International Code Council
500 New Jersey Avenue, NW
Sixth Floor
Washington, DC 20001
tel: 888.icc.safe (422.7233)
fax: 202.783.2348
www.iccsafe.org

April 23, 2008

The Honorable Max Baucus
Senate Finance Committee
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Senate Finance Committee
United States Senate
Washington, DC 20510

Re: HHS Actions Affecting Medicare/Medicaid Cost Burdens on States

Dear Chairman Baucus and Ranking Member Grassley:

In the consideration of legislation (*i.e.*, H.R. 5613) focused on resolving growing burdens on states in administering Medicare/Medicaid programs, the International Code Council would like to draw your attention to a longstanding regulatory complication and resulting costs related to Federal regulatory overlap and conflict.

In 1967, in amending the Social Security Act to create the Medicare/Medicaid system, Congress established reliance on a set of requirements known as the Life Safety Code to require an adequate level of fire safety in Medicare/Medicaid supported facilities. Though this action created regulatory overlap with state building and fire safety codes, the action provided a doctrine for minimum safety requirements in those instances where compliance with state or local building codes could not be assured. As a means to avoid overlap where adequate building and fire codes were already in force, Congress empowered HHS to waive the redundant compliance requirements of the federal regulation. In over 40 years of existence of this authority, however, the agency has not acted to recognize state building and fire codes which already provide assurances that the necessary protective building features and systems are in place.

It would be efficient for HHS to eliminate redundancy - in states with eligible building codes – to provide the states the flexibility to use a single set of construction requirements by health care providers when building and maintaining medical facilities. This recognition would reduce overlapping building design and compliance costs, yet provides the necessary protection for patients and other occupants because the state already enforces safety standards through its own governance of facility construction and maintenance requirements.

The attached issue paper, "Efficiency of Recognizing State Building and Fire Codes for Certification of Healthcare Organizations Participating in the Medicare/Medicaid Programs," provides additional discussion of this issue and the practical purpose and cost savings of federal recognition that the necessary building construction and maintenance features already exist in state administered building and fire safety codes.

I would welcome an opportunity to discuss this in more detail.

Sincerely,

Sara C. Yerkes

Sara C. Yerkes
Senior Vice President of Government Relations

cc: House co-sponsors of H.R. 5613

Enclosure

Efficiency of Recognizing State Building and Fire Codes for Certification Of Healthcare Organizations Participating in the Medicare/Medicaid Programs

The regulations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (HHS CMS) address health and safety requirements for all healthcare facilities that provide services reimbursed through Medicaid and Medicare programs.

The Social Security Amendments of 1965 to the Social Security Act establishing the Medicare program included health and safety requirements for facilities participating in the Medicare insurance program. Section 1819 (d) (2) (B) and section 1919 (d) (2) (B) of the Amendments require that a skilled nursing facility be licensed under applicable State and local law. For this purpose these sections reference the Life Safety Code of the National Fire Protection Association (LSC). To relieve regulatory overlap with state requirements these sections also provide that the LSC shall not apply in any state where the Secretary finds that there is in effect a fire and safety code, imposed by State law, which adequately protects residents and personnel in skilled nursing facilities. Other amendments to the Social Security Act similarly give the Secretary of HHS authority to accept a healthcare provider's compliance with state fire and safety codes in lieu of compliance with the LSC. No state, however, has yet been permitted to demonstrate safety compliance through fire and safety codes already imposed and enforced by state law.

In 1965, while the building and fire codes adopted by state and local government addressed all of the issues in the LSC and more, in the interests making sure that all nursing homes (and other health care facilities) were effectively covered, HHS CMS applied the LSC. In those states or localities without codes this certainly was an enhancement in nursing home safety. In those states with codes it created a problem wherein the nursing home had to comply with two differing approaches to achieving facility safety requirements. The unnecessary and unproductive design and compliance conflicts associated with this overlap can be removed through the authorized recognition that the necessary safety requirements are already present in state administered and enforced building and fire safety codes.

- In 1965 Congress referenced the LSC as a requirement for fire safety in skilled nursing facilities. This action was taken due the absence, at that time; of a single national building code. That condition has dramatically changed since 1965.

- Under the 10th and 14th Amendments to the United States Constitution, each state is recognized, within its jurisdiction, to regulate building construction and fire safety in the interest of the public health, safety and welfare. As such, the licensure and construction of healthcare facilities is and already must be subject to the building and fire codes adopted by that state.

- The LSC, as a standard for fire safety, is limited in purpose and does not address all aspects of building safety and construction. It does not address many important public welfare and safety issues as such as accessibility, energy conservation and the structural design of healthcare facilities.

- The International Code Council represents state and local jurisdictions that develop, adopt and enforce nationally recognized model codes for comprehensive building and fire safety. This set of building code requirements now adopted and applied in each of 50 U.S. states by state and local jurisdictions to govern all construction, including hospital and medical facilities.

- The codes developed by the membership of the International Code Council are a comprehensive set of building and fire code codes that address all aspects of building safety, including public safety and welfare interests such as structural, environmental, fire prevention, emergency egress, accessibility, and energy efficiency.

- Presently, HHS application of the LSC on top of a State's enforcement of its own comprehensive building code requirements can and does create unnecessary code conflicts and duplication of code enforcement to reach the same result. Duplication and conflict of is costly for the building design and construction community and the owners and operators of healthcare facilities.

- HHS CMS recognition of state and local building and fire codes that provide adequate fire safety for healthcare providers will eliminate the expense of unnecessary code conflict created by duplicate building code requirements applied by differing authorities.

- The America Hospital Association has calculated that the "demand for hospital care will soar as 78 million Baby Boomers reach retirement age. An estimated 62 percent of individuals between the ages of 50 and 64 have at least one chronic condition, a number expected to increase as the population ages. At the same time, 47 million people in America lack health care coverage. Health insurance premiums have risen 87 percent over the past six years. In 2006 alone, employer health insurance premiums rose by 7.7 percent – more than twice as fast as workers' wages and overall inflation."

- Addressing the issue of health care affordability requires priority attention of Congress and HHS. The costs of regulation need to be streamlined to take advantage of fire safety and code enforcement by the states.