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31 May 2021

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senators,

Re: Aged Care Legislation Amendment (Financial Transparency) Bill 2020

In our response to the Hon Senator Dean Smith's questions on notice about associated entities, we explained how these sorts of relationships were introduced into aged care by private equity. Because they were profitable and others had to compete with private equity, they rapidly spread to all types of providers in the sector and became acceptable conduct. We illustrated this by describing the destructive effect that private equity and its web of related party transactions had on the aged care system in both the United Kingdom (UK) and the USA.

On the 27th of May 2021, the UK's *Daily Mail* published another scathing expose of what is still happening there. It is an update on the information we supplied. The problems and extensive failures in care started in 2004. It shows that in spite of the efforts of central UK regulators for the last 17 years, a chaotic situation still exists. With so many provider companies in debt, residents are paying the price. It is clear that this is beyond the scope of centralised marketplace regulators.

While the *Daily Mail* does tend to sensationalise issues, there can be no doubt about the crisis created by treating aged care as a competitive market, which allows operators like this to prosper at the expense of citizens. As we indicated this a public good and should be led by and directly accountable to the community it serves.

We thought your committee might be interested in this article and we append a copy to this letter.

There is a growing movement to regionalise and rebuild citizenship and civil society in the UK and elsewhere. There are networks of citizens in the UK and globally pressing for regionalism and citizen engagement. They support local networks and write extensively about regionalism. There are global networks that have similar objectives, sometimes describing it as *"neighbourhood democracy"*. We were interested to hear Lucy Turnbull, Mayor of Sydney, pressing for regionalism on *The Drum* on 28 May 2021. Private equity and inappropriate corporate relationships would not prosper in systems like this.

It is increasingly clear that this is the path to a better and more responsible 21st century. Aged care is well placed to go down this path. Adopting perverse related party strategies would not be acceptable to citizens with their finger on the pulse.

The USA is currently addressing the same problems with private equity and nursing homes. Your committee might find the attached material from the USA helpful. We attach the transcript of a US committee hearing similar to yours dated 25 March 2021 including a link to the recorded hearing, a 2020 state report on transparency, and a link to a 2021 *'ten steps reform'* wish list from a non-profit provider of care.

We recognise the importance of regulation, transparency and of addressing many of the problems like staffing and accommodation impacting on care and strongly support this, but we find it disappointing that in the USA, the UK and Australia the thinking and primary focus still seems to be on containing the problems primarily through regulation.

It would be so much more sensible to make the structural, paradigm and policy changes that would create a system that does not think and behave in this way and does not depend on regulation to make it behave responsibly. That means creating a very different sort of market to that current in all three countries. We need a system that responds to citizens real life situations and that leads in identifying needed regulations rather than one that tries to subvert them. A community-led system would do this.

It may be that private equity and others who come only for the money might be less enthusiastic. The community-led system provides an avenue for them to extricate themselves from the sector and for the system to be gradually dominated by mission driven non-profit providers as was suggested in the AARP[1] wish list.

Regards,
Dr Michael Wynne and Lynda Saltarelli,
Aged Care Crisis Inc.

Related sources:

- **UK:** *Daily Mail* article re private equity, 27 May 2021 ***(attached)***
  https://www.dailymail.co.uk/news/article-9623449/Equity-vultures-prey-elderly-Ministers-face-calls-rein-investors-care.html
- **USA: Examining Private Equity's Expanded Role in the U.S. Health Care System**, Oversight Subcommittee Hearing, U.S. House of Prepresentatives, Washington, 25 Mar 2021: *https://bit.ly/2SBifkm*
  - **Public Hearing - opening statement - Chairman Richard Neal** (streamed live on 26 Mar 2021) **:** https://www.youtube.com/watch?v=QNj24ksJAuA
  - **Public Hearing - summary transcript** ***(attached)***
- **USA:** Research Report, Nursing Home Transparency, Office of Legislative Research, Connecticut General Assembly, 22 Dec 2020 ***(attached)***
- **USA: An Act improving transparency of nursing home operations** - Related parties, (Effective 1 Jul, 2014) https://cga.ct.gov/2014/ACT/PA/2014PA-00055-R00HB-05051-PA.htm ***(attached)***
- **USA:** 10 Steps to Reform and Improve Nursing Homes, 13 Jan 2021 (AARP)
  https://www.aarp.org/caregiving/health/info-2021/steps-to-improve-nursing-homes.html

