Nursing Home Ownership: Issues and Advocacy Opportunities

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Alissa Halperin
Halperin Health Policy Solutions
ahalperin@halperinhealthpolicysolutions.com
https://alissahalperin.substack.com/

Agenda

1. Introduction to Provider Ownership Transparency
2. Increasing Involvement of Private Equity Investors
3. Growth in Related Party Contracting
4. Opportunities for State Action
5. Recommendations for States
6. Recommendations for Advocates

Introduction to Provider Ownership Transparency

Introduction to Provider Ownership Transparency

- Increased privatization and for-profit orientation
  - 70% of nursing homes were owned by non-profits 50 years ago
  - 72% of nursing homes are now owned by for-profits
- More highly complex corporate structures, fewer mom and pops
  - 66% of nursing homes in the U.S. are operated by corporate chains
- Considerable dispersion of responsibility and accountability
  - Contractors, management companies, payroll companies, landlords; increasingly with related parties

Ownership has changed

State policies and processes around ownership are still catching up

Provider Ownership is Complex, Intentionally Complicated, Increasingly Profit-Motivated, and far too Opaque

- There are complex, overlapping, and interwoven, largely profit-motivated ownership structures that are newer or at least the overwhelming pervasiveness of them is newer.
- More and more providers/owners are leveraging corporate organizational strategies to shield themselves from tort, tax, insurance, and other liability.
  - Including layered ownership, use of real estate investment trusts, and related party contracting.
- They are exploiting legal and procedural loopholes that obfuscate full vetting of experience, expertise, and past performance of multi-layered, convoluted ownership structures.

Introduction to Provider Ownership Transparency

- What is ownership transparency?
  - Ensuring the State and the public know about who all the various owners of a provider are, AND
  - Using this information to ensure that qualified "owners" are being licensed and enrolled in Medicaid, AND
  - Having the right information so that all appropriate owners are being held accountable for providing high quality care
- Why is ownership transparency an issue?
  - Providers are exploiting these complex corporate structures to increase and maximize profit
- How should States prepare/respond?
  - Ensuring the policies and processes exist to capture, research, vet, and keep tabs on all the complexities of the modern corporate structures

Provider Ownership is Complex, Intentionally Complicated, Increasingly Profit-Motivated, and far too Opaque

- The shortcomings of state and federal requirements are being exploited by private equity investors and other profit-motivated owners and their related parties.
  - The purpose of these investment vehicles to rapid profit extraction.
  - Increasingly, services, property ownership, and administrative functions are being contracted out to related parties.
- This profit extraction is
  - Impacting quality of care and outcomes for those served and
  - Leaving providers strapped with debt and struggling, if not bankrupt.

Provider Ownership is Complex, Intentionally Complicated, Increasingly Profit-Motivated, and far too Opaque

- Historically, requirements that the owner be disclosed would account for the individual or mom and pop that owned the business.
- State and Federal rules and requirements have not kept up with and accounted for the changes in ownership.
  - Most states require disclosure of all owners that hold a 5 or 10% or more interest in the business and may or may not do any vetting on the owners that are not the licensee or operator.
  - Many states conduct robust vetting on the licensee or operator or first level of owner but not all owners and how deep vetting goes differs.
  - Many states get notified after a change of ownership interest (full or partial) but do not have a process that requires any new owner to apply for licensure and get approved by the state prior to the change of ownership taking effect.

Why does Provider Ownership Transparency matter?

(1 of 3)

Without the ability to know which individuals are behind the company:

- A **state licensure agency cannot**
  - Fully evaluate the owners' experience and expertise to provide good care to residents or participants
  - Consider how well those people may have performed in their prior ownership of the same service or in their provision of other LTSS
  - Know that 100% of owners have not been debarred from Medicare or Medicaid or put on an exclusion list that might prevent them from operating as a provider under Medicare and Medicaid rules
  - Know who is responsible for quality of care and who should be held accountable for deficiencies and other problems
  - Understand what other companies are owned by the same parent
  - Grasp what companies have shared owners and are related parties that may be profiting off of the business
  - Trend issues across an entire corporation's business

Why does Provider Ownership Transparency matter?

