United States Senate
Committee on Finance

Sen. Chuck Grassley · Iowa
Ranking Member

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Tuesday, October 2, 2007

Grassley seeks review of the effect of private equity ownership on nursing home care

WASHINGTON — Sen. Chuck Grassley has asked the Government Accountability Office to review the effect of private equity ownership on the quality of care provided in the nation's nursing homes.

Grassley said he made his request based on an investigative report in the New York Times in September that described higher numbers of serious health and safety deficiencies in nursing homes that had been taken over by large private investment firms.

Grassley also raised his concerns about these findings in a statement he made today in the United States Senate and put a copy of the New York Times article in The Congressional Record.

When he served as Chairman of the Senate Special Committee on Aging in the late 1990s, Grassley led a campaign to improve the quality of care in nursing homes. He conducted hearings, highlighted independent findings of the Government Accountability Office about substandard care, and prompted the Clinton Administration to launch what became known as the Nursing Home Initiative. This initiative resulted in the federal agency in charge of overseeing state-level nursing home inspections to issue regulations that were at that time ten years overdue and based on congressional reforms passed in 1987. The Health Care Financing Administration is today called the Centers for Medicare and Medicaid Services (CMS). In subsequent years, Grassley has been active in his oversight of CMS' actions related to nursing home quality of care.

Today, Grassley is the Ranking Member of the Committee on Finance, which has legislative and oversight responsibility for Medicaid and Medicare.

The text of his letter of request to the Government Accountability Office follows here, along with the statement he delivered today in the Senate.

October 2, 2007

The Honorable David Walker
Comptroller General
U.S. Government Accountability Office
441 G St, NW
Washington, D.C. 20548

Dear Comptroller General Walker:

As you know, I have been working for many years to improve the quality of care at nursing homes, and at my request, the Government Accountability Office (GAO) has issued more than a dozen reports documenting the need for improved oversight of nursing home quality and safety.

I read with great concern a recent article in The New York Times examining the effect of private equity ownership on the quality of care provided in the nation's nursing homes.[1] It appears that the investors may be increasing their profits at the expense of the health and safety of nursing home residents. According to The New York Times, investor-owned nursing homes, on average, had higher numbers of serious health and safety deficiencies or violations, including the administration of wrong medications, faulty fire exits, and unhygienic kitchens. The New York Times also reported that nursing home residents were often worse off when their home was owned by a private equity firm, compared to national averages for a number of indicators.

Accordingly, as Ranking Member of the Committee, I request that the GAO conduct a review of the effect of private equity ownership on the quality of care provided in the nation's nursing homes. Please ensure that your review includes the following information:

Total number of nursing homes purchased by private investment groups each year for the last five years; Percentage of total nursing homes that are owned by private investment groups, including percentages by state, each year for the last five years; Condition of nursing homes at the time of purchase by a private investment group; Names of the investment groups that have purchased nursing homes over the last five years, as well as the number of homes purchased per year; Condition and status of nursing homes in the years following purchase by a private investment group compared to other homes; Number and types of complaints against investor-owned nursing homes compared to other non-investment owned nursing homes; Number and types of health and/or safety deficiencies and violations cited at investor-owned nursing homes by state and federal regulators in each calendar year over the last five years compared to other homes; Role of the Centers for Medicare and Medicaid Services in the oversight of investor-owned nursing homes; and Recommendations or policy options as appropriate to help improve the oversight and accountability of investor-owned nursing homes.

Thank you for your attention to this important matter.

Sincerely,
Charles E. Grassley
United States Senator
Ranking Member, Committee on Finance

Floor Statement of U.S. Senator Chuck Grassley of Iowa
Ranking Member of the Committee on Finance
Nursing Homes
Tuesday, October 2, 2007

Mr. President, for ten years I have advocated for stronger measures to ensure that America's nursing home residents receive the quality of care they deserve.