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[1] AARP (formerly called the American Association of Retired Persons) is a United States–based interest group focusing on issues affecting those over the age of fifty.[3] According to the organization, it had more than 38 million members as of 2018.[4] The magazine and bulletin it sends to its members are the two largest-circulation publications in the United States.

AARP was founded in 1958 by Ethel Percy Andrus (a retired educator from California) and Leonard Davis (later the founder of the Colonial Penn Group of insurance companies).[5][6] It is an influential lobbying group in the United States.[7][8] AARP sells paid memberships, and markets insurance[9] and other services to its members. (Source: Wikipedia: https://en.wikipedia.org/wiki/AARP)

Equity vultures prey on the elderly: Ministers face calls to rein in investors who take profits at the expense of care home residents

- **Private investors buying into care sector should have to undergo quality tests**
- **Jeremy Richardson, of Four Seasons Health Care, called for a code of conduct**
- **The Mail is campaigning to highlight the growing problem of private equity firms buying up care homes and a wide range of companies**

By Susie Coen and Lucy White For The Daily Mail
Published: 09:37 AEST, 27 May 2021 | Updated: 09:43 AEST, 27 May 2021

Private equity firms buying up care homes should face stringent tests before being able to 'extract dividends and profit', the boss of one of the biggest chains in the sector said last night.

Jeremy Richardson, chief executive of Four Seasons Health Care – which tumbled into administration in 2019 with a £625million debt pile – called for them to be regulated and subject to a code of conduct.

'Like any industry, there are good private equity investors and less good private equity investors,' said Mr Richardson, 50, who started out in private equity.

'I have no problem with private investment in social care and I have no problem with investors making a profit.

'But – and this is the big caveat – I don't think it is acceptable in something like care, which is part of our national infrastructure, for the profit to be made to the detriment or quality of care and investment in the assets.'

Private investors should have to undergo financial, care quality and asset investment tests before buying up the sector, said Mr Richardson, who has run the troubled Four Seasons chain of 180 homes since December 2019.

Judith Fielding (left) and Doris Fielding, pictured on Judith's wedding. Judith's mum Doris died after suffering from the substantial failings in care at Orchid View care home, West Sussex

He suggested that if a chain has a series of homes rated inadequate it would not be 'appropriate' to take dividends and profits out of the business.

The Mail is campaigning to highlight the growing problem of private equity firms snapping up a wide range of companies, with some 123 businesses worth £36billion sold off during the pandemic.

Labour health spokesman Liz Kendall said: 'The Daily Mail are absolutely right to be campaigning on this crucial issue.

'The consequences of getting the regulation of care homes wrong are appalling – for frail care home residents, their families and the taxpayer.'

Private equity firms started buying up homes in earnest two decades ago, seeing an opportunity in consolidating them into large groups with economies of scale.

Enid Trodden, on her wedding day to Brian Trodden in 1945. Lesley's mum Enid Trodden died after suffering from the substantial failings in care at Orchid View care home

Some eyed the vast amounts of property care groups owned, selling the homes for a profit and then leasing them back.

US private equity giant Blackstone sold off hundreds of the properties at Southern Cross, the country's largest care home chain, after it bought the group in 2004.

When it listed the group on the stock market in 2006, Blackstone – led by billionaire Stephen Schwarzman – made a £600million profit in two years.

Blackstone sold its holding but when the financial crisis hit, the group was unable to pay its landlords. It soon collapsed, leaving around 300,000 residents in limbo as landlords rushed to find new care home providers.

