



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 14-29-LSC

DATE: May 16, 2014

TO: State Survey Agency Directors
State Fire Authorities

FROM: Director
Survey and Certification Group

SUBJECT: Information for Applications to Extend the Due Date for the Installation of Automatic Sprinkler Systems in Existing Nursing Homes

Memorandum Summary

- **Sprinkler Requirement:** On August 13, 2008, the Centers for Medicare and Medicaid Services (CMS) published a final rule entitled “Medicare and Medicaid Programs: Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems.” This regulation required all long term care facilities to be equipped with a supervised automatic sprinkler system by August 13, 2013.
- **Limited Extensions:** On May 12, 2014, CMS also published a final rule (CMS-3267-F) to permit a very limited extension of the automatic sprinkler due date for a facility that is building a replacement facility or undergoing major modifications to unsprinklered living areas.
- **Procedures to Request Time Extension:** Attached are the procedures to apply for approval of a request for an extension of time by a qualifying long term care facility that has not met the August 13, 2013 deadline for the installation of a complete automatic sprinkler system throughout the facility.

A. Background

On August 13, 2008, the Centers for Medicare & Medicaid Services (CMS) published a final rule requiring all long term care facilities to have automatic sprinkler systems installed throughout the building (73 FR 47075). This regulation required all nursing homes to have installed an automatic sprinkler system by August 13, 2013.

On May 12, 2014 CMS also published a final rule (CMS-3267-F, “Part II—Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction”) that allows CMS to grant a very limited extension of the due date for a facility that is building a replacement

facility or undergoing major modifications to unsprinklered living areas. Such authority is effective as of May 12, 2014.

In this memorandum we communicate procedures that a nursing home may use to apply for a temporary extension of the August 13, 2013 due date to install an automatic sprinkler system if it has not fully installed an automatic sprinkler system throughout the building.

B. Criteria & Procedures for Applying for and Approving Long Term Care Facilities Sprinkler Installation Time Extensions

CMS-3267-F allows CMS to grant an extension of the sprinkler due date for a time period not to exceed two years from August 13, 2013, if a number of conditions are met, and the facility is either building a replacement facility or undergoing major renovation, and needs additional time to undertake or complete the construction.

The regulation at 42 CFR 483.70(8)(iii) outlines conditions for facilities to obtain an extension of the due date for installation of an automatic sprinkler system beyond the August 13, 2013 deadline already established in regulation. The regulation lists 4 criteria for obtaining this extension:

- 1) Replacement/Major Modification: The facility is in the process of replacing its current building, or undergoing major modifications in all unsprinklered living areas and that requires the movement of corridor, room, partition, or structural walls or supports to improve the living conditions for residents, in addition to the installation of a sprinkler system; or has had its planned sprinkler installation so impaired by a disaster or emergency, as indicated by a declaration under section 319 of the Public Health Service Act, that CMS finds it would be impractical to meet the sprinkler installation due date.
- 2) Financial Commitments: The facility demonstrates that it has made the necessary financial commitments to complete the building replacement or modifications;
- 3) Plans Filed: The facility has submitted construction or modification plans to the State and local authorities that are necessary for approval of the replacement building or modification prior to applying for the deadline extension; and
- 4) Additional Interim Protections: The facility agrees to complete interim steps to improve fire safety of the building while the construction is completed, as determined by CMS. This could include such interim additional protections as a fire watch, installation of temporary exits and temporary smoke detection systems or additional smoke detection system in the area of construction, increased staffing in unsprinklered areas, increased fire inspections, additional training and awareness by staff, and additional fire drills.

Application and Approval Process

- 1) facility requesting an extension of time shall submit the required information, electronically in a pdf file, to the designated email mailbox below, with a copy to the state and CMS Regional Office:

SprinklerExtension@cms.hhs.gov

Complete sets of working drawings are not required to be submitted to CMS as part of the time extension request. We will request such information only if we determine they are necessary to document the request.

- 2) CMS will screen the information submitted to ensure that the facility has submitted the required information.
- 3) If CMS finds that additional information is needed, facilities will have 15 business days to address any questions we may have concerning the submittal.
- 4) CMS determinations with regard to extension requests are final. There is no formal appeal process, but CMS is available for informal reconsideration requests if there are material facts that are in dispute.

Information required from the facility to determine if a time extension is to be granted will depend on the type and extent of work that is being undertaken by the facility. However, in the “key information” section below we outline the basic submittal information necessary. While an onsite visit may be necessary at some point, in most cases, onsite visits by CMS or the State Survey Agencies will not be required at the time of application.

As part of the review of the request for a time extension, CMS will make a decision as to what interim fire safety measures will be required to be implemented by the facility and any reporting requirements concerning these measures that will be required to be submitted by the facility to CMS. Examples of items that may be required are the initiation of a fire watch, installation of temporary exits, and installation of temporary smoke detection or smoke alarm systems, increased fire safety training or fire drills for staff or other means to ensure the continued fire safety of the residents of the facility. We request that facilities outline any additional interim fire safety precautions the facility has or will implement during the period of the extension.

