

April 14, 2023

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

Dear Administrator Brooks-LaSure:

Arnold Ventures welcomes the opportunity to provide comments to the Centers for Medicare and Medicaid Services (CMS) on the “Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Homes” proposed rule (CMS-6084-P) that was published in the Federal Register on February 15, 2023.

Arnold Ventures is a philanthropy dedicated to investing in evidence-based policy solutions that maximize opportunity and minimize injustice. Our work within the health care sector is driven by a recognition that the system costs too much and fails to adequately care for the people it seeks to serve. Our work spans a wide range of issues including commercial-sector prices, provider payment incentives, prescription drug prices, clinical trials, Medicare sustainability, and complex care.

Our Complex Care portfolio is focused on ensuring that all individuals dually eligible for Medicare and Medicaid have access to the care that they need in the settings that they prefer. Given that over 70% of nursing home residents are dually eligible, this setting is of particular relevance to our work.¹ Along with our partners and grantees, we seek to advance evidence-based policies that ensure efficient, high quality care to the individuals who receive care in nursing facilities. To that end, we have been particularly troubled by the growing body of research linking certain nursing home ownership structures to reductions in staffing,^{2,3} quality, and outcomes.⁴ Yet current data sources fall short in enabling policymakers, researchers, and consumers and caregivers to readily identify facility ownership and structures. Transparency in nursing home ownership is critical to better understanding and addressing these potential negative impacts on care and outcomes for the dual-eligible population and beyond.

While this letter focuses narrowly on the agency’s important work to improve the Medicare and Medicaid programs and participating nursing homes, we also encourage CMS to consider authority to increase transparency around ownership in other parts of the health care system. Arnold Ventures has funded several studies aimed at measuring the effects of ownership of entities such as private equity companies and real-estate investment trusts (REITS) on patient care and outcomes across care settings, as well as clarifying opportunities to increase industry transparency. We look forward to the results of these studies and intend to share findings with CMS once available.

¹ Rahman, M. et al. (2022). [Higher Medicare SNF Care Utilization by Dual-Eligible Beneficiaries: Can Medicaid Long-Term Care Policies Be the Answer?](#)

² Pradhan, R. et al. (2014). [Private Equity Ownership of Nursing Homes Implications for Quality.](#)

³ Braun, T. et al. (2023). [The Role of Real Estate Investment Trusts in Staffing US Nursing Homes.](#)

⁴ Gupta, A. et al. (2021). [Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes.](#)

II. B. 1. A. Update to § 424.516

Background: CMS proposes to require skilled nursing facilities (SNFs) to report additional information about their facility's ownership and management status as part of the facility's Form CMS-855A, and to amend this reporting as changes occur. This new data collection includes details about the SNF's governing body, staff, and disclosable parties, as well as the organizational structure of any disclosable parties, including the interrelationships of multiple disclosable parties. In addition to requiring SNFs to report this information upon initial submission and during the revalidation process, which happens only once every five years, CMS proposes that SNFs would have 30 days to report changes in ownership and control and 90 days to report all other changes in organizational structure or staff.

Policy Position: We strongly support CMS' proposal to require facilities to report this additional level of detail, which will allow for much-needed transparency around nursing home structure, governance, and investments. We also strongly support CMS's proposal to increase the frequency of reporting beyond initial enrollment and revalidation. The proposal that SNFs be given a 30 to 90-day window to report such changes balances the importance of transparency with the operational burden of reporting.

II. B. 1. B. Definitions

Background: To clarify the terminology included in the proposed SNF reporting requirements, CMS proposes definitions for the following terms: (1) additional disclosable party, (2) managing employee, (3) organizational structure, (4) private equity company, and (6) real estate investment trust. The definitions of private equity and REITs proposed in this rule include both publicly and privately traded companies and CMS requests feedback regarding whether this approach makes sense.

Policy Position: We are supportive of CMS' definitions for the terms listed above, including the inclusion of publicly traded companies in the definitions of private equity companies and REITs. In addition to these terms, we would suggest including and defining the following terms in the SNF reporting requirements: hedge funds, venture capital funds, and real estate funds, of which REITs are one example. While it is important to track REITs, there are other types of funds that invest in real estate beyond REITs that are worth capturing.

CMS may also consider including an additional level of granularity within the definitions to approximate the size of the private investment within the SNF. CMS could require, for example, that SNFs not only report whether investments in their facilities meet the definition of private equity but identify whether the level of the private equity company's ownership of the SNF falls between 1% and 25%, 26% and 50%, 51% and 75%, or 76% and 100% of the SNF.

Additionally, we are wary that as standardized definitions of ownership structures arise, entities may restructure to avoid these categorizations, while still practicing the same activities that this proposed rule aims to better understand and expose. We therefore encourage CMS to consider how to capture ownership structures that don't fall neatly into the other specified categories. One way to do this would be to require reporting of "other private funds." Alternatively, CMS could increase transparency and reporting requirements at the activity level, in addition to at the ownership level.

II. B. 2. Medicaid

Background: CMS proposes to clarify the terminology included in the proposed Medicare nursing facility reporting requirements, including definitions for (1) additional disclosable party and (2) organizational

structure, be adjusted to comply with the Medicaid context. For example, in line with the proposed requirements on the Medicare side, CMS encourages states to establish reporting requirements regarding ownership changes. CMS also suggests that states collect data signifying whether nursing facilities are owned by private equity companies or REITs. However, CMS does not propose to require states to report ownership data with specific frequency within an enrollment application or to report changes to their existing ownership information within certain timeframes.

Policy Position: We are supportive of CMS' efforts to extend reporting requirements to the Medicaid program. We urge CMS to use their authority to mandate consistent reporting of ownership structure and changes, as holding Medicare and Medicaid facilities to different standards has the potential to create perverse incentives around ownership of Medicaid nursing facilities.

II. C. 1. Public Posting of Data

Background: CMS proposes that nursing facility ownership data, consistent with section 1124(c) of the Affordable Care Act be made publicly available within 1 year of the rule, should it be finalized.

Policy Position: We value increasing transparency among stakeholders such as researchers, policymakers, advocates, and consumers. Therefore, we support CMS' proposal to publicly report SNF ownership data within 1 year of this rule, if finalized.

II. C. 2. Section 1124(c)(3)(A) of the Act

Background: CMS proposes to apply the current certification standard for the initial enrollment or revalidation application Form CMS-855A to the additional information it proposes to include in form. Specifically, if finalized, the rule will require facilities to certify that all information included in the Form CMS-855A, including the new information around nursing home ownership, is "true, correct, and complete." CMS does not assert a penalty for failure to comply with this certification standard in reporting information on Form CMS-855A.

Policy Position: We support CMS' proposal to apply this stringent certification standard to the Form CMS-855A. However, we urge CMS to additionally consider how it intends to audit the data to ensure accuracy, and to impose a meaningful penalty on facilities that fail to comply with these proposed reporting standards. Lack of such accountability measures makes it far more difficult for CMS to ensure meaningful transparency.

Conclusion

Arnold Ventures is prepared to assist with any additional information needed. Please contact Mark Miller, Ph.D., Arnold Ventures' Executive Vice President of Health Care, at mmiller@arnoldventures.org or Arielle Mir at amir@arnoldventures.org with any questions. Thank you again for the opportunity to comment and your important work.

Arielle Mir