Two of the country's largest groups – HC-One and Care UK – are still in private equity hands, while several smaller groups have also been passed from one City investor to the next. For most, including Four Seasons – which was owned by the private equity firm Terra Firma until it went bust – their finances become more fragile with every change of ownership as successive buyout vultures try to squeeze out profits.

And for long-suffering residents paying hundreds of pounds every week for care, this has meant slipping standards and corners cut.

Former work and pensions secretary Baroness Altmann said: 'Time and again, it has been proven that private equity is not a secure business model to promise to house people for the rest of their lives.

'Financiers make huge amounts of money while people in care homes are often paying everything they have for services.

Enid Trodden, one of 19 elderly residents who died at Orchid View care home in Copthorne, West Sussex

'The Government must reform adult social care. I don't think private equity firms or hedge funds should have any role in delivering lifelong care for vulnerable people. Something has to change.'

Families of elderly residents at Four Seasons started to notice standards were slipping there three years ago. It had spent decades passing through the hands of various private equity owners.

By 2019, under the ownership of Guy Hands's firm Terra Firma, the business was in dire financial straits. Residents and their families soon picked up on the money troubles, as heart-breaking messages to the charity helpline Compassion in Care made clear.

The daughter of one previously happy elderly resident called the helpline saying: 'A lot of things seemed to be going wrong – laundry not being done, the food was not as good. Cheap and nasty sums it up.'

By 2019, Four Seasons and its then 322 homes were struggling with a £625million mountain of debt used to fund expansions.

Terra Firma planned to pay off loans using the private equity technique of cutting costs and ramping up fees. But it never managed to clear the debt and the chain fell into administration.

Since then, some homes have been passed on to new owners while the core is still being held by administrators who are looking for a buyer.

Four Seasons' founder Robert Kilgour, who first sold the chain to the private equity group Alchemy in 1999, said he 'wouldn't do that again' and described the way it was run down as 'obscene'.

Our mothers were used as cash cows at 'the worst care home in Britain'

The daughters of residents who died after suffering abuse at a Southern Cross care home have hit out at private equity firms who use the elderly as 'cash cows'.

Enid Trodden and Doris Fielding were among the 19 residents who passed away following years of neglect at £4,000-a-month Orchid View – dubbed 'Britain's worst care home'.

A Serious Case Review was ordered after major failings were identified at the home in Copthorne, West Sussex, between 2009 and 2011. The damning report made more than 30 recommendations to prevent future 'institutionalised abuse'.

Judith Charatan, 62, and Lesley Lincoln, 73, (right) have been campaigning for an inquiry into the home's failings for a decade.

An inquest found call bells were often not answered or could not be reached and vulnerable residents were routinely left soiled and in pain. In a single night shift, staff made 28 medication errors. The home was rated 'good' by the regulator in 2010 – a year before it was forced to close.

Care UK, one of the UK's biggest providers, opened Francis Court on the premises in 2012. The last two Care Quality Commission (CQC) inspections in 2019 rated the home as 'requires improvement'.

Judith Charatan, 62, and Lesley Lincoln, 73, have been campaigning for an inquiry into the home's failings for a decade.

Mrs Charatan, whose 90-year-old mother Mrs Fielding suffered abuse at Orchid View, hit out at the 'greedy' private equity firms running care homes into the ground.

'The residents were treated like commodities. It was a profit-driven organisation and a lot of people have suffered as a result of that,' she told the Daily Mail.

'I don't think the private equity companies behind care home chains such as Southern Cross have been properly scrutinised and held to account. They've probably skipped off into the Bahamas and are having a whale of a time.'

Mrs Charatan's mother was one of the last residents admitted to the home in June 2011. She lived there for two months before her health declined so rapidly she was admitted to hospital.

It transpired her medication had been mismanaged and she hadn't been fed properly. She died in December 2011.

