Description of the Problem

As of March 2022, over 15,000[11] New York nursing home residents have died from COVID-19. These numbers are likely undercounted[12] and do not include the many resident deaths that have resulted from social isolation, insufficient staffing, and overall failure of many nursing home operators to meet minimum health and safety standards. Nor do these numbers represent the almost 125,000 NY nursing home resident and staff COVID infections[13] which can have long-lasting negative health implications for vulnerable individuals.

While these numbers are shocking, what is even more heartbreaking is that these deaths and infections were not inevitable. Nor were the many needless and untimely deaths of nursing home residents that occurred prior to the pandemic. They are largely the product of widespread and longstanding failures by regulators over the course of decades to establish and enforce strong standards of care for nursing homes, and of nursing home owners and operators operating in that environment.

Because of these inadequate standards and often lax oversight, many nursing home owners and operators have become increasingly sophisticated in using taxpayer dollars for their own benefit, and not for those who these funds are intended – their residents. The millions of dollars of Medicare and Medicaid funds operators receive to care for nursing home residents, are increasingly diverted away from resident care and towards items such as salaries, capital expenditures, and administrative costs. Public funds that are paid to operators for resident care too often find their way into the coffers of companies owned or controlled by these operators. These "related-party" transactions have become a common business arrangement.

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In addition, private equity investment in nursing homes has soared in recent years, going from $5 billion in 2000 to more than $100 billion in 2018. An estimated five percent of nursing homes in the United States are owned by private equity firms, according to research by Weill Cornell Medicine.[14] While many nursing homes have long been run on a for-profit basis, an

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[11] *New York State Department of Health*, "Nursing Home COVID Related Deaths Statewide," (data downloaded March 10, 2022). Available at https://www.health.ny.gov/statistics/diseases/covid-19/fatalities_nh.pdf.

[12] Ferré-Sadurní, L., *The New York Times*, "Health Agency Under Cuomo 'Misled the Public' on Nursing Home Deaths," (March 15, 2022). Available at https://www.nytimes.com/2022/03/15/nyregion/nursing-home-deaths-cuomo-covid.html

[13] https://data.cms.gov/covid-19/covid-19-nursing-home-data (data downloaded March 15, 2022).

[14] Braun, R.T., Jung H., Casalino L.P., Myslinski Z., and Unruh, M.A., *JAMA Health Forum*, "Association of Private Equity Investment in US Nursing Homes With the Quality and Cost of Care for Long-Stay Residents," (November 19, 2021). Available at https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786442.

increasingly robust and disturbing body of research finds that quality of care for residents declines when private equity firms take over nursing facilities. Because private equity firms strive to generate high, short-term profits for their investors, the facilities they own tend to reduce spending on nurse staffing and other resident-facing services and supplies.

Other researchers studying the issue found that private equity acquisition of nursing homes leads to a reduction in the number of hours that front-line nurses spend each day providing resident care. These researchers whose Working Paper findings were published by the National Bureau of Economic Research[15] also detected a 50 percent increase in the use of antipsychotic drugs for nursing home residents in private equity-owned homes. These drugs are often utilized in lieu of hands-on nursing care. Private equity firms were also found to spend more money on things not related to resident care such as management expenses and fees paid to related-parties, such as their own medical alert companies. “These results, along with the decline in nurse availability, suggest a systematic shift in operating costs away from patient care,” the study authors concluded.

The Biden Administration’s recent nursing home reform proposals underscore the growing awareness of this environment, and the urgent need for swift action “to ensure taxpayer dollars go toward the safe, adequate, and respectful care seniors and people with disabilities deserve-not to the pockets of predatory owners and operators who seek to maximize their profits at the expense of vulnerable residents’ health and safety.”[16]

[15] Gupta. A., Howell, S.T., Yannelis, C., and Gupta, A., *National Bureau of Economic Research*, “Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes,” (February 2021). Available at https://www.nber.org/papers/w28474.

[16] Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes (February 28, 2022). Available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.