

February 26, 2019

Ms. Kate Goodrich, M.D.
Director and CMS Chief Medical Officer
Center for Clinical Standards and Quality
Centers for Medicare and Medicaid
7500 Security Boulevard
Baltimore, MD 21244

Dear Dr. Goodrich:

The American Network of Community Options and Resources (ANCOR) represents more than 1,600 service providers and 57 state provider associations who support individuals with intellectual and developmental disabilities (ID/DD). Our members operate programs community settings that are funded by the Home and Community Based Services (HCBS) Waiver and by the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) program. This letter is in reference to the Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities final rule that became effective 07/05/2016 (S&C: 16-29-LSC), specifically the provision that requires ICF/IID to comply with the 2012 edition of the National Fire Protection Association regulations (NFPA 101® 2012 edition of the Life Safety Code). ANCOR members have been working diligently to meet Life Safety Code (LSC) requirements by the 3-year phase-in period specified by the Centers for Medicare and Medicaid Services (CMS), (July 5, 2016 to July 5, 2019). However, the new LSC requirements for attics have posed significant issues for our ICF/IID members.

As you are aware, Sections 32.2.3.5.7 and 33.2.3.5.7 of the LSC requires attics of new and existing residential board and care occupancies (ICF/IID) to be sprinklered, if the attic space is used for living purposes, including storage and fuel-fired equipment. Facilities that do not use their attics for living purposes may choose to install a heat detection system in place of the sprinklers. This provision was added to the 2012 edition of the LSC and after soliciting public comment, CMS decided to finalize a 3-year phase-in period. However, the original public comments obtained by CMS stated a 3-year phase-in period would pose unreasonable hardship upon a facility due to unsupported cost and had instead proposed a 5-year phase-in period. The commenters also believed that a 5-year phase-in period would not adversely affect the health and safety of the individuals. In spite of these comments, a 3-year phase-in period was established by CMS.

In 2012, CMS estimated the cost per square foot to install sprinklers in an attic was \$3.00, and the average estimated square footage per attic per facility was 1500 square feet, for a total of \$4,500 per ICF/IID. Facilities that do not use their attics for living purposes may choose to install a heat detection system in the attic instead of sprinklers. In 2012, CMS estimated the cost to install a heat detection system to be \$1,000 per facility. Feedback from ANCOR members indicates that most providers chose to avoid the more complicated and expensive sprinkler costs for attics and chose to install heat detection systems to comply with the LSC attic requirements. However, feedback from ANCOR members also suggests that the cost of *already* completed heat detection renovations and the estimated costs of any *newly* installed heat detection systems comes at a cost between \$1,200 and \$8,099 per facility.

These costs are significantly higher than those estimated by CMS. In addition, if an existing facility's fire alarm panel was not adequate to support the required heat detection upgrade, a new fire alarm panel would be required at an estimated cost of \$20,000 to \$25,000 per ICF/IID facility. This cost was not

considered by CMS in their *original* cost estimate noted above. Therefore, based upon these revised cost estimates we believe that the original CMS 3-year phase-in period is not adequate and poses an unreasonable hardship upon an ICF/IID facility due to cost and should warrant an extension of the phase-in period.

As you are aware, there is a lack of uniformity among states as to how ICF/IID rates are set and how increased costs are addressed. The real costs noted above by ANCOR members for the required LSC attic protections are significantly higher than those costs estimated by CMS, *especially* if a new fire alarm panel is required for an existing facility. We believe that the costs for compliance with the LSC regulations have been underestimated by CMS and pose an unreasonable fiscal hardship upon an ICF/IID facility due to cost and an ICF/IID provider's inability to recoup those costs. A Medicaid payment rate adjustment is therefore warranted.

We are suggesting that a reasonable resolution *to these issues* would be to extend the phase-in period by 2 years to match the 5-year phase-in period (compliance by July 5, 2021) as originally proposed by public comment. We believe that this extension would ameliorate any unreasonable hardship upon an ICF/IID facility and would not adversely affect the health and safety of the individuals living in the ICF/IID. We also propose that CMS designate an interim rate change across all states reflecting increased costs occurring as a result of capital renovations or replacements that were made to comply with existing State or Federal LSC requirements. CMS could designate that Medicaid Federal Financial Participation (FFP) be made available in all states for the costs of required LSC modifications in order to comply with new and revised LSC standards. We believe that this interim Medicaid FFP increase, and subsequent increase in a provider's total per diem rate, would be a fair and consistent solution to address *this unfunded mandate*. The provider shall submit documentation showing that the changes made were necessary to meet existing State or Federal LSC requirements.

We appreciate your consideration of our proposal and would be happy to answer any questions or provide any additional information required by CMS. Thank you for your assistance in continuing to make the ICF/IID program an important and valuable service for individuals with I/DD and their families.

Sincerely,

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