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Details: November 26, 2007 Informational Hearing

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Public Health, Senior Issues, Long Term Care and Privacy

(SC-PHSILTCP)

(FORM UPDATED: 07/02/2010)

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

- Appointments ... **Appt**
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- Hearing Records ... bills and resolutions
  (**ab** = Assembly Bill)
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ManorCare

November 26, 2007

Hon. Tim Carpenter
Chairman
COMMITTEE ON PUBLIC HEALTH, SENIOR ISSUES, LONG-TERM CARE AND PRIVACY
Capitol Room 306 South
Madison, Wisconsin

Dear Chairman Carpenter:

Thank you very much for the opportunity to come before your Committee on Monday, November 26, 2007 to discuss the impending acquisition of HCR ManorCare by the Carlyle Group.

I would like to preliminarily provide you and your Committee members with some facts related to the transaction. I will be prepared with a written statement for the hearing and look forward as well to responding to any questions that the Committee may have.

There have been a number of distortions that have been made by third parties regarding the transaction and its implications for seniors in Wisconsin. I would like to set the record straight as it relates to a number of items.

New York Times Article

- A number of statements have been made linking a recent New York Times article of September 23, 2007 to the HCR ManorCare transaction with The Carlyle Group. Simply stated the New York Times article had absolutely nothing to do with HCR ManorCare.
- Setting aside that fact, in weeks subsequent to the publication of that article several groups including the State of Florida's Agency for Health Care Administration completed and released a detailed analysis of the Times article and stated the following:
    - *"There is no evidence to support that the quality of nursing home care suffers when a facility is owned by a private equity firm or an investment company."*
    - *"Concerns have been expressed regarding the purchase of Manor Care nursing homes by The Carlyle Group. The Service Employees International Union (SEIU) and others have expressed concern regarding future operation and the negative [e]ffects on patient care [a letter from SEIU is included in the appendix]. Regardless of who owns or operates a nursing home, it will still have to meet regulatory requirements or be subject to state and federal sanctions. Representatives of The Carlyle Group have pledged to maintain the Manor Care quality health services to residents under the new organization [a letter signed by Stephen Guillard (Manor Care) and Karen Bechtel (Carlyle) is included in the appendix].*

- In addition, LTCQ, Inc. a firm based in Massachusetts issued another report on November 6, 2007 stating that the New York Times *article "...is based on the application of problematic analytic techniques to problematic data."* They further noted that, *"An unequivocal conclusion of LTCQ's study of over 800 PE-owned facilities is that ownership by a PE firm and operation by a different organization is compatible with the highest quality of care."*
- LTCQ goes on to further note that, *"The author focuses exclusively on RN staffing, while the industry in general – including non-profits and owner-operated facilities – has relatively more LPNs than RNs in its pool of licensed nursing staff. Looking at total licensed staff tells a different story than just looking at RNs. In fact, the facilities studied by LTCQ generally increased their LPN and total licensed staff ratios over the years after they were acquired by PE firms.*

Quality of Care

HCR ManorCare is a leader in quality short-term post-acute services and long-term care. With more than 500 overall sites of care in 32 states, nearly 60,000 caring employees, and facilities spanning a care continuum of skilled nursing and rehabilitation centers, assisted living facilities, outpatient rehabilitation clinics, and hospice and home care agencies, HCR ManorCare was first in the industry to broadly measure patient care outcomes, with a continuing emphasis on meeting their care goals. In the State of Wisconsin, HCR ManorCare operates 8 nursing centers with 869 beds and 3 home health and hospice agencies.

Concerns about the care of our patients in the future are unfounded. The Carlyle Group intends to build on HCR ManorCare's strong record and believes that the best approach is to allow HCR ManorCare to continue doing what it is already doing so successfully – delivering quality care. The current management team at HCR ManorCare from officers at the corporate office, to Divisional and regional personnel, as well as facility-based staff will continue to direct and operate the company. Paul Ormond, who founded the Company over 25 years ago, will continue to be Chief Executive Officer and Chairman of the Board. I will continue as Executive Vice President and Chief Operating Officer with responsibility for the day-to-day operations of the Company and our officers and employees throughout the organization will continue in their present roles. ***We have stated verbally and in writing that there will be no staffing reductions within our caregiver ranks after this transaction concludes.*** We will maintain the same policies and procedures, the same methods of operation and the same practices as we did before the transaction with the Carlyle Group. We similarly felt it was important to assure our patients and families that at no time have we considered, nor will we implement a staffing reduction in our centers as a result of this transaction, and to that end we provided assurances in writing to them, copies of which are included with the accompanying materials.

Under Carlyle ownership, the HCR ManorCare Board will continue its Quality Committee and additionally appoint an independent and well-regarded committee of experts to advise the Quality Committee and Board on quality of care. HCR ManorCare will also continue publishing its Annual Report on Quality and we will ensure that you and the Committee members receive our most recent Quality Report.

Structure of The Transaction

This transaction is structured to provide that **HCR ManorCare will continue to own and operate the assets of the company.** We are not spinning off our real estate assets or selling them to a Real Estate Investment Trust (REIT). All of our assets will be owned 100% by our parent company, HCR ManorCare, Inc., which will retain full accountability and liability, with adequate insurance coverage, for all operations.

Insurance

HCR ManorCare's general and professional liability program consists of $125 million primary and excess insurance including a $5 million self-insured retention – more than adequate for a company of our size. We additionally carry and provide for $100 million in building risk insurance as well. There are no complex structures – all details of the transaction have been disclosed to authorities at the Wisconsin Department of Health.

