

NURSING HOME TRANSPARENCY AND QUALITY OF CARE IMPROVEMENT ACT OF 2008

Effective dates are one year after enactment unless otherwise noted.

Title I. Improving Transparency of Information on Skilled Nursing Facilities and Nursing Facilities

Sec. 101

Disclosure of information about ownership and additional disclosable parties.

Requires that skilled nursing facilities (SNFs) under Medicare and nursing facilities (NFs) under Medicaid make available on request by the Secretary, the HHS OIG, the states, and the state long-term care ombudsman, information on ownership (including direct and indirect ownership) and additional disclosable parties as well as information describing the governing body and organizational structure of the facility. Information shall be made available to the public upon request, and a notice of availability must be posted in the lobby of the facility. To the extent that the required information is submitted to the IRS as part of Form 990, to the SEC, or to the Secretary, facilities may make the information available in these formats. Effective on the date of enactment.

Requires the Secretary and the states to develop a standardized format for facilities to submit this information within two years of enactment. Requires the Secretary, within one year of promulgating regulations developing a standardized format, to make available to the public the information reported by SNFs and NFs in a manner similar to the information available to the public through the Online Survey, Certification and Reporting (OSCAR) data network. Prior to the promulgation of regulations, and for the additional year until information is available on OSCAR, information shall continue to be made available upon request.

Additional disclosable parties are defined as persons or entities that exercise operational, managerial or financial control over the facility or part thereof; lease or sublease real property to the facility; lend funds or provide financial guarantees; provide therapy, pharmacy or hospice services; or lease employees or employ staff on behalf of the facility.

The Secretary is required to provide guidance and technical assistance to states on how to adopt the standardized format.

Sec. 102

Accountability Requirements.

Requires SNFs and NFs to implement a compliance and ethics program to be followed by the facility's employees and its agents within 36 months of enactment. Requires the Secretary to develop regulations, in consultation with the HHS Inspector General, for an effective ethics and compliance program, which may include a model compliance

program, within two years of enactment. The Secretary may vary the elements and formality of the program based on the size of the organization. The compliance program must have standards and procedures designed to detect criminal, civil and administrative violations under the Social Security Act. The program must be enforced through appropriate disciplinary mechanisms and the facility should complete periodic assessments of the program to identify necessary changes to the program.

Requires the Secretary to evaluate compliance and ethics program and report to Congress no later than 3 years after regulations are promulgated.

Authorizes the Secretary to conduct a demonstration project to test and evaluate models for quality assurance and performance improvement (QAPI) programs. The demonstration project will fund quality improvement activities in NFs and SNFs including data analysis, root-cause and other analyses. The Secretary will conduct an evaluation of the program to determine if QAPI activities led to changes in metrics of patient quality of care and report to Congress, including any recommended statutory changes to modify or strengthen QAPI programs. Requires the Secretary to use the results of the evaluation to create a resource manual, in consultation with the HHS Inspector General, for facilities on QAPI best practices. Requires the Secretary to include in the proposed Medicare SNF rule for the subsequent fiscal year after the evaluation is complete one or more proposals to modify and strengthen QAPI programs.

Requires the Government Accountability Office (GAO) to conduct a study that will examine the extent to which large nursing home chains are undercapitalizing nursing homes and the effects of undercapitalization on nursing home quality including the effects on financing, staffing, and food costs. GAO is required to submit the study within one year of enactment with recommendations for such legislation and administrative action as the Comptroller determines appropriate.

Sec. 103

Nursing Home Compare.

Requires the Secretary to make available information about ownership and affiliated or related parties two years after enactment.

Requires the Secretary to disclose the names and locations of facilities that are enrolled in the “Special Focus Facility” program (or any successor program), according to procedures established by the Secretary. Such procedures shall provide for the inclusion of information about facilities that, since the previous quarter, were newly enrolled in the program; are enrolled and have failed to significantly improve, are enrolled and have significantly improved, have graduated from the program, or have closed voluntarily or been terminated.

Requires the Secretary to make standardized facility staffing data available, consistent with facility data submitted in a uniform format (Section 106). The uniform format will be designed to include hours of resident care provided per day, resident census, and

information about staffing turnover and tenure. The Secretary is required to make this information available to consumers in a format is clearly understandable. The format shall explain the relationship between nurse staffing levels and quality of care and an explanation that appropriate staffing levels vary based on patient case mix.

Requires the Secretary to provide links to state internet websites where information about state survey and certification programs, Form 2567 (or successor form) inspection reports, as well as facility plans of correction or responses to such reports can be found. Requires the Secretary to provide information to guide consumers in how to interpret and understand these reports.

