

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

March 30a, 2023

Re: Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities [CMS-6084-P]

The undersigned organizations share a mutual concern about the lack of transparency regarding the ownership and control of nursing facilities that serve Medicare and Medicaid beneficiaries. We further share the Centers for Medicare and Medicaid Services' (CMS) concern about certain types of owners – private equity (PE) firms and real estate investment trusts (REIT) – degrading standards of care in nursing facilities. We support CMS's action with this proposed rule to bring needed accountability for substandard care to nursing facility owners, and we urge prompt final adoption and strong enforcement of the rule.

Private equity and health care are incompatible

Private equity's business model of singularly focusing on maximizing profits, when applied to health care businesses, frequently creates conditions that compromise the quality and safety of care. Increased profits are extracted from cost saving moves like reductions in highly skilled staff and purchases of lower quality supplies, and from revenue enhancements such as performing unnecessary procedures and raising prices, all of which negatively affect care. Highly leveraged acquisitions and real estate transactions that benefit investors, two common PE practices, result in exorbitant debt obligations and rent payments that impose financial burdens on facilities and divert resources from patient care.

There is abundant evidence of the harmful effects of PE ownership of healthcare providers. As CMS notes in the proposed rule, the lives, health and safety of residents of PE-owned nursing facilities are at greater risk than are residents of other facilities.¹ And while this rule applies only to nursing facilities, as Section 6101 of the Affordable Care Act (ACA) requires, research evidence and actual experience of PE ownership's negative impacts on cost, quality, and access go well beyond nursing facilities. Our organizations hope that this rule is a step towards greater transparency across the health care system, particularly in sectors (such as specialty physician practices, hospice, and hospitals) where PE ownership is common.

The lack of transparency in ownership of facilities exacerbates the problem and shields private equity executives from accountability for the performance of the businesses they own. The opacity of ownership information can facilitate "stealth consolidation" of health care markets and obscure financial relationships among facilities and contractors such as management and staffing companies, which provide profits to their owners but can further drain resources from the facilities.

The proposed rule provides needed transparency and the prospect of accountability

Our organizations support the intent of the proposed rule and its requirement that nursing facilities report information about their owners, administrators, and any additional disclosable parties that exercise control, provide consulting services, or lease property to the facility. Disclosure of this

¹ <https://www.federalregister.gov/d/2023-02993/p-63>

information will provide needed sunlight to an opaque industry. We agree with the principal that facilities should not have to submit information more than once, in the interest of minimizing barriers to compliance. We also urge, however, that this convenience for facilities be balanced by rigorous enforcement of the rule.

In particular, we support:

- Requiring that owning and managing entities of nursing facilities disclose whether they are a PE company or a REIT, recognizing the higher likelihood of poor performance associated with these types of ownership;
- Broadening the definition of “managing employee” to include individuals, such as consultants, who influence the finances and operations of a facility but may not be permanent staff, acknowledging the frequent role of PE-backed management services companies;
- Applying Medicare’s existing “true, correct and complete” accuracy standard for submitted information, without a “to the best of my knowledge” qualifier;
- Publicly posting the ownership information as soon as is feasible and no later than one year following promulgation of the final rule.

We offer some recommendations to further strengthen the proposed rule. First, because the disclosure requirements do not become effective until the main vehicle for supplying the information, the Medicare Enrollment Application (CMS-855A), is revised, we urge CMS to go beyond the proposed language to “undertake [the revisions] promptly” and propose a reasonable but definite timetable for the revision process. Second, we request more specificity about where and how CMS will make the disclosure information publicly available. As you point out, the information will be used both for accountability and to allow consumers to select facilities with better knowledge of their owners and operators. It should be easily accessible for both purposes. For example, we suggest publishing the information on the Care Compare website, using plain language and organizing it to allow consumers to identify and examine quality ratings for multiple nursing facilities that may be owned or controlled by the same PE company, as the Government Accountability Office recommended in its recent report.²

Conclusion

An earlier effort to issue this rule shortly following passage of the ACA did not result in a final regulation. That these disclosure requirements were included in the ACA indicated how important the issue was in 2010. It is even more critical today to understand and analyze the interests of nursing home facility owners, particularly PE firms and REITs, to protect residents from the harmful effects of their business strategies. We urge CMS to follow through and swiftly finalize the rule.

Sincerely,

² “Nursing Homes: CMS Should Make Ownership Information More Transparent for Consumers,” accessed February 16, 2023, <https://www.gao.gov/assets/gao-23-104813.pdf>.