

Insights

Updated CMS Reporting Requirements for Nursing Facilities

March 26, 2024

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On November 17, 2023, the Centers for Medicare & Medicaid Services ("CMS") issued a Final Rule implementing certain requirements in the Affordable Care Act regarding the disclosure of ownership, managerial and other information for Medicare and Medicaid participating nursing facilities. The Final Rule became effective January 16, 2024, and it includes much more expansive reporting requirements than those that were previously in place. With the prevalence of the arrangements in Indiana where county hospitals operate nursing facilities subject to these requirements, this article is intended to summarize some of the major provisions contained in the Final Rule and outline the implications that the new reporting requirements have on entities involved in these types of arrangements.

Background:

Medicare and Medicaid provider enrollments require that nursing facilities provide information on the individuals and entities that have an ownership or control interest in the nursing facility. Prior to the Final Rule becoming effective, nursing facilities took different approaches as to which individuals or entities they would disclose, particularly when there was a manager and/or leasing arrangement involved. This discrepancy between the extent of facilities' disclosures was largely due to the fact that the previous requirements lacked specificity as to the scope of which individuals or entities constituted having an ownership or control interest.

The Final Rule:

Under the Final Rule, CMS clarifies and expands upon (1) the specific data that is required to be reported, (2) the timing of the reporting, and (3) the applicable definitions of the terms used in the reporting requirement rules, particularly with regard to the definitions of "additional disclosable party" and the entities' "organizational structure."

I. First, the data that facilities are required to report to CMS and/or the applicable state Medicaid agency now includes the following:

- 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.

The Final Rule also requires that all owning or managing entities that are listed on a provider's Form CMS-855A (i.e., the Medicare enrollment form) submission disclose whether those entities are a "private equity company" or a "real estate investment trust." While the information above that facilities are required to report may still be broadly construed, despite the Final Rule clarifying the somewhat vague definitions of some of the terms used therein (see Section III, below), CMS specifically notes in the Final Rule that the rule should be construed towards disclosure and, if in doubt about whether additional information should be released, facilities should disclose it.

II. Second, the Final Rule clarifies the timing of the required reporting. It provides that facilities must report the required information:

- Upon initially enrolling in Medicare or Medicaid;
- Upon any changes of ownership; and
- When revalidating their Medicare or Medicaid enrollment (note, however, that CMS states that it plans to conduct off-cycle revalidations of Medicare skilled nursing facilities in an effort to collect all of this newly required data from the facilities).

Medicare skilled nursing facilities must also disclose any changes to the information that's required to be reported within the current timeframes specified in 42 CFR § 424.516(e).

III. Third, the Final Rule includes several new definitions of the terms that are used in the reporting requirements. Specifically, the term "additional disclosable parties" is defined as a person or entity that:

- 1) 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;
- 2) Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5% 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.

The Final Rule defines the term "organizational structure" as meaning, in the case of:

- 1) 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%;
- 2) 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);
- 3) A general partnership: the partners of the general partnership;
- 4) 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%;
- 5) A trust: the trustees of the trust;
- 6) An individual: contact information for the individual; and
- 7) Any other person or entity: such information as the Secretary determines appropriate.

The Final Rule states that Medicare skilled nursing facilities will not have to disclose this newly required data until

the Form CMS-855A has been revised to collect this data and is publicly available for use (and Medicaid nursing facilities will not need to report this required data until the applicable state Medicaid agency has established means to collect it). However, the Office of Management and Budget has since approved the revised Form CMS-855A where all such information can be recorded, and MACs began accepting this revised form on November 17, 2023. The prior forms are now no longer valid, and if one is submitted, the MAC will return it and require the new, revised form to be submitted, likely delaying the approval of the CMS-855A submission. The current Form CMS-855A can be found here.

Impact on Indiana County Hospitals Operating Nursing Facilities:

As discussed above, Indiana's nursing facilities are predominantly operated by county hospitals which then engage specialized entities familiar with the intricacies of nursing facility operations to manage the day-to-day aspects of the facilities on behalf of the hospital operator. This structure can be complex when it comes to reporting each entity and the role it plays in the successful operation of the nursing facility. Due to the involvement of different types of entities playing different types of roles, some which may be related parties or real estate investment trusts, with CMS' reporting requirements having now been expanded, the list of the parties that are required to be reported will now likely be much longer.

County hospitals' organizational structures are generally already reported (e.g., the officers, directors, etc.). However, with the new reporting requirement and definition of "additional disclosable parties," the list of other entities to be disclosed—such as managers, landlords, entities owning directly or indirectly 5% or more of the real property, etc., along with the organizational structure of each—will likely substantially expand the information required as part of 855A submissions and subject facilities to additional questions or points of clarification by the MAC. Any request for additional information may further extend the already lengthy review and approval timelines we are seeing for 855A submissions.

For questions, please contact Meghan M. Linvill McNab, Andrew N. Warner, or another member of our Health Care Practice.

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