(2 of 3)

- Without the ability to know which individuals and entities own the business, **Medicaid agencies may not** be able to
  - Thoroughly vet all owners to ensure they meet Medicaid provider enrollment and program integrity requirements
  - Know to whom a quality incentive payment/ VBP payment should be made
  - Understand the heightened financial risks due to private equity ownership
- Without the ability to know which individuals and entities own the business, **other Government agencies may not** be able to know
  - Who to chase for unpaid taxes and debts (including unpaid payroll debts to workers in the home)
  - How many providers are contracting out services to companies owned by the same owners as a mechanism for tunneling out profits
  - Whether public officials have conflicts of interest due to ownership of the provider

Why does Provider Ownership Transparency matter?

(3 of 3)

- Without the ability to know which individuals and entities own the nursing home, **residents, potential residents, caregivers, and the general public may not** know:
  - Whether the provider they're looking at using is owned by for-profits (including private equity investors – incentivized by fast profit) and what the owners' experience and past performance is in operating a provider agency
  - Victims of negligence who want to pursue damages in court may not be able to determine who to sue and courts may not be clear on whom to punish
- State Lawmakers, Payors, and Regulators may not appreciate the tangled web of opacity and how that is being used to shield from tax and tort liability:
  - Leaving lawmakers uncertain as to
    - Who owns the providers in their state, what the owners' experience and past performance is in operating a provider business and how and whether the quality of care and participant/resident outcomes are impacted by the tangled web of opacity
    - Whether the state should adopt new application processes, change of ownership protections, and/or stronger criteria and review processes to determine who gets to have a license

Provider Ownership is Complex, Intentionally Complicated, Increasingly Profit-Motivated, and far too Opaque

- We lack full provider ownership transparency.
  - On the Opacity → Transparency Spectrum, we currently are between opacity and translucency (depending on the state and the provider type) but we are not transparent.
- If we don't have ownership transparency,
  - We cannot conduct thorough vetting.
  - We cannot ensure full accountability.
  - We cannot provider ownership transparency to the public.
- States need to adopt or modify rules and processes that detail standards and requirements that will help them to achieve full transparency, to support comprehensive and complete vetting, and to facilitate accountability from provider application and enrollment through changes of ownership and throughout the provider's lifecycle.

Increasing Involvement of Private Equity Investors

What is Private Equity?

- CMS defines a Private Equity Company as "a publicly traded or non-publicly traded company that collects capital investments from individuals or entities and purchases a direct or indirect ownership share of a provider."
- Private equity investments are generally made with the intention of extracting as much profit as possible within a 4-year–7-year window.
  - Heavy borrowing against the business or property is just one way they extract swift profit

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Increasing Involvement of Private Equity Investors: What's the Trend?

- Rapid growth across the entire healthcare sector
  - Nursing home sector has seen private equity ownership go from estimates of 5% to 13% in recent years
    - Due to lack of transparency into ownership, there are not good numbers across all sectors

Increasing Involvement of Private Equity Investors: What's the Why?

- Motivation:
  - Calculated, strategic choice to invest in healthcare and home- and community-based services providers
  - The climate is right
  - The foundation upon which to build — complex and opaque ownership structure, incomplete financial transparency — is primed
  - The opportunities are present to make a lot of money
- Opportunistic Climate:
  - Intentionally more complex corporate structures
  - Leveraging related party transactions
  - Minimizing risks of tax and tort liability
  - Shielding from insurance premium hikes
  - Investor experience/likelihood of significant profit
  - Predictability and relative stability of payment

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Increasing Involvement of Private Equity Investors: What's the Impact?

- This growth has raised concerns as:
  - Private equity firms deploy the complicated structures that help avoid transparency and accountability in resident care and the results are worse quality of care
  - Studies:
    - A recent study found residents in nursing homes associated with private equity ownership were more likely to have preventable emergency department visits and preventable hospitalization
    - Additional research found evidence that private equity investors cut staff in nursing homes while increasing resident volume and the nursing homes had significantly lower quality of care seen in declining CMS ratings post private-equity acquisition. Private equity firms deploy the complicated structures that help avoid transparency and accountability in resident care
    - https://pmc.ncbi.nlm.nih.gov/articles/PMC10354830/
    - https://www.nber.org/digest/202104/how-patients-fare-when-private-equity-funds-acquire-nursing-homes.
    - https://doi.org/10.1001/jamahealthforum.2021.3817
  - Remember: The PRIMARY purpose and intent of private equity investors is to extract as much profit as possible within 4-7 years not the provision of high-quality supports and services

Increasing Involvement of Private Equity Investors: What's the Impact?

