Summary of Health Care Reform Impacts on Long Term Care Providers

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The Patient Protection and Affordable Care Act of 2010 ("PPACA"), signed into law on March 23, 2010, contains many provisions affecting health care providers. This alert summarizes key provisions in the PPACA affecting long term care and hospice providers.

If you have questions regarding any of the developments discussed in this alert, please contact your Vorys relationship attorney or any of the attorneys listed on this alert. Also, watch for future alerts discussing PPACA provisions impacting other types of health care providers. Stay current on all aspects of health care reform by visiting the Vorys Health Care Reform web page (http://www.vorys.com/healthcarereform) and signing up for web updates and free educational offerings.

Quality Reporting for Long Term Care Hospitals (LTCH), Inpatient Rehabilitation Hospital and Hospice Programs (Section 3004)

Providers are required to submit a report on quality measures determined by the Department of Health and Human Services ("HHS") Secretary. Providers who do not submit quality measures are subject to a two percentage (2%) point reduction in their annual market basket update or federal discharge rates. The 2% reduction penalty may bring the update below zero and could reduce the rate for the upcoming year below the level of the previous year. The Secretary is to publish the quality measures that will be applicable to fiscal year 2010 no later than October 1, 2012.

Value-Based Purchasing for Skilled Nursing Facilities and Home Health Agencies (Section 3006)

By October 1, 2011, the HHS Secretary is required to submit to Congress a Medicare value-based purchasing implementation plan for skilled nursing facilities and home health agencies. In developing the plan, the Secretary must consider the following factors: (1) the development, selection and modification process of measures to the extent feasible and practical of all dimensions of quality and efficiency; (2) the reporting, collection and validation of quality data; (3) the structure of proposed value-based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value-based bonus payments; (4) methods for publicly disclosing performance information on performance; and (5) any other issues as determined by the Secretary. In developing the plan, the Secretary is required to consult with relevant affected parties and take into consideration experiences with demonstrations that the Secretary determines are relevant.

National Pilot Program on Payment Bundling (Section 3023, as amended by Section 10308)

By January 1, 2013, the Secretary will establish a pilot program to coordinate care (through bundled payment models) for Medicare beneficiaries not covered under Part C during an entire episode of care for 10 conditions to be specified by the Secretary. Services to be included in the bundle are acute care inpatient services; physician services (in and outside an acute care hospital); outpatient services, including emergency care; and post-

acute care services including home health, skilled nursing, inpatient rehabilitation and inpatient hospital services provided by a long term care hospital. The program is to run five years, and the Secretary may submit a plan to Congress by January 1, 2016 to expand the pilot program.

Independence at Home Demonstration Program (Section 3024)

The Act creates a new "independence at home" demonstration program to test a payment incentive and service delivery model that utilizes physician and nurse practitioner directed home-based primary care teams designed to reduce expenditures and improve health outcomes. The program will test whether an "independence at home" model reduces preventable hospitalizations; prevents hospital readmissions; reduces emergency room visits; improves health outcomes commensurate with the beneficiaries' stage of chronic illness; improves efficiency of care; reduces the cost of health care services; and achieves beneficiary and family caregiver satisfaction. The demonstration program is to begin no later than January 1, 2012 and will test services provided to approximately 10,000 beneficiaries.

Hospice Reform (Section 3132)

Beginning no later than January 1, 2011, the Secretary will collect additional data and information as appropriate to revise payments for hospice care. Data may include information on charges and payments; number of days of hospice care for Part A beneficiaries; number of days attributed to each type of service; cost of each type of service; amount of payment for each type of service; charitable contributions and revenue to a hospice program; the number of hospice visits; the type of practitioner providing the visit; the length of the visit and basic visit information; and other data deemed appropriate. Hospice programs and the Medicare Payment Advisory Commission (MedPAC) will be consulted regarding the data and information to be collected. Not earlier than October 1, 2013, the Secretary will implement revisions to the methodology for determining the payment rates for routine home care and other services included in hospice care. Revisions may include adjustments to per diem payments that reflect changes in resource intensity in providing care and services during the entire episode of care. Beginning January 2011, a hospice physician or nurse practitioner will be required to have a face-to-face encounter with a patient to recertify hospice care in order to extend services beyond 180 days.

Medicare Hospice Concurrent Care Demonstration Program (Section 3140)

The PPACA establishes a three-year demonstration program that will allow hospice beneficiaries to receive all other Medicare-covered services while in hospice care. The demonstration will be open to 15 hospice programs in both rural and urban areas. The Secretary will evaluate the potential for improved patient care, quality of life and cost-effectiveness in determining whether the program should be continued beyond three years.