Mrs Charatan said: 'I made the decision for her to go into that home thinking it would be wonderful. How companies can get away with treating people like that is beyond me.'

Mrs Lincoln's 86-year-old mother Mrs Trodden was one of five residents who the inquest found died from natural causes 'attributed to neglect'. Mrs Trodden, who suffered with Parkinson's and dementia, moved to the home in September 2009. She died in October 2011.

Mrs Lincoln was thrilled when her mother first moved to the 'beautiful, brand new home'. But within six weeks the cracks began to show.

She would find her mother left sitting in her own urine and she would have 'rigid attacks' due to her medication not being administered properly.

However, despite raising her concerns with Southern Cross and the CQC, no action was taken.

'Unbeknownst to us the place was folding. They ran out of food and basic things such as gloves – but they were still admitting people, using them as cash cows', Mrs Lincoln said.

'It's terrible. They can just pull everything out from under your feet – take the money from those residents, their entire pensions, and not give them the good care that they deserve. All I could do was make sure I was there every day to try and give her some part of the day that was good.'

Ministers face grilling over fat-cat takeovers

By Martin Beckford for The Daily Mail

Ministers will face questions in Parliament over what they are doing to protect firms from private equity takeovers.

They will be grilled by a select committee later this year on whether plans to reform the business world will do enough to stop jobs being put at risk by unscrupulous buyers.

It comes amid growing concern in Parliament that customers and workers are losing out while private equity predators make a fortune buying up firms.

Darren Jones, chairman of the business, energy and industrial strategy committee, said last night: 'There have been too many examples of private equity owners buying important British businesses only to load them with debt, withdraw value and then leave workers, customers and high streets worse off when they walk away at the point of failure.

'Government reforms to audit, corporate governance and director responsibilities should give sufficient powers to the new regulator to take action in the future.'

His committee will question ministers after summer recess about a Department for Business White Paper aimed at restoring trust in business. Panned reforms will mean large privately owned UK firms, including those owned by private equity, will be given as much scrutiny as major publicly listed ones.

Directors will have to publish more information about the financial health of businesses and will face investigation by a new watchdog if they break audit and reporting rules.

Yesterday MPs and peers from across the political spectrum called on the Government to do more to stop firms falling victim to private equity in the first place as they backed the Mail's campaign highlighting the problem.

Tory MP Sir John Hayes said: 'I'm delighted the Daily Mail is shining a light in this area.

'It's easy to be complacent about who owns companies but Covid has taught us that globalisation has created dependencies and fragility that pose huge risks to our country and people.'

Crossbench peer Baroness Wheatcroft recently raised concerns in the Lords about the risks of care homes being sold to private equity owners. She told the Mail: 'The vulnerable people who enter care homes need to be assured of their financial stability. The private equity model is simply not appropriate.'

Gareth Thomas, chairman of the all-party parliamentary group on mutuals, highlighted the planned sale of LV=, the historic Liverpool Victoria insurance firm, to US investment giant Bain Capital.

He said: 'Ministers and regulators need to step in urgently to stop great British businesses such as LV= being gobbled up unnecessarily by private equity saviours.'

Tory peer Lord Blencathra recently tabled questions in Parliament about the number of veterinary practices being bought by private equity firms 'concerned with maximising profits' instead of animal welfare. Three of the six main chains of vets are owned by private equity.

Asked by the Mail if the Prime Minister had any concerns that so many British businesses have been bought by private equity during the pandemic, a No 10 spokesman said: 'We are committed to ensuring the UK remains open for business while protecting the livelihoods of British workers.'

HOUSE COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON OVERSIGHT

Examining Private Equity's Expanded Role in the U.S. Health Care System

Thursday, March 25, 2021 at 1 p.m. via Cisco WebEx

View Recording Here

PURPOSE

The purpose of this hearing is to discuss the growing impact of privately held for-profit companies in U.S. Health Care and how it affects patient safety, costs, and jobs. This hearing specifically focused on private equity (PE) ownership of nursing homes and outcomes during the COVID-19 pandemic.

