



Client Alert

Contact Attorneys Regarding
This Matter:

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

Lanchi Nguyen
404.873.8520 - direct
404.873.8521 - fax
lanchi.nguyen@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

CMS Issues Rule on Notification Requirements for Nursing Facility Closure

Because the closure of a long-term care facility may affect the overall health of residents, their access to care and the quality of care, the Centers for Medicare & Medicaid Services (CMS) recently issued an Interim Final Rule with comment period to provide an organized process for facilities to follow to ensure that resident health and safety is protected during any transition period. Effective March 23, 2011, the Interim Final Rule (76 Fed. Reg. 9503-9512, February 18, 2011) requires the administrator of a Medicare skilled nursing facility or a Medicaid nursing facility to provide written notification of an impending closure and a plan for the relocation of residents at least 60 days prior to the date of the impending closure. If the facility's participation in Medicare or Medicaid has been terminated, the notifications must be provided no later than the date deemed to be appropriate by CMS. The implementation of notification requirements for nursing facility closures was mandated by section 6113 of the Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148 (PPACA).

Specifically, the written notification of closure must be provided to the Secretary of Health and Human Services, state long-term care ombudsman, facility residents and legal representatives (or responsible parties) of such residents. The closure plan for the relocation of residents must be approved by the State and include assurances that each resident will be transferred to the most appropriate facility or setting based on his or her needs and best interests. As part of the Interim Final Rule, the administrator must ensure that the facility does not admit any new residents on or after the date of the written notification of facility closure and is subject to sanctions or exclusion for failure to provide proper notice.

The Federal Register notes that the Interim Final Rule marks the first time that a regulation for long-term care facilities has imposed a civil monetary penalty (CMP) on an individual for a violation. While the PPACA allows the agency to establish penalties up to \$100,000 for failure to comply with the notification requirements, CMS recognized that administrators do not always have control over closure proceedings and determined that the CMPs would be \$500 minimum for the first offense, \$1,500 minimum for the second offense, and \$3,000 minimum for the third and subsequent offenses. Because these CMPs represent the minimum amount for each offense, CMS plans to identify criteria under which an administrator could be subject to higher CMPs (up to \$100,000) in interpretative guidelines. In addition, long-term care facilities are



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required to develop policies and procedures outlining the administrator's duties and obligations in regards to closure notices. While facilities cannot be sanctioned for non-compliance, the failure to have such policies and procedures in place may be considered a deficiency in the survey process.

The agency is accepting comments on the Interim Final Rule until April 19, 2011.

A copy of the Interim Final Rule is available [here](#).¹

¹ <http://edocket.access.gpo.gov/2011/pdf/2011-3806.pdf>

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