

FAMILIES FOR BETTER CARE

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June 21, 2011

Ms. Sandra Bastinelli
Center for Medicare and Medicaid Services
Department of Health and Human Services Attention: CMS-1351-P
Mail Stop C4-26-05, 7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Ms. Bastinelli:

On behalf of more than 1.3 million American citizens, and their families, who live in our nations' nearly 16,000 nursing homes, Families for Better Care submits the enclosed comments regarding proposed regulations for Section 6101 of the Patient Protection and Affordability Care Act.

Families for Better Care is a citizen advocacy organization dedicated to creating public awareness of the conditions in our nation's nursing homes and developing effective solutions for improving the quality of nursing home care.

We humbly request that the United States Department of Health and Human Services review and adopt our recommendations to ensure that residents, families, and consumers have current and accurate ownership information about nursing home chains, affiliated entities and subsidiaries.

If you have any comments or questions regarding our proposals, please feel free to contact me by phone at 850.491.2198 or by email at brian@familiesforbettercare.com.

Yours in service,



Brian Lee
Executive Director

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Subtitle B--Nursing Home Transparency and Improvement

PART I--IMPROVING TRANSPARENCY OF INFORMATION

SEC. 6101. REQUIRED DISCLOSURE OF OWNERSHIP AND ADDITIONAL DISCLOSABLE PARTIES INFORMATION

SUBPART P—REQUIREMENTS FOR ESTABLISHING AND MAINTAINING MEDICARE BILLING PRIVILEGES

§ 424.502 Definitions

Proposed language:

Additional disclosable party means, with respect to a skilled nursing facility defined at section 1819(a) of the Act, any person or entity including, but not limited to, any nursing home corporations, limited liability companies, affiliated corporations, or private investment funds who—

- (1) Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;
- (2) Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or
- (3) Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

Recommendation:

Broaden the definition of “*Additional disclosable party*” so it would also include nursing home chains and other affiliated or related entities, e.g., private investment funds or limited liability companies.

Rationale:

Enumerating these various entities ensures the Congressional intent and the essence of the Patient Protection and Affordability Care Act (PPACA) in regards to public disclosure of corporate information.

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The PPACA emphasizes transparency and accountability inasmuch that residents, families, consumers, and regulatory authorities have a direct, thorough and accurate accounting of these relationships between nursing homes, owners, private investors, and other entities that are actively involved in the support of resident care and life.

The language proposed by the Department of Health and Human Services provides an inadvertent loophole for nursing home chains to conceal details of various ownership interests and managers for limited liability companies—or other entities under the corporate canopy—that may deliver consultant, real estate management, or other operational services.

Adoption as currently proposed would allow nursing home operators to continue their shell game of camouflaging these responsible parties from consumers and government regulators.

As these various nursing home entities are intentionally separated to bewilder the public, an all-encompassing definition would reduce deceptive trade practices and maximize industry accountability.

Other recommendations:

- Specify that ownership information gathered by Health and Human Services—and each state's designated coordinating agency for receiving the data—should be made available to the public upon request starting July 2012 and immediately thereafter. Although PPACA does not provide specific authority to HHS to *publicize* the information until March 2013, the Act does not forbid the availability of it upon request. As such, the agency should have the discretion to release the information when requested.
- Clarify that State Long-Term Care Ombudsmen are authorized to release ownership information upon request in accordance with applicable federal and state public record laws without coercion, interference or retaliation.
- Designate that each state's respective licensing and regulatory agencies would utilize the existing Provider Enrollment, Chain and Ownership Systems (PECOS) to collect, coordinate, and submit the nursing home ownership data.
- Specify that nursing homes, nursing home chains and other related entities defined within the PPACA must comply with disclosure regulations within 90 days of final promulgation. Ownership information would be collected and submitted to HHS annually.