The Affordable Care Act and Nursing Homes

Ilene Henshaw and Rhonda Richards
AARP
Health and Family
Government Affairs
The Affordable Care Act and Nursing Homes

- Better and easier access to information about nursing homes
- Improved public accountability
- New tools to improve oversight and enforcement
Improving Transparency of Information (Sec. 6101)

• Nursing homes must report (and certify that info is accurate and current):
  — Governing body members, officers, directors, partners, managing employees, trustees, etc.
  — Those exercising operational, financial, or managerial control and others
  — Those leasing property to the facility, or owning whole or part interest (5%+) in the value of the property
  — Those providing management, administrative or certain other services
  — Organizational structure of the preceding two bullets
Timeline:
(Sec. 6101)

- Immediately: Info available and reported to State and State LTC Ombudsman upon request
- March 2012: HHS publishes final regs and standardized format
- June 2012: Info reported to HHS
- March 2013: HHS makes info available to public
Improving Accountability (Sec. 6102)

- Effective Compliance and Ethics (C&E) Programs
  - Nursing homes must have C&E programs that effectively prevent and detect criminal, civil, administrative violations and promote quality of care (March 2013)
  - C&E programs must include required components
  - Nursing homes must periodically reassess program and identify needed changes
  - HHS evaluates and reports to Congress (March 2015)
Improving Accountability
Sec. 6102 (cont’d)

• Quality Assurance and Performance Improvement (QAPI) Program
  - HHS will implement QAPI program for nursing homes and chains, including standards development
  - HHS will provide technical assistance on meeting standards
  - HHS will publish regulations
  - Nursing homes must submit plans to HHS on how to meet standards and implement best practices (Dec. 31, 2012 or within one year of regulations).
Nursing Home Websites (Sec. 6103)

• Nursing Home Compare (NHC) will be reviewed and revised to include:
  – Staffing data (More on this later)
  – Standardized complaint form and complaint info
  – Adjudicated criminal violations by facility or employees
  – Civil monetary penalties
  – Consumer rights info

• States will be required to submit survey info to CMS no later than date they send to facility. CMS to update NHC at least quarterly.
Nursing Home Websites (Sec. 6103) cont’d.

• Links to state nursing home websites that must include:
  – Info on state survey and cert. programs and all NHs in the state
  – Inspection reports and guidance on their interpretation
  – Plans of correction
  – Complaint investigation reports

• NHs must allow anyone to review survey and complaint investigation reports (3 yrs.)

• NHs must post notice of reports’ availability in prominent, accessible areas
Reporting of Expenditures (Sec. 6104)

- Medicare cost reports will include NH expenditures for wages and benefits for direct care staff
- HHS will categorize NH expenditures (direct care, indirect care, capital assets, admin services costs)
- HHS will establish procedures to make expenditure reports readily available upon request
Standardized Complaint Form
Sec. 6105

• HHS created a standardized complaint form and made it available on NHC website
• States will be required to make form available on request
• No requirement that form be used
• Complaints may be made orally
Complaints
Sec. 6105 (cont’d)

• States must establish complaint resolution processes that include:
  – Procedures to track complaints and notify complainants that complaint is received
  – Procedures to determine severity of and investigate the complaint
  – Deadlines for responding and notifying complainants of outcomes
  – Protections against retaliation for complainants
Staffing Accountability
Sec. 6106

• NHs to submit direct care staffing data electronically to HHS (March 2012)
• Staffing info must specify:
  – Category of work certified employee performs (RN, LPN, CNA, therapist, etc.)
  – Resident census and case mix
  – Staff turnover, tenure, hours of care provided by each category
  – Regular reporting schedule
  – Agency/contract staff hours (separately reported)
Five Star Quality Rating System Study
Sec. 6107

• Government Accountability Office (GAO) to study implementation and identify:
  – Problems
  – Ways to improve
  – Recommendation for legislation or administrative action
  – Due by March 2012
Civil Monetary Penalties
Sec. 6111

• HHS may reduce the amount of CMP 50% if a NH self reports* and promptly corrects deficiency within earlier of 10 days after penalty is imposed or 15 days from date of event that later resulted in finding of noncompliance.

• Reduction of penalty not permitted if:
  – Facility had a penalty reduced in preceding year for a repeat deficiency; or
  – The deficiency results in pattern of harm, widespread harm, immediate jeopardy or results in death.
  – Additional criteria are met.
Civil Monetary Penalties (cont’d)

Sec. 6111

• CMPs may be placed in escrow until appeals are resolved
• NHs must be given an opportunity to have Independent Informal Dispute Resolution process
• Portion (90%) of CMP funds must be used for benefit of residents, to support resident and family councils and other consumer involvement, for other facility improvement initiatives approved by HHS, resident relocation, temporary management, etc.
National Independent Monitor Demo Sec. 6112

- 2-year demo *authorized* to develop, test and implement independent monitor program to oversee nursing home chains
- Demo to begin March 2011 (if funded)
- NHs selected from those who apply to participate
- HHS to submit report to Congress on making this permanent

AARP 16
Facility Closure
Sec. 6113

- NH administrator must notify CMS, State LTC Ombudsman, residents and legal reps in writing at least 60 days prior to voluntary closure.
- HHS will determine notice timeframe in case of involuntary closure (termination from Medicare/Medicaid)
- New residents may not be admitted after notice
- States must ensure all residents have been successfully relocated prior to closure
- CMS may continue payments until relocation occurs
- Sanctions for failure to comply with notification requirement
Demos on Culture Change and Information Technology – Sec. 6114

• HHS to conduct 2 demos to develop best practices on:
  – Culture change; and
  – Health Information Technology

• For each project, HHS will award competitive grants for up to 3 years to facility-based settings

• Consideration given to needs of residents with cognitive impairment.
Staff Training
Sec. 6121

- Initial 75 hours of CNA training must include dementia management and patient abuse prevention training
- HHS to determine whether to include this in ongoing training
- Agency/contract CNAs subject to requirement
Criminal Background Checks and Elder Justice

- National program for national and state criminal background checks on certain employees of LTC providers (both NH and HCBS)
  - Federal dollars to states to help fund the program

- Elder Justice – elder abuse prevention, detection, response and coordination of efforts
  - Must be funded before programs can start

AARP 20
In conclusion...

- New law provides easier access to better and more current info on:
  - NH ownership/organizational structure
  - Standardized staffing data based on payroll records
  - Complaints and how to make them
  - Crimes
  - Expenditures
  - Survey Reports
- States must have comprehensive nh websites and effective complaint procedures
- CMS NHC will be improved and linked with state websites
ANY QUESTIONS?

Thank you!