

COMPLIANCE AND ETHICS PROGRAM

OVERVIEW

WHAT ARE OUR KEY CORPORATE VALUES?

Performance.

We commit to deliver and demonstrate excellence in everything we do. We are accountable and responsible for fulfilling our pledge to safeguard the welfare of each resident in a lawful and principled manner.

Integrity.

We do not compromise ethics. We strive to maintain a culture of ethical behavior and a commitment to compliance with the law. We also strive to detect and prevent wrong-doing. We demand honest, honorable and effective behavior from every member of our team and anyone working at or with North Lake Rehabilitation and Health Center in any capacity.

Transparency.

We are all humans and sometimes make mistakes, but at North Lake Rehabilitation and Health Center we have the courage to acknowledge our mistakes and do whatever is needed to address them. As such, we value open, honest and clear communication – up, down and sideways – and pledge to protect all those that are forthright from retaliation.

WHAT IS IN OUR COMPLIANCE AND ETHICS PROGRAM?

Our compliance and ethics program (the “Program”) includes (i) a Code of Conduct, (ii) written policies and procedures, (iii) education and training programs, (iv) ongoing monitoring and auditing to assess compliance, (v) multiple ways for you to report incidents of noncompliance including anonymously and without threat of retaliation, (vi) disciplinary actions that will be taken against individuals found violating the Program and (vii) oversight of the Program by the appointed committee members.

WHO HAS TO PARTICIPATE?

Every member of our team, regardless of salary, position or title, as well as any individual or company working at or with North Lake Rehabilitation and Health Center in any capacity, must participate in the Program.

IS PARTICIPATION VOLUNTARY?

This Program is not optional. North Lake Rehabilitation and Health Center, and in many cases the law, requires you to wholeheartedly participate in our Program.¹ The success and effectiveness of our Program depends on the commitment to its doctrines by every service provider, business associate and member of our workforce. We rely on your involvement in helping us identify and address illegal, unethical or other wrongful activity—past, present or

¹ The Patient Protection and Affordable Care Act of 2010 (“PPACA”) Health Care Reform, for example, requires every skilled nursing facility to “have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations ... and in promoting quality of care ...” by March 2013.

future. All those employed by or servicing North Lake Rehabilitation and Health Center are required to follow not only the particular provisions of the Program but also its implicit ideals.

WHAT WILL HAPPEN IF I DON'T FOLLOW THE PROGRAM?

Failure to be compliant can result in sanctions against you including termination of employment or relationship, civil or criminal fines, program exclusion and/or imprisonment.

WHY HAVE A COMPLIANCE AND ETHICS PROGRAM?

The Program helps provide an opportunity to improve the quality of care that residents receive. That is always our primary goal. It also helps us to operate lawfully, reduce liability and provides an effective way for us to demonstrate our commitment to first-rate care and lawful operation—much the same way good charting demonstrates the high level of care which we provide. We want employees, service providers, business associates, regulators, our potential referral base and residents and their loved ones to realize the good work we do.

WHY AM I RECEIVING A COMPLIANCE MANUAL?

The attached manual (the “Manual”) is designed to help us work together to be more ethical, compliant with regulations and to better detect and prevent illegal or unethical activity. The Manual is not a complete list of rules and regulations nor is it intended to prescribe a specific response to every conceivable situation. It offers a framework of principles and minimum standards to assist you in recognizing ethical and regulatory compliance issues and in determining an appropriate response as specific situations arise. You must use your judgment in applying these guidelines to the unique circumstances you face. When unsure as to the proper way of dealing with a certain challenge that occurs, please consult with your supervisor, the Chief Compliance Officer (the “CCO”), a member of the Compliance and Ethics Committee (the “Committee”), or call the Compliance and Ethics Hotline (the “Hotline”) or use the Compliance and Ethics Online System (the “Online System”) for guidance.

The Manual is not an employment contract; its policies and directives do not create a contract with nor are they intended to be relied upon by third parties.

LETTER FROM MANAGING MEMBER

Valued Staff,

At North Lake Rehabilitation and Health Center, our pursuit of providing high quality of care goes hand-in-hand with our unwavering commitment to compliance and ethics. Please do not jeopardize your integrity or that of North Lake Rehabilitation and Health Center. Faithfully follow our Compliance and Ethics Program. Help us to establish and maintain a culture where we are all accountable, strive to identify and correct errors as they are discovered and foster honesty. We are driven by the belief that honor and virtue need not be compromised in the pursuit of excellence. Working together as a team, openly and honestly communicating with one another without fear of retribution, we will succeed.

I enthusiastically endorse North Lake Rehabilitation and Health Center's Compliance and Ethics Program, which embodies these values and charts a path to upholding them in practice. On behalf of the Ownership and Senior Management, I express my full support for this invaluable program and request that each of you review this manual thoroughly and incorporate its directives in carrying out your duties. Indeed, I expect no less from every member of our team and those providing services to North Lake Rehabilitation and Health Center.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tzvi Bogomilsky', with a large, stylized flourish at the end.

Tzvi Bogomilsky

Managing Member

Lake Park SNF LLC dba North Lake Rehabilitation and Health Center

COMPLIANCE AND ETHICS PROGRAM

Adherence to Lake Park SNF LLC dba North Lake Rehabilitation and Health Center's Compliance and Ethics Program is *mandatory* and is a *condition of employment* and/or *working at or with North Lake Rehabilitation and Health Center in any capacity*. Carefully review this Manual and seek guidance from HR, the CCO, the Committee, the Hotline or the Online System for clarification or guidance on any uncertainty regarding the Program or the law. Any staff member, service provider or business associate who has knowledge of or suspects in good faith a violation of the Program is *required to report* such incidents to HR, the CCO, the Committee, the Hotline or the Online System in a timely manner. Should any staff member, service provider or business associate be found to have violated one or more of the terms of the Program – including, but not limited to, failing to report a known violation of the Program – he or she may face disciplinary action, up to and including termination of employment or relationship. Indeed, adherence to the Program may be a factor in performance evaluations and may affect advancement and compensation decisions, both positive and negative.

I. NORTH LAKE REHABILITATION AND HEALTH CENTER'S MISSION AND VALUES

North Lake Rehabilitation and Health Center is dedicated to providing services that assist each and every resident in attaining or maintaining his or her highest practicable physical, mental and psychosocial well-being. We are also dedicated to – and are committing significant resources to – promoting a culture of ethical behavior and a commitment to compliance with the law and detecting and preventing wrong-doing. North Lake Rehabilitation and Health Center holds its owners, operators, officers, managers, department heads, employees, members of the medical staff, vendors, suppliers, independent contractors, service providers, business associates and volunteers (collectively, “personnel” or “staff”) to the highest ethical, legal and business standards in the performance of their respective duties. We demand honest, honorable and effective behavior from every member of our team and anyone associated with North Lake Rehabilitation and Health Center in any capacity.

II. CODE OF CONDUCT

North Lake Rehabilitation and Health Center has adopted the following Code of Conduct (the “Code”) as part of the Program. The Code shall serve, in a sense, as North Lake Rehabilitation and Health Center's constitution—a foundational document that details the fundamental principles, ideals and framework for action within our organization. More specifically, the purpose of the Code is to: help fulfill our mission and values, in part, by defining ethics and compliance standards, spelling out compliance obligations and calling for honorable reporting; to make clear that we will not tolerate or permit employees, service providers or business associates to tolerate offenses or turn a blind eye; as a tool for education and training; to permit fair enforcement and discipline; and to help ensure effective self-monitoring.

A. Compliance with the Law and the Program

As a means of ensuring the safety of residents and safeguarding the efficient use of taxpayer funds, among other important public interests, federal, state and local governments have enacted many regulations controlling nursing home operations. In Appendix A attached to this Program we provide an overview of some important federal and state statutes. In addition, certain federal

and state laws are described in supplemental material that will be distributed and discussed in training and education sessions. Because these materials cannot possibly address every situation you may face or cover all of the operative statutes and regulations, staff members are encouraged to consult with their supervisors, the CCO, a member of the Committee, the Hotline or the Online System for further guidance when one is unsure about the legality or appropriateness of a matter. Under no circumstances does omission of a provision excuse non-compliance.

All personnel and those interacting with us must obey all applicable federal, state and local laws and regulations. It is also extremely important that you are able to identify illicit activity conducted by others and that you appropriately report such activity immediately. The Code and the Program are designed to help prevent and detect such violations and to provide avenues through which personnel can report violations that they witness or suspect in good faith, without fear of retribution.

Violations of law may be punishable by, among other things, financial penalties, elimination from health care programs and/or incarceration and/or by disciplinary action up to and including termination of employment or relationship. As importantly, compliance helps demonstrate our commitment to providing residents with very high quality care. Thus, strict compliance and full cooperation with the Code and the Program is absolutely necessary.

B. Transparency

North Lake Rehabilitation and Health Center strives to cultivate an environment of transparency. We are all humans and we all make mistakes. It is only by analyzing errors or near-errors that we learn how to avoid similar mishaps in the future. Yet, in order to learn from mistakes we must first identify them. Therefore, the effectiveness of the Program relies on the participation and cooperation of staff members by coming forward with questions and concerns, as well as reports, of suspected and known illegal or unethical behavior. North Lake Rehabilitation and Health Center *requires* all of its personnel, including those working at or with the Facility in any capacity, to be forthcoming when a mistake is realized or anticipated or a reportable event occurs. Furthermore, when approached by any member of the compliance team or someone acting with authority of the Committee, you are *required* to cooperate fully and truthfully and be completely candid with any informative knowledge you may have. Rest assured, the Committee is trained to protect employees who are working to support the Program.

C. No Retaliation

North Lake Rehabilitation and Health Center has a strict No Retaliation Policy, whereby staff members who report known or suspected violations of the Program or other illegal or unethical activity are protected from any intimidation, coercion, discrimination or any other form of retribution or adverse employment action for coming forward. All North Lake Rehabilitation and Health Center members, service providers or business associates should therefore feel comfortable discussing and/or reporting any and all compliance- or ethics-related questions, comments and concerns—whether it relates to a past error, an ongoing occurrence or the anticipation of prospective foul-play. Similarly, staff members should speak freely if approached by an internal investigator or auditor relating to happenings in the Facility. If for any reason you do not feel comfortable, you should report and explain the reason for your discomfort which, together with all reporting, can be done anonymously at any time of day or night through the Hotline or the Online System.

