

Understanding New Medicare Enrollment, Revalidation, and CHOW Requirements

David C. Marshall, Esq.

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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 or “track monies received and how they are used” by providers
 - 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, especially in CHOW situations

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 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

Introduction

- ▶ 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.
- ▶ Government is trying to get the “whole picture” of the Facility
 - Owners and Operational Management Team
 - Financial Solvency
 - Compliance History of the Facility and its Ownership
 - Actual operating practices/procedures and Ancillary Provider relationships

Regulations and Guidance To Note

- ▶ Sources of Federal Regulatory Law:
 - CMS Regulations for SNFs (42 CFR §§ 424.500-.518 and 455.100-07)
 - Section 424 are the Conditions for Payment under Medicare
 - Section 455 are the Program Integrity Provisions
 - Federal Register / Vol. 88, No. 221 / Friday, November 17, 2023, Page 80141
 - CMS Guidance on Additional Disclosable Parties:
 - [GUIDANCE FOR SNF ATTACHMENT ON FORM CMS-855A](#)

Medicare Revalidation Requirements

- ▶ Beginning in October 2024, CMS and its MACs sent letters to all nursing homes in the country, requiring an “off-cycle” Medicare revalidation, in order to capture all of the new disclosure requirements and to “re-set” the baseline of information on record
- ▶ In preparation, CMS revised the CMS Form 855A to capture the newly-required information. The current CMS Form 855A has an effective date of September 2024. (Make sure to always use the most recent form)
- ▶ CMS has delayed the “revalidation filing date” several times, and currently all revalidations must be submitted by **August 1, 2025**
- ▶ The revalidations can be done via Paper or through PECOS (though PECOS is strongly recommended!)

CMS Form 855A

- ▶ Section 1: Basic Information
 - Identify the reason for submitting the 855A
 - Note what information is changing
- ▶ Section 2: Identifying Information
 - Report the “type” of provider
 - Legal name, DBA, Address
 - Type of Business Structure
 - License status
 - Correspondence/Mailing Address
 - Whether this is a CHOW or Merger

CMS Form 855A

- ▶ Section 3: Final Adverse Legal Actions
 - List any federal/state convictions
 - List any exclusions, licensure revocations or suspensions
 - This section relates to the applicant/provider itself
- ▶ Section 4: Practice Location Information
 - Address of Facility
 - Remittance and Special Payment information
 - Paper Medical Records storage name and address
 - Whether or not Medical Records are stored electronically and if yes, the legal business name, tax id, and address
- ▶ Section 5: Organizational Ownership and Managing Control
 - Nursing Facilities no longer complete this Section; Deferred to Attachment 1

CMS Form 855A

- ▶ Section 6: Individual Ownership and Managing Control
 - Nursing Facilities no longer complete this Section; Deferred to Attachment 1
- ▶ Section 8: Billing Agency Information
 - If provider uses a billing agency, must provide information on that entity or individual
 - (Note that there is no Section 7 of the 855A; it is reserved)
- ▶ Section 10: Opioid Treatment Program Personnel
 - This section is only for Opioid Treatment Programs
 - (Note that there is no Section 9 of the 855A; it is reserved)

CMS Form 855A

- ▶ Section 12: Special Requirements for Home Health Agencies
 - Applicable to HHAs only
 - (Note that there is no Section 11 of the 855A; it is reserved)
- ▶ Section 13: Contact Person
 - Insert the information for the person that CMS/MAC should contact with questions regarding the 855A
 - Note that the MACs will not discuss the 855A with any person who is not listed in Section 13, so you may want to insert multiple contact individuals here

CMS Form 855A

- ▶ Section 14: Penalties for Falsifying Information
 - Listing of the penalties involved in falsifying information within the 855A
- ▶ Section 15: Certification Statement
 - Recitation of certifications being made via the submission of the 855A
 - Authorized Official - person to whom the organization has granted legal authority to enroll in the Medicare Program and make changes/updates
 - Ex. CEO, CFO, Owner, Partner, Chairman of the Board of Directors
 - Delegated Official – person delegated by the Authorized Official to report changes/updates to provider’s enrollment record. Must be a person with an ownership or control interest in the provider
 - Both Authorized and Delegated Officials would be reported as ADPs

CMS Form 855A

- ▶ Section 17: Supporting Documentation Information
 - License
 - IRS Documentation
 - Tax Identification information
 - Determination Letter for nonprofits
 - Disregarded Entity information (Form 8832, if applicable)
 - Certain banking information (EFT and “waiver of right to offset” letter)
 - Any “adverse legal action” documentation
 - Organizational diagrams
 - NPI confirmation
 - CHOW/Sale documentation (if applicable)
 - Copies of formation document, foreign qualification, and fictitious name registration approval, if applicable.

