



LTCCC POLICY BRIEF

NURSING HOME TRANSPARENCY: *A Critical Tool to Improve the Quality of Nursing Home Care*



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Introduction

The poor quality of care provided by far too many of this nation's nursing homes has been studied and documented for years. A groundbreaking study by the Institute of Medicine in 1986¹ exposed pervasive inadequate care, as well as widespread abuse and neglect. In addition, the study stated that there was "broad consensus that government regulation of nursing homes, as it now functions, is not satisfactory because it allows too many marginal or substandard nursing homes to continue in operation." As a follow-up to that study, landmark legislation, the Nursing Home Reform Act, part of the Omnibus Budget reconciliation Act of 1987 (OBRA-87), set forth an extensive set of regulatory requirements for nursing homes. This includes inspections at least once every 15 months, and the submission of electronic data to state and national databases, used to monitor and report quality.

Since then, several federal and state laws have been passed, and volumes of policy initiatives, quality improvement projects, and incentives and penalties have been implemented, imposed, or attempted. Nevertheless, poor quality of care remains widespread, despite the massive amount of public funds provided to care for nursing home residents. The substantial number of COVID-19 deaths among nursing home residents and staff (estimated at more than 200,000 and comprising about one-quarter of all COVID-19 deaths in the country),² notwithstanding the influx of millions of dollars in COVID-related financial aid to nursing homes, have drawn further attention to this continued substandard care, calling for urgent action.

Why is it so difficult to hold nursing homes accountable for providing the level of care for which they are being paid? How can it be that at the height of the COVID-19 pandemic, an investment firm with a record of providing substandard nursing home care could buy more than 20 facilities across multiple states with little to no scrutiny?³ How can regulators better pinpoint these "bad actors" and prevent them from causing harm to nursing home residents? How can we be assured that public funds are being spent as intended, on resident care? **Policymakers and advocates at both the federal and state levels are increasingly focusing on transparency – the availability of high-quality, complete, interoperable, and accessible data on nursing home ownership, management, and financing – as a critical tool for assuring quality care and program integrity.**⁴

¹ Institute of Medicine, *Committee on Nursing Home Regulation*, "Improving the Quality of Care in Nursing Homes," (1986). Available at <https://www.ncbi.nlm.nih.gov/books/NBK217556/>.

² Chidambaram, P., *Kaiser Family Foundation*, "Over 200,000 Residents and Staff in Long-Term Care Facilities Have Died From COVID-19," (February 3, 2022). Available at <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>

³ Tan, R., and Chason, R., *The Washington Post*, "An investment firm snapped up nursing homes during the pandemic. Employees say care suffered," (December 21, 2020). Available at https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html.

⁴ The focus of this brief is on nursing home transparency. However, it is critical to note that, while transparency is important, it is not a substitute for the presence of meaningful standards and the enforcement thereof.

Background

Efforts to Improve Transparency Prior to the Affordable Care Act

Institute of Medicine Study

Poor quality in nursing homes has been studied and documented for years. In 1986, Congress tasked the Institute of Medicine (IOM) with studying government regulation of nursing homes and recommending “changes in regulatory policies and procedures to enhance the ability of the regulatory system to assure that nursing home residents receive satisfactory care.” The IOM report identified an urgent need for a study to assess how to obtain more information about nursing homes and their operations to “facilitate regulation and policy development” and that such a “study should recommend specific ways to collect, analyze, and publish or otherwise make such data publicly available.”⁵

“The quality problems of this industry simply do not go away; they just seem to rise to public consciousness periodically.”

- John A. Nyman, *Journal of Policy Analysis and Management*, 1986

Around the same time, the IOM began studying the impact of for-profit and chain ownership on nursing home quality, cost, and access. A 1986 IOM report on the corporatization of nursing homes, *For Profit Enterprise in Health Care*, found that for-profit and chain-operated nursing homes provided poorer care than not-for-profit facilities⁶ and identified the need to better understand ownership, management, and financing models.

“Finally, researchers must use richer models of ownership. Lumping government-owned facilities with church-related homes and private nonprofits (that may be nonprofit in name only) into the same ownership category, may obscure significant differences in performance. The same is true of the for-profits. A multibillion dollar multistate chain of 800 nursing homes, whose stock is publicly traded, is hardly the same organization as a 40-bed facility owned and operated by a practical nurse and her family. Yet, both are for-profits. Finally, there may be significant differences among various multifacility nursing home systems and understanding the performance of chains may require analyses that distinguish among them.”⁷

Over the years, extensive research by the U.S. Government Accountability Office (GAO), U.S. H.H.S. Office of the Inspector General (OIG), and dozens of researchers have replicated and expanded on those findings.

⁵ *Institute of Medicine (US) Committee on Nursing Home Regulation*, “Improving the Quality of Care in Nursing Homes,” (1986) p. 43. Available at <https://www.ncbi.nlm.nih.gov/books/NBK217556/>.

⁶ See, for example, Hawes, C. and Phillips, C., *Institute of Medicine (US) Committee on Implications of For-Profit Enterprise in Health Care*, “The Changing Structure of the Nursing Home Industry and the Impact of Ownership on Quality, Cost, and Access” (1986). Available at <https://www.ncbi.nlm.nih.gov/books/NBK217907/>.

