

# Nursing Home Transparency Provisions in the Patient Protection and Affordable Care Act

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## Part I—Improving Transparency of Information

### Requirement

#### Sec. 6101—Disclosure of Ownership and Additional Disclosable Parties

Nursing facilities must report to HHS and certify as a condition of participation in Medicare and Medicaid that the following information is (“to the best of the facility’s knowledge”) accurate and current:

1. Each member of the governing body;
2. Each officer, director, member, partner, trustee, or managing employee;
3. Each additional disclosable party;
4. The organizational structure of each additional disclosable party to the facility and relationship of each to one another.

#### *Additional disclosable parties include any person or entity who:*

1. Exercises operational, financial, or managerial control over a facility or part of a facility, or provides policies and procedures or financial and cash management services for its operations;
2. Leases or subleases property to the facility, or owns a whole or part interest of at least 5 percent of the value of the property (including a mortgage, deed, note, or other obligation that is secured by the entity or any of the property or assets).
3. Provides management or administrative services, management or clinical consulting services, or accounting or financial services.

Note: Ownership and control interest include direct and indirect interests, including interest in intermediate entities.

### Implementation Deadlines

**Effective Immediately:** Nursing homes must provide the information in this section to the state and **state long-term care ombudsman** in which the facility is located and to the Department of Health and Human Services and the HHS Office of Inspector General (OIG) upon request.

**March 2012:** HHS publishes final regulations that include a standardized format for reporting information and procedures it will use to make the information public.

**June 2012:** Facilities begin reporting information to HHS.

**March 2013:** HHS makes information available to the **public**.

***Managing employees include:***

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.

***Organizational structures include:***

1. A corporation and its officers, directors, and shareholders who have at least a 5 percent ownership interest;
2. A limited liability company and its members and managers, including their percentage of ownership interest;
3. A general partnership and its partners;
4. A limited partnership, including partners who have at least 10 percent ownership interest;
5. A trust and its trustees;
6. An individual and contact information for the individual;
7. Any other person or entity HHS requires.

***Note:*** *If facilities already report the required information to a federal agency, such as the Securities and Exchange Commission or the IRS, they can submit those forms to meet the requirement.*

## Section 6102—Accountability Requirements for Nursing Homes

### Effective Compliance and Ethics Programs

The entity that operates a nursing home (“operating organization”) must establish a compliance and ethics program that is reasonably designed, implemented, and enforced so that it will be “generally” effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care.

In chains that operate five or more facilities, the specific elements of the program will vary with the size of the organization. Larger chains should have a more formal program and written policies defining standards and procedures to be followed by employees. The requirements “may specifically apply to the corporate level management” of chains.

### Required Components of the Program

The required components of compliance and ethics programs are:

1. Standards and procedures to be followed by employees and other agents that are “reasonably capable” of reducing criminal, civil, and administrative violations.
2. Assignment of specific high-level personnel within the operating organization who have sufficient resources and authority to oversee and assure compliance.
3. Due care not to delegate substantial discretionary authority to individuals whom the organization knew or should have known had a propensity to engage in criminal, civil, and administrative violations.
4. Steps to communicate effectively its standards and procedures to all employees and agents.
5. Reasonable steps to achieve compliance with standards, such as monitoring and auditing systems, and a reporting system in which employees and other agents can report violations by others within the organization without fear of retribution.
6. Consistent enforcement through appropriate discipline, including discipline of individuals who fail to detect an offense.
- 7.

After an offense is detected, organizations must take all reasonable steps to respond appropriately and prevent further offenses. They must periodically reassess their compliance program to identify needed changes.

**March 2012:** The Secretary of HHS and the HHS Inspector General will promulgate regulations for effective compliance and ethics programs, which may include a model compliance program.

**March 2013:** Nursing homes are required to have effective compliance and ethics programs.

**March 2015:** The Secretary will complete an evaluation to determine whether compliance and ethics programs led to changes in deficiency citations, changes in quality performance, or changes in other metrics of patient quality of care. The report will include recommendations to Congress for changes in the requirements.

