

## Long-Term Care Survey Alert

### Medicare Reform: Check Out Survey-Friendly Provisions In New Medicare Reform Law

#### Congress recognizes need for faster appeals in certain cases.

You have to dig a bit to find them, but the mammoth Medicare reform law includes some provisions that should help in the survey arena.

The **Medicare Prescription Drug, Improvement, and Modernization Act of 2003** directs the Secretary of Health & Human Services to develop "expedited appeals" for nursing facilities hit with program termination or denial of payments for new admissions. The provision applies to appeals filed on or after Oct. 1, 2004.

While the law doesn't define "expedited," there's lots of room for picking up the pace of appeals for providers about to lose their payment stream. "What happens now is that a successful appeal of termination becomes meaningless due to the passage of time," says **Howard Sollins**, attorney with **Ober/Kaler** in Baltimore, MD.. "Facilities that do prevail upon appeal win the battle but lose the war because they're out of business."

In addition, the law authorizes the **Centers for Medicare & Medicaid Services** to waive a facility's loss of nurse aide training in cases that did not involve quality-of-care deficiencies, notes **Barbara Gay**, director of information for the **American Association of Homes & Services for the Aging**. "The facility would still have to pay the civil monetary penalty, however," she adds.

AAHSA is checking into what non-quality of care related deficiencies might warrant serious enough sanctions to lose nurse aide training privileges. The trade group believes it's counterproductive for a facility struggling with quality of care to lose nurse aide training privileges at a time when the facility really needs more staffing and training.

#### Capitalize on New Payment Resources

The Medicare reform law also offers some payment relief, which can translate into improved resident and survey outcomes, as follows:

1. Two-year moratorium on the rehab therapy cap. The bill zaps the annual Part B therapy cap for another two years, which means facilities will have more resources to help residents achieve their functional potential. **Billing Alert:** Some residents exceeded the cap in place from Sept. 1 through Dec. 7, 2003, Gay notes. Yet the limits do not apply to claims received on or after Dec. 8, 2003 through Dec. 31, 2005, regardless of the date of services, according to CMS transmittal 42 (change request 3005).
2. Higher RUGs payment for AIDS patients. The law ups RUGs reimbursement by 128 percent for SNFs caring for AIDS patients, effective Oct. 1, 2004. "This is not the first year that Congress has increased AIDS reimbursement for nursing homes," notes **Jeff Smokler**, spokesman for the **American Health Care Association**. "AHCA is glad the administration recognizes the need to meet the costs of this special population in nursing homes," Smokler tells Eli.

Editor's Note: Read the new Medicare law (HR 1) at <http://thomas.loc.gov>.