D. Good Faith Reporting

North Lake Rehabilitation and Health Center recognizes the potential for abuse of this system of reporting; particularly the risk that a vindictive and unethical person could attempt to hide behind the anonymity and security that the Program provides to wrongfully and without basis inflict harm on others. Therefore, while we urge our staff to share pertinent information with the appropriate personnel and err on the side of over-reporting, all reports, suspicions and concerns of compliance or ethical violations must be made in good faith. Anyone who abuses this process by submitting reports that are knowingly false or based on anything other than good faith threaten the integrity and effectiveness of this crucial Program and may themselves be violating the law and/or may be subject to discipline.

E. Cooperation with Investigations

We strive to appropriately and orderly cooperate with government investigations with the least disruption to care at the Facility possible under the circumstances. Because complex issues of privacy, confidentiality, privilege, the right to counsel and/or retention of records often arise, personnel should refer all communications with law enforcement agencies and/or all requests for records to the Committee and North Lake Rehabilitation and Health Center's General Counsel so all inquiries can be appropriately and timely addressed.

Examples of investigations with which you may be faced include inquiries into possible Medicare or Medicaid fraud and abuse, inappropriate third-party billing or illegal kickbacks for patient referrals. The individuals who may approach you to conduct such investigations include members of an audit team (i.e. Zone Program Integrity Contractor ("ZPIC") auditors, Recovery Audit Program ("RAC") auditors, Medicare Administrative Contractor ("MAC") auditors); representatives of the state Attorney General's Office—including its Medicaid Fraud Control Unit; Investigators with the Office of the Inspector General; or law enforcement officials (i.e. Federal Bureau of Investigation ("FBI") or local police officers).

If any staff member is approached by a law enforcement official or government representative or is presented with a search warrant or receives a subpoena or any similar form of investigative communication relating to North Lake Rehabilitation and Health Center, its residents, its service providers, its business associates or its employees in any way – including notice of an in-person interview, deposition or interrogation or a demand for the immediate production or inspection of documents – the individual should politely inform such representative that he or she needs to contact the Committee and North Lake Rehabilitation and Health Center's General Counsel, who will properly assist North Lake Rehabilitation and Health Center in responding honestly, clearly and completely to the full extent of the law. The Committee, with the guidance of North Lake Rehabilitation and Health Center's legal counsel, will manage all responses and releases of information. All responses on behalf of North Lake Rehabilitation and Health Center should always be truthful and straightforward.

Nothing in this policy is intended to prevent, obstruct, mislead or delay the proper communication of information or records to the appropriate authorities. Nor is this policy intended to prevent or discourage employees from properly participating in lawful investigations. Instead, with this policy, North Lake Rehabilitation and Health Center strives to ensure that all operative laws and regulations are dutifully followed, that all information is provided in an organized and forthright manner and that the rights of North Lake Rehabilitation and Health Center's residents, service providers, business associates and employees are duly protected.

F. Integrity of Program

North Lake Rehabilitation and Health Center has taken numerous steps to preserve the integrity of the Program. Some of these steps include: (i) the CCO has authority of Ownership and Management to gain unfettered access to all documents reasonably relevant to compliance activities; (ii) all personnel must cooperate fully with internal investigations and audits and to talk openly and honestly about compliance and ethics concerns to the CCO or those acting on behalf of the CCO; (iii) the CCO and the Committee shall maintain the necessary independence to properly monitor the goings-on at North Lake Rehabilitation and Health Center at all levels; and (iv) there shall be periodic audits of the Program and those who administer it.

III. PROCEDURES AND STANDARDS

As stated above, the rules and regulations governing nursing home operations are voluminous. The Procedures and Standards set forth herein are not intended to be a complete catalog of protocols, but an abstract of some central guidelines that relate to the Facility generally.

A. Procedures

i. Distribution and Acknowledgment

The CCO is responsible to distribute a copy of this Manual to all personnel including service providers and business associates. The CCO is encouraged to have all personnel acknowledge receipt of the Manual, as well as personal responsibility for understanding and adhering to its guidelines, prior to beginning employment, or, in the discretion of North Lake Rehabilitation and Health Center, within 30 days of beginning employment. Such acknowledgement can be accomplished by the submission to HR or the CCO of an executed copy of the Compliance and Ethics Manual Receipt Certification and Acknowledgement Form that will be distributed along with this Manual, or by any other similar form of written acknowledgement. Submission of acknowledgment may be a precondition to certain employee privileges and/or the implementation of certain business arrangements as deemed appropriate by management, HR and/or the CCO.²

ii. Accessibility

The Manual must be accessible to all personnel, as well as residents and residents' families, responsible parties and vendors. The Manual and/or a synopsis thereof may also be posted in a conspicuous area in the Facility and/or on North Lake Rehabilitation and Health Center's website.

iii. Training and Education

In addition to receiving and reviewing this Manual, each new North Lake Rehabilitation and Health Center staff member must complete an initial training and education program within 30 days of beginning his or her employment or initiation of services. The CCO is encouraged to have all personnel acknowledge completion of the initial training and education program, as well as his or her understanding of the Program and his or her obligations thereunder. Such acknowledgement can be accomplished by the submission to HR or the CCO of an executed copy of the Compliance and Ethics In-Service Certification and Acknowledgement Form that will be distributed in conjunction with the initial training and education program, or by any other

² Additional certifications may be required when the Program is amended.

similar form of written acknowledgement. Submission of acknowledgment may be a precondition to certain employee privileges and/or the implementation of certain business arrangements as deemed appropriate by management, HR and/or the CCO.³

Personnel must also complete annual refresher training sessions thereafter, in which North Lake Rehabilitation and Health Center compliance representatives will review existing policies and introduce and explain any additions and/or modifications to the Program. To further enhance the efficiency of these training sessions, North Lake Rehabilitation and Health Center may have multiple different classes tailored for the different employment fields and positions, as appropriate. In addition to annual seminars, training sessions may be conducted, as necessary, to address specific issues and concerns that may arise over the course of the year. All North Lake Rehabilitation and Health Center personnel are expected to participate in all mandatory training sessions and to incorporate that training into day-to-day conduct.

The CCO is responsible to keep track of attendance at training and education sessions, via sign-in sheets, evaluation forms or any other appropriate means. The CCO will also retain copies of education training materials distributed at such sessions.

iv. Compliance and Ethics Committee and Chief Compliance Officer/Reporting

You can always report any ethical or compliance violation through the ordinary chain of command, but if the response is unsatisfactory or circumstances do not allow for such a path, please do not stop there. North Lake Rehabilitation and Health Center has appointed a Compliance and Ethics Committee, chaired by the Chief Compliance Officer, bearing responsibility for, among other things, receiving, responding to and overseeing all compliance and ethics issues. All North Lake Rehabilitation and Health Center personnel, including service providers and business associates, may contact the CCO or any Committee member, either in person, by telephone or in writing, with any compliance- or ethics-related questions, comments or concerns, or, in the alternative, one can anonymously use the Hotline or Online System described in the next paragraph. Human Resource-type issues like questions about your paycheck, benefits or staffing preferences should still be directed to HR and all other issues should be addressed through the appropriate chain of command.

v. Compliance and Ethics Hotline and Online System/Anonymous Reporting

North Lake Rehabilitation and Health Center has established a toll-free Compliance and Ethics Hotline – in English, Spanish, and approximately 150 foreign languages – and a Compliance and Ethics Online System – including a website and an email address – as alternative reporting tools. Both the Hotline and Online System provide North Lake Rehabilitation and Health Center personnel, as well as residents and their family members, avenues through which to report and/or discuss – anonymously or otherwise – compliance and ethics issues and concerns 24-hours-a-day; 365-days-a-year. To avoid the Hotline becoming clogged with extraneous issues, please restrict calls to compliance- and ethics-related issues only. Should an employee, service provider, business associate or resident be unable or unwilling to speak with a live agent on the Hotline or simply prefer another method, he or she should utilize the Online System's website or email address. In addition, North Lake Rehabilitation and Health Center has a Compliance and Ethics Fax Line for those who prefer to file reports via facsimile. The Hotline, Online System

³ Additional certifications may be required at subsequent training and education sessions.

and Fax Line are administered by an outside company in part to avoid the possibility that the caller may be recognized and to help ensure the integrity of the system. Report logs are kept, issues raised are investigated and each mechanism is monitored by the CCO and by an independent agency, as appropriate, to help ensure that effectiveness and confidentiality are properly maintained. The Hotline and Online System are also useful for those who have already reported a concern in person and desire follow-up. Each system may be used anonymously (without leaving a name).

- Compliance and Ethics Hotline:
 - Toll-Free Telephone: **(855) 640-6300**
- Compliance and Ethics Online System:
 - Website: **<http://www.snfhotline.org>**
 - E-mail: **reports@snfhotline.org**
 - Fax: **(614) 750-1444**

vi. *Anonymity and Confidentiality*

All reports, regardless of how or to whom they are presented, may be done so anonymously, if so desired. (Leaving a name allows us to better request more information or clarification during the course of any investigation but is most certainly not required.) All reports will be held strictly confidential to the extent permissible.

B. Standards

As expressed in the Code of Conduct, North Lake Rehabilitation and Health Center is absolutely committed to adherence to all operative federal, state and local laws, rules and regulations. Violations of law are unacceptable, as is encouraging, directing, facilitating or permitting unlawful behavior. While an itemized description of relevant federal and state statutes is set forth in Appendix A hereto, some policies that relate to regulations are set forth herein for emphasis.

i. *Quality of Care*

1. Clinically-Driven Care

All decisions regarding resident care shall be driven by the honest assessment of each resident's clinical needs.

2. Residents' Rights

Outstanding personalized care and services is foremost among North Lake Rehabilitation and Health Center's objectives. Accordingly, North Lake Rehabilitation and Health Center has adopted the residents' rights principles set forth in Appendix B hereto as part of the Program.

