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March 27, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

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

Dear Administrator Brooks-LaSure:

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) requiring disclosure of nursing facility ownership information, which was published on February 15, 2023. MACPAC is a nonpartisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of the U.S. Department of Health and Human Services (HHS), and the states on a wide array of issues affecting Medicaid and the State Children's Health Insurance Program (CHIP).

MACPAC recently completed a comprehensive review of Medicaid nursing facility payment policies, which is included in the Commission's March 2023 *Report to Congress on Medicaid and CHIP* (MACPAC 2023). The report outlines principles for states to consider when setting Medicaid payment rates and methods and makes recommendations on steps that HHS can take to improve the availability of data to assess whether state policies are consistent with these principles.

One of the Commission's recommendations is that HHS direct the Centers for Medicare & Medicaid Services (CMS) to collect and report comprehensive ownership data in a standard format that enables analysis (MACPAC 2023). These data are needed to fully understand the extent of related-party transactions and their effects on costs and quality outcomes. An example of multiple related parties owning a nursing facility is when private equity (PE) firms purchase a nursing facility, sell the real estate to another entity, and then lease the building to a third entity that manages the care provided. Some stakeholders have raised concerns about the potential for nursing facilities to pay above market rates for services owned by related parties, which has the potential to increase the profits of the entity that owns the related parties. Because many Medicaid programs pay nursing facilities on a cost basis, this practice has the potential to increase state and federal spending without a commensurate improvement in the quality of care provided. However, limited data are available to quantify these effects.

The proposed rule implements the disclosure requirements described in Section 6101 of the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) and expands reporting requirements for nursing facilities owned by PE



companies and real estate investment trusts (REITs). The Commission strongly supports these changes, which are consistent with MACPAC's recent recommendation.

Below we offer technical comments on how CMS could further expand collection of comprehensive data on nursing facility ownership to enable future analyses.

Application to Medicaid-only nursing facilities

The proposed rule establishes a standard process for collecting ownership data for Medicare-certified nursing facilities but does not apply the same standards to nursing facilities that are only certified by Medicaid. States are required to collect some ownership information for Medicaid-only facilities, but the new proposed reporting of PE and REIT ownership only applies to Medicare-certified facilities.

Although the vast majority of nursing facilities are dually certified by Medicare and Medicaid, about 2 percent of nursing facilities were only certified by Medicaid in 2019. These facilities provide long-term care to Medicaid enrollees but generally do not provide short-term, post-acute care following a hospital stay.

In the Commission's view, PE and REIT ownership data should be collected for both Medicare- and Medicaid-certified facilities. Although Medicaid-only facilities do not currently report to the Provider, Enrollment, Chain, and Ownership System (PECOS) used to collect ownership information for Medicare-certified facilities, states can still collect the same information in their own state-developed systems for Medicaid-certified facilities. To further standardize data reporting, CMS could also consider requiring Medicaid-only facilities to report ownership information in PECOS. States should also make these data publicly available and work with CMS to develop a common dataset that could enable analyses of ownership of all nursing facilities. States and CMS already work collaboratively to compile data on all nursing facilities through the Certification and Survey Provider Enhanced Report (CASPER) system, and CMS should consider whether there are ways to build on these existing processes in order to reduce reporting burden and make the data more useable.

Public-private real estate ownership models

The proposed rule defines REITs as companies that own part or all of the buildings or real estate in or on which a provider operates. The proposed rule is intended to gather information on for-profit entities that purchase nursing facility real estate and typically receive special tax consideration for doing so. However, in the Commission's view, CMS should also collect similar information on non-profit or public entities that engage in similar ownership practices.

For example, MACPAC has found that it is common in some states for public hospitals to buy or lease privately operated nursing facilities. In certain instances, these arrangements are intended to help improve access to post-acute care, but in other cases, these arrangements are designed to allow facilities to receive Medicaid supplemental payments targeted to government-owned facilities. For example, in one state in 2019, more than 90 percent of nursing facilities qualified for supplemental payments targeted to government-owned facilities, including 181 facilities that were classified as privately owned on Medicare cost reports (MACPAC 2023). CMS should consider collecting more detailed information on these arrangements and other similar arrangements to inform future analyses and oversight.

Future analyses of the relationships between ownership and quality outcomes

The Commission supports future efforts to use the new ownership data to examine the effects of ownership on quality outcomes. To enable these analyses, it will be important for CMS to make the data available to



researchers using common identifiers, such as the CMS certification number, that can be easily linked with existing CMS data, such as data on nursing facility quality measures, staffing rates, survey deficiencies currently published on Medicare.gov Care Compare, as well as data on nursing facility resident demographics and care needs provided in the Minimum Data Set.

Thank you for the opportunity to comment on this proposed rule. We appreciate CMS's continued efforts in this area.

Sincerely,



Melanie Bella, MBA
Chair

cc: The Honorable Ron Wyden, Chair, Senate Finance Committee
The Honorable Mike Crapo, Ranking Member, Senate Finance Committee
The Honorable Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee
The Honorable Frank Pallone, Jr., Ranking Member, House Energy and Commerce Committee

References

Medicaid and CHIP Payment and Access Commission (MACPAC). 2023. Chapter 2: Principles for assessing Medicaid nursing facility payment policies. *Report to Congress on Medicaid and CHIP*. March 2023.
<https://www.macpac.gov/publication/principles-for-assessing-medicaid-nursing-facility-payment-policies/>