INTERNATIONAL CODE COUNCIL, INC.
5203 LEESBURG PIKE, SUITE 600 • FALLS CHURCH, VIRGINIA 22041-3401
PHONE (703) 931-4533 • FAX (703) 379-1546

December 21, 2001

Centers for Medicare and Medicaid Services (CMS)
Department of Health and Human Services (HHS)
Attention: CMS-3047-P; RIN 0938-AK35
Hubert Humphrey Building, Room 443-G
200 Independence Avenue S.W.
Washington, D.C. 20201

Hand-delivered

Re: Federal Register of October 26, 2001, Volume 66, Number 208; pages 54179-54186

To Whom It May Concern:

The International Code Council (ICC) appreciates the opportunity to submit comments to CMS on the proposed rule that would amend the fire safety standards for hospitals, long-term care facilities, intermediate care facilities for the mentally retarded, ambulatory surgery centers, hospices which provide in-patient services, religious non-medical health care institutions, and Programs of All-Inclusive Care for the Elderly (PACE), under Title 42 of the Code of Federal Regulations, Parts 403, 416, 418, 460, 482, and 483. Through this action CMS also proposes to adopt the 2000 edition of the Life Safety Code (LSC) and thus eliminate references in federal regulations to all earlier editions.

ICC is a not-for-profit organization whose goals are to safeguard public health, safety and welfare; enhance economic development through the utilization of state-of-the-art technology in materials research, design and construction practices, and risks/hazards to the public in buildings and structures; streamline the building regulatory system through a single family of codes that brings consistency and compatibility to multiple layers of requirements existing at the international, federal, state and local levels; and advance innovation through performance-based provisions that require consistent and predictable levels of building performance and safety. Attachment A, "Setting the Standard for Building Safety," provides additional information about ICC, including the code development process and a list of the International Codes.

This letter addresses ICC's concerns and recommendations. The various attachments provide additional information, including Attachment B as our response to HHS' request for comments on various sections of Chapters 5 and 19 of the 2000 Edition of the LSC. Other enclosures are: Attachment C: International Codes – Adoption by State and Adoption by Jurisdiction; Attachment D: "Life Safety Code vs. the International Building and Fire Codes, Comparison Narrative of Key Fire & Life Safety Healthcare Issues"; Attachment E: "Healthcare Issues in LSC vs. I-Codes, Section by Section Technical Comparison"; Attachment F: a copy of the International Building Code; and Attachment G: a copy of the International Fire Code.

ICC does not oppose the use of the Life Safety Code (LSC) in the abovementioned regulations, nor do we object to the proposal to update to the 2000 edition of the LSC.

ICC does, however, object to CMS referencing only one code in the federal regulations for fire safety requirements for certain healthcare facilities. The exclusive reference creates conflict for many jurisdictions that enforce other equivalent or more stringent fire and life safety requirements. By not referencing other applicable codes, CMS favors one code to the detriment of other codes.

In response to the Federal Register proposed rule of August 1990 (subsequently withdrawn), smaller hospitals and other health care facilities submitted several comments to the HHS relating the predicaments they would have faced if forced to meet new requirements in later editions of the LSC. Some of those facilities would face similar conflicts today if not allowed to take advantage of the alternative life safety compliance methodologies of the IBC and IFC.

Based on the premise that the IBC and the IFC and the LSC provide equal protection, ICC urges HHS to be fair and inclusive in its regulations by incorporating by reference the IBC and the IFC for all facilities participating in the Medicare and Medicaid Programs. The inclusion of the IBC and IFC would eliminate many problems, including the misconception that if the state does not meet the LSC requirements it does not qualify for federal funding.

ICC supports the Secretary's authority to "accept a State's fire and safety code instead of the LSC if the State's fire and safety code adequately protects patients." Although the Secretary has held the authority for many years to allow the states the option of choice, the process has never been tested. HHS must have in place a system ready to evaluate and provide acceptance of any state code that adequately provides the equivalent level of fire and safety requirements. The IBC and the IFC would be examples of codes already imposed by state laws that adequately protect residents and personnel in nursing facilities.

It is important that HHS facilitate the application process for the states.

