

Proposed Nursing Home Disclosure Requirements Target Private Equity Companies and REITs

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On February 15, 2023, the Centers for Medicare & Medicaid Services (CMS) released a proposed rule which would require greater disclosures of the ownership and management of Medicare and Medicaid nursing homes. Specifically, nursing homes would be required to disclose whether they are owned by private equity companies or real estate investment trusts (REITs) and provide information on real property owners and management companies and their organizational structures.

CMS claims that the disclosures are intended to ensure CMS has sufficient data on nursing home owners to allow CMS to better monitor and hold accountable nursing facilities in order to improve nursing home quality of care and compliance.

The Biden Administration has long indicated it believes that corporate owners and operators may not provide the best care, stating in [February 2022](#), “[f]or too long, corporate owners and operators have not been held to account for poor nursing home performance. CMS will improve the public transparency of facility ownership and safeguard nursing home residents.”

The [Proposed Rule](#) focuses on three areas: (i) data to be reported, (ii) definitions, and (iii) the timing of the reporting.

For **data to be reported**, nursing homes would be required to disclose:

- Each member of the governing body of the facility, including the name, title, and period of service of each member;
- Each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity;
- Each person or entity who is an “additional disclosable party” of the facility; and

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- The organizational structure of each “additional disclosable party” of the facility and a description of the relationship of each such “additional disclosable party” to the facility and one another.

As for **definitions**, CMS is proposing several new definitions for nursing home disclosures, including the following:

- *Additional Disclosable Party* – would mean any person or entity who does any of the following: (1) 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; (2) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5% of the total value of such real property; or (3) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.
- *Organizational Structure* – would mean, in the case of:
 - a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5%;
 - a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);
 - a general partnership, the partners of the general partnership;
 - a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10%;
 - a trust, the trustees of the trust; and
 - an individual, contact information for the individual.
- *Private Equity Company* – would mean a publicly traded or nonpublicly traded company that collects capital investments from individuals or entities and purchases an ownership share of a provider.
- *Real Estate Investment Trust* – would mean a publicly traded or non-publicly traded company that owns part or all of the buildings or real estate in or on which the provider operates.

For purposes of meeting the ownership thresholds in the definition of “Organizational Structure,” the definition does not specify whether it includes individuals or entities with direct or indirect interests. However, based on the current form CMS-855A, it is possible CMS will require disclosure of direct and indirect interests that meet the specified threshold.

CMS also noted that it intends to add data elements to the form CMS-855A which will require nursing

homes to disclose whether the owners and managing entities of nursing homes are private equity companies or a REIT.

The additional disclosure requirements and new definitions, if implemented, would mean that nursing homes have to disclose landlords, sublandlords, and real property owners with ownership interests of 5% or more of the total value of such property, and the organizational structure of each such entity to CMS. Additionally, the nursing home would have to disclose any companies providing administrative services, management or clinical consulting services, or accounting or financial services to the facility, and related ownership and structure information, which expands the current disclosure requirements on the current form CMS-855A. The nursing home would also have to disclose whether it is owned by private equity companies or a REIT. As private equity companies and REITs continue to invest in nursing homes, these disclosure requirements could significantly impact those companies who are not directly involved in operations and want to remain out of public view.

Regarding the **timing** of the reporting, nursing homes would have to disclose the information upon initial enrollment in Medicare or Medicaid and when revalidating their enrollment. Additionally, each Medicare nursing home would have to disclose any changes to the information within 90 days of the change (unless there is also a change of ownership or control or a change in authorized or delegated officials, in which case the change must be reported within 30 days of the change). Medicaid nursing homes would have to follow their state agency's rules for reporting changes in enrollment information.

CMS stated that its concerns about the quality of care and operations of nursing homes have increased over the last decade and that there are reports that nursing home quality has declined under private equity and similar owners. CMS noted that, as of 2021, roughly 70% of nursing homes were for-profit facilities and approximately 11% of all nursing homes were owned by private equity companies (although estimates vary). CMS stressed that these concerns are not limited to private equity companies and that other private ownership, such as REITs, have generated similar concerns. Therefore, according to CMS, the Proposed Rule is designed to increase transparency in corporate ownership of nursing homes, which may assist CMS and other regulators in holding nursing homes accountable and allow consumers to select facilities with better knowledge of their owners and operators. Additionally, if the Proposed Rule is finalized, CMS would make the disclosure information publicly available within one year of the final rule.

CMS is accepting comments on the Proposed Rule until April 14, 2023. If finalized, the Proposed Rule will become effective 60 days after the date the final rule is published in the Federal Register. However, Medicare nursing homes would not be required to disclose the data until the form CMS-855A is revised and Medicaid nursing homes would not be required to disclose the data until state Medicaid agencies have established their own methods of collection.

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