



## Client Alert



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### **A Review of Additional Nursing Home Transparency and Improvement Provisions in the Patient Protection and Affordable Care Act**

We continue our analysis of the impact of the Patient Protection and Affordable Care Act (the Act), signed into law by President Obama on March 23, 2010, with a review of additional provisions of the Nursing Home Transparency and Improvement Subtitle (Title VI, Subtitle B). These provisions include a new opportunity for a reduction in certain civil monetary penalties levied against nursing homes by the Centers for Medicare and Medicaid Services (CMS), a new informal dispute resolution process for challenging civil monetary penalties, a new requirement for notification of closure of nursing homes, the initiation of new demonstration projects and certain staff training initiatives.

These provisions are summarized below in order of their appearance in the Act.

#### **A Reduction of Civil Monetary Penalties; Section 6111 of the Act.**

Under this provision, which is effective in March 2011, a civil monetary penalty (CMP) levied against a nursing home because of a survey deficiency may be reduced by up to 50 percent if the facility self-reports and promptly corrects the deficiency within 10 calendar days of the date of imposition of the CMP. There are limits to this opportunity for reduction; for example, a CMP may not be reduced under this new provision if the facility was the beneficiary of a CMP reduction within the preceding year or if the deficiency at issue resulted in a pattern of harm, immediately jeopardized the health or safety of a resident, or resulted in the death of a resident of the facility.

#### **A New Informal Dispute Resolution Process for Civil Monetary Penalties; Section 6111 of the Act.**

The Act calls for the promulgation of new regulations that would establish an informal dispute resolution process for CMP cases. Under the dispute resolution system, any "per day of noncompliance" CMP would not be imposed beginning on the initial day of imposition of the penalty and ending on the day on which the informal dispute resolution process is concluded. CMS may be able to collect the CMP and hold the money in an escrow account if the informal dispute resolution process extends further than 90 days from the date of imposition of the CMP. The CMP would be held in escrow until the final resolution of the matter (e.g., through the end of any appeal). If the facility successfully appeals the penalty, the CMP (plus interest) will be returned to the

facility. If the appeal is unsuccessful, CMS may allow some portion of the CMP amount collected and held in escrow to be used to support activities that benefit facility residents. There is no deadline for the issuance of these regulations, although the implementing statute is effective in March 2011.

#### **A New National Independent Monitor Demonstration Project; Section 6112 of the Act.**

The Act requires the Department of Health and Human Services (HHS) to establish a two-year demonstration project to develop, test and implement an independent monitor program to oversee the quality of services of multi-state and large single-state chains of nursing facilities. To participate in the project, an applying chain must be experiencing serious safety and quality of care problems. HHS will select participants from the pool of applicants. HHS must implement the project within one year.

The independent monitor(s) appointed under the demonstration project will be charged with conducting reviews and developing root-cause analyses regarding the facilities' safety and quality issues. The monitor will be required to oversee compliance initiatives and analyze the facilities' management structure, distribution of expenditures and nurse staffing levels. The monitor must make a report to HHS and to relevant State agencies regarding the results of its review, and the results will be published and evaluated by the HHS Office of Inspector General. Once the monitor issues its report, the facilities will be required to promptly submit a responsive report outlining the corrective measures that the facilities will implement.

#### **A New Requirement for Notification of Facility Closure; Section 6113 of the Act.**

Under this new requirement, which is effective in March 2011, the administrator of a nursing facility must submit to HHS, the state long-term care ombudsman, residents of the facility and legal representatives of such residents, written notification of an impending facility closure. The written notification should be provided no later than 60 days prior to the date of closure. The administrator must ensure the facility does not admit any new residents on or after the date written notification is submitted and must include a plan for the transfer and adequate relocation of the residents prior to the closure. Failure to comply with this new requirement could result in the administrator facing a CMP of up to \$100,000 and exclusion from the Medicare and Medicaid programs.

#### **New National Demonstration Projects on Culture Change and Use of Information Technology in Nursing Homes; Section 6114 of the Act.**

Under this Section, HHS is required to conduct two demonstration projects, both with the goal of establishing certain "best practices" for nursing homes. The first project is for the development of best practices related to cultural change, including the establishment of resources for facilities to access funding in order to undertake such cultural change. The second project is for the development of best practices related to the use of information technology to improve resident care. The demonstration projects must be implemented within one year and may not exceed three years in length, and will involve the award of a lump-sum grant to participating facilities to use in their development of best practices.



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### **Nursing Home Dementia and Abuse Prevention Training Requirement; Section 6121 of the Act.**

Pursuant to this Section, nursing facilities will be required, effective March 2011, to include dementia and abuse prevention training as part of the pre-employment initial training and, if HHS determines appropriate, as part of ongoing training.

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These provisions of the Act will present both opportunities and challenges for nursing home owners and operators. With the increased focus on nursing home transparency, it is likely that nursing homes are going to find themselves the focus of increased scrutiny as the Act's provisions are implemented.

For information on additional provisions of the Act that impact nursing homes, please see our previous Client Alerts from March 31, 2010,<sup>1</sup> and April 14, 2010.<sup>2</sup>

<sup>1</sup> [http://www.agg.com/media/interior/publications/Rubinger\\_Burgar-Nursing\\_Home\\_Ownership\\_Disclosures\\_Expand.pdf](http://www.agg.com/media/interior/publications/Rubinger_Burgar-Nursing_Home_Ownership_Disclosures_Expand.pdf)

<sup>2</sup> [http://www.agg.com/media/interior/publications/Rubinger\\_Grozone-Health\\_Reform\\_Brings\\_Nursing\\_Home\\_Transparency.pdf](http://www.agg.com/media/interior/publications/Rubinger_Grozone-Health_Reform_Brings_Nursing_Home_Transparency.pdf)

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