

# Today's Webinar:



LTCCC WEBINAR:

## **Show Me the Numbers:** How Transparency Can Improve the Quality of Nursing Home Care

Tuesday, July 19, 2022 | 1-2 PM ET

**Register:** <https://bit.ly/transparency-webinar>



Join us as **Ilene Henshaw**, long-term care policy expert, discusses transparency as a critical tool to improve the quality of nursing home care, efforts to improve transparency over the years, and recommendations for critically needed reforms.

**For materials from today's webinar, visit  
[nursinghome411.org/webinar-transparency/](https://nursinghome411.org/webinar-transparency/)**



# Nursing Home Transparency

A Critical Tool to Improve the  
Quality of Nursing Home Care

# A little about me...

Attorney

Consumer Advocate/Organizer

Legislative Counsel

Leader of 2 State-Based Nursing Home Advocacy Organizations

State Government Affairs Director

Consultant

Mother of 2 sons

Daughter of 2 Nursing Home Residents


Grandmother of 3

Hodophile


Francophile

Foodie





# What I'll be covering today...

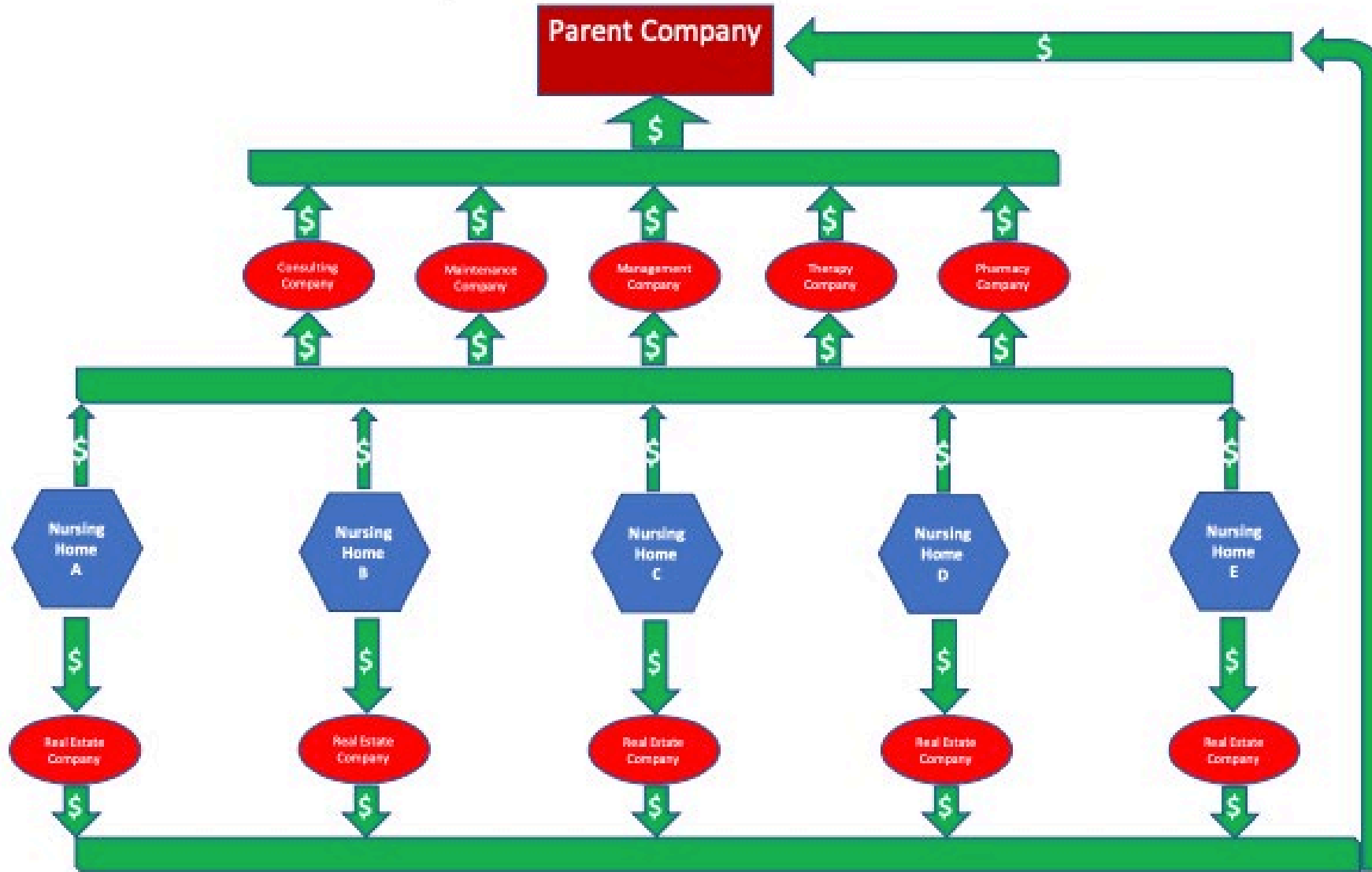
- What is “transparency”?
  - Why is it a “critical tool”?
  - Efforts to improve transparency
    - Past, Present, and Future
    - Federal and State
  - Recommendations
    - Ownership Transparency
    - Financial Transparency
    - Public Information Transparency
  - Key Takeaways
- 