Currently, over 1.7 million Americans live in nursing homes. This number will grow by leaps and bounds as the baby-boomer generation ages. Therefore, there has never been a more critical time to make sure that the federal government does all it can to protect the most vulnerable among us from substandard care.

In late September, an article on the front page of the New York Times underscored this issue and brought to light some troubling data. The article, entitled "At Many Homes, More Profit and Less Nursing," studied the quality of care at investor-owned nursing homes.

The findings were alarming, to say the least. Using numbers from the Centers for Medicare and Medicaid Services, the article compared several investor-owned nursing home chains to industry-wide averages for several indicators.

Here's what was found. The investor-owned homes, on average, had fewer clinical registered nurses per resident and higher numbers of serious health deficiencies. The article also reported that, in some cases, long-stay residents in these investor-owned homes suffered from higher rates of deterioration in their condition. I would like to highlight one case in particular. Following its purchase by a large investment firm, one nursing home cut its number of clinical registered nurses in half. Budgets for nursing supplies, resident activities, and other services were also cut. Investor profits soared and resident care plummeted. Indeed, visits by regulators found fire exits that didn't work, dirty kitchens, and other health and safety violations. 15 residents died in three years due to negligent care, according to their families.

Our elderly and disabled nursing home residents - our own grandparents, mothers, fathers, and other loved ones - deserve better.

Is this a case of profits before care? Well, I'm not sure. But I certainly intend to look into it. I intend to investigate allegations that some large investment firms are buying up nursing homes across the country and are hurting quality of care. And as a result, achieving, as the New York Times said, “More Profit and Less Nursing.”

And let's not forget that the Centers for Medicare and Medicaid Services shoulder some responsibility for these problems too - CMS needs to do a better job of protecting seniors in our nation's nursing homes and I am going follow up with them to see what they have to say.

So I say to my fellow Senators, we must do what is necessary to protect America's nursing home residents. We need to closely examine this matter. I plan to take a very active role in looking at this issue, and will be speaking with nursing homes, equity firms, and to CMS. We owe it to America's nursing home residents - and we owe it to their families. Also I would like to put in the record a copy of the New York Times article.

The New York Times

September 23, 2007 Sunday
Late Edition - Final

At Many Homes, More Profit and Less Nursing

BYLINE: By CHARLES DUHIGG
SECTION: Section 1; Column 0; Business/Financial Desk; Pg. 1
LENGTH: 3655 words

Habana Health Care Center, a 150-bed nursing home in Tampa, Fla., was struggling when a group of large private investment firms purchased it and 48 other nursing homes in 2002.

The facility's managers quickly cut costs. Within months, the number of clinical registered nurses at the home was half what it had been a year earlier, records collected by the Centers for Medicare and Medicaid Services indicate. Budgets for nursing supplies, resident activities and other services also fell, according to Florida's Agency for Health Care Administration.

The investors and operators were soon earning millions of dollars a year from their 49 homes.

Residents fared less well. Over three years, 15 at Habana died from what their families contend was negligent care in lawsuits filed in state court. Regulators repeatedly warned the home that staff levels were below mandatory minimums. When regulators visited, they found malfunctioning fire doors, unhygienic kitchens and a resident using a leg brace that was broken.

"They've created a hellhole," said Vivian Hewitt, who sued Habana in 2004 when her mother died after a large bedsore became infected by feces.

Habana is one of thousands of nursing homes across the nation that large Wall Street investment companies have bought or agreed to acquire in recent years.

Those investors include prominent private equity firms like Warburg Pincus and the Carlyle Group, better known for buying companies like Dunkin' Donuts.

As such investors have acquired nursing homes, they have often reduced costs, increased profits and quickly resold facilities for significant gains.

But by many regulatory benchmarks, residents at those nursing homes are worse off, on average, than they were under previous owners, according to an analysis by The New York Times of data collected by government agencies from 2000 to 2006.

