The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

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Ways and Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Statement for the Record
Examining Private Equity's Expanded Role in the U.S. Health Care System
Hearing before the U.S. House Ways and Means Subcommittee on Oversight
March 25, 2021

Dear Chairman Pascrell and Ranking Member Kelly:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) would like to thank Chairman Pascrell and Ranking Member Kelly for holding this hearing on the expanded role of private equity (PE) investors' expansion in the U.S. healthcare system. The Consumer Voice is the leading national voice representing consumers in issues related to long-term services and supports. We advocate for quality care, quality of life, and the rights of nursing home residents and other long-term care consumers.

Each year nursing homes receive billions of dollars in federal funding. Much of that money goes to for-profit corporations who operate 70% of nursing homes in the United States. PE's ownership interest has grown significantly over the past two decades. PE's investment in nursing homes increased to over $100 billion in 2018,[1] and PE firms now own roughly 11% of facilities.[2]

As private equity firms' ownership interests in nursing homes have increased, the quality of care in those homes has decreased. A recent study[3] of PE buyouts of nursing homes from 2000 to 2018 documented significant declines in the health of residents, non-compliance with care standards, and cuts to nursing staff. The same study estimated that PE ownership of nursing homes has increased the mortality rate of Medicare patients by 10%-roughly 20,150 lives from 2000 to 2017. PE owned homes have also performed poorly during the pandemic, experiencing higher COVID-19 infection rates than other homes.[4]

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[1] Appelbaum, Eileen and Rosemary Batt, "Private equity buyouts in healthcare: Who wins, who loses?," Institute for New Economic Thinking Working Paper Series, 2020, (118).
[2] Spanko, A. COVID-19 brings private equity investment in nursing homes into the spotlight. Skilled Nursing News. March 19, 2020. https://skillednursingnews.com/2020/03/covid-19-brings-private-equity-investment-in-nursing- homes-into-the-spotlight.
[3] Gupta, A., Howell, S.T., Yannelis, C., and Gupta, A. Does private equity investment in healthcare benefit patients? Evidence from nursing Homes. Philadelphia, PA: Wharton School. February, 2020.
[4] Braun, R.T., D; Yun, H., Casalino, L.P., Myslinski, Z., Kuwonza, F., Jung, H., Unruh, M.A. Comparative performance of private equity–owned US nursing homes during the COVID-19 pandemic. *JAMA Network Open.* 2020; 3 (10) doi:10.1001.

At the same time that care has declined in PE owned homes, profits have risen for owners. A 2011 GAO report found that the acquisition of a nursing home by a PE company results in higher profit margins when compared to non-profit or other for-profit homes.[5] PE companies see the acquisition of nursing homes as a source of short-term profits. Through convoluted ownership structures, where PE companies create third-party companies to which the facility must pay rent and other fees, and cutting costs such as staffing, PE companies are able to increase profits while care quality declines.[6]

The federal government has taken a hands-off approach to PE firms. These companies are able to acquire nursing homes because there are no established federal criteria for making decisions about ownership or management changes. Instead, the Centers for Medicare and Medicaid Services (CMS) relies on states to approve these acquisitions, often without any review. As a result, nursing homes are purchased by PE companies with no experience or expertise in providing long-term care services. PE firms can also exploit facilities to maximize their profit because there are no requirements governing how they spend their Medicare and Medicaid reimbursement dollars. Consequently, they can put as much money as they choose toward administrative costs and profits, while reducing expenditures on personnel and supplies.

To ensure proper quality of care in nursing homes and the appropriate use of taxpayer money, Consumer Voice urges Congress to:

- Require CMS to establish a national system to audit all nursing homes to determine ownership interests, related-party interest, and how facilities spend taxpayer money.
- Set limits on administrative costs and profits for all payors.
- Require CMS to establish federal regulations to specify the minimum criteria for purchasing or managing any nursing home.

Below we have described our concerns and recommendations.

I. Require CMS to establish a national system to audit all nursing homes to determine ownership interests, related-party interest, and how facilities spend taxpayer money.

Despite the tens of billions of federal dollars going to nursing homes each year, the federal government knows little about how that money is spent, regardless of ownership interest. In essence, nursing homes are given a check with few to no strings attached. PE companies take advantage of this lack of oversight in several ways to generate profits. For example:

- **Management Fees:** After acquiring nursing homes, PE companies steadily increase what they pay themselves for "monitoring homes." On average, these fees increase by almost 8% after a PE company purchases a home.[7]
- **Lease payments:** It is common for PE companies to purchase homes from an operator, create new third-party companies to hold the homes' assets, and then require the operator to

[5] Government Accountability Office (GAO). *Private Investment Homes Sometimes Differed from Others in Deficiencies,Staffing, and Financial Performance.* (GAO-11-571): July 15, 2011. http://www.gao.gov/products/GAO-11-571
[6] Gupta, A., Howell, S.T., Yannelis, C., and Gupta, A. Does private equity investment in healthcare benefit patients? Evidence from nursing Homes. Philadelphia, PA: Wharton School. February, 2020.
[7] Id.

pay lease payments. CMS cost reports reveal that such lease payments increase by roughly 75% after the PE purchases a home.[8]

- **Out-sourcing goods and services to third-party companies in which they have an ownership interest:** In addition, PE firms often require the homes they have bought to contract for a range of services, such as laundry and physical/occupational therapy, from entities the PE firm owns. These payments appear as the nursing home's expenses, while funneling the money to the PE company.

