

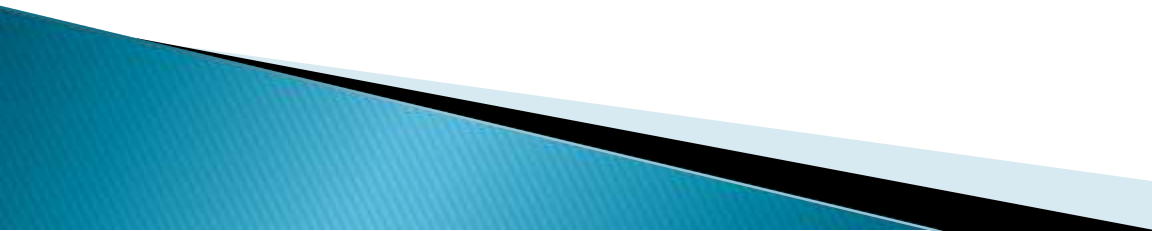
Transparency Issues For Nonprofit Long Term Care Providers in Pennsylvania

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Introduction

- ▶ Since the COVID Pandemic, there has been a significant push at both the federal and state government levels for increasing “transparency” in the post-acute provider industry
 - ▶ It is quite clear from government, that they are concerned that:
 - Private equity ownership of health care providers is/can be problematic
 - Ownership structures of providers are/can be unclear, making it difficult to hold individuals/entities accountable for operations
 - The current regulatory disclosure requirements may not be sufficient to effectively “vet” individuals and entities to confirm that they are appropriate for the responsibilities associated with health care operations
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Introduction

- ▶ In response, both federal and state governments have issued revised regulations, requiring significant “new” reporting obligations and disclosures, designed to address these concerns
 - ▶ While most of these changes apply in the nursing facility context, here in Pennsylvania, CCRC and PCH/ALR providers do also have significant disclosure responsibilities to the governing regulatory agencies.
 - ▶ While the “reasons” driving these increased transparency measures may stem from governmental positions with respect to for-profit operators, the requirements discussed here are applicable to all providers, regardless of the type of ownership
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Ownership and Control Reporting Requirements

▶ Sources of Regulatory Law:

- Department of Health Licensure Regulations for SNFs (28 Pa.Code 201.12 in particular)
- CMS Regulations for SNFs (42 CFR §§ 424.500-.518 and 455.100-07)
- Insurance Department Regulations for CCRCs (31 Pa. Code § 151.1-14)
- Department of Human Services Regulations
 - For NFs (55 Pa.Code 1101.43) (Medicaid)
 - For PCH (55 Pa.Code 2600.51)
 - For ALR (55 Pa.Code 2800.51)
 - For PCH and ALR (55 Pa.Code Chapter 20) (DHS general licensure regulations)

Ownership and Control Reporting Requirements

- ▶ We will discuss:
 - Who must be reported (individuals and entities);
 - What information on those individuals and entities must be reported;
 - Where and How such information must be reported; and
 - When such information must be reported.
- ▶ The main discussion will relate to nursing home operations, but we will also then address the reporting/disclosure requirements for CCRC and PCH/ALR operations

Ownership and Control Reporting Requirements

▶ Entity Reporting

- Both federal and state law governing nursing facilities require the disclosure of the “corporate structure” of the nursing facility, including the provision of an “organizational chart” as a visual reference
- The licensee entity itself will be the subject of much disclosure
- All entities “in the chain of ownership” above the licensee entity will have to be disclosed as well:
 - Holding Company and individual/entity ownership (for profits)
 - Parent Company (nonprofits)
- If the licensee’s real property is under separate ownership, that structure must also be disclosed
- If the facility is managed by an outside entity, information on the management company is required to be provided

Ownership and Control Reporting Requirements

- ▶ What must be disclosed for legal entities:
 - Legal Entity Name as reported to the IRS
 - Tax ID Number and copy of EIN letter from IRS
 - Mailing Address
 - Email Address
 - Phone Number
 - Disclosure of adverse legal history and documentation confirming resolution of any adverse legal actions/convictions, if applicable
 - Medicare/Medicaid Provider Number and/or an NPI, if applicable
 - If legal entity is a Trust, then must disclose the above, as well as the name of the Trustee (and the individual information on the Trustee)

Ownership and Control Reporting Requirements

- ▶ In a CHOW situation, the applicant Licensee Entity as well as its ownership will be required to disclose:
 - A listing of all health care facilities owned, operated or managed within the last 3 years (inside or outside of Pennsylvania);
 - The compliance history of such facilities for the last 3 years (e.g. disclosure of any CMPs, DPNAs or other sanctions imposed on the facilities by both federal and state authorities)
 - Whether any of its owners are related as spouses, parents, children, or siblings
 - Whether any of those entities/facilities have been in bankruptcy, or have had any civil or criminal verdicts or settlements adjudicated/implemented.