**“Citadel nursing home in Salisbury, site of state’s worst COVID-19 outbreak, has closed”**

<https://www.wbtv.com/2022/06/23/citadel-nursing-home-salisbury-site-states-worst-covid19-outbreak-has-closed/>



### Corporate Structure with Related Parties



Testimony of Ernest Tosh, J.D., Trial Attorney, Tosh Law Firm, Before the House Ways and Means Committee, Oversight Subcommittee hearing on Examining Private Equity's expanded role in the U.S. Health care System, March 25, 2021

So, what do we mean by “transparency”?

- The availability of *high-quality, complete, interoperable, and accessible* data on nursing home *ownership, management and financing*






# Why is “transparency” a critical tool?

- Transparency is necessary to provide regulators with the information they need for oversight and enforcement to:
  - Prevent resident harm
  - Hold bad actors accountable
  - Improve quality of care





Transparency is  
a building block  
for reforms

- Minimum Staffing Laws
    - (Insufficient funding? Or improper allocation?)
  - Direct Care Minimum Spending Laws
    - Profit capping provisions?
  - Ownership Suitability Standards and Oversight
    - Purchase/Change in Ownership
  - Others?
- 

# CAVEAT

- While transparency is a critical tool, it must be accompanied by meaningful standards, strong oversight, effective enforcement and sufficient funding



Lack of transparency has been a long-standing issue

## 1986

- Institute of Medicine (IOM) identifies urgent need to obtain more information about nursing homes and their operations to “facilitate regulation and policy development”.
- This “study should recommend specific ways to collect, analyze and publish or otherwise make such data publicly available.”
- IOM, studying rise of for-profit and chain nursing homes, cites need to better understand ownership, management and financing models.

# The Nursing Home Reform Law (OBRA-87)

**1987**

- Landmark law setting forth minimum health and safety standards nursing homes must meet to participate in Medicare and Medicaid
- Requires public disclosure of:
  - Survey information (statements of deficiencies, plans of correction)
  - Annual cost reports
  - Statements of ownership and control interest



## The early 2000's

- 2003: CMS collects ownership info in PECOS (electronic record system to enroll and store info on Medicare providers)
- 2007: NYT's report on private equity's impact on nursing home quality
- 2008/2009: GAO and HHS reports underscore need for more transparency in light of increasing complexity of ownership models
- 2008/2009: Congressional hearings resulting in Nursing Home Transparency and Improvements Acts of 2008 and 2009

2010

The Affordable  
Care Act  
(ACA):  
Ownership  
Transparency

§ 6101

Nursing homes must report information on:

- Each member of governing body
- Officers, directors, members, partners, trustees, managing employees, *other disclosable parties*
- Organizational structure of each disclosable party and relationship to the facility and other disclosable parties

