

IS IT PRIVATE EQUITY? WE CAN'T SEE

Federal Database on Owners of Nursing Homes Is Incomplete and Out-of-Compliance with the Law

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Key Findings

In response to evidence that nursing homes owned by private equity firms often provide substandard care, Congress included language in the 2010 Affordable Care Act (ACA) requiring nursing facilities to furnish far more comprehensive information on who their owners are.

But the U.S. Department of Health and Human Services (HHS), the agency responsible for collecting such information, never issued regulations to implement that law. Queries of a nursing home ownership database that the agency does publish suggests that ownership disclosure is about as spotty today as it was when the law was passed in 2010.

In summary, we found that:

- The Portopiccolo Group – a company recently describing itself as a “private equity firm” and now as a “family office” – has since 2016 accumulated 136 nursing homes by our count. But the word “Portopiccolo” does not appear a single time in the federal nursing home ownership database.
- Private equity firm Assured Healthcare Partners lists nursing home chain Regency Integrated Health Services among its portfolio companies. The federal ownership database includes reports for 58 Regency facilities. Only five of those facilities provide any indication of Assured Healthcare Partners’ involvement in them.
- Of 13 private equity firms that we believe (often based on information from nongovernment sources) to have holdings in nursing homes, only seven appear in the federal ownership database.
- Descriptions of the relationships between each nursing home’s owners, which the ACA required HHS to collect and disclose, have not been made public.
- Despite pledging to implement the disclosure requirements in the ACA, the Biden administration does not appear to be moving forward with a regulation to do so.

Introduction

Evidence has mounted for a decade-and-a-half that nursing homes¹ controlled by private equity firms² tend to offer lesser care than their peers. Meanwhile, figuring out who actually owns a given nursing home can be extremely difficult. The public has a particular right to this information because about 85 percent of nursing home revenue comes from the taxpayer-funded programs Medicare and Medicaid.³

This disclosure problem appeared to be solved by language in the 2010 Affordable Care Act that 1) vastly increased the ownership information that nursing homes would need to submit to the government and 2) called for that data to be shared with the public.⁴ But, despite a deadline to do so within two years, the U.S. Department of Health and Human Services (HHS) never issued a regulation to formally implement those requirements.

During the first six months after Covid-19 landed on American shores, residents and staff in nursing homes accounted for nearly half of all U.S. Covid fatalities.⁵

Reports that the pandemic turned some nursing homes into virtual death traps prompted renewed calls for greater disclosure of ownership information. Presidential candidate Joe Biden promised to audit nursing homes' spending and ownership data.⁶ Subsequently, in February 2022, the Biden administration promised several actions to improve the safety and quality of nursing home care, including a pledge to implement Affordable Care Act requirements "regarding transparency in corporate ownership of nursing homes."⁷

This report looks at the current disclosure landscape and assesses how easily the public can discern cases where private equity firms own nursing homes.

¹ Different types of facilities are commonly referred to as nursing homes. A skilled nursing facility provides "skilled nursing care and/or skilled rehabilitation services and other related health services," <https://go.cms.gov/3zOM7eZ>. A nursing home provides "a room, meals, and help with activities of daily living and recreation," <https://go.cms.gov/3dta0S0>. This report refers to all such facilities as "nursing homes." The transparency language in Section 6101 of the Affordable Care Act imposes the same disclosure requirements on skilled nursing facilities and nursing homes. See, Patient Protection and Affordable Care Act, Public Law 111-148, Section 6101, <https://bit.ly/3vXCIGk>.

² Private equity generally refers to non-publicly traded investors that purchase businesses with an intention to restructure and grow businesses to improve their profitability and, hence, prospects for sale.

³ Debbie Cenziper, Joel Jacobs, Alice Crites and Will Englund, *Profit and pain: How California's largest nursing home chain amassed millions as scrutiny mounted*, WASHINGTON POST (Dec. 31, 2020), <https://wapo.st/3PiKUIY>.

⁴ Patient Protection and Affordable Care Act, Public Law 111-148, Section 6101, <https://bit.ly/3vXCIGk>.

⁵ Priya Chidambaram, *Key Questions About the Impact of Coronavirus on Long-Term Care Facilities Over Time*, KFF (Sept. 1, 2020), <https://bit.ly/3QC4VoB>.

⁶ *Biden-Harris Plan to Make Nursing Homes and Long-term Care Facilities Safe*, BIDEN-HARRIS (presidential campaign) (undated), <https://bit.ly/3dlvakl>.

⁷ *Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes*, THE WHITE HOUSE (Feb. 28, 2022), <https://bit.ly/3JQifYA>.

I. Why Private Equity Ownership of Nursing Homes Matters

About 70 percent of the nation's roughly 15,000 nursing homes operate as for-profit businesses, and about 11 percent are estimated to be owned by private equity firms.⁸ For-profit ownership, in general, poses risks because the incentives of owners may not align with the interests of residents. For-profit nursing homes are less than half as likely as nonprofit facilities to receive the government's highest rating.⁹

But several aspects of the private equity business model creates even deeper concerns than standard for-profit ownership:

- Private equity acquisitions are typically funded with borrowed money, creating debt that is subsequently transferred onto nursing homes' balance sheets. PE firms also sometimes sell off nursing homes' property, saddling providers with lease payments. Investors may also charge providers exorbitant management fees. These types of actions impose costs on nursing homes, potentially depriving them of the resources needed to properly care for residents.
- PE firms typically seek especially high rates of return and to exit their investments quickly. These goals incentivize them to take risky actions to boost short-term profits.
- Private investors, unlike publicly traded companies, are not usually required to file detailed financial reports with the Securities and Exchange Commission. The absence of such disclosure could prevent regulators from learning if facilities lack the financial wherewithal to provide adequate care.

