Nareit
Real estate
working for you

Aug. 31, 2026

VIA ELECTRONIC SUBMISSION: https://www.regulations.gov

Mehmet Oz, M.D., Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-1844-P
P.O. Box 8013
Baltimore, MD 21244-8013

**Re: Calendar Year 2027 Home Health Prospective Payment System (HH PPS) Rate Update; Requirements for the HH Quality Reporting Program and the Expanded HH Value-Based Purchasing Model; Medicare Provider Enrollment, Durable Medical Equipment (DME), and DME, Prosthetics, Orthotics, and Supplies (DMEPOS) Policies**

Dear Administrator Oz:

Nareit appreciates the opportunity to offer comments on the provider enrollment proposed rule published by CMS on July 6, 2026 (the 2026 Proposed Rule).[1] Nareit® is the worldwide representative voice for real estate investment trusts (REITs) and the millions of Americans who invest in REITs. An estimated 170 million[2] Americans live in households that own REITs through stocks, 401(k) plans, pension plans and other investment funds. Nareit supports the Centers for Medicare & Medicaid Services (CMS) goal of transparency and disclosure but has concerns about the approach in the 2026 Proposed Rule. Chief among these concerns is CMS's continued conflation of REITs with private equity companies (PECs)—entities that are structurally, statutorily, and functionally distinct.

The 2026 Proposed Rule would revise the following provider enrollment applications to require all suppliers completing these forms to identify whether any organizations disclosed thereon are REITs:

[1] CMS-1844-P; Calendar Year 2027 Home Health Prospective Payment System Rate Update; Requirements for the Home Health Quality Reporting Program and the Expanded Home Health Value-Based Purchasing Model; Medicare Provider Enrollment, Durable Medical Equipment (DME), and DME, Prosthetics, Orthotics, and Supplies (DMEPOS) Policies, 91 Fed. Reg. 41216 (July 6, 2026).
[2] https://www.reit.com/data-research/data/reits-numbers.

1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
202-739-9400

**reit.com**

- Form CMS-855B (Medicare Enrollment Application—Clinics/Group Practices and Certain Other Suppliers; OMB Control No. 0938-1377).
- Form CMS-855S (Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Suppliers; OMB Control No. 0938-1056).
- Form CMS-20134 (Medicare Diabetes Prevention Program (MDPP) Suppliers).

As solicited by the 2026 Proposed Rule and required under the Paperwork Reduction Act of 1995, Nareit offers the following comments outlining its concerns that the information collection regarding REIT tax filing status will not be useful in carrying out CMS's functions, the information to be collected will not meet the quality, utility, and clarity necessary to be useful, and the information collection burden will be unreasonably high.

Described more fully below, these disclosure requirements are unlikely to yield reliable data that can be used in CMS data analysis and they are likely to impose a substantial burden on providers that far exceeds any usefulness. Further, CMS lacks statutory authority to collect it.

For these reasons, Nareit recommends that CMS remove the term "real estate investment trust" (REIT) from the proposed revisions to Forms CMS-855B, CMS-855S and CMS-20134, and that CMS publish the revised forms and instructions for public comment before finalizing them. Each of the reasons is described in more detail below.

## I. Background

In 2023, CMS issued a proposed rule[3] establishing new disclosure requirements on certain entities related to Skilled Nursing Facilities (SNFs). Unfortunately, although the proposed regulations' apparent intention was to capture all lessors among these entities, they did so by defining the broad swath of "all publicly-traded or non-publicly traded companies that own part or all of the buildings or real estate in or on which the provider operates" as REITs,[4] an overly broad and misleading definition not found anywhere else. CMS subsequently proposed to

[3] Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities, 88 Fed. Reg. 9820 (February 15, 2023).
[4] *Id.*at 9829

require reporting on REITs for all providers and suppliers that complete Form CMS-855A (collectively with the proposed SNF Reporting Rule, the "2023 Proposed Rules").[5]

Nareit identified this issue for CMS, as set forth in two separate letters,[6] and respectfully suggested that the "additional disclosable party section of the Proposed Rule, which references an 'entity' that '[l]eases or subleases real property to the facility,' is clear and sufficient."[7] Nareit further clarified that requiring reporting using the term REIT would cause confusion for potential users of the data and likely to lead to inaccurate reporting for several reasons. Any entity such as a corporation, trust, partnership, or LLC may make a tax election to be taxed as a REIT, provided that it satisfies the REIT tax rules as set forth in the Internal Revenue Code. Nareit noted that REIT tax status is an optional election under the control of the lessor and may change over time because an entity that has elected to be taxed as REIT may choose to stop being a REIT by simply revoking its own election.

