

Report on Medicare Compliance Volume 32, Number 7. February 20, 2023 Proposed Rule Would Require SNFs to Reveal Private Equity Owners; More Screening Is Here

By Nina Youngstrom

In a Feb. 15 proposed regulation, CMS said it will revise the Medicare enrollment form to require owning and managing entities of Medicare skilled nursing facilities (SNFs) to disclose whether they are a private equity company or real estate investment trust.^[1] CMS also would require disclosure of SNF managers and owners on the 855A enrollment form. The requirements dovetail with a provider enrollment provision in the final 2023 Medicare Physician Fee Schedule (MPFS) rule that puts SNF owners through more rigorous screening before opening the gates to Medicare patients.^[2]

The goal of the proposed regulation, which implements Sec. 6101(a) of the Affordable Care Act, is “to improve care and accountability.”

CMS said concerns are mounting about the quality of care in nursing homes, especially when they’re owned by private equity and other types of investment firms. The regulations point to several reports. For example, the National Bureau of Economic Research in February 2021 published an analysis that concluded private equity (PE) ownership “increases the short-term mortality of Medicare patients by 10%, implying 20,150 lives lost due to PE ownership over our twelve-year sample period. This is accompanied by declines in other measures of patient well-being, such as lower mobility, while taxpayer spending per patient episode increases by 11%,” according to a summary in the February proposed rule.

The proposed rule also would require SNFs to reveal information on the enrollment form about their owners and managers, including every member of the governing body and every person who is an officer, director, member, partner, trustee or managing employee of the facility. There are also disclosure requirements for Medicaid nursing facilities (NFs). “Knowing who these parties are through their disclosures on the Form CMS-855A and to States would: (1) provide additional transparency that may assist CMS and other regulators in holding nursing facilities accountable; and (2) allow consumers to select facilities with better knowledge of their owners and operators,” the rule states. The information would be made publicly available. The CMS website already has a search function that allows people to look for deficiencies at nursing homes by type of ownership (e.g., nonprofit, for profit) and bed size.^[3]

As a practical matter, however, attorney Judy Waltz said it isn’t apparent specifically how CMS will use the newfound details about ownership interests. “I don’t know what CMS does with it at the end of the day,” said Waltz, with Foley & Lardner LLP in San Francisco. Maybe CMS will shift survey resources under the Medicare conditions of participation to private equity/REIT-owned SNFs on the grounds they pose more risk. But survey resources are already stretched thin. Otherwise, “all I can figure is this is a public shaming,” Waltz said. “You can’t just terminate a facility because it’s owned by a private equity firm.”

She noted that CMS in the MPFS rule “bumped up enrollment requirements to make it harder for supposed bad actors to get into the business.” SNFs were moved from a low to a high “categorical risk designation” at enrollment and from low to medium at revalidation. The high-risk category requires everyone with a 5% or

greater direct or indirect ownership interest in a SNF to submit fingerprints for a national background check to the Medicare administrative contractor, which will do a fingerprint-based criminal history record check using the FBI's Integrated Automated Fingerprint Identification System.

Disclosures Are Required When Ownership Changes

CMS said in the proposed rule that requiring Medicare SNFs and Medicaid NFs to disclose more information related to their ownership and management structures will increase transparency. SNFs would have to disclose the following on the 855A:

- “Each member of the governing body of the facility, including the name, title, and period of service of each such 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.
- “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 to one another.”

The data would also have to be reported when there's a change in ownership.

1 Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities, 88 Fed. Reg. 9,820 (Feb. 15, 2023), <https://bit.ly/414cbQg>.

2 Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs To Provide Refunds With Respect to Discarded Amounts; and COVID-19 Interim Final Rules, 87 Fed. Reg. 69,404 (Nov. 18, 2022), <https://bit.ly/3iwZP1i>.

3 Centers for Medicare & Medicaid Services, “Quality, Certification and Oversight Reports (QCOR),” last accessed February 17, 2023, https://qcor.cms.gov/report_select.jsp?which=0.