A 2007 *New York Times* article reported on rising investments in nursing homes by private equity firms, which, in turn, were often cutting costs after making acquisitions. "At 60 percent of homes bought by large private equity groups from 2000 to 2006, managers have cut the number of clinical registered nurses, sometimes far below levels required by law," the *Times* reported.¹⁰

Determining who to hold accountable for negligence was also challenging. The article described a case in which a woman was unable to figure out which among 15 owners was

⁸ Charlene Harrington, Anne Montgomery, Terris King, David C. Grabowski and Michael Wasserman, *These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency in the Post COVID-19 Period*, HEALTH AFFAIRS (Feb. 11, 2021), <https://bit.ly/3w0LKgf>.

⁹ *Nursing Home Compare Five-Star Quality Rating System: Year Five Report*, ABT ASSOCIATES (June 15, 2014), <https://go.cms.gov/3dozQGG>.

¹⁰ Charles Duhigg, *At Many Homes, More Profit and Less Nursing*, THE NEW YORK TIMES (Sept. 23, 2007), <https://nyti.ms/3Qh38W5>.

ultimately responsible for the care of her mother, who had died as a result of a feces-infected bedsore.¹¹

Ten days after the *Times* article was published, Sen. Charles Grassley (R-Iowa) requested that the Government Accountability Office (GAO) investigate the scope and impact of private equity ownership of nursing homes.¹² The GAO later reported that the complexity of private investments in nursing homes showed a need for improving ownership data.¹³

A follow-up GAO study on the quality of care by nursing homes owned by private investors yielded inconclusive results.¹⁴ (Note: the GAO report focused “private investment,” which it defined as a broader category encompassing private equity.) But several recent research papers have associated private equity ownership with worse care:

- A 2021 National Bureau of Economic Research working paper found that “PE ownership increases the short-term mortality of Medicare patients by 10 percent,” while it is associated with 11 percent higher taxpayer spending. Remarkably, the study concluded that the use of antipsychotic drugs in PE-owned facilities was 50 percent higher than in non-PE-owned facilities.¹⁵
- A 2021 *JAMA Health Forum* article found that residents in private equity-owned facilities were 11 percent more likely to have an acute coronary syndrome emergency room visit than those in non-private equity-owned facilities.¹⁶
- A 2020 report by Americans for Financial Reform found that residents of private equity-owned nursing homes in New Jersey contracted Covid at a higher rate than those living in nonprofit, public, or non-PE-owned for-profit nursing facilities.¹⁷

¹¹ *Id.*

¹² *Grassley Seeks Review Of The Effect Of Private Equity Ownership On Nursing Home Care*, Web site of SEN. CHUCK GRASSLEY (Oct. 3, 2007), <https://bit.ly/3AiIpQv>.

¹³ *Nursing Homes: Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data*, GOVERNMENT ACCOUNTABILITY OFFICE (September 2010), <https://bit.ly/3QA94sZ>.

¹⁴ *Nursing Homes: Private Investment Homes Sometimes Differed from Others in Deficiencies, Staffing, and Financial Performance*, GOVERNMENT ACCOUNTABILITY OFFICE (July 2011), <https://bit.ly/3Qxp0wa>.

¹⁵ Sabrina T. Howell, Constantine Yannelis and Abhinav Gupta, *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes*, NATIONAL BUREAU OF ECONOMIC RESEARCH (working paper) (February 2021), <https://bit.ly/3QjX9jw>.

¹⁶ Robert Tyler Braun, Hye-Young Jung and Lawrence P. Casalino, *Association of Private Equity Investment in U.S. Nursing Homes with the Quality and Cost of Care for Long-Stay Residents*, JAMA HEALTH FORUM (November 19, 2021), <https://bit.ly/3IL3jqq> and Amy Stulick, *Private Equity Ownership Linked to Higher Medicare Costs, Increased Hospitalization*, SKILLED NURSING NEWS (Nov. 21, 2021), <https://bit.ly/3IPQD1e>.

¹⁷ *The Deadly Combination of Private Equity and Nursing Homes During A Pandemic: New Jersey Case Study of Coronavirus at Private Equity Nursing Homes*, AMERICANS FOR FINANCIAL REFORM EDUCATION FUND (August 2020), <https://bit.ly/3do9p3Z>.

II. Events at Portopiccino Group Nursing Homes Illustrate The Need for Comprehensive Ownership Disclosure

The Portopiccino Group was created in 2016.¹⁸ The firm has since acquired at least 136 nursing facilities, according to our analysis. Many were purchased during the pandemic.¹⁹

Until late 2020, the Portopiccino Group described itself as a “family owned private equity and investment management firm.”²⁰ Its web site expressed a vision of “Aggressive Investing Accelerating Performance,”²¹ to be achieved by “acquiring distressed assets and other value add projects and swiftly turning them profitable.”²² The firm’s web site no longer references “private equity” or swiftly turning businesses profitable. It now promises a vision of “Building Lasting Companies.”²³

Portopiccino’s nursing homes have experienced extraordinary numbers of Covid cases. At a 160-bed facility in Salisbury, N.C., 168 residents and staff contracted Covid in the first six months of the pandemic, resulting in 18 deaths.²⁴ At a Harrisonburg, Va., facility, 78 out of 81 residents tested positive in April 2020, shortly after the facility held a dance party while the pandemic was raging.²⁵ By August 2020, 23 residents at that facility had died of Covid.²⁶ A facility in Mayfield, Ky., suffered at least 107 Covid cases and 23 deaths.²⁷

Abundant evidence suggests that negligence abetted the spread of the virus. A June 2020 report by the North Carolina Department of Health and Human Services said the Salisbury facility posed “immediate jeopardy to resident health and safety” due to “a system failure (that) had a high likelihood of affecting all residents by placing them at an increased risk of developing and transmitting Covid-19.”²⁸ The report accused managers of the Salisbury nursing home of failing to heed requirements to quarantine new and readmitted residents, and of even allowing a resident to rejoin the facility’s general

¹⁸ Web page of the Portopiccino Group (viewed on Aug. 11, 2022), <https://bit.ly/3peSHGW>.

