

June 9, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9911-P, P.O. Box 8016
Baltimore, MD 21244


Dear Administrator Brooks-LaSure:

We want to thank you for meeting with us on June 1, 2023, to discuss our concerns regarding related party transactions and Medicare cost reporting. We are grateful for CMS's willingness to work with advocates to ensure nursing home residents are protected. As we noted during our call, we are very concerned that nursing home residents suffer from poor care due to the industry-wide practice of diverting Medicare and Medicaid dollars away from resident care. Billions of dollars are paid to related parties with little accountability for how that money is used. For President Biden's ambitious and historic nursing home reforms to be successful, we must have increased accountability in how nursing home dollars are spent.

During our conversation, it was mentioned that CMS had moved away from relying on cost reports when setting Medicare rates and paying nursing homes. While we appreciate this fact, our concerns are how this money is spent. Cost reports are the sole source for CMS, and the public, to ascertain how a nursing home spends taxpayer dollars. The current cost reporting system does not provide sufficient information to accurately determine how facilities spend money. In reporting related party transactions, the only information CMS requires is the cost of the service provided and how much the related party was paid. There is no accountability for whether the cost was reasonable or prudent, how the related party used the money, what services were provided, or how much was profit to the related party.

To illustrate, the chart below shows the aggregate costs and payments to nursing homes operated by Pruitt Health Care for 2018-2020. The Medicare cost report data shows that over the three years, Pruitt Health-owned nursing homes paid the Pruitt Health parent company nearly \$124 million. These payments exceeded the reported costs by roughly \$54 million, or 78%. Under the current cost reporting system, CMS cannot determine what services or goods those homes received from the related parties. There is no information explaining why the payments exceeded the reported costs by 78%.

Pruitt Health Care Home Office Cost Related Party Transactions				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$23,679,296.30	\$40,254,032.12	\$16,574,735.82	70.00%
2019	\$25,691,701.29	\$40,135,249.45	\$14,443,548.16	56.22%
2020	\$20,251,862.06	\$43,544,139.94	\$23,292,277.88	115.01%
Total	\$69,622,859.65	\$123,933,421.51	\$54,310,561.86	78.01%



CMS must modify the current cost reporting system to ensure that taxpayer dollars go towards resident care, not profits. Importantly, CMS currently has the regulatory authority to do so. CMS requires that these costs be reasonable and prudent.¹ In other words, the costs billed to nursing homes by related parties must be what the nursing home would have paid on an open market. CMS requires related parties to make their “books and records” available to CMS for auditing.² CMS can do this streamline and achieve this goal by increasing the disclosure requirements on cost reports, by requiring all related parties, businesses, holding companies, or other organizations that do business with nursing homes and also have an ownership or control interest in the home to disclose all financial and ownership information related to the business it does with a facility.

To ensure the accuracy of this information, CMS should require these cost reports to be audited by a Certified Professional Accountant who must attest to the integrity of the information contained in the report. Additional safeguards, such as automated systems that flag missing information or anomalies, would help identify problematic data. Random in-depth audits will also achieve better transparency. Most importantly, however, CMS needs to send a message to the industry that it is now paying attention to how the money is spent, which will incentivize facilities to adopt better financial practices.

When nursing homes divert money away from care to profits, it harms residents and impoverishes workers. Money meant for wages and benefits is diverted away from a workforce that is predominantly women of color. This practice results in low staffing, high turnover, and harm to residents. We must address the issue of financial accountability to realize the ambitious reforms announced by President Biden in 2022. We stand ready to work with you to address this critical issue and protect nursing home residents. We would like to meet with you and your staff again in the coming months to offer strategies and support.

Sincerely,

AFL-CIO
California Advocates for Nursing Home Reform
Center for Medicare Advocacy
Elder Justice Coalition
The Geriatric Circle: Long Term Care Experts
Justice in Aging
Long Term Care Community Coalition
Michigan Elder Justice Initiative
National Association of Local Long-Term Care Ombudsman
National Association of State Long-Term Care Ombudsman Programs
National Committee to Preserve Social Security and Medicare
National Consumer Voice for Quality Long-Term Care

¹ Ctrs. for Medicare & Medicaid Servs, U.S. Dep’t. of Health & Hum. Servs., Program Manuals §2102.3 (Rev. 454).

² Ctrs. for Medicare & Medicaid Servs, U.S. Dep’t. of Health & Hum. Servs., Program Manuals § 1005 (Rev. 386).