The practice of outsourcing goods and services to third-party companies in which nursing home owners have an ownership interest is extremely common, with roughly 75% of all nursing homes adopting this practice.[9] These relationships are extremely lucrative for PE companies as they allow them to charge a nursing home more than the home would pay in an open market. PE companies then take these profits from the third-party company, which appear as expenses, not profits, on the nursing home's ledger.[10] The full extent of PE's exploitation of third-party company profitmaking is not known, because CMS does not have adequate systems to audit nursing homes to determine how taxpayer money is spent and to whom it is paid.

Increased profits to PE companies lead to declines in care quality. When owners employ complex third-party ownership structures in order to siphon off profits rather than invest in resident care, staffing in nursing homes decreases, with those homes employing 8% fewer nurses and nurse aides.[11] Additionally, PE owners reduce the number of skilled staff, to avoid paying higher wages. As a result of these staffing cuts, residents suffer and experience poor health outcomes.[12]

The experience of HCR Manor Care illustrates this pattern. In 2018, HCR ManorCare filed for bankruptcy after being acquired in 2007 by PE company Carlyle. The *Washington Post* reported that after Carlyle's acquisition, ManorCare received increased citations for "neither preventing nor treating bed sores; medication errors; not providing proper care for people who need special services such as injections, colostomies and prostheses; and not assisting patients with eating and personal hygiene."[13] Contributing to the failure of ManorCare was exorbitant rent liabilities that were the result of Carlyle selling ManorCare's buildings and land to another investment firm. Once ManorCare had to start paying rent, the quality of care at ManorCare dropped.[14]

In order to ensure that taxpayer money is spent on care for residents and not on profits for PE owners, Congress must require CMS to establish a national system to audit all nursing homes to determine all ownership interests, including related-party interests, and how facilities spend taxpayer money.[15]

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8 Id.
9 Rau J. Care suffers as more nursing homes fed money into corporate webs. New York Times. January 7, 2018. https://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html.
10 Id.
11 Rau J. Care suffers as more nursing homes fed money into corporate webs. New York Times. January 7, 2018. https://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html
12 Gupta, A., Howell, S.T., Yannelis, C., and Gupta, A. Does private equity investment in healthcare benefit patients? Evidence from nursing Homes. Philadelphia, PA: Wharton School. February, 2020.
13 Keating, Dan and Peter Whoriskey, "Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society's most vulnerable," The WashingtonPost, 2018.
14 Keating, Dan and Peter Whoriskey, "Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society's most vulnerable," The WashingtonPost, 2018.
15 Journal of Health Care Finance, "Private Equity Ownership of Nursing Homes: Implications for Quality," Rohit Pradhan et al., June - July 2014, http:/lbealthfmancejournal.com/index.php/johcf/article/view/12.

II. Set limits on administrative costs and profits for all nursing homes.

Knowing where the money goes is the first step, but it must be followed by controlling how that money is spent. In November 2020, the CEO of PE-funded Genesis Healthcare, George Hager, stated publicly that the chain would need ongoing financial support from the federal government to keep operating. Yet, at the same time, Genesis had earmarked a $5.2 million bonus for Hager.[16] By limiting administrative costs and profits, Congress will ensure that the billions of federal dollars spent annually on nursing homes go towards resident care, rather than being funneled off to enrich PE investors and CEOs.

Congress has imposed these limitations before. Under the Affordable Care Act, Congress required insurers to use, at a minimum, 85% of the premiums they received on health care claims and quality improvement. This medical loss ratio (MLR) saved taxpayers $2.46 billion dollars in 2019.[17]

Congress should take the same step here by imposing an MLR on all nursing home operators and owners. By requiring federal dollars to be spent on care rather than exorbitant CEO bonuses and investor profits, Congress will increase positive health outcomes for nursing home residents and save taxpayer dollars.

III. Require CMS to establish federal regulations to specify the minimum criteria for purchasing or managing any nursing home.

Currently no meaningful federal criteria exist for determining who is eligible to receive initial Medicare and Medicaid certification to operate a nursing home, with CMS largely relying on state licensure processes. In many states, there is no evaluation of an entity's financial or management capacity to successfully operate these facilities and provide quality care. A report in the *Washington Post* revealed that even during the pandemic, investment groups with a long track record of owning homes that provide poor quality care were allowed to buy over 20 homes, and as a result, care suffered.[18]

Nursing home owners should be vetted for their experience in, and financial fitness for, owning and running nursing homes. Currently, without any criteria, PE companies that are ill-equipped to provide care and services to individuals with significant needs are permitted to take over facilities. As a result, residents experience harm.

Congress should require CMS to establish minimum criteria for the purchase, change of ownership, or management of any nursing home. These criteria should prohibit individuals or corporations with a history of owning or operating facilities with low staff and poor quality care from owning or managing nursing homes. In addition, companies with corporate settlements with state attorneys general or the US Department of Justice for fraud or worthless services should be barred from purchasing new nursing homes until their Corporate Integrity Agreement conditions are completed.

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16 https://www.washingtonpost.com/business/2021/01/20/genesis-nursing-homes-ceo-bonus/

17 Keith, K. ACA round-up: record-high medical loss ratio rebates, pass-through funding, preventive services. *Health Affairs Blog.* November 17, 2020. See also https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2019-Rebates-by-State.pdf

18 https://www.washingtonpost.com/local/portopiccolo-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14-ad872157ebc9_story.html

CMS must establish a process that ensures applicants that own or manage a nursing home have the experience and expertise to provide high quality care that meets established standards. Further, minimum financial standards must be established to ensure the applicant has sufficient financial resources to properly operate a facility.

The negative impact of PE ownership on residents of nursing homes is well documented. We urge Congress to take action to address the issues described in this letter. We cannot allow the profits of a few to take precedent over the well-being of thousands of our most vulnerable citizens.

Thank you for the opportunity to submit this statement for the record and for considerations of our recommendations.

Sincerely,

Robyn Grant

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