

## SPECIAL REPORT

### **Why Do Nursing Home Operators Who Provide Poor Quality Care Control Increasing Numbers of Facilities?**

While it is axiomatic that a nursing home owner's record is a good predictor of the quality of care the owner will provide in the future in another facility, many poor quality providers are expanding the numbers of facilities that they own or operate. Why is this disturbing trend apparently increasing? Unfortunately, there is no easy or simple answer to the question. In fact, there are likely multiple inter-related explanations.

#### **1. Facilities use complex ownership structures, and deliberately so, to confuse states and the public about who “owns” a nursing facility.**

A 2003 article, “Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring,”<sup>1</sup> explicitly recommends creating multiple companies – real estate, management, staff, supplies, etc. – so that government agencies and people who have been injured will not know which companies can and should be held accountable. The authors write:

In the context of nursing home ownership and operation, legal entities such as corporations, limited liability companies, and limited liability partnerships can be formed to benefit nursing home companies by limiting the financial liability and Medicare and Medicaid exclusion exposure of the real-estate investors and business owners. For example, the business entities that result from restructuring can help a nursing home operator avoid unnecessary exclusion of all Medicare and Medicaid providers currently owned by the same entity, in the event that any one of them is excluded from the Medicare or Medicaid programs. The business entities can also prevent litigants from obtaining judgments against related companies, and the owners personally, in proceedings alleging Medicare or Medicaid overpayments, false claims, or negligence.

The article suggests that creation of multiple single-purpose entities can help companies avoid both exclusion from the Medicare and Medicaid programs and financial liability due to Medicare and Medicaid overpayments, the False Claims Act, and malpractice/negligence litigation. Separating the real estate investment from the nursing home operation is one specific recommendation.

State laws have not caught up with these complex ownership devices. State rules for ownership do not delve into the complex and inter-related systems that owners devise.

#### **2. States do not know who is behind a corporation, particularly when the owners create a new corporation with a new name to apply for a state license.**

Corporations have independent identities that are separate from the principals behind them. There are multiple examples of owners exploiting this legal principle to their advantage. Owners form new corporations with new names, creating corporate entities that have no records. State

laws appear to treat these owners as “new” owners, if that is how they present themselves, even when the owners actually had poor records using different corporate names.

In 1994, Jon Robertson formed Phoenix Health Group and acquired nursing facilities in California. The *Los Angeles Times* reported in 1997, “As the money began to roll in from Medicare and Medi-Cal payments to the more than 300 residents at the facilities, Robertson, who had long displayed a fondness for life’s pricier pleasures – from Harley-Davidson motorcycles to diamond rings – began to spend conspicuously.”<sup>2</sup> In 1996, Robertson checked into a rehabilitation center in Phoenix to deal with a cocaine addiction. Robertson also “served prison time and owed \$150,000 in restitution to the IRS for filing a false tax return as president of another nursing home management company.”<sup>3</sup> Robertson’s California facilities provided poor care for residents and were cited with numerous deficiencies. The company filed for bankruptcy and abruptly closed its facilities.

Later, Robertson formed a new company, Utah-based Deseret Health Group. Despite Robertson’s poor record, multiple states gave licenses to Robertson’s new company and the federal government certified the facilities for Medicare and Medicaid reimbursement. In May 2015, Deseret abruptly stopped paying for food, medical supplies, and workers’ wages and benefits in at least seven nursing facilities owned by the company in Kansas, Minnesota, Nebraska, and Wyoming. States pursued court receiverships or otherwise took control of the facilities in order to protect residents and ensure they received food and medications.<sup>4</sup>

A second example occurred in Illinois in 2018, when William Rothner and Allied Health Services, Inc. sought to purchase and convert to for-profit ownership the Champaign County, Illinois county nursing facility. In August 2018, the County Review Board asked the potential purchasers to identify any adverse actions taken against them or any facilities owned or operated by them. A certification signed by Rothner on August 15, 2018 indicated that no action had been taken against University Rehabilitation Center of CU, LLC and University Rehab Real Estate, LLC. However, neither University Rehabilitation Center of CU, LLC nor University Rehab Real Estate, LLC existed on August 15. The companies listed on the certification reflected the new name that the applicants intended to give the county nursing facility once they bought it, but they were not created until August 17, 2018.<sup>5</sup> Clearly, no adverse actions could have been taken against companies that did not actually exist.

