2-4-1971

Congressional Record S. 815 - Mansfield: Sprinkler Regulations

Mike Mansfield 1903-2001

S. 595 AND SENATE RESOLUTION 44—INTRODUCTION OF A BILL AND SUBMISSION OF A RESOLUTION RELATING TO SPRINKLER REGULATIONS

Mr. MANSFIELD. Mr. President, as perhaps my colleagues will recall, on December 4 of the last Congress, I addressed this body with respect to a matter of grave concern to my State of Montana, as well as to a number of other States across the country.

Several months ago, the Department of Health, Education, and Welfare suddenly announced that major new requirements would be imposed on all hospitals and extended-care facilities now participating in the medicare program as providers of health service to the aged. Under the regulations, all providers will be required to comply with the provisions contained in what is called the Life Safety Code, a code developed by a nongovernmental organization known as the National Fire Protection Association.

Previously, I had expressed to my colleagues my concern with the apparent willingness of the Congress to delegate indirectly authority to nongovernmental bodies to establish standards in connection with Federal programs. The problem to which I speak today is a prime example of the morass which can result when the Federal Government and its agencies relinquishes vital authorities.

As part of the new requirements included in the Life Safety Code, many facilities would be ordered to tear down their walls and ceilings in order to install fire sprinkler systems meeting the specifications provided by the code. Each institution would be required to make such an installation, even though a facility already had a fire protection system that satisfies State and local requirements in the area of building safety.

The contracts for the installation of sprinkler systems required by the Department have thrown a number of small facilities supported by local tax dollars in my State into a confusing legal morass. As a demonstration of that fact, I ask unanimous consent to have printed in the RECORD at this time a letter I have received recently from the Attorney General of my State which indicates that in a number of instances it is impossible for facilities legally to comply with the demands of the Department.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF MONTANA,
OFFICE OF THE ATTORNEY GENERAL,
Helena, January 27, 1971.

Re requirement of HEW for the installation of sprinkler systems in certain hospital facilities.

Hon. MIKE MANSFIELD,
U.S. Senate,
Office of the Majority Leader,
Washington, D.C.

DEAR SENATOR MANSFIELD: This is in reply to your letter of January 21, 1971, concerning the above subject.

The officials of any political subdivision in the state of Montana cannot commit such political subdivision for the payment of money unless such money is available as provided by statute. If the only method to raise the necessary funds for a sprinkler system is by means of a bond issue, such officials cannot commit such political subdivision until the voters have approved such bond issue. In my opinion, any commitment by such officers would have to be contingent on voter approval of a bond issue. If such commitment were not made so contingent, it would be void or voidable.

Another factor to take into consideration is that if such political subdivision has fully utilized its bonding limit as provided by statute, it would be impossible for such political subdivision to secure funds for a sprinkler system by means of a bond issue.

If I can be of any further assistance in this matter, please advise.

Very truly yours,
ROBERT L. WOODAHL,
Attorney General.

Mr. MANSFIELD. Mr. President, for many months now, I have been receiving an enormous amount of correspondence all the way from patients to the Governor of my State, asking that I examine the Department's proposed changes in the ground rules in the medicare program. Those affected have asked me for an example where the money would come from in order to meet such new requirements. They point out that HEW has not proposed an effective method of financing such large capital renovation outlays. Others have objected, as I have said previously, to the demand that contracts be immediately entered into. Why, they want to know, should they be forced pellmell into making these substantial changes? The fire safety experts and agencies in my State and in other States would like to know why the Department insists upon enforcing nongovernmental standards upon institutions already satisfying the requirements developed and deemed appropriate by State regulatory bodies. Fire sprinkler systems, in their sound judgment, are not quite the panaceas in the fire safety area that some believe them to be.

