

Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-18-NH

**DATE:** April 1, 2011  
**TO:** State Survey Agency Directors  
**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Final Rule for Skilled Nursing Facilities (SNF) and Nursing Facilities (NF) -  
“Notification of Facility Closure Centers for Medicare & Medicaid Services  
(CMS)-3230-IFC”

**Memorandum Summary**

- **Notification of Facility Closure:** As part of the “Patient Protection and Affordable Care Act” (the Affordable Care Act), Federal Regulations have been released which detail who is to be notified when a Skilled Nursing Facility (SNF) or Nursing Facility (NF) closes and required timeframes.
- **Relocation:** The new regulations stipulate that a plan for relocation of residents be developed by the facility; this plan must be submitted and approved by the State Agency before closure of a nursing home.
- **Sanctions:** An administrator who fails to comply with the requirements will be subject to a civil monetary penalty.

The Interim Final Rule with comment “Notification of Facility Closure” was published in the Federal Register on Friday, February 18, 2011; the public has 60 days to comment on the interim final rule. The “Patient Protection and Affordable Care Act” under section 1128I (h) mandates specific procedures in the event of a SNF or (NF) closure. These procedures help protect the resident, the resident’s family, and visitors because they require the facility to provide an organized plan that allows the resident, family, and visitors to make the necessary adjustments within a reasonable time frame.

Section 6113 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111-148), enacted on March 23, 2010, amended sections 1128I and 1819(h) of the Social Security Act to incorporate specific provisions. These provisions state that individuals serving as the administrator of a SNF or NF must provide written notification of the impending closure and a plan for the relocation of residents at least 60 days prior to the impending closure; or, if the Secretary terminates the facility’s participation in Medicare or Medicaid, not later than the date

the Secretary determines appropriate when administrators do not meet Medicare and Medicaid participation requirements.

These regulations will:

- Require the administrator of the facility to provide written notification prior to impending closure to the Secretary (Per the 1864 Mission & Priorities document, CMS will be designating the State Survey Agency to act on the Secretary's behalf). The administrator is also required to notify the State Medicaid Agency, the State Long Term Care ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties regarding the transfer and adequate relocation of the residents specified in the plan for the SNF or NF closure.
- Require the administrator to give notice 60 days prior to the date of closure; or in the case of a facility where the Secretary or the State Medicaid Agency terminates the facility's participation in the Medicare and/or Medicaid programs, not later than the date that the Secretary determines appropriate.
- Ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted.
- Ensure that the plan provides for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.
- Ensure that the facility must have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure.
- Ensure that when the State Medicaid Agency or CMS terminates a facility's provider agreement, the State Survey Agency will arrange for the safe and orderly transfer of all Medicare and Medicaid residents to another facility.
- Require that any individual who is or was the administrator of a facility and fails or failed to comply with the requirements in the rule will be subject to civil monetary penalty (CMP) as follows: A minimum of \$500 for the first offense; a minimum of \$1,500 for the second offense; and a minimum of \$3,000 for the third and subsequent offenses.
- Require that an administrator could be subject to higher amounts of CMPs (not to exceed \$100,000) based on criteria that CMS will identify in interpretative guidelines.

We have attached a copy of the interim final rule for your information and reference.

If you have any questions regarding this memorandum, please contact Jay Weinstein at [Jay.Weinstein@CMS.hhs.gov](mailto:Jay.Weinstein@CMS.hhs.gov).

**Effective Date:** Immediately. This information should be communicated with all survey and certification staff, the State Medicaid Agency, LTC ombudsman, their managers and the State/Regional Office training coordinators within 30 days.

/s/

Thomas E. Hamilton

Attachment: Federal Register Notice CMS-3230-IFC

cc: Survey and Certification Regional Office Management