⁷ Id. at p546.

Nursing Home Reform Law

Many of the IOM's recommendations became law in 1987 with the passage of the Nursing Home Reform Act, as part of the Omnibus Budget Reconciliation Act of 1987 (OBRA-87).⁸ The resulting Nursing Home Reform Law (Reform Law), which remains in effect, set forth the most extensive set of changes to occur in federal nursing home regulation since the passage of Medicaid and Medicare more than two decades earlier. It established the minimum health and safety standards that nursing homes must meet to participate in Medicare and Medicaid.⁹ Among the Reform Law's many significant provisions was the public disclosure of information related to surveys, such as statements of deficiencies and plans of correction, as well as annual facility cost reports, and statements of ownership and control interest.¹⁰

Despite the positive steps taken in the Reform Law to improve transparency, detailed information about a nursing home's ownership and finances was for the most part considered confidential and unavailable to regulators or to the public. For example, someone suing a nursing home for abuse or neglect would have to convince the court why such information was needed and was not assured of receiving it.

In the early 2000s, growing investment in the nursing home industry by real estate investment trusts (REITs), private equity, and other increasingly complex ownership and financial structures further underscored the realization that more nursing home data – especially relating to ownership, management, and use of public funds – was sorely needed. In 2003, CMS began collecting nursing home ownership information in the Medicare Provider Enrollment, Chain, and Ownership System, or PECOS, an electronic system of records used to enroll and maintain information on Medicare providers.¹¹ As conceived, the primary function of PECOS was to gather information from a provider or supplier that tells CMS who it is, by whom it is owned, whether it meets state licensure and federal quality of care and safety requirements to participate in Medicare, where it is located or provides services, and information necessary to pay the claim. To this day, PECOS is considered a primary source for establishing ownership linkages across health care organizations because all Medicare providers are registered and those who report PECOS information must attest to its accuracy.

Yet, almost from its inception, questions about the accuracy, completeness, and usability of PECOS have been raised. Among those concerns were the inability to determine hierarchy or relationships among owners, the difficulty in linking all facilities in a chain or by private

⁸ U.S. Congress. *Omnibus Budget Reconciliation Act of 1987*. H.R. 3545. 110th Congress (1987-1988). Available at <https://www.congress.gov/bill/100th-congress/house-bill/3545>.

⁹ 42 C.F.R. Part 483, Subpart B. Available at <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-B>.

¹⁰ 42 U.S.C. § 1320a–5. Available at https://www.govinfo.gov/app/details/USCODE-1995-title42/USCODE-1995-title42-chap6-subchapXI_2-partA-sec1320a-5/summary.

¹¹ The vast majority of health care providers, including nursing homes, participate in Medicare.

investment ownership, as well as CMS's limited ability to determine accuracy and completeness.¹²

The Affordable Care Act's Transparency Provisions and Their Implementation

In 2007, a *New York Times* investigative report exposed the serious negative impact private equity and complex nursing home structures were having on nursing home quality.¹³ This was a major impetus for numerous GAO and HHS inspector General reports and hearings in both chambers of Congress, resulting in the Nursing Home Transparency and Improvement Acts of 2008¹⁴ and 2009,¹⁵ parts of which were ultimately passed as part of the 2010 Patient Protection and Affordable Care Act (ACA).¹⁶

Signed into law on March 23, 2010, the ACA's transparency provisions on ownership, management, and financing (Section 6101)¹⁷ are designed to make nursing home information more accessible and usable for consumers, advocates, and policymakers. This was seen as a critical tool for holding nursing homes accountable for the quality of care they provide, most of which was (and still is) funded by taxpayers.

Section 6101 of the ACA requires nursing homes to report information on each member of their governing body, persons or entities who are officers, directors, members, partners, trustees or managing employees, and other disclosable parties.¹⁸ Furthermore, nursing homes are required to report the organizational structure of each disclosable party and describe the relationship of that party to the facility and to other disclosable parties. The law authorizes regulators to obtain this information immediately, upon request. CMS was required to establish procedures to make this information available to the public by March 2013. Unfortunately (as of June 2022) the Section 6101 requirements have yet to be fully implemented.

¹² Government Accountability Office (GAO), "Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data," (2010). Available at <https://www.gao.gov/products/gao-10-710>.

¹³ Duhigg, Charles, *The New York Times*, "At Many Nursing Homes, More Profit and Less Nursing," (September 23, 2007). Available at <https://www.nytimes.com/2007/09/23/business/23nursing.html>.

¹⁴ U.S. Congress. *Nursing Home Transparency and Improvement Act of 2008*. H.R. 5799. 110th Congress (2008). Available at <https://www.congress.gov/bill/110th-congress/house-bill/5799>.

¹⁵ U.S. Congress. *Nursing Home Transparency and Improvement Act of 2009*. S. 647. 111th Congress (2009-2010). Available at <https://www.congress.gov/bill/111th-congress/senate-bill/647>.