In November 2023, CMS finalized the 2023 Proposed Rules (2023 Final Rule).[8] The 2023 Final Rule required all providers and suppliers that complete Form CMS-855A to identify the REIT tax status of any entity with certain ownership interests in or control of the reporting provider.[9]

While the intent of the 2023 Proposed Rules appeared to be to gather information as to all lessors—albeit under the inapposite umbrella term REIT—rather than requiring disclosure of all lessors as originally proposed, the 2023 Final Rule scaled back this data collection to the narrow share of lessors that have elected, and choose to maintain, REIT status, thereby excluding the vast majority of lessors.[10]

---

[5] Medicare Program; Proposed Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership, 88 Fed. Reg. 26658 at 27190 (May 1, 2023).

[6] See Nareit Comment to the CMS on SNF Information Reporting Proposal Defining REITs (April 14, 2023), *available at:* https://www.regulations.gov/document/CMS-2023-0031-0001/comment; Nareit Comment to the CMS on Information Reporting Proposal Defining REITs for All Medicare Providers/Suppliers (May 11, 2023), available at: https://www.regulations.gov/document/CMS-2023-0057-0003/comment.

[7] Nareit Comment to the CMS on Information Reporting Proposal Defining REITs for All Medicare Providers/Suppliers (May 11, 2023), available at: https://www.regulations.gov/document/CMS-2023-0057-0003/comment.

[8] Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities; Medicare Providers' and Suppliers' Disclosure of Private Equity Companies and Real Estate Investment Trusts, 88 FR 80141 (November 17, 2023).

[9] *Id*.

[10] Supra, n.8 at 80168. Separately, the 2023 Proposed and Final Rules did include in the definition of "Additional Disclosable Party" for SNFs any person or entity who "[l]eases or subleases real property to the facility, or owns…5 percent of the total value of such real property." 2023 Proposed Rule at 9829; 2023 Final Rule at 80169. Thus, for SNFs at least, the

The 2026 Proposed Rules would expand the REIT disclosure requirements well beyond SNFs, to include all Part B suppliers.

## II. The 2026 Proposed Rule data collection requirements will not yield reliable or useful data

CMS's stated purpose for initially requiring reporting on REIT ownership of SNFs, and now proposed to be extended to ownership of additional health care entities, was to track quality of care issues.[11] Under the existing rules, a variety of health care organizations completing form CMS-855A to enroll in, change or revalidate their enrollment in Medicare are required to report, *inter alia,* information about ownership and control of the practice by REITs.[12]

As described below, information identifying that an organization is or is not a REIT is not readily available, and collecting it will not necessarily be an easy task for the reporting provider. Thus, the information reported is unlikely to yield sufficiently reliable data for meaningful analysis.

REIT status is a tax election. As Nareit noted in 2023 and reiterates here, a REIT can be a variety of business structures including a corporation, trust, partnership, or LLC that satisfies all the specific requirements set forth in Section 856 of Title 26 of the United States Code.[13] A REIT may be organized in several ways, but it also affirmatively elects its specific REIT status on a REIT-specific tax return. The REIT tax election can be revoked by the REIT itself, or it may have a change in its business practices and no longer be eligible for REIT status. After an entity's REIT tax status has been revoked, it may choose to re-elect REIT status in a number of years. In essence, it is not necessarily a constant status, calling into question the usefulness of REIT tax status as an analytic metric over time.

requirement to report on REIT status is not only burdensome and likely to yield misleading results, it also overlaps with the larger information collection on landlords as a whole, making it superfluous (note that we decline to opine further in this comment letter on whether sufficient authority exists to collect REIT status data on SNFs).

[11] It is worth noting that while justifying the need for REIT and private equity ownership data, the preamble to the 2026 Proposed Rule focuses on the analysis of private equity ownership. Indeed, the sources cited in the rationale for collecting this data mention only private equity and do not mention the tax status of lessors (whether REIT or otherwise). The sources do mention concerns with sales of health care real estate generally, leading to the troubling conclusion that CMS may have reverted to its original misconception from the 2023 Proposed Regulations that all landlords elect to be taxed as REITs.

[12] Form CMS-855A, Section 5; Attachment A (for SNFs).

[13] 26 U.S.C. § 856(c)(4).

In contrast to the "Type of business structure" information also required on form CMS-855A, which may be accessible through public databases, an entity's tax status as a REIT is not otherwise publicly available. This tax status is protected taxpayer information and is not accessible to others, unless the REIT chooses to disclose it (as many public companies do).