Champaign County Healthcare Consumers opposed the sale of the county nursing facility to the for-profit owners<sup>6</sup> and reported that multiple facilities owned by Rothner and Altitude Health Services, Inc. in Illinois (and other states) had, in fact, had many significant adverse actions filed against them.<sup>7</sup> Nevertheless, the County sold the facility to Rothner, who took over in April 2019.<sup>8</sup>

### **3. Owners use multiple names, concealing their actual ownership of nursing facilities.**

In the past, nursing homes under common ownership would typically share a common corporate name. Now many companies, and conglomerates of companies, buy facilities in multiple states under multiple new names.

In 2020, *Barron’s* reported that Portopiccolo, a private equity firm started in 2016, operates 100 facilities under various names, such as Accordius, Pelican Health, and Orchid Cove.<sup>9</sup> The name

Portopiccolo may not appear on ownership papers or admissions contracts with residents. *The Washington Post* reported in December 2020 that during the coronavirus pandemic, Portopiccolo Group, despite its record of poor care (nearly 70 percent of Portopiccolo facilities had ratings of one or two (of five) on the federal website), short staffing, and coronavirus outbreaks, bought at least 22 nursing facilities, with “scant scrutiny” from state regulators in Maryland and Virginia.<sup>10</sup>

Another example comes from Vermont. *SevenDaysVt* reported in July 2021 that three people were identified on loan documents in the Fall 2020 as wanting to buy three nursing facilities in Vermont that were owned by Genesis HealthCare. When the application for the license was submitted to the state in February 2021, however, the wife of one of the owners, Ephram Lahasky, was substituted for Lahasky because Lahasky had a troubled history with nursing facilities in Pennsylvania.<sup>11</sup> Substituting Lahasky’s wife meant that the purchasers were not required to identify the Pennsylvania facilities for Vermont to review.

#### **4. State rules are largely about ownership and changes in ownership, but facilities can be managed by different corporations, without state approval, even while a change in ownership is pending or denied.**

The State of California has denied licenses to some potential buyers with poor records in other facilities they own in the State. Despite being denied licenses, the owners got control, and public reimbursement, as managers of those facilities.

The California nursing home company ReNew Health is one example. Founded in 2014, ReNew Health now owns or is affiliated with at least 26 nursing facilities in California, with about 2,000 residents. In 2020, during the coronavirus pandemic, and after the state moved to revoke the license of ReNew’s owner, Crystal Solorzano, state regulators denied Solorzano’s request to take over nine additional nursing facilities. Nevertheless, *LAist* reports, “Due to what advocates say is a flawed licensing process, Solorzano is allowed to run those nine nursing homes – and others across the state – as she appeals the state health department’s decision.”<sup>12</sup> California law permits potential buyers to operate facilities under management agreements as they appeal the denial of a state license. Appeals take years.

The state’s April 24, 2020 license denial letter for the nine additional California facilities cites the March 20, 2020 revocation of Solorzano’s nursing home administrator license because of unprofessional conduct, but notes that the revocation is not in effect because of Solorzano’s appeal.<sup>13</sup> The April 24 letter recites that the California Department of Public Health (CDPH) determined that Solorzano “submitted fraudulent documents to obtain [her] nursing home administrator license” – a fraudulent college transcript – in 2008. In addition, CDPH’s review of the compliance history of facilities owned, managed, or operated by Solorzano in the prior three years identified 14 immediate jeopardy deficiencies, 29 harm-level deficiencies, and 85 level F deficiencies. The letter describes the jeopardy deficiencies in detail (including rodent feces in a kitchen, a resident’s pepper-spraying a roommate and stabbing another resident, and a certified nurse assistant’s rape of a resident) as well as three administrative penalties under state law for failing to comply with minimum staffing levels.

*LAist* reports, “In its short time caring for California’s most vulnerable – many of them elderly and mentally ill – the company has racked up an inordinate number of red flags and citations, many for infractions known as ‘Immediate Jeopardies.’”<sup>14</sup> Although providing care to one in

fifty California nursing home residents, ReNew Health has been cited for nearly one in ten immediate jeopardy deficiencies in California. At least 198 people have died from COVID-19 at ReNew Health nursing facilities.

