

## 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 1986<sup>1</sup> 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),<sup>2</sup> 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?<sup>3</sup> 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.**<sup>4</sup>

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<sup>1</sup> *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/>.

<sup>2</sup> 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/>

<sup>3</sup> 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](https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html).

<sup>4</sup> 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.