¹⁶ U.S. Congress. *Patient Protection and Affordable Care Act of 2010*. H.R. 3590. 111th Congress (2009-2010). Available at <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>.

¹⁷ Id at p581.

¹⁸ Disclosable parties were defined as "any person or entity who (i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility; (ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or (iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility."

With respect to financing, while nursing homes had been required to submit annual cost reports prior to the ACA, ACA Section 6104¹⁹ requires them to report their spending across separate categories including direct care, indirect care, administrative expenses, and capital assets. In addition, CMS is required to redesign cost reports to capture this information and develop a way to make this information easily available upon request.

The ACA includes several other transparency and accountability provisions. Among these is the requirement for nursing homes to report staffing data, including hours of care per resident per day, turnover information, and wages, all based on auditable information such as payroll data. In addition, to increase public awareness and usability, CMS was required to add new information to its Nursing Home Compare²⁰ website including staffing data, inspections, penalties, and consumer complaints.

While many of the ACA's nursing home transparency requirements, particularly those related to strengthening consumer information, have been implemented (albeit some of them years after their required implementation date), others have not been implemented at all, or only partially.

Ownership Information

While CMS revised its Medicare enrollment and PECOS reporting form in 2011 to substantially expand its information on owners, managers, investors, and others, it has not yet published final regulations delineating all parties that are disclosable under the law and timeframes for reporting and updating information. In addition, as of this writing, CMS has still not established a mechanism to audit the accuracy and completeness of the PECOS data and has not enforced requirements to accurately report the names of all parent companies of the licensee and their related owners and corporations.²¹

Other concerns remain with respect to ownership information. To this day, many nursing home researchers consider PECOS to be an inaccessible and "relatively unreliable data source, particularly as ownership changes...."²² In addition, PECOS data is only available to researchers upon request because there are no PECOS public use files. Only one of its datasets, the Medicare Fee-For-Service Public Provider Enrollment Files (PPEF) is available to the public (since 2016), and those data are updated only on a quarterly basis.²³

¹⁹ *Patient Protection and Affordable Care Act of 2010*, Section 6104. Available at <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf> at p593.

²⁰ The Medicare.gov Nursing Home Compare website is now known as Care Compare.

²¹ Harrington, C., Montgomery, A., King, T., Grabowski, D., and Wasserman, M., *Health Affairs Forefront*, "These Administrative Actions Would Improve Nursing Home Ownership and Financial Transparency in the Post COVID-19 Period," (February 11, 2021). Available at <https://www.healthaffairs.org/doi/10.1377/forefront.20210208.597573/full>.

²² Adelberg, M.S., Dobosenski, A.T., and Prendergast, E. M., *Faegre Drinker*, "The Need for Data Transparency in Skilled Nursing Facilities," (2022) <https://www.faegredrinker.com/-/media/files/linked-articles/the-need-for-data-transparency-in-skilled-nursing-facilities.pdf>

²³ Id.

Endeavoring to promote transparency, CMS announced in April 2022 it will release data publicly on mergers, acquisitions, consolidations, and ownership changes for 2016-2022 for nursing homes enrolled in Medicare.²⁴

Financing Information

Also in 2011, CMS implemented new Medicare cost reporting requirements for skilled nursing homes to collect detailed data on direct care expenditures by category. However, CMS has not yet developed a plan to report these data in a user-friendly format to policymakers and the public, as required by ACA's Section 6104. Furthermore, cost report data are seldom audited, and penalties are not issued for failure to report.²⁵ Though expenditure data in the cost reports are available to the public, experts describe them as "difficult to interpret and known to be inaccurate and incomplete."²⁶

Staffing Information

Although Section 6106 of the ACA required nursing homes to electronically submit staffing data based on payroll and other auditable data (instead of self-reported, unaudited data) within two years of the statute's enactment, the first reporting did not occur until 2016. Data has been available to the public since 2017.²⁷ Nursing homes are now required to use the PBJ (payroll-based journal) system to submit the number of hours nursing and other staff are paid each day, and these data form the basis for the staffing measures included on the Medicare.gov Nursing Home Care Compare website (formerly Nursing Home Compare).^{28,29}

In early 2022, CMS began posting information on staff turnover and weekend staffing levels on Care Compare.³⁰

²⁴ Centers for Medicare & Medicaid Services, "HHS Releases New Data and Report on Hospital and Nursing Home Ownership," (April 20, 2022). Available at <https://www.cms.gov/newsroom/press-releases/hhs-releases-new-data-and-report-hospital-and-nursing-home-ownership>.

²⁵ Harrington, C., Montgomery, A., King, T., Grabowski, D., and Wasserman, M., *Health Affairs Forefront*, "These Administrative Actions Would Improve Nursing Home Ownership and Financial Transparency in the Post COVID-19 Period," (February 11, 2021). Available at <https://www.healthaffairs.org/doi/10.1377/forefront.20210208.597573/full>.

²⁶ Adelberg, *supra* note 22.

²⁷ For more information on the PBJ System, see <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Staffing-Data-Submission-PBJ>.