Manor Care maintains relationships with the largest and highest rated insurers and re-insurers in the marketplace. All commercial participants on the program are rated A- or better by A.M. Best to assure that claims and judgments are effectively handled.

American International Specialty Lines (First $500,000 per Occurrence) A+
Hannover Re (Reinsurer) ($7.5MM xs. $5 Million) A
Max Bermuda, Ltd. (50% Reinsurer) ($12.5MM xs. $12.5 MM) A-

Carlyle and HCR ManorCare Commitment

To clarify our commitment to maintaining the highest quality service at HCR ManorCare, Carlyle and HCR ManorCare announced on October 22, 2007 a "Patients First" pledge, which articulates our commitment to five key operating principles:

- ✓ Quality health care services for our patients and residents.
- ✓ Education and training to help ensure our professional staff and frontline caregivers have the tools to meet the needs of our patients and residents.
- ✓ A primary focus on providing care for patients who require complex medical care and intensive rehabilitation, those whom other providers must often turn away.
- ✓ Staffing based on our patients' clinical needs, many of whom are higher-acuity, while striving to exceed all federal and state requirements.
- ✓ Capital investment that helps ensure HCR ManorCare's facilities continue to be well-maintained, attractive structures, as well as state-of-the-art in their rehabilitation capabilities, clinical technology and record-keeping.

Financial Strength of The Company

Concerns have been expressed in the public as to the ability of our company to provide adequate funding to meet commitments associated with this impending transaction. The Carlyle Group will be investing approximately $1.4 billion in equity in the company -- this is twice the current level of equity that is on our balance sheet at the present time. Lending institutions have committed to provide our Company with a $200 million revolver that will be available to ensure that there is no disruption to our normative methods of operation.

Additionally, please note that our ability to service our increased debt results from the fact that we will no longer be making dividend payments to our shareholders; interest payments associated with prior debt; repayments of our debt; or share buybacks that we have effected over the past 5 years. During this period of time, the amounts that the company has paid for these items (which will not occur in the future) substantially exceed the new debt service on an annual basis. HCR ManorCare will be able to adequately fund our obligations and ensure continued quality care to our patients and families. Our Board has been presented with a solvency opinion which was prepared by Duff and Phelps and which attests to the financial viability of the Company going forward.

This strong financial position will enable the company to execute its strategy which includes sustaining and enhancing staffing levels; funding all components of our operation, advancing our use of technology, enhancing the introduction of additional medical and clinical personnel, continued training for nurses and caregivers; and investing at least $100 million every year in renovations, expansions and improvements at care centers, including expanded therapy space, clinical programs, new equipment and information technology.

Support and Participation for Community-Based Focused Programs

We are strong supporters and participants in efforts to improve focus on community-based services. We presently operate one the most extensive post-acute systems in the United States that provides both facility-based and community-based services. We are committed to supporting the Administration in this endeavor. Within various states, we are actively involved in processes to review low acuity residents for potential placement into community-based settings and look forward to working with the States to ensure that our patients are appropriately placed and cared for in the future.

Summary

HCR ManorCare has provided exceptional and comprehensive health care services to tens of thousands of Wisconsin's seniors over the many years of our work in your State. We acknowledge our responsibility to ensure that the care provided to our patients and families is consistent with all appropriate rules and regulations as well as all appropriate medical and clinical standards. You have the commitment of our management team, our Board and our employees to this end. We sincerely appreciate this opportunity to reaffirm our commitment to continue managing the company with the same dedication to quality care, staffing levels, employee benefits, capital investment and the caring culture that has made HCR ManorCare the most uniquely successful and respected provider in our industry.

Please let us know if you have any additional questions that we can respond to regarding our pending transaction.

Sincerely,

Stephen L. Guillard
Executive Vice President
Chief Operating Officer

cc Committee Members
Senator Dave Hansen
Senator Bob Wirch


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Wisconsin
Alliance
for Retired
Americans
6333 W. BLUE MOUND ROAD
MILWAUKEE, WI 53213
414 771-9511

November 26, 2007

State Senator Tim Carpenter
Speaker Pro Tempore
Room 306 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Carpenter:

On behalf of the 87,000 Wisconsin Alliance for Retired Americans members statewide, I would like to thank you for looking into the proposed Manor Care takeover by the Carlyle Group. Anytime changes are suggested in the legal structure of a nursing home - or in this case eight nursing homes - all relevant details must be sought to understand the ramifications for the residents of those facilities. **We owe our senior citizens and people with disabilities nothing less.**

We are asking that approval of Carlyle's license applications be withheld until questions that would demonstrate Carlyle's commitment to quality care are answered. Specifically, we are requesting information regarding:

- How legal rights of Manor Care residents will be protected, despite the limited liability status proposed in Carlyle's applications
- Staffing plans, including number of hours and qualifications of staffers
- Operational plans to decrease the already high number of federal health standards violations received at the eight Manor Care nursing homes in Wisconsin
- Precise plans for complying with regulatory oversight by DHFS and CMS

We look forward to receiving more detailed information about this proposal, and **we hope that you will consult with advocates of affected parties, including the Wisconsin Alliance of Retired Americans, before granting this debt-based buyout.** Thank you for your continued support of quality long term care.