**Quality Assurance and Performance Improvement (QAPI) Program**

HHS will implement quality assurance and improvement (QAPI) programs for nursing homes, including chains, including quality assurance and performance standards, and it will provide technical assistance to facilities on development of best practices to meet the standards.

**December 31, 2011**—HHS will publish regulations implementing a QAPI program for nursing homes, including chains.

**December 31, 2012**—Nursing homes must submit plans to HHS on how they will meet quality assurance and performance standards and implement best practices.

### **Sec. 6103—Nursing Home Compare (NHC) Website**

The following information will be provided for comparing nursing homes “in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to **consumers**, and searchable”:

#### **Staffing Data**

The law requires CMS to implement a new data collection and reporting system—a system that CMS has been working on since it released Phase II of its massive study of nurse staffing ratios almost a decade ago. The new system will collect staffing data electronically from payroll records and other auditable sources (e.g., cost reports), replacing the current self-reported, widely inaccurate information now recorded in the OSCAR reporting system. (See Sec. 6106 for more information about staffing data.)

The law provides that:

- The publicly reported data must include resident census; hours of care per resident day; and staff turnover and tenure.
- The format must be clearly understandable and allow consumers to compare differences between facilities and state and national averages.
- It must include concise, “plain English” explanations of how to interpret such data as “nursing home staff hours per resident day;” differences in types of staff; the relationship between nurse staffing levels and quality of care; and an explanation “that appropriate staffing levels vary based on patient case mix.”

#### **Links to State Internet Websites**

Nursing Home Compare will have links “posted on a timely basis” to state internet websites with:

1. Information about their survey and certification programs;
2. Facilities’ Form 2567 inspection reports and guidance to consumers on how to interpret them;
3. Facilities’ plans of correction and other responses to inspection reports.

**March 2012**

**March 2011**

<p><b>Standardized Complaint Form and Complaint Information</b></p> <p>Nursing Home Compare will include a standardized complaint form with information on how complaint forms are used and how to file complaints with the state survey and certification agency and the state long-term care ombudsman program. (For more about the standardized complaint form, see Sec. 6105.)</p> <p>In addition, NHC will include a summary of the number, type, severity, and outcome of substantiated complaints.</p>	<p><b>March 2011</b></p>
<p><b>Adjudicated Criminal Violations by a Facility or Its Employees</b></p> <p>NHC will include the number of adjudicated criminal violations by a facility or employees of the facility that were:</p> <ul style="list-style-type: none"> <li>• Committed inside the facility; and</li> <li>• Violations or crimes of abuse, neglect, and exploitation; criminal sexual abuse; or other crimes that resulted in serious bodily injury.</li> </ul> <p>In addition, NHC will report the number of civil monetary penalties levied against the facility, employees, contractors, and “other agents.”</p>	<p><b>March 2011</b></p>
<p><b>Review and Modification of Nursing Home Compare</b></p> <p>HHS will revamp Nursing Home Compare after a review of the accuracy, clarity, timeliness, and comprehensiveness of the information that is <i>currently</i> reported on the website and revamp the website based on the review.</p> <p>The revision of NHC will be carried out in consultation with state long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, and any others HHS deems appropriate.</p>	<p><b>March 2011</b></p>
<p><b>Timeliness of Submission of Survey Information</b></p> <p>States will be required to submit survey information to CMS no later than the date on which they send it to the facility. CMS will be required to update NHC “as expeditiously as possible” but at least quarterly.</p>	<p><b>March 2011</b></p>