Information to be available to regulators immediately upon request and to public pending establishment of procedures by March 2013\*

*These requirements have not been fully implemented, but are addressed by the Biden Administration's recent announcement of nursing home reforms*



2010

The Affordable  
Care Act:  
Financing  
Transparency

§6104; §6106

- Nursing homes must report spending across separate categories (direct/indirect care, administrative expenses, capital assets)
  - CMS required to redesign cost reports and make this information easily available upon request

*Section 6104 requirements have not been fully implemented*

- Nursing homes must report staffing data (based on auditable information) including:
  - Hours of care per resident per day
  - Turnover
  - Wages



2010

The Affordable  
Care Act:  
Public  
Information  
Transparency

§ 6103; § 6105

*Nursing Home Compare* website to be updated and improved to include:

- Timely, accessible, user-friendly info on staffing, inspections, penalties and consumer complaints
- Standardized complaint form and contact info for state survey agencies and LTC Ombudsman programs
- Links to state websites including inspection and complaint reports and plans of correction
- Summary of number, type, severity, and outcome of substantiated complaints and info on number and types of crimes committed by facilities or their employees, contractors, and/or agents and fines levied against them

*Note: Many, but not all, of the required updates have been made.*


Still work to do  
to implement  
ACA  
transparency  
provisions

- Publish regs on ownership to specify disclosable parties and timeframes for reporting/updating info
- Establish mechanism to audit accuracy and completeness of PECOS data and enforcement of reporting requirements
- Develop a plan to report direct care expenditures by category in user-friendly format
- Establish a plan to audit this data and enforce reporting requirements





## More recent developments

- 2017-2021: Trump Administration focuses on deregulation, relaxation of surveys, reducing fines and reporting
  - 2019/2020: Ownership transparency and private equity investment are subjects of congressional oversight hearings and proposed legislation
- 

# 2022 Biden Administration

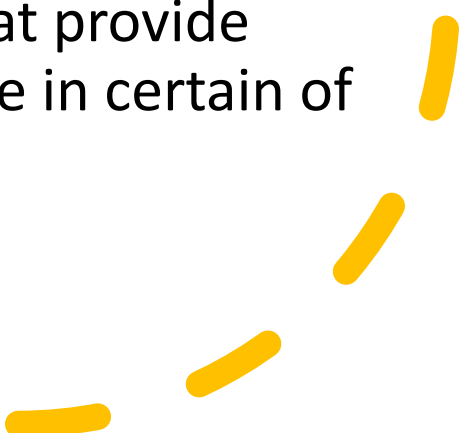
# Transparency Reform Proposals

- Implementing ACA's corporate ownership requirements and improving access to this information on Care Compare
- Creating a new database to track/identify owners and operators across states
- Enhancing Care Compare
  - Improving readability/usability
  - Ensuring star ratings reflect verifiable data
  - Holding nursing homes accountable for accurate submissions
- Using data submissions to improve enforcement actions
- Examining role of private equity, real estate investment trusts and other ownership models and reporting findings

<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/>

# 2022 Biden Administration

## Other related reform proposals

- Expanding CMS's enforcement authority at the ownership level:
    - Greater accountability for chain owners
    - Seeking CMS authority to require minimum corporate competency to participate in Medicare and Medicaid
    - Seeking CMS authority to impose enforcement actions on owners and operators of facilities even after they close, or on owners and operators that provide persistent and substandard care in certain of their facilities
- 

# Early State Transparency Reforms

- Pre-COVID transparency reforms:
  - **Connecticut** (2014): Nursing homes must include in their annual reports a profit and loss statement from related parties receiving \$50,000 or more
  - **California** (2018): nursing homes must report interests of 5% or more in a related party; must disclose profit and loss statements of related parties if goods, fees, services collectively worth \$10,000 or more annually