Ownership and Control Reporting Requirements

▶ Individual Reporting:

- Board Members and Officers of the Licensee Entity
 - Include the name, title, and period of service for each member.
 - Board Members of parent entity would not currently need to be disclosed (unless there is no Board for the licensee entity, and the parent board serves in that capacity)
- Operations/Management Personnel
 - Administrator
 - Director of Nursing
 - Medical Director
 - Regional Directors (if appropriate)
- For-profit providers must disclose all individual owners holding either a direct or indirect interest in the licensee of 5% or greater

Ownership and Control Reporting Requirements

- ▶ What must be disclosed for individuals:
 - Legal Name
 - Mailing Address
 - Email Address
 - Phone Number
 - Date of Birth
 - Place of Birth
 - NPI/Medicare number (if held)
 - Social Security Number
 - Disclosure of adverse legal history and documentation confirming resolution of any adverse legal actions/convictions, if applicable

Ownership and Control Reporting Requirements

- ▶ Additional Disclosable Parties:
 - Entities holding mortgage, deed, trust, lien on provider
 - Management companies
 - Related ancillary providers (e.g. therapy, pharmacy)
 - Providers of supplies/equipment
 - Financial advisors
 - Consultants
- ▶ We continue to await guidance from CMS on some of these (especially “financial advisors” and “consultants”)

Ownership and Control Reporting Requirements

- ▶ In the CHOW context, DOH and Medicare are aggressively requiring a vast array of information to “vet” applicants who want to operate licensed and certified facilities:
 - Individual owner/operator qualifications
 - Experience in operating other nursing facilities, focusing especially on clinical/quality outcomes (measured through survey/compliance experience)
 - Financial ability of applicant to operate the facilities to be acquired (measured through pro formas) as well as the financial solvency of the proposed application (measured through audited financials and the financial experience of other operations)
 - Clearly no “rubber stamp” approvals for nursing home sales any longer

Ownership and Control Reporting Requirements

▶ Where and How Reported:

- For Medicare: CMS Form 855A
 - Section 5 (Entities) and Section 6 (Individuals)
- For State Licensure: DOH Licensure Application and Notification Letters
 - DOH Licensure Application now submitted through web portal for CHOWs, renewals and initial licensure applications
 - Changes in 5% or more of ownership interests, changes in management entity, changes in Administrator/Board Members require notification, by letter, to DOH
- For Medicaid: Medicaid Enrollment/Disclosure Forms
 - Changes in ownership or control require written notification to DHS, as well as submission of the “Disclosure of Ownership” pages of the Medicaid enrollment application

Ownership and Control Reporting Requirements

▶ When Reported:

- CHOW
 - Notice of the proposed CHOW must be submitted no later than 30 days prior to planned closing of the sale
 - However, it takes DOH between 45-60 days to review a CHOW application, so notice should be provided prior to the submission of the CHOW application
- Licensure Renewal and General Obligations (including change of personnel)
 - Per 28 Pa.Code 201.13c, the renewal application must be provided at least 21 days prior to the expiration of the current license
 - Per 28 Pa.Code 201.18(c), must report any changes to any information submitted via a Licensure Renewal or CHOW application within 30 days
 - Report changes to facility Administrator ASAP
- Medicare or Medicaid
 - Revalidations every 5 years, or as otherwise required by the governmental agency
 - Changes in ownership that don't result in a CHOW should be reported within 30 days
 - Changes in personnel (e.g. Board Members) must be reported within 90 days

Ownership and Control Reporting Requirements

- ▶ Medicare Fingerprinting Requirements – 42 CFR § 424.518(d)
 - In accordance with the Affordable Care Act and its implementing regulations, CMS must conduct a fingerprint-based background check on all individuals with a 5 percent or greater ownership interest in a provider or supplier that falls under the high-risk category for purposes of enrollment screening, which includes SNFs.
 - CMS has contracted with Accurate Biometrics to be the fingerprint-based background check contractor. SNFs may not use another entity/organization.
 - Accurate Biometrics' customer service center can be reached at 1-866-361-9944.
 - The MAC will send a letter if fingerprints are required. A provider should not begin this process until such letter is received. The letter will reflect the name of the person to be fingerprinting, along with a fingerprint tracking number. Most importantly, Novitas has advised that the letters will be emailed to the email address reported in the correspondence section or practice location section of the 855A. If an email address is not reported in either section, the letter will be mailed to the facility.
 - Penalties apply for failing to submit fingerprints under 42 CFR § 424.518.
 - Provider or supplier billing privileges may be denied or revoked.