The CMS regulation also permits consideration of a further (one time only) 1 year extension of time if, after the initial approval of up to two-years from the August 13, 2013 date, extenuating circumstances arise that prevent completion of the project within the time period of the initial extension approval. CMS will not entertain any such “second” extension request until well after any initial approval has been in effect. Any such second extension request will be unusual, and require clear documentation of barriers arising outside the control of the nursing home that prevented completion of the project within the timeline of the original extension request.

Key Information

Applications should contain the following information:

- 1) **Organization Information:** The name, address, CCN, contact information, and other data regarding the nursing home that is requesting the extension.
- 2) **Type of Request:**
 - (a) Replacement Facility,
 - (b) Major Modification, or
 - (c) Disaster/Emergency.

Provide a narrative description of the circumstances behind the request for an extension of time, including a description of what the facility is proposing, such as a replacement of the existing facility or major modification of the living area.

- 3) **Timeframe:** The length of time for which the extension is requested.
- 4) **Major Modifications:** If the request is not for building a replacement facility, but is to allow time to complete a major modification of the living area, provide:
 - (a) A description and/or drawing of the proposed work,
 - (b) A listing of all units affected, square footage involved, overall estimated project cost,
 - (c) Proposed length of time for the extension,
 - (d) Correspondence to the State Licensure Authority concerning the proposed major modifications to the facility and their response to such request.
- 5) **Projected Milestones:** A list of project milestones for completion of the modifications or replacement of the facility will be required to be submitted for review to help in determining the length of the extension time required to complete the work proposed.
- 6) **Financial Commitments:** Documentation from financial institutions attesting to the facility's financial capabilities to complete the building replacement or modifications. This could include such things as final loan approvals, final grant approval or other such things that could enable CMS to determine the financial capabilities of the facility to complete the project in a timely manner.
- 7) **Construction Documentation:** Documentation concerning the submittal of construction plans and specifications for the replacement of an existing long term care facility or the modification of an existing long term care facility. This information shall include correspondence with State and local plan approval authorities indicating approval or receipt of plans for approval and the date of anticipated plan approval from the approving authorities. For facilities with partial plan approval or preliminary plan approval a copy of any final approval documentation will also be required to be submitted when received by the facility.

- 8) ***Additional Interim Protections:*** A description of any special fire protection precautions that the facility has or will implement during the time period of the extension.

C. Survey Process and Relationship to Sprinkler Extension

There are several different situations that may occur with respect to the interaction between surveys and extension requests in an unsprinklered facility, such as whether or not the facility has already been surveyed and cited for not having a complete sprinkler system, or whether or not a facility that is newly surveyed after the August 13, 2013 effective date of the sprinkler requirement would qualify for an extension. In the discussion below we describe these different scenarios and actions to be taken as a result.

1) Extension Already Approved at Time of Survey: If a sprinkler extension has been approved and the facility is subsequently surveyed, the details of the extension would be put in K000/F000 “Initial Comments” explaining why the extension was granted and for how long the extension is in effect. The surveyors are not required to survey for compliance with the requirement for full facility sprinklering as there will likely be regular progress reports submitted by the facility. The facility should provide the surveyor with a copy of the extension approval request when the surveyor arrives.

2) Facility Likely to Qualify for Extension: For facilities that have been surveyed and cited at K56 for lack of a complete automatic sprinkler system before an extension is approved, and the facility alleges that it qualifies for an extension and has or will apply for an extension of the sprinkler due date, the RO, SA and facility would follow the procedures outlined in S&C 13-55 (e.g., implementing protections in Attachment 4). The facility may provide evidence on the survey that would be similar to that described in the extension application. The surveyors would not be expected to make a recommendation about whether or not an application will be approved, but may use this evidence in determining whether the facility is building a replacement facility or major modification.

If an extension is subsequently approved, the SA would note this on future standard surveys as described in #1 above. Approval of an extension request, together with any CMS-specified special protections that accompany the approval, will replace the procedures under S&C 13-55.

3) Facility Not Qualified for Extension: If a facility is surveyed, cited for not being fully sprinklered, and the facility does not meet the extension of time requirements or if the extension is denied, the facility would be cited (K56). Extension denials will be communicated with both the RO and SA. The provisions of S&C 13-55 could still apply, and if so, the procedures outlined in S&C 13-55 would be followed (e.g., the extraordinary protections outlined in the Attachment to S&C 13-55).

If, pursuant to S&C13-55, the scope and severity has been lowered to a “C” and the facility does not qualify for an extension of the due date, and has not completed sprinklering after six months, there would be a survey (generally offsite), and a deficiency would be re-issued at an “F” or higher level of scope and severity. This citation at an “F” or higher level would start a new enforcement cycle. In these circumstances, CMS may immediately apply the full array of CMS

Page 6 - State Agency Directors

enforcement actions as part of the new enforcement cycle, (such as civil money penalty, denial of payment for new admission, directed plan of correction, termination) to address the continued non-compliance in a timely manner.

If you have further questions regarding this matter, please contact James Merrill at James.Merrill@cms.hhs.gov.

Effective Date: May 12, 2014. The information contained in this memorandum is now current policy and is in effect for all nursing homes requiring the installation of an automatic sprinkler system. The State Agency (SA) should disseminate this information within 14 days of the date of this memorandum.

Training: This memorandum should be communicated with all survey and certification staff, fire authorities, surveyors, their managers, and the State/regional office (RO) training coordinator within 30 days.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management