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March 30, 2023

HHS Secretary Xavier Becerra  
CMS Administrator Chiquita Brooks-LaSure  
Department of Health and Human Services  
Hubert Humphrey Building  
200 Independence Ave. S.W.  
Washington, D.C. 20201

**Dear Secretary Becerra and Administrator Brooks-LaSure:**

We represent a group of individuals and organizations working to bring transformative change to America's residential long-term care system. Near-term solutions to make transformative changes at the national level in the nursing home sector are at hand. This letter highlights our support for a fundamental accountability reform – transparency. *There is an urgent need to promulgate clear, comprehensive rules on nursing home ownership and financial transparency now.*

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>1</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>2,3,4,5</sup>

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>6</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. The January 2023 GAO report noted ongoing gaps in nursing home industry ownership transparency.<sup>7</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>8</sup>

Congress provided authority for making transparency of ownership a reality in Section 6101 of the Affordable Care Act (ACA) of 2010. The statute explicitly requires nursing homes certified by Medicare and licensed by Medicaid to make available specific information on ownership, including a description of the governing body, managing employees, and the organizational structure of each Medicare skilled nursing facility (SNF) or Medicaid licensed nursing facility (NF), along with detailed information from “additional disclosable parties.”<sup>9</sup> These parties are “any person or entity who exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility.”

In 2011, the Centers for Medicare and Medicaid Services (CMS) pledged in a Notice of Proposed Rulemaking (NPRM) that “to respond properly to all of the comments received related to the disclosure of information requirements, we will publish a separate final rule specifically addressing these provisions at a later date.”<sup>10</sup> Yet in 2012, the agency indicated that it had no plans to promulgate a final rule, while declining to provide a rationale.

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More than a decade later, in a second NPRM published in February 2023, CMS noted: “We did not finalize these proposed disclosure provisions in the subsequent final rule, published on August 8, 2011, due to the need for more time to consider the comments received, though we stated that we would address our provisions in a separate final rule in early 2012. After reviewing the comments, we did not publish a final rule or finalize our proposals.”<sup>11</sup> There was no explanation for this decision then, nor is one shared in the second NPRM.

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>12</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.”

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>13</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>14</sup> In addition, a 2022 report issued by Public Citizen made similar points.<sup>15</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>16</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>17</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>18</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>19</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.

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*We strongly support full realization of the recommendations in the 2022 NASEM report, and therefore recommend:*

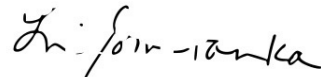
- CMS work to provide thoughtful discussion, examples, and a clear definition of what constitutes a person or entity that “exercises operational, financial, or managerial control over the facility or a part thereof” as part of promulgating Sec. 6101 of the ACA.
- CMS work to provide clear time parameters and penalties for failure to comply with reporting requirements under 6101, including penalties for submitting false or misleading information.
- CMS establish a requirement for routine auditing that will verify whether ownership information being reported is accurate, and will analyze ownership information together with cost reports, staffing data, survey inspection results, and other relevant information.
- CMS ensure that accurate and comprehensive data on the finances, operations, and ownership of all nursing homes are available in real-time, readily usable, through a searchable database providing access to consumers, payers, researchers, and federal and state regulators.

We stand ready to support work to achieve these goals, and with this letter, the principal signatories respectfully request a meeting. Under separate cover, we are also sending a letter addressing appropriate nursing home staffing levels.

Respectfully,



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