First, the entity may be a private company that does not provide the frequent and transparent public disclosures of a public company. In such case, the provider would not be able to access this information through public sources and so might make inquiry to the entity itself. Whether a company's tax status is known to the provider's contacts within the entity is dubious and likely to yield unreliable results. Even for public companies that do disclose their tax status, ensuring the reporting of reliable data will be difficult and may rely on extracting information through the company's financial statements (or determining the entity's overall corporate ownership structure and identifying the entity's public company parent and then tracing through the parent's financial statements, as the case may be).

As a result, providers will frequently be left to guess the answer or rely on information that is or may become outdated. The data available to date on responses to current Form CMS-855A for SNFs suggests that the information reported on REIT status is confusing, conflicting and frequently inaccurate.[14]

Whatever the intended goal for collecting this data, the data currently being received for SNFs strongly suggests that it is not accurate or reliable, and the same can be expected for the data that will be received for the proposed expanded range of entities required to report this information.

Further, it is not even clear what use data on an entity's tax status would be for CMS even if it were reliably captured. Moreover, under the current CMS rules—now proposed to be extended to additional providers—providers are only required to disclose REIT status on entities with ownership and/or control of the provider. The REIT rules make that ownership or control structurally improbable. This is not coincidental: a REIT is structurally inconsistent with the operational control that concerns CMS. A REIT's income and assets must be primarily from

[14] By way of example, responses from the CMS Skilled Nursing Facility (SNF) dataset as of July 2026 include a state pension listed as a REIT and numerous family trusts listed as REITs, which given the low likelihood of REITs within family trusts, is likely due to a confusion on terminology with Real Estate Investment Trusts. A family trust that invests in real estate may appear to be a "real estate investment trust" to a respondent who is unaware that "real estate investment trust" is a defined term and specifically applies to an entity that has made a "real estate investment trust" tax election.

real estate-related sources, with only limited qualifying investment income and assets. Further, a taxable REIT subsidiary may not operate or manage a health care facility.[15]

Finally, the record does not support this collection. The preamble's justification for gathering REIT data rests on sources addressing private equity ownership. None of the cited material examines the tax status of lessors, and none identifies the REIT election as a variable bearing on quality of care. An information collection must rest on a demonstrated need. Here, the record does not address, and CMS has not articulated, a need with respect to the extension of the collection to REITs.

## III. The data collection requirements impose unreasonable burdens on providers, including small businesses.

The flip side of the confusion and complexity leading to unreliable data discussed above is the burden on providers that are required to provide this data. As noted previously, providers likely do not have easy access to an entity's tax information and the current and proposed rules would impose a significant burden on them to attempt to obtain it. In many cases, providers may be small businesses that do not have the expertise, time or resources to expend chasing private tax filing information from the associated entities it is required to provide reports on.

This burden is compounded by the fact that attempting—and failing—to provide accurate information poses significant risks to the provider. In order to complete the application, the provider is required to answer all the questions, including whether the entity is a REIT. This means the provider must devote the considerable effort necessary to determine the tax status of the entity, or risk reporting inaccurate information (and, very likely, the provider may both expend its resources and *still* end up reporting unintentionally inaccurate information).[16]

In the 2023 Final Rule, CMS indicated that it estimated the burden on providers to be 12 minutes.[17] Nareit submits that, as demonstrated above, that estimate is woefully inaccurate.

---

[15] 26 U.S.C. §§ 856(c), 856(l)(3).

[16] CMS guidance on completing Attachment 1 emphasizes that "SNFs are expected to use the maximum feasible efforts to secure the required data." The guidance does provide a limited exemption from reporting if "(1) the ADP refuses to provide the data; and (2) the information is not available and accessible elsewhere (e.g., within the SNF's existing records, searchable on the Internet)," however, the guidance emphasized that "it is extremely important that the SNF exhaust all feasible means of securing the information before concluding that it is unattainable." *See* Guidance for SNF Attachment on Form CMS-855A, February 24, 2026 at 20, *available at*: https://www.cms.gov/files/document/guidance-snf-attachment-855a.pdf.

[17] Supra, n.8 at 80166.

We note that the preamble to the 2026 Proposed Rule states that while it does not "in and of itself, impose an information collection burden, the revisions of the Forms CMS-855B and CMS-855S, to collect . . . REIT data would do so."[18] We believe these burdens combined with the lack of useable data that will be collected are strong reasons not to extend the information collection to additional entities as proposed here.[19] We urge CMS to address this burden and the value of the information to be collected in considering the proposed rule and also as part of the information collection requests that CMS indicates it will submit to the Office of Management and Budget to request revisions to these forms.[20] We further urge CMS to consider whether this benefit/burden analysis comports with Presidential Executive Orders directing agencies to minimize burdens in the regulatory process.[21] Prior to finalizing any revisions to forms CMS-855B and CMS-855S, we request that CMS allow for public comment on the forms and instructions.