The state of California has also allowed Shlomo Rechnitz, the state's largest nursing home owner, and his companies (with at least 81 facilities in California with more than 9,000 beds), to operate 18 nursing facilities (with more than 1700 beds) without a state operating license since 2014, when Rechnitz purchased the Country Villa chain through a bankruptcy auction. Then California Attorney General Kamala Harris filed an emergency motion in the bankruptcy court, opposing Rechnitz's purchase of the Country Villa facilities and calling him "a serial violator of rules within the skilled nursing industry."<sup>15</sup> *CalMatters* describes the state's licensing process as "opaque, confusing and rife with inconsistencies."<sup>16</sup>

Although the state has still not decided whether to give Rechnitz licenses to run the 18 nursing homes, a company attorney contends that the state has approved an "interim management agreement" for the company's operations of the Country Villa facilities. As *CalMatters* reports, while new owners apply for change of ownership of a facility, "the state allows new owners to operate homes using the license of the previous owner."<sup>17</sup> In addition, management companies can run the day-to-day operations of facilities.

In e-mails with *CalMatters*, the California Department of Public Health wrote that "the state considers individual change-of-ownership applications on a case-by-case basis, and reviews of applicants with larger portfolios or more complex organizational structures take longer."<sup>18</sup> The state's review considers "the applicant's history of compliance with state regulations."<sup>19</sup> However, applicants do not need state approval of a management company during the change-of-ownership process.

Although the Department told the State Auditor in 2018 that it was "developing regulations to clarify' the change-of-ownership application process," those efforts "have been 'placed on a temporary hold due to staff redirections associated with COVID response."<sup>20</sup>

Like many states, Vermont law authorizes state officials to review nursing home sales "and block purchases by buyers who are financially or otherwise unfit."<sup>21</sup> In the Fall of 2020, two New Yorkers contracted with Genesis HealthCare to manage five Genesis facilities in Vermont. As the state decides whether to give state licenses to the new buyers of the Genesis facilities, the buyers continue to manage the facilities.<sup>22</sup>

The Texas-based PC Hayes Management company has owned Twin City Gardens, a Minneapolis nursing facility, since October 2020. The *Star Tribune* reports that the Texas company "has been unable to renew the facility's license, which expired at the end of September, because it cannot show proof of liability insurance, according to [Minnesota Department of Health]."<sup>23</sup> Nevertheless, without a license, the Texas management company continues to operate the Minneapolis nursing facility.

According to the federal website *Care Compare*, as of October 27, 2021, the facility's record under PC Hayes Management is poor. Since January 2021, the facility has had five complaint surveys, which have cited 12 deficiencies, including three immediate jeopardy deficiencies and one actual harm deficiency (the highest two categories of noncompliance, which are assigned to

fewer than 5% of deficiencies nationwide). It has more residents than the state average who are administered antipsychotic drugs and it has been cited for abuse.

**5. Many owners are wealthy and make substantial campaign contributions to state and federal elected officials, which gets them access and a friendly reception to their policy goals and priorities.**

In a three-part series in 2017, “Profits over patients,” *The Advocate* describes “a long list of financial policies and laws in Louisiana that heavily favor nursing homes . . . a testament to the strength of the state’s nursing home lobby, long a leading source of campaign cash for the state’s politicians.”<sup>24</sup> While most states have been shifting Medicaid payments away from nursing homes and towards home and community-based services and spending, Louisiana is an outlier and moving in the opposite direction.

Part 2, titled “For Louisiana nursing homes, waves of campaign cash prompt favorable policy,”<sup>25</sup> documents the campaign contributions of the nursing home industry that lead to policies favoring the industry. *The Advocate* reports that then-Governor Bobby Jindal abandoned a plan to reform the state’s health care system (by moving to managed long-term care) when the nursing home industry sent an e-mail objection. The plan had been developed over a two-year period with the participation of nursing home representatives (who voiced their objections outside of the meetings) and, it was estimated, would save \$77 million annually in Louisiana’s long-term care costs.<sup>26</sup>

Part three – “How lawmakers, politicians voted to enrich Louisiana nursing homes, instead of saving money” – ties the first two parts of the series together, documenting the state laws that benefit the nursing home industry. State laws “require the state to increase biannually the daily rates they pay nursing homes – and make those rates nearly impossible to cut.”<sup>27</sup>

