

April 14, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-6084-P
P.O. Box 8010
Baltimore, MD 21244-1810

Submitted electronically via <https://www.regulations.gov/commenton/CMS-2023-0031-0001>

Re: Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs) (CMS-6084-P, published February 15, 2023)

Dear Administrator Brooks-LaSure:

On behalf of the National Association of Social Workers (NASW), I am submitting comments on the notice of proposed rulemaking (NPRM) addressing disclosures of ownership and additional disclosable parties information for skilled nursing facilities (SNFs) and nursing facilities (NFs) (CMS-6084-P).

Founded in 1955, NASW is the largest membership organization of professional social workers in the United States, representing more than 110,000 social workers. We work to enhance the professional growth and development of our members, to create and maintain professional standards, and to advance sound social policies.

Social workers play an essential role in serving Medicare and Medicaid beneficiaries across an array of settings, including SNFs and NFs (hereafter also referred to as “nursing homes,” “nursing facilities,” or “facilities,” consistent with the NPRM). Nursing home social workers are dedicated professionals whose daily efforts enhance the quality of life and quality of care for residents. Yet, their efforts are hampered by daunting systemic challenges, including multiple ownership layers and the financial involvement of other stakeholders for whom profit—not resident well-being—is the primary goal.

Thus, NASW thanks CMS for proposing regulations to implement Section 6101 of the Affordable Care Act (ACA), which requires nursing homes to disclose ownership, managerial, and other information. This ACA requirement (which was to have been implemented within two years of enactment of the landmark health care law) is essential to improving quality of care and quality of life for nursing home residents. Additionally, we recommend additional changes to the regulations to reflect the practices in which facility owners and operators currently engage. These changes are needed to ensure that CMS has sufficient data to monitor and hold accountable nursing homes.

Accordingly, our comments address the following topics:

- link between ownership, transparency, and quality
- legal authority to require disclosure of individuals behind nursing homes, regardless of each facility's ownership structure
- public support for greater transparency of ownership and related party information
- recommendations to enhance the Section 6101 regulations

Link Between Ownership, Transparency, and Quality

Nursing home ownership and management practices have evolved drastically since the enactment of the Medicare and Medicaid programs in 1965. At that time, most facilities were owned by individuals, nonprofit and religious organizations, public entities, and for-profit companies. In subsequent years, ownership by multistate corporate chains (each using a common name) became common. Since the 1990s, private investment in nursing homes has become increasingly prevalent. Yet, private investors—including private equity firms—are not required to disclose as much information as publicly traded companies must do. Consequently, secrecy in regard to facility ownership and management has become the norm.

As a result of the Nursing Home Reform Act (hereafter, “the Reform Law”), enacted in 1987, nursing facilities are responsible for providing high-quality care to, and maintaining or enhancing the quality of life for, each resident.¹ The Reform Law also instituted multiple resident rights, including the right to express “grievances with respect to treatment or care that is (or fails to be) furnished.” The long-term care ombudsman program provides invaluable assistance to residents and resident representatives in fielding, reporting, and helping to resolve concerns related to quality of care and quality of life (among other topics). State licensing boards also field such concerns, and CMS surveyors can play a role. Yet, it is difficult—if not impossible—for residents, resident representatives, staff, attorneys, and external entities (even state boards and CMS) to hold facilities accountable when the ownership, operations, and management of such facilities are not readily evident. Similarly, without comprehensive data about the individuals and organizations behind nursing homes, states and CMS cannot prevent owners and operators with poor track records either from expanding into other facilities or from diverting funds away from resident care and into profits without clear records of ownership, operations, and management.

¹ Nursing Home Reform Act of 1987, 42 U.S.C. §1395i-3(f)(1).