3. Comprehensive Care Plans

North Lake Rehabilitation and Health Center shall develop a comprehensive care plan for each resident that addresses his or her individual medical, nursing, mental and psychosocial needs, using, among other things, the Resident Assessment Instrument (RAI), and includes all disciplines involved in the resident's care and, when possible, the resident and/or the resident's family members. North Lake Rehabilitation and Health Center shall also evaluate with the

attending physician how best to ensure physician participation, whether via consultation and post-meeting debriefing or telephone or personal attendance at meetings. The duration and content of care plan meetings, as well as attendance and the status of clinical assessments at the time of such meetings,⁴ should be properly documented, as such records may assist the Facility in demonstrating compliance.

4. Medication Management

North Lake Rehabilitation and Health Center shall employ or obtain the services of a licensed pharmacist. North Lake Rehabilitation and Health Center and consultant pharmacist should work together to achieve proper medication management at North Lake Rehabilitation and Health Center, by, among other things, ensuring compliance with operative quality and safety standards, including monitoring the prescription drugs prescribed to residents and keeping residents' drug regimens free from unnecessary medications.

5. Psychotropic Drugs

North Lake Rehabilitation and Health Center must ensure that psychopharmacological practices comport with governmental regulations and generally accepted professional standards. For example, no medications – especially atypical antipsychotic medications – should be used as a means of chemical restraint for purposes of discipline or convenience.

6. Promoting Resident Safety

Residents have a legal right to be free from abuse and neglect under all circumstances. Residents are also entitled to be free from preventable adverse incidents and temporary harm events. Accordingly, North Lake Rehabilitation and Health Center shall take steps to ensure that it is protecting its residents from these risks. Of particular concern is harm caused by staff and fellow residents. Heightened awareness and monitoring for abuse and neglect are crucial to the success of our Program.

7. Background Checks

North Lake Rehabilitation and Health Center shall not employ or contract with individuals found guilty of abusing, neglecting or mistreating residents or individuals with a finding entered into a state nurse aid registry concerning abuse, neglect, mistreatment of residents or misappropriation of residents' property. Furthermore, if an individual or entity contracts or does business with or is employed by an individual or entity that is excluded from participation in the Medicare or Medicaid programs – or a non-excluded entity which is controlled by an excluded individual – it may be subject to penalties.

In light of the foregoing, background checks may be conducted on all personnel, specifically those who are licensed health care providers and those with direct resident access, as required under operative federal and state law. This is in addition to requiring all prospective employees to disclose any criminal convictions and/or exclusions from health care programs in their employment application. The background check, at the time of employment and periodically thereafter, may include searches of state and federal criminal history records, a review of the Office of Inspector General's List of Excluded Individuals/Entities and other recognized registries and methods of investigation such as fingerprint checks. Specifically, criminal

⁴ Clinical assessments should be completed *prior* to care plan meetings.

background checks may be conducted annually and exclusion checks may be conducted monthly or more frequently as required by law or circumstances. Furthermore, all employees are required to inform North Lake Rehabilitation and Health Center if they become excluded, debarred, suspended or otherwise ineligible to participate in federal or commercial health care programs or if they are convicted of a crime while working at or with North Lake Rehabilitation and Health Center or if they become aware that another person or entity with whom North Lake Rehabilitation and Health Center conducts business is excluded or employs or contracts with excluded individuals or entities.

All service providers and business associates must conduct the background checks discussed above on all of their employees who work at or with North Lake Rehabilitation and Health Center in any capacity.

Should a background check reveal that an individual or entity has been convicted of a felony or was excluded from participation in health care programs, North Lake Rehabilitation and Health Center shall refrain from employing or contracting with such individual or entity, at a minimum to the extent required by law. Furthermore, if such individual or entity is employed by or contracting with North Lake Rehabilitation and Health Center at the time such conviction or exclusion is discovered, North Lake Rehabilitation and Health Center will immediately work to determine the appropriate action based on the circumstances, including possible termination of the relationship and/or reversal of payment received for services rendered by the individual or entity while excluded.

8. Employee Qualifications

All North Lake Rehabilitation and Health Center personnel shall obtain and maintain proper credentials, certifications and licenses as required to carry out their respective jobs. In addition, all staff members should fulfill any applicable continuing education requirements. At a minimum, North Lake Rehabilitation and Health Center and any entity doing business with it in any capacity shall check qualifications as required by law.

9. Staffing

Staffing levels shall not fall below any applicable federal or state requirements. North Lake Rehabilitation and Health Center shall assess its staffing pattern regularly to evaluate whether it has sufficient staff members who are competent to care for the unique acuity levels of our residents. Assessment of staffing patterns should take into account resident case mix, staff skill levels, staff-to-resident ratios, staff turnover, staffing schedules, disciplinary records, payroll records, timesheets and adverse events reports (e.g. falls, adverse drug events, etc.), as well as interviews with staff, residents and/or residents' families or legal guardians.⁵

ii. *Billing Practices*

All staff members should be particularly cautious with the accuracy of billing information, as reckless misstatements to government agencies or other payers can result in criminal prosecution, forfeiture of reimbursement and/or the imposition of civil monetary penalties imposed against an individual and/or North Lake Rehabilitation and Health Center.

⁵ Whenever possible actual "on-the-floor" staff rather than theoretical "on-paper" staff should be examined when assessing staffing; that is, payroll records are better than scheduling records.

1. Accurate Documentation and Submission of Claims

Honesty and meticulousness in writing is just as important as it is in verbal communication. North Lake Rehabilitation and Health Center demands that all personnel, including anyone working at or with the Facility in any capacity, maintain the highest level of integrity regarding documentation by maintaining proper records in accordance with all relevant laws. North Lake Rehabilitation and Health Center strictly prohibits tainting the accuracy of medical, financial or billing records by, among other things, forging another's signature; back-dating; falsifying, misrepresenting, altering or exaggerating entries; or submitting a document that one has reason to believe is false, erroneous or inadequate. As an additional safeguard, North Lake Rehabilitation and Health Center may institute monitoring and auditing systems aimed at detecting inaccurate billing and reimbursements. Should any staff member discover a billing error – including but not limited to the receipt of an overpayment (an amount of money North Lake Rehabilitation and Health Center receives in excess of the amount due and payable under health care program requirements) – he or she should immediately advise a supervisor or a Committee member of the error to ensure that proper corrective action is taken.

2. General Billing Practices

Personnel must adhere to all operative laws, rules and regulations governing billing procedures, submission of reimbursement claims and filing of cost reports. North Lake Rehabilitation and Health Center must submit accurate claims and desires only to bill for services that were actually provided, medically necessary and properly authorized. As such, do not submit a false claim or cause a false claim to be submitted. By way of example, no member of our team, or anyone working at or with North Lake Rehabilitation and Health Center in any capacity, should: bill for items or services not rendered or provided as claimed; submit claims for equipment, medical supplies and services that are medically unnecessary; submit claims to Medicare Part A for residents who are not eligible for Part A coverage, particularly regarding hospice care; duplicate bill; fail to identify and refund credit balances; bill for unallowable claims related to communicable disease care; submit claims for items or services not ordered; knowingly bill for inadequate or substandard care; provide misleading information about a resident's medical condition on the MDS or otherwise provide inaccurate or incomplete information used to determine the Resource Utilization Group ("RUG") assigned to the resident; improperly utilize therapy services to inflate the severity of RUG classifications and obtain additional reimbursement; over-utilize Medicare Part B services; upcode the level of service provided; bill for individual items or services when they either are included in the Facility's per diem rate or are of the type of item or service that must be billed as a unit and may not be unbundled; bill residents for items or services that one included in the per diem rate or otherwise covered by a third-party payer; alter documentation or forge a physician's signature on documents used to verify the services were ordered; fail to maintain sufficient documentation to support the diagnosis, justify treatment, support the course of treatment and results and promote continued care; or create or submit false cost reports. Furthermore, North Lake Rehabilitation and Health Center will require the payment of insurance copayments and deductibles barring a determination that a resident lacks the funds for such payment or some other legitimate exception.

3. Restorative and Personal Care Services

Residents shall receive appropriate restorative and personal care services to allow residents to attain and maintain their highest practicable level of functioning. These services include, among others, care to avoid pressure ulcers, active and passive range of motion, ambulation, fall prevention, incontinence management, bathing, dressing and grooming activities. Health care programs may not reimburse for restorative and personal care services that were not provided or were so wholly deficient that they amounted to no care at all.

4. Document Retention

North Lake Rehabilitation and Health Center requires the retention of all generated and received recorded information – electronic and paper – related to financial, medical or legal issues for the applicable period required by law, if any.⁶ All records should be kept in their original form or a suitable alternative form for storage for the duration of the period, at which time such records should be destroyed. In the event a legal hold notice – requiring retention of certain records that may be relevant to matters that are the subject of litigation, investigations or audits – is issued, the terms of such notice should be carefully observed, superseding normal document retention practices.

5. Excluded Individuals/Entities

North Lake Rehabilitation and Health Center shall not employ, contract with or bill for services provided by individuals or entities excluded from participation in a federal, state or commercial health care program.

iii. *Kickbacks*

The Anti-Kickback Statute is a criminal prohibition against remuneration (any form of payment, whether direct or indirect) made to induce or reward the referral or generation of health care program business. To that end, unless an exception or Safe Harbor applies, the acceptance, offer, payment or solicitation of money or anything else of value by, from or to any vendor, supplier or health care provider or beneficiary by, from or to a North Lake Rehabilitation and Health Center staff member in exchange for any referral, recommendation or inducement of any business is strictly prohibited. Examples may include discounts, special deals, perks or gifts (i.e. free office space, commissions, expensive travel or entertainment arrangements, etc.). The offer to or acceptance from vendors of nominal gifts – such as inexpensive pens, small pads of paper or modest meals – in line with commonly accepted practices, may be acceptable when such gifts are not given or accepted for the purpose of inducing the referral or generation of business and such gifts do not create the appearance of impropriety. However, North Lake Rehabilitation and Health Center personnel shall not offer or accept any tip or gift to or from any prospective or current resident or on behalf of any resident in any way related to health care services rendered or to be rendered. In addition, we request that personnel report any occurrence of a staff member being offered or accepting any free or non-fair market value goods or services from anyone with whom North Lake Rehabilitation and Health Center does or might do business, as such activity may create heightened risk.

