

# Congress of the United States

Washington, DC 20515

May 17, 2023

The Honorable Xavier Becerra  
Secretary  
U. S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
U. S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Becerra and Administrator Brooks-LaSure:

We write regarding the Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services' (CMS) proposed rule to increase nursing home ownership transparency.<sup>1</sup> While we appreciate CMS taking steps to implement this long overdue rule, which establishes requirements for the disclosure of information about the owners and operators of Medicare skilled nursing facilities and Medicaid nursing facilities,<sup>2</sup> we believe that certain provisions of the proposed rule could be strengthened for the benefit of patients. Specifically, we urge you to clarify ownership definitions, establish strong auditing and enforcement measures, and ensure that comprehensive reporting information is made available to the public in an easily searchable format.

In May 2011, CMS published a proposed rule to implement nursing home ownership transparency requirements, titled "Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Disclosures of Ownership and Additional Disclosable Parties Information."<sup>3</sup> The proposed rule called for nursing homes to disclose any person or entity who exerts control over it, leases property to it, or offers administrative services to it. It also required facilities to provide the organizational structure of these entities and a description of the relationships between them. Notably, the law required HHS to complete a regulation to implement the transparency language within two years of passage.<sup>4</sup> Although CMS issued

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<sup>1</sup> U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Federal Register Notice, "Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities," February 15, 2023, <https://www.federalregister.gov/documents/2023/02/15/2023-02993/medicare-and-medicare-programs-disclosures-of-ownership-and-additional-disclosable-parties>; Senator Charles E. Grassley letter to HHS CMS (March 3, 2023), available at [https://www.grassley.senate.gov/imo/media/doc/grassley\\_to\\_hhs\\_cms\\_-\\_proposed\\_pe\\_nursing\\_home\\_ownership\\_rule.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley_to_hhs_cms_-_proposed_pe_nursing_home_ownership_rule.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Patient Protection and Affordable Care Act, Public Law 111-148, § 6101, 124 Stat. 699 (2010), available at <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>.

this proposed rule in May 2011, it was never finalized.<sup>5</sup> Twelve years later, it's time to finalize this rule to ensure the safety of our nation's nursing home patients.

Private equity-owned nursing homes are associated with higher Medicare costs and increased emergency department visits and hospitalizations.<sup>6</sup> Reports have underscored the importance of nursing home ownership transparency. In 2022, the National Academies of Sciences, Engineering, and Medicine (NASEM) recommended that HHS “ensure that accurate and comprehensive data on the finances, operations, and ownership of all nursing homes are available in a real-time, readily usable, and searchable database.”<sup>7</sup>

The Medicaid and CHIP Payment and Access Commission's March 2023 report similarly recommended that CMS collect and report comprehensive data on nursing facility finances and ownership in a standard format.<sup>8</sup> Health care experts have also described the urgent need to “promulgate clear, comprehensive rules on nursing home ownership and financial transparency.”<sup>9</sup> Increased transparency will empower older adults, their families, researchers, and health care providers to identify nursing homes that provide excellent care, while at the same time hold bad actors accountable. To prevent nursing home owners from prioritizing profits over patients, these data will give CMS the tools to identify waste, fraud, and abuse of federal Medicare and Medicaid dollars.<sup>10</sup>

We support CMS's proposal regarding the disclosure of ownership and management information when nursing homes initially enroll in Medicare or Medicaid and when revalidating their enrollment at a minimum of every five years, while reserving the right to require revalidation at any time. We also support CMS's proposal to require the disclosure of the governing body, managing employees, and the organizational structure of the nursing home, as well as detailed information about any entity who exercises control over, is contracted for operational purposes, or provides financial management services to the nursing home. While the proposed rule will provide critical information to regulators and the public on nursing home ownership, we urge CMS to consider strengthening the proposed rule as follows:

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<sup>5</sup> Taylor Lincoln, *Is It Private Equity? We Can't See*, PUBLIC CITIZEN (Sept. 1, 2022), available at <https://www.citizen.org/article/nursing-home-transparency/#ftn1>.

<sup>6</sup> JAMA Health Forum, “Association of Private Equity Investment in US Nursing Homes With the Quality and Cost of Care for Long-Stay Residents,” Robert Tyler Brain, et.al., Nov. 29, 2021, <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786442>.

