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Circular Letter: DHCQ 13-9-600

TO: Administrators of End Stage Renal Disease Facilities (ESRD) Facilities

FROM: Madeleine Biondolillo, MD
Interim Associate Commissioner, DPH

Paul DiNatale, MA, MSW
Assistant Director, HCQ

DATE: September 23, 2013

RE: Compliance with Life Safety Code (LSC) in End Stage Renal Disease (ESRD) Facilities

The purpose of this circular letter is to notify ESRD facilities of the need to communicate to the Department via the attached Attestation Statement whether the ESRD facility is located adjacent to high hazardous occupancies and does not exit to the outside at grade level from patient treatment areas.

As of July 16, 2012, compliance by certified ESRD facilities with the applicable requirements of National Fire Protection Association (NFPA) 101 Life Safety Code, 2000 edition is limited to those facilities that are adjacent to high hazardous occupancies and those facilities that do not exit to the outside at grade level from patient treatment areas.

On April 15, 2008 Centers for Medicare & Medicaid Services (CMS) published regulations at 42 CFR Part 494, which included LSC provisions that ensure standardization of the CMS regulations across all provider types (73 Fed. Reg. 20370). These provisions applied Chapters 20 and 21 of NFPA101 Life Safety Code. However, CMS has determined that many of the structural requirements of NFPA 101 were unnecessary in ESRD facilities as these requirements support a "defend in place" fire strategy that assumes many of the occupants cannot immediately evacuate in case of fire. However, in ESRD facilities, the fire evacuation process entails an individual's rapid disconnection from a dialysis machine and quick exit.

Therefore, in the final rule "Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction" (77 Fed. Reg. 29002, May 16, 2012) CMS limited the compliance of ESRD facilities with the NFPA

101 Life Safety Code to those facilities that are located adjacentⁱ to Industrial, High Hazard occupancies as defined by NFPA 101 Section 3.3.134.8.2 and explained in NFPA 101, Section A.3.3.134.8.2, Annex Aⁱⁱ; and, those facilities that do not exit to grade.

All ESRD facilities are also required to comply with other State and local fire codes and safety standards.

As the ESRD facility administrator, you must submit the attached Attestation Statement to the Department of Public Health to communicate whether the facility meets or does not meet the requirements for an exemption to compliance with NFPA 101 Life Safety Code, 2000 edition.

Facilities determined to be exempt will not be surveyed for compliance with Chapters 20 and 21 of the NFPA 101 Life Safety Code, 2000 edition.

Please reference for further information the CMS survey and certification memorandum issued 7/12/2013 ([Ref: S&C: 13-47-LSC/ESRD.](#))ⁱⁱⁱ

All comments or questions to this correspondence should be addressed to: Joanne Murphy at (617) 753-8212.

Please complete the attached attestation, sign and date, and email it to Joanne.Murphy@state.ma.us ; or mail to:

Attn: Joanne Murphy
Department of Public Health
Division of Health Care Quality
99 Chauncy Street
Boston, Ma. 02111

ⁱ Being “adjacent” means an ESRD facility that shares a common wall, floor, or ceiling.

ⁱⁱ NFPA 101, 2000 edition, Section 3.3.134.8.2 Occupancy, Industrial, High Hazard. An industrial occupancy in which industrial operations that includes high hazard materials processes, or contents are conducted.

NFPA 101, 2000 edition, Section A.3.3.134.8.2, Annex A Occupancy, Industrial, High Hazard. A high hazard occupancy includes occupancies where gasoline and other flammable liquids are handled, used, or stored under such conditions that involve possible release of flammable vapors; where grain dust, wood flour, or plastic dusts, aluminum or magnesium dust, or other explosives are manufactured, stored, or handled; where cotton or other combustible fibers are processed or handled under conditions that might produce flammable flyings; and where other situations of similar hazard exist.

ⁱⁱⁱ <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-47.pdf>