



Senate Business & Transportation Committee  
Informational Hearing - Fire & Life Safety Codes  
Phil Bentley, Sr. Vice-President Government Relations  
June 15, 2015

## **Introduction**

Chair Beyer, members of the committee, my name is Phil Bentley with the Oregon Health Care Association representing more than 700 long-term care providers in Oregon. With me today is Joe Greenman, our General Counsel, who has spent a considerable amount of time working on issues related to fire and life safety code enforcement.

Thank you the opportunity to testify today on this important issue.

In our experience there are two primary areas of concern that our members have experienced with the current system of life and safety code compliance, and the reason why we were supportive of the original intent of SB 886.

First, there are simply too many cooks in the kitchen and a lack of coordination between them.

## **Summary of Current Process**

Our members include skilled nursing facilities, which are licensed by the Oregon Department of Human Services. Other health care facilities are licensed by the Oregon Health Authority.

Nursing facilities are subject to state and federal building and fire and life safety codes. Nursing facilities are also subject to standards set by the Centers for Medicare and Medicaid Services (CMS).

In order to build and license a new facility at least four state agencies are involved just in the fire and life safety code approval process:

1. The Oregon Health Authority performs plan reviews to ensure compliance with administrative rules, including building codes, specific licensed setting standards, and fire and life safety codes (state and federal). The Facilities Planning and Safety unit of OHA also conducts on-site inspection for code compliance at the completion of each project.
2. The Building Codes Division and the local building code agency are responsible for compliance with state and local building codes.
3. The Oregon State Fire Marshal is responsible for fire and life safety code enforcement, including CMS regulations. The Department of Human Services subcontracts with the State Fire Marshal for enforcement of the national standards adopted by CMS.
4. The Department of Human Services is responsible for compliance with Medicare and Medicaid standards and grants final approval of the license.

Nursing facilities are also periodically inspected for compliance with fire and life safety codes when their licenses are subject to renewal.

The **current process** has too many agencies responsible for code compliance and there is a lack coordination and accountability between the various agencies. Consequently, providers experience inconsistent application of the fire and life safety codes at different stages in the process.

The stated purpose of the current plan review process is “to minimize the need for costly changes and delays, to correct deficiencies in newly constructed facilities; and to promote cost containment through better programming, construction and design.” These goals are not being realized and have not for many years.

The **second problem** frankly are challenges with a particular Fire Marshall. Following a personnel change in 2010 at the Fire Marshal’s office, our members saw a dramatic increase in citations.

This chart demonstrates the difference between Oregon and other CMS Region 10 states, which includes Oregon, Washington, Idaho and Alaska. Oregon is the yellow line.

The combination of these two factors — the organizational structure and personnel challenges — has led to costly delays in the opening of facilities. These delays postpone residents from receiving the care they need, prevent staff from earning a living, and add unnecessary costs to a project because of lost operating revenues and expensive retrofits and changes to the construction plan.

## Example

A recent example was the opening of the Veterans' Home in Lebanon last year. During an inspection near the completion of the construction, the Fire Marshal said the wiring had to be replaced with conduit even though Plans Review had approved the wiring plan, the construction around the wiring was completed and the drywall had been installed. The cost to redo the wiring exceeded \$1 million. Fortunately, CMS agreed that a much less costly solution that had initially been proposed by the Home complied with all of the regulations. But it took over three months for all of the parties to agree on the solution, delaying work toward opening the Home to our veterans.

Back in mid-2010 when we started to see the dramatic rise in citations, our association staff and members engaged with the fire marshal's office to attempt to resolve the problem.

We hired a national consultant who was the former President of the National Fire Protection Association and one of the most respected authorities on nursing home fire and life safety to assist our members with citation due process and/or compliance strategies. The NFPA is the foremost authority on fire safety codes. These are the codes which CMS adopts as their standards.

After reviewing the situation in Oregon, he concluded that the major causes of the increase in cited deficiencies was not that Oregon had unsafe buildings. He found that the problem to be:

- (1) Personnel changes in the Fire Marshal's office;
- (2) Incorrect interpretations of the CMS Regulations and policies;
- (3) Incorrectly cited deficiencies, and
- (4) Over enforcement of the operational requirements for fire/life safety.

