



THE COMMONWEALTH OF MASSACHUSETTS
ANDREA JOY CAMPBELL
ATTORNEY GENERAL



STATE OF NEW YORK
LETITIA JAMES
ATTORNEY GENERAL

April 14, 2023

The Honorable Xavier Becerra, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

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

Dear Secretary Becerra and Administrator Brooks-LaSure:

Re: Disclosure of Ownership Information in Nursing Facilities

The undersigned Attorneys General of Massachusetts, New York, Arizona, California, Delaware, Hawaii, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, write in support of the U.S. Department of Health and Human Services and the Centers for Medicare and Medicaid Services' ("CMS") Proposed Rule, file code CMS-6084-P, implementing portions of section 6101 of the Patient Protection and Affordable Care Act ("Affordable Care Act") and requiring the disclosure of certain ownership, managerial, and other information regarding nursing facilities, particularly from private equity investors and real estate investment trusts ("REITs").

As State Attorneys General, we are charged with protecting the safety and well-being of residents of nursing facilities. Our Medicaid Fraud Control Units ("MFCUs"), as well as other sections in some of our offices, have authority to investigate and prosecute those responsible for committing abuse or neglect of residents and misappropriation of residents' funds in these facilities.¹

And as has been widely reported during the COVID-19 pandemic, many nursing facilities continue to deliver substandard care to their residents. Over 200,000 nursing facility residents

¹ See 42 U.S.C. § 1396b(q); 42 C.F.R. § 1007.11(b)(1) ("The Unit will also review complaints alleging abuse or neglect of patients or residents in health care facilities receiving payments under Medicaid and may review complaints of the misappropriation of funds or property of patients or residents of such facilities.").

and staff died due to COVID-19 since the start of the pandemic, accounting for at least 23% of all COVID-19 deaths in the United States.² Furthermore, recent analyses have found that, for every two victims of COVID-19 in nursing facilities, there was another resident who died prematurely of other causes.³ These tragic outcomes are reflective of facilities that are chronically understaffed⁴ and often fail to provide basic support to residents, including with respect to hygiene, wound care, and feeding/hydration.⁵

The quality of care delivered by nursing facilities operated on a for-profit basis, particularly when those for-profit owners and/or operators include private equity investors, is often worse than at non-profit nursing facilities.⁶ A recent study found that nursing facilities with private equity ownership had increases of short-term mortality by 10%; this study also found worsening mobility of residents, declines in nurse availability per resident, and elevated use of antipsychotic medications in nursing facilities owned by private equity.⁷ Another recent study found that private equity-owned nursing facilities had higher rates of emergency department visits and hospitalizations compared to other nursing facilities.⁸

Many of the recent enforcement actions brought by MFCUs have focused on addressing the root causes of substandard care in nursing facilities. Often, those root causes are decisions made by for-profit owners and operators, including private equity investors and REITs, on issues including staffing levels, admissions criteria, expenses for staff training, loans, and inflated expenses paid by the facilities to related parties controlled by owners, operators, or their family members. In recent enforcement actions, MFCUs have sought to identify those decisions made by owners and operators that led to substandard care and have attempted to reform those practices to improve the quality of care delivered to residents in the future.

For example, in December 2022, the Massachusetts MFCU announced a \$1.75 million settlement with Athena Health Care Systems (“Athena”), a for-profit owner of nursing facilities

² Priya Chidambaram, “Over 200,000 Residents and Staff in Long-Term Care Facilities Have Died from COVID-19,” KAISER FAMILY FOUNDATION, Feb. 3, 2022, available at <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>.

³ Matt Sedensky and Bernard Condon, “Not just COVID: Nursing home neglect deaths surge in shadows,” ASSOCIATED PRESS, Nov. 19, 2020, available at <https://apnews.com/article/pandemics-us-news-coronavirus-pandemic-daac7f011bcf08747184bd851a1e1b8e>.

⁴ Charlene Harrington, et al., *Appropriate Nurse Staffing Levels for U.S. Nursing Homes*, HEALTH SERV. INSIGHTS v. 13, June 29, 2020, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7328494/>.

⁵ “US: Concerns of Neglect in Nursing Homes,” HUMAN RIGHTS WATCH, Mar. 25, 2021, available at <https://www.hrw.org/news/2021/03/25/us-concerns-neglect-nursing-homes>.

⁶ See, e.g., Haider J. Warraich, “For-profit nursing homes and hospices are a bad deal for older Americans,” STAT NEWS, Apr. 19, 2021, available at <https://www.statnews.com/2021/04/19/for-profit-nursing-homes-hospices-bad-deal-older-americans/>.

⁷ Atul Gupta, et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes*, NYU STERN SCHOOL OF BUSINESS, Nov. 12, 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537612.