Requires the Secretary to make available a model standardized complaint form (Section 105), including explanatory material on how to use the complaint forms, and how to file a complaint with the state survey and certification program and the state long-term care ombudsman program.

Requires the Secretary to make available the number of adjudicated instances of criminal violations by a nursing facility or the employees of the facility including criminal conduct that occurred inside the facility as well as violations that occur outside of the facility that are crimes of elder abuse, criminal or sexual abuse and other violations that result in serious bodily injury.

Requires the Secretary to establish a process to review the accuracy, clarity of the presentation, timeliness, and comprehensiveness of information currently reported on *Nursing Home Compare*; and a process to modify or revamp the site in accordance with comments received after review. In conducting the review, the Secretary is directed to consult with state long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives, and other representatives of programs or groups as the Secretary determines appropriate.

Requires states to submit survey information to the Secretary no later than they send such information to the facility, and requires the Secretary to use this information to update *Nursing Home Compare* as expeditiously as practicable, but no less frequently than quarterly.

Requires facilities to have available on request the preceding three years' of inspection reports (Form 2567 reports), complaint investigations and the facility's plans of correction or other responses to the Form 2567 reports. Also requires facilities to post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

Requires the Secretary to issue guidance to states on making available electronic links to Form 2567 inspection reports, facility plan of correction reports or other responses to 2567 reports, and complaint investigation reports. Within two years after enactment, requires States to have these links on the state's internet website as a condition of contract.

Sec. 104

Reporting of expenditures.

Requires SNFs to separately report wages and benefits for direct care staff on the Medicare cost report, breaking out at a minimum, registered nurses, licensed professional nurses, certified nurse assistants and other medical and therapy staff. The Secretary is directed to consult with the HHS OIG, the Medicare Payment Advisory Commission and other interested experts to produce annual reports on facility expenditures for direct care, indirect care, administrative spending and capital costs. Effective not later than two years after enactment.

Sec. 105

Standardized complaint form.

Requires the Secretary to develop a standardized complaint form for use in filing complaints with the state survey and certification agency and a state long-term care ombudsman program. Clarifies that complaints may be submitted orally or in other forms.

Requires states to establish complaint resolution processes with procedures to assure accurate tracking of complaints received, including a notification to the complainant that a complaint has been received; procedures to determine the likely severity of a complaint and for the investigation of a complaint; and deadlines for responding to a complaint and procedures that enable the complainant to track the status of the complaint notification.

Such complaint resolution processes shall also ensure that residents and workers are not retaliated against if they complain in good faith about the quality of care and that relatives and legal representatives of residents are not denied access to the resident or otherwise retaliated against because they have complained about the quality of care provided by the facility. Such processes shall ensure that the legal representative or other responsible party is not denied access to such resident or otherwise retaliated against if they have complained about the quality of care provided by the facility.

States must make the standardized complaint form available upon request to residents and any person acting on the resident's behalf.

Provides whistleblower protections for employees who complain in good faith about the quality of care or services at the facility. The facility is also prohibited from retaliatory reporting with the state against an employee because that employee filed a complaint in good faith. A facility that violates this provision may be subject to a civil action. Each facility must post this information of employee rights.

Sec. 106

Ensuring staffing accountability.

Requires the Secretary to develop a program for facilities to report staffing information in a uniform format based on payroll data, including information on agency or contract staff. These standards must specify the category of work an employee performs, such as whether the employee is an RN, LPN, LVN, CNA, therapist or other medical personnel. Standards must also include resident census data, information on resident case mix, information on employee turnover and tenure, the hours of care provided per resident per day, and a regular reporting schedule. The Secretary shall not delay the collection of nurse staffing data if doing so is feasible prior to collection of other staffing data.

Title II. Targeting Enforcement

Sec. 201

Civil money penalties.

Provides the Secretary with authority to impose a civil monetary penalty (CMP) of up to \$100,000 for a deficiency that results in the direct proximate cause of death of a resident.

Provides the Secretary with authority to levy CMPs at \$3,050-\$25,000 per day or per instance for deficiencies that are cited at the level of actual harm and immediate jeopardy. For other per day or per instance deficiencies, provides the Secretary authority to impose CMPs not less than \$250 and not more than \$3,050.

Provides the Secretary with authority to reduce CMPs from the level that they would otherwise be for facilities that self-report and promptly correct deficiencies within 10 calendar days after imposition of the penalty. Reductions cannot be made for self-reported deficiencies cited at the immediate jeopardy level, at the actual harm level if the harm is found to be a "pattern" or "widespread," and for deficiencies that result in the death of a resident. Facilities cited for a repeat deficiency that had been self-reported during the preceding year are not eligible for a reduction. Such facilities are also not eligible for a CMP reduction if a decision is made to not appeal. Limits the aggregate reduction for self reporting and waiving of appeal (as provided under current regulations) at 35 percent.

