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Memorandum

To: AHCA Members
From: Lyn Bentley and Dianne De La Mare
Subject: Notification of Facility Closure (§6113)
Date: 9/24/2010

Notification of Facility Closure

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA). Subtitle B of the law, entitled **Nursing Home Transparency and Improvement** includes three parts. **Part 2 – Targeting Enforcement** contains [§ 6113 – Notification of Facility Closure](#).

Administrator Responsibilities

When a nursing facility plans to close, no later than 60 days prior to the closure, the administrator is required to provide written notification of such to:

- The Secretary of the Department of Health and Human Services (Secretary);
- The State long-term care ombudsman; and
- Residents of the facility or other responsible parties.

In the case of a nursing facility that is closing due to the Secretary terminating the facility's participation in the Medicare or Medicaid program, the notification timeframe will be determined by the Secretary.

The administrator must not admit new residents on or after the date on which the written notification is submitted.

In the notification of closure, the administrator must include a plan for the transfer and adequate relocation of the residents by a specified date prior to closure that is approved by the State. Also, the plan must include assurances that the residents will be transferred to the most appropriate nursing facility or other setting, in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

State's Responsibilities

The State must ensure that all residents of the nursing facility have been successfully relocated to another appropriate location (as described above) prior to closure of the facility.

Secretary's Responsibilities

As the Secretary determines appropriate, the Secretary may continue payments under Medicare (and Medicaid) for residents of a nursing facility that has submitted a notification during the period beginning on the date the notification is submitted and ending on the date on which the resident is successfully relocated.

Sanctions

An administrator who fails to comply with the requirements is subject to:

- A civil monetary penalty of up to \$100,000;
- Any other penalties that may be prescribed by law; and
- May be subject to exclusion from participation in any Federal healthcare program.

Effective Date

This section is effective March 23, 2011.

AHCA Questions/Issue/Concerns

- How does CMS envision the implementation of this provision? Will CMS develop templates for the required notification?
- What role will the Secretary, the State, and the long-term care ombudsman have in the relocation of the residents of a facility that is closing? Will those roles differ depending upon a voluntary closure or a facility termination by the Secretary?
- AHCA believes that any failure of a facility to adhere to these requirements should be considered from the standpoint of whether the failure had any significant impact on the relocation of residents as well as whether the failure was intentional or due to circumstances not within the direct control of the facility.
- AHCA believes that the penalty should only be enforced against the individual responsible for the "violation." We ask that CMS provide clarification regarding the sanctioning of individual administrators when decisions regarding impending facility closure are made at the ownership level. Will any civil money penalties obtained under this provision go into the general civil money penalty fund that is currently in the Medicare Trust Fund? Or will they be kept by the state in which the facility and administrator are located.
- Will CMS provide clarification about how it will determine exclusion from participation in any Federal health care program for an administrator who has failed to comply with the requirements in this section?

AHCA Next Steps

AHCA will continue to communicate with the Secretary to advocate for clarification of provisions, as necessary, and for reasonable implementation of this section of the law.

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