Mr. President, on Friday, January 29, Senator METCALF and I had an opportunity to meet with Dr. John Anderson and several of his associates representing the Department of Public Health for the State of Montana, as well as with Mr. Robert Ball, Commissioner of Social Security and members of his staff. Senator METCALF and I requested this meeting in order to impress upon the Commissioner and the Department of Health, Education, and Welfare our genuine and personal concerns with the impact created by those provisions of the Life Safety Code which I have just mentioned. As a result of that meeting, I ask unanimous consent to have printed in the RECORD at this point a letter I received from Commissioner Ball.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SOCIAL SECURITY ADMINISTRATION,
Washington, D.C., January 29, 1971.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: This letter will confirm the understandings you and I reached at our meeting concerning the proposed Medicare fire protection regulations.

As you know, these regulations which are called for by provisions of law in titles XVIII and XIX of the Social Security Act were issued for comment, and there will be a number of appropriate modifications before they are put in final form. When the final regulations are issued making the provisions of the Life Safety Code applicable to extended care facilities and hospitals, we will make clear that there will be appropriate discretion in the application of the Code. There may be some instances where the circumstances of the institution, its construction and all surrounding safeguards would provide equivalen patient safety to that provided by the installation of sprinklers as well as meeting other requirements of the Code. The Code itself provides for such discretion. We will not move to terminate institutions who claim to provide an equivalent level of patient protection until such claims have been examined on an individual basis.

We and other concerned parts of the Department will work with the states and other interested parties in the developmnt of an inspection and determination process to adjudicate these individual situations. We plan to consult with a variety of interested groups including state health officers in designing the criteria for determining equivalency and procedures for their application to individual situations. As I emphaszed this morning, we do not, however, expect that there will be a high incidence of such equivalency findings, but assure you of objective assessments.

As we also indicated to you in our previous conversations and correspondence, Secretary Richardson and I are concerned about the financial difficulties the new regulations might impose on some health institutions that, after individual determinations, will be found to require installation of sprinklers or to make other changes to conform to safety requirements. In this regard, we continue to support the principle reflected in section 610 of H.R. 1550 which was included in the Senate bill at your suggestion. Hence, in any situation where it is conclusively determined that the installation of sprinklers is ultimately necessary but where there is an immediate problem of inability to secure financing, we will, as the Secretary wrote you in his letter of December 9, grant a reasonable extension.

At the Secretary's direction we will also take further steps to ascertain what changes in law, if any, and in regulations are required in order to come as close as we can to a situation in which compatible requirements of health and safety in each of the Department's programs will be applied to facilities serving patients under the financing of the several programs.

In summary, in enforcing the regulations that apply the Life Safety Code to Medicare, we will look at existing Montana hospitals and extended care facilities, (as well as those in other States), on a case by case basis. The purpose of this examination will be to make individual determinations on claims of equivalent level of patient protection and requests

for an extension of time based upon financial hardship.

Sincerely yours,

ROBERT M. BALL,
Commissioner of Social Security.

Mr. MANSFIELD. Mr. President, I am, of course, most appreciative to the Commissioner and his associates for coming to the Hill to discuss with Dr. Anderson, Senator METCALF, and me these problems and further appreciate the Commissioner's decision to hold the deadlines in question in abeyance. However, I think it important that the Department understand that, although immediate relief has been provided, the crux of our problem has not been touched upon.

The proposed regulations make it clear that the Secretary is prepared to amend in the future the conditions of participation for medicare providers each time the National Fire Protection Association decides that it and it alone possesses the wisdom needed to change fire and safety regulations. This is, in my opinion, in doubtful delegation of responsibility by the Secretary to an organization over which no specific supervision is provided by any body answerable to the American people. Congress did not, in my opinion, intend in the medicare program to grant such authority to private associations.

State legislators create State agencies responsible for setting and enforcing health and safety standards. Congress can set conditions under which providers of services will function in federally financed health care programs. But in both cases, the people have a voice in assuring that these standards and these conditions be reasonable and that the wherewithal be available to assure compliance with them. Before medicare benefits are cut off to our senior citizens because of the pronouncements of a nonregulated voluntary association, I want to know the reason why.