Sincerely,

Leon Burzynski

Leon Burzynski, President
Wisconsin Alliance of Retired Americans


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Testimony before the Wisconsin Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy
Honorable Senator Tim Carpenter, Chair
November 26, 2007

Honorable Senator Carpenter, members of the Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy:

Good afternoon. My name is Brian Olney, and I am a Senior Researcher for the one million-member SEIU Healthcare, the nation's largest union for healthcare workers. In Wisconsin, SEIU represents more than 15,000 members including nurses and other health professionals, nursing home workers, and home care aides. SEIU Wisconsin members also work as public school employees, building service workers, and municipal and county employees. We are dedicated to quality, affordable healthcare for all.

I'm here today on behalf of our more than 15,000 Wisconsin members and as a patient care advocate to share my grave concerns about what the buyout of HCR Manor Care by the Carlyle Group could mean for the future of nursing home care in Wisconsin. Manor Care is an important nursing home provider in Wisconsin, with 8 homes and 868 resident beds. This buyout could impact the health and welfare of the thousands of residents – our parents, grandparents, and loved ones – who enter a Manor Care home in Wisconsin each year.

Carlyle is one of the world's largest private equity firms, and until recently has focused on the defense, aerospace, and energy sectors. Carlyle has very little experience in the long-term care industry and no known prior experience at all owning nursing homes. LifeCare Hospitals, the only other long-term care provider owned by Carlyle, was recently alleged to bear responsibility for at least 24 patient deaths in New Orleans following Hurricane Katrina after the administrator and medical director evacuated the facility, leaving others to care for highly vulnerable residents during this critical time.

The Manor Care takeover is the largest to date in an industry where private equity ownership has become a national trend. By acquiring the nation's largest nursing home chain, Carlyle is looking to cash in and bank big profits from the increasing demand for long term care by the aging baby boomer population.

Carlyle has issued public statements pledging "to continue to provide quality health care services."[1] But Manor Care already has a very troubled patient care track record. Manor Care homes in Wisconsin average just 3.07 nursing hours per patient per day[2] – 25 percent below the 4.1 nursing hours per patient per day standard found in a government-funded study to improve patient care outcomes.[3] In fact, every single Manor Care home in Wisconsin staffs below this standard, placing residents in these homes at substantially increased risk of quality of care problems.[4] We have appended a copy of this study to our written comments for the Committee's review and consideration.

A significant body of research suggests staffing levels are the best measure of quality of nursing home care.[5] Certified Nurse Assistants, or C.N.A.s, account for the largest component of the 4.1 nursing hours standard, at 2.8 hours. This is because C.N.A.s provide the majority of direct care to Nursing Home residents, including assistance with such critical daily activities as dressing, bathing, walking, brushing teeth, eating, and toileting. It is therefore particularly troubling that every Manor Care home in Wisconsin fails to provide this level of C.N.A. staffing, and one home provides nurse assistant staffing of just 1.73 hours per patient per day, 38 percent below the standard

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[1] Company Press Release, "The Carlyle Group Issues 'Patients First' Pledge as Purchase of Nursing Home Company Manor Care Nears Completion," October 22, 2007.
[2] Based on information from "About the Nursing Home–Staff," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 9/7/2007.
[3] Schnelle, et al. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II final report. Centers for Medicare and Medicaid Services, December 2001.
[4] Based on information from "About the Nursing Home – Staff," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 9/7/2007; Schnelle, et al. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II final report. Centers for Medicare and Medicaid Services, December 2001.
[5] Institute of Medicine (IOM), Wunderlich, G.S. and Kohler, P., Eds. 2001. *Improving the Quality of Long-Term Care.* Washington, DC: National Academy of Sciences, IOM; Harrington, C., Zimmerman, D., Karon, S.L., Robinson, J., and Beutel, P. 2000. Nursing Home Staffing and Its Relationship to Deficiencies. The Journal of Gerontology: Social Sciences. 55B (5):S278-286; Burgio, L.D., Engel, B. T., Hawkins, A., McCormick, K., and Scheve, A. (1990). A descriptive analysis of nursing staff behaviors in a teaching nursing home: Differences among NAs, LPNs, and RNs. *The Gerontologist, 30*, 107-112.

recommended in the government-funded study. According to a model developed for this study, staffing at this facility is so low that incontinent residents must wait, on average, 143.12 minutes to receive incontinent care. The same model suggests that because Manor Care facilities in Wisconsin are already so short-staffed, each day an estimated 800 exercise treatments are missed – that's at least one missed treatment for every resident. Exercise-related care is critical to preserving residents' mobility and physical and mental health. While top Manor Care executives will take a payday out of this deal that may total as much as $254 million – including $10,777,252 for Chief Operating Office Stephen Guillard from his various stock holdings and options as reported in Manor Care's SEC filings[6] – residents may be forced to sit for hours in soiled clothes and miss exercise treatments necessary to regain their strength because there aren't enough staff to care for them. Guillard's payout is more than Manor Care projects it will spend to operate any single home in Wisconsin for an entire year. Our society will be judged by how we treat our elderly – not our executives.

