



California Association of Long Term Care Medicine  
*Promoting quality patient care through medical leadership and education*

April 13, 2023

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
PO Box 8010  
Baltimore, MD 21244-1810

Submitted electronically via <https://www.regulations.gov>

Re: CMS 6084-P  
42 CFR Parts 424 and 455 Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs)

Dear Centers for Medicare & Medicaid Services, Department of Health and Human Services,

On February 28, 2022, President Biden issued a landmark “Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes” Executive Order – an order which he reiterated at his State of the Union Address the next day. Included in the White House initiative is a directive to “Improve Transparency of Facility Ownership and Finances”<sup>1</sup> which calls on CMS to “implement Affordable Care Act requirements regarding transparency in corporate ownership of nursing homes, including by collecting and publicly reporting more robust corporate ownership and operating data.”

CALTCM is the medical voice for long term care in California. We represent physicians, nurse practitioners, physician assistants, nurses, pharmacists, social workers, and others who work to provide care to the residents of nursing homes. Even prior to the pandemic, our members have been deeply concerned by the myriad issues that impede the promotion of quality care in our state’s nursing facilities. For many years we have observed dedicated administrators and directors of nursing struggle to manage staff while dealing with financial pressures. Low wages and limited benefits have made finding and maintaining staff challenging. Studies have shown that understaffed nursing homes are correlated with poorer clinical quality.<sup>2,3,4,5</sup> The lack of transparency regarding how revenue is utilized to provide care is well known.<sup>6,7</sup> Ultimately, we need complete transparency to assure that an ample amount of facility revenue goes towards providing care to the residents.

### **Need for Improved Ownership Reporting Regulations**

Sixteen years ago, a *New York Times* article analyzed the tragic impact that non-transparent, complex ownership structures can have on the quality of nursing home care.<sup>8</sup> Subsequent analyses have clearly demonstrated the deeply negative consequences for both residents and staff of allowing opaque, non-accountable ownership structures in nursing homes to multiply in the absence of organized, proactive federal policy and oversight.<sup>9,10,11,12</sup>

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As is increasingly understood, acquisitions of nursing homes by private equity and real estate investment trusts (REITs) are key areas where transparency and accountability in nursing home ownership are needed. In private equity acquisition of nursing homes, long-stay residents had higher rates of potentially preventable hospitalizations and Emergency Room visits, as well as higher Medicare costs.<sup>13</sup> These issues extend to other types of ownership structures, including related party transactions and corporate layers used to obscure profits and provide legal liability protection. In 2010, the GAO identified the shortcomings in the current CMS PECOS ownership database and recommended that ownership information needs to be made available to states and consumers in a more intelligible way. The GAO recommended that CMS revise the ownership reporting requirements to make nursing home ownership structures more understandable and take other actions to improve the accuracy and dissemination of these data.<sup>14</sup> A January 2023 GAO report noted ongoing gaps in nursing home industry ownership transparency.<sup>15</sup> Corrective action by the federal government is possible, just as happened in the wake of a 2019 GAO report on the defense industry documenting how profits had been siphoned off by non-transparent ownership arrangements among defense contractors.<sup>16</sup>

Given the long history of persistently poor care in some quarters of the nursing home sector, improvements in ownership transparency are essential. Without the implementation of a final regulation for Sec. 6101, which the ACA required to be implemented within two years following enactment, the pattern of poor care and the shifting of taxpayer dollars from care, operations, staffing and supplies to other purposes is likely to continue.