The Anti-Kickback Statute is an intent-based statute and is complex in nature. Staff members must seek guidance from a Committee member and/or North Lake Rehabilitation and Health Center's counsel whenever the Anti-Kickback Statute is potentially implicated.

⁶ HIPAA, for example, requires that certain documentation be retained for 6 years.

iv. *Anti-Supplementation*

North Lake Rehabilitation and Health Center must accept the applicable Medicare or Medicaid payment (including any beneficiary co-payment authorized under those programs), respectively, for covered items and services as the complete payment and may not charge the beneficiary, or any other person, any amount in addition to what is otherwise required to be paid under those programs.

v. *Fair Competition*

While we strive for excellence in the industry, we do so only while competing fairly with others. Determination to succeed does not excuse unfair competition. North Lake Rehabilitation and Health Center is committed to carrying on its business within the parameters of relevant regulations and proper practices. As such, North Lake Rehabilitation and Health Center forbids the engagement in any activity that produces monopolies or suppresses competition. We ban the use or sharing of proprietary or confidential information from or with competitors, as well as the utilization of deceptive or illegal means to obtain classified information. It is likewise prohibited to violate trademarks or other intellectual property rights (e.g. copyrights, patents and service marks) of others.

vi. *No Discrimination*

Respect for the dignity of others is the guiding principal for our professional relationships. Do not discriminate in admissions, retention, treatment or employment decisions based on race, color, religion, sex, national origin or any other characteristic prohibited by law or engage in sex-based wage discrimination or discrimination against qualified individuals with disabilities or discriminate in employment based upon genetic information about an applicant, employee or former employee.

vii. *Advertising and Marketing*

The content and dissemination of advertising and marketing materials and compensation arrangements for marketers and sales representatives shall accord with any and all relevant laws, rules and regulations. Specifically, all advertising and marketing materials shall be truthful and non-deceptive and shall be distributed in a manner that abides by HIPAA privacy rules. And compensation arrangements for marketers and sales representatives shall steer clear of potential issues of fraud, waste and kickbacks.

viii. *Conflicts of Interest*

North Lake Rehabilitation and Health Center's interests must supersede all personal interests in our staff members' actions in their professional capacity. Personal interests must not interfere with North Lake Rehabilitation and Health Center's interests in any way. Therefore, all North Lake Rehabilitation and Health Center personnel must disclose existing potential and perceived conflicts of interest – including their or their family member's or close friend's participation or ownership in or employment with any contractor or party with which the Facility does business or conducting outside business other than that which is being done on behalf of the Facility with any of its vendors, suppliers or contractors, or any of their officers or employees – and avoid entering into any relationship that may compromise their responsibility to North Lake Rehabilitation and Health Center going forward. Those staff members who work regularly with third parties on North Lake Rehabilitation and Health Center's behalf should report any actual or potential conflicts of interest on no less than an annual basis or whenever the conflict first arises.

ix. *Proprietary, Privileged and Confidential Information*

Disclosure or sharing of proprietary, privileged and/or confidential information – including health information, personal data and classified business records – is strictly regulated. North Lake Rehabilitation and Health Center personnel, including anyone working at or with the Facility in any capacity, have an affirmative duty to protect confidential and privileged resident, employee and business information; accessing and sharing such material only as warranted by operative laws, rules and regulations, some of which are summarized in Appendix A hereto. Regarding protected patient information – data, including demographic data, that relates to the individual’s past, present or future physical or mental health or condition, the provision of health care to the individual or the past, present or future payment for the provision of health care to the individual, that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual – foremost among these statutes are HIPAA⁷ and HITECH.⁸ Proprietary information and intellectual property may include ideas, inventions, software, books, new ways of doing things, financial statements, plans, discussions, customer lists or anything else that a business would not want a competitor to know.

Some practical examples of protective care include refraining from discussing private information in public areas, sharing sensitive information only with appropriate individuals who need to know the information to do their jobs, properly indicating the sensitivity of confidential written material, delivering such material to designated recipients directly rather than leaving it at an unoccupied desk, refraining from leaving the machine unattended while making copies of such material and shredding or otherwise destroying waste copies. To further assist in ensuring such security, North Lake Rehabilitation and Health Center may institute other policies to safeguard confidentiality.

Given the complex technical regulations related to the release of proprietary, privileged and/or confidential material to others, staff members, service providers and business associates should refer all requests for information to the Committee and North Lake Rehabilitation and Health Center’s General Counsel. Only such trained professionals should attempt to handle issues of privilege and the release of confidential patient and business information outside the organization.

Should a breach of unsecured protected health information occur, North Lake Rehabilitation and Health Center will provide all appropriate notification in accordance with the HITECH guidelines.

IV. COMPLIANCE OFFICERS

North Lake Rehabilitation and Health Center has established a Compliance and Ethics Committee, comprised of high-level health care professionals representing operational and programmatic spheres, serving as compliance officers. The Committee, chaired by the Chief Compliance Officer, has been afforded the authority and resources necessary to carry out its duty to ensure regulatory and ethics compliance. A complete list of the members of the Compliance Committee, as well as each member’s contact information, will be displayed in a conspicuous

⁷ Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), P.L. 104-19.

⁸ Health Information Technology for Economic and Clinical Health (“HITECH”) Act, P.L. 111-5.

place in the Facility and posted on North Lake Rehabilitation and Health Center's website, with additional copies available in the business office.

The CCO, with the assistance of the Committee, is tasked with assisting North Lake Rehabilitation and Health Center in its endeavor to develop a culture that values compliance from the top down and fosters compliance from the bottom up and helping to implement the Program by, among other things:

- Identifying, evaluating and prioritizing the greatest areas of compliance risk, based on, among other things, OIG Work Plans, Compliance Alerts, survey and audit findings (past and present), payer denials, and/or discussions with and reports from staff members and managers;
- Creating an annual compliance work plan, along with anticipated budgetary needs, and presenting such blueprint to the CEO, Ownership and/or the Governing Body as appropriate;
- Efficiently utilizing the resources given to [him/her] and requesting more resources when necessary;
- Ensuring that the Manual is distributed to all staff members and collecting each member's executed acknowledgment form;
- Developing, coordinating, implementing and overseeing the Program, including the training and education of North Lake Rehabilitation and Health Center personnel;
- Accessing and reviewing any and all documents that are relevant for effective compliance activities;
- Monitoring the Program to ensure that it is up-to-date with any and all modifications to legal and regulatory standards as well as the evolving realities and needs of the Facility and amending the Program appropriately;
- Ensuring that all legally required background checks are conducted and that OIG's List of Excluded Individuals/Entities is reviewed periodically to confirm that North Lake Rehabilitation and Health Center does not employ or contract with anyone who has been excluded from participating in government or commercial health care programs and/or convicted of certain crimes in violation of law;
- Investigating compliance and ethics issues that arise to determine whether (i) a violation has, in fact, occurred; (ii) disciplinary action is required; and (iii) all reasonable steps to respond appropriately to a violation and to prevent similar violations have been taken;
- Aiding supervisors, Committee members and/or North Lake Rehabilitation and Health Center's General Counsel in developing and implementing resolutions to compliance issues that arise, including recommending and assessing punishments, overpayment returns, whether or not voluntary disclosure is appropriate and other corrective actions for violations;
- Following up, as appropriate, with personnel regarding reports they have filed, thereby generating confidence in the Program by exhibiting the seriousness with which compliance issues are handled;
- Reviewing previous citations and survey tags for potential patterns of deficiency to ensure that recurring problems are addressed more urgently and with greater resolve;
- Acting with management's (Ownership, the CEO and/or the Governing Body) implied or express authority and commitment to the integrity of the Program, when necessary;

- Maintaining the Hotline and Online System, including ensuring a log of reports is properly kept, and safeguarding the integrity and effectiveness of these mechanisms, including the retention of external monitors as needed;
- Coordinating efforts and sharing of information between the Committee, North Lake Rehabilitation and Health Center's lawyers and internal and/or external auditors and monitors, as necessary;
- Analyzing audit findings, with the assistance of legal counsel as appropriate, and advising management on remedial options so they can properly decide what course to pursue; and
- Periodically assessing the effectiveness of the Program as a means of improvement, by evaluating the implementation of policies and procedures, employee awareness vis-à-vis the Program and other appropriate methods.

The CCO shall be on par with North Lake Rehabilitation and Health Center's management and is not subordinate to the General Counsel or the Chief Financial Officer. The CCO and/or the Committee will report to the Ownership, the CEO/Operator and/or the Governing Body directly no less than on an annual basis and more frequently, as necessary. These in-person meetings may be accompanied by a written report and shall address the performance of the Program in the prior period, any ongoing compliance issues of concern and the Program's objectives and work plan for the coming period. Those to whom the CCO reports shall work to ensure that the Program is effective and current and is endowed with the resources and authority needed to achieve its objectives. These executives are also tasked with ensuring that the CCO is duly performing [his/her] responsibilities. As such, they shall review internal controls and audits, assess risk management and retain external auditors if necessary.

V. DUE CARE IN DELEGATION OF AUTHORITY

North Lake Rehabilitation and Health Center has used due care in its delegation of discretionary authority, granting such influence only to qualified and accomplished staff members. Aside from the standard background checks, those in positions of authority may be subject to more careful personal and professional scrutiny and are only granted discretionary authority upon reliable recommendation.

VI. EDUCATION AND TRAINING

While the Manual is an educational tool, North Lake Rehabilitation and Health Center recognizes the need to further train and educate staff members. At a minimum, each incoming staff member is required to complete an initial training program within 30 days of his or her employment or initiation of services. In addition, North Lake Rehabilitation and Health Center has instituted annual refresher training sessions for all staff members in which North Lake Rehabilitation and Health Center compliance representatives will review existing policies and introduce and explain any additions and/or modifications to the Program. The training sessions may be conducted by duly qualified North Lake Rehabilitation and Health Center personnel, outside trainers or both and may include live lectures, videos, computer programs and/or online interactive sessions. To further enhance the efficiency of these sessions, North Lake Rehabilitation and Health Center may have multiple different classes tailored for the different employment fields and positions concentrating on the issues that are most relevant to the particular group of personnel. There may also be programs to address specific issues and concerns that may arise over the course of the year.