Authorizes the Secretary to ensure that CMPs imposed on a facility for deficiencies that are cited at the level of actual harm or higher are collected within 90 days after the date that the deficiency was imposed, and put into an interest-bearing escrow account within 30 days, to be kept pending resolution of any appeals. If the facility's appeal is successful, the CMP, with interest, is returned to the facility. If the appeal is unsuccessful, some portion of the proceeds may be used to fund activities of the state long term care ombudsman or that benefit residents through projects that strengthen and support resident and family councils, and that benefit residents in other ways, including offsetting the costs of relocating residents to home and community-based settings.

States are given parallel CMP authorities to place CMPs in escrow accounts, with parallel rules on return of any CMP with interest upon successful appeal by the facility. Similarly, in the event of an unsuccessful appeal, states may use proceeds for projects that strengthen and support resident and family councils, and to support other activities that benefit residents, including offsetting the costs of relocating residents to home and community-based settings.

Requires the Secretary to periodically increase the CMPs described in this section beginning after 2010 in accordance with Section 5 of the Federal Civil Penalties Inflation Act of 1990.

Section 202

National independent monitoring requirements.

Directs the Secretary, in consultation with the HHS Inspector General, to conduct a study to examine the potential benefit and feasibility of applying national independent monitoring requirements to NFs and SNFs. The evaluation shall consider the need for monitoring requirements to remedy patterns of poor performance, abuse and other measures of quality of care. The evaluation shall consider the criteria for selecting facilities to be subject to the monitoring program, responsibilities of independent monitors and implementation issues.

Sec. 203

GAO study on temporary management.

Requires the Government Accountability Office to conduct a study on “best practices” by states that effectively maximize the use of temporary management. GAO is required to submit the study within one year of enactment, together with recommendations for such legislation and administrative action as the Comptroller determines appropriate. Following submission of GAO’s report, the Secretary is required to issue guidance to states on how to implement GAO’s recommendations.

Sec. 204

Notification of facility closure.

Requires the administrator of a facility that is preparing to close to provide written notification at least 60 days in advance to residents, legal representatives of residents or other responsible parties, the state, the Secretary and the long-term care ombudsman. Facilities must prepare a plan for closing the facility by a specified date that is provided to the state, which must approve it and ensure the safe transfer of residents to another facility or alternative setting that the state finds appropriate in terms of quality, services and location, taking into consideration the needs, best interests and preferences of each resident.

In the case of a facility where the Secretary terminates the facility's participation, the Secretary must provide written notification to the parties above not later than the date that the Secretary determines appropriate.

Facilities are not permitted to admit new residents on or after the date on which written notification is submitted.

The Secretary may continue making payments to a facility to support residents until they are relocated, as the Secretary determines appropriate.

Sec. 205

National demonstration projects on culture change and use of information technology in nursing homes.

Authorizes the Secretary to conduct two facility-based demonstration projects beginning no later than one year following enactment that will develop best practice models. The first is designed to focus on best practices in facilities that are involved in the "culture change" movement, including where facilities may be able to access resources to implement culture change. The second focuses on development of best practices in information technology that some facilities are using to improve resident care. The demonstrations cannot exceed three years. Following the completion of each demonstration project, the Secretary is required to submit a report on the results to Congress within 9 months, together with recommendations and administrative action as the Secretary determines appropriate. Such sums as necessary are authorized for funding the demonstrations.

Title III. Improving Staff Training

Sec. 301

Dementia management and abuse prevention training.

Requires SNFs/NFs to include dementia management and abuse prevention training as part of pre-employment initial training, and if the Secretary determines appropriate, as part of ongoing in-service training. The Secretary shall approve models of dementia management and abuse prevention training.

Sec. 302

Study and report on training required for certified nurse aides and supervisory staff.

The Secretary, working through the Assistant Secretary for Planning and Evaluation, is required to submit a report to Congress within two years of enactment on recommendations for training content for frontline workers and for supervisory staff. This report will examine whether the number of pre-employment training hours for CNAs should be increased from 75 hours, and if so, what the number of hours of that training should be, including recommendations for the content of such training. To the

extent that some states already have in place requirements for pre-employment training of more than 75 hours, the Secretary is required to consult with these states. The report will also examine whether training requirements for in-service training should be increased from 12 hours per year, and include any recommendations for the content of that training.