I have asked the Department to postpone implementation of its new regulations until a full report and study has been made not only of the merits of these regulations, but also until the Congress has an opportunity to learn why it is necessary to act so quickly to deny health care to older Americans.

I do not consider the Department's response to my request as demonstrated by the Commissioner's letter of January 29 and included in my remarks to be sufficiently firm or clear. Further, the Department has failed to speak effectively to the dire consequences of this precipitous action upon the public. The people I represent want to know what is going on, and I intend to do my best to see to it that the matter be resolved fully and in the open.

Mr. President, it seems to me that the Department of Health, Education, and Welfare is now beginning to realize how confused the matter of health and safety standards has become. Even within HEW itself, different facility standards are applied in different health programs. In numerous instances, several of these programs provided assistance to the same health institution. As a demonstration of this fact, I have in my files a letter signed by Harald M. Graning, Assistant Surgeon General of the Public Health Service under the Department of Health, Education, and Welfare. Dr. Graning's letter was in response to one of my constituent's expressed concerns with certain provisos of the Life Safety Code. I think it essential that my colleagues be appraised of the manner in which this ruling is viewed by other officials in the Department who have, I might add, considerable expertise in the area of health facilities.

I ask unanimous consent that the letter referred to be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PUBLIC HEALTH SERVICE,
Rockville, Md., December 10, 1970.

Rev. HOWARD J. HOGUE,
Missionary Pastor,
Choteau, Mont.

DEAR MR. HOGUE: Thank you for your letter of November 28, 1970, to President Nixon about the problems facing Montana hospitals because of the requirement for sprinkling of hospitals.

As you may know, this office has taken the position that patient safety can best be served by insisting upon proper fire safe construction throughout rather than a blanket application of devices such as sprinklers. It would seem that the correctness of this position has been proven by the record that no lives have been lost from a building fire in any facility constructed under the Hill-Burton program since its inception 25 years ago.

It is most likely that you are referring to the requirement by the Social Security Administration that certain facilities be sprinkled in order to be eligible for Medicare-Medicaid; therefore, we are forwarding your letter to that office for further reply.

Sincerely yours,

HAROLD M. GRANING, MD.,
Assistant Surgeon General, Director.

Mr. MANSFIELD. Mr. President, I think it unimaginable that this body, of all bodies, will allow the implementation of a ruling of dubious quality costing millions of dollars nationally, escalating medical costs and, in some areas, most likely depriving thousands of senior citizens of essential medical attention.

I am, therefore, submitting today a resolution indicating that it is the sense of the U.S. Senate that, first, a study, full and complete, be made of the various standards now applied to health care institutions receiving Federal funds under various programs; second, that a report and recommendations be made to Congress by the Secretary of Health, Education, and Welfare, delineating an effective way in which one set of uniform Federal standards can be developed for all programs; and third, that the proposed changes in medicare standards not be implemented until Congress has received and reviewed the Secretary's study and recommendations.

The PRESIDENT pro tempore. The resolution will be received and appropriately referred.

The resolution (S. Res. 44), submitted by Mr. MANSFIELD (for himself and Mr. METCALF), which reads as follows, was referred to the Committee on Finance:

S. RES. 44

Whereas the Federal Government through various programs provides assistance for the construction and modernization of hospitals and other health care facilities, and through the Medicare, Medicaid, and other programs, assists individuals in obtaining health care services from hospitals and other health care facilities;

Whereas presently there are no uniform standards of health and safety applicable with respect to hospitals and other health care facilities receiving Federal funds under various programs;

Whereas the Secretary of Health, Education, and Welfare is preparing to issue regulations requiring that hospitals participating in the insurance program established by title XVIII of the Social Security Act be required to meet the standards of health and safety established by the Life Safety Code of the National Fire Protection Association for the protection of hospital patients;