Adding to the urgency of promulgating clear, comprehensive rules on ownership and financial transparency, a 2022 report issued by the HHS Assistant Secretary for Planning and Evaluation (ASPE) identified the rising frequency of ownership changes in SNFs,<sup>17</sup> noting that a labyrinth of poorly described ownership structures complicates efforts to assess the impact of ownership changes on health care costs and quality. An earlier report issued in February 2021 by the National Bureau of Economic Research (NBER) pointed to correlations between investor (private equity) ownership of nursing homes with higher mortality and lower staffing.<sup>18</sup> In addition, a 2022 report issued by Public Citizen made similar points.<sup>19</sup>

Financial decisions and cost pressures placed on administrators and practitioners working in nursing homes impact quality. Facility operations, staffing and services can be influenced by opaque governance structures. For example, the decision to sell the real estate on which a nursing home is situated can result in staffing changes<sup>20</sup> due to the burden of lease payments that may sharply increase over time and must be satisfied as a priority item in operating budgets.

All studies reinforce the urgency of effectively implementing Section 6101 so that the federal government can know who oversees making key financial, operational and managerial decisions about the operations, thereby influencing the quality of care provided in the nation's nursing homes. The National Academies of Sciences, Engineering and Medicine report issued in April 2022, "*The National Imperative to Improve Nursing Home Quality: Honoring our Commitment to Residents, Families and Staff*," identifies as a top-level priority "increas[ing] transparency and accountability of finances, operations and ownership," and identifies HHS as the responsible partner for operationalizing this goal and related recommendations (p. 12-13).<sup>21</sup>

The massive impact of the COVID-19 pandemic on nursing homes underscores the urgent need for nursing home owners to be held accountable for quality and safety. A lack of infrastructure in many nursing homes to provide effective infection prevention and control practices was consequential during the pandemic.<sup>22</sup> As conditions changed and the virus spread, family members and public health officials had an incomplete understanding of who was exercising operational, managerial, and financial control in America's nursing homes. The OIG reported 169,291 more nursing home deaths in 2020 than would have normally been expected.<sup>23</sup>

Medicare and Medicaid reimbursements are designed to pay for resident care. Hence, it is essential for the federal government to have a full and complete picture of ownership, and those persons and entities who exercise operational, managerial, and financial control. We strongly support regulatory changes to improve nursing home ownership reporting, disclosures of ownership and additional disclosable parties. We recommend additional changes to the regulations to ensure that the regulations meet the CMS' goals of improving nursing home ownership transparency.

### **Additional Regulations to Improve Ownership Transparency Are Needed.**

Unfortunately, the proposed regulations fail (1) to define and disclose each parent company or sole owner, (2) to ensure reporting of the many layers of corporate ownership, (3) to identify each nursing home chain and each facility owned by each chain, (4) to require appropriate documentation to ensure accuracy and transparency, (5) to require certification by the parent company or sole owner, (6) to make the information publicly available. Below we set out recommendations for how each of these shortcomings may be overcome.

#### **1. Define and Disclose Each Parent Company.**

The proposed regulations fail to ensure that a parent company is a disclosable party. As numerous investigative analyses and research reports have detailed, nursing home ownership is often structured in multi-layered corporations, which may include LLCs, trusts, and more.<sup>24</sup> Such layered structures make it more difficult to identify the "ultimate parent or owner of a nursing home."<sup>25</sup> The regulation should define "parent organization" and "parent company" to mean an organization in control of another organization either directly or through one or more intermediaries.

The difficulty in identifying the parent owners of NHs was reported over a decade ago, and this barrier has severely limited the ability of CMS to carry out its oversight responsibility and to prevent fraudulent or unqualified individuals and entities from NH ownership.<sup>1</sup> The CMS ownership database (the Medicare provider enrollment system) continues to be inaccurate and incomplete, does not show relationships among companies, and does not require reporting by PE and other private investors.<sup>26</sup> For example, The Portopiccolo Group, a PE firm that acquired 136 NHs between 2016 and 2022, does not appear in the CMS database.<sup>27</sup> Instead, Portopiccolo's NHs appear under dozens of different names<sup>28</sup> and it is not listed as the parent company. The regulations should make clear that the names of all the individuals and entities with 5 percent or greater ownership in the parent company must be disclosed, and that the name of the corporation alone is insufficient.

