

April 12, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201
Via regulations.gov

**RE: Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties
Information for Skilled Nursing Facilities and Nursing Facilities; RIN 0938–AU90**

Dear Administrator Brooks-LaSure:

We appreciate this opportunity to support and comment upon the Centers for Medicare and Medicaid Services' (CMS) proposed rulemaking (the "Proposal") that would implement Section 6101(a) of the Affordable Care Act by requiring the disclosure of information relating to the owners and operators of Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities. The disclosure information required in the Proposal would bring much-needed public transparency to nursing facility ownership and changes of ownership, thereby helping to protect our nation's most vulnerable patients from the risks associated with private equity investment.

The risks to patients at private equity-owned nursing homes are well documented; academic studies and investigative reporting over the years have found higher patient mortality rates, reduced staffing, overreliance on psychiatric medications, and reduced quality of care.¹ Despite the hundreds of billions of dollars of government money going into nursing homes, public understanding of nursing home ownership and operations is limited. Tangled webs of corporate legal structures obfuscate what companies own or operate which facilities, making it difficult for regulators to track and ensure compliance with federal regulation.

Private Equity Stakeholder Project's 2021 report "[Pulling Back the Veil on Today's Private Equity Ownership of Nursing Homes](#)" identified the current largest private-equity-owned nursing home chains

¹ See for example: "Atul Gupta, Sabrina T. Howell, Constantine Yannelis, Abhinav Gupta. "Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes," NBER, February 13, 2021. <https://bfi.uchicago.edu/working-paper/does-private-equity-investment-in-healthcare-benefit-patients-evidence-from-nursing-homes/>; and: Peter Whoriskey and Dan Keating, "Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society's most vulnerable," Washington Post, November 25, 2018. https://www.washingtonpost.com/business/economy/opioid-overdoses-bedsores-and-broken-bones-what-happened-when-a-private-equity-firm-sought-profits-in-caring-for-societys-most-vulnerable/2018/11/25/09089a4a-ed14-11e8-baac-2a674e91502b_story.html

and, through case studies, considered the ways that profit-seeking tactics associated with private equity ownership may put patient care at risk. However, our research was severely limited by the dearth of publicly available information on private equity nursing home ownership.

Public Citizen's 2022 study "[Is It Private Equity? We Can't See: Federal Database on Owners of Nursing Homes Is Incomplete and Out-of-Compliance with the Law](#)" found similar challenges. Despite pledging to implement the disclosure requirements in the Affordable Care Act, ownership disclosure is about as spotty today as it was when the law was passed in 2010. For example, of 13 private equity firms that we believe (often based on information from non-government sources) to have holdings in nursing homes, only seven appear in the federal ownership database.

The transparency requirements in the Proposal would (1) empower patients to avoid problematic nursing facilities by receiving information related to corporate owners that have histories of neglect and malfeasance at such facilities, and (2) make it easier for regulators to pursue justice in enforcement actions, such as in response to violations of the False Claims Act.²

In addition, we support CMS' proposal to increase the frequency of reporting, requiring nursing homes to report ownership changes within 30 days and other changes to organizational structure and staff within 90 days. As private equity and REIT ownership can change frequently, more frequent disclosure is critical to providing an accurate, current picture of who owns nursing homes.

Additionally, we support CMS' inclusion of publicly-traded private equity firms in the Proposal because some publicly-traded firms have histories of substantial, troubled ownership of skilled nursing facilities and others still maintain footprints in long-term and senior care sector.

In 2018, an investigation by the *Washington Post*, "[Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society's most vulnerable](#)," highlighted the impact on patients of the Carlyle Group's past ownership of nursing home chain HCR ManorCare. The Carlyle Group is a publicly-traded firm.

KKR-owned BrightSpring Health Services (Formerly ResCare) has garnered renewed scrutiny for the poor conditions of its group homes for people with disabilities during KKR's ownership.³ Since private equity is a strategy in which firms with various corporate forms and regulatory responsibilities take part, public-private parity is crucial to capture the actual prevalence of private equity investment in nursing facilities.