In 1988 HCFA (now CMS) declared it did not have the technical expertise to compare the fire and safety requirements between codes. As a result, HCFA requested that the National Institute of Building Sciences' (NIBS) conduct a thorough study to the "extent to which these codes (referring to the model building codes) are comparable to NFPA standards and whether they adequately protect patients and personnel in institutional health care occupancies certified for participation in Medicare and Medicaid." A committee comprised of expert volunteers from the public and private sectors of the building community studied the technical requirements of the model codes and the LSC. The study was based on a comparison, analysis, and evaluation of the technical provisions of the 1988 Life Safety Code, the 1988 Uniform Codes, the 1987 (with 1989 revisions) BOCA National Codes, and the 1988 Standard Codes.

No federal action resulted from the NIBS study. ICC is not aware of any subsequent initiative by HHS to clarify the regulations or to inform the regulated community on how to obtain recognition for other comparable fire and safety requirements.

Major changes have occurred in the code development area since 1988 that will simplify the Secretary's task of comparing codes. The building and construction community (architects, engineers, designers, code enforcement officials) asked for a single, unified building regulatory system for the entire country. The three model code organizations (BOCA, ICBO and SBCCI) responded by placing the country's welfare and safety at the top of their priority list. To demonstrate their commitment, they set aside their organizations' objectives, created the ICC in 1994, and ceased to publish their individual codes. In 1999, ICC published the first single family of coordinated and comprehensive codes known as the International Codes. The International Codes are being widely adopted across the country. Copies of the most current code adoption charts by state and local jurisdictions are enclosed as Attachment C. The charts are updated monthly and may be downloaded from our website at http://www.intlcode.org.

Several recent studies and side-by-side comparisons of the IBC and LSC have been completed that will facilitate HHS' role of assessing equivalency. The reports conclude that the two codes are comparable and provide an equivalent level of protection. There is no compromise in safety. As a matter of fact, IBC provides a higher level of protection because it has a broader scope; not only does it address fire and life safety requirements, it provides the most advanced structural provisions. The tragic events of September 11 demonstrated the importance of sound structural regulatory standards.

"From Model Codes to the IBC: A Transitional Guide" is a side-by-side comparison that was published earlier this year. Engineers and architects from the firm Rolf Jensen & Associates, Inc. (RJA) conducted this comparison. Rolf Jensen & Associates is a subsidiary of the RJA Group, Inc., a global fire and security consulting firm.

The ICC engineering staff also studied the equivalency of the 2000 IBC and IFC to the 2000 NFPA 101. A summary of "Life Safety Code vs. the International Building and Fire Codes/Comparison Narrative of Key Fire & Life Safety Healthcare Issues," Attachment D, addresses materials used in construction of the building, active fire protection features, the level of passive protection, means of egress, fire drills and more.

In conclusion, ICC urges CMS to consider the fact that an overwhelming 97% of cities, counties and states that have adopted and enforce building and safety codes are using documents developed by the ICC. The unified system created by ICC stimulates the building economy, improves safety, and creates safer and more durable facilities.

ICC commends CMS for taking the initiative to update its health and safety provisions to ensure beneficiaries of Medicare and Medicaid Programs continue to receive the highest degree of protection. We hope CMS will support our commitment to public safety by accepting our recommendations to 1) incorporate by reference the International Building Code and the International Fire Code in the fire safety requirements for healthcare facilities; and 2) have in place a process to accept a state's fire and safety code instead of the LSC, and as part of this option inform the regulated community on how to apply for said equivalency.

ICC is pleased to offer CMS any assistance necessary, including technical interpretations of the codes by our engineers, architects, and other professionals on staff, as well training, seminars or any educational materials that the agency may deem necessary.

Thank you again for the opportunity to comment. If I may be of further assistance, please feel free to contact me either by phone: 703-931-4533, ext. 12 or by email at yerkes@intlcode.org.

Sincerely,

Sara C. Yerkes
Government Relations Director

SCY/rsl

cc: William J. Tangye, ICC
Paul K Heilstedt, ICC
Jon S. Traw, ICC
Richard P. Kuchnicki, ICC