

• Section 486.306 states, in paragraph (a), that “An OPO must make available to CMS documentation verifying that the OPO meets the requirements of paragraphs (b) through (d) of this section . . .” This section only contains paragraphs (a), (b), and (c). We propose to delete the reference to “(d)” in paragraph (a) and insert “(c)” in its place. This paragraph would then read, “the OPO meets the requirements of paragraphs (b) and (c) of this section . . .”

• Section 486.308(b)(1) reads, in part, “if additional time is needed to select a successor OPO to an OPO that has been de-certified.” We propose to remove the “to” between the two “OPOs” and replace it with “for” in this sentence. The paragraph would then read, “if additional time is needed to select a successor OPO for an OPO that has been de-certified.”

• Section 486.344(d)(2)(ii) reads, in part, “If the identify of the intended recipient is known . . .” We intended to say the “identity” of the intended recipient. We propose to remove the word “identify” and replace it with “identity.” The clause would then read, “If the identity of the intended recipient is known . . .”

Contact for all transplant center and OPO topics: Diane Corning, 410-786-8486

#### **E. Long-term Care Facilities**

On August 13, 2008, we published a final rule requiring all buildings containing long term care facilities to have automatic sprinkler systems installed throughout the building (73 FR 47075). The deadline for meeting this requirement is August 13, 2013. The final rule was based on a CMS analysis of fire safety in nursing homes, and the agency’s conclusion that fire safety protections would clearly be improved by ensuring that all facilities be fully sprinklered within a reasonable period of time. The Government Accountability Office (GAO) also studied this issue and issued a report entitled “Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight” (GAO-04-660, July 16, 2004,

<http://www.gao.gov/products/GAO-04-660>). The GAO analyzed two long term care facility fires in 2003 that resulted in 31 total resident deaths. The report examined Federal fire safety standards and enforcement procedures, as well as results from the fire investigations of these two incidents. The report recommended that fire safety standards for unsprinklered facilities be strengthened and cited sprinklers as the single most effective fire protection feature for long term care. Based on both CMS's analysis and the GAO's report, and under the Secretary's authority at sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act, to issue regulations that promote the health and safety of the residents of long-term care facilities, we finalized a requirement that all long term care facilities must be fully sprinklered by August 13, 2013.

Based on recent public comments and input, we believe that some facilities will not be able to meet the August 2013 deadline due to the magnitude of the enterprise they are undertaking (such as large scale construction of a replacement facility) combined with recent financial and construction constraints. We therefore propose to allow a long term care facility to apply for a temporary deadline extension of the sprinkler system requirement, under very limited circumstances, if they are unable to meet the deadline. An extension will avoid spending funds on structures that will be obsolete in the near future. Our intent is to establish a rigorous review process for all deadline extension requests.

We are proposing to add a provision at § 483.70(a)(8)(iii) that would allow long term care facilities the opportunity to apply for a deadline extension, not to exceed 2 years, if all of the following conditions apply:

- 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;
- The facility demonstrates that it has made the necessary financial commitments to complete the building replacement or modification;
  - 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
  - The facility agrees to complete interim steps to improve fire safety of the building while the construction is being completed, as determined by CMS. This could include a fire watch, installation of temporary exits and temporary smoke detection systems, or additional smoke detection systems in the area of construction, increased fire safety inspections, additional training and awareness by staff, and additional fire drills.

An extension may be granted for up to 2 years, depending on the need and particular circumstances. We would determine the length of the extension based on the information submitted by the facility.

Applications for the extension will only be considered if the delay in meeting the August 13, 2013 deadline is due to the plan for facility replacement or major modification, as described above. A number of facilities, for example, have had plans to replace an old structure with a new replacement nursing home, but have found that it is requiring more time to complete the necessary arrangements and construction. The nursing home's residents will benefit from the improved living environment of the new facility, and an extension of the deadline could avoid wasting funds on sprinklering an old structure that will soon be replaced. Similarly, nursing

home residents may benefit from a nursing home that is undertaking a major modification to improve living conditions, such as converting two-person or three-person rooms to single occupancy. **If there is a delay due to such plans, and the construction is cost-effective if the sprinklering is done at the same time as the major modification of the unsprinklered area, then we would consider an extension of the deadline date.** We are soliciting public comment as to whether the extension should be limited to just situations in which a replacement facility is being constructed. We are also soliciting public comment regarding these or other factors that may be important when determining whether to approve or deny an extension request, and when determining the appropriate length of the extension time period. **However, it is our intent to fashion an extension that is very narrowly defined.** The current rule has provided a five-year implementation period designed to ensure time for planning and resource mobilization. We propose to add the possibility of a time-limited extension in order to accommodate plans for major investments by a nursing home in a replacement facility or major modification where the investment, planning, and construction time involved may warrant a further extension and yield even better long term benefits for residents. **We also propose to add a provision at § 483.70(a)(8)(iv) that would allow for a renewal of the deadline extension for an additional period, not to exceed 1 additional year. We propose that a facility could only apply for a single extension renewal.** The facility may be granted the additional extension if CMS finds that there are extenuating circumstances beyond the control of the facility that will prevent the facility from being in compliance by the end of the first waiver period. An example is a situation where residents have not yet been able to move to a substantially completed replacement facility due to last minute construction delays outside the control of the facility. Additionally, the facility would be required to meet all other conditions in paragraph (a)(8)(iii) related to applying for the

approval by CMS, submitting its plans to the State and local authorities, and taking the appropriate interim steps to improve safety of the building until the work is completed. We also welcome comments on this proposed provision.

Contact for long term care topics: Kristin Shifflett, 410-786-4133.

~~F. Rural Health and Primary Care~~

~~We have identified several priority areas in the CoPs for CAHs (42 CFR part 485), the CfCs for both RHCs and FQHCs (42 CFR part 491), and the payment provisions for RHCs (42 CFR part 405) for updates and revisions. We believe that these proposed revisions may eliminate or significantly reduce burden where CoPs and CfCs are duplicative, unnecessary and/or burdensome.~~

~~1. CAH Provision of Services (§ 485.635(a))~~

~~CAHs are currently required to develop their policies and procedures with the advice of a group of professional personnel that includes one or more doctors of medicine or osteopathy and one or more physician assistants, nurse practitioners, or clinical nurse specialists, if they are on staff. At least one member of the professional group must not be a staff member. We propose to remove the requirement that a CAH must develop its patient care policies with the advice of a non-CAH staff member and instead are proposing to allow CAHs flexibility in their approach to developing their patient care policies and procedures. That is, we are proposing that a CAH will no longer be required to include a non-staff member among the group of professional personnel to develop its patient care policies. We believe that this provision is no longer necessary and that the original reasons (lack of local resources and in-house expertise) for including this requirement have been effectively addressed. Also, based on our experience with CAHs and input from the provider community, we believe it is a challenge for facilities to comply with this~~