

## 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 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.<sup>58</sup>

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.

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<sup>58</sup> 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>

- 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.<sup>59</sup>
- 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.

### 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.<sup>60</sup>

### 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.

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<sup>59</sup> 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/>.

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

**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 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.