



Center for Clinical Standards and Quality /Survey & Certification Group

Ref: S&C: 13-47-LSC/ESRD

DATE: July 12, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

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

Memorandum Summary

- **Limited LSC Applicability to ESRD Facilities:** Effective July 16, 2012, compliance by certified ESRD facilities with the applicable requirements of the 2000 edition of the National Fire Protection Association (NFPA) Life Safety Code 101 is limited to those ESRD facilities that are located adjacent to high hazardous occupancies and those facilities that do not exit to the outside at grade level from the patient treatment area.
- **Retained Compliance by ESRD Facilities:** All ESRD facilities are still required to comply with State and local fire codes and other safety standards required by 42 CFR Part 494 Conditions for Coverage (CfC) for ESRD facilities.
- **Attestation by ESRD Facilities for Exemption:** ESRD providers may submit an attestation to claim an exemption to the NFPA LSC requirements if they are not located adjacent to high hazard occupancies and they do provide exits at grade level from the patient treatment area level.

Background:

On April 15, 2008 we published regulations at 42 CFR Part 494, which included LSC provisions that ensure standardization of the Centers for Medicare & Medicaid Services (CMS) regulations across all provider types (73 Fed. Reg 20370). These provisions applied Chapters 20 and 21 of the NFPA LSC 101. At the time these regulations were promulgated, CMS believed that the standardized application of the LSC was desirable and the costs to ESRD facilities for compliance would not be excessive. In retrospect, CMS has determined that many of the structural requirements of the NFPA LSC 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 a 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 Program; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction” (77 Fed. Reg. 29002, May 16, 2012) we limited the compliance of ESRD facilities with the NFPA LSC 101 to those facilities that are located adjacent to high hazardous occupancies and those facilities that do not exit to grade. This rule also clarified that the requirement for sprinklers in ESRD facilities housed in high rise buildings is intended to be applicable to those buildings constructed after January 1, 2008.

CMS will continue to require compliance with the structural requirements of NFPA LSC 101 for ESRD facilities that pose a higher risk for life safety from fire. Such higher risk ESRD facilities include those that do not have a readily available exit to the outside at grade for swift, unencumbered exit and those facilities that are located adjacent to an “industrial high hazardous” occupancy, as defined by NFPA 101 at section A.3.3.134.8.2, Annex A.

State and Local Fire Codes and Safety Standards under CfC 494 Remain:

All ESRD facilities are still required to comply with other State and local fire codes and safety standards under Part 494 of the CFR. This includes the appropriate handling of chemicals related to the dialysis process; appropriate training in emergency preparedness for the staff and patients; and the provision of patient instructions on disconnecting from the dialysis machine during an emergency as well as instructions on emergency evacuations.

Defining “Exit to the Outside at Grade Level from the Patient Treatment Area Level”:

The phrase “exit to the outside at grade level from the patient treatment area level” applies to ESRD facilities that are on the ground or grade level of a building where patients do not have to traverse up or down stairways within the building to evacuate to the outside. Accessibility ramps in the exit area that provide an ease of access between the patient treatment level and the outside ground level are not considered stairways.

An ESRD facility which provides one or more exits to the outside at grade level from the patient treatment level and which has a patient exit path (which may include an accessibility ramp that is compliant with the Americans with Disabilities Act) to the outside would be exempt from complying with the applicable provisions of the NFPA LSC 101 as long as the ESRD facility is not located adjacent to an “industrial high hazardous” occupancy.

Defining Adjacent to an “Industrial High Hazardous” Occupancy:

An “industrial high hazardous occupancy” is based upon the definition in the NFPA LSC 101, 2000 Edition at section A.3.2.134.8.2, Annex A: “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, or plastic dusts, aluminum or magnesium dust, or other explosive dusts are produced; where hazardous chemicals or 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.”

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

Home Dialysis Patients Dialyzing in a Home Training and Support Center

Home Training and Support Centers which are operated independently of or as an offsite location of a certified ESRD facility must also meet all the requirements.

ESRD & LSC: Attestation for Exempt Facilities and LSC Survey for Non-Exempt Facilities:

The ESRD facility administrator may submit an attestation to the applicable State Survey Agency that the facility meets the requirements for an exemption to compliance with NFPA LSC 101. Those facilities that do not submit an attestation claiming exemption will be considered a non-exempt facility and will be surveyed for compliance with chapters 20 and 21 of the NFPA 101 LSC, 2000 Edition. We have attached a Model Attestation Statement for your information.

For comments or questions contact James Merrill at James.Merrill@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

Attachment

cc: Survey and Certification Regional Office Management

Model Attestation Statement

Life Safety Code Attestation for Exempt ESRD Facilities

Facility Name: _____ CCN: _____

Facility address:

I attest to the following:

- ☐ The above named facility provides one or more exits to the outside at grade level from the patient treatment area level. *(Note that the patients' exit path from the treatment area may include an accessibility ramp that complies with the Americans with Disabilities Act (ADA));*
AND
- ☐ The above named facility is not adjacent to a high hazardous occupancy. *(Note: This type of occupancy is defined in NFPA 101, 2000 Edition at § A.3.3.134.8.2 as "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, or plastic dusts, aluminum or 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.")*

The facility agrees to notify CMS if there are any structural changes that would cause the facility to no longer meet the exemption requirements.

Signature of Facility Administrator

Date