New Reporting Requirements Now Include Independent Contractors by Kevin R. McManaman

Nebraska employers should now perform new hire reporting when hiring independent contractors. Effective January 1, 2010, the definition of "employee" under the Nebraska New Hire Reporting Act, for the first time, expressly includes "independent contractors." Nebraska law now requires all employers to report any newly hired or rehired employees and independent contractors. Reporting includes listing the employer or independent contractor’s name, address, social security number, and date of hire or rehire. The report must be made within 20 days of the date of hire or rehire. Nebraska employers must make this report electronically. These findings will then be electronically synthesized, organized, and loaded to the CMS. When doing onsite preparations, QIS team members will analyze alphabetical resident census with room numbers and units in addition to a list of new admissions over the last thirty days. There will also be substantial changes to offsite preparation, the initial tour process, sample selection, and to various other aspects of the survey process. QIS surveys will involve two stages. Each stage will involve three steps. Step one will be "computer generated sampling." Step two will be "investigation." Step three will be "synthesis." The first stage involves a preliminary investigation of regulatory areas and stage two involves an in-depth investigation into deficiencies identified during stage one. The system will be implemented in phases across the state, using "teams" to do one area of the state at a time. This will take two to two and a half years to implement fully. Because this process will be more objective, driven by MDS data, and feature larger sample sizes, it will likely result in a higher rate of deficiencies in places of any "FVZ" comments surveyors presently generate. More information regarding the QIS process may be found at the Nebraska Department of Health and Human Services website: http://www.dbhs.ne.gov/crl/hc/certification.htm.

For More Information Call Us at: 800-714-3439

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Nebraska law requires facilities to keep various records in addition to medical records. Under Title 175 Chapter 12006:10E of the Administrative Code, facilities must “... maintain records pertaining to resident personal funds accounts as applicable, financial matters, resident possessions, and statements of resident rights and responsibilities.” In addition, facilities must inventory resident possessions at the time of admission, update as necessary, and account for all possessions upon discharge. Facilities must also maintain chronological resident registers. If kept on computers, these records may be able to be retrieved in case of a fire. Employers are advised to seek advice from their attorney on how to proceed given the myriad of unanswered questions arising from this amendment.

**Smoking Policies Should Be Followed**

By Kevin R. McNamara

A Texas skilled nursing facility recently was sued for failing to follow its own rules on smoking, or to assess ability to follow established guidelines. In that case, the facility’s policies reportedly prohibited the resident’s roommate from having a lighter inside the nursing home which the roommate allegedly used to start a fire, causing third-degree burns and eventual death. The allegations were that the Defender Nursing home had previously known or should have known that failure to monitor and assess the roommate’s adherence to smoking policies posed a serious threat to disabled residents.

**Accountability and other Requirements Under PPACA, Subtitle B**

By Tammy Schroeder

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA). The PPACA includes ten titles and Title VI, “Transparency and Pro- gram Integrity” contains provisions that are similar to legislation that Senators Chuck Grassley (R-IA) and Herb Kohl (D-WI) have been trying to get passed for a couple of years now. Subtitle B looks to improve the transpar- ency of and access to nursing home informa- tion in order to improve nursing home ac- countability. The following will identify who “shall exercises operational, financial, or managerial control over a facility or part of a facility, or provides policies and procedures on or financial and physical services to its operations, leases or sublets property to sub- title B as well as some definitions for certain terms used.

The transparency provisions of the PPACA require facilities to report information to the Secretary of the Department of Health and Human Services (HHS), the HHS Inspector General, the facility’s state and in some cases, the ombudsman. There are 4 things the facility is required to disclose a wide variety of third parties, especially consultants and advisors which include accountants, payroll services and bookkeeping companies. Subtitle B defines “organizational struc- ture” to a) registration and its owners, b) a limited liability company and its members and managers, including their percentage of ownership interest, c) a general partnership and its partners, (d) a limited partnership and its partners with at least a 5% ownership interest and (e) a trust or other entity that the facility, or own a whole or part interest at least 5% of the value of the property (including a mortgage, deed, or other lien that is secured by the entity or by the property or assets), or (f) provides manage- ment or administrative services, management or clinical consulting services, or accounting or financial services.” (PPACA §6101(c)(1)(AA)- (II) Under this definition, a facility is required to disclose information to the Secretary of the Department of Health and Human Services, the HHS Inspector General, and the facility’s state and federal ombudsman.

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**Accountability and other Requirements Under PPACA, Subtitle B**

By Tammy Schroeder

One of the main purposes be- hind Senators Grassley’s and Klobuchar’s push for the Nursing Home Transparency Improvement Act, is to make sure that nursing homes must turn in to the HHS their own plans for meeting those requirements. Under the PPACA, the Nursing Home Compare website will be required to have data regarding staffing, links to state inspection reports, a standardized complaint form on the website and a list of insurance and financial service providers the facility serves. The PPACA will require organiza- tions who own 5 or more facilities to have a formal compliance and ethics program along with written policies and procedures that all employees are to follow. HHS will have to have established standards for quality assurance and performance improvement of nurs- ing homes published by December 31, 2011, and then a year after that, nursing homes must turn in to HHS data that shows whether the data has met the performance goals. Facilities will be required to re- port how much is spent on wages and benefits to direct care staff and will need to be broken down into RN’s, LPN’s, CNA’s and other medical and therapy staff. HHS will then categorize the amounts and set spending limits on direct care, indirect care, administrative services and capital assets. Another provision of the PPACA will be that facilities must submit to HHS their direct care staffing infor- mation. This information will help to indicate the type of work a certified employee does, include resident census and resident case mix data, have regular report schedule and provide employee turnover, tenure and hours of care.

**PPACA, Subtitle B and Who Must Now be Disclosed**

By Tammy Schroeder

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