

March 2, 2023

Proposed Rule on Disclosures of Nursing Facility Ownership

Summary and areas for potential comment

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Medicaid and CHIP Payment and Access Commission



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Overview

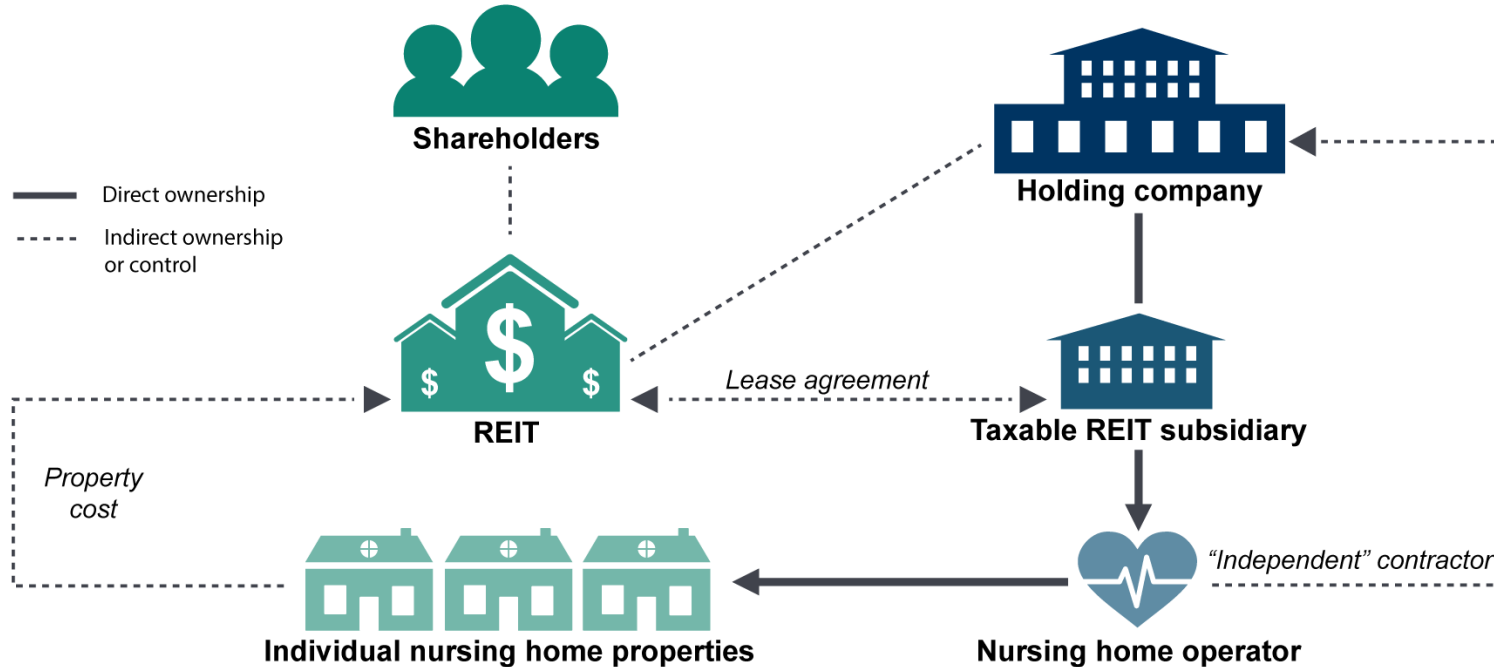
- Background
 - Ownership models for nursing facility care
 - Current disclosure requirements
- Proposed new reporting requirements
 - Private equity ownership
 - Real-estate investment trusts
- Potential areas for comment
 - Support for changes that are consistent with MACPAC's recent recommendation
 - Medicaid-specific considerations



Nursing Facility Ownership

- In 2022, most nursing facilities (72 percent) were for-profit and two-thirds of facilities (66 percent) were part of a larger chain
 - 15 percent of nursing facilities were part of chains with 10 facilities or fewer
 - 11 percent of facilities were part of chains with more than 100 facilities
- Between 2010 and 2020, about 5 percent of nursing facilities were acquired by private equity (PE) firms
- In 2021, real estate investment trusts (REITs) held investments in 1,806 nursing facilities
 - REITs are for-profit corporations that invest in income-producing properties
 - REITs typically own the nursing facility building and then lease the operations to a nursing facility operator

Example of REIT Nursing Facility Ownership



Notes: REIT is real estate investment trust.

Source: Based on information from Braun, R.T., D. Williams, D. Stevenson, et al. The Role of Real Estate Investment Trusts in Staffing US Nursing Homes, 2023, *Health Affairs*, 42, no. 2 <https://www.healthaffairs.org/doi/suppl/10.1377/hlthaff.2022.00278>.

Potential Effects of Nursing Facility Ownership

- Stakeholders have raised concerns that PE and REIT ownership may result in reduced staffing levels and worse health outcomes
- Related party transactions may inflate reported costs above what they would be if the facility were operated more economically and efficiently
- In some states, public hospitals buy or lease privately operated nursing facilities so that these facilities can receive Medicaid supplemental payments targeted to government-owned facilities

Current Ownership Disclosure Requirements

- Section 6101 of the Affordable Care Act (ACA) requires the Centers for Medicare & Medicaid Services (CMS) to collect nursing facility ownership information
- CMS collects information on corporations that have at least a 5 percent ownership stake in Medicare-certified facilities in its Provider Enrollment, Chain, and Ownership System (PECOS)
- State Medicaid agencies must collect similar information for the small number of nursing facilities that are only certified by Medicaid

Proposed Rule

- The proposed rule would add regulations to implement Section 6101 of the ACA and expand the scope of current reporting
- The PECOS data collection would be expanded to include additional information about PE and REIT ownership
- Ownership data would be collected at initial Medicare enrollment and updated every five years or when there is a change in ownership
- Medicaid-only nursing facilities that are not enrolled in PECOS would submit ownership information in a state-prescribed format

Potential Areas for MACPAC Comments

- The proposed changes are consistent with MACPAC's recent recommendation for CMS to collect and report data on nursing facility ownership in a standard format that enables analysis
- The lack of standardization of reporting for facilities that are only certified by Medicaid is a potential area of concern
- The proposed definition of REITs is limited to for-profit entities and does not include arrangements where public hospitals buy nursing facilities and lease operations to private entities
 - MACPAC's recent analyses found large discrepancies between reported ownership for Medicaid supplemental payments and public/ private ownership reported on Medicare cost reports

Next Steps

- Comments are due April 14, 2023
- If Commissioners are interested in commenting, staff will draft a letter reflecting the Commissioner discussion

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