

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

April 14, 2023

Administrator Chiquita Brooks-LaSure
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-6084-P
P.O. Box 8010
Baltimore, MD 21244-1850

Re: CMS-6084-P; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities

Submitted electronically: www.regulations.gov

Dear Administrator Brooks-LaSure:

The Long Term Care Community Coalition (LTCCC) is a national non-profit organization dedicated to improving care, quality of life, and dignity for residents in nursing homes and other long-term residential care settings. For over 30 years, LTCCC has conducted policy studies and quantitative analyses of nursing home laws, standards, and their implementation. In addition to its work on systemic nursing home issues, LTCCC works closely with residents, families, and their advocates to improve care.

We respectfully submit the following comments in response to CMS's proposed rule that would implement portions of section 6101 of the Affordable Care Act (ACA). In addition to our comments, LTCCC supports those of the National Consumer Voice for Quality Long-Term Care and the Geriatric Circle.

Foundation for Our Comments

Increased private equity investment and the ever-growing complexity of nursing home ownership and financing structures have made it exceedingly challenging for regulators to determine a nursing home's ownership, its quality track record, and its use of public dollars. Providing the public with more comprehensive ownership information than what is currently available would greatly enhance the tools available to consumers confronted with selecting a facility for themselves or a loved one. In addition, more extensive ownership information would be valuable to those monitoring the care of that individual once he or she becomes a nursing home resident.

While progress continues to be made and promising transparency reforms have been recently proposed at the federal level, the sad reality is that regulators still lack the timely, complete,

accurate, and actionable information they need to hold bad actors accountable and, more importantly, prevent resident harm. Greater transparency of ownership, management, and financial data, combined with sufficient oversight and enforcement authority and the necessary funding to effectively carry out these activities are critically needed.

Public Availability of Ownership Information

Section 6101(b) of the Affordable Care Act (“the Act”) states that no later than one year after the final regulations promulgated under section 1124(c)(3)(A) of the Act are published in the Federal Register, the Secretary shall make the information reported per such regulations available to the public. The proposed rule, on its face, appears to be consistent with Section 6101(b).

However, the additional language contained in the proposed rule is concerning. That language states that “[w]e would *consider* making this data available on *data.cms.gov*” and that “[f]urther information regarding the *format and scope* of the published information would be provided via future sub-regulatory guidance.” In addition, CMS’s own fact sheet¹ accompanying the proposed rule states that, “[h]owever, as indicated in the proposed rule, CMS would provide more information after the final rule is published regarding the *timing, vehicle and content* of this publication [emphasis added]”.

While we strongly support making the ownership data required to be reported under section 1124(c)(3)(A) of the Act publicly available, we have a number of serious concerns raised by the language quoted above which appears to call into question **what** information will be made available, **when** will it be made available, and **how** will it be made available.

What information will be made publicly available?

We believe that the information required to be reported per section 1124(c)(3)(A) should be made available to the public *in its entirety*. The proposed rule and accompanying fact sheet language seemingly postponing decisions about the “scope of the published information” and the “content” of that information is alarming, and not consistent with the underlying legislation.

The public has a strong appetite and compelling need for information about who owns a nursing home and their record of providing quality care. While the public, including nursing home residents and their families and friends, nursing home direct caregivers, researchers, and advocates, has long been concerned about the poor quality of care provided by far too many of

¹ Centers for Medicare & Medicaid Services, “Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities – Proposed Rule, (February 13, 2023). Available at <https://www.cms.gov/newsroom/fact-sheets/disclosures-ownership-and-additional-disclosable-parties-information-skilled-nursing-facilities-and>.

this nation’s nursing homes, the association between ownership type and quality of care came to the public’s attention much later.²

People seeking nursing home care today are increasingly turning to the internet for help. Many of those individuals are seniors. Unlike common stereotypes, today’s seniors are digitally savvy, most owning smartphones, accessing the internet daily, and having broadband at home. The COVID lockdowns during the height of the pandemic have incentivized many to fully embrace e-commerce, and they readily use the internet for purchasing decisions. When information is presented in a manner that is accessible and that uses effective transparency tools, these consumers eagerly incorporate this information into their decision-making processes.

When will the information be made available to the public?

We believe the law establishes a specific deadline for publication which is no later than one year after the final regulations are promulgated. We would support making this information publicly available as early as possible, but certainly no later than the legislatively required deadline.

How will the information be made available to the public?