²⁸ The daily rates for a range of nursing and non-nursing staff are collected by CMS and reported to the public on a quarterly basis at <https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing>. Every quarter, LTCCC provides average staffing rates, including nursing ratios, for every nursing home in the country in easy-to-use state files <https://nursinghome411.org/data/staffing/>.

²⁹ Effective December 1, 2020, *Care Compare* replaced eight CMS health care-specific websites, including Nursing Home Compare.

³⁰ Centers for Medicare & Medicaid Services, "To Advance Information on Quality of Care, CMS Makes Nursing Home Staffing Data Available," (January 26, 2022). Available at <https://www.cms.gov/newsroom/press-releases/advance-information-quality-care-cms-makes-nursing-home-staffing-data-available>.

Consumer Information

In addition to information on staffing, Care Compare provides a range of information on individual nursing homes, including ratings under CMS's Five-Star Quality Rating System, the results of health care inspection reports and complaint investigations, quality measure data, and basic ownership information (reflecting a partial implementation of Section 6101 of the ACA). States are required to provide a website with information on all nursing homes in the state, including survey reports, complaint investigation reports, and plans of correction (which, unfortunately, are not provided on Care Compare as of this writing). A standardized complaint form is available on Care Compare and on state nursing home consumer websites, as well as information on how to submit complaints and contact the state survey agency and the Long-Term Care Ombudsman Program.

Recent Efforts to Improve Transparency

While the passage and lengthy implementation of the transparency provisions of the ACA provided an opportunity for CMS to promote transparency in nursing home ownership, financing, and expenditures, the devastation wrought by COVID in nursing homes has revealed that serious gaps still exist. A large influx of funds went into the coffers of nursing homes during the pandemic, yet little is known about how this was spent. Furthermore, state regulatory agencies were hampered by a severe lack of ownership data that could have improved their response to the crisis. Some state agencies³¹ discovered that complex ownership and management structures and opaque financial reports made it difficult to identify and hold accountable bad actors. A state and federal regulatory system that largely collected and focused on information at the individual nursing home and single-state level did not serve the oversight needs of regulators.

The push for greater transparency in nursing home ownership and financing information slowed tremendously during the Trump Administration, which focused on deregulation, relaxation of surveys, and reduction of financial penalties.³² In late 2019-early 2020, just as COVID-19 began to tear through nursing homes, the issue of ownership transparency and private equity investment again became a focus of scrutiny, with oversight hearings in the House, by the House Ways and Means Subcommittee on Oversight, and the introduction of several pieces of legislation on the subject.³³

Biden Administration 2022 Reform Proposals

³¹ See, for example, Brubaker, H., *Eagle Tribune*, "Pennsylvania nursing home buyers would face more scrutiny under state health proposal," (April 26, 2022). Available at https://www.eagletribune.com/region/pennsylvania-nursing-home-buyers-would-face-more-scrutiny-under-state-health-proposal/article_3546727a-133e-598b-9b0e-041b73f2bc18.html

³² Edelman, T., *Center for Medicare Advocacy*, "Long-Term Care Policy: Trump vs. Biden, (October 20, 2020). Available at <https://medicareadvocacy.org/long-term-care-policy-trump-vs-biden/>.

³³ See, for example, U.S. Congress. H.R. 5825. 116th Congress (2019-2020). Available at <https://www.congress.gov/bill/116th-congress/house-bill/5825/text>.

On February 28, 2022, the Biden Administration released a package of nursing home reforms which were highlighted several days later in the President's State of the Union Address.³⁴ One major area of emphasis in that reform package is a *commitment to improving the public transparency of nursing home ownership and finances*. These transparency initiatives include:

- Implementing ACA transparency requirements regarding corporate ownership, including collecting and publicly reporting more robust corporate ownership and operating data, and improving the accessibility of this information on the Care Compare website.
- Creating a new database to track and identify owners and operators across states. This registry will use information collected through provider enrollment and inspections to provide more information about prospective owners and operators to states.
- Enhancing Care Compare by improving the readability and usability of its information, ensuring that star ratings more closely reflect verifiable data, and holding nursing homes accountable for providing accurate information. The Administration will be asking Congress to provide CMS with additional authority to validate data submitted and to take enforcement action against facilities providing incorrect information. Once new minimum staffing standards are in place,³⁵ Care Compare will include the performance of each facility in meeting these standards.
- Examining the role of private equity, real estate investment trusts, and other types of ownership in the nursing home sector, and publicly reporting those findings.
- Using data submissions, which will be performed in addition to on-site inspections, to improve enforcement actions against poor performing facilities.

Closely related to the transparency efforts outlined in the Biden Administration package are the proposals to expand CMS's enforcement authority at the ownership level, with an emphasis on chain ownership. These efforts include:

- Increasing accountability for chain owners and seeking new CMS authority to require minimum corporate competency to participate in Medicare and Medicaid. With such authority, CMS could potentially restrict an individual or entity from participating in those programs based on the compliance history of other facilities they have owned or operated.
- Seeking expanded CMS authority to impose enforcement actions on owners and operators of facilities even after they close, or on owners and operators of facilities that provide persistent and substandard care in some of their facilities, while owning others.

³⁴ *The White House*, "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/>.