The Times analysis shows that, as at Habana, managers at many other nursing homes acquired by large private investors have cut expenses and staff, sometimes below minimum legal requirements.

Regulators say residents at these homes have suffered. At facilities owned by private investment firms, residents on average have fared more poorly than occupants of other homes in common problems like depression, loss of mobility and loss of ability to dress and bathe themselves, according to data collected by the Centers for Medicare and Medicaid Services.

The typical nursing home acquired by a large investment company before 2006 scored worse than national rates in 12 of 14 indicators that regulators use to track ailments of long-term residents. Those ailments include bedsores and easily preventable infections, as well as the need to be restrained. Before they were acquired by private investors, many of those homes scored at or above national averages in similar measurements.

In the past, residents' families often responded to such declines in care by suing, and regulators levied heavy fines against nursing home chains where understaffing led to lapses in care.

But private investment companies have made it very difficult for plaintiffs to succeed in court and for regulators to levy chainwide fines by creating complex corporate structures that obscure who controls their nursing homes.

By contrast, publicly owned nursing home chains are essentially required to disclose who controls their facilities in securities filings and other regulatory documents.

The Byzantine structures established at homes owned by private investment firms also make it harder for regulators to know if one company is responsible for multiple centers. And the structures help managers bypass rules that require them to report when they, in effect, pay themselves from programs like Medicare and Medicaid.

Investors in these homes say such structures are common in other businesses and have helped them revive an industry that was on the brink of widespread bankruptcy.

"Lawyers were convincing nursing home residents to sue over almost anything," said Arnold M. Whitman, a principal with the fund that bought Habana in 2002, Formation Properties I.

Homes were closing because of ballooning litigation costs, he said. So investors like Mr. Whitman created corporate structures that insulated them from costly lawsuits, according to his company.

"We should be recognized for supporting this industry when almost everyone else was running away," Mr. Whitman said in an interview.

Some families of residents say those structures unjustly protect investors who profit while care declines.

When Mrs. Hewitt sued Habana over her mother's death, for example, she found that its owners and managers had spread control of Habana among 15 companies and five layers of firms.

As a result, Mrs. Hewitt's lawyer, like many others confronting privately owned homes, has been unable to establish definitively who was responsible for her mother's care.

Current staff members at Habana declined to comment. Formation Properties I said it owned only Habana's real estate and leased it to an independent company, and thus bore no responsibility for resident care.

That independent company -- Florida Health Care Properties, which eventually became Epsilon Health Care Properties and subleased the home's operation to Tampa Health Care Associates -- is affiliated with Warburg Pincus, one of the world's largest private equity firms. Warburg Pincus, Florida Health Care, Epsilon and Tampa Health Care all declined to comment.

Demand for Nursing Homes

The graying of America has presented financial opportunities for all kinds of businesses. Nursing homes, which received more than $75 billion last year from taxpayer programs like Medicare and Medicaid, offer some of the biggest rewards.

"There's essentially unlimited consumer demand as the baby boomers age," said Ronald E. Silva, president and chief executive of Fillmore Capital Partners, which paid $1.8 billion last year to buy one of the nation's largest nursing home chains. "I've never seen a surer bet."

For years, investors shunned nursing home companies as the industry was battered by bankruptcies, expensive lawsuits and regulatory investigations.

But in recent years, large private investment groups have agreed to buy 6 of the nation's 10 largest nursing home chains, containing over 141,000 beds, or 9 percent of the nation's total. Private investment groups own at least another 60,000 beds at smaller chains and are expected to acquire many more companies as firms come under shareholder pressure to sell.

The typical large chain owned by an investment company in 2005 earned $1,700 a resident, according to reports filed by the facilities. Those homes, on average, were 41 percent more profitable than the average facility.

But, as in the case of Habana, cutting costs has become an issue at homes owned by large investment groups.