<p><b>Special Focus Facility Program</b>  The Special Focus Facility Program that was instituted during the Clinton Administration is now required by law for facilities identified as substantially failing to comply with the law. No additional guidance on the program is given other than that surveys of SFFs will be conducted at least once every six months.</p> <p><b>Availability of Survey Reports and Complaint Investigations</b>  Nursing homes will be required to allow any individual to review their survey reports and complaint investigations for the preceding three years. They will be required to post a notice in prominent, accessible areas of the facility that the reports are available.</p> <p>They cannot make identifying information about complainants or residents available.</p> <p><b>State Consumer Websites</b>  States are required to maintain a consumer-oriented website that provides information about all nursing homes in the state, including their Form 2567 inspection reports, complaint investigation reports, plans of correction, and other information that the state and HHS consider useful to the public in evaluating care in individual facilities. HHS will provide states guidance, and it will provide such information on Nursing Home Compare “if possible.”</p> <p><b>Consumer Rights Information Page on Nursing Home Compare</b>  HHS will develop a consumer rights information page on NHC that includes information or links to information about nursing facilities that is available to the public; tips on choosing a nursing home; consumer rights; and state-specific information about the survey process and services available through the long term care ombudsman program.</p>	<p><b>Policy Already in Effect</b></p> <p><b>March 2011</b></p> <p><b>March 2011</b></p>
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<p><b>Sec. 6104—Reporting of Expenditures</b></p> <p><b>Reporting of Direct Care Expenditures</b>  Medicare cost reports will be modified to report separately skilled nursing facilities' expenditures for wages and benefits for direct care staff. The date will be broken out (at minimum) for RNs, LPNs, CNAs, and other medical and therapy staff.</p> <p><b>Categorization of Expenditures by Functional Accounts</b>  HHS will categorize SNFs' expenditures annually <i>from all payment sources</i> into the following functional accounts:</p> <ol style="list-style-type: none"> <li>1. Spending on direct care services, including nursing, therapy, and medical services;</li> <li>2. Spending on indirect care, including housekeeping and dietary services;</li> <li>3. Capital assets, including building and land costs; and</li> <li>4. Administrative services costs.</li> </ol> <p>HHS will establish procedures to make the information readily available to interested parties upon request.</p>	<p><b>March 2011:</b> HHS redesigns cost reports.  <b>March 2012:</b> SNFs begin using new reporting system.</p> <p><b>September 2013</b></p>
<p><b>Sec. 6105—Standardized Complaint Form</b></p> <p>HHS will develop a standardized complaint form that residents or persons acting on their behalf can use in filing a complaint with the state survey and certification agency or the state long-term care ombudsman. Facilities will be required to make the form available upon request, and it will be published on Nursing Home Compare. Consumers are not required to use the form, however, and the law specifies that complaints may be made orally.</p>	<p><b>March 2011</b></p>

<p><b>Complaint Resolution Process</b></p> <p>States are required to establish complaint resolution processes that ensures that legal representatives of residents and other responsible parties are not denied access to residents or otherwise retaliated against if they complain about the quality of care or other issues. Complaint resolution processes are to include:</p> <ol style="list-style-type: none"> <li>1. Procedures to assure accurate tracking of complaints, including notification of the complainant that the complaint has been received;</li> <li>2. Procedures to determine the likely severity of the complaint and for the investigation of the complaint; and</li> <li>3. Deadlines for responding to complaints and notifying complainants of the outcome of the investigation.</li> </ol>	<p><b>March 2011</b></p>
<p><b>Sec. 6106—Ensuring Staffing Accountability</b></p> <p>Nursing homes must submit direct care staffing information electronically to HHS based on payroll and other verifiable and auditable data. HHS will develop specifications for submitting the data based on consultations with long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives, and others HHS deems appropriate.</p> <p>Staffing information must:</p> <ol style="list-style-type: none"> <li>1. Specify the category of work a <i>certified</i> employee performs (e.g., RN, LPN, CNA, therapist, other medical personnel);</li> <li>2. Include resident census and resident case mix data;</li> <li>3. Include a regular reporting schedule; and</li> <li>4. Include information on employee turnover, tenure, and hours of care provided by each category of certified employee.</li> <li>5. Report agency and contract staff separately from employee staffing.</li> </ol>	<p><b>March 2012:</b> Nursing homes are required to begin submitting direct care staffing information electronically to HHS.</p> <p>Because CMS has already developed and tested a system to collect and report nurse staffing data, the law allows the agency to begin collecting data on some categories of staff, such as nursing, before other categories.</p>