¹⁹ Eleanor Laise, *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic*, BARRON’S (Aug. 6, 2020), <https://bit.ly/3dtnfSI>.

²⁰ *Who We Are*, Archived web page of the Portopiccino Group (Nov. 26, 2020), <https://bit.ly/3Ka4z6F>.

²¹ *Our Vision*, Archived web page of the Portopiccino Group (Sept. 22, 2020), <https://bit.ly/3ADmf7l>.

²² *Who We Are*, Archived web page of the Portopiccino Group (Nov. 26, 2020), <https://bit.ly/3Ka4z6F>.

²³ *Our Vision*, Web page of the Portopiccino Group (viewed on Aug. 11, 2022), <https://bit.ly/3QyKKb6>.

²⁴ Eleanor Laise, *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic*, BARRON’S (Aug. 6, 2020), <https://bit.ly/3dtnfSI>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Michael Gordon, *Nursing home put residents in ‘immediate jeopardy’ of COVID-19, state says. 18 died*, CHARLOTTE OBSERVER (June 26, 2020).

population after test results showed she was Covid-positive. These lapses occurred despite the facility having access to a vacant hall, the report said.²⁹

An employee at the nursing home whose job title was “infection control preventionist” said that the facility did no quarantining of residents and that she had “no input in room placement decisions.” The facility’s health directory offered a similar account.³⁰ Further, according to an employee’s statement in an affidavit, Covid-positive staff were told to return to work if they did not have symptoms.³¹ In May 2022, in response to a “failure to meet basic health and safety requirements,” the federal government took the rare step of terminating the Salisbury nursing home’s eligibility to receive Medicare payments.³²

Employees at a Portopiccolo facility in Maryland also reported being asked to work while Covid-positive. The Kent County, Md., health officer confirmed one such case.³³ The facility, additionally, had a nonfunctioning water heater from July to September 2020. “Ample hot water is the core of any infection prevention program,” the health officer said, explaining that more than a dozen residents of the facility had already died of Covid by the time the water heater broke. The state fined the nursing home \$730,000 for failing to fix or repair the water heater and for placing residents in “immediate jeopardy.”³⁴

In a 2019 mortgage loan contract obtained by the *Washington Post*, Portopiccolo expressed plans to save nearly \$800,000 at three North Carolina facilities by lowering costs for equipment, transportation and employee benefits. Those strategies had enabled it to save more than \$50 million at 37 facilities, the contract said. Consistent with that account, employees at Maryland facilities said Portopiccolo slashed insurance and vacation benefits after taking ownership.³⁵

Just three of 75 nursing facilities that listed Portopiccolo CEO Simcha Hyman as their owner provided nurse staffing levels above the national average, according to a 2020 *Barron’s* report. Meanwhile, 43 percent of those facilities had the lowest rating on the federal government’s five-star scale, compared to only 17 percent of facilities nationally.³⁶

²⁹ *Id.*

³⁰ *Id.*

³¹ Eleanor Laise, *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic*, BARRON’S (Aug. 6, 2020), <https://bit.ly/3dtnfSI>.

³² *Notice to Public of the Citadel Salisbury Involuntary Termination*, CENTERS FOR MEDICARE & MEDICAID SERVICES (May 4, 2022), <https://adobe.ly/3OzLzAr>.

³³ Rebecca Tan and Rachel Chason, *An investment firm snapped up nursing homes during the pandemic. Employees say care suffered*, WASHINGTON POST (Dec. 21, 2020), <https://wapo.st/3dciRaj>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Eleanor Laise, *The Deadly Combination of Private Equity and Nursing Homes During a Pandemic*, BARRON’S (Aug. 6, 2020), <https://bit.ly/3dtnfSI>.

III. Private Equity Firms Often Do Not Appear in Ownership Reports for Providers in Which They Are Invested

The previous section provides an indication of why it is in the interests of consumers and regulators to be able to determine the owners of nursing homes. Here, we look at disclosure rules and how easily ownership information can be ascertained, in practice.

The Affordable Care Act called for a nursing home to disclose any person or entity who exerts control over it, leases property to it, offers administrative services to it, or performs any of several other functions. It also required facilities to provide the organizational structure of all these entities, as well as a description of the relationships between them.³⁷

The law required HHS to complete a regulation to implement the transparency language within two years of its passage. HHS did issue a proposed regulation in May 2011,³⁸ but never finalized it. The agency listed the rulemaking effort as “withdrawn” in 2014.³⁹

Although HHS never completed a regulation dedicated to the ACA’s transparency language, other disclosure regulations predated the ACA and remain in effect. These rules require nursing homes to list entities that hold direct or indirect ownership interests of 5 percent or more.⁴⁰ (Indirect ownership refers to an entity holding a stake in another owner.) This data must be updated when nursing homes experience a change in ownership or undergo recertification, which is required every five years.⁴¹

HHS has enhanced disclosure guidelines for nursing homes and other health Medicare providers in ways that overlap requirements laid out in the Affordable Care Act disclosure language.⁴² Instructions for the form on which Medicare providers furnish ownership data have been updated to require them to list investment firms, holding companies, partnerships and banks (including those with mortgage interests) that have

³⁷ Patient Protection and Affordable Care Act, Public Law 111-148, Section 6101 (March 23, 2010), <https://bit.ly/3vXCIGk>.

³⁸ *Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Disclosures of Ownership and Additional Disclosable Parties Information*, Proposed Rule, FEDERAL REGISTER (May 6, 2011), <https://bit.ly/3vWva1a>.

³⁹ *Skilled Nursing Facility Required Disclosure of Ownership*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET (Fall 2014), <https://bit.ly/3Qbrssx>.