#### **2. Report Many Layers of Corporate Ownership**

The ultimate goal of ownership regulations is twofold. First, they must create a broad definition of additional disclosable parties that captures all relevant entities. This has to include the parent

company, and simultaneously require full disclosure of each entity. Second, regulations must require a description of the organizational structures of each nursing home company. The regulatory language needs to recognize the fact that a corporation may be owned by other corporations. Too narrow a definition has resulted in nursing homes creating shell corporations or using other mechanisms to obfuscate their ownership.

For example, in 2020, Ensign, the second largest US chain, reported owning 22 separate companies. These 22 Ensign companies, in turn, owned a total of 409 legal entities (mostly LLCs), which directly owned and/or operated 198 separate NHs and other senior care communities, most with different corporate names.<sup>29</sup> The regulations must clarify that each company at each layer must report all owners with an interest of 5 percent or more.

The broad language of the law provides the Secretary the authority to require disclosure from other entities, including private equity investors or firms, REITS, and other owners of nursing homes. The regulations must make clear that holding companies and all related party companies are disclosable parties and must be reported.

In addition, the disclosable party language should ensure the reporting of any management company and any property company regardless of whether or not it is a related party because of its direct and indirect influence on nursing home operations.

### **3. Disclose Nursing Home Chains and Each Facility Within Each Chain**

The regulations should define “nursing home chain” as any entity that includes two or more facilities. The regulations must explicitly ensure that each nursing facility in each nursing home chain is considered a disclosable party. About 60 percent of SNFs and NFs are a part of chains. Researchers and the GAO have clearly documented that for-profit chains are more likely to have understaffing and quality of care problems than other nursing homes.<sup>30,31,32</sup> At the present time, the ownership data reports chains or non-chains, but researchers have found that these data are clearly inaccurate. Many nursing home chains have made it extremely difficult to identify which nursing homes belong to which chains. CMS regulations must require a complete listing of each facility in a chain owned by the parent company.

### **4. Provide Appropriate Documentation to Ensure Accuracy and Transparency**

To ensure the accuracy of reporting and transparency, each reporting entity should provide supplemental documents, including copies of articles of incorporation, bylaws, and all current management, property, loan, organizational charts, and other corporate agreements/contracts.

The regulations should explicitly require an organizational chart that shows all the companies directly and indirectly controlled by the parent company. This chart should include all holding companies, management, property, and related party companies and show how the companies are related to each other.

We recommend that regulations explicitly require that the documentation includes a complete list of the names and addresses of each entity owned and managed by the parent company.

### **5. Require Certification by the Parent Company or Sole Owner**

CMS regulations should designate that the parent company or sole owner is responsible for certifying the accuracy of the ownership reports and that the certification should be made under penalty of perjury. The current requirement states:

*(5) A skilled nursing facility (as defined by section 1819(a) of the Act) must certify as a condition of participation and payment under the program under Title XVIII of the Act that the information reported by the facility in accordance with these regulations is, to the best of the facility's knowledge, accurate and current.*

The current regulations, which allow certification of accuracy by an individual representative of a nursing home, are not sufficient. This is because that individual may not know the true complexity of a facility's ownership and therefore may provide inaccurate data with the excuse that the data were accurate to the best of the individual's knowledge. Instead, the CEO or designee of the parent company or sole owner, who has full knowledge of the ownership facts and can assure accuracy, should be required to certify the report.

## **6. Make Ownership Information Publicly Available**

CMS states that more information regarding the "vehicle" for publication of the ownership information will be provided after the final rule is published. We strongly urge CMS to establish how they plan to make the ownership information available as part of the final regulations.

