

# PUBLICATION

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## New Federal Health Care Facility Regulations Could Mean More Construction Work [Ober|Kaler]

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On April 16, 2014, the Centers for Medicare & Medicaid Services (CMS), an agency of the U.S. Department of Health and Human Services, published proposed rules that would amend the fire safety standards for hospitals, long-term care facilities, ambulatory surgery centers, hospice inpatient and many other health care facilities that participate in the federal Medicare and Medicaid programs. Specifically, CMS has proposed adoption of the 2012 editions of the Life Safety Code, promulgated by the National Fire Protection Association, and the Health Care Facilities Code; the former sets out fire safety requirements for new and existing buildings, while the latter contains detailed provisions specific to health care facilities that are intended to provide minimum requirements for the installation, inspection, testing, maintenance and performance of facility materials, equipment and appliances. Promulgation of these regulations likely will result in new construction projects, particularly ones relating to fire safety.

A key change would involve a requirement that “high rise” buildings (those over 75 feet in height, generally 7-8 stories) be sprinklered throughout. Existing structures would have 12 years to install such systems. Although the requirement mainly would affect hospitals, CMS is seeking public comment (due by June 16) regarding the possible effect on other types of health care facilities.

In addition, automatic sprinkler systems will be required in all habitable areas, closets, roofed porches, balconies and decks of new residential health care facilities; CMS has also “strongly encouraged” existing facilities to be sprinklered in all habitable areas (which may convince existing facilities, to avoid litigation risks, to do so). Under the new provisions, sprinklers also must be installed in the attics of both new and existing residential facilities if the attic is used for living purposes, storage or the housing of fuel-fired equipment; otherwise, it must have a heat detection system, be of noncombustible construction or be constructed of fire retardant treated-wood.

Moreover, the proposed provisions will require newly-constructed facilities to install approved smoke alarms inside every sleeping room, outside every sleeping area and on all levels within a residential unit. CMS is soliciting public comment regarding whether that requirement should be applied to existing facilities, as well.

Clearly, both new and existing health care facilities will be undertaking significant fire protection projects in the coming months and years.

Aside from construction projects that will be implemented to address these new fire safety provisions, the relaxation of certain rules regarding rehabilitation projects may spur some facilities to undertake smaller construction renovation/addition projects that otherwise might not be cost-effective under the current rules. Specifically, the current code requires even minor health care facility renovation projects to meet the same stringent requirements as those applied to new construction. The new provisions contain a chapter entitled “Building Rehabilitation”, which sets out different types of building rehabilitation work -- repair, renovation, reconstruction, change of use, change of occupancy and addition -- to which different, generally lesser, standards apply. The express purpose for that change is to assist health care facilities by reducing the cost of minor construction projects. That change should result in more such rehabilitation projects.

