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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 ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
  (**ab** = Assembly Bill)
  (**ar** = Assm. Resolution) (**ajr** = Assm. Joint Resolution)
  (**sb** = Senate Bill)
  (**sr** = Sen. Resolution) (**sjr** = Sen. Joint Resolution)
- Miscellaneous ... **Misc**


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Manor Care Nursing Homes in Wisconsin

Date?

Green Bay

Manor Care Health Services East
600 South Webster Avenue
Green Bay, WI 54301

Manor Care Health Services
1760 Shawano Avenue
Green Bay, WI 54303

Kenosha

Heartland Health Care Center Washington
3100 Washington Road
Kenosha, WI 53144

Platteville

Heartland Health care Center Platteville
1300 N. Water Street
Platteville, WI 53818

Appleton

Manor Care Health Services
1335 Oneida Street
Appleton, WI 54915

Fond Du Lac

Manor Care Health Services
65 South National Avenue
Fond Du Lac, WI 54935

Showano

Manor Care Health Services-Shawano
1436 South Lincoln Street
Showano, WI 54166

Pewaukee

Heartland Health Care CenterPewaukee
N26 W23877 Watertown Road
Pewaukee, WI 53072


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Jim Doyle
Governor

Kevin R. Hayden
Secretary

Date ?

DIVISION OF QUALITY ASSURANCE
1 WEST WILSON STREET
P O BOX 2969
MADISON WI 53701-2969

Telephone: 608-266-8481
FAX: 608-267-0352
TTY: 888-241-9432
dhfs.wisconsin.gov

State of Wisconsin

Department of Health and Family Services

Department of Health and Family Services
Division of Quality Assurance
Licensure Requirements for Nursing Home

Application Requirements (per Chapter 50 and HFS 132)

- Must be on forms provided by the department, and include name, address and type and extent of interest in each of the following persons:
  - All managing employees and, if any, the director of nursing of the facility.
  - Any person who, directly or indirectly owns any interest in any of the following:
    - The partnership, corporation or other entity which operations the facility.
    - The profits, if any, of the facility.
    - The building in which the facility is located.
    - The land on which the facility is located.
    - Any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located…
    - Any lease or sublease of the land on which the or the building in which the facility is located.
- If any person named above is a partnership, then each partner.
- If any person named above is a limited liability company, then each member.
- If any person named above is a corporation, then each officer and director.
- If any person named above is a bank, credit union, etc, it is sufficient to name the entity involved.
- In the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between the owner or operation of the old licensee and the owner or operator of the new licensee, whether direct or indirect.
- Financial Information, including evidence of sufficient resources to operate the facility for 6 months.

Application Review (Fit and Qualified Review)

- The Department shall issue a license if it finds the applicant to be fit and qualified and if it finds that the nursing home meets the requirements established by this subchapter (sec. 50.03 (4)(a), Wisc. Stats).
- The Department shall review (HFS 132.14.(4):
  - The information contained in the application and any other documents that appear to be relevant, including survey and complaint investigation findings for each facility with which the applicant is affiliated or was affiliated during the past 5 years, and shall consider:
    - Any class A or B violations issued by the department relating to the applicant's operation of a residential or health care facility in Wisconsin.

        - Any adverse action, state and federal, against the applicant or any person named in the application (conditional license, placement of monitor or receiver, denial, suspension or revocation of the license).
    - Frequency of noncompliance with state licensure or federal certification laws.
    - Any prior financial failures of the applicant concerning the operation of a residential or health care facility that resulted in debt consolidation, restructuring, insolvency proceeding or mortgage foreclosure.
    - Any related convictions of the applicant.
- Approval or denial must be made within 60 days after receiving a complete application.
- If the application for a license is denied, the department shall give the applicant reasons, in writing for the denial and shall identify the process for appealing the denial.

Issuance of License

- If the applicant has not been previously licensed or if the facility is not in operation at the time application is made, the department shall issue a probationary license, which is valid for 12 months.
- Oversight is increased during that 12 month period and decision made to issue regular license or not.