⁴⁰ See, *Part 483 - Requirements For States And Long Term Care Facilities*, CODE OF FEDERAL REGULATIONS, <https://bit.ly/3OnyhY3> and §420.206 *Disclosure of persons having ownership, financial, or control interest*, CODE OF FEDERAL REGULATIONS, <https://bit.ly/3Ad5oYS>.

⁴¹ Michael S. Adelberg, Aaron T. Dobosenski and Erin M. Prendergast, *The Need for Data Transparency in Skilled Nursing Facilities*, FAEGRE DRINKER (February 2022), <https://bit.ly/3pHkAHX>.

⁴² *Medicare Enrollment Application, Institutional Providers, CMS-855A*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (viewed on Aug. 11, 2022), <https://go.cms.gov/3peTFTA>. Searches on the Wayback Machine indicate that the form was modified to include these and other expanded requirements sometime between June 2011 and July 2012. See, archived forms available on June 9, 2011 (<https://bit.ly/3AnwQ6r>) and July 10, 2012 (<https://bit.ly/3Pps0d3>).

ownership stakes above certain thresholds. Medicare providers also must list entities whose interests in their property (*i.e.*, real estate) is equal to 5 percent or more of the facility's overall value.⁴³ Roughly consistent with the ACA's requirements, the revised form also requires each provider to disclose "the organizational structures of all of its owners," and those owners' "relationships with the provider and with each other."⁴⁴

Since about 2012, HHS has posted and maintained a database containing the ownership information that nursing homes report to it.⁴⁵ We tested that database by studying the extent to which PE firms that we believe to have investments in nursing homes appear in the database.

Queries of Ownership Reports by Nursing Homes Tied to the Portopiccolo Group Fails To Turn Up the Name "Portopiccolo"

We identified 136 nursing homes in the ownership database that appear to be connected to the Portopiccolo Group.⁴⁶ Their ownership disclosure showed:

- At least one name among "Simcha Hyman," "Naftali Zanziper" or "Naftali Zanziper Family Trust" is listed as an owner of 113 facilities. Hyman and Zanziper are the CEO and president, respectively, of the Portopiccolo Group.⁴⁷
- Portopiccolo COO Batya Gorelick is listed as an officer of 95 providers.⁴⁸

⁴³ *Id.* Note: The form discussed here is called the Medicare Enrollment Application. A spokesperson for the Centers for Medicare & Medicaid Services confirmed to Public Citizen that nursing homes are required to answer the same questions regarding ownership when they submit data relating to change of ownership or when they undergo recertifications as when they initially apply for certification.

⁴⁴ *Id.*

⁴⁵ See, nursing home ownership database released by the Centers for Medicare & Medicaid Services, last updated July 1, 2022 (downloaded on Aug. 16, 2022), <https://bit.ly/3QDIi7e> and *Implementation of Affordable Care Act Provisions To Improve Nursing Home Transparency, Care Quality, and Abuse Prevention*, KAISER COMMISSION ON MEDICAID AND THE UNINSURED (January 2013), <https://bit.ly/3AiLsnz>.

⁴⁶ The Portopiccolo Group does not list its nursing home holdings on its web site. To identify nursing homes Portopiccolo appears to own, we used three steps: 1. We assumed nursing homes listing Portopiccolo principals Simcha Hyman and/or Naftali Zanziper are owned by Portopiccolo (113 nursing homes) 2. We counted nursing homes within Portopiccolo subsidiary Accordius Health (see: <https://bit.ly/3Qxvk7k>) for which no ownership information was listed in the database as belonging to Portopiccolo. (19 nursing homes) 3. We searched a separate HHS database for entities reporting the same address as the one listed by the Portopiccolo Group. We assumed that facilities listing those entities as owners are connected to Portopiccolo. (4 nursing homes). (The separate database, which HHS made public in April 2022, catalogs changes of ownership of nursing homes. This database suffers from many of the same shortcomings as the primary ownership database. But it does furnish some categories of information, such as owners' addresses, that the primary ownership database does not.)

⁴⁷ Web site of the Portopiccolo Group (viewed on Aug. 11, 2022), <https://bit.ly/3zRo4w4>.

⁴⁸ *Id.* and Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDIi7e>.

- No ownership information is provided for 18 Portopiccolo facilities.⁴⁹
- The name “Portopiccolo” does not appear in the ownership database.⁵⁰

In fairness, a researcher who was already aware of the Portopiccolo Group’s role in the nursing home industry could easily identify many nursing homes to which it has ties because the name of at least one of Portopiccolo’s leaders appears in most of the nursing homes’ ownership reports. But, as shown by the following example, not all cases are as easy. (Generic identifications are used here for simplicity.)

- Nursing facility No. 1, located in Palm Bay, Fla., is listed in the federal database as owned 50 percent each by Simcha Hyman and Naftali Zanziper. No additional information on ownership of that facility is provided.⁵¹
- Nursing facility No. 2, located in St. Petersburg, Fla., reports it is directly owned 100 percent by St Petersburg FL Holdco LLC and it lists no indirect owners.⁵²
- Nursing facility No. 3, located in Orange Park, Fla., reports it is directly owned 100 percent by Orange Park FL Holdco LLL. Several indirect owners are listed, but they do not include principals of the Portopiccolo Group.⁵³

A user of the database would conclude that these three nursing homes are owned by three unrelated entities. But if one looks beyond the HHS database, connections emerge.

- A web search reveals that Hyman and Zanziper (the reported owners of nursing home No. 1) are, as mentioned above, the leaders of the Portopiccolo Group.⁵⁴
- State corporate filings indicate that Hyman is the “authorized person” associated with St Petersburg FL Holdco LLC (the reported owner of facility No. 2).⁵⁵
- State corporate filings indicate that Hyman is “authorized person” associated with the Orange Park FL Holdco LLC (the reported owner of facility No. 3).⁵⁶

Thus, Hyman of these three nursing homes, but this connection cannot be detected if one relies solely on the HHS database.

