
Issue Brief

FEDERAL ISSUE BRIEF



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

The Centers for Medicare & Medicaid Services (CMS) have issued a final 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 rule is scheduled for publication on November 17. A display copy of the 93-page document is currently available at: <https://public-inspection.federalregister.gov/2023-25408.pdf>.

Section 6101(a) of the **Affordable Care Act** added a section 1124(c) to the Act. It established requirements for the disclosure of information about nursing facility ownership and oversight.

Summary of Major Finalized Provisions

There are three principal categories of provisions that CMS is finalizing in this rule.

a. Data to be Reported

CMS is finalizing its proposals that nursing homes must disclose the following information to CMS or, for Medicaid nursing facilities, the applicable state Medicaid agency (hereafter occasionally referenced as “state” or “state agency”):

- Each member of the facility’s governing body, 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.
- 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.

To the extent that a Medicare SNF must already report some of this data via the Form CMS-855A, CMS is finalizing its proposal that the SNF need not report the same data required under section 1124(c) of the Act more than once on the same application submission. (States will have the option of adopting a similar policy with respect to the required Medicaid nursing facility data.) In general, this rule should be construed towards disclosure and, if in doubt about whether additional information should be released, SNFs should disclose it.

CMS will also make the information provided per section 1124(c) of the Act publicly available within 1 year as required under section 6101(b) of the Affordable Care Act.

b. Timing of Reporting

CMS is finalizing its proposal that the nursing facility must report the foregoing information upon initially enrolling in Medicare or Medicaid (which, for purposes of this requirement, includes changes of ownership under 42 CFR 489.18) and when revalidating their Medicare or Medicaid enrollment. Moreover, a Medicare SNF, once enrolled, must disclose any changes to this information within the current timeframes specified in § 424.516(e) for reporting changes in enrollment data.

Consistent with 42 CFR 424.515, SNFs must revalidate their Medicare enrollment every 5 years. However, CMS under § 424.515(d) can perform off-cycle revalidations; that is, CMS can revalidate a provider or supplier at any time and need not wait until the arrival of the provider's or supplier's 5-year revalidation cycle. As finalized, CMS will accordingly reserve the right and indeed plans to conduct off-cycle revalidations of SNFs to collect the data required under section 1124(c) of the Act beginning when the revisions to the Form CMS-855A are finalized. .

c. Definitions

To explain some of the terminology associated with these reporting requirements, CMS proposed several new definitions. These included, but were not limited to, private equity company, real estate investment trust, additional disclosable party, and organizational structure.

Concerning the PEC and REIT definitions CMS proposed in the February 15, 2023 and FY 2024 IPPS/LTCH PPS proposed rules, CMS is finalizing the PEC definition with one minor clarification.

Due to concerns raised by commenters, CMS is not finalizing its proposed REIT definition. However, CMS is finalizing a definition of REIT that commenters recommended that: (1) CMS believes is more consistent with current federal law and industry practice; and (2) will still enable the agency to collect the information needed regarding REIT ownership of nursing homes.

CMS is also finalizing without modification: (1) all other definitions it proposed in the February 15, 2023 proposed rule; and (2) its proposal in the FY 2024 IPPS/LTCH PPS proposed rule to apply the PEC and REIT definitions (though as modified in this final rule) to all providers and suppliers that complete the Form CMS-855A.

d. Effective Date

This final rule will become effective 60 days after the date it is published in the **Federal Register**. Yet Medicare SNFs will not have to disclose the data required under section 1124(c) of the Act until the Form CMS-855A is: (1) revised to collect this data; and (2) publicly available for use. For Medicaid nursing facilities, the required data will not need to be reported until the applicable state Medicaid agency has established means to collect it. CMS expects state Medicaid agencies to promptly: (1) establish such data collection mechanisms; and (2) begin requiring Medicaid nursing facilities to provide this data once these collection means are established.

Final Provisions

CMS says it is finalizing all of its provisions from both the February 15, 2023 and FY 2024 IPPS/LTCH PPS final rules as proposed except as follows:

- CMS is inserting “direct or indirect” before the term “ownership share” in its PEC definition in 42 CFR 424.502.
- CMS is redefining REIT in 42 CFR 424.502 as a real estate investment trust as that term is described in 26 U.S.C. 856.

Additional Guidance

CMS notes that it will be providing “sub-regulatory” guidance to explain the new requirements to stakeholders, including examples of the types of data that must be disclosed.

Comments

Overall, this is a well written regulation. The final principal categories provide a simple and succinct summary of the changes being made.

CMS notes that it received only 75 comments in response to the February 2023 proposal.

The rule contains much of the February 13, 2023 proposal. However, it is contained separately and does not distract from the final changes being made.

The **Affordable Care Act** was enacted in March 2010. One must ask why it has taken CMS 13 years to promulgate this requirement.