CMS Proposes Sweeping Disclosure Requirements for Nursing Facilities

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The Centers for Medicare & Medicaid Services ("CMS") published a proposed rule on February 15, 2023 that will require Medicare skilled nursing facilities ("SNFs"), as well as Medicaid nursing homes, to disclose significant ownership and management information.

CMS has expressed concern about the quality of nursing homes, and in particular, for-profit facilities owned by private equity companies, real estate investment trusts (REITs) and other investment firms. In recent years, Pennsylvania's own for-profit nursing homes have experienced numerous quality issues, and many have been placed into receivership by the Pennsylvania Department of Health. Some blame inadequate government reimbursement, while others blame the profit motivation of investors. Nevertheless, CMS believes that greater transparency about nursing home ownership will assist federal and state regulators in holding nursing homes accountable.

Under the proposed rule, nursing facilities will be required to provide comprehensive information about their ownership structure (e.g. corporation, LLC, partnership etc.) and the persons involved, including:

- **Each member of the governing body of the facility**.
- **Each officer and managing employee of the facility** "who directly or indirectly manages, advises or supervises any element of the practices, finances or operations of the facility."
- **Each person or entity who is an "additional disclosable party"**, defined broadly as any person or entity that exercises "operational, financial or managerial control over the facility" or "provides policies or procedures for any of the operations of the facility" or "provides financial or cash management services to the facility."

The definition of "additional disclosable party" also includes any person or entity that leases real property to the facility or owns 5% or more of the property. Finally, perhaps included as a catch-all requirement, facilities must disclose any person or entity that provides "management or administrative services, management or clinical consulting services, or accounting or financial services to the facility."

Some criticize these disclosure requirements as overly broad, duplicative and impracticable. They express concern that burdensome reporting requirements will discourage private investment in long-term care at a time when the industry is plagued by escalating costs, staffing shortages and inadequate reimbursement. Others, particularly those in the nonprofit world, have applauded the added transparency in the interest of quality, noting that nonprofit facilities already report much of this information in their Form 990 filings.

CMS for its part, has stated that the final rule will attempt to eliminate any duplicate reporting requirements. However,

CMS also has advised that any information obtained will be posted on its website and available to the public. Comments or objections to the proposed rule are due by April 14, 2023, and much debate is expected.

If you have any questions regarding the CMS proposed rule, please contact Partner Christopher J. Churchill or any member of the Senior Living Industry Group.

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