CMS Form 855A

- ▶ Attachment 1: Skilled Nursing Facility Disclosures
 - This attachment replaces Section 5 (Entities) and Section 6 (Individuals) for skilled nursing facilities
 - It is designed to capture all of the information that was previously required within Sections 5 and 6, and also to capture the new “Additional Disclosable Party” information
 - Attachment 1 is broken down into 2 components:
 - Organizational Identification and Disclosures (Pages 52 to 63 of the 855A) and
 - Individual Identification and Disclosures (Pages 64 to 70 of the 855A)
 - In addition to completing the forms themselves, Attachment 1 requires the submission of several types of “Organizational Charts” for the entities reported in Attachment 1

SNF Ownership Reporting

- ▶ Conceptually, it may be easier to separate ownership/control interests in the skilled nursing facility from the “Additional Disclosable Party” concept, though there is clearly some overlap in the definitions
- ▶ Providers must still (as always) report all individuals and entities holding 5% or more direct/indirect ownership in the facility
 - Note, though, that the 855A requires providers to submit an Organizational Chart that reflects 100% of the ownership interests “up-the-chain”. So, individuals/entities holding less than 5% ownership will be included on this chart, but their “individual” information would not be reported within the 855A Attachment 1
- ▶ Real Property ownership must still be reported, as more fully discussed in connection with the new ADP requirements

SNF Ownership Reporting

- ▶ For Nonprofits, the provider entity would have to report any “parent” entity, or other entity that holds more than 5% of the ownership/membership interests in the provider entity
- ▶ While not “owners” of the SNF, the Nonprofit SNF entity Board Members must be reported in Attachment 1, as they are deemed to have “control” over the SNF entity
- ▶ Only Board Members of the SNF provider entity would have to be reported; not the Parent Board (unless the Parent Board also serves as the SNF provider entity Board)

SNF Ownership Reporting

- ▶ Federal, state, county, city, or other level of government, legally and financially responsible for Medicare payments received (including any potential overpayments), must report the name of that government or Indian tribe in the applicable section.
- ▶ The provider must submit a letter on the letterhead of the responsible government agency, which attests that the government or tribal organization will be legally and financially responsible if there is any outstanding debt owed to CMS. This letter must be signed by an “authorized official” of the government or tribal organization who has the authority to legally and financially bind the government organization to the laws, regulations, and program instructions of Medicare

SNF Ownership Reporting

- ▶ If the County is financially responsible for the Medicare payments received by the SNF, then the SNF needs to only report its managing employees (e.g. Administrator, DON, Medical Director)
- ▶ As such, the County Commissioners would not need to be reported on Attachment 1, unless one of the Commissioners is also acting as the “Authorized Representative” for enrollment/certification purposes.

Additional Disclosable Party Filing Requirements

▶ What and Who Are ADPs?

- CMS defines an “additional disclosable party” as:
- Any person or entity who:
 - Exercises operational, financial, or managerial control over the SNF or a part thereof, or provides policies or procedures for any of the SNF’s operations, or provides financial or cash management services to the SNF;
 - Leases or subleases real property to the SNF, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or
 - Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

Additional Disclosable Party Filing Requirements

- ▶ Examples/Categories of ADPs per CMS:
- ▶ Accounting Services
 - Includes an accounting organization or individual to provide any type of accounting activity
 - Cost Reports, tax preparation
 - Includes in-house or outside auditors, and the accountant does not have to be a CPA
 - In practicality, a SNFs auditors and cost report preparers would clearly be captured as ADPs

Additional Disclosable Party Filing Requirements

▶ Administrative Services

- Includes compliance activities, human resources, public relations/marketing
- Does not include custodial, building security, EHR vendors, dietary, housekeeping or laundry service providers, or payroll vendors
- CMS specifically includes nurse staffing agencies, and therapy/rehabilitation providers (PT, ST and OT) as ADPs under this category

▶ Cash Management Services

- Includes parties that give advice on cash flow and other financial matters
- ACH payment and mobile banking services
- This is a broad category, especially coupled with some of the other financial categories

Additional Disclosable Party Filing Requirements

- ▶ Clinical Consulting Services
 - CMS makes clear that the mere provision of “templates” does not trigger an ADP reporting here (or under Category 8, Policies and Procedures); there must be actual advice or recommendations provided
 - Includes Pharmacy Consultants
 - Conducting compliance audits alone doesn't trigger; Consultant must provide advice and recommendations (and whether the SNF accepts is immaterial)
- ▶ Financial Control
 - Includes monitoring or managing the SNFs finances
 - Includes individuals/entities with the authority to approve the expenditure of SNF funds
 - Includes an owning organization that funds part of the SNFs operations
 - Includes banks that have given the SNF a line of credit
 - Any bank that holds a security or mortgage interest in the SNF

Additional Disclosable Party Filing Requirements

▶ Financial Services

- Includes investment banking, investment management, asset management, financial advice, accounting, financial audits
- Again, potential overlap with other categories of ADPs

▶ Managerial Control

- Includes “managing employees” and “managing organizations”
- Includes supervisors and non-supervisors who oversee and are responsible for any aspect of the SNF operations (but specifically excluding nurse administrative assistants)
- Must have oversight and decision-making authority
- Potential “rule of thumb”: Facility Department Heads

Additional Disclosable Party Filing Requirements

▶ Management Services

- Includes management companies for the facility itself and arguably separate Departments within the facility

