

Skilled Nursing Facility Compliance Post-Health Care Reform

The provisions of PPACA specific to **Skilled Nursing Facilities** (SNF's) (and some other long-term care facilities) can be grouped into four subject areas: (1) transparency; (2) mandatory **compliance** planning; (3) making data related to quality metrics comparable and standardized; (4) self-reporting of deficiencies.

1. Transparency

PPACA requires expansive new disclosures by SNF's regarding their ownership and control, employees, costs, and closures. For most of the requirements, the Secretary of the Department of Health and Human Services (HHS) must implement final regulations regarding the disclosure requirements within two years of enactment of PPACA, or by March 2012. SNF's, however, are required to disclose the ownership and control information available for inspection effective immediately. For purposes of cost reporting described below, HHS is required to produce a redesigned cost report form by March 2011, the use of which will be required beginning on or after March 23, 2012. The specific information that SNF's will now be required to report is as follows:

a. Ownership and Control

Section 6101 will require the following information regarding ownership and control:

- names, titles, and dates of service for each member of the governing body of the SNF;
- names, titles, and dates of service for each person or entity serving as an officer, director, member, partner, trustee or managing employee of the SNF;
- the identity and information for each "additional disclosable party" of the SNF, which is defined as any person or entity exercising operational, financial, or managerial control, providing policies or procedures for facility operations, providing financial or cash management services, leasing or subleasing real property to the facility, owning a whole or part interest equal to or exceeding 5%; or providing management or administrative services, clinical consulting services, or accounting or financial services; and
- the organizational structure of each "additional disclosable party" (see above) and a description of the relationship of each such additional disclosable party to

the facility and to one another.

b. Staffing

Section 6101 will require the following information regarding employees:

- the specific categories of work performed by direct care staff;
- resident census data and case mix;
- employee turnover; and
- hours of care per resident per day for each category of employee.

Several other provisions of PPACA relate to SNF staffing. Section 6106, for example, requires the HHS Secretary to develop a uniform program for reporting staffing information. Section 6201 requires the Secretary to establish a national program for background checks on employees with "direct patient access" at SNF's and other longterm care facilities. Section 6121 requires SNF's to institute dementia management and abuse prevention training as part of pre-employment initial training beginning March 2011.

c. Costs

Section 6104 requires the following disclosures regarding costs:

- Separate breakdown of expenditures for direct care services, indirect care services, capital assets, and administrative costs, including separate reporting of expenditures will include itemization of wages and benefits for direct care staff, *i.e.* amounts paid for each of registered nurses, licensed vocational nurses, certified nurse assistants and other medical and therapy staff.

d. Closures Beginning March 2011, Section 6113 requires SNF's to make written notification to HHS, state ombudsmen, residents, and their representatives at least 60 days in advance of facility closures. Failure to give notice exposes SNF's to the risk of a civil monetary penalty of \$100,000 and possible exclusion of other facilities.

2. Compliance Planning

Section 6102 of PPACA requires SNF's to implement and operate compliance and ethics programs to be followed by their employees and agents. Compliance programs must be customized by the SNF in order to prevent and detect criminal and civil violations of relevant laws and regulations. As with the transparency programs, HHS is required to implement final regulations regarding these disclosure requirements within two years of PPACA's enactment, or by March 2012. SNF's will be required to have compliance programs in effect within three years, or by March 2013. Many of our SNF clients have already implemented or are actively implementing compliance plans well in advance of the 2013 deadline. We strongly encourage organizations that have not yet done so to consider working on a compliance plan. If compiled and implemented properly, compliance plans can play a valuable function not only in avoiding violations of the law, but in workforce training, facility culture, and managing risk.

3. Comparable and Standardized Data

In an effort to make facility quality more transparent, Section 6103 of PPACA requires that information on the Nursing Home Compare website of Medicare be prominent, easily accessible, timely, and enhance data on each SNF. Data to be available online will include:

- standardized complaint forms, including explanatory information on the forms;
- summaries of information regarding substantiated complaints; and
- adjudicated instances of criminal violations by a facility or its employees.

Section 6105 requires HHS to develop the standardized complaint form to be reported on the Nursing Home Compare website. The form will be available to residents and their representatives to complain to state surveyors and long-term care ombudsmen, as well as to certifying agencies. States, in turn, will be required to develop complaint resolution processes to ensure, among other things, access to residents and nondiscrimination against complainants. PPACA requires HHS to add most of this information to the website and the new complaint form within one year of enactment, *i.e.* March 2011. These provisions highlight the need for facilities to ensure that their operational quality is transparent and quantifiable.

4. Self-Reporting Deficiencies

Section 6111 of PPACA authorizes the HHS Secretary to reduce civil monetary penalties (CMP's) by as much as 50% when facilities self-report and correct deficiencies within 10 days. These reductions will not to apply to deficiencies at levels that place residents in immediate jeopardy or actual harm, or where there have been previous reductions of CMP's within one year. SNF's will also be able to participate in a new informal dispute resolution process 30 days after imposition of a CMP.