VII. STEPS TAKEN TO ACHIEVE COMPLIANCE

The appropriate practical action North Lake Rehabilitation and Health Center has taken to achieve compliance with the Program's standards is reflected in several techniques set forth in this Manual. Foremost among these measures is North Lake Rehabilitation and Health Center's comprehensive reporting system, whereby staff members, including service providers and business associates, are provided multiple avenues of communicating concerns and incidents involving compliance and ethics issues. Personnel are encouraged to communicate freely with supervisors, the CCO or a Committee member either in person or by email, or anonymously via the toll-free Hotline – with operators able to converse in English, Spanish and approximately 150 other foreign languages – or the Online System, including a website, an email address and a fax line. If any staff member feels that he or she received an inadequate response for an in-person report, the Hotline or Online System should be utilized to address the issue. North Lake Rehabilitation and Health Center's strict No Retaliation Policy ensures that personnel are protected from any retribution for coming forward with reports of known or suspected illicit activity. The workings and importance of the reporting system is conveyed to all personnel upon their joining North Lake Rehabilitation and Health Center and periodically thereafter vis-à-vis annual training and education courses. Furthermore, North Lake Rehabilitation and Health Center endeavors to follow up with staff members who file reports, as appropriate and practicable, as a means of conveying our sincere commitment to addressing compliance matters and concerns.

Another attempt to achieve compliance lies in North Lake Rehabilitation and Health Center's multiple investigative and oversight tools to monitor and audit regulatory and ethics issues. Through internal controls and internal and external audits, among other things, we strive to bring all of North Lake Rehabilitation and Health Center's goings on in line with current regulatory and ethical standards and ensure that the Program itself is as effective and efficient as possible. Specifically, audits may focus on hot-button issues (identified as such based on OIG Work Plans, Compliance Alerts and previous surveys and audits and payer denials or any other issue deemed appropriate or advisable by North Lake Rehabilitation and Health Center) such as billing, coding, medical necessity, referrals and other claims-related issues; hospital readmissions and hospitalizations, staffing patterns, communicable disease care, rates of adverse events, plans of care and related quality matters; and compliance concerns, including professional review of training and education classes and material and the use of interviews, surveys and other established methods to get feedback from staff members on the effectiveness of policies, ways in which procedures can be improved and employees' perspectives on their relationship with management. North Lake Rehabilitation and Health Center may also use exit interviews with outgoing personnel to glean information as to how operations and compliance can be improved. Follow-up monitoring, as well, may be conducted to help ensure an effective and enduring resolution of noncompliance findings.

VIII. CONSISTENT DISCIPLINARY ENFORCEMENT

North Lake Rehabilitation and Health Center recognizes that the consistent enforcement of this Program is critical for its authenticity. Therefore, North Lake Rehabilitation and Health Center will enforce the principles of this Program and appropriately discipline anyone who knowingly and willingly – or, in some instances, even recklessly or negligently – violates its principles, either actively or passively.

IX. APPROPRIATELY RESPONDING TO OFFENSES

If an alleged violation of the Program or an operative law, rule or regulation is brought to the attention of a supervisor, the CCO or a Committee member – or if the offense is otherwise detected – a formal investigation may commence. The CCO may manage a suitable inquiry into the matter – including, as appropriate, interviews of people who may have knowledge of the alleged conduct; reviews of relevant documentation; and preparation of a report of the investigation – and may make a determination whether and to what extent a violation has taken place. Should the CCO, with the assistance of the Committee and in consultation with counsel if necessary, conclude that a violation was committed, any and all available reasonable remedies will be pursued in a timely manner. This may include the repayment of ill-gotten funds via overpayments, duplicate billings or improper compensations. The CCO, along with the Committee and legal counsel, may also determine that voluntary disclosure to government authorities and/or payers may be appropriate. Required disclosures and submissions, such as correction plans for deficiencies identified during surveys, will also be duly performed. Furthermore, the Committee may review identified violations in search of possible lessons to be learned in order to prevent such infringements from reoccurring and help develop a corrective action plan accordingly. Any modifications to the Program that may help prevent such reoccurrence or assist in the detection of such a violation will be implemented as soon as practicable. Additional training may also be provided, as appropriate.

Another means of averting future violations is to deter the perpetrator and others from lax compliance with the Program. To that end, should a determination be made upon appropriate investigation that a North Lake Rehabilitation and Health Center staff member, including anyone working at or with the Facility in any capacity, knowingly and willingly – or, in certain circumstances, even recklessly or negligently – violated the Program or an operative law, rule or regulation, recommendation for disciplinary action may be made to HR, who is responsible for determining the proper punishment. HR shall then instruct the appropriate supervisor or manager what disciplinary action should be taken. All disciplinary action shall be enforced by supervisors and/or managers. Available disciplinary actions – to be meted out according to the seriousness and prevalence of the offense – include verbal warnings, written warnings, suspension, modification of compensation, privilege revocation, financial penalty and termination of employment or relationship. Where appropriate, referrals for further disciplinary action by law enforcement authority may be made. North Lake Rehabilitation and Health Center disciplinary action shall be taken under the guidance and supervision of legal counsel, as needed. The disciplinary process will be enforced in a timely, decisive and public manner and each step of the process will be well documented. It will be made clear to the staff and everyone who comes in contact with North Lake Rehabilitation and Health Center that we take regulatory and ethics compliance very seriously.

X. PERIODIC REASSESSMENT OF THE PROGRAM

An effective and efficient compliance and ethics program must remain current – properly reflecting contemporary laws and policies; existing conditions in the greater industry as well as the specific facility; and the latest focus trends of regulatory enforcement agencies. Periodic reassessment of the Program is necessary. Thus, North Lake Rehabilitation and Health Center shall undertake to internally monitor and audit the Program as appropriate. The Committee will have applicable federal, state and local rules, laws, alerts and regulations monitored for changes that are relevant to North Lake Rehabilitation and Health Center. The Committee may also

manage a reassessment, enlisting the assistance of various staff members to study the latest compliance developments and identify areas of the Program that require modification. These efforts are in addition to – rather than in place of – reviews of the fundamental effectiveness of the Program systems and structures and assessments of the overall success of the Program in general, as well as each of its basic elements. North Lake Rehabilitation and Health Center also recognizes the need for ongoing external auditing and monitoring to ensure objectivity in implementing, enforcing and updating a proper compliance program. As such, the Committee may procure the services of independent third-party consultants, as needed. These efforts will help the Program remain relevant and useful in effectively guiding North Lake Rehabilitation and Health Center to achieve full regulatory and ethics compliance.

XI. CONCLUSION

Our priority is and should always remain providing the highest level of care practicable to our residents. North Lake Rehabilitation and Health Center appreciates the pivotal role an effective and efficient compliance and ethics program plays in achieving our mission. We count on your full support of our compliance efforts and look forward to working with you in making this Program an enduring success.

Appendix A

Relevant Federal Statutes

The purpose of this summary is to provide a basic awareness of the tenets by which the nursing home business is regulated – though other laws and regulations may apply – so we can all work together to make certain that any suspected violation is immediately brought to the attention of a compliance officer. Our goal is to ensure that we comply with all laws and provide the highest levels of care practicable. Below is a brief synopsis of key federal statutes that set rules relevant to nursing homes. Many state and local authorities enact additional laws, many of which parallel these, albeit with varying penalties and punishments.¹

This supplement is *not* intended to be a sweeping, all-inclusive anthology for legal regulatory compliance. While we strive to educate staff members about the basic guidelines and values of nursing home operation so fundamental approaches for day-to-day activities can be properly developed, North Lake Rehabilitation and Health Center does not expect its personnel to become legal experts. If a staff member is unsure about the legitimacy of a particular activity or practice, he or she should ***never*** speculate as to the correct answer. Instead, the individual should seek appropriate guidance from the Chief Compliance Officer, a member of the Compliance and Ethics Committee, the Compliance and Ethics Hotline or the Compliance and Ethics Online System. Staff members will *not* be penalized for asking compliance-related questions. To the contrary, North Lake Rehabilitation and Health Center desires a culture in which each staff member is comfortable asking the questions necessary to ensure that he or she properly understands and performs his or her tasks and obligations.

Key operative federal statutes relevant hereto include:

- **Federal False Claims Act, 31 U.S.C. § 3729 et seq.**

The Federal False Claims Act (“FCA”) provides penalties for any individual or entity that knowingly presents or causes to be presented a false or fraudulent claim or material statement for payment or approval from the Federal Government.² Knowingly concealing or improperly avoiding or decreasing an obligation – including the failure to return an overpayment – to the Government is also prohibited under this statute, as is conspiring to do any of the foregoing.

¹ More than 30 states have instituted their own False Claims Acts, Anti-Kickback Laws and Self-Referral Laws. In addition, state law tort theories – including payment by mistake, unjust enrichment and fraud – as well as residents’ rights statutes and licensure standards are bases for state health care actions.

A similar summary of relevant state statutes will be provided along with this Appendix and another presentment of some specific federal and state laws will be provided to satisfy the requirements of The Deficit Reduction Act of 2005 § 6032, summarized below.

² The Government has argued that Medicare and Medicaid cover only costs that are reasonable and necessary for the diagnosis or treatment of illness or injury. Thus, when medically unnecessary services are provided and billed to health care programs, the claims are fraudulent, the patient is unnecessarily exposed to risks of a medical procedure and the health care programs incur needless costs. To that end, government authorities are increasingly scrutinizing quality data submitted by health care providers to identify inconsistencies and evidence of ongoing quality problems that providers fail to address.

Although “knowledge” is a prerequisite for liability under the FCA, reckless disregard for or deliberate ignorance of the truth or falsity of the subject information may satisfy the knowledge requirement.³

- **The Medicare and Medicaid Acts, 42 CFR Part 483, Subpart B**

The *Omnibus Budget Reconciliation Act of 1987* (OBRA) requires nursing homes to provide the care necessary for all residents to attain or maintain their highest practicable physical, mental and psychosocial well-being to qualify for payments under these government programs.