⁴⁹ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Web site of the Portopiccolo Group (viewed on Aug. 11, 2022), <https://bit.ly/3zRo4w4>.

⁵⁵ St. Petersburg FL Holdco LLC (filed on July 19, 2022), SUNBIZ.ORG, <https://bit.ly/3ACAYzC>.

⁵⁶ Orange Park FL Holdco LLC (filed on April 27, 2022), SUNBIZ.ORG, <https://bit.ly/3c7H9IX>.

Most Ownership Reports of Regency Integrated Health Services Do Not Name or Refer to a Private Equity Firm that Lists the Chain in Its Portfolio

PE firm Assured Healthcare Partners lists numerous nursing home investments in its portfolio. They include Regency Integrated Health Services, a nursing home chain in Texas.⁵⁷ We identified 58 Regency providers in the ownership database,⁵⁸ and studied whether it reveals ties between Regency facilities and Assured Healthcare Partners.

- More than 30 Regency providers name a medical district, hospital authority or hospital as an owner. None of them list Assured Healthcare Partners.⁵⁹
- Several Regency providers essentially name the chain as their direct owner. These reported owners include several variants of “Regency Opco.”⁶⁰
- Assured Healthcare Partners does not appear in the database under its proper name. However, five Regency facilities list variants of AHP Fund among their indirect owners. AHP, presumably, stands for Assured Healthcare Partners.⁶¹
- No ownership information is listed for three Regency providers.⁶²

Many PE Firms with Investments in Nursing Homes Are Not Reported as Owners

We do not suspect the incomplete nature of ownership reports relating to Portopiccolo and Assured Healthcare is unusual. Because the spottiness of their disclosure was consistent with other researchers’ findings on nursing home ownership data quality, we did not find it necessary to conduct a comprehensive analysis of ownership reports by other nursing homes believed to be PE-owned. We think the Portopiccolo and Regency examples suffice to demonstrate that ownership disclosure is inadequate and out-of-compliance with the law.

But, to cover our bases, we conducted a simple, binary test to see if 13 PE firms believed to hold nursing home investments show up at all in the ownership database.⁶³ These PE firms – which include the two discussed above – were listed as nursing home owners in a 2021 report by the Private Equity Stakeholder Project, which has conducted extensive work on this topic. Just seven of these PE firms appear in the database. [See Table]

⁵⁷ *Portfolio*, ASSURED HEALTHCARE PARTNERS (viewed on Aug. 11, 2022), <https://bit.ly/3dih9nT>.

⁵⁸ *Locations*, REGENCY INTEGRATED HEALTH CARE SERVICES (viewed on Aug. 11, 2022), <https://bit.ly/3vYaK7N> and Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁵⁹ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Eileen O’Grady, *Pulling Back the Veil on Today’s Private Equity Ownership of Nursing Homes*, PRIVATE EQUITY STAKEHOLDER PROJECT (July 2021), <https://bit.ly/3AjiHHu>.

PE firm name	Description	PE firm appears in ownership database? ⁶⁴
Assured Healthcare Partners	Assured lists several nursing home investments in its portfolio. While entities including the words AHP Fund appear a handful of times in the federal ownership database, Assured Healthcare Partners does not appear.	No
Bay Bridge Capital Partners	Bay Bridge appears in the ownership database in association with 55 nursing homes.	Yes
Centre Partners	Several investment entities with names beginning "Centre" are listed for facilities that are part of Covenant Care, which Centre Partners lists in its portfolio. ⁶⁵	Yes
Fillmore Capital Partners	Fillmore appears in the ownership database in association with one facility.	Yes
Formation Capital	Formation's web site describes it as "a leading investor [...] across skilled nursing, senior housing, behavioral health, hospice and related ancillary services." ⁶⁶ Its name does not appear in the ownership database.	No
GI Partners	GI Partners, a California Superior Court judge wrote in an opinion, is an owner of nursing home company Plum Healthcare. ⁶⁷ It is not listed in the database.	No
McCarthy Capital	McCarthy Capital lists Life Care Services in its portfolio. ⁶⁸ The ownership database lists McCarthy as an owner of 10 LCS facilities, a small fraction of LCS's sites.	Yes
Pinta Capital Partners / ReGen Healthcare	Genesis Healthcare says it operates more than 250 centers in the U.S. In 2021, the company was purchased by ReGen, which was reportedly affiliated with Pinta Capital. ⁶⁹ Neither ReGen nor Pinta Capital Partners appears in the database.	No
Portopiccolo Group	We found 136 facilities in the ownership database in which Portopiccolo appears to be invested. Portopiccolo does not appear in the database.	No
Redwood Capital	Redwood Capital reportedly has ownership stakes in LCS and Erickson Living. ⁷⁰ Its name appears in the listings of several LCS facilities and one Erickson facility.	Yes
Safanad	Safanad has acquired many nursing homes, often along with "strategic industry partner" Formation Capital. ⁷¹ It does not appear in the database.	No
Stockwell Capital	Stockwell Fund II is reported in the database as an owner of 26 facilities.	Yes
Tryko Partners	Entities including the name Tryko are listed as owners of 39 nursing homes.	Yes

⁶⁴ We counted a PE firm as disclosed if the main part of its name was listed. We did not count Assured Healthcare Partners appearing as AHP Fund because a reader would not readily know what AHP stood for.

⁶⁵ *Our Portfolio*, CENTER PARTNERS (viewed on Aug. 16, 2022), <https://bit.ly/3c1I1Z5>.

⁶⁶ *About*, FORMATION CAPITAL (viewed on Aug. 16, 2022), <https://bit.ly/3QSssBX>.

⁶⁷ *Dean Higgs v. Plum Healthcare Group LLC, et al., Proposed Statement of Decision*, Superior Court of California (April 9, 2021), <https://bit.ly/3C64Lln>.

⁶⁸ *Portfolio*, MCCARTHY CAPITAL (viewed on Aug. 16, 2022), <https://bit.ly/3du5EKd>.