Despite proactively working with the Fire Marshal and other respective agencies over the last five years, we still face challenges.

In 2014 the opening of a new skilled nursing facility in Tualatin was delayed over a month because of last minute citations by the Fire Marshal.

In September of 2014, the Fire Marshal conducted a courtesy walk through of the facility and indicated that there were no issues. A month later, right before opening was scheduled, the Fire Marshal issued 9 citations.

And we are currently working with a member to dispute a citation which was issued by the same Fire Marshal. Once again due to the complexity of the code and lack of appropriate citing of code, we brought in national experts to assist.

## **Solutions**

Our members want to provide safe buildings and practices for their residents. In order to accomplish that objective we need an effective and consistent application of the relevant building and fire and life safety codes.

The amended version of SB 886, which passed the Senate, will help provide some measure of consistency and accountability of code enforcement.

In terms of more comprehensive solutions we are looking forward to the conversation with other stakeholders this interim. We believe that DHS should retain its licensure authority but there is considerable merit in the concept of consolidating the various code enforcement functions under the Building Codes Division.

We appreciate the work that has led to this conversation today and hopefully we will be before you again during 2016 with legislation for your consideration.

Thank you.

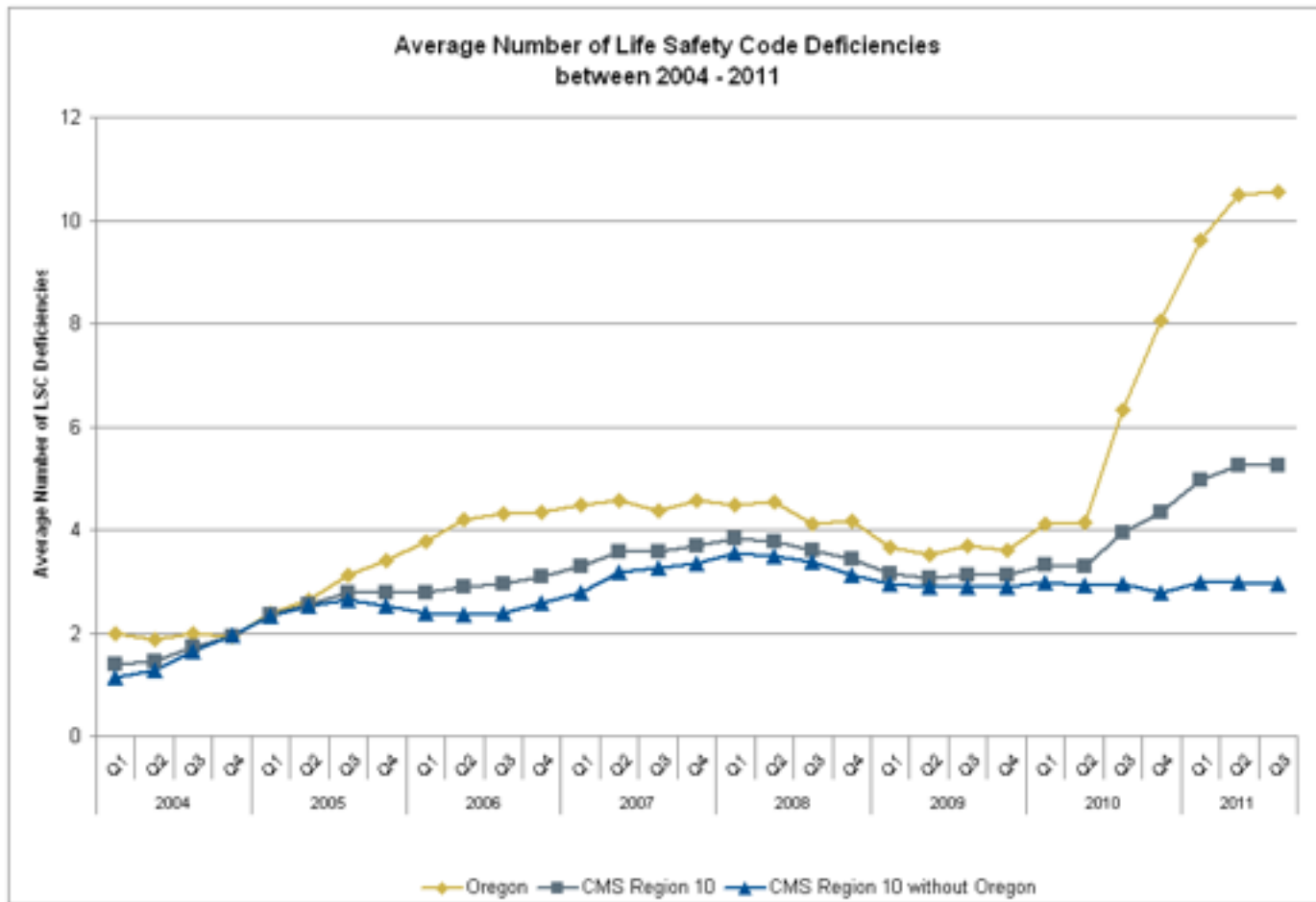




## Life Safety Code Trends between 2004 – 2011

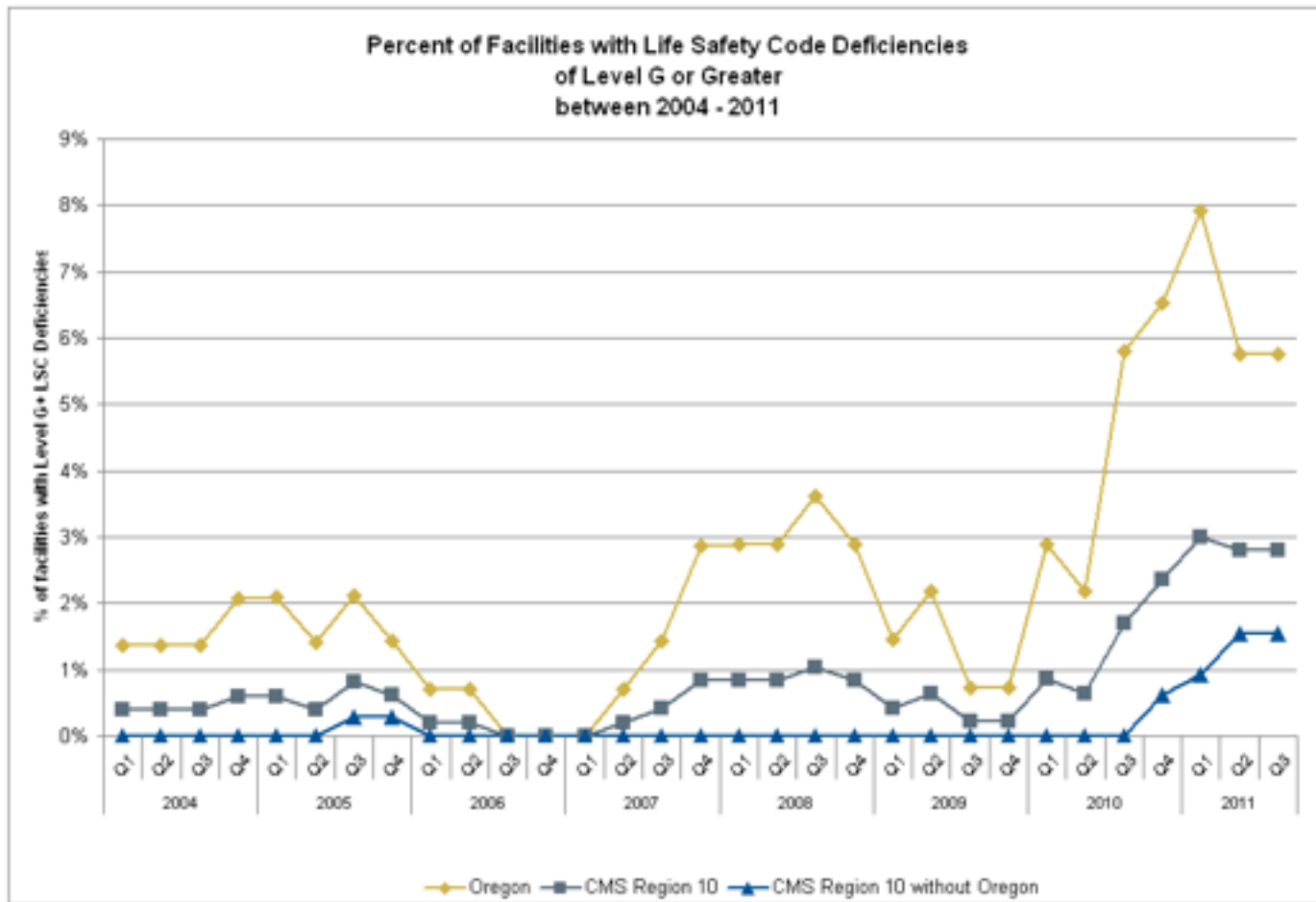
Comparing Oregon  
to CMS Region 10

