

New CMS Rule Expands Required Ownership Disclosures for Skilled Nursing Facility Ownership

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On Nov. 15, 2023, the Centers for Medicare and Medicaid Services (“CMS”) issued a new final rule that significantly expands required ownership disclosures for skilled nursing facility (“SNF(s)”) owners and operators (collectively, the “Final Rule”). The new disclosure requirements apply to SNFs at the time of initial Medicare enrollment and revalidation, as well as in connection with a change of ownership (“CHOW”).

Goals for Increased Transparency in SNF Ownership

The Final Rule is intended to increase the quality of care provided to SNF residents through greater transparency and scrutiny of SNF ownership. CMS has made clear its concern with private equity companies (“PEC(s)”) and real estate investment trusts (“REIT(s)”) owning SNFs and referenced reports that “raise concerns about the quality of care in PEC-owned and REIT-owned nursing homes.”

Expanded Disclosure Requirements for SNFs

In addition to existing disclosures required under Form CMS-855A (“CMS 855A”), SNFs will now be required to disclose the identity of each additional disclosable party (an “Additional Disclosable Party”), including whether such Additional Disclosable Party constitutes a PEC (which term is broadly defined in the Final Rule) or a REIT. Under the Final Rule, an Additional Disclosable Party includes any person or entity that:

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

Detailed Requirements and Definitions in the Final Rule

The Final Rule goes on to require details with respect to the organizational structure of each Additional Disclosable Party, as well as a description of the relationship between the Additional Disclosable Party and the SNF.

The term “private equity company” is defined under the Final Rule to include a publicly traded or non-publicly traded company that collects capital investments from individuals or entities and purchases a direct or indirect ownership share of a provider.

Practical Implications for SNF Providers

From a practical perspective, this will require disclosure of many investment, leasing, management and consulting relationships that were previously outside the scope of the CMS 855A, and may impact how certain SNF owners and operators structure their ownership and relationships with investors, lenders, landlords, managers and affiliate service providers. As in the past, all ownership disclosures will be made publicly available per Section 6101(b) of the Affordable Care Act.

Anticipated Impact on Medicare Enrollment and Revalidation

We expect that CMS’s review and scrutiny of all such additional ownership disclosures will lead to longer review and approval periods in connection with initial Medicare enrollment and revalidation, as well as in connection with CHOWs. SNF providers must thoroughly and meticulously complete CMS 855A to ensure they meet the requirements of the Final Rule.

Effective Date and Implementation of the Final Rule

The Final Rule will be effective in early 2024, although SNFs will not have to disclose the additional information required under the Final Rule until the CMS 855A is revised to collect this data and is available for public use.

For more information regarding the above, please contact a member of the [Benesch Healthcare+ Practice Group](#).

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