An Editorial in *The Advocate* describes why nursing homes are so favored in the state Capitol: “The industry contributes lavishly to political campaigns, virtually ensuring that when governors and legislators decide how lucrative Medicaid dollars get spent, nursing home operators stand at the head of the line.”<sup>28</sup>

A second example of industry influence on state policy is Florida. *Naples Daily News* reported in 2019 that Florida’s new Medicaid reimbursement, which was enacted in 2017 and will be fully implemented in 2023, will result in reduced reimbursement for some of the state’s best performing facilities, while providing higher reimbursement for some of the state’s most poorly performing facilities. The newspaper’s analysis determined that one in four facilities averaging four to five stars (five is the highest rating) will lose more than \$15 million combined under the new reimbursement system, while “On the flip side, 53 nursing homes that averaged two stars or fewer between 2013 and 2017 are projected to receive more money, an additional \$25 million combined.”<sup>29</sup>

Leaders of non-profit facilities opposed the legislation in 2017, urging legislators “not to put profits over people,” but, *Naples Daily News* reports, the for-profit nursing home industry enjoyed “Clout after contributions.”<sup>30</sup>

In addition to affecting the Medicaid reimbursement system, *Naples Daily News* reports the nursing home industry's success in "defeat[ing] measures intended to improve care and . . . pass[ing] legislation that financially benefits . . . its members."<sup>31</sup> Examples are the enactment of legislation banning lawsuits against passive investors and stopping "an 'unfriendly' bill that would have mandated a \$1 million state penalty against nursing homes where patients died from abuse or neglect."<sup>32</sup>

## **6. Owners become too big to regulate, too big to fail.**

When a corporation owns or manages a large portion of facilities in a state, the corporation becomes "Too big to fail," says Charlene Harrington, professor of nursing at the University of California, San Francisco.<sup>33</sup> If a state takes strong enforcement action against a large owner, it has to consider what will happen to the facilities and their residents. Since States do not have the resources to operate facilities directly, they look for another company to operate the facilities, temporarily or permanently, as quickly as possible.

When New Jersey-based Skyline HealthCare collapsed in 2018 and abandoned nursing facilities that it had taken over across the country in little more than a year, multiple states installed temporary managers or rushed to court to get receiverships so that staff and vendors would be paid and residents would have food and medications. States were eager to transfer ownership of the facilities to new owners, and in some instances, gave authority to companies they knew very little about.

An example occurred in Pennsylvania. The state identified as the new operator of the Skyline facility in Lancaster a new for-profit company that had been created on May 2, 2018, the same day that temporary management over the Pennsylvania Skyline facilities was installed. The effective date of the sale of the Lancaster facility was May 14. The new operator was not actually new, however. According to *Lancasteronline*, the new company had at least two of the same owners and shared the address of a company, Priority Healthcare Group, that had actually bought 14 facilities in the state in 2016.<sup>34</sup> Priority's record managing 11 former Golden Living facilities in Pennsylvania was poor; Priority cut staffing levels and reduced other spending at the facilities.<sup>35</sup> Yet this newly created company was entrusted with a former Skyline facility.

Through the HHS Office of Inspector General, the federal government has authority to exclude providers from the Medicare and Medicaid programs.<sup>36</sup> It uses this mechanism for individuals and sometimes, for small companies, like a small home health agency. It does not use this authority against large companies because of the difficulty of operating hundreds of facilities in multiple states. Instead, the Inspector General typically enters five-year Corporate Integrity Agreements<sup>37</sup> with large companies<sup>38</sup> and even with individual nursing facilities.<sup>39</sup> The companies are too big for the government to use its strongest enforcement tool.

## **7. Federal government does no oversight of ownership or management of facilities that it certifies for reimbursement.**

As long as a facility is licensed by the state and provides information to CMS about who has ownership interests in the facility, the federal government will certify the facility for Medicare and Medicaid. The federal government does not conduct an independent investigation or make

an independent determination about facilities' ownership, management, or financial capacity to operate nursing facilities.

## Conclusion

Who owns or operates a nursing facility largely determines whether the facility will provide good care to its residents. While individuals and companies can purchase facilities and buildings, they are not automatically entitled to state licenses and federal certification.

