

## AHCA Policy Memo on Section 6101 of PPACA

### PPACA Requires Disclosure of Ownership and Additional Disclosable Parties Information

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA). Title VI, Subtitle B of the law, entitled **Nursing Home Transparency and Improvement** includes two parts. The first section of **Part I – Improving Transparency of Information** is section 6101 – Required Disclosure of Ownership and Additional Disclosure Information.

This sections states that, beginning immediately, a facility must make certain information available for the State in which the facility is located, the State Long-Term Care Ombudsman, the Secretary of the Department of Health and Human Services (HHS) and the Office of Inspector General of HHS *should one of these entities request the information*. The information that must be provided, if requested, is bulleted on the attached document “**Guidance on the Nursing Home Transparency Provisions of the Patient Protection and Affordable Care Act**” (**Guidance**).<sup>1</sup>

By March 2012, HHS must issue final regulations that create a standardized format for reporting the disclosure information specified in PPACA section 6101. By July 2012, a nursing facility must report the information, on the standardized form, to HHS. At that time, a nursing facility also will have to certify, as a condition of program participation, that the information provided is, to the best of its knowledge, accurate and current. By March 2013, HHS will make the ownership and additional disclosable party information submitted on the standardized form available to the public.

It is important to note that if a nursing facility already reports any of this information to the Internal Revenue Service (e.g., on Form 990), the Securities and Exchange Commission, or HHS (e.g., on Form 855A) and, in some states, on the CMS Ownership and Control Interest Statement, the nursing facility can submit any of those forms/documents to satisfy the current requirement.

### Impact

A nursing facility will be responsible for obtaining and reporting the required ownership and other disclosable party information and certifying that this information is, to the best of the facility’s knowledge, accurate and current. The **Guidance** document identifies and defines specific individuals for which the facility must obtain and report the information.

Until the standardized format is developed and issued in final regulations (March 2012), a nursing facility may use the attached “**Provider Ownership and Disclosure Form**”<sup>2</sup> (**Form**) as a guide for compiling the required information. It is important to understand that this **Form** was designed by Reed Smith, LLP, AHCA General Counsel, to provide

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<sup>1</sup> Prepared by AHCA’s General Counsel, Reed Smith, LLP

<sup>2</sup> Ibid.

AHCA members with assistance in gathering the information required by PPACA until CMS develops the standardized format. Neither the **Guidance** nor the **Form** is to be considered legal advice. We recommend that each nursing facility review the information it gathers with its own legal counsel to assure that they have met the legal requirements of the PPACA/.

### Concerns

- In §1126(b) of the Social Security Act, the term “managing employee” means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.”

The PPACA defines the term “managing employee” as an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises, any element of the practices, finances, or operations of the facility.

Clarification must be provided by HHS.

- The PPACA definition of the term “managing employee” states that a consultant who advises or supervises any element of the practices or operations of the nursing facility requires additional clarification. AHCA believes that a “consultant,” for purposes of this requirement, should include only those consultants who actually have decision-making responsibilities related to day-to-day implementation of policies and procedures.
- It is important that HHS provide adequate time for a nursing facility to obtain this level of information, particularly during the immediate period following adoption of this law.
- HHS must clarify when and in what format the disclosure of ownership and additional disclosure information must be updated.
- HHS must designate a coordinating organization in every state for receiving and disseminating this information. That coordinating organization should also be required to advise a facility if this disclosure information has been requested.