- Destabilization of Providers
  - Depletion or removal assets
  - Incumbering with debt
  - Decentralizing of operations
  - Rapid entering and exiting
- Increased Administrative Burden on State
  - Diverts attention to closures, mergers and acquisitions, bankruptcies, etc. away from everyday quality of care monitoring, oversight, and operations
- Ill-spent Medicaid Dollars

Growth in Related Party Contracting

What Are Related Parties?

- Related Parties are other businesses that have some shared or common ownership with the provider
- In recent years, there has been a rise in the number of nursing homes, contracting with related parties to provide services to the Provider, such as:
  - Management, payroll, other essential administrative functions
  - Temporary staffing agency, cleaning company, maintenance, medical director, pharmacy managed, and other services
  - Ownership and serving as landlord for the property

Research on Related Party Transactions in the Nursing Home Space

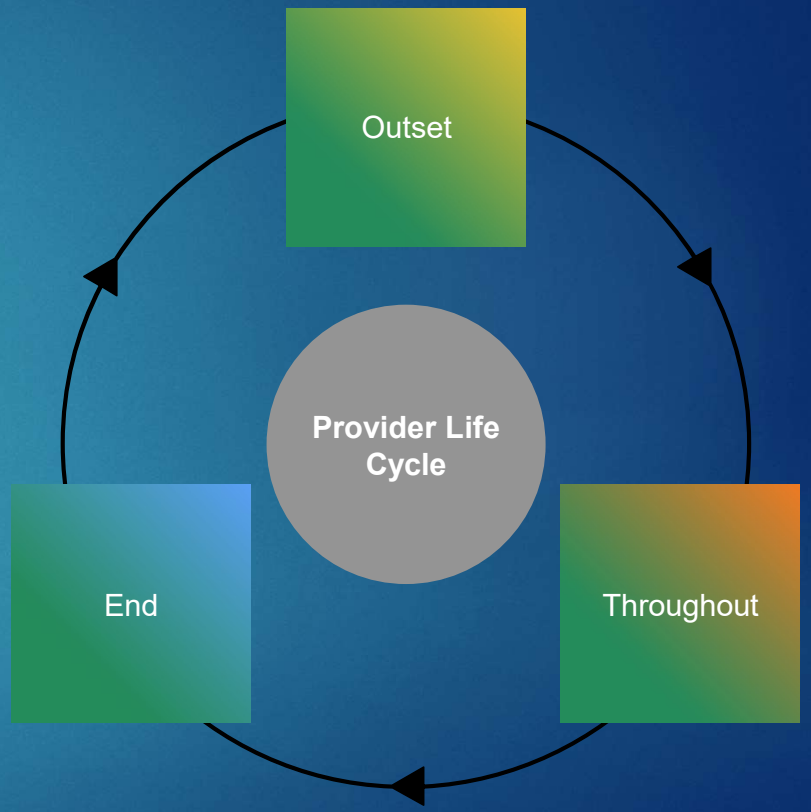
- Typically exceed fair market value by a lot
  - Andrew Olenski and Ashvin Ghandi - UCLA Center for Health and Policy Research. "Tunneling and Hidden Profits in Health Care"
- Comprise an increasing percentage of revenue spending
  - Toby Edelman, Center for Medicare Advocacy - Center for Medicare Advocacy. "CMA Special Report Hidden Profits that Detract from Nursing Facility Care Are Unregulated and Ignored"
- Not fully transparent
  - OIG Report - U.S. Department of Health and Human Services Office of Inspector General. "Some Selected Skilled Nursing Facilities Did Not Comply With Medicare Requirements for Reporting Related-Party Costs"
  - The Consumer Voice – "Where do the Billions of Dollars Go? A Look at Nursing Home Related Party Transactions

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Opportunities for State Action

Timing for State Action

- Outset:
  - Licensure Application Processes
  - Medicaid Provider Enrollment
  - Vetting against strong criteria
  - Managed Long Term Services and Support Contracting
  - Change of ownership approvals
- Throughout:
  - Ongoing financial and other reporting
  - Mandatory disclosures
  - Requiring state approvals of Provider changes, actions, etc.
  - Provider integrity oversight
  - Enforcement
- End:
  - Exit and closure processes
  - Funds for continued operation
  - Approvals before sales, etc.