Such low staffing levels may explain why, over the past three survey cycles, Manor Care nursing homes in Wisconsin have been cited for a total of **97 violations of federal health standards regulations, which have increased 59% in the most recent survey cycle.**[7] It may also explain why 75% of Manor Care homes were cited in their most recent survey for a serious resident care violation that caused actual harm or even immediate jeopardy to resident health or safety, which is the most severe level of harm CMS assigns to health violations.[8]

The real tragedy here lies in the human stories behind each of these statistics: the resident known to be at high risk for weight loss for whom no care plan to address this risk was ever prepared, and who subsequently suffered severe weight loss equivalent to

[6] Manor Care, Inc. Schedule 14A, August 6, 2007.
[7] Based on information from "About the Nursing Home – Inspections," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 8/23/2007.
[8] Based on information from "About the Nursing Home–Inspection Results," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 11/16/2007.

11.4% of his body weight in just 23 days without the facility taking notice;[9] or, the resident who was repeatedly left unattended to smoke while connected to oxygen.[10]

Manor Care's low staffing levels and poor performance on numerous indicators of quality care are particularly alarming in light of the real possibility of even further staffing cuts and deterioration in the quality of care once Carlyle takes over. As the New York Times reported in its September 23 expose, clinical registered nurse staffing was cut at 60% of homes purchased by large private equity firms between 2000 and 2006, sometimes far below levels required by law. The New York Times also reported an increase in serious quality of care deficiencies at these homes.

Manor Care may itself come under pressure to further cut staffing in order to service the massive $5.5 billion debt it will have once the deal is complete. SEIU estimates the increase in the interest expense alone in just the first year after the Carlyle takeover to be $400 million. This figure, which does not even include the increase in principal payments, is already more than double Manor Care's entire profit of $167 million in 2006.[11] How will this massive new expense be paid for? Are we really to believe Carlyle's investment plan for Manor Care is to drive a profitable company deeply into the red, and not cut costs to keep its investment profitable?

Once Carlyle's applications for nursing home licenses are approved, it may be very difficult to hold these homes accountable to ensure such a scenario does not take place. As the New York Times reported, "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." Carlyle intends to adopt a corporate structure similar to those other private equity firms have used to render their homes impervious to oversight, which involves spreading assets among an elaborate web of special purpose LLCs and holding companies. Although

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[9] Manor Care Health Services – Shawano, complaint survey conducted 4/4/2007.
[10] Manor Care Health Services, 265 S. National Ave., complaint / partial extended survey conducted 4/10/07 to 4/17/07. See pages 1-2.
[11] Manor Care's reported net income in 2006 was $167,084,000. Manor Care, Inc., Schedule 10-K for Fiscal Year ended 12/31/06, p. 45.

Manor Care has claimed in its communications that "The Carlyle Group has no intention of separating real estate from the management of those assets," Manor Care's own filings with the SEC, Carlyle's own applications to regulators in Wisconsin and in numerous other states, and a November 8 Washington Post article all make clear Carlyle does intend to do precisely that. Carlyle has told reporters it does not intend to use these Byzantine structures to evade liability, but what is to stop exactly this from happening?

Wisconsin's license application process exists precisely to ask these questions now so reasonable steps may be taken to avoid problems before they occur. Nursing home licenses in Wisconsin are not transferable. Once a nursing home licensure application is complete, the Department of Health and Family Services (DHFS) is required to make any inspection or investigation "necessary" to determine whether the applicant is fit, qualified, and able to comply with the statutory requirements.[12] DHFS may review both material provided in the application and any other documents that may appear relevant.[13] No license may be issued until and unless an applicant has supplied all information requested.[14]

Although DHFS has taken the initial step of deeming Manor Care's applications complete, DHFS can still request additional information from Manor Care. Fundamental questions regarding Carlyle's plans for operating the 8 Manor Care facilities remain unanswered, and critical sections of the applications were filled out incompletely and, we believe, inaccurately. The requirement that DHFS conduct whatever investigation is "necessary" means that DHFS must request and consider any information needed to determine whether the applicants are "fit and qualified."

We have reviewed the Manor Care applications and found them deficient. For example, Manor Care checked "yes" in response to the question about whether "adverse action initiated by any state licensing agency resulted in the denial (D), suspension (S), or revocation (R) of a license." But Manor Care did not complete the table provided for

[12] Wis. Stat. §50.03(4); Wis. Admin. Code §HFS 132.14(4)(a).
[13] Wis. Admin. Code §HFS 132.14(4)(b).
[14] Wis. Admin. Code §HFS 132.14(3)(d).

details, and instead attached summary descriptions of terminations of four Manor Care facilities from certification as providers of Medicare and Medicaid. The types of adverse actions and effective dates are not clearly identified in the company's summaries. Manor Care should be required to re-submit a complete table and attach all relevant correspondence for all terminations from Medicare and Medicaid.

In addition, Manor Care checked "no" in response to the question about whether "any adverse action initiated by a state or federal agency based on non-compliance resulted in civil monetary payments, termination of a provider agreement, suspension of payments, or the appointment of temporary management of the facility." But the company's descriptions of the four terminations mentioned above indicate that there were terminations of provider agreements and, for some facilities, monetary fines. To complete the application, Manor Care should check "yes" and re-submit a completed table with the information requested on the application form.

Manor Care should also submit additional information regarding its plans for revenue and profit growth, and make clear how these goals will be achieved without compromising care in light of the significant increase in debt service that will result from the leveraged buyout, and the demonstrable track record of staffing cuts and patient care problems in other nursing homes under private equity ownership. The financial statements Manor Care has provided reflect assumptions that are not clearly identified or adequately explained. Manor Care also failed to disclose a complete list of the executives and corporate entities that will exercise control over the nursing homes, and listed no Carlyle executives in its applications at all, even though regulatory filings make clear that Carlyle will be the parent company of the reorganized Manor Care. We are submitting a memorandum identifying these and other material deficiencies in Manor Care's applications, which the DHFS must request in order to satisfy concerns that this takeover will not negatively impact Manor Care residents.