# Oregon and CMS Region 10- LSC Deficiencies

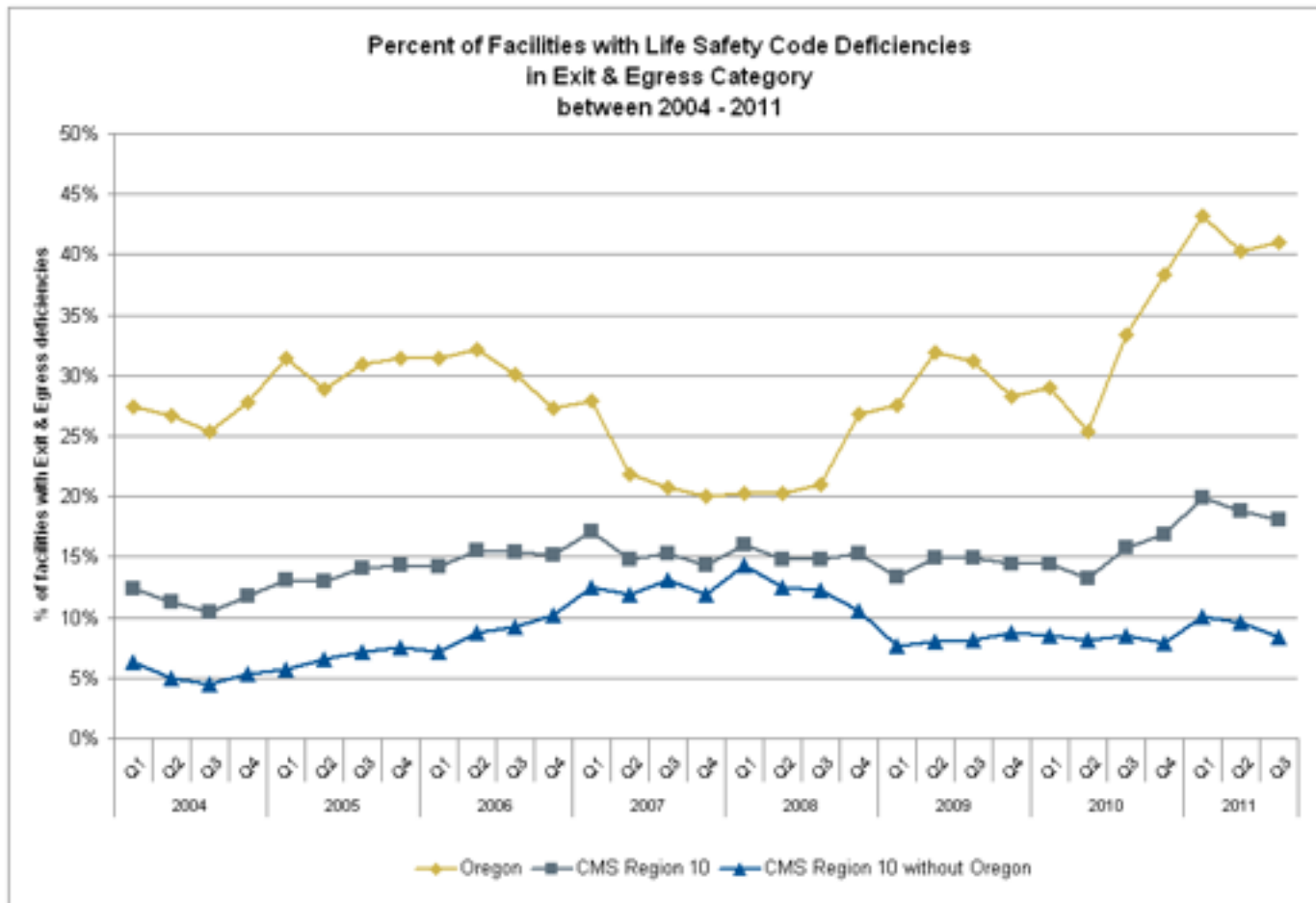




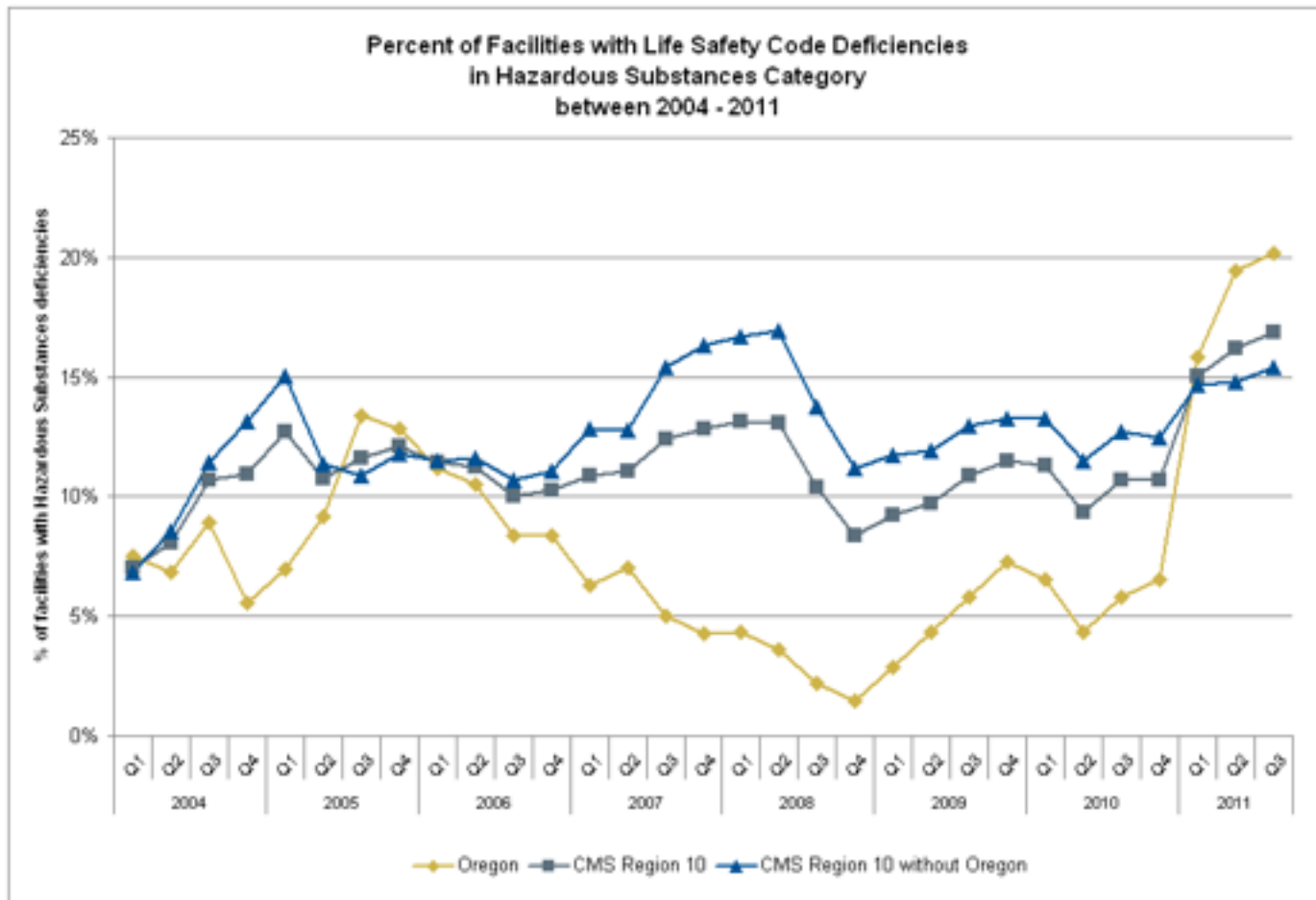
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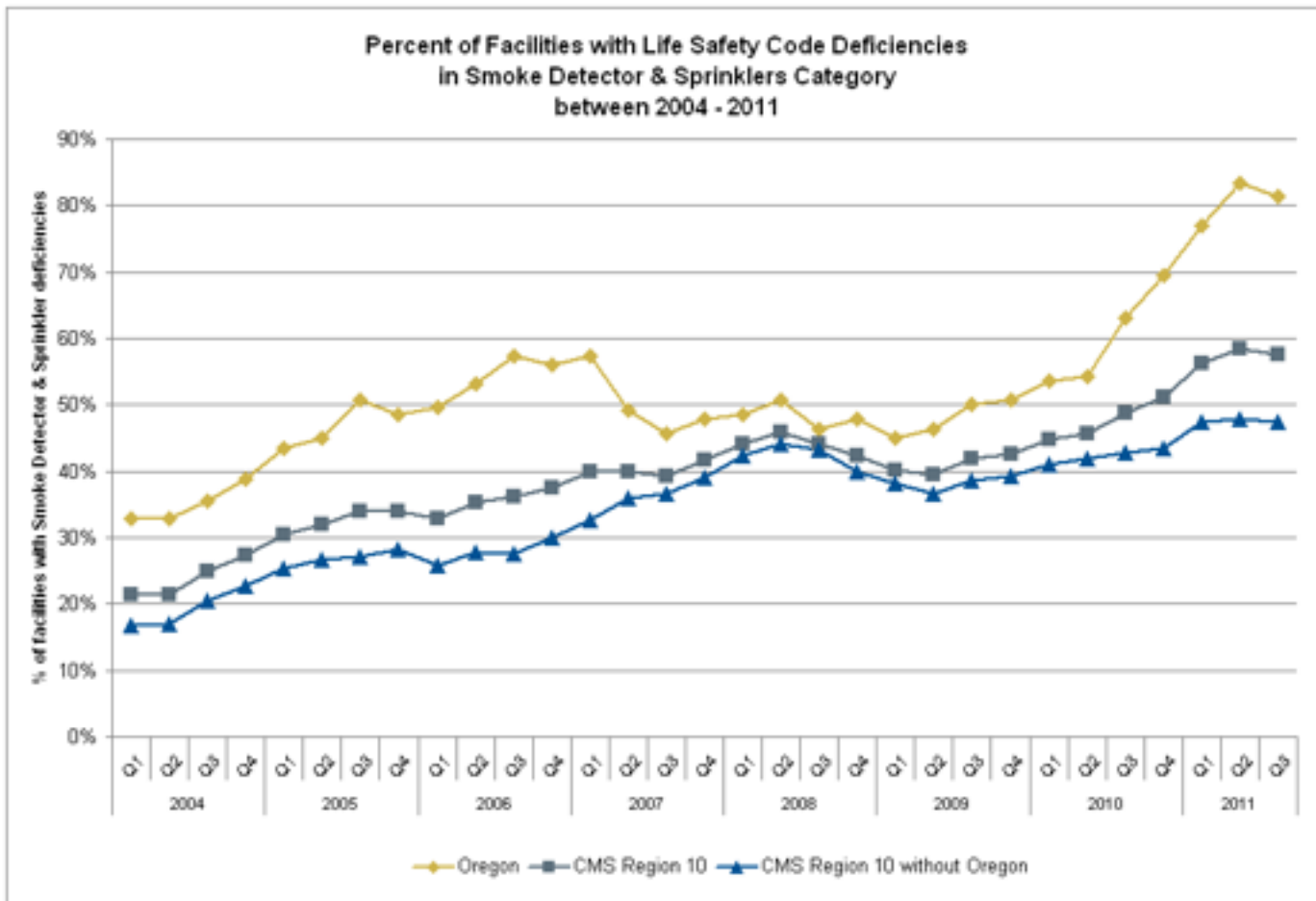
# Oregon and CMS Region 10- LSC Deficiencies- Exit/Egress



# Oregon and CMS Region 10- LSC Deficiencies- Hazardous Substances



# Oregon and CMS Region 10- LSC Deficiencies- Detectors/Sprinklers



# Oregon and CMS Region 10- LSC Deficiencies- Fully Sprinklered

