



Long-Term Care Regulation Provider Letter

Number: PL 24-11

Title: Application Requirements Related to Ownership, Affiliates, and Controlling Persons

Provider Types: Assisted Living Facilities (ALF); Day Activity and Health Services (DAHS) Facilities; Day Activity and Health Services (DAHS) with Individualizes Skills and Socialization Facilities; Day Activity and Health Services (DAHS)-Individualized Skills and Socialization Only Facilities; Home and Community Support Services Agencies (HCSSA), Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID); Nursing Facilities (NF); Prescribed Pediatric Extended Care Centers (PPECC)

Date Issued: June 24, 2024

1.0 Subject and Purpose

This provider letter provides consistent definitions for certain terms across provider types to avoid duplicate data entries in the Texas Unified Licensure Information Portal (TULIP) for licensure or certification and for Medicaid contracting with HHSC. The definitions provided herein are intended **solely for these purposes** and do not replace any definitions found in statute or rule intended for other purposes (e.g., enforcement actions).

Note that the information below was developed based in part on rules recently published by the Centers for Medicare and Medicaid Services (CMS) related to nursing facilities on November 17, 2023.¹

2.0 Policy Details & Provider Responsibilities

When entering data into TULIP as part of the application or renewal processes for licensure or when contracting with HHSC, an applicant, license

¹ Read [88 Fed. Reg 80141](#).

holder, or contractor (termed the "**disclosing entity**" for purposes of this letter) may find that an individual or legal entity being disclosed meets multiple definitions (e.g., owner, affiliate, controlling person). Regardless of this fact, such an individual or legal entity need only be disclosed once. For example, an individual or legal entity that qualifies as an "owner" would likely also qualify as a "controlling person"; nevertheless, the individual or legal entity should only be disclosed as an "owner."

The disclosing entity is responsible for accurately identifying who within or related to the disclosing entity qualifies as an owner, affiliate, or controlling person.

2.1 Owners

A disclosing entity is required to disclose as an "**owner**" any individual or legal entity that has at least a 5% direct or indirect ownership interest in the disclosing entity. The disclosing entity is required to fully disclose all levels of ownership of 5% or more at each level of ownership, from the ownership of the disclosing entity to the ownership of each successive ownership entity.

When determining ownership interest, the following definitions apply:

- "Disclosable interest" is defined as: 5% or more direct or indirect ownership interest in the disclosing entity.
- "Direct ownership interest" is defined as: ownership of equity in the capital, stock, or profits of, or a membership interest in, the disclosing entity.
- "Indirect ownership interest" is defined as: any ownership or membership interest in a person that has a direct ownership interest in the disclosing entity.²
- "Person" is defined as: any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

² The amount of indirect ownership interest is determined by multiplying the percentages of ownership in each entity. For example, if A owns 10% of the stock in a corporation that owns 80% of the disclosing entity, A's interest equates to an 8% percent indirect ownership interest in the disclosing entity and must be reported. Conversely, if B owns 80% of the stock of a corporation that owns 5% of the stock of the disclosing entity, B's interest equates to a 4% indirect ownership interest in the disclosing entity and need not be reported. Read [42 CFR §420.202](#).

Additional considerations:

- Disclosing entities are not required to disclose individuals or legal entities in the ownership structure that hold less than 5% direct or indirect ownership **unless** such individuals or legal entities qualify as—and thus should be disclosed as—affiliates or controlling persons (as discussed below).
- Publicly traded organizations and governmental organizations might not have individuals or legal entities with a disclosable interest.
- Non-profit organizations should not identify any individual or legal entity as an “owner.” Instead, disclose the non-profit organization’s members or directors as affiliates or controlling persons if these terms apply to them.
- Generally, a “parent company” would be most accurately disclosed as an owner rather than an affiliate or controlling person.^{3, 4}

2.2 Affiliates

If an individual or legal entity is disclosed in the ownership section, do not also disclose it as an affiliate regardless of whether it meets the criteria provided below.

An “**affiliate**” or “**business affiliate**” includes the following:

- For a corporation: each officer and director, each stockholder with a disclosable interest, and any subsidiary or parent company of the corporation.
- For a limited liability company: each officer, member, manager, or parent company.

³ [Texas Business Organizations Code §1.002\(65\)](#) defines “parent” as: “an organization that, directly or indirectly through or with one or more of its subsidiaries: (A) owns at least 50% of the outstanding ownership or membership interests of another organization; or (B) possesses at least 50% of the voting power of the owners or members of another organization.” Regardless of this definition, an entity that meets the definition of “owner” provided in this letter should be disclosed as an owner regardless of whether it meets the definition of “parent” in §1.002(65).