Ownership and Control Reporting Requirements

- ▶ Criminal Background Check/Fingerprint Requirements:
 - Fingerprinting is required to be completed within 45 days from the date of the letter from the MAC.
 - The information submitted to Accurate Biometrics must match the information from the 855A. If the information does not match, Accurate Biometric will not process the fingerprints.
 - Delays in the fingerprinting process will result in delays in the ultimate CMS approval and assignment of the Medicare provider number.
 - Website:
 - Cmsfingerprinting.com
 - From there, you can find a fingerprint collection site and begin the application process.

Disclosures to DHS for Nursing Facility Providers

- ▶ Federal Criminal Background Check Requirements – 42 CFR § 455.106
 - Disclosure Requirement: Providers must disclose to the Medicaid agency the identity of any person with ownership or control interest, or those who are agents or managing employees, who have been convicted of a criminal offense related to Medicare, Medicaid, or the title XX services program.
 - Notification to Inspector General: The Medicaid agency must inform the Inspector General of any such disclosures within 20 working days and also notify the Inspector General of any actions taken regarding the provider's participation.
 - Denial Based on Convictions: The Medicaid agency can refuse to enter into or renew an agreement with a provider if any key person has been convicted of a relevant criminal offense.
 - Denial Based on Inaccurate Disclosure: The agency may also refuse to enter into or terminate a provider agreement if the provider fails to fully and accurately disclose required information.
 - Timeliness of Notification: The Medicaid agency is required to notify the Inspector General promptly of both the disclosure and any subsequent actions regarding the provider's application.

Pennsylvania Licensure Renewal Disclosures

- ▶ Must reflect current ownership/control structure of Facility:
 - Provide updates within the Renewal Application as appropriate.
 - For example, update Board Member listing; report changes to Administrator or DON as required.
 - Licensure, Medicare and Medicaid reporting on ownership structure must all match!
- ▶ Audited Financial Requirement (Annual and at CHOW) requires:
 - Audited financial statements prepared in accordance with generally accepted accounting principles (GAAP). If GAAP requires consolidated financial statements, then consolidated statements shall be provided.
 - A visual representation of the current ownership structure, which must include parent companies, shareholders, individuals and any related parties.
 - A supplemental schedule of annual gross revenues, prepared in accordance with GAAP. The supplemental schedule shall be broken out by payor type.
 - Submit the most recently-completed audited financial to DOH as part of a renewal or CHOW

Disclosures to PA Insurance Department for CCRC Providers

- ▶ Disclosure statements shall contain the information required by section 7 of the act (40 P. S. § 3207) and the information required by 31 Pa. Code § 151.7, including
 - Information about the facility itself, its location, resident population
 - Description of services provided, as well as Entrance and Monthly Fees and refund options
 - Any minimum age or spousal admission restrictions
 - Affiliations, if any, with religious organizations
 - Audited financial statement of provider
 - Description of financing arrangements in place for the provider
 - Copy of Resident Agreement
- ▶ Every provider shall maintain copies of all disclosure statements filed with the Department, including amended disclosure statements, for at least 4 years, or until the conclusion of the next succeeding examination by the Department, whichever is later.

Disclosures to Insurance

Department for CCRC Providers

- ▶ The financial statements required, under section 7(a)(9) of the act (40 P. S. § 3207(a)(9)), should be filed in accordance with Chapter 147.
- ▶ Amendments to disclosure statements may be filed with the Department at any time, but are required upon a “material change” (See 31 Pa.Code 151.(e)(3).
- ▶ Changes in the operation of a provider or facility which require an amendment to a disclosure statement include, but are not limited to, the following:
 - Changes in the board of directors, officers, managing or general partners, administrators or trustees and managers which affect the management of a facility. Biographical affidavits by these individuals shall be filed with the Department at the time an amended disclosure statement is filed.
 - New or additional mortgages, liens, security interests, loan commitments, long-term financing arrangements or leases, which transaction materially affects the real property of the facility.
 - Other material changes in the financial or factual information contained in the disclosure statement or statement in support of the provider’s original application for a certificate of authority.