We strongly oppose making these data available *only* on data.cms.gov, as this approach would be antithetical to public transparency, the goal of the underlying legislation. The data.cms.com site is largely unknown to nursing home residents and their families, and even those who are aware of that site find it unwieldy and challenging to use.

Is CMS considering making this information available on data.cms.gov *in addition to other websites, including, most logically, the Care Compare website?* While we are not opposed to including this data on data.cms.gov, a site specifically intended for use by researchers and regulators, we strongly urge that the information must be made available to the public on Care Compare. That site is the primary web-based tool operated by CMS providing information for patients/nursing home residents and caregivers to use to make informed decisions regarding their health care providers, including nursing homes. It is also extensively used by advocates, representatives of the Long Term Care Ombudsman Program, and citizen advocacy organizations.

Users of Care Compare expect and deserve to find newly reported and more robust ownership information included and easily accessible on that site, especially given the Biden Administration’s very public announcements about its commitment to increase the transparency of nursing home ownership information for consumers.³ The Administration also

² One of the earliest publications exposing the serious negative impact private equity and other complex nursing home ownership structures had on nursing home quality was a scathing 2007 New York Times investigative report. Available at <https://www.nytimes.com/2007/09/23/business/23nursing.html>.

³ See *White House*, “Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes,” (February 28, 2022). Available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>.

committed to make this information easier to find on the Nursing Home Care Compare website. We believe that Care Compare is the most appropriate site for consumers to locate this information and to help them identify patterns related to care quality and ownership.

On a similar note, we would also recommend including in Care Compare information from the data file on nursing home ownership posted to data.cms.gov in September 2022, and not simply a link to it.

If the choice of vehicle(s) has not yet been determined, how will that occur? Will feedback from a wide range of consumers (nursing home residents and their loved ones, researchers, advocates) be solicited and used to make this determination?

While we strongly urge CMS to include the information to be reported under this proposed rule on Care Compare, as well as on data.cms.com, in the event the issue remains unsettled, we recommend obtaining input from likely end users of the data for that purpose. We are confident that most nursing home residents, families, and advocates seeking information related to quality and ownership type would turn to Care Compare rather than to data.cms.gov.

The proposed rule indicates that “[f]urther information regarding the *format and scope* [emphasis added] of the published information would be provided via future sub-regulatory guidance.”

As you develop that further information, we would urge you to carefully consider and incorporate the extensive recommendations of the United States Government Accountability Office in its January 2023 Report entitled “CMS Should Make Ownership Information More Transparent for Consumers.”⁴ In that report, the GAO found that ownership information on Care Compare was not sufficiently transparent for consumers. Its recommendations include using plain language with clear graphics, organizing the information to highlight patterns related to quality across nursing homes with common ownership, obtaining consumer input to test ease of use and navigability, including explanations of how to use ownership information in the decision-making process, and adding information on how the data are collected and assessed for accuracy.

Additional Recommendations:

- Ownership information on Care Compare must be made easily searchable by chain and common ownership. Because nursing homes are increasingly for-profit entities, operated by multi-state or national chains or owned by private equity firms, consumers must be able to readily access and use ownership information across multiple states, by chains, or by common owner or operator.
- CMS should require nursing homes to include a *current* visual representation of its organizational structure and posting same on Care Compare.

⁴ U.S. Government Accountability Office, “Nursing Homes: CMS Should Make Ownership Information More Transparent for Consumers,” (January 3, 2023). Available at <https://www.gao.gov/products/gao-23-104813>.

- The CEO or designee of the parent company or owner, who has full knowledge of the ownership facts and can assure accuracy, should be required to certify the completeness and accuracy of ownership information.
- The definition of “managing control” should include any entity who receives and approves facility budgets or actually approves or has the right to approve any nursing home operational expenditure.
- We strongly urge CMS to establish intermediate sanctions (rather than solely prohibition from participation in Medicaid/Medicare) for failures to report complete, accurate, and timely ownership information. These regulations should include specific penalties that coincide with the significance of the failure to report complete, accurate, and timely information as well as a mechanism for increased penalties for repeated failures to report complete, accurate, and/or timely information.
- Reports submitted to regulatory agencies should be audited, and those who fail to comply with reporting requirements (including by submitting incomplete or inaccurate information) should be held accountable via a system of non-discretionary fines.
- Minimum requirements for the purchase, change in ownership, or management of nursing homes that participate in the Medicaid or Medicare programs must be strengthened and enforced. Criteria for identifying patterns of poor care should be developed and a history of poor care in any state should disqualify an applicant. A centralized application system should be created to better coordinate information across states and reduce duplication of efforts.