KEY TAKEAWAYS

- A perceived lack of transparency and inadequate data collection by CMS hinders reform.
- Some Members believe that private equity owned nursing homes and long-term care facilities inadequately staff facilities, which compromises care to patients.
- Transparency measures, such as comprehensive and consolidated financial reporting that includes ownership, actual expenses, staffing practices and cash flow of nursing homes and all private equity-related entities could help increase accountability from taxpayers and the media.

Sections relevant to key themes of interest are linked below:

- **Private equity transparency** (pages 2, 3, 4, 5, 6)
- **Quality data** (pages 3, 4, 6)
- **Impact on health equity** (pages 2, 4, 5, 6)
- **COVID-19** (pages 2, 4, 5, 6)
- **Investigations** (pages 2, 3, 5, 6)
- **Workforce** (pages 3, 4, 6)
- **Non-nursing home entities** (page 6)

MEMBERS PRESENT

Subcommittee Chairman Bill Pascrell, Ranking Member Mike Kelly, Representatives Suozzi, Walorski, Chu, Wenstrup, Plaskett, Doggett, Evans

WITNESSES

Sabrina Howell, Ph.D.
Assistant Professor of Finance
NYU Stern School of Business

Terris King, Sc.D.
Founder and CEO
King Enterprise Group, LLC

Ernest Tosh, JD
Trial Attorney
Tosh Law Firm, PLLC

Milly Silva
Executive Vice President
1199 SEIU United Healthcare Workers East

Grace Colucci
Co-founder
Voices for Seniors

OPENING STATEMENTS

Chairman Pascrell (D-NJ) stated that there was a 21% increase in investment by private equity (PE) in the healthcare system. This is troubling because they are focused on profit, not quality. They saddle companies with debt, which leads to job loss. There is a lack of transparency in ownership that makes oversight by regulators impossible. COVID-19 exposed the inner sanctum of health care in the U.S. The impact of PE in health care is felt most by vulnerable communities, including people of color, seniors and the disabled. Recent studies on nursing homes have shown that PE owned facilities tend to deliver lower quality care, resulting in higher billing to Medicare and higher mortality rates. This was exacerbated during COVID-19. H.R. 5825 (Transparency in Health Care Investments Act), introduced last Congress by House Ways and Means Chairman Richie Neal (D-CA), and the recently introduced H.R. 1958 from Chairman Pascrell both seek to increase transparency in private-equity-backed health care.

Ranking Member Kelly (R-PA) said that we are all focused on nursing homes right now because of COVID-19. But many of the issues we've seen this year have nothing to do with the role of PE. All of us are willing to work more about the effects of ownership and consolidation on the cost and quality of healthcare. Republicans want a bipartisan investigation into COVID-19 in nursing home and data, but those requests have gone unheeded. We need to understand why states felt it was necessary to send these patients to nursing homes. Many states, including Pennsylvania and New York, seem to have unreported or underreported data. This is an American problem. We can solve some of these problems, but today is not the day to address issues related with PE ownership. We need to first address the missing data issues from nursing homes during the pandemic.

TESTIMONY

Dr. Sabrina Howell said that PE in US health care has grown dramatically in the last decade. PE managers only want to own the target for three to six years. They have big upsides and low downsides. The PE firm does not borrow; rather the purchased company owns 80% of the debt. The PE firm does not owe lenders, but the company's other stakeholders bear the burden. Investors generate large, early cash flows by selling assets like real estate, which destabilizes the company. The company takes on more debt to pay investors strong returns, even if the company goes bankrupt. Data shows that some of the incentives of PE are good for consumers when there is quality transparency, when there are not government subsidies, and markets are competitive. The information asymmetry between provider and patient; separation of revenue from the consumer; and government subsidies not tied to quality mean that these incentives can harm patients. Provider can generate higher profits by cutting patient care costs. Going to a PE owned nursing home increases probability of death by 10%. The shift in costs away from patient-care-focused expenses shows that there is a systemic change—indicated by lower staff and higher use of pain medication and antipsychotics—that can cause these bad outcomes. There are probably areas in health care where PE is not as harmful, but in the aggregate, PE buyouts are detrimental to patients and taxpayers.