Revision of Certain Market Basket Updates and Incorporation of Productivity Improvements into Market Basket Updates (Section 3401, as amended by Section 10319)

The PPACA incorporates a productivity adjustment into the market basket update for inpatient hospitals, home health providers, hospice providers, inpatient psychiatric facilities, long term care hospitals and inpatient rehabilitation facilities. The beginning of the productivity adjustment varies, depending on provider type. The PPACA provides additional market basket reductions for certain providers and incorporates a

productivity adjustment into payment updates for Part B providers who do not already have such an adjustment.

Required Disclosure of Ownership and Additional Disclosable Parties Information (Section 6101)

Beginning on the date of enactment of the PPACA, skilled nursing facilities and nursing facilities are required to disclose on demand to the Secretary, Inspector General and the state long term care ombudsman information on their organizational structures and on officers, directors, members, trustees, partners or managing employees, including names, titles and periods of service. The term "managing employee" means an individual (including 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. The organizational structure requirements require disclosure of the officers, directors and shareholders of a corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent. It also requires disclosure of limited liability company information 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. Additional disclosable parties include entities that provide policies or procedures for any of the operations of the facility, provide financial or cash management services, or provide management or administrative services, management or clinical consulting services, or accounting or financial services to the facility. Within two years, the Secretary will provide a standard format for the reporting of this information. One year following the release of a standard format, all information will be made public through the Secretary.

Accountability Requirements for Skilled Nursing Facilities and Nursing Facilities (Section 6102)

The PPACA requires nursing facilities and skilled nursing facilities to have in operation a compliance and ethics programs in operation 36 months after the enactment of the PPACA that is effective in preventing and detecting criminal, civil and administrative violations. Three years after the date of the promulgation of regulations under this section of the PPACA, the Secretary is to complete an evaluation of the compliance and ethics programs required to be established under this subsection and then submit a report to Congress on this evaluation.

Nursing Home Compare Medicare Website (Section 6103)

Not later than one year after the date of the enactment of the PPACA, the Secretary is required to ensure that information provided for comparison of nursing homes be posted on the Nursing Home Compare website in a manner that is prominent, easily accessible, updated on a timely basis, readily understandable to consumers of long term care services and searchable. The website will now include information about staffing turnover and tenure; links to state internet websites with information regarding state survey and certification information; the standardized complaint form and information on how to file a complaint with the state survey and certification program and the state long term care ombudsman program; and summary information on the number, type, severity and outcome of substantiated complaints. It will also include summary information on the number, type, severity and outcome of adjudicated instances of criminal violations by a facility or the employees of a facility that were committed inside the facility and the number of civil monetary penalties levied against the facility, employees, contractors and other agents.

Reporting of Expenditures (Section 6104)

The Secretary will modify the reporting form for expenditures on wages and benefits for direct care staff of skilled nursing facilities one year after the date of enactment of the PPACA. For cost reporting periods two years after the date of the enactment of the PPACA, skilled nursing facilities shall separately report expenditures for wages and benefits for direct care staff – breaking out at a minimum registered nurses, licensed professional nurses, certified nurse assistants and other medical and therapy staff. Expenditures will also have to be reported separately for direct care services, indirect care services, capital assets and administrative costs.

Standardized Complaint Form (Sections 6105)

By one year after the date of enactment of the PPACA, the Secretary is required to develop a standardized form for residents to use when filing a complaint with a state survey and certification agency and a state long term care ombudsman program. The forms will be made available to a resident of a facility or any person acting on behalf of a resident.

Ensuring Staffing Accountability (Section 6106)

Within two years of enactment of the PPACA, the Secretary will develop a program that requires facilities to submit staffing information in a uniform format based on payroll and other verifiable and auditable data including the category of work a certified employee performs; the resident census data; a regular reporting schedule; hours of care provided per resident per day; and employee turnover and tenure.

GAO Study and Report on Five-Star Quality Rating System (Section 6107)

The PPACA directs the Comptroller General to conduct a study of the CMS Five-Star Quality Rating System. The study will evaluate how the system is being implemented, any problems associated with the system, and how the system could be improved. The Comptroller General must issue a report of the study's findings to Congress two years after enactment of the PPACA.

Civil Money Penalties (Section 6111)

The PPACA provides the Secretary with authority to reduce the penalties to skilled nursing facilities and nursing facilities that self report and promptly correct deficiencies within ten calendar days of the imposition by fifty percent. Penalties will not be reduced for repeat offenders or if the deficiency is found to result in a pattern of harm that jeopardizes the health or safety of a resident.