<p><b>Sec. 6107—GAO Study of Five-Star Quality Rating System</b></p> <p>The Government Accountability Office will conduct a study of the Five-Star Nursing Home Rating System, including an analysis of:</p> <ol style="list-style-type: none"> <li>1. How the system is being implemented;</li> <li>2. Any problems associated with the system or its implementation;</li> <li>3. How it could be improved;</li> <li>4. Recommendations for legislation or administrative action that could improve the system.</li> </ol>	<p><b>March 2012</b></p>
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## Part II—Targeting Enforcement

<b>Requirement</b>	<b>Implementation Deadline</b>
<p><b>Sec. 6111—Civil Monetary Penalties</b></p> <p><b>Reduction of Civil Monetary Penalties</b>—The intent of this section is unclear. It says that when a facility self-reports and promptly corrects a deficiency within 10 days after the imposition of a penalty, HHS may reduce the amount of the CMP by up to 50 percent. Prompt correction appears to be at odds with a facility’s ability to postpone correction until 10 days after a penalty has been imposed.</p> <p>Reduction of CMPs would be prohibited:</p> <ol style="list-style-type: none"> <li>1. If the facility had had a penalty reduced in the preceding year for a repeat deficiency;</li> <li>2. If the deficiency results in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents, or results in the death of a resident.</li> </ol>	<p><b>March 2011</b></p>

**Collection of Civil Monetary Penalties**

This section allows CMPs to be placed in an escrow account until any appeals are resolved. Before CMPs can be escrowed, however, nursing homes must be given an opportunity within 30 days to participate in an *independent* informal dispute resolution (IIDR) process that generates a written record. In cases where CMPs are imposed for each day of noncompliance, they cannot continue to accrue during the days between imposition of the penalty and completion of the independent IDR. The IIDR must be completed within 90 days. When nursing homes successfully appeal deficiencies, CMPs may be returned to the facility with interest.

**Use of CMP Funds**

HHS may provide that a portion of Medicare and Medicaid CMP funds be used to:

1. Support activities that benefit residents, including assistance to residents of facilities that close, either voluntarily or involuntarily, or are decertified, including offsetting costs of relocating residents to a home or community-based setting or another nursing home.
2. Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities;

Facility improvement initiatives approved by HHS, including joint training of facility staff and surveyors; technical assistance for facilities implementing quality assurance programs; appointment of temporary management firms; and other activities approved by HHS.

### **Sec. 6112—National Independent Monitor Demonstration Project**

The law authorizes a two-year demonstration project to develop, test, and implement an independent monitor program to oversee interstate and large intrastate nursing home chains.

#### **Requirements**

Nursing homes will be selected from among those that *apply to participate* in the demonstration, and chains will be responsible for paying HHS for a portion of the cost of the demonstration project. HHS may waive relevant provisions in current law, as necessary, to carry out the demonstration. Criteria for selecting participants include:

1. A number of facilities with serious safety and quality of care problems;
2. A number of facilities in the Special Focus Facility program or multiple facilities with repeated serious safety and quality of care deficiencies.

#### **Responsibilities of the Independent Monitor**

HHS will contract with an independent monitor to conduct the project. The contractor will:

1. Conduct periodic reviews and prepare root-cause quality and deficiency analyses;
2. Conduct sustained oversight of the chain's efforts to achieve compliance;
3. Analyze the management structure, expenditures, and nurse staffing levels of the chain's facilities in relation to resident census, staff turnover rates, and tenure;
4. Report findings and recommendations to the chain, HHS, and the relevant states, and publish the results.