"The first thing owners do is lay off nurses and other staff that are essential to keeping patients safe," said Charlene Harrington, a professor at the University of California in San Francisco who studies nursing homes. In her opinion, she added, "chains have made a lot of money by cutting nurses, but it's at the cost of human lives."

The Times's analysis of records collected by the Centers for Medicare and Medicaid Services reveals that 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. (At 19 percent of those homes, staffing has remained relatively constant, though often below national averages. At 21 percent, staffing rose significantly, though even those homes were typically below national averages.) During that period, staffing at many of the nation's other homes has fallen much less or grown.

Nurses are often residents' primary medical providers. In 2002, the Department of Health and Human Services said most nursing home residents needed at least 1.3 hours of care a day from a registered or licensed practical nurse. The average home was close to meeting that standard last year, according to data.

But homes owned by large investment companies typically provided only one hour of care a day, according to The Times's analysis of records collected by the Centers for Medicare and Medicaid Services.

For the most highly trained nurses, staffing was particularly low: Homes owned by large private investment firms provided one clinical registered nurse for every 20 residents, 35 percent below the national average, the analysis showed.

Regulators with state and federal health care agencies have cited those staffing deficiencies alongside some cases where residents died from accidental suffocations, injuries or other medical emergencies.

Federal and state regulators also said in interviews that such cuts help explain why serious quality-of-care deficiencies -- like moldy food and the restraining of residents for long periods or the administration of wrong medications -- rose at every large nursing home chain after it was acquired by a private investment group from 2000 to 2006, even as citations declined at many other homes and chains.

The typical number of serious health deficiencies cited by regulators last year was almost 19 percent higher at homes owned by large investment companies than the national average, according to analysis of Centers for Medicare and Medicaid Services records.

(The Times's analysis of trends did not include Genesis HealthCare, which was acquired earlier this year, or HCR Manor Care, which the Carlyle Group is buying, because sufficient data were not available.)

Representatives of all the investment groups that bought nursing home chains since 2000 -- Warburg Pincus, Formation, National Senior Care, Fillmore Capital Partners and the Carlyle Group -- were offered the data and findings from the Times analysis. All but one declined to comment.

An executive with a company owned by Fillmore Capital, which acquired 342 homes last year, said that because some data regarding the company were missing or collected before its acquisition, The Times's analysis was not a complete portrayal of current conditions. That executive, Jack MacDonald, also said that it was too early to evaluate the new management, that the staff numbers at homes over all was rising and that quality had improved by some measures.

"We are focused on becoming a better organization today than we were 18 months ago," he said. "We are confident that we will be an even better organization in the future."

A Web of Responsibility

Vivian Hewitt's mother, Alice Garcia, was 81 and suffering from Alzheimer's disease when, in late 2002, she moved into Habana.

"I couldn't take care of her properly anymore, and Habana seemed like a really nice place," Mrs.

Hewitt said.

Earlier that year, Formation bought Habana, 48 other nursing homes and four assisted living centers from Beverly Enterprises, one of the nation's largest chains, for $165 million.

Formation immediately leased many of the homes, including Habana, to an affiliate of Warburg Pincus. That firm spread management of the homes among dozens of other corporations, according to documents filed with Florida agencies and depositions from lawsuits.

Each home was operated by a separate company. Other companies helped choose staff, keep the books and negotiate for equipment and supplies. Some companies had no employees or offices, which let executives file regulatory documents without revealing their other corporate affiliations.

Habana's managers increased occupancy, and cut expenses by laying off about 10 of 30 clinical administrators and nurses, Medicare filings reveal. (After regulators complained, some positions were refilled and other spending increased.) Soon, Medicare regulators cited Habana for malfunctioning fire doors and moldy air vents.

Throughout that period, Formation and the Warburg Pincus affiliate received rent and fees that were directly tied to Habana's revenues, interviews and regulatory filings show. As the home's fiscal health improved, those payments grew. In total, they exceeded $3.5 million by last year. The companies also profited from the other 48 homes.