[https://uscode.house.gov/view.xhtml?req=\(title:42%20section:1396r%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:1396r%20edition:prelim))

The goal of the Medicare Provider Enrollment, Chain, and Ownership System (PECOS) is to facilitate communication and data accuracy between providers and CMS. In 2010, a U.S. Government Accountability Office (GAO) study of PECOS in relationship to nursing homes owned by private investment firms found that “CMS’s ability to determine the accuracy and completeness of the reported ownership data [was] limited.”² The GAO offered 11 recommendations encouraging CMS and the U.S. Department of Health and Human Services (HHS) to “consider requiring the reporting of certain information to make nursing home ownership structures more understandable and take other actions to improve the accuracy and dissemination of these data as HHS implements new ownership reporting requirements in the [ACA].” Although HHS concurred with all of the report recommendations, only six of the GAO recommendations have been implemented to date.

The current NPRM signifies a step toward improving reporting of ownership information by nursing homes. Yet, disclosure requirements and CMS oversight must be strengthened to address transparency and accountability in the nursing home industry as it exists today. Facilities use complex ownership structures to obscure ownership information from states and the public, as recommended in the journal of the American Health Lawyers Association in 2003:

In the context of nursing home ownership and operation, legal entities such as corporations, limited liability companies, and limited liability partnerships can be formed to benefit nursing home companies by limiting the financial liability and Medicare and Medicaid exclusion exposure of the real-estate investors and business owners.³

Moreover, owners use multiple names, thereby concealing their ownership of nursing homes and their records of poor care. Examples include private equity firm Portopiccolo’s operation of more than 100 facilities (as of 2020) under multiple names (including Accordius, Pelican Health, and Orchid Cove)^{4,5,6} and attempts by Ephram Lahasky and another New Yorker to buy

² U.S. Government Accountability Office. (2010). *Nursing homes: Complexity of private investment purchases demonstrates need for CMS to improve the usability and completeness of ownership data* (GAO-10-710). <http://www.gao.gov/products/GAO-10-710> [Quotes from p. 22]

³ Casson, J. E., & McMillen, J. (2003). Protecting nursing home companies: Limiting liability through corporate restructuring. *Journal of Health Law*, 36(4), 577–613. [Full text: <http://briuswatch.org/wp-content/uploads/2016/06/Casson-J.-Protecting-Nursing-Home-Companies-2003.pdf>]

⁴ Laise, E. (2020, August 6). As the pandemic struck, a private-equity firm went on a nursing home buying spree. *Barron’s*. https://www.barrons.com/articles/as-the-pandemic-struck-a-private-equity-firm-went-on-a-nursing-home-buying-spre-51596723053?mod=hp_DAY_Theme_1_1

⁵ Public Citizen. (2022). *Is it private equity? We can’t see. Federal database on owners of nursing homes is incomplete and out-of-compliance with the law*. <https://www.citizen.org/article/nursing-home-transparency/>

⁶ Tan, R., & Chason, R. (2020, December 21). An investment firm snapped up nursing homes during the pandemic. Employees say care suffered. *Washington Post*. https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html

Vermont nursing facilities by using the name of Lahasky's wife to hide his record of poor care in Pennsylvania.⁷

Because of these practices, states do not know which principals are involved in a corporation, especially when owners create a new corporation with a new name to apply for a state license. This lack of knowledge enables facility owners to act with impunity, with dire consequences for residents and staff. For example, Jon Robertson formed three companies in three states at different periods of time. All were problematic: His Phoenix Health Group, which acquired nursing homes in California, provided poor care to residents and were cited with numerous deficiencies. The company filed for bankruptcy and closed its facilities following a period in which, "as the money began to roll in from Medicare and Medi-Cal payments to the more than 300 residents at the facilities, Robertson, who had long displayed a fondness for life's pricier pleasures—from Harley-Davidson motorcycles to diamond rings—[had begun] to spend conspicuously."⁸ Despite this track record, Robertson went on to serve as president of Infinia Inc., a company owned by his brother, which operated nursing homes in five states. While in that role, Robertson filed a false tax return that failed to report the large sums of company funds he had transferred to his personal accounts.⁹ Even that incident didn't stop Robertson from forming the Utah-based Deseret Health Group, which obtained state licenses and federal approval to operate Medicare- and Medicaid-certified nursing homes in several states. Nine years after Deseret's founding, the company stopped paying for food, medical supplies, and workers' wages and benefits in at least seven nursing facilities in four states. Those states had to take control of the facilities, whether by court receivership or other means.¹⁰ Yet another example of ownership-related problems was the purchase and conversion to for-profit ownership a Champaign County, Illinois, county nursing facility by William Rothner's Altitude Health Services, Inc., and Extended Care Clinical, LLC.^{11,12,13,14}