Milly Silva stated that someone in most people's lives is supported by a nursing home. PE ownership has focused on maximizing profit. Workers on the frontline have experienced these effects. Staffing shortages that result from PE ownership harms patients, who suffer from lack of quality care. These workers have some of the most dangerous jobs in America and also some of the lowest wages. Most of them are women, and most of them people of color. The tragedy we have seen over the last year is the result of systemic failures that existed before COVID-19. These failures were driven in large part by PE ownership. The presence of unions is one check on poor outcomes in care, but legislative oversight is essential. Nursing home workers often cite low staffing levels as a key issue, which leads to poor outcomes for patients. In NJ, a law requiring CNA-to-nursing ratios should be a model law in the country.

Dr. Terris King said that he has committed his life to alleviating inequities. A number of questions arise. We must determine whether there is a way to balance patient care and PE investors and consider whether investors can actually impact patient quality. An inter-agency investigation must be conducted to address these issues. We need to ensure we are consistently collecting the right information in Provider Enrollment, Chain, and Ownership System (PECOS). CMS should establish a prior authorization process for changing ownership for nursing homes and require financial reporting and oversight.

Ernest Tosh stated that his primary interest is data regarding nursing homes. They have a massive problem with understaffing, which leads to preventable deaths and injuries. PE has made understaffing worse. The easiest solution appears to be an increase in staffing, which has been shown to reduce negative outcomes. The hard part is figuring out whether current reimbursement rates support more staffing. Taxpayers can't figure that out because of a lack of transparency in the nursing home industry. We don't know how profitable any given nursing home is due to financial filings that are highly manipulated and do not provide an accurate financial picture. The annual cost report with CMS that nursing homes file are in theory great—but the manipulation by for-profit chains launder profits from nursing homes by overpaying related parties. Nursing homes are willingly overpaying rent to the PE holding company, and it looks like the nursing homes are not making as much money. There is no required reporting for the related parties, like the PE holding company. It makes it impossible to determine whether they could actually be employing more staff if they were paying fair market value. All chains should file audited, consolidated financial reports, including for related parties to offer.

Grace Colucci stated that her father was a devoted family man. He was in a facility during the COVID-19 outbreak in New York. He ended up in the hospital for a month and ultimately passed away. He contracted COVID-19 in the nursing home, but died at home, becoming one of the uncounted. Governor Cuomo's rule on nursing home admissions did not separate the vulnerable to protect them. We need accountability to understand what happened with nursing homes during COVID-19. An investigation seeking the truth, regardless of office, is called for.

QUESTIONS AND ANSWERS

Chairman Pascrell asked how the burden on the workforce plays out day to day in the nursing home. **Ms. Silva** said that the way PE owners are driving the facilities, patient care cedes to profit. This results in lower staffing, particularly direct care staff. There is a decrease in quality of meals to residence. You also see that related parties of the PE entity are used to provide services and temporary staff. It is impacting workers and residents. **Chairman Pascrell** said that since 2013, 25 companies have paid settlements for allegedly violating False Claims Act while under PE ownership. He asked for more detail about the need for rooting out fraud. **Mr. Tosh** said CMS data, such as upcoding, is essential to uncovering fraud. We also look for length-of-stay fraud to milk Medicare system for more money. Finally, we look for "Five Star" fraud, which is manipulating staffing and quality data to get more patients. **Chairman Pascrell** asked if the Five Star System is a fraud. **Mr. Tosh** said he agreed. **Chairman Pascrell** asked how PE's grip is an issue of health equity. **Dr. King** said that we need to see how CMS has fallen behind with data collection. PE can look at market data and understand which populations and communities they target based on vulnerability of those communities and ability to make their voices heard. PE will then shut down hospitals in those communities, creating access issues. This increases existing disparities in minority communities.