- **Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b)**

Makes it a felony for a person to knowingly and willfully⁴ offer, pay, solicit or receive anything of value in return for a referral or to induce generation of business reimbursable under a federal health care program. This can include cash, gifts, cross-referrals and/or reduced-cost services or items—directly or indirectly.

- **The Civil Monetary Penalties Act, 42 U.S.C. § 1320a-7a**

Issues penalties of up to \$10,000 per item or service claimed,⁵ treble damages and exclusion from federal and state government programs for several enumerated illicit acts, including (i) presenting or causing to be presented a claim for Medicare or Medicaid reimbursement for an item or service that the person knew or should have known was either (a) not provided as claimed; (b) was provided during a period in which the professional or entity was excluded from the program; or (c) was false or fraudulent; (ii) offering to transfer or transferring remuneration to any individual eligible for health care benefits that is likely to influence the referral or generation of business for which payment may be made under a federal or state health care program; and (iii) failing to report and return a known overpayment. This serves as an administrative alternative to criminal prosecution or an action under the FCA.

- **Stark Law, 42 U.S.C. § 1395nn**

The Physician Self-Referral Law, known as the Stark Law, may indirectly apply in the nursing home setting in that it prohibits a physician or a physician’s immediate family member who has a financial relationship – including a direct or indirect ownership interest or compensation arrangement – with an entity from referring patients to the entity for designated health services (“DHS”) covered by Medicare or Medicaid unless an exception is available. Two exceptions relate to bona fide employment and personal services arrangements, which often allow medical directors who receive compensation from a facility for administrative or management services to refer residents to the facility for therapies and other DHS services.

³ 31 U.S.C. § 3729(b).

⁴ See PPACA section below regarding the softening of the actual knowledge/specific intent requirement.

⁵ Penalties may vary with different violations.

A claim generated as a result of a referral tainted by a Stark violation can also be treated as an overpayment and may be subject to the “reverse false claims provision” of the False Claims Act.

- **Social Security Act § 1128(b)(6)(B)**

Authorizes the OIG to exclude any individual or entity that has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under Medicare or Medicaid) substantially in excess of the needs of the patients or of a quality which fails to meet professionally-recognized standards of health care.

- **The Nursing Home Reform Act, 42 CFR 483 et seq.**

Requires nursing homes to provide services to residents in compliance with federal requirements and create and adhere to a written plan of care for each resident in order to be eligible for payments under Medicare and Medicaid. The NHRA also establishes a Resident Bill of Rights, which is attached in its entirety to the Manual as Appendix C.

- **Health Insurance Portability and Accountability Act (“HIPAA”), 18 U.S.C. §§ 669, 1035, 1347, 1518**

This statute establishes privacy protections and security requirements relating to protected health information (PHI). HIPAA also provides criminal penalties for any individual or entity that knowingly and willfully:

- executes, or attempts to execute, a scheme to defraud – or fraudulently obtain any money or property from – any health care benefit program;
- fraudulently obtains or intentionally misapplies any of the money or property under the control of any health care benefit program;
- falsifies, conceals, or makes a materially false statement or representation in connection with the delivery of or payment for health care benefits, items or services; or
- prevents, obstructs or delays – or attempts to prevent, obstruct or delay – the communication of information related to a federal health care offense to a criminal investigator.

Specific intent and actual knowledge of the statutory prohibitions may not be required for conviction under several provisions of this statute.

- **Health Information Technology for Economic and Clinical Health Act (“HITECH”), American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5**

This statute extends the complete Privacy and Security Provisions of HIPAA – including criminal and civil penalties – to business associates of covered entities. HITECH also (i) strengthens HIPAA enforcement by introducing mandatory penalties for willful neglect of residents’ privacy; (ii) establishes mandatory notification requirements for unauthorized use or disclosure of unsecured (i.e. unencrypted) PHI—even requiring that the Department of Health and Human Services (“HHS”) and/or local media be notified of breaches under certain

circumstances involving large numbers of residents; and (iii) requires entities utilizing electronic health record (EHR) to provide residents with accountings of disclosure even for treatment, payment and health care operations. Another aspect of the legislation is its enhancement of the protections of electronic PHI (ePHI), including the right of individuals to obtain – at an affordable cost – their PHI in electronic format and multiple incentives related to health care information technology designed to accelerate the adoption of EHR systems by individual entities and, more generally, the electronic exchange of information on a national level.

- **Program Fraud Civil Remedies Act of 1986**, *31 U.S.C. § 3801 et seq.*

Establishes an administrative remedy against any person who makes a false claim or written statement to any of certain federal agencies, including HHS. Any person who submits a claim or written statement to an affected agency knowing or having reason to know that it is false, fictitious or fraudulent, is subject to liability. The determination of whether a claim is false, as well as the imposition of fines and penalties, is made by the administrative agency, not by prosecution in the federal court system.

- **The Deficit Reduction Act of 2005** § 6032, *42 U.S.C. § 1396a(68)*

An entity that receives at least \$5 million in annual Medicaid payments must have written policies for all management, employees, contractors and agents providing detailed information about (1) the FCA; (2) administrative remedies for false claims and statements; (3) any state laws pertaining to civil or criminal penalties for false claims and statements; and (4) whistleblower protections under the law, with respect to the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs. The written materials should also include the entity's policies and procedures for detecting and preventing fraud, waste and abuse. This information should be included in facilities' employee handbooks.

- **Patient Protection and Affordable Care Act of 2010 ("PPACA") Health Reform Law**, Public Law 111–148

- Anti-Kickback Statute

Section 6402(f) of PPACA revises the evidentiary standard under the Anti-Kickback Statute and eliminates the requirement of actual knowledge of, or specific intent to commit, a violation of the statute; while scholars disagree about the effect, many argue that all that is needed is intent to engage in the subject transaction – not intent to break the law.

Also, this section creates 42 U.S.C. § 1320(a)-7b(g), which adds the Federal False Claims act to the list of statutes under which a facility or individual may be charged for claiming payment for a transaction prohibited by the Anti-Kickback Statute—the apparent rationale being that compliance with the Anti-Kickback Statute is a condition for participation in Medicare.

- Compliance Programs

Section 6102 introduces new Section 1128I to the Social Security Act, which mandates adequate corporate compliance programs in all nursing facilities by March 23, 2013.⁶

- HIPAA/Health care Fraud

Mirroring what Section 6402(f) did to the Anti-Kickback Statute, Section 10606 of PPACA amends 18 U.S.C. § 1347 to reduce the intent required to establish a health care fraud violation. The “knowing and willful” standard no longer requires proof of actual knowledge of or specific intent to violate the statute. Also, the definition of health care offense set forth in 18 U.S.C. § 24(a) was amended to include violations of the Anti-Kickback, among others.

- Elder Justice Act – Section 6703

Reporting requirement

- Amends the Social Security Act, adding Section 1150B, to require reporting of any “reasonable suspicion” of a crime against anyone receiving care at a nursing facility.

Incentives related to the increased care and protection of elders

- Amends the Social Security Act, adding Sections 2041 *et seq.*, providing numerous incentives for increased care and protection of elders, including grants to state agencies that perform surveys of nursing facilities.

- Civil Monetary Penalties

In Sections 6402(d)(2) and 6408(a), PPACA introduces several new CMPs relating to false or misleading statements or omissions in provider applications or contracts; reverse false claims; prescriptions by excluded individuals; filling claims based on false records; and failure to grant timely access to OIG for investigations. Also, Section 6402(d)(2)(B) adds four new provisions to the list of practices that were not previously included in the term “remuneration” under § 1128A(i)(6), thus broadening the utilization of CMPs for 42 U.S.C. § 1320a-7a(a)(5) regarding kickback-related activity. Finally, Section 6402(a) creates new Section 1128J(c) of the SSA, which permits the HHS Secretary to impose “an appropriate administrative penalty commensurate with the offense or conspiracy,” in addition to any other applicable remedies, for knowing participation by beneficiaries in health care fraud offenses, or conspiring to commit such offenses.

- Overpayments

Section 6402(a) creates new Section 1128J(d) of the SSA, which clarifies FERA’s regulations regarding the retention of overpayments and establishes

⁶ The elements of the mandated compliance program form the basis of [HOME]’s Compliance and Ethics Program as set forth in the accompanying Compliance and Ethics Manual.

that providers must report and return any overpayments under Medicare and Medicaid within 60 days of discovery or the date a corresponding cost report is due. This clause expressly subjects providers who fail to timely report and return an overpayment to liability under the FCA and, in turn, to CMPs.

- Background Checks

Section 6201 requires the HHS Secretary to establish a national program to identify appropriate procedures for conducting background checks on prospective employees at SNFs in direct patient care positions. As part of this program, nursing homes would be required to obtain the state and national criminal history and other background information on such prospective employees.

- Investigative Authority

Section 6402 (i) extends the HHS and OIG's investigative subpoena authority to program exclusion investigations; (ii) allows for the suspension of Medicare and Medicaid payments to providers or suppliers if there is a "credible allegation of fraud" against the supplier or provider; and (iii) requires HHS to share data for the purposes of identifying potential fraud, waste and abuse in the Medicare and Medicaid programs with various other agencies.

Florida Compliance Statutes

I. FL Anti-Kickback Statute, *Fla. Stat. § 456.054*

It is unlawful to offer, pay, solicit, or receive a kickback – directly or indirectly, overtly or covertly, in cash or in kind – for referring or soliciting patients. This crime is treated as a violation on the Patient Brokering Prohibition—a third-degree felony, punishable by imprisonment of up to 5 years and/or a corresponding fine, which may be increased for repeat offenses.

II. FL Patient Self-Referral Act (“FL Stark Law”), *Fla. Stat. § 456.053*

Recognizing that the referral of a patient by a physician to a provider of healthcare services in which the referring physician has an investment interest represents a potential conflict of interest, a healthcare provider is prohibited from referring a patient for the provision of designated health services to an entity in which the healthcare provider is an investor or has an investment interest, barring an exception. The enumerated exceptions generally relate to qualifications of the operative term “investment interest.” Disciplinary actions hereunder include denial of licensure and penalties.