⁷ Simmons-Ritchie, D. (2018, November 15). Special investigation: Worst nursing homes continue to fail the frail despite lawsuit, promises. *Patriot-News*. <https://www.pennlive.com/news/2018/11/pennlive-special-investigation-still-failing-the-frail.html>

⁸ Slater, E. (1997, October 23). Entrepreneur fades from view as empire collapses. *Los Angeles Times*. <https://www.latimes.com/archives/la-xpm-1997-oct-23-mn-45876-story.html> [Quote from para. 16]

⁹ Lawson, H. B. (2015, May 6). Nursing home faces closure. *Saratoga Sun*. <https://www.saratogasun.com/story/2015/05/06/news/nursing-home-faces-closure/3898.html>

¹⁰ Lawson, H. B. (2015, May 6). Nursing home faces closure. *Saratoga Sun*. <https://www.saratogasun.com/story/2015/05/06/news/nursing-home-faces-closure/3898.html>

¹¹ Champaign County Health Care Consumers. (2018, May 21). *Research on bidder for Champaign County nursing homes*. <https://www.healthcareconsumers.org/research-on-bidder-for-champaign-county-nursing-home/>

¹² Champaign County Health Care Consumers. (2018, October 29). *Champaign County nursing home will not be owned by the companies approved by the county board*. <https://www.healthcareconsumers.org/champaign-county-nursing-home-will-not-be-owned-by-the-companies-approved-by-the-county-board/>

¹³ Meadows, J. (2018, October 29). *Watchdog group says applicant to buy county nursing home switched companies*. Illinois Public Media (NPR). <https://will.illinois.edu/news/story/watchdog-group-says-applicant-to-buy-county-nursing-home-switched-companies>

¹⁴ Meadows, J. (2019, April 3). *Champaign County nursing home sale finalized*. Illinois Public Media (NPR). <https://will.illinois.edu/news/story/champaign-county-nursing-home-sale-finalized>

Furthermore, whereas state rules primarily address ownership and changes in ownership, facilities can be managed by different corporations, without state approval, even while a change in ownership is pending or denied. For example, in the previously cited Vermont situation, the buyers managed the facilities while the state decided whether to grant licenses to those same people.¹⁵ Similarly, although California denied licenses to potential buyers (such as Crystal Solórzano’s ReNew Health^{16,17} and Shlomo Rechnitz¹⁸) with poor records in other facilities they own in the state, the owners obtained control—and, consequently, federal reimbursement—as managers of those facilities. Another example is the Texas-based PC Hayes Management company’s continued operation of the Minneapolis nursing home Twin City Gardens with neither liability insurance nor a state license.¹⁹

The preceding scenarios illustrate the types of ownership problems Section 6101 was created to address. They also demonstrate the ways in which private owners increasingly use various legal configurations to own, operate, and manage nursing facilities. The federal government must mandate that owners and operators provide comprehensive, meaningful, and accurate ownership information, down to the level of individuals, on a timely and regular basis. Moreover, the government must effectively audit this information and enforce meaningful penalties for noncompliance.

Legal Authority to Require Disclosure of Individuals Behind Nursing Homes, Regardless of Each Facility’s Ownership Structure

Section 6101 of the ACA provides broad authority to CMS to require comprehensive disclosure of ownership information by requiring identification of “each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility” and “each person or entity who is an additional disclosable party of the facility.”²⁰ Moreover, the 1987 Reform Law gives the Secretary of HHS full and broad authority to require meaningful disclosure of all individuals who own or manage a piece (or pieces) of a nursing home business, regardless of the nursing facility’s official ownership structure:

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the

¹⁵ Wiener, J. (2021, April 16). California oversight of nursing homes called “befuddling,” “broken.” *CalMatters*. <https://calmatters.org/projects/california-oversight-nursing-homes/>