*The statute requires: "Not later than the date that is 1 year after the date on which the final regulations promulgated under section 1124(c)(3)(A) of the Social Security Act, as added by subsection (a), are published in the Federal Register, the Secretary of Health and Human Services shall make the information reported in accordance with such final regulations available to the public in accordance with procedures established by the Secretary."*

Moreover, the US Government Accountability Office issued a Report in January 2023 entitled "CMS Should Make Ownership Information More Transparent for Consumers."<sup>33</sup> In that report, the GAO found that ownership information on Care Compare was not sufficiently transparent for consumers. Its recommendations include using plain language with clear graphics, organizing the information to highlight patterns related to quality across nursing homes with common ownership, obtaining consumer input to test the ease of use and navigability, including explanations of how to use ownership information in the decision-making process and adding information on how the data are collected and assessed for accuracy.

We strongly urge that CMS make all the provider enrollment information publicly available on [www.data.cms.gov](http://www.data.cms.gov). This should include the documentation data that verifies the accuracy of the information submitted. In addition, we strongly urge CMS to make the parent company data and related party data for each nursing home available on its Medicare Nursing Home Compare website.

Sincerely,



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- <sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>
- <sup>2</sup> Harrington, C. et al. [Appropriate Nurse Staffing Levels for U.S. Nursing Homes](#). (Health Services Insights, June, 2020).
- <sup>3</sup> Backhaus, R., Verbeek, H., Van Rossum, E., Capezuti, E., & Hamers, J. P. (2014). Nurse staffing impact on quality of care in nursing homes: A systematic review of longitudinal studies. *Journal of the American Medical Directors Association*, 15(6), 383–393. <https://doi.org/10.1016/j.jamda.2013.12.080>
- <sup>4</sup> Grabowski, D. C., Stewart, K. A., Broderick, S. M., & Coots, L. A. (2008). Predictors of nursing home hospitalization: A review of the literature. *Medical Care Research and Review*, 65(1), 3–39. <https://doi.org/10.1177/1077558707308754>
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- <sup>7</sup> Wasserman, M. et al. [These Administrative Actions Would Improve Nursing Home Ownership and Financial Transparency in the Post COVID-19 Period](#). (Health Affairs, February 2021)
- <sup>8</sup> <https://www.nytimes.com/2007/09/23/business/23nursing.html>
- <sup>9</sup> <https://www.npr.org/sections/health-shots/2023/01/31/1139783599/new-york-nursing-home-owners-drained-cash>
- <sup>10</sup> <https://www.washingtonpost.com/business/2020/12/31/brius-nursing-home/>
- <sup>11</sup> <https://www.auditor.ca.gov/pdfs/reports/2017-109.pdf>
- <sup>12</sup> <https://www.healthaffairs.org/doi/10.1377/forefront.20210208.597573/>
- <sup>13</sup> Braun, R. T., Jung, H. Y., Casalino, L. P., Myslinski, Z., & Unruh, M. A. (2021, November). Association of private equity investment in US nursing homes with the quality and cost of care for long-stay residents. In *JAMA Health Forum* (Vol. 2, No. 11, pp. e213817-e213817). American Medical Association.
- <sup>14</sup> Government Accountability Office (GAO). *Nursing homes: Complexity of private investment purchases demonstrates need for CMS to improve the usability and completeness of ownership data*. GAO-10-710. Washington, D.C, September 2010. <http://www.gao.gov/products/GAO-10-710>
- <sup>15</sup> <https://www.gao.gov/assets/gao-23-104813.pdf>
- <sup>16</sup> <https://www.gao.gov/products/gao-20-106>
- <sup>17</sup> <https://aspe.hhs.gov/sites/default/files/documents/be6f3366294bd30a08a8ae90c84f3894/aspe-datapoint-change-ownership-pecos.pdf>
- <sup>18</sup> National Bureau of Economic Research, Feb. 2021 <https://www.nber.org/papers/w28474>
- <sup>19</sup> <https://www.citizen.org/wp-content/uploads/Nursing-home-ownership-disclosure.pdf>
- <sup>20</sup> <https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00278>
- <sup>21</sup> <https://nap.nationalacademies.org/download/26526>
- <sup>22</sup> <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.asp>
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