Given the concerns already raised about quality of care in private equity-owned nursing homes, and the potential financial impact of this type of highly leveraged buyout, there is substantial additional information that DHFS needs to evaluate the licensure applications filed as part of this highly complex transaction. If Manor Care fails to provide this additional information in a timely fashion, DHFS may deny the company's applications and allow it to refile complete applications, or Manor Care may agree to an extension of the ordinary deadline for the licensure process in order to allow the company sufficient time to gather the requested information.

Manor Care has put heavy pressure on elected officials and regulators to approve the deal on a rapid timeline. As recently as October 23, Manor Care filed a form 8-K with the SEC reaffirming its goal of closing the deal by November 7. Yet Manor Care's own merger agreement with Carlyle does not require the companies to complete the merger until **March 31, 2008** – a deadline which may even be further extended to **May 30, 2008.**[15] There is therefore no reason to short-circuit the Department of Health and Family Services' review process and limit stakeholder input by rushing ahead with a rapid and reckless timeline. The DHFS should use the coming months to carefully review Carlyle's track record and its plans for operating Manor Care's 8 homes in Wisconsin, and take every reasonable step to ensure this deal protects the interests of Manor Care's present and future residents. We urge the Committee to work closely with the Department of Health and Family Services to ensure a thorough examination of The Carlyle Group's takeover of Manor Care homes before granting Carlyle licenses to operate these homes.

SEIU is not alone in expressing concern about private equity's influence in the nursing home industry. In Congress, the House Ways & Means Subcommittee on Health and the Senate Special Committee on Aging both held related hearings earlier this month. The House Energy and Commerce Committee and the House Financial Services Committee have also announced investigations into the impact of private equity ownership on nursing homes. These announcements come on the heels of requests by Senators Grassley and Clinton for the Government Accountability Office to investigate private investor ownership of nursing homes, and letters sent by Senators Grassley and Baucus to

[15] Manor Care, Inc. Schedule 14A, August 6, 2007, p.8.

five private investment firms seeking information on their ownership and management of nursing home chains, and to the Centers for Medicare and Medicaid Services about its oversight of such homes.

In addition to Wisconsin, state legislators in Washington, Illinois, Michigan, Maryland, Florida, and Pennsylvania have all called upon regulators to investigate the Carlyle buyout of Manor Care, and legislative hearings have also been held in Pennsylvania and announced in Michigan, Illinois, and Maryland. These states are the locations of nearly half of Manor Care's nursing homes. In fact, Florida's Agency for Health Care Administration (ACHA) signaled on November 19 that it intends to deem incomplete, and therefore deny, 7 of the Carlyle Group's 29 applications for the transfer of operating licenses for Manor Care nursing homes after Manor Care failed to provide in a timely manner additional information requested by AHCA to rectify deficiencies in Manor Care's applications.

We once more urge this Committee to work closely with the Department of Health and Family Services to conduct a thorough examination of The Carlyle Group's takeover of Manor Care homes, and ensure the interests of Wisconsin residents will be protected before granting Carlyle licenses to operate these homes.

Thank you.


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TESTIMONY BEFORE THE SENATE COMMITTEE ON PUBLIC HEALTH, LONG-TERM CARE, SENIOR ISSUES, AND PRIVACY

State of Wisconsin
November 26, 2007

Testimony of Stephen L. Guillard
Executive Vice President and Chief Operating Officer
HCR ManorCare

Thank you very much for the opportunity to come before this Committee of the State Senate of Wisconsin to discuss the future of HCR ManorCare in providing services to the citizens of Wisconsin. I am Stephen Guillard and presently serve as the Executive Vice President and Chief Operating Officer of HCR ManorCare. In this capacity, I direct all of the day-to-day operations of the company in providing a broad spectrum of post-acute health care services.

HCR ManorCare is a leading provider of short-term post-acute and long-term care services. We provide quality care for patients and residents through a nationwide network of skilled nursing and rehabilitation centers, assisted living facilities, outpatient rehabilitation clinics, and hospice and home care agencies. HCR ManorCare operates in more than 500 locations across the United States with approximately 280 skilled nursing facilities, 65 free-standing assisted living centers that focus principally on care to patients with early stage Alzheimer's and dementia, 91 outpatient clinics, and 120 hospice and home care agencies. Taking all of these services together, we are the largest and most recognized provider of post-acute health care in the United States with annual revenues of approximately $4 billion.

Within the state of Wisconsin, nearly 1,500 of our 60,000 employees nationwide provide services to your citizens in 8 skilled nursing centers and 3 hospice and home care locations. It is our vision to ensure that our patients and residents live with the greatest dignity and comfort and that we return as many individuals as possible back to their homes or to the community -- and we are extremely proud of our track record in this regard. We welcome each member of this committee to visit one of our nursing centers.

We strive to ensure that our patients achieve the greatest possible outcomes during their stay at our centers, and we focus extensively on high-acuity, complex medical and rehabilitation type of patients. Our philosophy is to assist patients in the restorative and rehabilitative processes and return them to the community when possible. We have been uniquely successful in this regard. Of the 150,000 patients discharged during this year, approximately half will have stayed at our centers for less than 30 days. Based on standard measures of effectiveness of care, our data demonstrates that our patients achieve outcomes that are comparable to, and often exceed, those of acute care and rehabilitation hospitals in a more cost-effective setting.