¹⁶ Yu, E., & Mendelson, A. (2021, April 6). Immediate jeopardy: Death and neglect inside a troubled California nursing home chain. *LAist*. <https://laist.com/special-reports/nursing-homes-renew.php>

¹⁷ Vivona, T. S. (2020, April 24). *Letter to Crystal Solórzano re: notice of denial of application*. California Department of Health, Center for Health Care Quality. <https://www.documentcloud.org/documents/20533881-change-of-ownership-denial-sequoias-post-acute-llc-04-24-2020->

¹⁸ Wiener, J. (2021, April 16). California oversight of nursing homes called “befuddling,” “broken.” *CalMatters*. <https://calmatters.org/projects/california-oversight-nursing-homes/>

¹⁹ Howatt, G. (2021, October 25). State regulators take control of Minneapolis nursing home. *Star Tribune*. <https://www.startribune.com/state-regulators-take-control-of-minneapolis-nursing-home/600109876/>

²⁰ Patient Protection and Affordable Care Act § 6101, 42 U.S.C. § 1124(c)(2)(A)(ii)(II–III). [https://www.ssa.gov/OP_Home/ssact/title11/1124.htm#:~:text=\(C\)%20Managing%20employee,or%20operations%20of%20the%20facility](https://www.ssa.gov/OP_Home/ssact/title11/1124.htm#:~:text=(C)%20Managing%20employee,or%20operations%20of%20the%20facility)

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.²¹

This legal authority was underscored by the U.S. Department of Justice’s 2015 Individual Accountability Policy, which recognized both the importance of and the need for personal accountability in corporate criminal matters.^{22,23} Furthermore, in March 2023 President Biden called for accountability for the individuals responsible for recent bank failures.²⁴ This recent statement conveys the Administration’s commitment to hold accountable the individuals behind corporate wrongdoing.

Public Support for Greater Transparency of Ownership and Related Party Information

Four sources indicate growing public support for greater transparency of ownership and related party information:

- *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*, an April 2022 report issued by the National Academies of Sciences, Engineering and Medicine (NASEM), identified the importance of ownership information to the public. Explaining that “current data sources do not allow for an examination of performance across nursing homes by a common owner” and that facilities use “related-party transactions or unrelated business entities to hide profits,” the report included the following recommendations:

RECOMMENDATION 3A: HHS should collect, audit, and make publicly available detailed facility-level data on the finances, operations, and ownership of all nursing homes (e.g., through Medicare and Medicaid cost reports and data from Medicare’s Provider Enrollment, Chain, and Ownership System).

- HHS should ensure that the data allow the assessment of staffing patterns, deficiencies, financial arrangements and payments, related party entities, corporate structures, and objective quality indicators by common owner (i.e., chain and multi-facility owners) and management company.

... RECOMMENDATION 3B: HHS should ensure that accurate and comprehensive data on the finances, operations, and ownership of all nursing

²¹ Nursing Home Reform Act of 1987, 42 U.S.C. §1395i-3(f)(1).

[https://uscode.house.gov/view.xhtml?req=\(title:42%20section:1396r%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:1396r%20edition:prelim)) [The Medicaid provisions in the law, codified at 42 U.S.C. §1396r(f)(1), are substantively identical.]

²² Yates, S. Q. (2015, September 9). *Individual accountability for corporate wrongdoing* [Memorandum]. U.S. Department of Justice, Office of the Deputy Attorney General.
<https://www.justice.gov/archives/dag/file/769036/download>

²³ U.S. Department of Justice. (2023). Principles for federal prosecution of business organizations. In *Justice Manual* (9-28.000). <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations>

²⁴ The White House. (2023, March 17). *Statement from President Joe Biden on holding senior bank executives accountable*. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/17/statement-from-the-president-on-holding-senior-bank-executives-accountable/>

homes are available in a real-time, readily usable, and searchable database so that consumers, payers, researchers, and federal and state regulators are able to use the data to:

- Evaluate and track the quality of care for facilities with common ownership or management company.
 - Assess the impact of nursing home real estate ownership models and related-party transactions on the quality of care.²⁵
- The March 2023 report of the Medicaid and CHIP Payment and Access Commission (MACPAC) included the following recommendations:
 - collection of “comprehensive data on nursing facility finances necessary to compare Medicaid payments to the costs of care for Medicaid covered residents”
 - “more transparency of related-party transactions [to] help shed light on practices that may inflate costs above what they would be if a facility were operated more economically and efficiently”
 - “more transparency of real estate ownership models ... especially arrangements in which the facility real estate is owned by one entity and then leased to another”; PECOS data “do not include information on the ultimate owners of some chains, and they do not separately identify specific types of arrangements that stakeholders have raised concerns about, such as real-estate investment trusts and private equity ownership ... [and] do not identify public or private ownership”
 - “making the payment and cost data that are collected publicly available in a standard format [to] help improve transparency and enable further analyses by other researchers ... particularly ... for CMS to identify facilities by their CMS certification numbers (CCNs), [which] ... are used to identify facilities on CMS’s Care Compare website [and] on Medicare cost reports”²⁶
 - A January 2023 GAO report found that specific and detailed nursing home ownership information is important for consumers because for-profit and chain-owned facilities tend to have fewer staff and provide poorer care to residents than do other types of facilities.²⁷ Despite the importance of ownership information, the information reported on Care Compare “is not sufficiently transparent for consumers because it uses

²⁵ The National Academies of Sciences, Engineering, and Medicine. (2022). *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*. The National Academies Press. <https://doi.org/10.17226/26526> [Quote from p. 439]

²⁶ Medicaid Payment Advisory Commission (2023, March). Principles for assessing Medicaid nursing facility payment policies. In *Report to Congress on Medicaid and CHIP* (pp. 27–60). <https://www.macpac.gov/wp-content/uploads/2023/03/Chapter-2-Principles-for-Assessing-Medicaid-Nursing-Facility-Payment-Policies.pdf> [Quotes from p. 49]

²⁷ U.S. Government Accountability Office. (2023). *Nursing homes: CMS should make ownership information more transparent for consumers* (GAO-23-104813). <https://www.gao.gov/assets/gao-23-104813.pdf> [Quote from pp. 13, 18, & 22]

terminology that consumers may not understand and does not allow consumers to identify relationships and patterns across nursing homes, among other limitations.” The GAO recommends providing “a user-friendly list of all nursing homes under common ownership, along with information on their quality ratings, would allow consumers to observe patterns in quality across facilities with common ownership.” The report also includes an example of how to display quality patterns for facilities under common ownership.

- A February 2022 report by Faegre Drinker found “no central repository of SNF regulatory information from which meaningful transparency can be derived” and offered four recommendations:
 - “a federal ‘source of truth’”—a “publicly available SNF ownership file from information that is already required and reported in PECOS”
 - reporting “organizational and individual names in a uniform manner”
 - charging and funding CMS or another agency “with regular data integrity oversight of each federal system”
 - assigning responsibility to CMS or another agency “for establishing a SNF data transparency strategic plan with an appropriation to do so”²⁸

Recommendations to Enhance the Section 6101 Regulations

Although the proposed rule is a step in the right direction, it does not address multiple topics essential to the collection and reporting of information about nursing home ownership, operations, and finances. Routine, timely disclosure of comprehensive, accurate, and meaningful information will not only inform consumer decision making regarding facilities, but will also equip CMS to improve its oversight and enforcement activities. Accordingly, NASW offers the following recommendations.

DEFINITIONS

The proposed rule lacks definitions essential to identifying potentially problematic patterns in ownership, financial, and managerial control. NASW recommends that CMS incorporate definitions for the following terms, as they relate to nursing home ownership, in the final rule.

Parent company or parent organization: NASW supports a definition specifying that a company or organization is the legal entity owning a controlling interest in another organization, either directly or through one or more intermediaries. The parent organization is the “ultimate” parent, or the top entity in a hierarchy (which may include other parent organizations) of subsidiary organizations that is not itself a subsidiary of any corporation. A legal entity may be its own parent organization if it is not a subsidiary of any other organization. The disclosable

²⁸ Adelberg, M. S., Dobosenski, A. T., & Predergast, E. M. (2022). *The need for data transparency in skilled nursing facilities: Research, analysis, and recommendations*. <https://www.faegredrinker.com/-/media/files/linked-articles/the-need-for-data-transparency-in-skilled-nursing-facilities.pdf> [Quote from pp. 2, 13, 14, & 15]

party requirements should include not only the parent company, but also all relevant entities of each nursing home company.