³⁵ One of the key goals outlined in the Biden Administration package is the establishment of a minimum nursing home staffing requirement. On April 11, CMS published a proposed rule seeking initial input on this.

Some of these proposals will require Congressional action, while others could be accomplished under CMS's existing authority.

State Transparency Reforms

Long before the White House released its recent reform package, a few states, including Connecticut³⁶ and California,³⁷ moved to pass legislation to improve ownership, management, and financial transparency for nursing homes. However, the bulk of state legislative transparency efforts were a response to the pandemic's devastating impact on nursing homes and the massive amount of dollars that flowed to these facilities.

The following are summaries of some of these state legislative efforts.

New York

New York was one of the first states to pass a transparency law.³⁸ Signed in December 2019, it imposed significant reporting obligations on New York's nursing home operators and increased the state health department's (DOH) oversight authority. Nursing home operators are required to:

- Disclose to DOH any "common or familial ownership" between the operator or facility and any entity or individual that provides services to the operator or the facility;³⁹
- Attest to the accuracy of such disclosures on an annual basis;⁴⁰
- Obtain DOH approval before guaranteeing the debt or other obligation of any third party;⁴¹ and

³⁶ CT House Bill No. 5051, *An Act Improving Transparency of Nursing Home Operations* (2014). Available at <https://www.cga.ct.gov/2014/act/pa/pdf/2014PA-00055-R00HB-05051-PA.pdf>.

Connecticut law signed in 2014 requiring nursing homes to include in their annual reports a profit and loss statement from related parties receiving \$50,000 or more.

³⁷ For example, California AB 9297, introduced in 2015 but died in Committee, would have established additional oversight and transparency for nursing home ownership by strengthening suitability requirements of owners, clarifying state's duty to review and approve ownership changes, and make ownership information more transparent to the public.

California AB 1953 signed into law in 2018, required reporting (effective January 1, 2020), by nursing homes and operators of ownership interests of 5% or more in a related-party, and to make several significant disclosures including the profit and loss statements of related parties' if goods, fees, and services were collectively worth \$10,000 or more per year.

³⁸ NY Public Health Law, Section 2803-X, *Requirements related to nursing homes and related assets and operations* (2020). Available at <https://www.nysenate.gov/legislation/laws/PBH/2803-X>.

³⁹ Id. § 2803, ¶ 1.

⁴⁰ Id. § 2803, ¶ 2.

⁴¹ Id. § 2803, ¶ 3.

- Provide DOH with 90 days' notice prior to executing a letter of intent or other contractual agreement relating to any sale, mortgage, or encumbrance of the real property of the facility.⁴²

New Jersey

Early in the pandemic, New Jersey enlisted the Manatt Health consulting group to study the state's initial response to the pandemic in its nursing homes. In its report,⁴³ released June 2, 2020, Manatt set forth the key elements of a high-functioning, resilient long-term care system, including "a high degree of transparency across [the] system" and a "[r]eal-time use of data to inform interventions, educate the public and hold [the] industry accountable." The report provided a series of concrete near, intermediate, and longer-term recommendations for state action to improve nursing home transparency. Many of these recommendations, including new procedures to regulate and monitor nursing home ownership, were quickly adopted by legislative champions and passed into law.⁴⁴

About one month after the release of the Manatt report, a strong ownership transparency bill, A4477 (S2789),⁴⁵ was introduced and eventually signed into law in May 2021. This law requires nursing home operators to provide:

- The names, addresses and organizational chart of companies intending to buy a facility,
- Any lease or management agreements,
- A list of all facilities the buyer has owned in the last five years, and
- Financial audits from the three years preceding the submission.

The legislation also requires any application for change in ownership to be posted on the health department's website. The state is also required to review the quality and safety record of the parties to the sale.

In January 2022, New Jersey Governor Murphy signed into law another transparency law, A4478 (S2759),⁴⁶ that further strengthens reporting to require nursing homes to publish on their websites owner-certified financial statements (or IRS Form 990's for non-profit homes), as well as their most recent cost reports. The law also requires the state health department to develop a special focus survey program for chronically poor performing nursing homes and

⁴² Id. § 2803, ¶ 4.

⁴³ Manatt, "Recommendations to Strengthen the Resilience of New Jersey's Nursing Homes in the Wake of COVID19," (June 2, 2020). Available at <https://manatt.com/Manatt/media/Documents/NJ-LTC-Report.pdf>.

⁴⁴ The Manatt report made numerous other recommendations beyond transparency, which were eventually enacted into law, including establishing a Minimum direct spending law. For more information on Minimum Direct Spending Laws, which have been enacted in additional states, see LTCCC's Brief, available at <https://nursinghome411.org/minimum-spending-laws/>.

⁴⁵ NJ Assembly Bill No. 4477 (2021). Available at <https://www.njleg.state.nj.us/bill-search/2020/A4477>.

⁴⁶ NJ Assembly Bill No. 4478 (originally introduced in 2020, signed by Governor Murphy in 2022). Available at <https://www.njleg.state.nj.us/bill-search/2020/A4478>.

authorizes the development of a system of escalating fines for repeated violations by a particular offender. The legislation also requires the state DOH to evaluate staffing levels in nursing homes.