⁸ Robert Tyler Braun, et al., *Association of Private Equity Investment in US Nursing Homes with the Quality and Cost of Care for Long-Stay Residents*, JAMA HEALTH FORUM, Nov. 19, 2021, available at <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786442>.

in three states. This settlement resolved allegations that Athena's facilities, at the corporate owners' direction, admitted substantial numbers of residents with histories of substance use disorder, even though the facilities did not have adequate levels of appropriately trained staff to meet the needs of those residents. As part of that resolution, Athena agreed to participate in a program with Alliant Health Solutions, which has received a grant from the U.S. Substance Abuse and Mental Health Services Administration to create "Centers of Excellence for Geriatric Emotional/Mental Health and Substance Use Education." This program will result in updates to Athena's policies, procedures, and trainings with respect to its treatment of residents with histories of SUD. Athena also agreed to give the Massachusetts MFCU the authority to require many of Athena's facilities to contract with an independent compliance monitor if those facilities are found to have serious deficiencies in future surveys by the Massachusetts Department of Public Health.⁹

Similarly, in November and December 2022, the New York MFCU brought three different lawsuits against New York nursing facility owners and operators. These lawsuits, against The Villages of Orleans Health and Rehabilitation Center, Fulton Commons Care Center Inc., and Cold Spring Center for Nursing and Rehabilitation, allege that the owners and operators of these facilities cut staffing to increase their personal profits, resulting in residents who sat in their own urine and feces for hours, suffered malnourishment and dehydration, missed medical appointments, had wounds develop and/or get worse, and sustained falls and other injuries. These lawsuits also allege that, in each case, the owners and operators of the facilities extracted millions of dollars through fraudulent, inflated payments paid by the facilities to the owners directly or to multiple related parties owned and controlled by the facility owners, their family members and/or other persons the owners favored. The New York MFCU is not only seeking damages in these cases, but also has asked for substantial injunctive relief to protect residents, including removal of owners and managers, a freeze on admissions at the facilities, appointment of a healthcare monitor to oversee the facilities' healthcare operations, and appointment of a financial monitor to stop fraudulent payments from the nursing home to related parties.¹⁰

In addition, in February 2023, the New York MFCU, the U.S. Attorney for the Northern District of New York, the Department of Health and Human Services Office of the Inspector General, and the U.S. Department of Justice announced a \$7.1 million civil settlement paid by the now-closed Saratoga Center for Rehabilitation and Skilled Nursing Care, its owners,

⁹ "AG Healey Secures \$1.75 Million Resolution With Nursing Home Chain Over Failure To Meet the Needs of Residents With Substance Use Disorder," Dec. 21, 2022, available at <https://www.mass.gov/news/ag-healey-secures-175-million-resolution-with-nursing-home-chain-over-failure-to-meet-the-needs-of-residents-with-substance-use-disorder>.

¹⁰ "Attorney General James Sues Orleans County Nursing Home for Years of Fraud and Resident Neglect," Nov. 29, 2022, available at <https://ag.ny.gov/press-release/2022/attorney-general-james-sues-orleans-county-nursing-home-years-fraud-and-resident>; "Attorney General James Sues Long Island Nursing Home for Repeated Financial Fraud and Resident Neglect," Dec. 13, 2022, available at <https://ag.ny.gov/press-release/2022/attorney-general-james-sues-long-island-nursing-home-repeated-financial-fraud-and>; "Attorney General James Sues Long Island Nursing Home for Years of Fraud and Resident Neglect," Dec. 16, 2022, available at <https://ag.ny.gov/press-release/2022/attorney-general-james-sues-long-island-nursing-home-years-fraud-and-resident>.

unlicensed operator, and landlord for years of fraud and resident neglect.¹¹ The investigation found that, when the owners applied to New York’s health agency in 2014 to get a license to operate Saratoga Center, they and the landlord misrepresented their relationship, claiming it was at “arm’s length,” and that the owners were seeking private loans to fund their acquisition of the nursing home. In reality, the owners and the landlord were already in business together, and the landlord was funding the purchase of Saratoga Center. In 2017, the landlord pressured the owners to relinquish control of Saratoga Center to the unlicensed operator and other associates but did not report the change to New York’s health agency. The quality of care at Saratoga Center declined under the control of the new, unlicensed operator and associates, causing residents to suffer the consequences, including unsanitary and unhealthy conditions, significant medication errors, excessive and unnecessary falls and injuries, and the development of pressure sores that went untreated.

Notably, in all of its recent enforcement actions, the New York MFCU sued or held accountable through settlement various owners of these nursing facilities whose ownership interests had been concealed from public disclosure. That is because, under existing CMS regulations, corporate owners and operators, especially private equity investors, REITs, and similar arrangements between facilities and purported investors, continue to structure acquisitions of nursing facilities to avoid disclosure of the extent of their ownership or involvement in the facilities’ operations. This lack of disclosure hampers law enforcement efforts to address substandard care by preventing MFCUs and Attorneys General, as well as other enforcement agencies, from identifying the true decision makers at nursing facilities—who may be responsible for the root causes of that substandard care—without considerable expenditure of public resources through investigative efforts and/or discovery.

By requiring owners and facilities to disclose this information automatically, CMS will: (1) make known the true decision makers exercising control over nursing facilities’ operations, including those who have the ultimate responsibility for whether high quality or substandard care is delivered to vulnerable residents; and (2) enable agencies like ours to appropriately use our resources efficiently and tailor our enforcement efforts to the root causes of substandard care in nursing facilities. The undersigned State Attorneys General commend CMS for proceeding with this Proposed Rule and urge its adoption.

¹¹ “Attorney General James Secures Over \$7.1 Million from Former Saratoga County Nursing Home for Years of Fraud and Neglect,” February 27, 2023, available at <https://ag.ny.gov/press-release/2023/attorney-general-james-secures-over-71-million-former-saratoga-county-nursing>.

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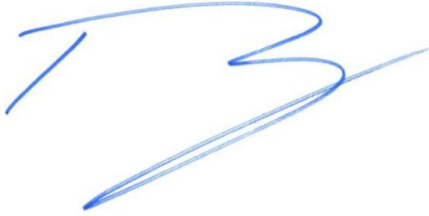
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