Examples of State Action

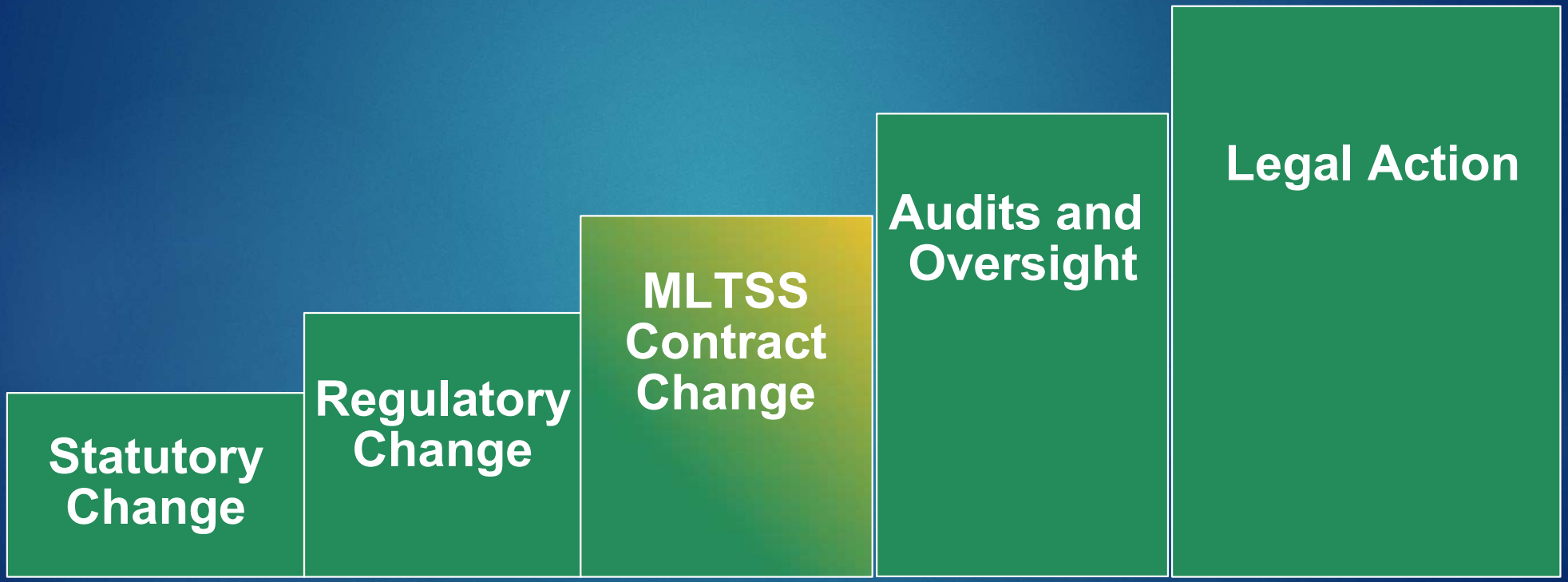
- States are:
  - Enhancing their licensure application disclosures and processes — MA, PA, CT
  - Strengthening their licensure application vetting criteria and processes — MA, PA, CT
  - Requiring more detailed annual ownership and financial reporting and disclosures — CA, NJ, RI, PA
  - Mandating pre-approval and comprehensive vetting before sale or transfer of ownership interest — DE, IL, CT, NJ
  - Researching the connections between ownership and quality of care or enforcement concerns — OR, MI
  - Making transparency to the public a priority and a tool in increasing accountability — OR
  - Limiting private equity's ability to sell off its interest in the nursing home — RI