⁶⁹ Web site of Genesis Healthcare (viewed on Aug. 16, 2022), <https://www.geneshcc.com/> and Alex Spanko, *Nursing Home Giant Genesis to Restructure, Voluntarily Delist from NYSE as ReGen Steps in with \$50M Stake*, SKILLED NURSING NEWS (March 3, 2021), <https://bit.ly/3Ap0msj>.

⁷⁰ Tim Mullaney, *Senior Living Giant LCS Recapitalizes With Redwood, McCarthy, Employee Owners*, SENIOR HOUSING NEWS (Jan. 3, 2022), <https://bit.ly/3K57ddZ> and

⁷¹ See, for example, *Safanad increases investment in HC-One following its acquisition of Bupa care homes*, SAFANAD (Aug. 25, 2017), <https://bit.ly/3Qwlq5O>, *Safanad and Formation Capital Acquire Assisted Living Facilities From Agape Senior*, SAFANAD (March 20, 2016), <https://prn.to/3OCK98I> and Cassandra Dowell, *Formation Capital, Safanad Acquire 14 SNFs for \$150 Million*, SENIOR HOUSING NEWS (July 22, 2014), <https://bit.ly/3QQpnCn>.

The bar set for this test was low, as it merely looked to see if the name of a PE owner appeared at least once in the database. Nonetheless, our search illustrated that current disclosures often fail to clear that low bar. Meanwhile, ownership reports relating to several PE firms whose names do appear in the database appear to be grossly incomplete.

To the extent that nursing homes have submitted documents describing the relationships between their various owners, HHS has not shared that information with the public.⁷²

Our findings were similar to those the GAO reached in its 2010 report on private investment in nursing homes. The GAO's researchers did not find the names of – or names “readily identifiable” with – four of the six private investment firms that they examined.⁷³

IV. The Frequent Absence of PE Names From Ownership Reports Likely Violates Existing Disclosure Rules

In its 2010 report, the GAO suggested that it was possible for some ownership structures to create enough distance between a nursing home and a private investment firm that the nursing home would not have been required to list the private investment firm in its ownership reports. The GAO put forth an example of a private investment firm creating a “special purpose entity” to serve as the legal owner of the nursing home, while the PI firm would hold no ownership interest in the special purpose entity.⁷⁴

But, as discussed above, the rules have changed. Even though it has not issued regulations to implement the disclosure section of the ACA, the federal government has broadened its guidelines for submitting ownership reports since the GAO study was conducted. We believe that the current guidelines would require the names of the investment firms we looked at most closely in this report – the Portopiccolo Group and Assured Healthcare Partners – to appear in ownership reports for nursing homes to which they have ties.

Portopiccolo Group

The simplest reason we believe that the Portopiccolo Group should be disclosed on ownership reports is that Portopiccolo has called itself an owner. As recently as late-2020, Portopiccolo described its strategy as taking “an active approach to ownership.”⁷⁵ Further, the Portopiccolo Group suggested that it was an owner of land relating to nursing homes. Its web site described its work as, “Maintaining an ever-growing portfolio of properties leased to skilled nursing facilities [...]”⁷⁶ If the Portopiccolo Group owns property valued

⁷² E-mail from CMS spokesperson to author (Aug. 5, 2022).

⁷³ *Nursing Homes: Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data*, GOVERNMENT ACCOUNTABILITY OFFICE (September 2010), <https://bit.ly/3QA94sZ>.

⁷⁴ *Id.*

⁷⁵ Archived web page of the Portopiccolo Group (Nov. 26, 2020), <https://bit.ly/3PmJoiu>.

⁷⁶ *Id.*

at 5 percent or more of a nursing home's value, then the nursing home would be obliged under current guidelines to report it as an owner.⁷⁷

For 113 nursing homes, Portopiccolo's name would likely warrant listing simply because the facilities name the company's CEO and/or president as an owner.⁷⁸ If Portopiccolo's executives have an ownership stake, one would assume their firm also does.

Of course, a relationship that looks like "ownership" might not satisfy a legal definition. But the disclosure guidelines also capture cases where an entity exercises any form of control even if it does not legally "own" a nursing home.

Instructions for the form on which providers describe their ownership call for disclosure of, "Any organization that exercises operational or managerial control over the provider." The instructions further explain, "The organization need not have an ownership interest in the provider in order to qualify as a managing organization."⁷⁹

Portopiccolo appears by its own account to exercise operational control of companies in which it invests. "We maintain a hands-on investment approach, helping companies navigate their strategic challenges through dedicated counsel and ongoing support," the firm's web site says. "We hire and empower industry leaders to manage projects. We provide critical resources to overhaul and improve operations, and we invest in facilities, activities and professional teams from the bottom up."⁸⁰

Phrases such as a "hands-on investment approach," "dedicated counsel," "hire and empower," and acting to "provide critical resources to overhaul and improve operations" appear indicative of "operational or managerial control." Meanwhile, 95 nursing homes list the Portopiccolo Group's COO as an officer of the nursing homes,⁸¹ which also suggests a managerial function.

We submitted an e-mail to the Portopiccolo Group's general information mailbox to ask why its name is not listed in ownership reports for nursing homes in which it appears to be invested. We also left voicemail messages with the firm's president and chief operating officer asking similar questions. We did not receive a response.

⁷⁷ *Medicare Enrollment Application, Institutional Providers, CMS-855A*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (viewed on Aug. 11, 2022), <https://go.cms.gov/3peTFTA>.

⁷⁸ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDIj7e>

⁷⁹ *Medicare Enrollment Application, Institutional Providers, CMS-855A*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (viewed on Aug. 11, 2022), <https://go.cms.gov/3peTFTA>.

⁸⁰ Web site of the Portopiccolo Group (viewed on Aug. 11, 2022), <https://bit.ly/3QyKKb6>.

