



Client Alert

Contact Attorneys Regarding
This Matter:

Hedy S. Rubinger
404.873.8724 - direct
404.873.8725 - fax
hedy.rubinger@agg.com

Jessica Tobin Grozine
404.873.8526 - direct
404.873.8527 - fax
jessica.grozine@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

Health Reform Brings Nursing Home Transparency and Improvement Initiatives

The Patient Protection and Affordable Care Act (the Act), signed into law by President Obama on March 23, 2010, contains numerous provisions aimed at increasing nursing home transparency and improving patient care. Title VI, Subtitle B, of the Act, entitled "Nursing Home Transparency and Improvement," has been called one of the most significant nursing home reform initiatives in more than 20 years.

The following is an overview of some of the new transparency and improvement initiatives under the Act.

Accountability Requirements for Skilled Nursing Facilities and Nursing Facilities

The Act requires all nursing home operators, within 36 months after the date of enactment, to implement a compliance and ethics program that is "effective in preventing and detecting criminal, civil, and administrative violations under th[e] Act and in promoting quality of care [...]." With respect to organizations that operate five or more facilities, the law requires that the regulations mandate more formal program requirements depending on the size of the organization. The Department of Health and Human Services (HHS) must promulgate regulations no later than March 23, 2012. Not later than three years after the applicable regulations are promulgated, HHS must complete an evaluation of the compliance and ethics programs and assess whether the programs had an affect on performance and quality of care.

Each compliance and ethics program is required to contain the following specified components:

- The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil and administrative violations.
- Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to assure such compliance.
- The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a pro-

pensity to engage in criminal, civil and administrative violations.

- The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil and administrative violations by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution.
- The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.
- After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modification to its program to prevent and detect criminal, civil and administrative violations.
- The organization must periodically undertake reassessment of its compliance program to identify changes necessary to reflect changes within the organization and its facilities.

The Act also requires HHS to establish and implement a quality assurance and performance improvement (QAPI) Program no later than December 31, 2011. Facilities will be required to submit to HHS a plan to meet the standards under the program and implement best practices no later than one year after the date on which the applicable regulations are promulgated. The law specifically contemplates that that the QAPI Program will apply to all facilities, including multi-unit chains of facilities.

Nursing Home Compare Website

The Act also makes changes to the Nursing Home Compare website, or its successor. Under the Act, Nursing Home Compare must include additional data regarding staffing, links to state internet websites with information regarding state survey and certification programs, links to state inspection reports and plans of correction, instructions for interpreting such reports, the standardized complaint form discussed below, a summary of information regarding substantiated complaints, and information regarding criminal violations by a facility and its employees. The information must be updated by HHS in a timely manner and must be accessible and understandable to consumers. With the exception of staffing information, discussed further below, this information must be made available no later than March 23, 2011.

In an effort to improve the timeliness of the information made available to the public through the Nursing Home Compare website, beginning March 23, 2011, states will be required to submit survey and certification information to HHS no later than the date on which the state sends such information to the facility. HHS is required to update the Nursing Home Compare website at least quarterly.

The Act also requires facilities to have survey, certification, and compliant investigation reports, made during the three preceding years, available to any individual upon request. The facility is required to prominently

post notice of the availability of such reports in a public area. This requirement becomes effective on March 23, 2011.

Reporting of Expenditures

In an effort to categorize expenditures, the Act also makes changes to the manner in which skilled nursing facilities report certain expenditures. For cost reporting periods beginning on or after March 23, 2012, skilled nursing facilities must separately report expenditures for wages and benefits for each category of direct care staff (i.e., registered nurses, certified nurse assistants, etc.). HHS must establish procedures for making this information readily available to interested parties upon request.

Standardized Complaint Form

The new law also requires HHS to develop a standardized complaint form for use by residents in filing a complaint with the state survey and certification agency and long-term care ombudsman. The state will be responsible for establishing a complaint resolution process in order to prevent retaliation against or denial of facility access to the legal representative of the resident or other responsible party as a result of such a complaint. This provision is effective on March 23, 2011.

Ensuring Staff Accountability

No later than March 23, 2012, HHS will require a facility to electronically submit direct care staffing information based on payroll data and other verifiable data. HHS will establish specifications for such data, which will include the category of work a certified employee performs, resident census and resident case mix data, and information regarding employee turnover and tenure, and the hours of care provided by each category of certified employee per resident per day.

GAO Study on Five-Star Quality Rating System

The new law also mandates a GAO study and report on the Five-Star Quality Rating System and requires the Comptroller General to submit a report to Congress no later than March 23, 2012. The study will include an analysis of how the system is being implemented, any problems associated with the system, and how the system can be improved.

Conclusion

It is important that nursing homes become familiar with these new requirements and initiatives, as their obligations will increase dramatically as the new transparency provisions go into effect. Moreover, with the increased focus on Medicare and Medicaid integrity, nursing homes will undoubtedly be subject to scrutiny with respect to the new transparency requirements.

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