Recommendations for States

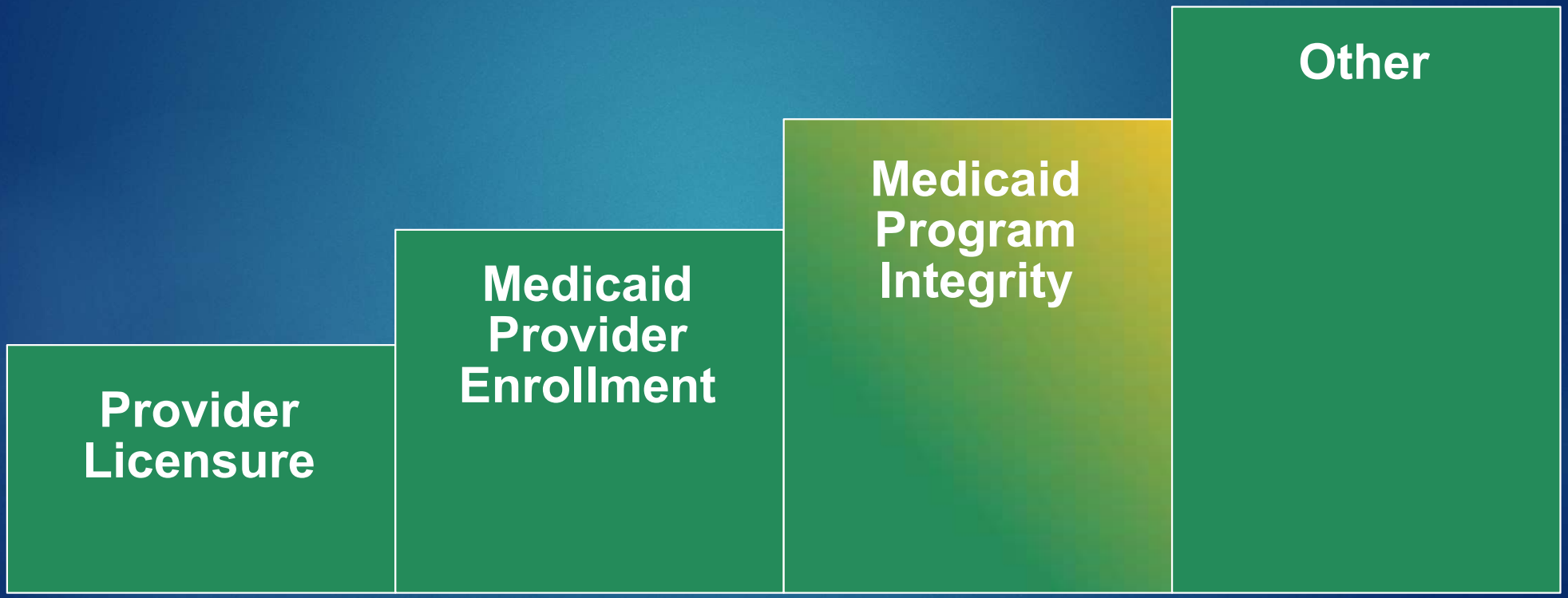
Process Recommendations

1. **FORM cross-agency partnerships to develop approach**
2. **ESTABLISH your baseline**
3. **LEVERAGE systemwide opportunities for transparency and accountability**
4. **PURSUE advances in transparency and accountability for all provider types**
5. **ARTICULATE policy purpose**
6. **CONSIDER all vehicles for change**
7. **BUILD from other efforts, Federal authorities**
8. **ITERATE — explore a phased approach**

Levers for Change



Systems/Processes Change



Substantive Recommendations for States

- Change the rules to:
  - Require disclosure of 100% of owners, parents, sister organizations, etc. with any percentage interest.
  - Limit PE investment.
    - For example, States can prohibit private equity investors having a controlling interest and no control over quality of care decisions.
  - Prohibit secrecy of investors.
  - Limit or prohibit complex layering in corporate organizational structure.
  - Limit or prohibit large profit extraction in any given year, year over year, or across a 5 year period.
  - Set limits on contracts with related-parties to require them to:
    - Meet fair market value terms and reflect arms' length consideration
    - Are of quality comparable to or greater than non-related party vendors/providers; and
    - Chosen based primarily on the well-being of residents and not solely on the profit interests of owners, operators, and investors.
  - Require proof:
    - States can require submission of contracts providers have with other entities and review them to determine which are with related parties
    - Require submission of contracts and details on all owners of both parties to the contract.
    - Require submission of independent valuations of fair market value of transactions.
    - Require disclosure of payments nursing homes made to related parties with evidence of how these compare to payments made or prices charged by fair market competitors.