National Independent Monitor Demonstration Project (Section 6112)

The PPACA provides that the Secretary, in consultation with the Inspector General, will develop, test and implement a national independent monitor program to conduct oversight of interstate and large intrastate skilled nursing facility and nursing facility chains. Chains wishing to participate in the program must apply with the Secretary. The project will begin within one year of enactment of the PPACA and will last for two years.

Notification of Facility Closure (Section 6113)

The PPACA requires long term care facilities to provide written notification to its residents, legal representatives of the residents, other resident responsible parties, the relevant state government office, any ombudsman program and the Secretary at least 60 days prior to closure. The notice must include a plan for the transfer and adequate relocation of the residents of the facility by a specified date prior to closure. Failure to comply with the new provisions can result in a civil monetary penalty of up to $100,000. This provision will be effective within one year of enactment of the PPACA.

National Demonstration Projects on Culture Change and Use of Information Technology in Nursing Homes (Section 6114)

The Secretary will conduct two demonstration projects to develop best practices in skilled nursing facilities and nursing facilities – one for facilities that are involved in the culture change movement and another to develop best practices for facilities using information technology to improve resident care. The projects will begin within one year of enactment of the PPACA and will run for three years.

Dementia Training (Section 6121)

This section requires facilities to include dementia management training and abuse prevention training as part of pre-employment initial training for permanent and contract or agency staff, and if the Secretary determines appropriate, as part of ongoing in-service training. The training must be implemented no less than one year after the enactment of the PPACA.

Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long Term Care Facilities and Providers (Section 6201)

The PPACA provides that the Secretary will carry out a program similar to the pilot program included in the Medicare Prescription Drug, Improvement and Modernization Act of 2003. The nationwide program will be implemented and maintained by states and will require a background check, including fingerprinting, to be completed for each employee that has direct contact with patients in a long term care facility.

Elder Justice Act (Sections 6701-6703)

The Elder Justice Act was first introduced six years ago as a stand-alone bill and was enacted as part of the PPACA. It establishes within the Office of the Secretary of HHS an Elder Justice Coordinating Council as well as an Advisory Board on Elder Abuse, Neglect and Exploitation. The Act directs the Secretary to make grants to establish stationary and mobile forensic centers to develop forensic expertise on elder abuse. In addition, it requires the Secretary to provide incentives for individuals to train for, seek and maintain employment providing direct care in a long term care facility. It also authorizes the Secretary to make grants to long term care facilities for the purpose of assisting such facilities in offsetting the costs for certified EHR technology designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors. A program of annual adult protective services grants to states must also be created. Significantly, each individual owner, operator, employee, manager, agent or contractor of a long term care facility that receives at least $10,000 in federal funds must report to the Secretary and local law enforcement entities any reasonable suspicion of a crime against anyone who is a resident of, or is receiving care from, the facility.

Establishment of a National Voluntary Insurance Program for Purchasing Community Living Assistance Services and Support (CLASS Program) (Section 8002)

The purpose of the CLASS Program is to establish a national, voluntary insurance program for purchasing community living assistance services and supports. It is intended to expand options for individuals with functional limitations requiring long term care services and supports. The CLASS Program is to be financed through monthly premiums paid by voluntary payroll deductions through employers or by payments made directly from individuals. Individuals who are employed by a participating employer will be automatically enrolled in the CLASS Program unless they decide to opt out. Alternate enrollment procedures will be made available for individuals whose employer does not

offer the CLASS Program and to those that are self-employed or have more than one employer. The CLASS Program will provide a cash benefit of no less than an average of $50 per day. The benefit level will vary based on a scale of functional ability, with not less than two or more than five benefit levels, and the benefit may be paid on a daily or weekly basis. There is no lifetime or aggregate limit for the benefit. Class benefits are eligible to adults with functional limitations, as certified by a licensed health care practitioner, that are expected to last for a continuous period of more than 90 days, and who have paid monthly premiums to the program for at least five years and have worked at least three of those five years. The effective date is January 1, 2011.

Incentives for States to offer Home and Community Based Services as a Long Term Care Alternative to Nursing Homes (Section 10202)

This provision adds a new policy creating financial incentives for states to shift Medicaid beneficiaries out of nursing homes and into home and community based services (HCBS). The provision provides Federal Medical Assistance Percentage (FMAP) increases to states to rebalance their spending between nursing homes and HCBS by October 1, 2015.

Revision to Skilled Nursing Facility Prospective Payment System (Section 10325)

The PPACA has a provision delaying implementation of the RUGs-IV payment system changes for one year to October 1, 2011. However, the implementation of the concurrent therapy adjustment, the look back period change, and MDS 3.0 have not been delayed and will go into effect on October 1, 2010.

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