Related party: In its *Medicare Provider Reimbursement Manual*,²⁹ CMS stated that it is common for nursing home owners to create related parties in which they legally have no ownership interest. CMS has stated further that, despite this lack of ownership interest, the organization or entity is still a “related party” because of the element of control or because the purpose of the related party purpose is solely to benefit the owner. Consequently, CMS needs to define the term and to require timely disclosure of related parties. Medicare’s principles of reasonable cost reimbursement define “related organizations” in this manner:

- (1) Related to the provider. Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.
- (2) Common ownership. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.
- (3) Control. Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.³⁰

More specifically, NASW supports the following definitions:

Operational control:

- a) An individual or entity that has the power, directly or indirectly, to influence or direct the actions or policies of any part of either the facility or an organization that is an additional disclosable party as defined in this section; or
- b) An individual or entity has the power (directly or indirectly) to choose, appoint, or terminate (i) any member of the Board of Directors or management committee, (ii) any manager or managing member, (iii) any member of senior management of the skilled nursing facility or its business, its chain, or its parent company or corporation or (iv) any other person or entity who participates in the operational or financial management or oversight of the facility or its business.

Financial control:

- a) An individual or entity that has the power, directly or indirectly, to influence, direct, or manage the finances of facility or an additional disclosable party as defined in this section; or
- b) Receives or is entitled to receive (directly or indirectly) 5 percent or more of any of the profits or revenues of the skilled nursing facility, its business, or its properties during any time period.

²⁹ Centers for Medicare & Medicaid Services. (n.d.). Cost to related organizations (Rev. 272). In *Provider reimbursement manual—Part 1* (Publication 15-1). <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021929>

³⁰ Principles of Reasonable Cost Reimbursement, 42 C.F.R. §413.7(b)(1–3) (2016). <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-413/subpart-A/section-413.17>

- c) Directly or indirectly owns or controls an equity interest in the skilled nursing facility, its business, or its properties that is equal to or exceeds 5 percent of the total outstanding equity interest of all equity owners in the skilled nursing facility, its business, or its properties.

Managerial control: An individual or entity that has the power, directly or indirectly, to influence or direct day-to-day operation of an institution, organization, or agency, either under contract or through some other arrangement. This includes any individual or entity that is a related organization under 42 C.F.R. § 413.17.

Additional disclosable party: In lieu of the preceding suggestion to add a definition for “parent company or parent organization,” CMS could add the following text to the definition of “additional disclosable party” in relation to a nursing home:

Directly or indirectly owns or controls an equity interest in the skilled nursing facility [or nursing facility], its business, its parent company or chain, or any other subsidiaries (including properties) that is equal to or exceeds five percent of the total outstanding equity interest of all equity owners in the skilled nursing facility [or nursing facility], its business, or its parent company or chain, or any other subsidiaries (including properties).

Moreover, NASW encourages CMS to modify the definition of “additional disclosable party” by noting that it includes any person or entity who engages in one of the following activities:

- “exercises any level of operational, financial, or managerial control over the facility or a part thereof” ... or
- “provides any level of financial or cash management services to the facility” or ...
- “provides any level of management or administrative services, management or clinical consulting services, or accounting or financial services to the facility”

Chain: Both the NASEM report and the GAO 2023 report asserted the need to identify any facility’s connection to a nursing home chain. NASW supports the inclusion of “chain provider” as defined in 42 C.F.R. § 421.404(a): “a group of two or more providers under common ownership or control.”³¹ Moreover, the regulations should specify that each facility in each chain is considered a disclosable party.

Common ownership: Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

Organizational structure: NASW urges CMS to modify its definition in this manner:

- Specify that a *corporation* includes “the officers, directors, and shareholders of the corporation who have a direct or indirect ownership interest in the corporation which is equal to or exceeds 5 percent.”