## IV. The data collection requirements are not authorized by law

Even beyond the data quality and burden of reporting, CMS has not articulated a legal basis for the disclosure requirements. The current disclosure requirements for SNFs were issued pursuant to Section 1124 of the Social Security Act. However, Section 1124(c) of the Social Security Act (the Act), provides authority for very narrow and specific disclosure requirements for a limited universe of provider types.[22] As the 2026 Proposed Rule appears to recognize, Section 1124(c)'s requirements for "additional disclosable parties" does not authorize CMS to mandate disclosure from other non-SNF providers and suppliers. Instead, for this purpose, the 2026 Proposed Rule relies on three separate and generalized statutory provisions and divines from them an authority to require these disclosures even absent any specific statutory citations that allow it.[23]

---

[18] Supra, n.1 at 41308.
[19] While the same logic would apply to cease collection of this information on form CMS-855A, we recognize that is beyond the scope of the current request for comments.
[20] Supra, n.1 at 41308.
[21] See Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (February 19, 2025); Executive Order 14192, Unleashing Prosperity Through Deregulation (January 31, 2025).
[22] We also question whether section 1124(c) authorizes current regulations requiring disclosure of REIT tax status, since it requires only disclosure of "organizational structure" of additional disclosable parties. The statutory definition of "organizational structure" does not extend to tax status, and Congress did not grant CMS any authority to expand the definition or the types of information that must be disclosed.
[23] CMS specifically disclaims the authority under section 1124(c), instead relying on section 1102 ("The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the

Importantly, nothing in the three provisions relied on for authority to expand the range of entities subject to the current disclosures contains any discussion or focus on the concerns animating the disclosures in section 1124(c), *i.e.* "to gain further insight into the [providers'] operators and affiliates" due to concerns about quality of care."[24] Social Security Act sections 1102 and 1871 are administrative implementation provisions, not independent grants of substantive power. They authorize CMS to write rules that carry out the specific statutory mandates Congress has enacted, but they do not authorize CMS to create new rights, obligations, or requirements that Congress itself did not establish.[25] Similarly, while Social Security Act section 1866(j) does confer some specific regulatory authority over the provider and supplier enrollment process, there is no delegation of authority to require to the types of disclosures CMS is proposing to require in this Proposed Rule.

It thus appears that the 2026 Proposed Rule is attempting to import a disclosure regime specified in another provision by stretching general grants of authority beyond their limits, and ignores the statutory provision that expressly governs disclosures by other Part B providers and suppliers – Section 1124A. Section 1124A complements Section 1124 by establishing disclosure requirements for all other providers under Part B. Importantly, these requirements are narrower than those in Section 1124, and do not include anything related to "additional disclosable parties." It is well-settled that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[26]

functions with which each is charged under this chapter"), section 1866(j) ("The Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers under this title. Such process shall include screening of providers and suppliers in accordance with paragraph (2), a provisional period of enhanced oversight in accordance with paragraph (3), disclosure requirements in accordance with paragraph (5), the imposition of temporary enrollment moratoria in accordance with paragraph (7), and the establishment of compliance programs in accordance with paragraph (9)."), and section 1871 ("The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title.") of the Act.

[24] *Supra* n.1

[25] *See, e.g. Merck & Co. v. United States HHS*, 385 F. Supp. 3d 81, 92 (D.D.C. 2019) (invalidating HHS' attempt to mandate list price disclosures pharmaceutical manufacturers ads, stating that "provisions like those at issue here [Sections 1102 and 1871] do not supply an agency '[c]arte blanche authority' to promulgate rules on any matter relating to its enabling statute.) (internal citations omitted).

[26] *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal citations omitted).

## V. Recommendation

Nareit understands CMS' interest in transparency and disclosure. However, as described above, requiring information about a tax status will not yield useable data, will impose a significant burden on the provider to comply, and is not supported by statutory authority. Accordingly, Nareit recommends that the term "real estate investment trust" be removed from the information collection.

Nareit appreciates the opportunity to participate in this rulemaking and would be pleased to discuss our comments or any questions CMS or its staff may have. Please do not hesitate to contact me at cbarre@nareit.com or (202) 940-8130 or Nareit's Deputy Executive Vice President, Policy & Public Affairs, Cameron Arterton, at carterton@nareit.com or (202) 853-6693 if you would like to discuss these comments or related issues in greater detail.

Respectfully Submitted,

Catherine Barré
Executive Vice President, Policy & Public Affairs & General Counsel
Nareit