² "Since 2013, at least 25 health care companies have paid settlements totaling over \$570 million for allegedly violating the FCA while under private equity ownership. The private equity owners of those companies currently own around 200 other health care companies combined. Except in a handful of cases, the private equity owners were not included in the settlements." <https://pestakeholder.org/wp-content/uploads/2021/02/Private-Equity-False-Claims-Act-PESP-022221-.pdf>

³ <https://www.buzzfeednews.com/article/kendalltaggart/kkr-brightspring-disability-private-equity-abuse>

In addition to requiring disclosure of the existence of private equity ownership, CMS may also want to consider disclosure of the scale of the private equity owner, by, for example, requiring disclosure of where the private equity owner falls within a range of assets under management, such as under \$50 million, between \$50 million and \$150 million, between \$150 million and \$1 billion, and over \$1 billion. Private equity firms routinely disclose assets under management to federal and state securities regulators on publicly-available documents, suggesting such disclosure would not be cumbersome for nursing homes to complete. Such data would enable CMS and academic researchers to better understand impacts of different scales of private equity ownership on facilities and patients.

We support CMS' proposal to require reporting from nursing homes receiving funding from Medicaid as well as Medicare and urge CMS to require consistent reporting of nursing home ownership, including ownership by private equity firms or REITS, regardless of whether the facility is funded by Medicare, Medicaid, or both.

Further, we support CMS' requirement that facilities certify that reported ownership information is "true, correct, and complete" and urge CMS to clarify how it intends to ensure facility compliance with the reporting requirements and what penalties facilities may face for failing to accurately disclose their ownership, including private equity and REIT ownership.

Finally, considering the proliferation of private equity and REIT investment in healthcare at large, we encourage CMS to explore ways to ensure ownership transparency in other healthcare contexts, such as hospitals and hospice care.

We have found private equity ownership of hospitals has eroded quality of care in the pursuit of outsized profit. For example, safety net hospital chain Prospect Medical Holdings, which received 63% of its patient service revenue from Medicare and Medicaid in 2019, was owned by Los Angeles-based private equity firm Leonard Green & Partners between 2010-2021. Over the course of its ownership, Leonard Green siphoned hundreds of millions of dollars in dividends and fees from the hospital chain even as its hospitals suffered quality and operational issues that hurt patients and workers. Now, Prospect's hospitals are in poor financial shape, shutting down services and laying off hundreds of workers.⁴

In the hospice context, private equity transactions rose almost 25 percent from 2011 to 2020.⁵ Much like with SNFs and other nursing facilities, the quality of care and working conditions of for-profit firms in this industry has been subject to intense scrutiny in recent years due to questionable business practices.⁶

⁴ Eileen O'Grady, "How Private Equity Raided Safety Net Hospitals and Left Communities Holding the Bag," Private Equity Stakeholder Project, November 2022. <https://pestakeholder.org/reports/how-private-equity-raided-safety-net-hospitals-and-left-communities-holding-the-bag/>.

⁵ <https://pestakeholder.org/wp-content/uploads/2022/03/Home-Healthcare-and-Hospice-report.pdf>

⁶ For example, a 2019 Government Accountability Office report found that hospices with the lowest quality (according to the CMS composite quality measure implemented in 2017) scores were most likely to be for-profit, although average quality remained similar. For example, for-profit hospices were more likely than their non-profit counterparts to have low rates of home visits in the last days of life by health professionals and high rates of live discharge from hospice. Non-profit hospices also had slightly higher percentages of white beneficiaries, and for-

Thus, as private equity investment in healthcare expands and private equity firms expand their investments in other parts of the healthcare system, ownership transparency in other areas becomes even more important.

We thank you again for the opportunity to provide comment in support of the Proposal. This Proposal will go a long way in guaranteeing that patients, the public and regulators have the transparency they need to make informed assessments of our nation's nursing facilities. We also encourage CMS to extend transparency disclosures to other healthcare sectors under its charge.

For questions, please contact Senior Policy Coordinator, Chris Noble, at chris.noble@pestakeholder.org.

Best,



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Additional Signatory Organizations

American Economic Liberties Project
Americans for Financial Reform Education Fund
Be A Hero
Caring Across Generations
Center for Popular Democracy
Families USA
Healthcare NOW

Naugatuck Valley Project, Inc.
National Disability Rights Network (NDRN)
Partners for Dignity and Rights
Physicians for a National Health Program
Put People First! Pennsylvania
U.S. PIRG (Public Interest Research Group)

profit hospices had a greater proportion of patients enrolled in both Medicare and Medicaid, indicating that for-profit hospices are more likely to serve patients of color and low-income patients. For-profit hospices were also more likely to serve patients with ailments that resulted in longer lengths of stay, such as dementia, rather than patients with conditions like cancer which usually require less time in hospice. <https://pestakeholder.org/wp-content/uploads/2022/03/Home-Healthcare-and-Hospice-report.pdf>