Ranking Member Kelly said that a lot of people are looking for answers they cannot get because of missing data. He also noted that entities typically have to have certain capital requirements, but it sounds like the PE and public entities don't have those requirements.

Dr. Howell said there are not limits on ratio of debt-to-equity in a PE transaction. Shadow banks have entered during periods where there have been some regulation, but today it is very common for debt-to-equity ratio to be 7-to-1, which is extremely high.

Rep. Thomas Suozzi (D-NY) said that he understands that 70 percent of the 15,000 nursing homes in the country are for-profit. He asked what percentage of that was PE-owned. **Dr. Howell** said they have been able to link at least 9 percent of them, but that data ended in 2015. Since then, deals in the senior care space have only increased. It is difficult to affirmatively determine because of lack of transparency in ownership. **Rep. Suozzi** said he does not have a PE bias and that Dr. Howell made a persuasive case about the way PE investors were manipulating cash flow. He noted that unionized nursing homes had better COVID outcomes.

Rep. Jackie Walorski (R-IN) said that COVID-19's impact has been disproportionately felt by seniors in nursing homes and long-term care. NY, NJ, MI and PA had to admit patients into nursing homes when they came from hospitals with confirmed cases of COVID-19 or a positive test themselves. Each of these cases were not equitably covered in the media and were politicized. **Rep. Walorski** called for bipartisan accountability and investigation.

Rep. Judy Chu (D-CA) stated she is concerned about the impact of PE on the health care system, including the practice of surprise medical billing. She was said she was proud to support Chairman Richie Neal's bill on transparency in healthcare investment. She asked how transparency can help at PE-owned facilities and what kinds of measures are needed. **Dr. Howell** said there is no good information on ownership of CMS-paid nursing homes. Ownership files should be publicly available for any health care provider regardless of ownership type if they take CMS payments. Debt, real estate sales, and other related party charges are in the Neal bill. **Rep. Chu** asked about the concerns of PE's impact on health outcomes on racial and ethnic minorities. **Dr. King** said we have to acknowledge the inequities that existed before PE's outpaced CMS's data collection. We also need to understand how PE exacerbated these. We need to know what is being done, where it is being done and how the profit motivations are impacting health care. We also need to understand whether minority communities are being targeted and if PE is creating an access issue.

Rep. Stacey Plaskett (D-VI) asked how we get all participants to fill gaps and find solutions, such as telehealth, and programs that expand access to care in underserved areas. **Dr. King** said that partnerships with community-based organizations, such as partnerships with hospitals and churches, could expand things a great deal in terms of quality. We could expand the role of Federally Qualified Health Centers so that places like churches could share in those services. We do not have to wait until a person is severely ill until we start caring for them in the community. **Rep. Plaskett** asked why it might be concerning that the Trump Administration made it more difficult to obtain facility financial data on nursing homes. **Mr. Tosh** said that the administration cut off all information about nursing homes, which we need to understand whether they could actually afford more staffing. We cannot even make a Freedom of Information Act request for the cost reports, as they are considered trade secret now. **Rep. Plaskett** asked if there are any holistic policies that we can use to improve senior care in the for-profit sector. **Dr. King** said that we can use major CMS levers of incentives and penalties. We can postpone purchase, do a broad review, and then make corrections to the system.

Rep. Brad Wenstrup (R-OH) said he is always concerned with the impact of different ownership structures and consolidation. The main concern here is COVID-19, and he believes that a lot of leadership was not following medical recommendations and covered-up data. **Ms. Colucci** said COVID-19 has affected all Americans and we need to find out why cover-ups happened so we can prevent it from happening again.

