



## KEY PROVIDER ISSUES IN HEALTH CARE REFORM

### July 2010 ELDER CARE PROVISIONS

The health care reform law included provisions to provide additional protection to those in long-term care facilities. The Elder Justice Act of the law authorizes funding for adult protective services; establishes an advisory board on elder abuse, neglect and exploitation; provides guidelines for reporting of suspected crimes and abuse in long-term care facilities; as well as grants and incentives for long-term care staffing.

#### **Funding Opportunities**

*Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers* – Grants to establish and operate stationary and mobile forensics centers, to develop forensic expertise regarding, and provide services relating to, elder abuse, neglect, and exploitation. There are appropriations as follows: \$4 million for 2011; \$6 million for 2012; and \$8 million for years 2013 and 2014.

*Enhancement of Long-Term Care* – Grants for individuals to train for, seek, and maintain employment providing direct care in long-term care. Grants to long-term care facilities to assist in offsetting the cost of purchasing, leasing, developing, and implementing certified EHR technology. There are appropriations as follows: \$20 million in 2011; \$17.5 million in 2012; and \$15 million for years 2013 and 2014.

*National Demonstration Projects on Culture Change and Use of Information Technology in Nursing Homes* – Under each demonstration project conducted under this section, one or more grants will be awarded to facility-based settings for the development of best practices. There are appropriations for sums as may be necessary.

#### **Elder Justice Coordinating Council**

The law establishes a 27 member *Elder Justice Coordinating Council* that will make short- and long-term recommendations to the Secretary. The advisory council will develop plans for the coordination of activities of federal, state, local and private agencies and entities relating to elder abuse, neglect and exploitation.

#### **Reporting of Crimes and Abuse**

The *Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities* provision of the law requires each individual owner, operator, employee, manager, agent, or contractor of a long-term care facility that receives at least \$10,000 in federal funds annually under the Social Security Act, to report to

the Secretary and one or more local law enforcement entities, any reasonable suspicion of a crime against anyone who is a resident, or is receiving care from the facility.

The law defines a long-term care facility as a “residential care provider that arranges for, or directly provides, long-term care.” Based on the definition of long-term care facility in the law, skilled nursing facilities that receive federal funding must comply with the new abuse reporting requirements. The law does not clearly state whether the definition will also apply to other residential facilities that receive federal funding, such as in-patient hospice or assisted living.

Under the law, abuse or crimes reporting requirements must be met in a very short timeframe. If the event results in serious bodily injury, the witnessing individual is required to report the suspicion immediately, but not later than two hours after forming the suspicion of the crime. If serious bodily injury does not occur, the suspicion must be reported within twenty-four hours. Any person with first-hand knowledge or other information must fulfill the reporting obligations or be subject to sanctions. The penalties for non-compliance with the law include civil monetary penalties reaching up to \$200,000. If the failure to report the abuse exacerbates harm to the victim, or results in harm to another individual, then the maximum civil monetary penalty can be increased to \$300,000. Additionally, the Secretary may exclude the covered individual from participation in federal health care programs. It should be noted, penalties are not aimed at the person committing the crime, rather at each witness to the crime.

*For information, visit [www.strategichealthcare.net](http://www.strategichealthcare.net), or contact Marian Lowe, Partner, Strategic Health Care, at 202-266-2606 or at [marian.lowe@shcare.net](mailto:marian.lowe@shcare.net).*