Nursing Home Transparency and 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 affiliated or related parties.

Requires as a condition of participation and payment in Medicare and Medicaid that SNFs and NFs make available on request by the Secretary, the HHS OIG, the states, the state long-term care ombudsman, a resident, and the legal representative of the resident (or other responsible party) ownership information to the 5% level (as defined in section 1124 (a)(3)), as well as information describing the organizational structure of the facility and its relationship to affiliated parties. Facilities must certify to the Secretary and the HHS OIG that such information is accurate and current. To the extent that the required information is submitted to the IRS as part of Form 990, to the SEC, or to CMS, facilities may make the information available in these formats. Effective on 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. Information must include the identity of individuals with an ownership or control interest (as defined in section 1124 (a)(3), information on the members of the governing body, and information describing the organizational structure of any affiliated or related parties, including principal officers and directors, or members in the case of limited liability companies.

Affiliated or related parties are defined as companies or individuals that serve as operators, landlords, management companies or advisors, real estate or consulting companies, members of a limited liability company, administrative services companies, lenders and companies providing financial guarantees, captive or affiliated liability insurance companies, and other entities as the Secretary determines appropriate.

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

Sec. 102
Accountability requirements.

Requires the Secretary, in consultation with the HHS General Counsel's office and the HHS OIG, to develop criteria defining accountability requirements for chains and facilities. These criteria include annual independent audits for facilities that are part of a group under common ownership or control with annual revenues of $50 million or greater in the aggregate, and requirements of new owners of facilities to provide proof of financial ability to operate the facility, including documentation of projected revenue and expenses for the first 12 months of operation of the facility. The Secretary is required to

have these standards, which are in addition to those required under Sec. 101, developed within two years of enactment.

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 have enrolled in the program; facilities that have improved and graduated from the program; facilities that are enrolled in the program and have failed to make significant progress within 18 months; and facilities that have closed voluntarily or been terminated.

Requires the Secretary to make standardized staffing data available on facilities that is submitted by facilities 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.

Requires the Secretary to provide links to state internet websites regarding state survey and certification programs, and links to Form 2567 (or successor form) inspection reports, as well as facility plans of correction or responses to such reports. 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 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, 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.

Requires facilities to have available on request the preceding three years' of inspection reports (Form 2567 reports), complaint investigations and the facility's plan of correction or other response to the Form 2567 report. 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.

Sec 104
Reporting of expenditures.

Requires the Secretary to add an item to the Medicare cost report to obtain information about direct care services delivered by staff -- RNs, LPNs, LVNs, and CNAs. 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, including staffing-derived services, indirect care, administrative spending and capital costs.

Sec 105
Standardized complaint form.

Requires the Secretary to develop a standardized complaint form for use by residents (or a person acting on the resident's behalf) 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 complain and for the investigation of a complaint; and deadlines for responding to a complaint and for notifying the complainant of the outcome of the investigation.

Such complaint resolution processes shall also ensure that relatives and legal representatives of residents are not denied access 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.

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, and to also take into account services provided by any 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, or CNA. Standards must also include resident census data, information on employee turnover and tenure, and the hours of care provided per resident per day. The Secretary is charged with submitting a report to Congress no later than 6 months after the one-year design phase has ended. Not later than one year following the evaluation, the Secretary shall require facilities to begin electronically submitting nurse staffing information in a uniform format.

Title II. Targeting Enforcement

Sec. 201
Civil monetary 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 death of a resident.

Provides the Secretary with authority to levy CMPs at $3,000-$25,000 per day or per instance for deficiencies that are cited at the level of actual harm and immediate jeopardy. For other deficiencies, the Secretary's authority to impose CMPs cannot exceed $3,000. The Secretary is authorized to reduce CMPs by no more than 25% for facilities that don't appeal (regulations currently grant an automatic 35% reduction).

Provides the Secretary with authority to reduce CMPs from the level that they would otherwise be by 50% for facilities that self-report and promptly correct deficiencies within 10 calendar days after imposition. Reductions cannot be made for self-reported deficiencies cited at the immediate jeopardy level, at the actual harm level if the harm is founds 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 50% reduction. Such facilities are also not eligible for a CMP reduction if a decision is made to not appeal.

Requires the Secretary to provide facilities with the opportunity for participation in an informal dispute resolution process.

For CMPs that are cited at the level of actual harm and immediate jeopardy, provides the Secretary with the authority to place CMPs in an escrow account following completion of the informal dispute resolution process, or the date that is 90 days after the date of the imposition of the CMP, whichever is earlier. Monetary amounts collected and placed in escrow are to be kept in an interest-bearing escrow account pending the 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 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 provided with parallel CMP authorities.

Sec. 202
Financial audit of facilities in the "Special Focus Facility" program.

Requires the Government Accountability Office to conduct a study on the financial status, resident care and performance of facilities enrolled in the "Special Focus Facility" program. The deadline for submitting the study to the Secretary and to Congress is one year after enactment.

Section 203
National independent monitor program.

Directs the Secretary to establish a protocol within one year of enactment for developing, testing and implementing a national independent monitor program, which will be evaluated by the HHS OIG after two years. The OIG is required to submit a report to Congress containing the results of the evaluation, together with recommendations for such legislation and administrative action as the OIG determines appropriate.

The independent monitor program shall be designed to focus on interstate and large intrastate nursing home chains, and has the following core responsibilities:

(1) to conduct periodic reviews and preparation of root-cause quality and deficiency analyses of chains, whether publicly or privately held, to assess compliance with state and federal regulations;
(2) to analyze the management structure, distribution of expenditures, and nurse staffing levels of facilities of a chain in relation to resident census, staff turnover rates and staff tenure;
(3) to report the results of findings and recommendations with respect to reviews, analyses and oversight to the chain and the facilities of a chain, to the Secretary, and to relevant states.

The independent monitor shall analyze such chains in instances where 3 or more facilities of the chain are enrolled in the "Special Focus Facility" program; at chains that are experiencing financial problems that may be linked to serious quality deficiencies; and at chains with a record of chronic poor performance.

Chains that receive a report containing findings and recommendations from the independent monitor are required to submit a report outlining corrective actions that will be taken within 10 days. If a chain declines to implement the independent monitor's

recommendations, the chain shall submit reasons why it will not do so. After receiving the chain's response, the independent monitor is required to finalize recommendations and to submit a report to the chain and the facilities of the chain, the Secretary, and the relevant state or states, as appropriate. Chains are responsible for all costs associated with appointment of independent monitors, and shall pay such costs to the Secretary.

Interstate and intrastate chains that fail to respond to or to take corrective actions to implement the recommendations of the independent monitor may be subject to civil monetary penalties.

Sec. 204
GAO studies on temporary management and barriers to purchasing facilities with a record of poor care.

Requires the Government Accountability Office to undertake two national studies.

The first shall be 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.

GAO is also required to conduct a study on whether barriers exist for new owners who purchase, and potential owners who wish to purchase, facilities with a record of poor care. 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.

Sec. 205
Notification of facility closure.

Requires the administrator of a facility that is preparing to close to provide written notification to residents, legal representatives of residents or other responsible parties, the state, the Secretary and the long-term ombudsman program advance notice of at least 60 days. 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 and best interests 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. 206
Demonstration projects to develop best practice models for facilities that are undertaking "culture change" and information technology advances that improve resident care.

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 facilities 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 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 there is a case to be made for increasing the number of pre-employment training hours for CNAs from 75 hours, and if so, what the number of hours and content of that training should be. 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.