Rep. Lloyd Doggett (D-TX) stated that this issue of PE in health care has not been looked at enough and extends beyond nursing homes. Air ambulance Medicare markets, hospital emergency departments and other practices have been similarly manipulative. He praised Chairman Neal's bill and hopes he will continue to lead on this. He asked whether the Transparency in health Care investments act would help this. **Dr. Howell** said that transparency on ownership, expenses and staffing would be helpful. It would also be helpful to include evidence of employment contracts to assess workforce impact. **Rep. Doggett** noted he would be introducing a nursing home oversight bill soon, and asked how a task force could best use appropriated funds. **Dr. King** said they could first assess safety and review clinical quality measures that already exist. Two critical pieces that need to be looked at is the leadership in clinical quality and health of the employees. Find out where the data is deficient that comes to CMS.

Rep. Dwight Evans (D-PA) asked how concerned we should be when safety net hospitals are bought and then closed by a PE firm. **Dr. King** said that we should be concerned, because the heart of the safety net hospital is there to look after vulnerable people who almost certainly cannot pay for care. **Rep. Evans** asked how concerned we should be about growth of PE in health care. **Dr. Howell** said the data indicates we should be worried, because data shows more spending at nursing homes and worse outcomes.

OFFICE OF LEGISLATIVE RESEARCH
Objective Research for Connecticut's Legislature

ResearchReport

Nursing Home Transparency

By: Mary Fitzpatrick, Associate Analyst
December 22, 2020 | 2020-R-0356

Issue

This report describes provisions in PA 14-55, An Act Improving Transparency of Nursing Home Operations, concerning (1) cost reporting and (2) the Nursing Home Financial Advisory Committee. See also OLR's Public Act Summary.

Cost Reporting

By law, nursing homes must submit cost reports annually to the Department of Social Services (DSS), which the department generally uses to establish per diem rates for caring for Medicaid-eligible residents.

The act expanded the type of information required in cost reports from for-profit nursing homes to include information from certain related parties that conduct business with the nursing home. Specifically, under the act, cost reports must include the most recent finalized profit and loss statement from any related party that receives $50,000 or more per year from the home for goods, fees, and services.

"Related Parties"

Under the act, a related party is any company related to a nursing home through family association (by birth, marriage, or domestic partnership); common ownership; control; or business association with any of the home's owners, operators, or officials.

A profit and loss statement, sometimes called an income statement or earnings statement, is generally a document identifying a business's revenues and expenses, summarizing a company's profitability for a given time period. Companies use the statements for tax purposes and general financial accounting.

The act's provisions on related party reporting do not apply to non-profit nursing homes. Additionally, the act prohibits anyone from bringing a legal action against, or holding liable, the state, DSS, or any state official or agent for failing to take an action based on information that must be submitted to DSS in the cost reports (CGS § 17b-340).

Nursing Home Financial Advisory Committee

The act also made changes to the Nursing Home Financial Advisory Committee's membership and duties and required the committee to convene by August 1, 2014. (At the time of the act's passage, the committee was not meeting regularly.)

By law, as amended by the act, the committee must assess the overall infrastructure and projected needs of nursing homes operating in the state by evaluating any available information and date, including nursing homes' quality of care, acuity, census, and staffing levels. The committee must recommend to DSS and the Department of Public Health (DPH) appropriate action consistent with the goals, strategies, and long-term care needs in the state's strategic plan to rebalance Medicaid long-term care supports and services. By law, the committee includes the following members or their designees:

1. DSS commissioner (chair),
2. DPH commissioner (chair),
3. Office of Policy and Management secretary,
4. Connecticut Health and Education Facilities Authority executive director,
5. Long-Term Care Ombudsman,
6. a non-profit nursing home representative (appointed by the governor) and
7. a for-profit nursing home representative (appointed by the governor).

The law additionally allows the Labor Commissioner to appoint a nonvoting member to the committee.

Since the act's passage, the committee has generally met quarterly. The committee recently submitted its 2019 annual report to the aging, appropriations, humans service, and public health committees, as required by law (CGS § 17b-339).

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