⁴ The **HCSSA and PPECC** licensure rules ([26 TAC §558.2](#) and [26 TAC §550.5](#)) define “parent company” to mean “a person, other than an individual, who has **direct 100% ownership** interest” in the ownership of an agency or center. Regardless, for purposes of HCSSA or PPECC licensure, any individual or legal entity that meets the definition of “owner” provided in this letter should be disclosed as an owner.

- For an individual or sole proprietor:
 - the individual's spouse;
 - each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and
 - each corporation in which the individual is an officer or director or a stockholder with a disclosable interest in the corporation.
- For a partnership: each partner in the partnership, including general and limited partners (regardless of the percent of direct or indirect ownership or controlling authority) and any parent company of the partnership.
- For a trust: each trustee of the trust.
- For a group of co-owners under any other business arrangement: each officer, director, or the equivalent under the specific business arrangement and any parent company of the business.

2.3 Controlling Persons

If an individual or legal entity is disclosed in the ownership or affiliate section, do not disclose it as a controlling person regardless of whether it meets the criteria provided below.

A "**controlling person**" of a disclosing entity is a person with the ability, acting alone or in concert with others, to directly or indirectly provide, influence, direct, or cause the direction of the management or administrative services, management or clinical consulting services, accounting or financial sources, expenditure of money, or the development of policies or procedures of the disclosing entity or a part thereof.⁵

A controlling person does not include a person, such as an employee, lender, secured creditor, or property owner (except as provided below for skilled nursing facilities and nursing facilities) who does not exercise any influence or control, whether formal or actual, over the

⁵ A person qualifying as a "controlling person" in this section may be described in [§1124\(c\)\(5\)\(A\)](#) of the Social Security Act and CMS rules at [42 CFR §424.502](#) (governing skilled nursing facilities) and [§455.101](#) (governing nursing facilities) as an "additional disclosable party."

operation of the disclosing entity. For example, for publicly traded organizations, shareholders and lenders do not qualify as controlling persons based solely on their positions as shareholders or lenders (though they may qualify as controlling persons if they meet the definition described herein).

The following are examples of individuals and legal entities that qualify as controlling persons:

- Board members and commissioners;
- Executives and officers (president, director, chief executive officer, chief operating officer, chief financial officer, trustee or trust manager);
- Managing employees (general manager, business manager, administrator, director, or other individual who directly or indirectly conducts the day-to-day operation of the disclosing entity, either under contract or through some other arrangement, or who manages, advises, or supervises any element of the practices, finances, or operations of the disclosing entity);⁶ and
- Any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider, is in a position of actual control or authority with respect to the disclosing entity, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or managing employee of the provider.

Management companies and other business entities that operate or contract with others for the operation of the disclosing entity may qualify as controlling persons, as may persons who are controlling persons of the management company or other business entity.⁷ However, for licensure purposes, because these parties should be

⁶ CMS rules at [42 CFR §424.502](#) (governing skilled nursing facilities) and [§455.101](#) (governing nursing facilities) define a “managing employee” somewhat differently based on differences in the relevant definitions contained in the Social Security Act.

⁷ Under [42 CFR §424.502](#) (governing skilled nursing facilities) and [§455.101](#) (governing nursing facilities) a person or entity that “provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility” qualifies as an “additional disclosable party.”

disclosed in TULIP in the management company section, do not additionally disclose them as controlling persons of the disclosing entity.

Note the following license-specific requirements for TULIP:

- For a disclosing entity that applies for or holds a **day activity health services (DAHS)-individualized skills and socialization only** license, the only person required to be disclosed as a controlling person is the chief executive officer (CEO) or equivalent person.⁸
- For a **skilled nursing facility or nursing facility license**, any party that leases or subleases real property to the facility, or who owns a whole or part interest equal to or exceeding 5% of the total value of such real property, is considered a controlling person in addition to the individuals and legal entities described above.⁹ However, such parties will be disclosed in the application in the real estate section of TULIP for purposes of licensure once TULIP is updated to accept this information. Providers will be notified once TULIP has been updated.
- For **skilled NFs and for HCSSAs providing hospice**, the NF or HCSSA administrator and medical director are always considered “managing employees” and must be disclosed.¹⁰

3.0 Background/History

The application process has been reevaluated to address the confusion caused by inconsistent definitions across types of licensees and contractors and to avoid the submission of duplicate information for purposes of licensing and contracting with HHSC. It is not intended to revise the definitions of any terms in statute or rule intended for other purposes.

⁸ Read [26 TAC §559.205](#).

⁹ Under [42 CFR §424.502](#) (governing skilled nursing facilities) and [§455.101](#) (governing nursing facilities) such a party qualifies as an “additional disclosable party.”

¹⁰ Read [42 CFR §424.502](#).

4.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at LTCRPolicy@hhs.texas.gov or call (512) 438-3161.

If you have questions specific to the license application, contact Licensing at (512) 438-2015.