# Recent state Transparency Reforms

- **New York (2019):**
  - Disclose common/familial ownership between facilities and related entities
  - Seek approval before guaranteeing debt of third parties
  - Provide advance notification relating to actions involving the real property of the facility (sales, mortgages, etc.)
- **New Jersey (2020-2022):**
  - Provide substantial details regarding prospective owners including organizational charts, other facilities owned, previous years' audits, lease/management agreements
  - Publish on facility owner-certified financial statements and cost reports
  - Publish on state website applications for change in ownership
  - State required to review quality/safety record of parties to the sale

# Recent state Transparency Reforms

## California (2021)

- Significantly expanded reporting requirements for nursing homes to include:
  - Annual consolidated financial report with data from all operating entities, license holders and related parties
  - Visual representation of organizational structure
  - Certification by duly authorized organization official of accuracy and completeness
  - Posting of above reports and related documents on state website
- Established shared liability/accountability for entities that share ownership or control
  - State authorized to seek repayment of fines and fees due from related parties

# Recent state Transparency Reforms

## Florida (2021)

### #1

- Annual reporting of actual expenditures and revenue
- Certification of data by organization's CFO
- Must include balance sheet, income statement, statement of cash flow, retained earnings

### #2

- Reports must be audited

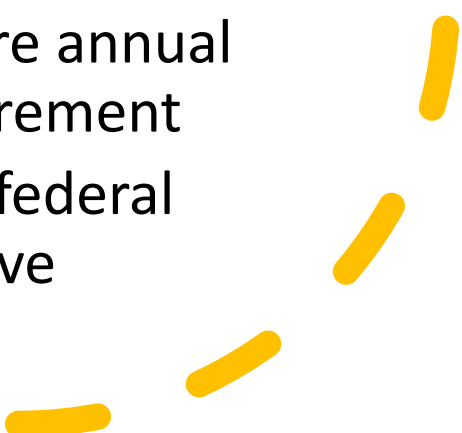


# Recommendations: Ownership Transparency

- Create nationwide database to track owners and operators across states\*
- Facilitate greater state-state and federal-state coordination on nursing home performance and finances
- Improve access/usability of PECOS
- Expand PECOS and state reporting to include related party and private equity arrangements
- Require auditing of all reports; fines for failure to comply with reporting requirements
- Authorize CMS to focus on chains and impose penalties at corporate level\*
- Strengthen minimum requirements for purchase, management of facilities that participate in Medicare and Medicaid programs
- Create a centralized application system
- Adequately fund oversight at state and federal levels to recruit/retain skilled professionals\*



# Recommendations: Financial Transparency and Accountability

- Require nursing homes to provide audited, annual, consolidated, financial reports of income from all sources, including operating entities and all organizations related by common ownership or control
  - Coordinate state and federal financial oversight efforts,\* including joint Medicaid and Medicare audits
  - Mandate nursing homes to spend set minimum amount of total revenue on direct resident care. Require annual audits to enforce this requirement
  - Adequately fund state and federal agencies to implement above
- 

# Recommendations: Public Information Transparency

- Make public access to nursing home data the default
- Make data, including PECOS and cost reports, readily available in user-friendly formats\*
- Consolidate data into a single database when feasible and appropriate in a format that is interchangeable and mergeable.
- Improve timeliness of public information
- Improve Care Compare\* to:
  - Easily allow searches by chain and common ownership
  - Provide full access to its data sources
  - Stop/limit redactions in Statements of Deficiencies that tend to conceal critical information from public and researchers
  - Include a facility's Plan of Correction along with the statement of deficiency
- Adequately fund agencies to implement above

# Takeaways

- For decades, lack of transparency has been known as a barrier to improving nursing home care
- Ever-increasing complexity of ownership and financing structures severely hampers ability of federal and state regulators to oversee and enforce standards and protect residents
- Lack of transparency allows nursing homes to hide profits and divert funds away from care and towards related parties
- Overwhelming majority of nursing homes' revenue is derived from public dollars and millions of new funding dollars have flowed to nursing homes since COVID
- Transparency is the foundation for other critical legislative reforms such as ownership suitability standards, minimum direct care spending requirements and staffing minimums
- Progress has been made in increasing transparency, but much more needs to occur