Whereas enforcement of such regulations would compel the closing of many hospitals and work a grave financial hardship on others even though such hospitals do meet the standards of health and safety for patients which are imposed as a condition for the receipt of Federal funds under other programs: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of Health, Education, and Welfare—

(1) conduct a full and complete study and investigation of the matter of the standards of health and safety for patients which should be uniformly applicable to hospitals and other health care facilities receiving Federal funds under various programs;

(2) on the basis of such study and investigation, develop and recommend to the Congress uniform standards of health and safety for patients which should be applicable to hospitals and other health care facilities receiving Federal funds under various programs; and

(3) not put into effect any regulation which would have the effect of making the standards of health and safety established by the Life Safety Code of the National Fire Protection Association applicable with respect to hospitals participating in the insurance program established by title XVIII of the Social Security Act until such time as the study and investigation referred to in clause (1) shall have been completed and the Congress shall have had a reasonable time to consider the standards of health and safety recommended pursuant to clause (2).

Mr. MANSFIELD. Mr. President, in addition, I am also introducing a bill to amend certain sections of the Social Security Act to permit State health agencies, in connection with medicare and medicaid, to waive certain conditions for participation as a provider of health services in these programs. In the case of certain health and safety standards, the States could waive certain requirements imposed by the Secretary if the imposition of such requirements would result in an unreasonable hardship for health facilities and for the people so vitally dependent upon them. The States would, however, have to assure that any standards substituted in lieu of the Secretary's requirement adequately guarantee the health and safety of patients in hospitals and extended care facilities. This, in my judgment, places the responsibility for guaranteeing the health and safety of patients in hospitals where it now is and where it belongs at the present time—at the State and local level.

If a thoroughly considered uniform set of Federal standards relating to patient health and safety are adopted by the

Congress, perhaps then it would be worthwhile to consider the desirability of transferring the responsibilities for standard setting in the health areas from the State to Federal Government.

I ask unanimous consent that the bill be printed in the RECORD.

The PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 595) to amend title XVIII of the Social Security Act to permit, in certain instances, the State health agency of a State to waive certain requirements relating to health and safety which must be met by hospitals in such State in order for them to participate in the insurance program established by such title, and to amend title XIX of such act to eliminate the Life Safety Code of the National Fire Protection Association as the official standard for determining whether nursing homes meet health and safety standards introduced by Mr. MANSFIELD (for himself and Mr. METCALF), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1861(e)(8) of the Social Security Act is amended by inserting "subject to section 1863A," imediately after "(8)".

(b) Title XVIII of the Social Security Act is amended by inserting immediately after section 1863 the following new section:

"WAIVER BY STATE HEALTH AGENCIES OF CERTAIN REQUIREMENTS WITH RESPECT TO HOSPITALS

"SEC. 1863A. The State health agency for any State may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, with respect to any particular hospital or class or type of hospitals located in such State, any requirement imposed by the Secretary pursuant to section 1861(e)(8) if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that (1) the application of such requirement to such hospital (or to such class or type of hospitals) would result in an unreasonable hardship on such hospital or hospitals and (2) the waiver of such requirement with respect to such hospital or hospitals will not adversely affect the health and safety of the patients of such hospital or hospitals."

SEC. 2. Section 1902(a)(28)(F)(i) of the Social Security Act is amended to read as follows: "(i) meet such standards relating to the health and safety of individuals receiving care in such nursing home as the Secretary shall by regulations establish; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, with respect to any particular nursing home or class or type of nursing homes, any such standard if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that (I) the application of such standard to such nursing home (or to such class or type of nursig homes) would result in an unreasonable hardship on such nursing home or homes, and (II) the waiver of such standard with respect to such nursing home or homes will not adversely affect the health and safety of the patients of such nursing home or homes; and except that such standards shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing homes; and".

SEC. 3. The amendment made by this Act shall take effect on the date of enactment of this Act.