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New Long-Term Care Facility Closure Notice Requirements Go Into Effect March 23rd

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CMS published an interim final rule in the Federal Register on February 18, 2011, amending the long-term care facility closure notice requirements. Long-term care facilities affected by the new rule include skilled nursing facilities (SNF) in the Medicare program and nursing facilities (NF) in the Medicaid program. The Interim Rule, which implements section 6113 of the Affordable Care Act, becomes effective on March 23, 2011. However, CMS will accept comments on the Interim Rule through April 19, 2011. 76 Fed. Reg. 9503 (Feb. 18, 2011).

The Interim Rule places primary responsibility on individuals serving as administrators of a SNF or NF to timely report a facility's impending closure. The regulations also outline when Medicare and Medicaid reimbursement may be available during the closure process.

Under the Interim Rule:

- *Timing of Notice:* The administrator must provide written notification of facility closure at least 60 days prior to closure, or if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate. Thus, close attention to CMS notices, such as in survey report cover letters during a survey cycle where termination is threatened, is important.

- *Who Must Be Notified:* The administrator must notify the Secretary of HHS, the State long-term care ombudsman, residents of the facility, and legal *representatives* of such residents or other responsible parties of the impending closure.

- *Contents of Notice:* Closure notices must contain a state-approved relocation plan and assurances that residents will be transferred to the most appropriate facility of other setting in terms of quality, services, and location, taking into consideration the needs, choice and best interests of each resident.
- *No New Admissions During Closure Period:* The administrator must ensure that no new *residents* are admitted to the facility after the notification of closure is issued.
- *Facility Policy and Procedures:* The long term care facility must have policies and procedures in place to ensure that the administrator performs the required facility closure notice requirements. Long term care facilities that fail to maintain policies and procedures will be subject to deficiency citations during surveys.
- *State Responsibility to Ensure Relocation:* States are required to ensure all residents of the facility have been successfully relocated to another facility or an alternative home and community-based setting, before a facility closes. The Interim Rule notes that this requirement will be published in the State Operations Manual as interpretive guidance for surveyors.

Long-term care facilities that comply with the new notice requirements will be entitled to continue to receive Medicare and Medicaid reimbursement during the closure period and reimbursement will continue until all residents have been successfully relocated.

The regulation is especially important because of the individual financial risk to administrators. Administrators who fail to comply with the new notification rules will be subject to civil monetary penalties of up to $100,000, as well as possible exclusion from participation in federal health care programs. If failure to adhere to notice requirements results in harm to a resident, a resident's family, or a visitor, the administrator will be subject to additional Civil Monetary Penalties. State licensing agencies may also bring disciplinary actions against administrators.

The Interim Rule provides appeal rights for administrators sanctioned for noncompliance with these new regulatory requirements.