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Health Care Bulletin

THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 ("HEALTH REFORM BILL") INCLUDES SIGNIFICANT DISCLOSURE PROVISIONS FOR NURSING HOME PROVIDERS

The Patient Protection and Affordable Care Act of 2010, H.R. 3590 (the "Health Reform Bill") includes significant disclosure of ownership and related transparency provisions for skilled nursing facilities and nursing facilities. Under Section I, Title VI, Subtitle B, Part I, the Health Reform Bill enacts a series of additions and changes to existing law.

The changes generally require facilities to disclose ownership and control interests, managing employees, and individuals or entities that exercise operational control beyond current disclosure requirements. They also add requirements to disclose individuals or entities that lease or sublease the real property to the facility, provide management or administrative services, or provide management or clinical consulting services to the facility.

These new disclosure requirements are significant and far reaching. They go well beyond the existing ownership and control disclosure requirements found in 42 CFR Part §500 and the CMS 855 form.

Section §6101 of the Health Reform Bill, provides that beginning on the date of enactment of the bill and ending when the information is provided to the appropriate government agencies, providers are required to have available for inspection, the following information:

"(ii)The identity of and information on--

(I) each member of the governing body of the facility, including the name, title, and period of service of each such member;

(II) each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity; and

(III) each person or entity who is an additional disclosable party of the facility.

(iii)The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another."

An "additional disclosable party" is defined in Section §6101 as:

"any person or entity who--

(i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

(ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

(iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility."

"Organizational structure" is defined in Section §6101 as:

"..in the case of--

(i) a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the

corporation which is equal to or exceeds 5 percent;

(ii) a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);

(iii) a general partnership, the partners of the general partnership;

(iv) a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;

(v) a trust, the trustees of the trust;

(vi) an individual, contact information for the individual; and

(vii) any other person or entity, such information as the Secretary determines appropriate."

The Secretary of DHHS is to implement final regulations implementing these requirements within 2 years of the enactment of the Health Reform Bill.

In order to comply with the new statutory provisions, providers have to begin evaluating what information must be retained and made available to government agencies in the interim period between the enactment of the bill and when regulations are promulgated specifying how the information is to be reported.

Additional Information

For more information on complying with the new disclosure requirements or the Health Reform Bill in general, please contact a member of Benesch's Health Care Department:

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