California

In early 2021, California Advocates for Nursing Home Reform (CANHR), a statewide nonprofit consumer advocacy organization, crafted a package of seven bills to “improve state oversight, financial transparency, accountability, and ultimately enhance care for all residents.”⁴⁷ This suite of legislative reforms, known as the Prioritize Responsible Ownership, Treatment, Equity and Corporate Transparency (PROTECT) Plan was intended to respond to the large number of COVID-19 related deaths in that state’s nursing homes and the need to address the underlying issues of complex ownership models and the lack of transparency in the expenditure of public funds. In October 2021, Governor Newsom signed five⁴⁸ of those bills into law.⁴⁹ (See the [Appendix](#) for CANHR’s original proposal, which includes three transparency provisions.)

A key component of the legislative package is SB 650,⁵⁰ also known as the Corporate Transparency in Elder Care Act of 2021. While existing state law required any “organization that operates, conducts, owns, or maintains a health facility” and its officers to file “specified reports relating to the facilities finances, including a balance sheet, detailing the assets, liabilities and net worth,” SB 650 significantly expanded the reporting requirements for nursing homes alone. This new law requires nursing homes to file with the state “an annual consolidated financial report that includes data from all operating entities, license holders, and related parties.”⁵¹ The filing must include a visual representation of the organizational structure. The law also requires a “duly authorized official of the organization to certify the report” and attest to its completeness. Furthermore, the state is to post these submitted reports and documents, which are considered public records, to its website.

⁴⁷ *California Advocates for Nursing Home Reform*, “A Once-in-a-Century Pandemic Yields a Once-in-a-Generation Chance for Reform: Introducing the 2021 Nursing Home PROTECT Plan,” (2021). Available at http://www.canhr.org/publications/newsletters/Advocate/PDFs/Advocate_2021Q1.pdf.

⁴⁸ *California Advocates for Nursing Home Reform*, “Press Release: Governor Newsom Signs Five of Six Nursing Home PROTECT Plan Reform Bills,” (October 8, 2021). Available at <https://canhrlegislation.com/press-release-governor-newsom-signs-five-of-six-nursing-home-protect-plan-reform-bills/>.

⁴⁹ Governor Newsom vetoed AB 279 dealing with resident evictions. AB 1502 was turned into a two-year bill.

⁵⁰ CA Senate Bill No. 650, *The Corporate Transparency in Elder Care Act* (2021). Available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB650.

⁵¹ Related parties” is broadly defined to include home offices, management organizations, owners of real estate, entities that provide staffing, therapy, pharmaceutical, marketing, administrative management, consulting, and insurance services; providers of supplies and equipment; financial advisors and consultants; banking and financial entities; any and all parent companies, holding companies, and sister organizations; and any entity in which an immediate family member of an owner of those organizations has an ownership interest of 5 percent or more. “Immediate family member” includes spouse, natural parent, child, sibling, adopted child, adoptive parent stepparent, stepchild, stepsister, stepbrother, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandparent, and grandchild.

California Governor Gavin Newsom also signed into law AB 1042⁵² which establishes shared liability for entities that share ownership or control of a nursing home. Under this law, related parties will be liable for, and the state is expressly authorized to seek repayment of, any unpaid fines and other fees due from related parties.

AB 1502,⁵³ still under consideration as of this writing,⁵⁴ establishes ownership suitability standards for nursing homes. The bill, which has passed the Assembly, would authorize the state to deny an application for a nursing home license, and to ban new admissions or to fine entities that continued to operate without an approved license. The bill is intended to close a major loophole in California law that currently allows entire nursing home chains to be purchased without state approval.

Florida

In 2021, Florida enacted legislation (s. 408.061, F.S.)⁵⁵ to require nursing homes and their home offices⁵⁶ to report their actual expenditures and revenues annually. The data are required to be certified as complete and accurate by the chief financial officer and must include the fiscal year-end balance sheet, income statement, statement of cash flow, and statement of retained earnings.

Legislation to require these reports to be audited (HB 539⁵⁷) was passed by the legislature and signed into law on April 6. These provisions take effect July 1, 2022.

RECOMMENDATIONS

Certain of the following recommendations for action have already been enacted by state legislatures and/or proposed in the Biden Administration's nursing home package. Others will require further development and championing by policymakers and advocates, understanding the critical need to seize this unique moment to act.

Ownership Transparency

Nursing homes are increasingly for-profit entities, operated by multi-state or national chains or owned by private equity firms. Existing data which focus on individual nursing homes and individual states are not sufficient to meet the challenges of this complex environment. State and federal regulatory agencies are not adequately staffed nor resourced to be able to use

⁵² CA Assembly Bill No. 1042, *Related Party Accountability* (2021). Available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1042.

⁵³ CA Assembly Bill No. 1502, *Nursing Home Ownership and Management Reform* (2021). Available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1502.

⁵⁴ June 2022.

⁵⁵ FL s. 408.061, F.S. (2021). Available at <https://www.flsenate.gov/laws/statutes/2021/408.061>.