Substantive Recommendations for States

- Change the process
  - Comprehensive and Detailed Licensure Applications
    - Full and extensive disclosure for all owners of any % interest all the way up to the parent company and inclusive of all sister organizations (related parties) of identities, qualifications, past experience, financial circumstances, background, etc.
  - Well-articulated Meaningful Qualifications and Criteria for Licensure
    - Specific and clear standards for what will prompt application denial or granting of licensure with conditions that must be met before full licensure is afforded
    - Prohibit decisions that impact care delivery from being made by anyone without clinical qualifications
  - Robust Vetting
    - Review and consider all information disclosed through the application process and some look-behind
  - Continuous Compliance and Qualification
    - Require providers apply for renewal and provide updates to information previously submitted

Substantive Recommendations for States

- Change the oversight:
  - Increase quality scrutiny where PE is involved.
  - Analyze state and federal information about staffing levels, quality, inspection, and enforcement actions and cross-reference that with data on ownership.
  - States can routinely audit financial reports and financial data to ensure the provider is reporting related-party costs in accordance with state and federal regulations.
  - Enhance Provider Cost Reporting Requirements to be more detailed and comprehensive and commit to thorough review, helping the state to identify any monies being siphoned off to related parties
    - States can require submission of owner-certified, fully audited, comprehensive financial statements from the parent company on down and covering any sister organizations, related parties, and wholly owned subsidiaries upon which to establish provider rates
    - Some State's Department of Health (like Pennsylvania's Department of Health) have staffed up with forensic accountants in the licensure unit to review the financial information that nursing homes are required to submit
  - Request legal action by Attorneys General or Auditors/Comptrollers General

Substantive Recommendations for States

- Study:
  - How different ownership structures in their state stack up on quality measures, staffing levels, and resident outcomes to determine whether they warrant additional study or scrutiny.
  - Study whether correlations between ownership and quality of care outcomes and experience.
  - Gather inputs from LTC Ombudsman interactions with residents, resident complaints, non-compliance/citations, Medicaid claims data on related/resulting health outcomes, etc.
  - Investigate and report out on the depth, breadth, and impact of related party transactions.
  - Investigate and report out on the amount of Medicaid dollars spent on the direct care and support staff using the data from the NH/ICF compensation reporting rule.

- Respond to findings:
  - Propose responsive systems/process or substantive changes
  - Adopt targeted quality oversight depending on what your study shows
  - Conduct better vetting as part of a study or as part of vetting or as part of enforcement
  - Attorney Generals can pursue cases whether there are ownership issues and correlated quality

Substantive Recommendations for States

- Improve Public Transparency - Shine Light and Make Public
  - States can
    - Require clear, plain language details and explanation of ownership structures and disclosure of each provider's ownership composition on state websites
    - Improve the amount of information they provide to the public
    - Improve the accessibility and understandability/digestability of the information
    - Re-work their websites with stakeholder input
    - Provide meaningful and impactful contextual information on their websites
    - Publish information on the state's nursing home directory that clearly specifies whether the nursing home contracts with related parties and contextualizes why potential residents should be aware (because conflicts of interest can have real impacts)
    - Publish information on the state's nursing home directory about private equity investors

Recommendations for Advocates

Recommendations for Advocates

- Advocate for Policy Change:
  - Change in what is disclosed or gathered from other sources, what must be considered, how it is weighed and what is determinative of what result, how ownership changes may occur, how often information is reviewed and vetted, how accountability is imposed, through
    - Statutory Change
    - Regulatory Change
    - Subregulatory form or process changes
    - Oversight focus changes
    - MLTSS contracts

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Recommendations for Advocates

- Advocate for Landscape Study:
  - What is happening in my state with ownership transparency (what can be known about who owns to how many layers, what information is collected, how is it used in vetting, where are the gaps, how does this compare to other states)
  - What correlations between ownership and quality - based on what is known and what complaints, critical incidents, etc.
    - Do their own studies based on legal services cases, Ombuds data?, MLTSS complaints, focus groups, etc.

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Recommendations for Advocates

- Advocate for transparency to the public
  - Press the state for improved websites with full disclosure around ownership, PE involvement, related party transactions, etc.
  - Put the NH/ICF reporting info right there and break it out by nursing home
  - Put quality
  - Draw the connections
  - Provide the context and comparisons
- Train on what to look for, what it matters
  - Discharge planners and social workers
  - Care managers/coordinators
  - Families and caregivers

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Need a Deeper Dive?

- Check out my Substack series on nursing home ownership transparency.
- https://alissahalperin.substack.com/ or use the QR code
- Ownership transparency is a complex topic and I try to unpack and dissect it over the course of this series from the nursing home lens.

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Questions

CONTACT INFO:

ALISSA HALPERIN
HALPERIN HEALTH POLICY SOLUTIONS
AHALPERIN@HALPERINHEALTHPOLICYSOLUTIONS.COM

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