<sup>7</sup> National Academies of Sciences, Engineering, and Medicine, “*The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*,” 2022, p. 519 (NASEM found that such data would allow for all parties – federal, state and individual – to access data on the quality of care provided at nursing homes owned by the same company, individual or trust, and allow for more research on how ownership impacts the quality of care in nursing homes) <https://nap.nationalacademies.org/read/26526/chapter/12#518>.

<sup>8</sup> MACPAC, “Principles for Assessing Medicaid Nursing Facility Payment Policies,” (concluding that this data was necessary to strengthen program integrity and ensure that taxpayer money is supporting patient care, rather than lining the pockets of wealthy owners and private equity firms). <https://www.macpac.gov/publication/principles-for-assessing-medicare-nursing-facility-payment-policies/>.

<sup>9</sup> California Association of Long Term Care Medicine, “CALTCM Letters,” Letter to HHS Secretary and CMS Administrator from Michael Wasserman, Lori Smetanka, Charlene Harrington, Susan Ryan, Anne Montgomery, Penny Cook, Four Organizations, and Seventy-nine Individual Signatories, March 30, 2023, [https://www.calctcm.org/assets/Support%20Letter%20-%20TRANSPARENCY%20LETTER%20040723\\_FINAL%20LIST.pdf](https://www.calctcm.org/assets/Support%20Letter%20-%20TRANSPARENCY%20LETTER%20040723_FINAL%20LIST.pdf).

<sup>10</sup> STAT news, “For-profit nursing homes and hospices are a bad deal for older Americans,” Haider J. Warraich, April 19, 2021, <https://www.statnews.com/2021/04/19/for-profit-nursing-homes-hospices-bad-deal-older-americans/#:~:text=Private%20equity%20investment%20fundamentally%20changes%20nursing%20homes%3A%20It,changes%20from%20for-profit%20to%20nonprofit%2C%20care%20quality%20improves>.

**1. Require more robust ownership reporting requirements for Medicare-certified nursing homes.**

The language requiring nursing homes to disclose any person or entity that exercises operational, financial, or managerial control is overly broad and may cause confusion about which entity is responsible for negligence or substandard care of our nation's most vulnerable.<sup>11</sup> To address this concern, the final rule should include a standardized requirement for nursing homes to report each parent company, holding company, management company, and property company associated with the facility. CMS should also consider categorizing direct and indirect ownerships using the common fund types found in the U.S. Securities and Exchange Commission's Uniform Application for Investment Advisor Registration ("Form ADV") instructions.<sup>12</sup> Reporting similar to Form ADV would provide information about a nursing home's owner, clients, employees, and disciplinary history.<sup>13</sup>

**2. Require standardized reporting requirements for Medicaid-certified nursing homes.** The proposed rule also allows each state to determine the requirements for Medicaid-only certified nursing homes, which could result in conflicting requirements. To address this concern, the final rule should require Medicaid-certified nursing homes to comply with the same requirements as Medicare-certified nursing homes.

**3. Require reporting of all related-parties in which nursing home owners have a direct or indirect stake.** Where a nursing home owner also has a stake in a "related party" that provides supplies or services to the facility (e.g., pharmacy, maintenance, staffing,), comprehensive data is critical as these interconnected relationships allow nursing home owners to engage in lucrative and potentially unlawful self-dealing.<sup>14</sup> CMS should require more information about these relationships and the payments received by these parties for supplies and services. This would allow CMS to set more accurate rates for Medicare- and Medicaid-covered services and ensure that funds are being appropriately used for patient care.

**4. Require a complete listing of each facility in a nursing home chain owned by the same parent company.** CMS should define a nursing home chain as two or more facilities owned by the same parent company and require a complete listing of each facility in a nursing home chain owned by the same parent company. This data will allow regulators to trace problems in individual homes back to the owner of the chain.

**5. Provide clear reporting timelines and establish penalties for failure to report accurate information.** CMS should require facilities to report any ownership changes within a defined period, such as thirty or sixty days, to capture all restructurings, reorganizations, and changes in additional disclosable parties. CMS should consider a range of penalties, such as fines or the inability to receive Medicare funds – or both – for noncompliance. CMS could also incorporate the reporting requirements into the Skilled Nursing Facility (SNF) Value-Based Purchasing Program, in which CMS withholds a percentage of a SNF's payments and redistributes that funding to SNFs as incentives for quality

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<sup>11</sup> Taylor Lincoln, *Is It Private Equity? We Can't See*, PUBLIC CITIZEN (Sept. 1, 2022), available at <https://www.citizen.org/article/nursing-home-transparency/#ftn1>.