#### **Implementation of Recommendations of the Independent Monitor**

Within 10 days of receiving a finding, chains are required to submit a report to the monitor:

1. Outlining corrective actions; or
2. Indicating why the chain will not implement the monitor's recommendations.

Within 10 days after receiving this report from the chain, the monitor will finalize its recommendations and submit a report to the chain, facilities in the chain, HHS, and the relevant states.

**March 2011:** Begin demonstration projects. Other timelines are not clear except that this is to be a two-year project.

<p><b>Evaluation of the Report</b> HHS will submit a report to Congress with recommendations on whether to establish a permanent independent monitor program.</p> <p><b>Authorization of Appropriations</b> Congress must appropriate funding to carry out the program.</p>	<p><b>Within 180 Days after Completion of the Demonstration Project</b></p>
<p><b>Sec. 6113. Notification of Facility Closure</b></p> <p><b>Notification of Closure</b> When a facility is going to close voluntarily, the administrator must provide written notification at least 60 days prior to the impending closure to:</p> <ol style="list-style-type: none"> <li>1. CMS;</li> <li>2. The state long-term care ombudsman;</li> <li>3. Residents and their legal representatives and other responsible parties.</li> </ol> <p><i>In cases where nursing homes are terminated from Medicare and Medicaid, HHS will determine the appropriate notification timeframe.</i></p> <p>The administrator must ensure that the facility does not admit new residents after the date of notification.</p> <p>The notification must provide for the transfer and adequate relocation of residents by a specified date that has been approved by the state, including assurances that:</p> <ol style="list-style-type: none"> <li>1. Residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, and</li> <li>2. Taking into consideration the needs, choice, and best interests of each resident.</li> </ol> <p><b>Relocation of Residents</b> States must ensure that before a facility closes, all residents have been successfully relocated to another facility or an alternative home and community-based setting.</p>	<p><b>March 2011</b></p>

<p><b>Continuation of Payments until Residents Are Relocated</b> CMS may continue payments for residents of the facility until they are successfully relocated.</p> <p><b>Sanctions for Failing to Comply with Notification of Closure</b> An administrator who does not comply with the notification requirements:</p> <ol style="list-style-type: none"> <li>1. Will be subject to a fine of up to \$100,000;</li> <li>2. May be subject to exclusion from participation in Medicare and Medicaid;</li> <li>3. Will be subject to any other penalties prescribed by law.</li> </ol>	
<p><b>Sec. 6114—Demonstration Projects on Culture Change and Information Technology in Nursing Homes</b></p> <p>HHS will conduct two demonstration projects:</p> <ol style="list-style-type: none"> <li>1. Development of best practices in nursing homes that are involved in the culture change movement, including the development of resources for facilities to find and access funding to undertake culture change; and</li> <li>2. Development of best practices for the use of information technology.</li> </ol> <p><b>Conduct of Demonstration Projects</b> In each project:</p> <ol style="list-style-type: none"> <li>1. HHS will award one or more competitive grants, for a period not to exceed three years, to facility-based settings to develop best practices.</li> <li>2. Consideration is to be given to the special needs of residents who have cognitive impairment, including dementia.</li> </ol>	<p><b>March 2011:</b> Demonstration projects are implemented for a period not to exceed three years.</p>

### Part III—Improving Staff Training

Requirement	Implementation Deadline
<p data-bbox="170 349 919 389"><b>Sec. 6121—Dementia and Abuse Prevention Training</b></p> <p data-bbox="170 422 1360 576">Provides for the initial 75 hours of nurse aide training to include dementia management and patient abuse prevention training. If HHS finds it appropriate, this training will also be included in ongoing training. Nurse aides who are employed through an agency or under contract with a nursing home are also subject to the requirement.</p>	<p data-bbox="1417 349 1596 389"><b>March 2011</b></p>