

## **Guidance on the Nursing Home Transparency Provisions of the Patient Protection and Affordable Care Act**

### **Current Requirement for SNFs and NFs**

The following information must be available to the Secretary of the Department of Health and Human Services (“HHS”), the Inspector General of HHS, the State in which the facility is located, and the State long-term care ombudsman, if any of them ask for it:

- Name of any person/entity that has an ownership interest of 5% or more in the facility
  - Includes direct or indirect interests, such as intermediate entities
  - “Intermediate entity” is not defined, but would likely include any and all persons or entities in between the ultimate parent (at the top of the ownership chain) and the actual Provider (facility), as long as there is an ownership link at each level down the chain.
- Name of any person/entity owning a mortgage, deed of trust, note, or obligation secured by the facility or property of the facility, if the interest is 5% or more of the total property
- Each member of the governing body of the facility
  - Name, title, period of service must be disclosed
- Each officer, director, member, partner, trustee, or managing employee of the facility
  - Name, title, period of service must be disclosed
  - **Managing employee** means an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility
    - Note that this definition is different from the definition of “managing employee” for purposes of other ownership and disclosure provisions of the already-existing law. See Section 1126(b) of the Social Security Act.
- Each additional disclosable party of the facility
  - Name, organizational structure, and a description of the relationship of each additional disclosable party to the facility and to one another must be disclosed
  - **Additional disclosable party** means any person or entity who:
    - Exercises operational, financial, or managerial control over the facility or a part of the facility;

- Provides policies or procedures for any of the operations of the facility;
- Provides financial or cash management services to the facility;
- 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 the real property; or
- Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.
- Examples include parent-subsidary relationships, management companies, real estate holding companies, and administrative service companies
- **Organizational structure** means:
  - For a corporation → officers, directors, and shareholders who have an ownership interest equal to or exceeding 5% must be disclosed
  - For an LLC → members and managers must be disclosed, including, as applicable, what percentage each member and manager has of the ownership interest in the LLC
  - For a general partnership → partners must be disclosed
  - For a limited partnership → general partners and any limited partners who have an ownership interest equal to or exceeding 10% must be disclosed
  - For a trust → the trustees must be disclosed
  - For an individual → his or her contact information must be disclosed

*Note: If a facility already reports any of the above information to a federal agency, such as the IRS, SEC, or HHS, the facility can submit those forms to satisfy the current requirement. For example, facilities already must disclose certain ownership/investment information on CMS Form 855A and, in some states, on the CMS Ownership and Control Interest Statement.*

### **Future Requirements and Rulemakings**

- By March 2012, HHS must issue final regulations that include a standardized format for reporting the above information.
- By July 2012, facilities will begin reporting the above information to HHS.
  - A facility will have to certify that the information provided is, to the best of its knowledge, accurate and current.
- By March 2013, HHS will make the above information available to the public.

### **Undefined Terms/Concepts**

- There are many items that will need to be explained in future regulations. For example:
  - “Governing body” is not specifically defined; CMS may refer to existing regulatory definition in 42 C.F.R. § 483.75(d).
  - Many aspects of the “additional disclosable party” definition need further clarification. E.g., what is a clinical consultant? What if another party, such as a law firm, creates a Provider’s policies and procedures?
  - It is not clear how the new disclosure requirements apply to a Provider with a chain of ownership. E.g., does a Provider have to report additional disclosable parties for an indirect owner?