⁸¹ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDIj7e>.

Assured Healthcare Partners

Simply because Assured Healthcare Partners lists Regency Integrated Health Services in its portfolio, we believe all Regency providers likely are obliged to name it as an owner.⁸²

Additional information supports this conclusion. Assured Healthcare Partners describes Eagle Arc Partners as “a joint venture partner to AHP in the post-acute and long-term care sector, including investments in Regency Integrated Health Services.”⁸³ If Assured Healthcare is involved in a joint venture invested in Regency, as it indicates it is, it should be listed as an owner of Regency facilities on the basis of that connection. The joint venture, Eagle Arc, also presumably should be named as an owner. It is not.⁸⁴

Other related entities may also warrant being identified as owners. Assured Healthcare Partners lists Brian Reynolds, managing director of Capital Senior Ventures JV, as a “strategic partner.” Reynolds is named in the federal ownership database as either an “officer” or person with “operational/managerial control” of seven Regency facilities.⁸⁵ Capital Senior Ventures describes itself as providing “equity capital for the acquisition of skilled nursing and assisted living facilities.”⁸⁶ If Reynolds’ work for Capital Senior Ventures relates to his ties to Regency facilities, Capital Senior Ventures should be listed among those facilities’ owners. Its name does not appear in the ownership database.⁸⁷

Entities for which Assured Healthcare Partners is a subsidiary also should be named as owners. In a 2021 annual report filed with the SEC, Assured Guaranty listed Assured Healthcare Partners as a subsidiary.⁸⁸ Assured Guaranty does not appear in the ownership database.⁸⁹ Another Assured Guaranty subsidiary, Assured Investment Management, describes Assured Healthcare Partners as “operating within” its platform.⁹⁰ This suggests that Assured Investment Management also should be listed as an owner whenever Assured Healthcare Partners must be. But its name does not appear in the database.⁹¹

We asked a spokeswoman for Assured Healthcare Partners why the firm’s name does not appear in the ownership database. We did not receive a response.

⁸² *Portfolio*, ASSURED HEALTHCARE PARTNERS (viewed on Aug. 11, 2022), <https://bit.ly/3dih9nT>.

⁸³ *Elliott Mandelbaum* (bio), ASSURED HEALTHCARE PARTNERS (viewed on Aug. 17, 2022), <https://bit.ly/3K0ajj8>

⁸⁴ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁸⁵ *Brian Reynolds*, CAPITAL FUNDING GROUP (viewed on Aug. 17, 2022, <https://bit.ly/3QRy5jw> and Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁸⁶ *Capital Senior Ventures LLC*, LINKEDIN (viewed on Aug. 17, 2022), <https://bit.ly/3Pq0QTz>.

⁸⁷ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

⁸⁸ *Form 10-K*, ASSURED GUARANTY (year ended Dec. 31, 2021), <https://bit.ly/3QRwSbY>.

⁸⁹ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>

⁹⁰ *Form 10-K*, ASSURED GUARANTY (year ended Dec. 31, 2021), <https://bit.ly/3QRwSbY> and *Our Businesses*, ASSURED INVESTMENT MANAGEMENT (viewed on Aug. 17, 2022), <https://bit.ly/3wdd0Zb>

⁹¹ Public Citizen analysis of federal nursing home ownership database, <https://bit.ly/3QDji7e>.

V. Many Observers Have Concluded that Ownership Information Collected by the Government Is Incomplete

Our finding that the currently available disclosures do not comprehensively describe nursing homes' owners is consistent with many others' conclusions.

- The 2010 GAO report on private investment ownership concluded that the federal database that collects nursing home ownership data was lacking in important details. The data, for example, did not provide insight into the “hierarchy or relationships among the numerous organizational owners listed for [private investment]-owned nursing homes” and “PI ownership was often not readily apparent in the data.”⁹²
- The HHS inspector general's office in 2016 offered critical testimony on the Medicare system that collects ownership information, which is known as the Provider Enrollment, Chain, and Ownership System (PECOS). “We found that for nearly all providers in our review, owner names in PECOS did not match those on record with the State Medicaid agencies,” an assistant IG testified. “This means that Medicare and Medicaid information for the same providers does not match”⁹³
- The Medicare Payment Advisory Commission (MedPAC), an agency that advises Congress on the Medicare program, issued a report on the effects of private equity in healthcare in 2021. MedPAC wrote that its researchers needed to rely on nongovernment sources to determine private equity owners of nursing homes. “When we were able to identify PE ownership, it was because we had information from public data sources such as research reports or websites that identified PE relationships,” the MedPAC report said. In the government database, itself, MedPAC wrote, “Typically, the names of PE-backed portfolio companies were listed as owners rather than the PE funds themselves.”⁹⁴
- Researchers opining in *Health Affairs* in 2021 on nursing home disclosure issues reached similar conclusions. The Centers for Medicare & Medicaid Services “has not established a mechanism to audit the accuracy and completeness of the PECOS ownership reporting system,” they wrote, “and has not enforced its requirements

⁹² *Nursing Homes: Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data*, GOVERNMENT ACCOUNTABILITY OFFICE (September 2010), <https://bit.ly/3QA94sZ>.

⁹³ Testimony of Ann Maxwell, Assistant Inspector General of the U.S Department of Health and Human Services, Office of Inspector General before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations (May 24, 2016), <https://bit.ly/3PpNHtK>.