Disclosures to DHS for PCH and ALR

- ▶ Both PCH and ALR must notify DHS:
 - 30 days in advance of any change in legal entity, name, location or profit/nonprofit status
 - Within 30 days (i.e. “after”) of any other type of change, such as change in responsible person (e.g. the facility administrator or manager)
- ▶ DHS does not currently collect information about facility ownership (operator or property); however, it is best practice to keep the Department apprised of any changes which don't trigger a CHOW

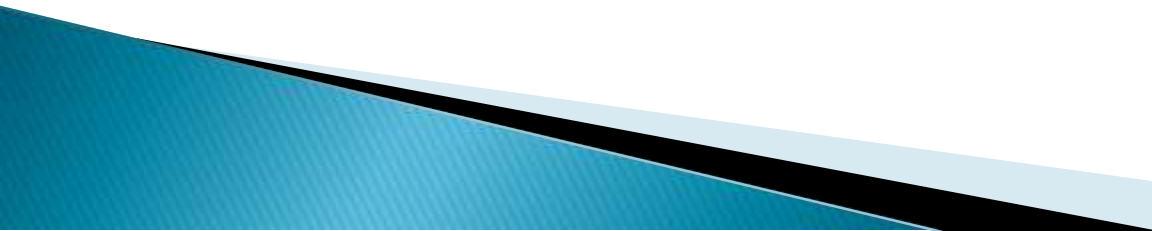
Disclosures to DHS for PCH and ALR

- ▶ Criminal Background Check Requirements
 - The Older Adults Protective Services Act (OAPSA) requires all applicants/employees who are not, or have not been, a resident of the Commonwealth of Pennsylvania for the last two years, to obtain criminal history record information reports from both the Pennsylvania State Police (“PSP Clearance”) and the Federal Bureau of Investigation (“FBI Clearance”).
 - As part of the ALR and PCH licensure process, this includes the Administrator and all individuals who hold 5% or more direct/indirect ownership and/or control in the proposed licensee. The FBI Clearance requires fingerprinting which must be done through IdentiGo, and the PSP Clearance must be done through PATCH, as explained below.

Disclosures to DHS for PCH and ALR

- ▶ IdentiGo is Pennsylvania's vendor for digital fingerprinting. No other vendor may be used. You must first pre-register online, using the below link:
 - <https://www.identigo.com/services/live-scan-fingerprinting?filter=state-fingerprinting>
- ▶ All applicants/employees who reside in Pennsylvania must obtain only a PSP Clearance, not FBI Clearance. All applicants/employees who are not or have not been a resident of the Commonwealth of Pennsylvania for the last two years must obtain a PSP Clearance, in addition to the FBI Clearance.
- ▶ A PSP Clearance is requested through PATCH at below link:
 - <https://epatch.pa.gov/home>

Disclosures to DHS for PCH and ALR

- ▶ If some individuals will never enter the facility, they are not required to obtain a criminal history record of any kind, and instead, DHS will accept a signed statement that attests that the named individuals have not obtained a background check because they will not be entering the home.
 - ▶ However, technically, Board Members who will enter the building are subject to the criminal background check requirements.
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Corporate Transparency Act

▶ Overview:

- Enacted on January 1, 2021; effective as of January 1, 2024.
- Goal: To strengthen reporting and transparency of business ownership in the U.S.
- Purpose: To reduce money laundering, tax fraud, and similar crimes.
- Requires certain entities to report ownership and control information to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN")

▶ CTA Exemptions for Nonprofits

- Exemption for entities described in IRC §501(c) and exempt under IRC §501(a).
- Includes IRC §527 political organizations and IRC §4947(a) charitable trusts.
- Wholly-owned subsidiaries of, or entities exclusively supporting, the above nonprofits also exempt.
- Nonprofits losing tax-exempt status must file a CTA report within 180 days of revocation.

Corporate Transparency Act

▶ Subsidiary Exemption

- Applies to Both For-Profit and Nonprofit Subsidiaries
- If a CTA-exempt charity spins off wholly owned or controlled for-profit subsidiary, the subsidiary is not subject to CTA reporting requirements.
- Reporting is required if exempt charity parent is not sole owner or controller of subsidiary unless subsidiary itself is independently CTA-exempt.
- To qualify for exemption, the subsidiary must be fully, 100% owned or controlled by CTA-exempt entity.
 - For example, a joint venture entity owned by both a nonprofit and a for-profit would be subject to CTA reporting requirements.

Corporate Transparency Act

▶ Compliance Deadlines for Nonprofit Entities

- Entities created before January 1, 2024 have one year to file with FinCEN.
 - To avoid a reporting obligation, you would need to receive your IRS Determination Letter by the end of 2024.
- Nonprofits created after January 1, 2024 and before January 1, 2025, must file initial CTA report within 90 calendar days of formation.
 - Compliance mandatory until obtain tax-exempt status.
 - Given the delays in the IRS processing of 1023 applications, it is likely that a newly-created nonprofit will have to file an initial report with FinCEN.
 - Once the 1023 is approved, and IRC §501(c)(3) status is granted, no further reporting for the entity would be required.
- All entities formed on or after January 1, 2025 will have 30 days to file with FinCEN.

Conclusions and Recommendations



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