III. FL Patient Brokering Prohibition, *Fla. Stat. § 817.505*

It is a third-degree felony, punishable by imprisonment of up to 5 years and/or a corresponding fine – which may be increased for repeat offenses – to offer, pay, solicit or receive any commission, bonus, rebate, kickback, or bribe – directly or indirectly, in cash or in kind – or engage in any split-fee arrangement, in any form whatsoever, in return for or to induce the referral of patients, or in return for the acceptance or acknowledgement of treatment, from a healthcare provider or healthcare facility; or to aid, abet or advise others regarding the same.

IV. State Healthcare Fraud Civil and Criminal Laws

a. Florida False Claims Act, *Fla. Stat. §§ 68.081 et seq.*

The Florida False Claims Act closely parallels the Federal False Claims Act, imposing penalties and fines on individuals and entities that knowingly present or cause to be presented – or make or use or cause to be made or used a false record or statement material to – a false or fraudulent claim for payment by a state health care agency. Conspiracy to commit such acts is also proscribed. Failure of an entity to return any payment from the government to which it was not entitled – so called “reverse false claims” – is also covered by this statute. “Knowingly” here carries the same meaning as the federal law; incorporating acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. Penalties range from \$5,500 to \$11,000 per false claim and recoverable damages are up to three times the total damages sustained by the agency plus reasonable attorney fees and costs. Penalties may be reduced based on cooperation with the investigation.

Like the federal statute, private citizens (other than certain current and former government employees) with knowledge of fraudulent activity are able to bring a qui tam action on behalf of the government and receive between 25% and 30% of resultant payments back to the government if the government opts not to participate and 15% and 25% if the government does participate in the suit, plus reasonable attorney fees and costs. The award may be reduced if the action is largely based on information disclosed in the media or public hearings or if the violation

was planned and initiated by the Relator. And if the whistleblowing Relator is found guilty of a crime associated with the violation of the Florida FCA, no share will be awarded to him or her. Relators are protected from retaliation for reporting fraud and can receive back pay, reinstatement and compensation for reasonable costs including attorney fees.

Unlike its federal counterpart, the Florida statute includes an affirmative defense of “innocent mistake.” Furthermore, under the Florida FCA, a defendant’s damages may be reduced from treble to double if the defendant demonstrates *any* of the three disclosure/cooperation requirements, whereas *all* of the requirements must be met under the federal statute. Also unlike the federal statute, prevailing defendants in a Florida FCA case deemed clearly frivolous are entitled to awards of reasonable attorney fees and costs.

b. Florida Medicaid Program Integrity, Fla. Stat. § 409.913

Calls on AHCA to oversee and investigate the activities of Florida Medicaid recipients and to submit, along with the Medicaid Fraud Control Unit, an annual report regarding the effectiveness of the state’s efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments. AHCA is authorized hereunder to recover overpayments, issue administrative sanctions and refer cases of suspected fraud for criminal investigation to the Attorney General.

c. Administrative Sanctions on Providers, Entities, and Persons, Fla. Admin. Code r. 59G-9.070

Allows AHCA to impose sanctions, suspensions and terminations upon healthcare providers and individuals for violation of Medicaid-related laws. Sanctionable offenses hereunder include: (i) failure to renew a required license or having the same revoked, suspended or terminated; (ii) failure to make available or refuse access to Medicaid-related records; (iii) failure to maintain contemporaneous documentation; (iv) failure to comply with the provisions of the Medicaid laws; (v) furnishing, authorizing or ordering goods or services that are inappropriate, unnecessary, excessive, of inferior quality or harmful; (vi) pattern of failure to provide necessary care; (vii) false or a pattern of erroneous medical records; (viii) patient abuse or neglect; (ix) improperly collecting from or billing a recipient; and (x) failure to comply with notice and reporting requirements. There is a wide range of penalty amounts, varying based on the number of previous offenses. Furthermore, each day that an ongoing violation continues and each instance of an act or omission contrary to a Medicaid law or the Medicaid provider agreement is considered a separate violation. Also, reinstatement following a suspension is effected by submitting a written request to AHCA, who then considers whether the provider deserves to rejoin Medicaid.

d. Florida Medicaid Provider Fraud Law, Fla. Stat. §§ 409.920; 409.9201; 409.9203

This statute sets forth several crimes related to fraud involving Medicaid providers. First, it is a felony to knowingly make or cause to be made any false statement of representation of a material fact in making a claim to AHCA or a managed care plan for payment. It is likewise unlawful to knowingly: (i) make or caused to be made a claim for items or services that are not authorized for reimbursement by Medicaid; (ii) charge, solicit accept or receive anything of value in addition to the amount legally payable for an item or service provided under Medicaid; (iii) make or cause to be made any false statement or representation of a material fact in any document containing items of income and expense that may be used to determine a rate of payment for an

item or service; (iv) solicit, offer, pay, or receive any remuneration, including any kickback or bribe – directly or indirectly, overtly or covertly, in cash or in kind – in exchange for a referral of any item or service or for purchasing, leasing or ordering any goods, facility, item or service paid, in whole or in part, by Medicaid; (v) submit false or misleading information to Medicaid for the purpose of being accepted as a Medicaid provider; and (vi) use or endeavor to use a Medicaid provider's or recipient's identification number to make or cause to be made a claim for items or services not authorized to be reimbursed by Medicaid. These crimes are punishable by fines and/or imprisonment that vary with the amount of payment inappropriately received and the number of previous offenses, if any. In addition, the offender may be criminally fined the greater of five times the gain unlawfully received or five times the loss incurred by the healthcare provider.

Section 409.9201 makes it is a felony to knowingly sell or purchase or attempt or conspire to sell or purchase a legend drug that was paid for by Medicaid. It is also a felony to knowingly make or cause to be made – or conspire to make – any false statement or representation to any person for the purpose of obtaining goods or services from Medicaid. These crimes are punishable by fines and/or imprisonment that vary with the value of the drugs, goods or services and the number of previous offenses, if any.

Section 409.9203 provides its own whistleblower reward for one who furnishes original information which leads to recovery of a fine or penalty relating to violations of the Medicaid Fraud laws. Rewards are capped at the lesser of 25% of the amount recovered or \$500,000. However, this statute expressly excludes the receipt of rewards under the Florida False Claims Act after recovery hereunder.

e. Miscellaneous Crimes Applicable to Healthcare Fraud

In addition to the healthcare-specific crimes, there are several crimes that prosecutors have applied to Medicaid fraud and other healthcare fraud cases. Some of the most popular such statutes include:

- **Florida Fraud Law, *Fla. Stat. § 414.39***

Criminalizes the knowing (i) failure to disclose any material fact used in determining a person's qualification to receive public assistance; (ii) failure to disclose a change in circumstances in order to obtain or continue to receive public assistance to which he or she is not entitled or in an amount larger than to which he or she is entitled; (iii) unauthorized use, possession, forgery, or alteration – or fraudulent misappropriation by a program employee or official – of a food assistance identification card, an authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services or a Medicaid identification card or any food assistance program benefits; or (iv) filing of a claim for services to a recipient of public assistance for services that were not rendered or were unauthorized. Aiding and abetting any of these illicit acts is also a crime hereunder. These crimes are punishable by fines and/or imprisonment that vary with the amount of payment inappropriately received and the number of previous offenses, if any.

- **False Pretenses and Fraud in Matters within the Jurisdiction of the Department of State, *Fla. Stat. § 817.155***

It is a third-degree felony to knowingly and willfully falsify or conceal a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false document in

any matter within the jurisdiction of the Department of State. These crimes are punishable by fines and/or imprisonment that vary with the amount of payment inappropriately received and the number of previous offenses, if any.

- **False Official Statements, *Fla. Stat. § 837.06***

It is a second-degree misdemeanor to knowingly make a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty. This crime is punishable by a fines and/or imprisonment that vary with the amount of payment inappropriately received and the number of previous offenses, if any.

V. Whistleblower Protections

a. Florida False Claims Act / Whistleblower's Acts, *Fla. Stat. §§ 68.088; 112.3187 et seq.; 448.101 et seq.*

As stated above, much like the federal statute, the Florida False Claims Act allows private citizens (other than certain current and former government employees) to bring a qui tam action on behalf of state government agencies and receive a portion of resultant payments recovered by the government. Relators are protected from all forms of reprisal for serving as whistleblowers to investigative authorities, disclosing or threatening to disclose violations of law which creates a substantial and specific danger to the public's health, safety, or welfare, actual or suspected gross waste of public funds or Medicaid fraud or abuse. Employees are similarly protected for refusing to participate in unlawful activity. Employees who suffer wrongful retaliation are entitled to receive reinstatement to same work position or an equivalent position and of full fringe benefits and seniority rights, as well as compensation for lost wages and benefits and recovery of reasonable attorney fees and costs. Protocols are also set forth to have investigators and law enforcement personnel properly protect the identity of whistleblowers.

Prevailing defendants in a Florida FCA case deemed clearly frivolous are entitled to awards of reasonable attorney fees and costs.

Florida's Private Whistleblower Act provides protection only to those employees that notify employers in writing of the suspected illegal activity, policy or practice before disclosing it to the appropriate government agency, providing the employer a reasonable opportunity to correct the issue.

Federal Resident Rights¹

§ 1396r. Requirements for nursing facilities

Effective: March 23, 2011

(a) “Nursing facility” defined

In this subchapter, the term “nursing facility” means an institution (or a distinct part of an institution) which--

(1) is primarily engaged in providing to residents--

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(l) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility’s staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which--

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident’s family or legal representative, by a team which includes the resident’s attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents’ assessment

¹ 42 USCA § 1396r.

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment--

- (i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;
- (ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;
- (iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and
- (iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than \$5,000 with respect to each assessment.