I am pleased today to speak to this Committee about the impending merger of HCR ManorCare and a subsidiary of The Carlyle Group, one of the country's preeminent private equity investors. I also bring to this Committee an affirmation of our commitment to the continued provision of quality care in Wisconsin subsequent to this transaction.

We recently met with the Department of Health and Family Services in the state to ensure that they had an opportunity to speak with those of us at HCR ManorCare who have the responsibility to direct the operations of our services in Wisconsin. I am pleased today to reiterate some of the following points that we made in our recent meeting with Otis Woods Mr. Otis Woods, Administrator of the Division of Quality Assurance of the Department of Health & Family Services Division of Supportive Living and other Department officials.

- We, at HCR ManorCare, fully expect that this transaction will be seamless to our patients, families and employees. The same people that operate our company and centers today will manage those centers after this transaction concludes. It will be the same staffing levels, the same policies and procedures, and the same beneficial outcomes for our patients. Nothing uniquely different within the daily operation of our centers will occur.

- The senior management team that presently directs and operates the services within our centers will not change. All of the senior officers of HCR ManorCare will remain in place subsequent to this transaction with The Carlyle Group. Carlyle would not have made this acquisition without the knowledge and belief that the managers who have the experience in this sector would stay and continue in their roles. Mr. Paul Ormond, who has been with the company since its inception, and I will remain in our executive roles and as members of the Board of Directors. Both of us have provided commitments to the Carlyle organization that we will continue in our roles for the foreseeable future.

- We will not reduce staffing of caregivers in our nursing centers or assisted living centers, and our staffing levels are well above requirements set by the state of Wisconsin. We believe that the reputation and value of our company is directly related to the quality of services that we provide to our patients, residents and families, and we will do everything within our power to ensure that it continues uninterrupted. As we routinely do in our work, we are constantly seeking to find ways to improve our care, develop new ways to expand our services and provide a rewarding environment for our employees.

- All of our current assets will continue to be owned by the parent company. We are not spinning off our real estate assets or selling them to a Real Estate Investment Trust (REIT). All of our assets will be owned 100% by our parent company, Manor Care, Inc., which will retain full accountability and liability, with adequate insurance coverage, for all operations. HCR ManorCare's general and professional liability program consists of $125 million primary and excess insurance, including a $5 million self-insured retention plus $100 million in property risk – more than adequate for a company of our size.

- We will operate with a sound financial foundation. For years HCR ManorCare has paid down its debt, bought back shares of its stock, provided our shareholders with a dividend as a return for the vital private capital they gave to us, and funded the interest on our debt. In the future, we will not issue dividends or buy back shares as a private company, and the interest from prior debt will be rolled into our future financing. The total expenditure of these items that occurred in the past will not recur in the future – which will enable our company to take these same dollars, and nothing more, to pay all of our net debt costs. That will leave us the same or more cash flow to adequately fund all of our obligations, including a plan to reinvest over $100 million each year into our centers. The Carlyle Group is investing $1.3 billion of equity capital enabling us to essentially double the equity on our balance sheet going forward and which will position our company as unique in its financial strength compared with any peer company across the nation.

In closing, I, and all of the employees of our company, want to reiterate our commitment to quality care. We firmly believe that The Carlyle Group shares that objective and that they will be good partners for HCR ManorCare. This is a very beneficial transaction for everyone involved and I am appreciative of this opportunity to speak before this Committee today. I look forward to answering any questions that you have regarding this transaction and HCR ManorCare.


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Testimony of Jeffrey A. Pitman on behalf of the Wisconsin Academy of Trial Lawyers Before the Senate Public Health, Senior Issues, Long Term Care and Privacy Committee On Planned Takeover of Manor Care Nursing Homes by The Carlyle Group November 26, 2007

Senator Carpenter and members of the Committee, I am Jeffrey A. Pitman of Pitman, Kyle & Sicula in Milwaukee. I am representing the Wisconsin Academy of Trial Lawyers (WATL).

Thank you for allowing me to speak to the committee about the very important subject of nursing home accountability and nursing home resident's receiving the highest quality care to which they are entitled. My firm and I have had the privilege of representing nursing home residents and their families from all over this state.

In all of my cases, a key issue is identifying who is accountable for the negligent injury or wrongful death of my client. This usually boils down to who owns and/or controls the nursing home operation, in particular the budget. I have taken greater than 100 depositions of administrators, nurses, nurses' aides, dieticians, managers, corporate financial officers, corporate executive officers and owners. We've had to investigate and track down who owned and controlled the nursing home, whether there was a management company who managed the operation, who was responsible for the daily operation of the nursing home, who paid the expenses and earned the profit/income, and if there was liability insurance. I've seen firsthand the devastating human toll that can be caused by a nursing home putting profit over its residents. We've been able to identify and hold accountable the proper entity. However, there is a very real danger to residents' health and safety and holding wrongdoer's accountable that is growing in our state. It is reflected by the Manor Care purchase by the Carlyle Group.

Nursing home residents are entitled to receive the care necessary for them to attain or maintain their highest level of physical, mental and psychosocial well-being and to maintain their safety. The purchase of Manor Care by the private equity investment group of eight Wisconsin nursing homes creates a serious danger to the health and safety of Wisconsin nursing home residents. It's a danger that has materialized across the United States, including Wisconsin, with the private equity firm purchase of Mariner and Beverly Enterprises. It's a danger from which we can and should protect Wisconsin nursing home residents. Some residents don't have family, sometimes known as elder orphans, which can advocate on their behalf. We must speak for this frail and vulnerable and vital group of Wisconsin citizens. If we don't, who will?