<sup>12</sup> U.S. Securities and Exchange Commission, "Form ADV Data," <https://www.sec.gov/foia/docs/form-adv-archive-data>; <https://www.sec.gov/about/forms/formadv-instructions.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> NPR, "Nursing home owners drained cash while residents deteriorated, state filings suggest," Jordan Rau, January 31, 2023, <https://www.npr.org/sections/health-shots/2023/01/31/1139783599/new-york-nursing-home-owners-drained-cash>.

performance.<sup>15</sup> Without defined timelines for reporting ownership changes or clear consequences for inaccurate reports, facilities may hide ownership to conceal profits and escape liability.

**6. Establish a requirement for annual auditing to verify data accuracy.** The HHS Office of Inspector General reported that the existing Provider, Enrollment, Chain and Ownership System (PECOS) database has been plagued with reliability concerns,<sup>16</sup> including listing defunct providers, inaccurate enrollment dates, and incorrect provider addresses. To verify the accuracy of ownership information, we urge CMS to establish a requirement for annual audits, including an analysis of ownership information together with cost reports, staffing data, and survey inspection results.

**7. Make these data available in a publicly searchable database.** In some states, the only way to identify the actual owner of a nursing facility is through a lawsuit following a bad patient outcome.<sup>17</sup> CMS should take specific action to ensure that the ownership data it collects are available to regulators and the public through a searchable database similar to the CMS Care Compare Website.<sup>18</sup> Access to ownership data is essential to holding nursing homes accountable and protecting patients.

COVID-19 shined a light on the deficiencies in our nation's nursing homes.<sup>19</sup> We owe it to current and future patients to get this done. Accordingly, we urge CMS to move swiftly to finalize and strengthen this proposed rule by ensuring ownership is clearly defined, establishing strong auditing and enforcement measures, and requiring comprehensive information that is available to the public in an easily searchable format.

To better understand how CMS intends to finalize this important rule, please answer the following questions by June 1, 2023.

1. How does CMS intend to implement ownership reporting requirements for Medicare-certified nursing homes? Please explain in detail.
2. Does CMS plan to require standardized reporting requirements for Medicaid-certified nursing homes? If so, how? If not, why not?
3. Does CMS intend to address "related party" transactions? If so, how? If not, why not?
4. Will CMS require a complete listing of each facility in a nursing home chain owned by the same parent company? If so, how? If not, why not?

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<sup>15</sup> U.S. Centers for Medicare & Medicaid Services, "The Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program," <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/SNF-VBP/SNF-VBP-Page>.

<sup>16</sup> U.S. Department of Health and Human Services, Office of Inspector General, "Inaccurate Data in the Provider Enrollment, Chain, and Ownership System Individual Global Extract File," June 2009, <https://oig.hhs.gov/oei/reports/oei-07-08-00181.pdf>.

<sup>17</sup> The New York Times, "Maggots, Rape and Yet Five Stars: How U.S. Ratings of Nursing Homes Mislead the Public," Jessica Silver-Greenberg and Robert Gebeloff, Updated August 4, 2021, <https://www.nytimes.com/2021/03/13/business/nursing-homes-ratings-medicare-covid.html?action=click&module=RelatedLinks&pgtype=Article>.

<sup>18</sup> U.S. Centers for Medicare and Medicaid Services, "Find and compare providers near you," <https://www.medicare.gov/care-compare/?providerType=NursingHome>.

<sup>19</sup> Taylor Lincoln, *Is It Private Equity? We Can't See*, PUBLIC CITIZEN (Sept. 1, 2022), available at <https://www.citizen.org/article/nursing-home-transparency/#ftn1> (during the first six months after COVID-19 landed on American shores, residents and staff in nursing homes accounted for nearly half of all U.S. COVID fatalities).

5. Does CMS have a plan to implement clear reporting timelines and establish penalties for failure to report accurate information? Please explain in detail. If not, why not?
6. Will CMS establish a requirement for annual auditing to verify data accuracy? If so, how? If not, why not?
7. Does CMS plan to make these data available in a publicly searchable database? Please explain in detail. If not, why not?

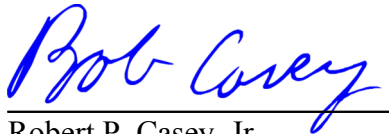
Sincerely,



Elizabeth Warren  
United States Senator



Charles E. Grassley  
United States Senator



Robert P. Casey, Jr.  
United States Senator



Katie Porter  
Member of Congress



Lloyd Doggett  
Member of Congress