⁹⁴ *Congressional Request: Private Equity and Medicare*, chapter within *Report to the Congress Medicare and the Health Care Delivery System*, MEDPAC (June 2021), <https://bit.ly/3Phw4Mx>.

to fully and accurately report the names of all the parent companies of the licensee and their related owners and corporations.”⁹⁵

- Shortcomings in ownership data figured prominently in a 600-page report on nursing home quality published by the National Academies of Sciences in 2022. “CMS makes some ownership information available, but these data are incomplete; often difficult to use (by researchers, consumers, and others); and do not allow for determining the corporate structure, finances, and operations of individual nursing homes or assessing quality across facilities owned or operated by the same entity,” the report’s authors wrote.⁹⁶
- The federal government does not vouch for the accuracy of the ownership data it publishes. “CMS cannot verify whether providers, in general, are accurately reporting ‘ultimate parents’ or any other owners in the ownership chain,” HHS analysts wrote in April 2022.⁹⁷

Members of Congress have once again asked the Government Accountability Office to assess the quality of disclosure of nursing home ownership. The GAO has said that it expects to issue a report on the topic in fall 2022.⁹⁸

VI. Why Comprehensive Ownership Data Matters

The significant – perhaps surprising – amount of attention given to gaps in data over nursing home ownership suggests that it is a topic of importance. Among the benefits from complete and accurate data:

1. Comprehensive ownership data would include a listing of each nursing home’s *vendors* that are owned by the same entities as the nursing home. Payments to these “related parties” allow nursing home owners to engage in lucrative and potentially unlawful self-dealing. But such behaviors are likely to go undetected if reporting rules are not followed.

“Although nursing homes are required to report any Medicare and Medicaid payments to related-party organizations on their Medicare cost reports, this

⁹⁵ Charlene Harrington, Anne Montgomery, Terris King, David C. Grabowski and Michael Wasserman, *These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency in the Post COVID-19 Period*, HEALTH AFFAIRS (Feb. 11, 2021), <https://bit.ly/3w0LKgf>.

⁹⁶ *The National Imperative to Improve Nursing Home Quality Honoring Our Commitment to Residents, Families, and Staff*, NATIONAL ACADEMIES OF SCIENCE, ENGINEERING AND MEDICINE (2022) <https://bit.ly/3p9ZYHQ>.

⁹⁷ W. Pete Welch, Joel Ruhter, Arielle Bosworth, Nancy De Lew, and Benjamin D. Sommers, *Change of Ownership of Hospital and Skilled Nursing Facilities: An Analysis of Newly-Released CMS Data*, OFFICE OF HEALTH POLICY, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (April 20, 2022), <https://bit.ly/3QklENn>.

⁹⁸ Alex Zorn, *GAO Reportedly to Issue Report This Fall on Nursing Home Ownership Amid Private Equity Scrutiny*, SKILLED NURSING NEWS (April 13, 2022), <https://bit.ly/3QyO0eT>.

cannot be enforced if accurate and complete ownership data are not regularly analyzed and made available,” experts on nursing home disclosure wrote in *Health Affairs* in 2021.⁹⁹

2. Accurate disclosure would allow regulators to identify entities related to providers that the government has sanctioned. Federal regulations require nursing homes to describe cases in which other providers sharing the same owner have been sanctioned relating to their participation on Medicare or Medicaid. But these cases might escape regulators’ attention if not disclosed.

HHS’s inspector general’s office spoke in 2016 testimony on how incomplete data hinders effective oversight. “If [data collected] does not accurately and completely capture provider ownership information for Medicare providers, CMS does not know exactly with whom it is doing business, and its ability to provide adequate oversight of the Medicare program is compromised.”¹⁰⁰

3. Better ownership data would provide greater insight into potentially monopolistic market conditions. As HHS noted in a recent paper discussing the importance of disclosure, “A 2021 Executive Order directed the Justice Department and Federal Trade Commission to review and revise their merger guidelines, and timely data on provider ownership may aid in this process.”¹⁰¹

But if government regulators do not have access to accurate ownership data, they might not be aware of instances in which related owners seek to purchase nursing homes in markets in which they already have a significant presence.

4. Accurate ownership data would provide valuable information to consumers and researchers.

⁹⁹ Charlene Harrington, Anne Montgomery, Terris King, David C. Grabowski and Michael Wasserman, *These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency in the Post COVID-19 Period*, HEALTH AFFAIRS (Feb. 11, 2021), <https://bit.ly/3w0LKgf>.

¹⁰⁰ Testimony of Ann Maxwell, Assistant Inspector General of the U.S Department of Health and Human Services, Office of Inspector General before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations (May 24, 2016), <https://bit.ly/3PpNHtK>.

¹⁰¹ W. Pete Welch, Joel Ruhter, Arielle Bosworth, Nancy De Lew, and Benjamin D. Sommers, *Change of Ownership of Hospital and Skilled Nursing Facilities: An Analysis of Newly-Released CMS Data*, OFFICE OF HEALTH POLICY, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (April 20, 2022), <https://bit.ly/3OkIENn>.

VII. Recommended Next Steps for HHS

When circumstances plainly call for a public policy response, a person might shout out “there oughta be a law.” In the case of nursing home ownership disclosure, there already is. It simply has not been enforced.

We recommend that HHS take three steps to shore up ownership disclosure:

1. Send a notice to all nursing home providers 1) informing them that nursing home ownership disclosure guidelines call for much more information than many nursing homes currently furnish and 2) requiring them to promptly correct any shortcomings in their disclosures.
2. Immediately begin posting the information that nursing homes have provided regarding their owners’ organizational structures and the relationships between their various owners.
3. Complete the regulation to implement the disclosure requirements in the Affordable Care Act. Despite the Biden administration’s pledge in February 2022 to implement ACA requirements “regarding transparency in corporate ownership of nursing homes,”¹⁰² the administration does not appear to have begun work on creating the relevant regulation.¹⁰³ It should do so.

These steps are past due.

¹⁰² *Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes*, THE WHITE HOUSE (Feb. 28, 2022), <https://bit.ly/3IQjfYA>.

¹⁰³ We did not find reference to work on the regulation in the administration’s Regulatory Agenda, which was issued in June 2022, <https://bit.ly/3bUpqXk>. A spokesperson for the Centers for Medicare & Medicaid Services wrote to Public Citizen, “CMS does not have any additional details to share at this time about potential future rulemaking.”