What types of harm am I referring to? Wisconsin nursing home residents, due to their frail and vulnerable health, are commonly at risk for a decline in their health, and injury and death due to poor quality of care and inadequate training and staffing. Common injuries are pressure sores, falls causing hip fractures leading to premature death, medication errors which can lead to serious injury or death, dehydration and malnutrition. These types of injuries are also identified as common quality indicators used to measure the quality of the nursing home care. Nursing homes are required by federal law to provide sufficient staff to meet the needs of all its residents. Wisconsin law has minimum staffing ratios in place. However, in numerous depositions I have had administrators, directors of nursing and nursing staff admit that they don't know how those numbers were determined and that meeting the minimum staffing ratio doesn't mean there is sufficient staff to provide necessary care for residents. So, meeting the state minimum staffing ratios does not mean all of the residents' needs are being met. All of these types of harm can be directly related to the quality and quantity of staff at the nursing home. These types of harm can be the basis for a state or federal regulatory violation, also known as a deficiency, and a civil claim or action.

The private equity investment group is a relatively new business and ownership model. Private equity ownership is much different than privately owned or public corporation ownership. Private equity owners have created corporations to limit the private equity ownership group's liability for harm caused to its residents. These corporations can make it very difficult to prove who owns, controls, operates and manages the nursing home and who is financially responsible for the harm and from whom damages can be collected.

It is a model that has been infrequently used in Wisconsin. I've seen the nursing home corporate structure in which a parent corporation controls the budget and staffing of the operation, albeit behind the scenes, covertly, and the nursing home has its own corporation without assets. I've also seen it structured to that a management company, usually owned by the parent or its individual stockholders, operates and controls the nursing home, for a fee. This management fee creates cash flow from the nursing home to the management company regardless of the profitability of the nursing home. In other words, they take some of the nursing home income right off the top on a monthly basis. Money is taken out of the nursing home that could be used to increase the quality and quantity of staffing.

Why am I concerned about private equity investment ownership? There are several reasons. First, there is no oversight by the Securities and Exchange Commission and no scrutiny by financial analysts and the business media. What the private investment group does and why can remain private and confidential. For example, they do not have to:

1. Disclose to the public their debt levels, or other aspects of their capital structure;
2. Report executive compensation;
3. Report events that have a material impact on their business;
4. Report acquisitions or divestitures.

They are able to keep secrets. Even in a lawsuit, most nursing home's fight to keep their financial information and documentation secret and confidential.

Second, they try to limit liability and accountability for harm suffered by residents. We are aware from Manor Care's filings in other states that it intends on significantly restructuring its corporation. In fact, it has created multiple corporations as follows:

1. A holding company to own the entire Manor Care chain;
2. Limited liability corporations for the operations of individual Manor Care homes;
3. Limited liability corporations for the real estate holdings of individual Manor Care homes; and
4. Corporations to lease properties from the ownership corporation and sublease to the operating corporation.

What possible reasons would Manor Care want to create these multiple LLC's? One of the clear and indisputable answers is to limit liability for harm to residents. It discourages litigation. They can create a corporation that has no assets and is, therefore, judgment proof. The parent/holding company can allege it defers the operational and budget decisions to the individual LLC/home and that LLC has no assets. Tough luck. They will have removed the most valuable asset, the real estate, from the operating LLC. They can drop liability coverage so there would be no recourse for an injured or deceased resident and his or her family.

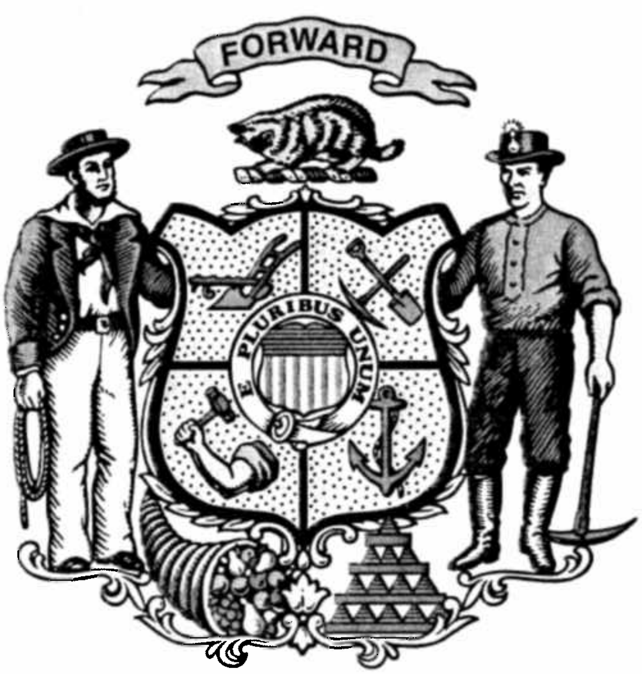
It can guarantee income/profit. The parent may "manage" the facility and take a management fee for its management services. The management fee is usually paid every month from the subsidiary home to corporate. The fee is guaranteed profit/income from the nursing home and a cost to the home. I've had cases in which there were no services, beside maybe payroll, provided to the nursing home for a $10-20K monthly management fee.

