
October 11, 2022

**Hubert Humphrey Building
200 Independence Ave. S.W.
Washington, D.C. 20201**

Dear Secretary Becerra and Administrator Brooks-LaSure:

We represent a group of individuals and organizations working to bring transformative change to America’s residential long-term care system. Near-term solutions to make transformative changes at the national level in the nursing home sector are at hand. This letter highlights our support for a fundamental accountability reform – transparency.

On February 28, 2022, President Biden issued a landmark ***“Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes” executive initiative***. Included in the White House directive is an order, “Improve Transparency of Facility Ownership and Finances.”¹ The language is unequivocal in its blunt call to action: “CMS will implement Affordable Care Act requirements regarding transparency in corporate ownership of nursing homes, including by collecting and publicly reporting more robust corporate ownership and operating data.” With this letter, we are requesting a meeting to discuss how we can be of assistance in effectively carrying out this top priority.

The authority for making transparency of ownership a concrete reality is anchored in Section 6101 of the Affordable Care Act (ACA) of 2010. The statute explicitly requires nursing homes reimbursed and certified by Medicare and Medicaid to make available specific information on ownership, including a description of the governing body, managing employees, and the organizational structure of each Medicare skilled nursing facility (SNF) or Medicaid nursing facility (NF), along with detailed information regarding “additional disclosable parties.”²

In 2011, the Centers for Medicare and Medicaid (CMS) pledged that “to respond properly to all of the comments received related to the disclosure of information requirements, we will publish a separate final rule specifically addressing these provisions at a later date.”³ ***More than a decade later, no final rule for Sec. 6101 has been implemented.***

This unexplained delay is highly problematic in view of a recent report issued by the HHS Assistant Secretary for Planning and Evaluation (ASPE), which identified the rising frequency of ownership changes in SNFs,⁴ and noted that a ***byzantine labyrinth of poorly described ownership structures complicates efforts to assess the impact of ownership changes on health care costs and quality.*** Further, a report issued in February 2021 by the National Bureau of Economic Research (NBER) pointed to highly troubling links between investor (private equity) ownership of nursing homes, higher mortality and lower staffing.⁵ In addition, a 2022 report issued by Public Citizen made similar points.⁶ All reinforce the importance of implementing Section 6101. Finally, the National Academy of Sciences, Engineering and Medicine report, “The National Imperative to Improve Nursing Home Quality: Honoring our Commitment to Residents, Families and Staff,” identifies as a top-level priority “increase[ing] transparency and accountability of finances, operations and ownership,” and identifies HHS as the responsible partner for operationalizing this goal and related recommendations (p. 12-13).⁷

More broadly, the COVID-19 pandemic has highlighted the need for much greater transparency of ownership in the nursing home sector to improve both quality and safety. One disturbing finding was the lack of infrastructure

in most nursing homes to provide population-specific interventions for effective infection prevention and control practices. As conditions changed and the virus spread, communications challenges may have been exacerbated **by having only an incomplete understanding of those organizations and individuals exercising operational, managerial, and financial control over nursing homes at the national level.**

Underscoring the need for much more robust monitoring of real-time performance in the nursing home sector at the national level, the President’s executive initiative charges HHS with creating “a Database of Nursing Home Owners and Operators.” Specifically, it states that “CMS will create a new database that will track and identify owners and operators across states to highlight previous problems with promoting resident health and safety.” Foreseeing this, a February 2021 *Health Affairs* article recommended that “HHS should immediately create an interagency (CMS, HHS OIG, Department of Justice (DOJ) and the Centers for Disease Control and Prevention) **“Early Detection Task Force”** [emphasis added] to identify and monitor nursing homes that need more focused attention.” The article calls for such a task force to “analyze [Provider Enrollment and Chain Ownership System] PECOS data in addition to information about staffing and medical director administrative time from the Payroll-Based Journal (PBJ) database, data from the survey and certification inspection program, and spending patterns from Medicare cost reports. Robust monitoring would provide a new lens on how ownership and financial investment in the nursing home sector impact the quality of care and the stability of individual facilities and chains.”⁸ We do acknowledge and appreciate the Administration’s recent efforts to release more ownership data.

We agree with these recommended actions and believe that **a federal task force should include other relevant agencies** that have authority over discrete aspects of nursing home improvement, including the Department of Housing and Urban Development (HUD, which finances nursing home renovations and builds), the Department of Labor (DOL, which funds workforce programs), and the Consumer Financial Protection Bureau (CFPB, which focuses on prevention and mitigation of fraud and abuse).

Furthermore, we note that **there must be routine auditing to verify whether the ownership information being reported is accurate, and whether the cost report information being reported is accurate. Sec. 6104 of the ACA** requires SNFs to report their expenditures in four categories: spending on direct care; indirect care; administrative expenses; capital expenses. This raises several logical follow-up issues, among them these questions: What database, if any, has CMS created to examine this information? What auditing is being done of these data to assess their integrity and accuracy? Has there been any attempt to examine whether ownership trends (e.g., non-profit status, private equity ownership) are associated with higher or lower reported expenditures in these categories?

To transform the conversation on nursing home reforms into meaningful change for residents -- which to date has been uneven at best -- requires attracting a whole new class of quality-motivated entrepreneurs to build and renovate nursing homes, along with a workforce that is attracted to helping people with disabilities and older individuals and economically rewarding them for doing so. One key aspect to making nursing home transformation a reality is to establish a **pathway for the “best of the sector” to become the recognized leaders and drivers of ongoing quality improvement.** We have a large and growing aging population, so policy leaders must consciously promote a high-quality, person-centered model of residential long-term care – one that complements ongoing efforts to simultaneously create a robust infrastructure for easier availability of home and community-based services.

All of this requires HHS to step forward to take a **firm, fair, proactive role in monitoring the nursing home sector with an eye to incentivizing positive change. Analysis of performance on a near real-time basis is also an essential component of quality improvement.** It is entirely possible to combine detailed ownership data as authorized by Sec. 6101, staffing data housed in the Payroll-Based Journal (PBJ) system (Sec. 6106 of the ACA),

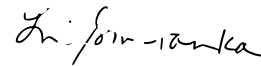
Medicare cost report data (Sec. 6104 of the ACA), survey and certification data, including trend analysis, grounded in work already done for Care Compare, clinical quality metrics, and perhaps other data. **Only by looking at the data together can we move forward together to understand and affect the ongoing performance of each nursing home**, and/or each nursing home group where connected by common ownership.

We stand ready to work with you to achieve these goals during the next several months and will follow this letter with a separate request for a meeting.

Respectfully,



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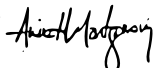
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¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>

² <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>

³ <https://www.aha.org/system/files/advocacy-issues/tools-resources/advisory/2011/110901-regulatory-adv.pdf>

⁴ <https://aspe.hhs.gov/sites/default/files/documents/be6f3366294bd30a08a8ae90c84f3894/aspe-datapoint-change-ownership-pecos.pdf>

⁵ National Bureau of Economic Research, Feb. 2021 <https://www.nber.org/papers/w28474>

⁶ <https://www.citizen.org/wp-content/uploads/Nursing-home-ownership-disclosure.pdf>

⁷ <https://nap.nationalacademies.org/download/26526>

⁸ These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency In The Post COVID-19 Period, Harrington, et al. <https://www.healthaffairs.org/doi/10.1377/forefront.20210208.597573/>