⁵⁶ *Home office* generally refers to an entity owns, leases or controls multiple providers or suppliers of a chain organization.

⁵⁷ FL House Bill 539, *Nursing Home Financial Reporting* (2022). Available at <https://www.flsenate.gov/Session/Bill/2022/539>.

ownership data for oversight or enforcement. In addition, there presently exists no single, easily accessible, nationwide repository of nursing home information that could provide regulators with a complete picture of a nursing home's ownership, quality of care, staffing levels, expenditures, financial well-being, licensure, or disciplinary history. This information is currently housed in a multitude of distinct databases that cannot always be linked together.⁵⁸

The ability of state and federal regulators (as well as the public and researchers) to readily access and use ownership, financial, and quality information across multiple state and federal data sources must be improved.

The following are LTCCC's recommendations to improve ownership transparency:

- A nationwide database or registry to track and identify owners and operators across states such as the one announced by the Biden Administration should be created.
- The federal government should facilitate greater coordination and collaboration amongst states, and between the states and the federal government, with respect to nursing home performance and finances.
- Access to and usability of PECOS should be enhanced, and the integrity of the data provided assured. PECOS and state reporting requirements must go beyond ownership to include all parent, management, and related-party entities as well as private equity arrangements.
- Reports submitted to regulatory agencies should be audited, and those who fail to comply with reporting requirements (including by submitting incomplete or inaccurate information) should be held accountable via a system of non-discretionary fines.
- CMS should be specifically authorized to focus on nursing home chains and to impose penalties at the corporate level when there is a pattern of poor care. Quality concerns at one facility in a multi-state chain should trigger scrutiny in its other facilities.
- Minimum requirements for the purchase, change in ownership, or management of nursing homes that participate in the Medicaid or Medicare programs must be strengthened and enforced. Criteria for identifying patterns of poor care should be developed and a history of poor care in any state should disqualify an applicant. A centralized application system should be created to better coordinate information across states and reduce duplication of efforts.⁵⁹
- Oversight efforts at both the state and federal levels must be adequately funded to handle more complex tasks and recruit and retain professionals with the necessary skills.

⁵⁸ Adelberg, M.S., Dobosenski, A.T., and Prendergast, E. M., *Faegre Drinker*, "The Need for Data Transparency in Skilled Nursing Facilities," (2022) <https://www.faegredrinker.com/-/media/files/linked-articles/the-need-for-data-transparency-in-skilled-nursing-facilities.pdf>

⁵⁹ See LTCCC's Policy Brief on Promising Practices & Recommendations for Evaluating Nursing Home Owners. Available at <https://nursinghome411.org/meaningful-safeguards-promising-practices-recommendations-for-evaluating-nursing-home-owners/>.

Financial Transparency and Accountability

The complexity of ownership and management structures hampers the ability of regulators to effectively monitor how taxpayer dollars are being spent and to ascertain a nursing home's financial health. While steps have been taken to improve nursing home cost reporting, more needs to be done.

The following are LTCCC's recommendations to improve financial transparency and accountability:

- Nursing homes should be required to provide audited annual consolidated financial reports of income from all sources, including operating entities and all organizations and entities related by common ownership or control.
- State and federal financial and oversight efforts should be coordinated whenever feasible, including joint Medicaid and Medicare audits.
- The federal government and/or the states should mandate nursing homes to spend a minimum amount of their total revenue on direct resident care. Annual audits to enforce this minimum spending requirement should occur annually.⁶⁰

Public Information

Public information – provided by state nursing home websites, CMS's Care Compare, and other federal data systems – are largely state-centric and focused on a single facility. This greatly impedes the public's ability to assess care across multiple states, by chains, or by common owner or operator. Furthermore, Care Compare is based on certain data that are self-reported by facilities, potentially inaccurate, and not fully available to the public or researchers. In addition, the information available to consumers is generally not current, a significant problem as Care Compare is often used by consumers to select a nursing home in crisis situations.

The following are LTCCC's recommendations to increase access and usage of public information:

- Public accessibility to nursing home data should be the default. Such data should be readily available to the public and researchers, unless there is a demonstrated, compelling, and overarching need to withhold certain information.
- Data, including PECOS and cost reports, should be available in a format that is easily usable by consumers, especially residents, their families, and advocates, as well as researchers. PECOS should be made available to interested stakeholders without requiring request.
- Data should be provided in a single database (rather than scattered among different databases) and in a format that is interchangeable and mergeable. For example, some CMS files spell out the names of states while others use state initials. These

⁶⁰ See LTCCC's Policy Brief on Direct Care Minimum Spending Laws. Available at <https://nursinghome411.org/minimum-spending-laws/>.

inconsistencies place an unnecessary encumbrance on the use of the data by consumers and those who work with them.