(III) The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted--

- (I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;
- (II) promptly after a significant change in the resident's physical or mental condition; and
- (III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must not admit, on or after January 1, 1989, any new resident who--

(i) is mentally ill (as defined in subsection (e)(7)(G)(i) of this section) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii) of this section) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)--

(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility--

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) Waiver by State

To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if--

- (I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,
- (II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,
- (III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,
- (IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965 [42 U.S.C.A. § 3027(a)(12)]) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and
- (V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this subchapter to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) Assumption of waiver authority by Secretary

If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual--

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The nursing facility must provide such regular performance review and regular in-service education as assures that

individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) “Nurse aide” defined

In this paragraph, the term “nurse aide” means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual--

- (i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or
- (ii) who volunteers to provide such services without monetary compensation.

Such term includes an individual who provides such services through an agency or under a contract with the facility.

(G) Licensed health professional defined

In this paragraph, the term “licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must--

- (A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);
- (B) provide for having a physician available to furnish necessary medical care in case of emergency; and
- (C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents’ assessments (described in paragraph (3)), as well as the results of any pre-admission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor’s degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents’ rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident’s well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms. Restraints may only be imposed--

- (I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right--

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

(B) Notice of rights

A nursing facility must--

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r-5(c)(1)(B) of this title;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section;

(iii) inform each resident who is entitled to medical assistance under this subchapter--

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396o of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless--

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must--

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except--

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include--

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C.A. § 3021 et seq. or 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C.A. § 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.A. § 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act [42 U.S.C.A. § 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning--

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident--

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

(F) Continuing rights in case of voluntary withdrawal from participation

(i) In general

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter [42 U.S.C.A. § 1396 et seq.] but continues to provide services of the type provided by nursing facilities--

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) Information for new residents

The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this subchapter [42 U.S.C.A. § 1396 et seq.] with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this subchapter.

(iii) Continuation of payments and oversight authority

Notwithstanding any other provision of this subchapter, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of--

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this subchapter; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) of this section (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) No application to new residents

This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

(3) Access and visitation rights

A nursing facility must--

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

(A) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) Construction

(i) Nothing prohibiting any charges for non-medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a nursing facility must--

(i) (I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) subject to subparagraph (B)(v), not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term “nursing facility services”.

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(v) Treatment of continuing care retirement communities admission contracts

Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1396r-5 of this title, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.

(6) Protection of resident funds

(A) In general

The nursing facility--

- (i) may not require residents to deposit their personal funds with the facility, and
- (ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of \$50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility’s operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident’s personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident’s account reaches \$200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident’s other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.

(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident’s personal funds (and a final accounting of such funds) to the individual administering the resident’s estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid-eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) “Certain medicaid-eligible individual” defined

In subparagraph (A), the term “certain medicaid-eligible individual” means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual’s income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in--

- (i) the persons with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in the facility,
- (ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a-5(b) of this title) of the facility,
- (iii) the corporation, association, or other company responsible for the management of the facility, or
- (iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C)¹ Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(C)¹ Availability of survey, certification, and complaint investigation reports

A nursing facility must--

- (i) have reports with respect to any surveys, certifications, and complaint investigations made respecting the facility during the 3 preceding years available for any individual to review upon request; and
- (ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complainants or residents.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that--

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must--

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a-3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must--

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be--

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review**(A) Preadmission screening****(i) In general**

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual--

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital,

and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)--

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section)--

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) Review required upon change in resident's condition

A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) of this section with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident's physical or mental condition.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long-term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers--

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described

in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers--

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must--

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be "mentally ill" if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of

dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term "specialized services" has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4) of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988--

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum (including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training,²(II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that--

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements--

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and

competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program--

(I) offered by or in a nursing facility which, within the previous 2 years--

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i-3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i-3(h)(2)(B)(ii) of this title or subsection (h)(2)(A)(ii) of this section of not less than \$5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i) of this section, clauses (i), (iii), or (iv) of subsection (h)(2)(A) of this section, clauses (i) or (iii) of section 1395i-3(h)(2)(B) of this title, or section 1395i-3(h)(4) of this title, or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII of this chapter) in a State if the State--

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to--

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall--

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28)(B) of this title, the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(10) Special focus facility program

(A) In general

The Secretary shall conduct a special focus facility program for enforcement of requirements for nursing facilities that the Secretary has identified as having substantially failed to meet applicable requirements of this chapter.

(B) Periodic surveys

Under such program the Secretary shall conduct surveys of each facility in the program not less often than once every 6 months.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that--

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents--

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted--

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1316 of this title in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to--

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if--

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to

achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public--

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a-3 of this title, and

(iv) information disclosed under section 1320a-5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C.A. § 3021 et seq. or § 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C.A. § 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs³ (1), (2), or (3) of subsection (h) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify--

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(E) Submission of survey and certification information to the Secretary

In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home Compare Medicare website under subsection (i), each State shall submit information respecting any survey or certification made respecting a nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies--

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may--

(i) terminate the facility's participation under the State plan,

- (ii) provide for one or more of the remedies described in paragraph (2), or
- (iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

- (i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.
- (ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) of this section) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.
- (iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while--
 - (I) there is an orderly closure of the facility, or
 - (II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

- (iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

- (i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.
- (ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)--

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(E) Funding

The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1396b(a)(7) of this title, to be necessary for the proper and efficient administration of the State plan.

(F) Incentives for high quality care

In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this subchapter. For purposes of section 1396b(a)(7) of this title, proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this subchapter.

(3) Secretarial authority**(A) For State nursing facilities**

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies--

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties**(I) In general**

Subject to subclause (II), the Secretary may impose a civil money penalty in an amount not to exceed \$10,000 for each day of noncompliance. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(II) Reduction of civil money penalties in certain circumstances

Subject to subclause (III), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

(III) Prohibitions on reduction for certain deficiencies

(aa) Repeat deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

(bb) Certain other deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

(IV) Collection of civil money penalties

In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that--

(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an independent informal dispute resolution process which generates a written record prior to the collection of such penalty;

(bb) in the case where the penalty is imposed for each day of noncompliance, provide that a penalty may not be imposed for any day during the period beginning on the initial day of the imposition of the penalty and ending on the day on which the informal dispute resolution process under item (aa) is completed;

(cc) may provide for the collection of such civil money penalty and the placement of such amounts collected in an escrow account under the direction of the Secretary on the earlier of the date on which the informal dispute resolution process under item (aa) is completed or the date that is 90 days after the date of the imposition of the penalty;

(dd) may provide that such amounts collected are kept in such account pending the resolution of any subsequent appeals;

(ee) in the case where the facility successfully appeals the penalty, may provide for the return of such amounts collected (plus interest) to the facility; and

(ff) in the case where all such appeals are unsuccessful, may provide that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while--

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies

and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(D) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if--

- (i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility, and
- (ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(5) Immediate termination of participation for facility where State or Secretary finds noncompliance and immediate jeopardy

If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively⁴ shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on finding of noncompliance

(A) State finding of noncompliance and no Secretarial finding of noncompliance

If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d) of this section, but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary--

- (i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and
- (ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents--

- (A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;
 - (ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or
 - (iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and
- (B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to

the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(8) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (ii)(IV),⁵(iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.

(9) Sharing of information

Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XVIII of this chapter, including investigations by State medicaid fraud control units.

(i) Nursing home compare website

(1) Inclusion of additional information

(A) In general

The Secretary shall ensure that the Department of Health and Human Services includes, as part of the information provided for comparison of nursing homes on the official Internet website of the Federal Government for Medicare beneficiaries (commonly referred to as the "Nursing Home Compare" Medicare website) (or a successor website), the following information in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to consumers of long-term care services, and searchable:

(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1320a-7j(g) of this title, including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and allows such consumers to compare differences in staffing between facilities and State and national averages for the facilities. Such format shall include--

(I) concise explanations of how to interpret the data (such as plain English explanation of data reflecting "nursing home staff hours per resident day");

(II) differences in types of staff (such as training associated with different categories of staff);

(III) the relationship between nurse staffing levels and quality of care; and

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

(iii) The standardized complaint form developed under section 1320a-7j(f) of this title, including explanatory material on what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

(iv) Summary information on the number, type, severity, and outcome of substantiated complaints.

(v) The number of adjudicated instances of criminal violations by a facility or the employees of a facility--

(I) that were committed inside of the facility; and

(II) with respect to such instances of violations or crimes committed outside of the facility, that were violations or crimes that resulted in the serious bodily injury of an elder.

(B) Deadline for provision of information

(i) In general

Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after March 23, 2010.

(ii) Exception

The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1320a-7j(g) of this title are implemented.

(2) Review and modification of website

(A) In general

The Secretary shall establish a process--

(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before March 23, 2010; and

(ii) not later than 1 year after March 23, 2010, to modify or revamp such website in accordance with the review conducted under clause (i).

(B) Consultation

In conducting the review under subparagraph (A)(i), the Secretary shall consult with--

(i) State long-term care ombudsman programs;

(ii) consumer advocacy groups;

(iii) provider stakeholder groups;

(iv) skilled nursing facility employees and their representatives; and

(v) any other representatives of programs or groups the Secretary determines appropriate.

(j) Construction

Where requirements or obligations under this section are identical to those provided under section 1395i-3 of this title, the fulfillment of those requirements or obligations under section 1395i-3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

Florida Resident Rights¹

400.022. Residents' rights

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

¹ FL ST § 400.022.

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.
4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).
5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.
 - (i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.
 - (j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.
 - (k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.
 - (l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.
 - (m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).
 - (n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.
 - (o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.
 - (p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social

Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

Compliance and Ethics Manual
Receipt Certification and Acknowledgement

I certify as follows:

I have received a copy of North Lake Rehabilitation and Health Center Compliance and Ethics Manual (the “Manual”);

It is my responsibility to read and understand the content of the Manual;

If I have any questions I shall timely ask the Chief Compliance Officer (“CCO”) and/or a member of the Compliance and Ethics Committee (the “Committee”) for guidance;

If I am afraid of retaliation or do not get satisfactory assistance, I will ask for assistance anonymously through the Compliance and Ethics Hotline (the “Hotline”) or the Compliance and Ethics Online System (the “Online System”); and

I will do my best to faithfully follow the code of conduct and policies and procedures described in the Manual and I will report any suspected violations to a member of the Committee and/or through the Hotline or Online System.

Signature

Date

Printed Name