▶ Operational Control

- Includes persons/entities who oversee and have responsibility for any aspect of the SNFs daily activities or transactions. CMS specifically cites:
 - Medical records, patient activities, dietary/food operations, maintenance (but not housekeeping); marketing, social services, and therapy
 - Overlaps significantly with Category 7, Managerial Control
 - Only need to report individuals/entities once, even if they fall into multiple categories
 - Again, “Department Heads” is a good rule of thumb for this category

Additional Disclosable Party Filing Requirements

▶ Policies or Procedures

- Persons/Entities responsible for developing or furnishing guidelines for the SNFs operations
- Examples:
 - Emergency/evacuation plans
 - Patient treatment procedures
 - Patient transfer procedures

▶ Real Property Owners

- Must report any individual/entity holding a 5% or greater direct or indirect ownership interest in the facility's real property
- Requires "up-the-chain" property ownership reporting

Additional Disclosable Party Filing Requirements

- ▶ Legal services furnished by attorneys are specifically excluded from ADP services, so long as they are “legal” in nature and provided in the context of an attorney-client relationship
- ▶ CMS specifically excludes the following as ADPs:
 - Pharmacies
 - Labs
 - X-ray suppliers
- ▶ Note, again, that CMS is continually revising its guidance, and additional “categories” may be deemed exempt in the future

Additional Disclosable Party Filing Requirements

- ▶ What information must be provided for ADP entities:
 - Legal Entity Name as reported to the IRS
 - How is the entity registered with the IRS?
 - Proprietary
 - Non-profit
 - Disregarded Entity
 - Copy of EIN letter
 - Email Address
 - Phone Number and Fax Number, if applicable
 - Medicare and NPI Number, if applicable
 - Disclosure of adverse legal history and documentation confirming resolution of any adverse legal actions/convictions, if applicable

Additional Disclosable Party Filing Requirements

▶ ADP Entity Ownership Structure

- If the ADP is a corporation, then must report the officers/directors of the ADP and any person or entity with a 5% or greater direct/indirect interest in the ADP
- If the ADP is an LLC, then must report any person/entity that manages the LLC and any person/entity with a direct/indirect interest in the LLC, regardless of the percentage
- If the ADP is a general partnership, then must report all persons/entities with an interest in the ADP, regardless of percentage
- If the ADP is a limited partnership, then must report all persons/entities with a general partnership interest, regardless of percentage, and all person/entities with a limited partnership interest of at least 10%
- If the ADP is a Trust, then must report the trustees of the trust

Additional Disclosable Party Filing Requirements

▶ ADP Entity Ownership Structure

- SNFs are expected to “use the maximum feasible efforts” to obtain the required ADP data
- Generally required to make “multiple attempts” to secure data, unless:
 - The ADP refuses to provide the data; and
 - The information is not available and accessible elsewhere (such as SNF records or on the internet)
- Document efforts to obtain ADP information:
 - Identify data in question
 - Identify means used (e.g. phone calls, emails, etc. to ADP)
 - Number of attempts made
 - Whether other means (e.g. Internet) used to secure data
 - Have all efforts been exhausted
 - Provide letter/documentation as part of filed 855A

Additional Disclosable Party Filing Requirements

- ▶ What information must be provided for ADP individuals
 - Name as it appears on his/her security card
 - Date of Birth
 - Social Security Number
 - Home Address
 - Email Address
 - Phone Number and Fax Number, if applicable
 - Medicare and NPI Number, if applicable
 - Disclosure of adverse legal history and documentation confirming resolution of any adverse legal actions/convictions, if applicable

Additional Disclosable Party Filing Requirements

- ▶ What “organizational chart” documentation must be provided:
 - Chart 1: SNF Provider/Opco Organizational/Ownership Chart (100% interests, even if certain entities/individuals hold less than 5%)
 - Chart 2: Chart of all ADPs and their relationship to the SNF and each other
 - Chart 3+: Ownership chart for each ADP
- ▶ Charts 1 and 2 can be combined, though it may not be practical to do so.

Recommendations and “To-Do” List

- ▶ Assign individual(s) within the organization to oversee the revalidation process and calendar the filing deadline
- ▶ Review CMS guidance and develop a “checklist” of information necessary
- ▶ Locate/obtain the most current Medicare 855A filed with the MAC (either a revalidation, a CHOW, or a change of information/update) to use as the “baseline” for this revalidation
- ▶ Remember that whatever is reported here should match what is reported to DHS for Medicaid (Medical Assistance) purposes, so you may also need to file updates with DHS to keep information aligned

Conclusions

- ▶ Will the Trump Administration make further changes to these filing requirements, delay (again) their implementation, or terminate the filing requirements?
 - Termination of the new ADP reporting rules would likely require additional rulemaking, and of course, that takes time
 - Accordingly, it is critical that the SNF “team” assigned here continually monitor CMS pronouncements
- ▶ Until then, continue to prepare the response; this is not a filing that can be made at the last minute, so it is better to prepare in advance
 - You should “get started” (in earnest!) at least 30 days before the filing deadline, if not earlier!

Contact Information

David C. Marshall, Esq.
Latsha Davis & Marshall, P.C.
Phone: 717-620-2424
dmarshall@ldylaw.com