³¹ Assignment of Providers and Suppliers to MACs, 42 C.F.R. § 421.404(a) (2023).
<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-421/subpart-E/section-421.404>

- Specify that a *trust* includes “the trustees and beneficiaries of the trust.”
- Add “an investment firm, including private equity firm or fund, and any partner or limited partner with an ownership interest in the firm or fund that exceeds 5 percent.” Define *private equity company* as “a publicly traded or non–publicly traded company that collects capital investments from individuals or entities and purchases an ownership share of a provider. Note that a private equity company can qualify as an “additional disclosable party,” as defined previously.
- Add *real estate investment trust (REIT)*. REITs are increasingly involved in the nursing home business. NASW encourages CMS to define this term to reflect, but not be limited to, a publicly traded or non–publicly traded company that owns part or all of the buildings or real estate in or on which a provider operates. Furthermore, we recommend that CMS clarify a real estate investment trust can qualify as an “additional disclosable party,” as defined previously.

REPORTING REQUIREMENTS

Identify common ownership in and management facilities by assigning a personal identification number to each individual with an ownership or management interest in a nursing home, as in the California Assembly’s Skilled Nursing Facility Ownership and Management Reform Act of 2021 (Bill No. 1502).³² This requirement would be consistent with Section 6101 language that requires each disclosing entity to provide “full and complete information as to the identity of each person with an ownership or control interest.”³³

Require each reporting entity to provide copies of articles of incorporation, bylaws, and all current management, property, loan, organizational charts, and other corporate agreements or contracts, including the following elements:

- an organizational diagram that depicts all of the companies directly and indirectly controlled by the parent company (including all holding companies, management, property, and related party companies) and delineates the relationships among the companies
- a complete list of the names, addresses, and other identifying information of each entity—including, but not limited to, facilities in any chain(s)—owned and managed by the parent corporation or parent organization

Clarify that each company at each layer must report all individuals and entities with a direct or indirect ownership or operational interest of 5 percent or more. This requirement should include not only holding companies and all related companies, but also management companies and property companies—regardless of whether any such company is, technically, a “related party.”

³² A.B. 1502, 2021–2022 Sess. (Ca. 2022).

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1502 [Pertinent content included in Section 3(b)]

³³ Patient Protection and Affordable Care Act § 6101, 42 U.S.C. §1320a-3(a)(1).

[https://uscode.house.gov/view.xhtml?req=\(title:42%20section:1320a-7a%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:1320a-7a%20edition:prelim))

Require copies of any documents that contribute to establishing the relationship between the facility and any person or entity previously specified, including any documents establishing a financial obligation either between the facility and any person or entity or between such persons and entities.

Require the parent company's or sole owner's CEO to certify, under penalty of perjury, the accuracy of ownership reports. If the CEO is not available, this responsibility must be fulfilled by a designee of the CEO who has full knowledge of the ownership facts and can assure accuracy—not just by any individual representative of the nursing home, as stated in the current requirements.

Require that ownership and management reports (as described previously within these comments and with the aforementioned certification of accuracy) be submitted as part of an initial provider enrollment and for annual revalidation of nursing home information. Require that any change in direct or indirect ownership interest of a parent company, parent organization, or additional disclosable party be submitted at least 30 days before the change takes effect and that owners submit any other disclosable changes within 30 days of the changes. Such notice was specified in the 2011 proposed rule addressing nursing home disclosures.³⁴ Although the 2023 NPRM requires reporting within 30 days by referring to §424.516(e), subsection (3) requires reporting within 30 days only “for a change of ownership or control, including changes in authorized official(s) or delegated official(s),” requiring other changes “to enrollment” to be reported only within 90 days.³⁵

Review changes of ownership and affirm that a potential new owner is eligible to receive Medicare and Medicaid reimbursement, rather than automatically assigning a provider agreement to any new owner identified in change of ownership paperwork.³⁶

Consider issuing separate regulations requiring CMS approval of all changes of information in facility ownership or management within a specified time period, such as 120 days, before the proposed changes may be made. Include penalties, such as banning new admissions and suspending Medicare and Medicaid payments, for facilities that implement such changes without approval.