Multiple actions at the state and federal levels are needed to ensure that owners and managers are qualified and competent and have sufficient financial resources and management skills to operate nursing facilities. States must fully enforce existing laws and enact (and fully enforce) additional provisions to ensure that applicants for licenses disclose audited ownership and financial information about all related parties. The federal government needs to take an active role in overseeing who is eligible for the billions of dollars in federal reimbursement that nursing homes receive.

T. Edelman  
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<sup>1</sup> Joseph E. Casson, Julia McMillen, "Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring," *Journal of Health Law*, Vol. 36, No. 4 (Fall 2003), <http://briuswatch.org/wp-content/uploads/2016/06/Casson-J.-Protecting-Nursing-Home-Companies-2003.pdf>

<sup>2</sup> Eric Slater, "Entrepreneur Fades From View as Empire Collapses," *Los Angeles Times* (Oct. 23, 1997), <https://www.latimes.com/archives/la-xpm-1997-oct-23-mn-45876-story.html>

<sup>3</sup> The Associated Press, "Utah company facing bankruptcy; nursing home residents in limbo," *The Salt Lake Tribune* (May 13, 2015)

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<sup>5</sup> Champaign County Health Care Consumers (CCHCC), "Research on bidder for Champaign County Nursing Homes" (May 21, 2018), <https://www.healthcareconsumers.org/research-on-bidder-for-champaign-county-nursing-home/>; CCHCC, "Champaign County Nursing Home will not be owned by the companies approved by the County Board" (Oct. 29, 2018), <https://www.healthcareconsumers.org/champaign-county-nursing-home-will-not-be-owned-by-the-companies-approved-by-the-county-board/>; Jim Meadows, "Watchdog Group Says Applicant To Buy County Nursing Home Switched Companies," *willradio.tv.online* (NPR) (Oct. 29, 2018), <https://will.illinois.edu/news/story/watchdog-group-says-applicant-to-buy-county-nursing-home-switched-companies>

<sup>6</sup> Letter to Vice Chair Richard Sewell, Illinois Health Facilities and Services Review Board, from CCHCC re Project Number 18-026 Champaign County Nursing Home, Urbana (Oct. 22, 2018), <https://www2.illinois.gov/sites/hfsrb/Projects/ProjectDocuments/2018/18-026/2018-10-22%2018-036%20Response%20to%20SAR.pdf>

<sup>7</sup> CCHCC, "Research on bidder for Champaign County Nursing" (May 21, 2018), <https://www.healthcareconsumers.org/research-on-bidder-for-champaign-county-nursing-home/>

<sup>8</sup> As reported in CMA, "Privatization of County-Owned Nursing Facilities is Not Good for Residents, Staff, and States" (Special Report, Oct. 20, 2021), <https://medicareadvocacy.org/wp-content/uploads/2021/10/CMA-Report-SNF-Privatization-10-2022.pdf>, the facility quickly became a Special Focus Facility. As of October 5, 2021, the federal website *Care Compare* does not report staffing information for the facility and resident and staff vaccination rates.

<sup>9</sup> Eleanor Laise, "As the Pandemic Struck, a Private-Equity Firm Went on a Nursing –Home Buying Spree," *Barron's* (Aug. 6, 2020), [https://www.barrons.com/articles/as-the-pandemic-struck-a-private-equity-firm-went-on-a-nursing-home-buying-spree-51596723053?mod=hp\\_DAY\\_Theme\\_1\\_1](https://www.barrons.com/articles/as-the-pandemic-struck-a-private-equity-firm-went-on-a-nursing-home-buying-spree-51596723053?mod=hp_DAY_Theme_1_1)

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- <sup>11</sup> Daniel Simmons-Ritchie, “Still Failing the Frail; New Name, Same Nightmare,” *Patriot-News* (Nov. 15, 2018), <https://www.pennlive.com/news/2018/11/pennlive-special-investigation-still-failing-the-frail.html>
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- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
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<sup>37</sup> 42 U.S.C. §1320c-5(b)(3). *See* Office of Inspector General, Corporate Integrity Agreements, <https://oig.hhs.gov/compliance/corporate-integrity-agreements/>; Office of Inspector General, Quality of Care Corporate Integrity Agreements, <https://oig.hhs.gov/compliance/corporate-integrity-agreements/quality-of-care.asp>

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