colorado State Fire Chiefs Association

Notes:

- The next meeting will be held in the Colorado Division of Emergency Management Policy Room on the 2<sup>nd</sup> floor of the same building (9195 East Mineral Avenue, Centennial, CO). Conference call capability will be provided and the call-in number will be distributed in advance.
- Contact information for meeting participants and the article distributed by Becky Baker are included with distribution of these minutes.
- Subsequent to the meeting Jesi Dobosz informed Paul that CDPHE will not be involved in the stakeholder process. She said CDPHE will re-engage if it is decided to move forward with state legislation.
- Thank you to Katie Mendel, CSFCA Administrative Assistant for taking notes during the meeting and preparing draft minutes.

Additional Information

The following information was provided by Kevin Klein, subsequent to the meeting:

**Life Safety Code Requirements**

This page provides basic information about Medicare and/or Medicaid provider compliance with Life Safety Code (LSC) requirements and includes links to applicable laws, regulations, and compliance information.

The LSC is a set of fire protection requirements designed to provide a reasonable degree of safety from fire. It covers construction, protection, and operational features designed to provide safety from fire, smoke, and panic. The LSC, which is revised periodically, is a

publication of NFPA, which was founded in 1896 to promote the science and improve the methods of fire protection.

The basic requirement for facilities participating in the Medicare and Medicaid programs is compliance with the 2000 edition of the LSC. Facilities with waivers of the health occupancy provisions of the LSC or with an acceptable Plan of Correction are considered “in compliance.”

In most cases, the State Survey Agency (SA) schedules the LSC survey to coincide with the health survey; however, the timing of the LSC is left to the discretion of the SAs. The SA determines whether the LSC survey is to occur before, after, or simultaneously with the health survey. Most States require an initial LSC survey before admitting patients prior to becoming operational.

To assess facilities’ compliance with the LSC and other Medicare and Medicaid fire safety requirements, the SA may enter into a subagreement or a contract with the State fire Marshal’s office or other State agency responsible for enforcing State fire code requirements. Under this agreement, the designated State fire authority generally agrees to:

- Survey all non-accredited hospitals, hospices, ASCs, SNFs, NFs, CAHs, RNHCIs, PACE Facilities and ICFs/MR in accordance with schedules the SA furnishes;
- Survey accredited hospitals selected for validation surveys or surveyed as a result of a substantial allegation of an unsafe conditions;
- Complete the appropriate Fire Safety Survey Report (Form CMS-2786);
- Prepare statements of deficiencies and review Plans of Correction (Form CMS-2567);
- Make recommendations to the SA regarding facilities’ compliance with program fire safety requirements; and
- Use only qualified fire safety inspectors in the performance of these surveys.

**Exemption for State Law** - The LSC is not applicable where CMS finds that a State has in effect a fire and safety code imposed by State law that adequately protects patients in health care facilities, except for small ICFs/MR surveyed under the Residential Board and Care Chapters (Chapters 32 and 33). (See Section 1863 of the Act.)

The State submits a request that State codes be utilized in lieu of the LSC to the CMS/RO. That office will forward the request to the CMS central office (CO) for a determination along with the a copy of the enabling legislation so that the CO can determine whether the applicable State law adequately protects patients in healthcare facilities.

Upon notification by CO, the RO advises the State authority that submitted the request whether the State code is acceptable in lieu of the LSC. State codes cannot be submitted for ICFs/MR since CMS has no authority to accept them in lieu of the LSC.

**Unreasonable Hardship/Waivers** - The LSC provides that the authority having jurisdiction shall determine the adequacy of protection provided for life safety from fire in accordance with the provisions of the LSC. In cases of unreasonable hardship, 42 CFR 483.70(a)(2) specifies that a waiver may be granted where it would not adversely affect resident health and safety.

The Secretary has delegated to CMS the authority to grant waivers of LSC provisions for all facilities participating in Medicare and Medicaid with the exception of ICFs/MR. The State LSC surveyor recommends waivers, but CMS ROs grant the waivers. Therefore, LSC requests the SA receive from all providers except ICF/MRs must be forwarded to the RO for adjudication. For ICFs/MR, the State has the authority to grant waivers of health care occupancy requirements. There is no authority for either the State or the RO to grant waivers of Board and Care Occupancy provisions.

DRAFT