

Issue Brief

FEDERAL ISSUE BRIEF



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CMS Issues Proposed Rule Regarding Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities

The Centers for Medicare and Medicaid Services (CMS) have issued a proposed rule regarding the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities (referenced collectively as “nursing homes”).

The proposal is only 37 pages. The rule is scheduled for publication on February 15. A display copy is currently available at: <https://public-inspection.federalregister.gov/2023-02993.pdf>. The proposal provides a comment period ending April 14. CMS notes that this proposal would become effective, if adopted, 60 days after the final rule is published.

Provisions of the Proposed Regulations

A. Background

Section 6101(a) of the **Affordable Care Act** added a new section 1124(c) to the Act. It established requirements for the disclosure of information about nursing facility ownership and oversight. Under section 1124(c)(2)(A)(ii) of the Act, a nursing facility enrolling or enrolled in Medicare or Medicaid must disclose;

- The name, title, and period of service of each member of the facility’s governing body;
- The name, title, and period of service of each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility; and
- Each person or entity who is an additional disclosable party of the facility.

Section 1124(c)(5)(A) of the Act defines “additional disclosable party” as a person or entity that--

- Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the facility’s operations, or provides financial or cash management services to the facility;
- Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or
- Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

B. Proposed Provisions

CMS says that given both the statutory mandate in section 1124(c) of the Act and the need to address quality of care concerns in nursing homes through increased transparency, this proposed rule would require the following:

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- Medicare SNFs and Medicaid nursing facilities would need to disclose the data outlined in section 1124(c) upon initial enrollment and revalidation. Medicare SNFs would also have to: (1) report this information as part of any change of ownership pursuant to 42 CFR § 489.18; and (2) report any change to this data within the timeframes specified in 42 CFR § 424.516(e).
 - For Medicare SNFs, the data would be reported via the Form CMS-855A Medicare enrollment application. For Medicaid nursing facilities, the data would be reported via means prescribed by the state.

1. Medicare

a. Update to § 424.516 –

CMS would add new paragraph (g)(1) to § 424.516 outlining the following information to be reported as part of a SNF's Form CMS-855A initial enrollment or revalidation application. These data elements would be designated as paragraphs (g)(1)(i) through (iv), respectively, and would be in addition to (and not in lieu of) all other reporting requirements in subpart P:

- 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.

b. Definitions

To clarify some of the terminology used in § 424.516(g)(1), CMS proposes to add several definitions to § 424.502.

CMS proposes to define "additional disclosable party" as meaning (with respect to a skilled nursing facility defined at section 1819(a) of the Act) any person or entity who: (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 percent 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.

CMS proposes to add to the end of § 424.502's definition of "managing employee" a separate definition of "managing employee" that mirrors section 1124(c)(5)(C) of the Act and applies only to SNFs and the requirements in § 424.516(g). It would mean an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

CMS proposes to define "organizational structure." It would mirror the definition of the same term in section 1124(c)(5)(D) of the Act. With respect to a SNF, it would mean;

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- For 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 percent;
 - For 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;
 - For a general partnership - The partners of the general partnership;
 - For 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 percent;

- For a trust - The trustees of the trust;
- For an individual - Contact information for the individual.

CMS intends to add data elements to the Form CMS-855A through which owning and managing entities of SNFs would have to disclose whether they are either a private equity company or a REIT.

2. Medicaid

CMS proposes to revise its Medicaid enrollment provisions in 42 CFR part 455, subpart B, to include therein regulatory provisions akin to those being proposing in part 424, subpart P.

C. Public Posting of Data

Consistent with section 6101(b) of the **Affordable Care Act**, CMS says it intends to make data reported pursuant to section 1124(c) publicly available if this rule is finalized. CMS would provide more information after the final rule is published regarding the timing, vehicle, and content of this publication.

Final Comment

While this proposal is relatively short, it nevertheless contains extensive definitions of the reporting requirements. Those impacted need to review such in detail.