

May 5, 2005

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-3818-P  
PO Box 8012  
Baltimore, MD 21244-8012

Subject: Comments Proposed Rule RIN 0938-AG82  
(70 Fed Reg 6184 et. sec., February 4, 2005)

To whom it may concern:

The International Code Council<sup>®</sup> (ICC<sup>®</sup>) submits the following comments regarding the proposed rule issued by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (HHS CMS) (70 Fed Reg 6184) to revise the requirements that end stage renal disease (ESRD) dialysis facilities must meet to be certified under the Medicare Program.

The ICC is a 35,000 + member association dedicated to building safety whose mission is to provide the highest quality codes,

ty and performance of the built environment. This mission and the activities of the ICC directly relate to Sections 1881 (b)(1) and 1881 (f)(7) of the Social Security Act, as amended by P.L. 95-292, wherein the Secretary of HHS is to prescribe safety requirements for ESRD facilities. The current conditions for coverage of ESRD facilities are to protect patient health and safety. The ICC believes the proposed rule can be modified to further enhance patient health and safety with respect to the building facilities provided to house ESRD services through a reference to the ICC Codes.

The codes developed under the auspices of the ICC serve as a baseline for the design, construction, operation and maintenance of the majority of both public and private sector buildings in the U.S. As such the ICC Codes are readily recognized and understood by building owners, product manufacturers, designers, contractors, code officials and all others involved in building design, construction, approval, and operation. The majority of U.S. state and local government agencies that adopt codes adopt and implement building safety and fire prevention codes developed by the ICC. In addition most federal agencies have building construction policies that require the use of the ICC Codes or those policies refer to the state or local code proximate to the federal facility. This helps fulfill the direction of the National Technology Transfer and Advancement Act (P.L. 104-113), a key point referenced in the supplementary

information pertaining to the proposed rule, requi

for uniformity in federal, state and local building regulations as opposed to establishing a situation where HHS CMS rules create a conflict with other rules the private sector must also satisfy. It also ensures that ESRD facilities constructed or operated in areas without codes or

Codes by HHS CMS for ESRD facilities would reinforce federal uniformity.

- € With respect to “compliance with federal, state and local laws and regulations” on page 6191 the ICC notes that a requirement that ESRD facilities be in compliance with federal, state and local laws and regulations pertaining to fire safety, equipment and other relevant health and safety issues (42 CFR 494.20 proposed) and a requirement to satisfy the Life Safety Code is generally duplicative, highly impractical and creates a significant problem for state and local government and ESRD facility owners and operators. As private sector operations, ESRD facilities must comply with state and/or local building and fire safety regulations as a condition for initial construction and continued occupancy. To impose a duplicative and unnecessarily conflicting set of HHS CMS requirements on such facilities for their initial design and construction as well as their operation essentially leaves two outcomes: operation in violation of state and/or local law; or failure to qualify for HHS CMS programs. To eliminate this conflict the ICC recommends that the rule be revised to provide an option for facility design, construction and operation in accordance with state or local building and fire safety codes that are no less stringent than the latest edition of the ICC Codes.
  
- € With respect to “physical environment” on page 6197 the ICC notes that in adopting the

developing and considering what could easily be 20 or mo

The ICC believes that the best way to address patient safety in ESRD facilities is to adopt the same requirements for protection of public health and safety already widely adopted, applied and enforced by federal, state and local government agencies. This ensures that all those involved with the design, construction, renovation and use of such facilities are able to technically and administratively work from the same baseline, especially considering the ESRD facility owner must already comply with state and/or local building and fire safety codes. Consistency between the baseline HHS CMS requirements and such state and local codes will benefit everyone involved in ESRD facility design, construction, operation and maintenance.

The ICC appreciates the opportunity to provide comments and hopes HHS CMS will consider the opportunity it has to further solidify the uniformity and consistency of U.S. building regulation. Should additional information be needed please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Sara C. Yerkes". The signature is written in a cursive, flowing style.

Sara C. Yerkes  
Senior Vice President of Government Relations