- The timeliness and completeness of information provided to the public must be given greater priority.
- CMS should stop or, at a minimum, significantly limit the redaction of Statements of Deficiencies (SoDs) published on Care Compare. For example, it is currently not possible to identify and assess citations for inappropriate antipsychotic drugging (a widely recognized, pervasive problem) because CMS redacts the names of medications in the SoDs it publishes. SoDs are already written in a manner that ensures that no resident name is divulged. Heavy redaction of these important documents makes them, too often, virtually impenetrable and useless.
- A facility's Plan of Correction should be included with the publication of a SoD on Care Compare (as CMS has long required for state websites). This is important information for residents, families, and the general public to have to ensure that the facilities in their communities are implementing safe and appropriate care practices.
- Care Compare should be made searchable by chain and common ownership.
- More detailed, user-friendly, and timely information on ownership, finances and citations should be included in Care Compare and state websites. A facility's ownership information should include information about other commonly owned entities, real estate ownership, related parties, and private equity investment. The data sources at the foundation of Care Compare should be made more readily available to researchers and the public.
- In the instances for which CMS risk-adjusts data, it should make the non-risk-adjusted data available, too, in its public-facing websites.
- CMS should reinstate the inclusion of geolocation data for nursing homes in all facility-level data files. When it stopped providing these data, CMS unnecessarily impeded the public's ability to gain insights into quality, staffing and other differences and potential inequities across different communities.

CONCLUSION

More than 35 years have passed since the enactment of OBRA 87, the landmark nursing home reform law. Despite the ensuing years of studies, hearings, and the sporadic media attention and robust public outcry that often follows a particularly horrendous case of nursing home abuse, nursing home residents still do not receive the quality of care or quality of life that the law requires, that they deserve, and for which millions of taxpayers' dollars are spent.

In recent years, the collapse and bankruptcy of nursing home chains highlighted the failure of nursing home regulators to protect residents. The COVID-19 pandemic has further underscored the inability of our regulatory agencies at both the federal and state levels to protect residents from harm and to ensure nursing homes are using public funds as they are intended. Increased private equity investment and the ever-growing complexity of nursing home ownership and financing structures have made it exceedingly challenging for regulators to determine a nursing home's ownership, its quality track record, and its use of public dollars.

Greater transparency of ownership, management, and financial data, combined with sufficient oversight and enforcement authority and the necessary funding to effectively carry out these activities are critically needed.

While progress continues to be made (primarily at the state level) and promising transparency reforms have been recently proposed at the federal level, the sad reality is that regulators still lack the timely, complete, accurate, and actionable information they need to hold bad actors accountable and, more importantly, prevent resident harm. Greater transparency of ownership, management, and financial data, combined with sufficient oversight and enforcement authority and the necessary funding to effectively carry out these activities are critically needed.

APPENDIX: The PROTECT Plan

The PROTECT Plan is made up of the following seven bills:

1. **SB 650: Corporate Transparency in Elder Care.**⁶¹ Requires nursing homes to submit audited consolidated financial reports so the public can see how much of its tax dollars are being spent on care for residents and how much is being spent on “related party” businesses the nursing home owns or controls. Signed into law.
2. **AB 279: Prohibiting Resident Eviction During the Pandemic.**⁶² Prohibits intermediate care homes or nursing homes from terminating services to residents or from transferring a resident to another facility without consent during any declared state of emergency relating to the coronavirus disease 2019 (COVID-19). Governor Newsom vetoed this bill.
3. **AB 323: Nursing Home Citations.**⁶³ Provides a long-overdue inflationary boost to nursing home citation penalties and updates the criteria for AA citations (those that cause the death of a resident) from the old “direct proximate cause of death” standard to the clearer “substantial factor” standard. Signed into law.
4. **AB 749: Certification of Nursing Home Medical Directors.**⁶⁴ Requires nursing home medical directors to be certified by the American Board of Post-Acute and Long-Term Care Medicine. Signed into law.
5. **AB 849: Nursing Home Resident Rights.**⁶⁵ Restores facility liability to up to \$500 for each violation of a resident’s rights, undoing last year’s awful *Jarman v. HCR ManorCare* decision, which held that nursing homes could violate as many resident rights as it wants for \$500. Signed into law.
6. **AB 1042: Related Party Accountability.**⁶⁶ Establishes shared liability for entities that share ownership or control of nursing homes. Related parties will be liable for unpaid state monetary penalties for citations and unpaid Quality Assurance Fees. Signed into law.

⁶¹ CA Senate Bill No. 650, *The Corporate Transparency in Elder Care Act* (2021). Available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB650.

⁶² CA Assembly Bill No. 279, *Prohibiting Resident Eviction During the Pandemic* (2021). Available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB279.

⁶³ CA Assembly Bill No. 323, *Nursing Home Citations* (2021). Available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB323.

⁶⁴ CA Assembly Bill No. 749, *Certification of Nursing Home Medical Directors* (2021). Available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB749.

⁶⁵ CA Assembly Bill No. 849, *Nursing Home Resident Rights* (2021). Available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB849.

⁶⁶ CA Assembly Bill No. 1042, *Related Party Accountability* (2021). Available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1042.

7. **AB 1502: Nursing Home Ownership and Management Reform.**⁶⁷ Establishes suitability standards for persons and entities seeking to run nursing homes and ends nursing home squatting, where persons or entities run nursing homes with no approval from the state. Pending action.

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⁶⁷ CA Assembly Bill No. 1502, *Nursing Home Ownership and Management Reform* (2021). Available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1502.