Though spending cuts improved the home's bottom line, they raised concerns among regulators and staff.

"Those owners wouldn't let us hire people," said Annie Thornton, who became interim director of nursing around the time Habana was acquired, and who left about a year later. "We told the higher-ups we needed more staffing, but they said we should make do."

Regulators typically visit nursing homes about once a year. But in the 12 months after Formation's acquisition of Habana, they visited an average of once a month, often in response to residents' complaints. The home was cited for failing to follow doctors' orders, cutting staff below legal minimums, blocking emergency exits, storing food in unhygienic areas and other health violations.

Soon after, nursing home inspectors wrote in Centers for Medicare and Medicaid Services documents that Habana was at fault when a resident suffocated because his tracheotomy tube became clogged. Although he had complained of shortness of breath, there were no records showing that staff had checked on him for almost two days.

Those citations never mentioned Formation, Warburg Pincus or its affiliates. Warburg Pincus and its affiliates declined to discuss the citations. Formation said it was merely a landlord.

"Formation Properties owns real estate and leases it to an unaffiliated third party that obtains a license to operate it as a health care facility," Formation said. "No citation would mention Formation Properties since it has no involvement or control over the operations at the facility or any entity that is involved in such operations."

For Mrs. Hewitt's mother, problems began within months of moving in as she suffered repeated falls.

"I would call and call and call them to come to her room to change her diaper or help me move her, but they would never come," Mrs. Hewitt recalled.

Five months later, Mrs. Hewitt discovered that her mother had a large bedsore on her back that was oozing pus. Mrs. Garcia was rushed to the hospital. A physician later said the wound should have been detected much earlier, according to medical records submitted as part of a lawsuit Mrs. Hewitt filed in a Florida Circuit Court.

Three weeks later, Mrs. Garcia died.

"I feel so guilty," Mrs. Hewitt said. "But there was no way for me to find out how bad that place really was."

Death and a Lawsuit

Within a few months, Mrs. Hewitt decided to sue the nursing home.

"The only way I can send a message is to hit them in their pocketbook, to make it too expensive to let people like my mother suffer," she said.

But when Mrs. Hewitt's lawyer, Sumeet Kaul, began investigating Habana's corporate structure, he discovered that its complexity meant that even if she prevailed in court, the investors' wallets would likely be out of reach.

Others had tried and failed. In response to dozens of lawsuits, Formation and affiliates of Warburg Pincus had successfully argued in court that they were not nursing home operators, and thus not liable for deficiencies in care.

Formation said in a statement that it was not reasonable to hold the company responsible for residents, "any more, say, than it would be reasonable for a landlord who owns a building, one of whose tenants is Starbucks, to be held liable if a Starbucks customer is scalded by a cup of hot coffee."

Formation, Warburg Pincus and its affiliates all declined to answer questions regarding Mrs. Hewitt's lawsuit.

Advocates for nursing home reforms say anyone who profits from a facility should be held accountable for its care.

"Private equity is buying up this industry and then hiding the assets," said Toby S. Edelman, a nursing home expert with the Center for Medicare Advocacy, a nonprofit group that counsels people on Medicare. "And now residents are dying, and there is little the courts or regulators can do."

Mrs. Hewitt's lawyer has spent three years and $30,000 trying to prove that an affiliate of Warburg Pincus might be responsible for Mrs. Garcia's care. He has not named Formation or Warburg Pincus as defendants. A judge is expected to rule on some of his arguments this year.

Complex corporate structures have dissuaded scores of other lawyers from suing nursing homes.

About 70 percent of lawyers who once sued homes have stopped because the cases became too expensive or difficult, estimates Nathan P. Carter, a plaintiffs' lawyer in Florida.

"In one case, I had to sue 22 different companies," he said. "In another, I got a $400,000 verdict and ended up collecting only $25,000."

Regulators have also been stymied.