ENFORCEMENT

The NASEM study recommended the use of various enforcement mechanisms against owners with patterns of poor performance. The proposed rule states that if the information disclosed is

³⁴ Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Disclosures of Ownership and Additional Disclosable Parties Information, 76 Fed. Reg. 26363 (proposed May 6, 2011) (to be codified at 42 C.F.R. pts. 413, 424, & 455).

³⁵ Additional Provider and Supplier Requirements for Enrolling and Maintaining Active Enrollment Status in the Medicare Program, 42 C.F.R. §424.516(e)(1–2) (2023). <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-424/subpart-P/section-424.516>

³⁶ Change of ownership or leasing: Effect on provider agreement. 42 C.F.R. §489.18(c) (1994). <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-489/subpart-A/section-489.18>

not accurate or complete, a facility may be prohibited from participating in Medicare and Medicaid. NASW urges CMS to delineate the following points:

- CMS intends to suspend and remove inappropriate owners and managers from the Medicare and Medicaid programs.
- CMS intends to prevent ownership and management roles, including changes in such ownership and management, by individuals and entities that have prior records of providing worthless services (providing services that are “so substandard as to be tantamount to no service at all”)³⁷ or engaging in fraud.

NASW also urges CMS to specify intermediate sanctions for various types of infractions:

- withholding of payments to facilities that do not submit reports in a timely manner, and if the reports are incomplete or inaccurate, until the missing or incorrect information is provided by the owner and verified by CMS
- assessment of a civil penalty of \$10,000 for a material violation of the ownership regulatory provisions
- immediate suspension, in whole or in part, of payments to providers whose reports are found to be materially false until the complete reports are provided and deemed acceptable by CMS, consistent with 42 C.F.R. 405.371(d)(1)³⁸

Additionally, we encourage CMS to consider criminal penalties for owners or operators who knowingly submit false information.

Furthermore, NASW suggests that CMS consider establishing a reward system for finding and reporting errors in ownership and operations. Such a system could be financed by fines levied against the facilities for submitting inaccurate cost reports. If CMS were to substantiate a suspected error or falsification, the reporter (who may be an auditor, attorney, or other member of the general public) could be paid a modest fee. This system should not supplant extant federal or state whistleblower regulations.

PUBLIC ACCESS TO OWNERSHIP AND MANAGEMENT INFORMATION

CMS has acknowledged the importance of public access to ownership and management information. Yet, the proposed rule states that more information regarding the vehicle for publication of such information will not be provided until after CMS issues the final rule. NASW urges CMS to include in the final rule a plan to make ownership and management information accessible to the public using at least two platforms:

- Post all provider enrollment information—including the data elements specified within these comments and documentation verifying the accuracy of the information submitted—to <https://data.cms.gov/>

³⁷ United States ex rel. Jackson v. DePaul Health System, 454 F. Supp. 3d 481, 494 (E.D. Pa. Apr. 15, 2020). <https://casetext.com/case/united-states-ex-rel-jackson-v-depaul-health-sys>

³⁸ Suspension, Offset, and Recoupment of Medicare Payments to Providers and Suppliers of Services, 42 C.F.R. 405.371(d)(1) (2019). <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-405/subpart-C/subject-group-ECFRcb4be12070a402f/section-405.371>

- Post all parent company data and related party data for each nursing home on Care Compare, consistent with the GAO's 2023 recommendations:
 - Provide all information using plain language with clear graphics.
 - Organize information to make clear how patterns in the quality of care across nursing homes are related to common ownership or management.
 - Explain how the data are collected and evaluated for accuracy.
 - Include instructions of how to use ownership and management information in selecting a nursing facility.
 - Reflect consumer input to assess ease of use and navigation.

In conclusion, knowing who owns, finances, operates, and manages facilities is critical to protecting both resident care and the integrity of public reimbursement. Implementation of the proposed rule with NASW's recommended changes would be a critical step toward both goals.

Thank you for your consideration of NASW's comments. Please contact me at BBedney.nasw@socialworkers.org if you need additional information.

Sincerely,

Barbara Bedney

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