The subsidiary that leases back the building and equipment also guarantees income/profit while the home incurs these yearly costs. These expenses can be adjusted or manipulated to increase profit and loss for the two LLC's.

I've not heard one logical explanation as to how the corporate restructuring benefits the resident and will lead to higher quality care. The private equity investment group has one sole purpose, to make money for its investors.

What are the potential remedies to maintain or improve quality of care and provide injured residents and their families a remedy against the wrongdoer? First, Wisconsin could impose minimum insurance requirements. Second, Wisconsin could impose minimum bonding requirements.

We believe that nursing home owners and operators should not be allowed to hide from their responsibilities to their residents. The safety and comfort of the residents needs to be the primary issue of concern of nursing homes.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Testimony of Ethel Macaux
before the
Senate Committee on Public Health, Senior Issues, Long-Term Care and Privacy
Senator Tim Carpenter, Chair
Manor Care nursing homes
November 26, 2007

Good morning, Senator Carpenter and members of the Committee. My name is, Ethel Macaux. I thank you for the opportunity to appear today to testify on the matter of licensure changes for eight Manor Care nursing homes in Wisconsin.

I am here today because I am concerned about the potential transfer of Manor Care's nursing home licenses to the Carlyle Group. Numerous reports have outlined facts that would, and should, frighten anyone whose loved ones are in the care of these facilities.

I have had the great misfortune of dealing with these issues firsthand. My husband Glen suffered neglect at a nursing home and his life was never the same. The events cost him his independence, and cost us nearly $200,000 in hospital bills. Thankfully, we were able to seek recourse through the civil justice system and the home was held accountable for their actions.

On September 12, 2000 Glen was admitted to a nursing home following surgery for a ruptured left quad tendon. Glen's orthopedic surgeon issued written orders to the nursing staff that he was to wear a brace on his left leg at all times, except when bathing, and that a dry dressing should be applied to the surgical site around his left knee.

Surgical sites like Glen's need to be observed and monitored for any sign of infection at least daily. Both the facility Administrator and the Director of Nursing testified to this point. It was later realized through a review of the nursing home's records that the nursing staff failed to inspect or assess my husband's surgical site from September 13 until the morning of September 18.

When Glen went for a physical therapy session on September 18 an aide removed his brace to reposition it and saw drainage on the bandage underneath. When she took the bandage off, she saw drainage around the surgical site, redness and warmth from above his knee to the hip area, and seepage along his groin and the side of his knee. A nurse then contacted the office of the orthopedic surgeon, but did not talk to the surgeon. Glen's routine orthopedic appointment was moved to the next day.

The next day the orthopedic surgeon found Glen's leg to be red and swollen from his mid-thigh to his calf. There was foul smelling pus draining from his surgical site. When the doctor applied pressure to Glen's knee a pus-like substance sprayed across the room. One of the nurses cried. It was at this point that they realized the nursing staff had failed to monitor Glen's surgical site for an extended period of time.

Glen was immediately admitted to the hospital for surgery. By then the infection was so bad that he was in septic shock and he was barely alert at all.

Glen continued to suffer severe pain and nurses had to repeatedly take pus from the wound in order to save his leg. This process was excruciatingly painful.

My husband was admitted to the nursing home on September 12 in good condition and with the plan being that he would return home. The infection that was caused due to his stay at the nursing home resulted in severe disability. Glen could no longer move his left leg; he suffered from ongoing chronic pain, continued swelling and depression. Our hospital bills totaled nearly $200,000.

I'm sure this story is hard to hear. But believe me, it was far harder to live. No matter how much we don't want to believe it can happen to us, or to our loved ones, it can and sometimes does. I'm living proof.

What's going to happen when a similar situation arises under this private equity firm? There are very serious questions about whether or not they can be held accountable at all.

I know that several of the nursing homes the Carlyle Group is seeking to take over are located in districts represented by members of this committee. For your constituent's sake, for your family's sake, I ask you to please ensure this group can be held accountable – or deny their request.


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WISCONSIN STATE SENATOR
DAVE HANSEN
SENATOR – 30TH DISTRICT
ASSISTANT MAJORITY LEADER

Date?

I would like to thank Chairman Carpenter and the members of the committee for holding a public hearing today on the proposed purchase of ManorCare by the Carlyle Group.

First, let me say that my request for this hearing was not intended to be an indictment of the care that ManorCare has provided to the elderly and disabled persons in Wisconsin. I have enjoyed a good working relationship with ManorCare and its employees, and I appreciate the difficult and much-needed work that they provide on a daily basis.

However, over the past several weeks I have noted the questions that have been raised regarding private equity involvement in the long term care industry. I am concerned with what such a purchase might mean for the residents living in ManorCare's nursing homes.

I do not presume to judge the merits of this proposed buyout, but I do feel that it warrants the close evaluation of this body and the Department of Health and Family Services before it is approved.

This is the same consideration I would request in any similar situation where the care of our elderly and disabled citizens is impacted. After all, these people are our loved ones, family members and friends – as citizens of this state we deserve to know that their care will not suffer as a result of this ownership change.

I greatly appreciate the committee taking time today to listen to the testimony provided by all concerned parties. I hope that this process will facilitate greater discussion and understanding and will lead to a decision by the department that is consistent with the values of our state.

Again, I thank Chairman Carpenter and the members of the committee for holding this hearing. I would also like to thank the people who have taken time out of their day to make their voices heard.

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