For instance, Florida's Agency for Health Care Administration has named Habana and 34 other homes owned by Formation and operated by affiliates of Warburg Pincus as among the state's worst in categories like "nutrition and hydration," "restraints and abuse" and "quality of care." Those homes have been individually cited for violations of safety codes, but there have been no chainwide investigations or fines, because regulators were unaware that all the facilities were owned and operated by a common group, said Molly McKinstry, bureau chief for long-term-care services at Florida's Agency for Health Care Administration.

And even when regulators do issue fines to investor-owned homes, they have found penalties difficult to collect.

"These companies leave the nursing home licensee with no assets, and so there is nothing to take," said Scott Johnson, special assistant attorney general of Mississippi.

Government authorities are also frequently unaware when nursing homes pay large fees to affiliates.

For example, Habana, operated by a Warburg Pincus affiliate, paid other Warburg Pincus affiliates an estimated $558,000 for management advice and other services last year, according to reports the home filed.

Government programs require nursing homes to reveal when they pay affiliates so that such disbursements can be scrutinized to make sure they are not artificially inflated.

However, complex corporate structures make such scrutiny difficult. Regulators did not know that so many of Habana's payments went to companies affiliated with Warburg Pincus.

"The government tries to make sure homes are paying a fair market value for things like rent and consulting and supplies," said John Villegas-Grubbs, a Medicaid expert who has developed payment systems for several states. "But when home owners pay themselves without revealing it, they can pad their bills. It's not feasible to expect regulators to catch that unless they have transparency on ownership structures."

Formation and Warburg Pincus both declined to discuss disclosure issues.

Groups lobbying to increase transparency at nursing homes say complicated corporate structures should be outlawed. One idea popular among organizations like the National Citizens' Coalition for Nursing Home Reform is requiring the company that owns a home's most valuable assets, its land and building, to manage it. That would put owners at risk if care declines.

But owners say that tying a home's property to its operation would make it impossible to operate in leased facilities, and exacerbate a growing nationwide nursing home shortage.

Moreover, investors say, they deserve credit for rebuilding an industry on the edge of widespread insolvency.

"Legal and regulatory costs were killing this industry," said Mr. Whitman, the Formation executive.

For instance, Beverly Enterprises, which also had a history of regulatory problems, sold Habana and the rest of its Florida centers to Formation because, it said at the time, of rising litigation costs. AON Risk Consultants, a research company, says the average cost of nursing home litigation in Florida during that period had increased 270 percent in five years.

"Lawyers were suing nursing homes because they knew the companies were worth billions of dollars, so we made the companies smaller and poorer, and the lawsuits have diminished," Mr. Whitman said. This year, another fund affiliated with Mr. Whitman and other investors acquired the nation's third-largest nursing home chain, Genesis HealthCare, for $1.5 billion.

If investors are barred from setting up complex structures, "this industry makes no economic sense," Mr. Whitman said. "If nursing home owners are forced to operate at a loss, the entire industry will disappear."

However, advocates for nursing home reforms say investors exaggerate the industry's precariousness. Last year, Formation sold Habana and 185 other facilities to General Electric for $1.4 billion. A prominent nursing home industry analyst, Steve Monroe, estimates that Formation's and its co-investors' gains from that sale were more than $500 million in just four years. Formation declined to comment on that figure.

Analyzing the Data

For this article, The New York Times analyzed trends at nursing homes purchased by private investment groups by examining data available from the Centers for Medicare and Medicaid Services, a division of the Department of Health and Human Services.

The Times examined more than 1,200 nursing homes purchased by large private investment groups since 2000, and more than 14,000 other homes. The analysis compared investor-owned homes against national averages in multiple categories, including complaints received by regulators, health and safety violations cited by regulators, fines levied by state and federal authorities, the performance of homes as reported in a national database known as the Minimum Data Set Repository and the performance of homes as reported in the Online Survey, Certification and Reporting database.