

## **Private Equity and REITs, Take Note! CMS Finalizes Nursing Facility Ownership Disclosure Requirements**

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On November 17, 2023, the US Department of Health and Human Services (HHS) published a final rule requiring nursing facilities participating in Medicaid and skilled nursing facilities participating in Medicare to disclose detailed ownership, managerial, governance and personnel qualifications, with a particular focus on private equity and real estate investment trust (REIT) ownership. This data will be made public in an effort to increase transparency and provide consumers with more data to evaluate facilities and make informed choices about where to obtain nursing care.

## **IN DEPTH**

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## NURSING FACILITY OWNERSHIP DISCLOSURE REQUIREMENTS

Effective January 16, 2024, nursing facilities participating in Medicaid and skilled nursing facilities participating in Medicare will be required to disclose the following information when they initially submit an enrollment application via the Provider Enrollment, Chain, and Ownership System (PECOS) or a CMS-855A application (or the equivalent state enrollment form), experience a change in ownership or control, or revalidate their enrollment information:

1. The name, title and period of service for each member of the governing body of a nursing facility
2. The name, title and period of service for each officer, director, member, partner, trustee or managing employee of a nursing facility
3. Each additional disclosable party of the facility
4. The organizational structure of each additional disclosable party and a description of the relationship that the additional disclosable party has with the facility

Changes in ownership or control of an enrolled provider, which the information above constitutes, must be reported within 30 days of the change.

Notwithstanding the effective date of the final rule, in November, the Centers for Medicare & Medicaid Services (CMS) released an **updated** CMS-855A application that includes the detailed requests for ownership and managing control noted above. These revisions add private equity and REIT to the description of the types of organizations that may have an ownership interest. Skilled nursing facilities must also include a diagram of their owners. Medicare Administrative Contractors

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will no longer accept the prior version of the CMS-855A after December 17, 2023.

Medicaid-enrolled nursing facilities' ownership disclosure compliance obligations will not arise until the applicable state Medicaid agency has established the means to collect this data. CMS has instructed states to promptly establish data collection mechanisms and share the information with affected nursing facilities when available.

## **NEWLY DEFINED TERMS**

Under the final rule, a “**managing employee**” includes a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over the day-to-day operation of the facility or who directly or indirectly manages, advises or supervises any element of the practices, finances or operations of the facility. HHS specifies that this definition is intended to include a hospice or skilled nursing facility administrator or medical director.

“**Additional disclosable party**” includes any person or entity who (i) exercises operational, financial or managerial control over the facility; (ii) provides policies or procedures for any of the facility's operations; (iii) provides financial or cash management services to the facility; (iv) leases or subleases real property to the facility; (v) owns a whole or part interest equal to or exceeding 5% of the total value of the facility's real property; (vi) provides management or administrative services; (vii) provides managerial or clinical consulting services or (viii) provides accounting or financial services to the facility.

“**Private equity**” includes any publicly traded or non-publicly traded company that collects capital investments from individuals or entities

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and purchases a direct or indirect ownership share of a provider.

“**Real estate investment trust**” is defined using the existing definition of REITs found in Section 856 of the Internal Revenue Code (IRC)—namely, a corporation, trust or association that is managed by one or more trustees or directors, with a beneficial ownership held by 100 or more persons, which ownership is evidenced by transferable shares or by transferable certificates of beneficial interest which, but for limitations in the IRC, would be taxable as a domestic corporation and is neither a financial institution nor an insurance company as defined in the IRC. This is a far narrower definition than the version in the proposed rule, which would have included any 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.

## **HOW DATA WILL BE USED AND PUBLISHED**

CMS will issue further guidance regarding the timing, content and means of data publication, but it will do so through sub-regulatory guidance rather than notice and comment rulemaking. Recognizing its obligation to make the data public within one year of the final rule’s publication, CMS is deciding whether to use its **Care Compare** website, [data.cms.gov](https://data.cms.gov) or another venue. It is also determining how the data can be presented to allow users to understand the contents and search for trends, relationships or other connections in nursing facility ownership structures.

## **IMPACT**

Applicants who fail to timely report the obligatory information or who submit inaccurate reports risk denial or revocation of their enrollment.

Providers who experience a denied enrollment on this basis may be barred from reapplying for up to three years, and providers whose enrollment is revoked may be prohibited from reenrolling for up to 10 years. Providers subject to these new requirements should review them carefully and ensure that the information submitted is accurate and comprehensive.

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