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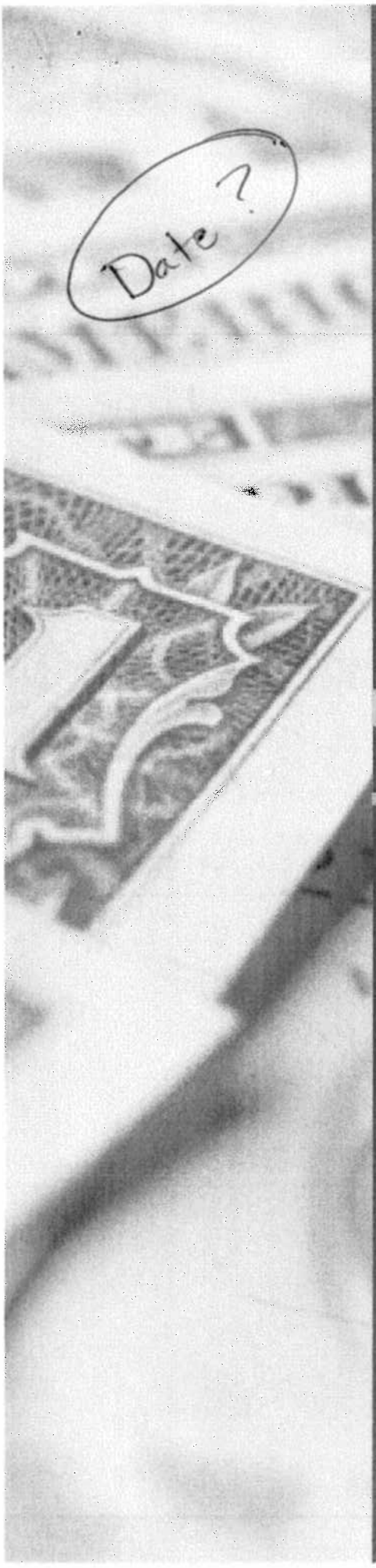


Who Wins, Who Loses?

The Carlyle Group Buyout of HCR Manor Care: Impact on Wisconsin

www.CarlyleFixManorCareNow.org

SEIU

Introduction

Stakes are high for Wisconsin in the $6.3 billion takeover of HCR Manor Care, one of the state's largest nursing home providers, by one of the world's largest private equity buyout firms, the Carlyle Group.

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.

But the buyout raises serious concerns for nursing home staff trying to provide quality care, the taxpayers who fund the bulk of this care and, most importantly for the residents who may suffer as Carlyle Group and Manor Care executives pay themselves millions while saddling Manor Care—a company that already has a record of failing to provide all its residents with quality care—with billions in debt.

Carlyle so far has refused to discuss specific plans for the reorganization and operations of Manor Care, which runs 8 nursing homes in Wisconsin with 868 resident beds.

The company has indicated an interest in closing the deal by the end of the year and Manor Care shareholders are scheduled to vote Oct. 17 to approve the deal, adding urgency to the questions about the impact of this corporate takeover on Wisconsin.

Seeking to ensure quality care and safe staffing at Manor Care-run homes after the buyout is completed, the nation's largest healthcare workers union, SEIU, is calling on the Carlyle Group to:

1. Ensure that its nursing homes are in compliance with federal minimum resident care regulations at all times.
2. Ensure that its nursing homes are staffed at levels recommended by the federal government.
3. Disclose the impact of its Manor Care buyout to the nursing home residents, workers and taxpayers in each state.
4. Structure its buyout so that Manor Care staff has a role in the reorganization and benefit from its outcome.
5. Create a Quality Care Fund and a new advisory committee comprised of Manor Care staff, resident advocacy groups, and other stakeholders to improve patient care in all Manor Care homes.

The detailed list of commitments SEIU is calling on Carlyle to make to high quality long term care as part of the Manor Care buyout can be found at www.CarlyleFixManorCareNow.org

About SEIU Wisconsin

With more than 1 million healthcare worker members, SEIU is the largest and fastest growing health care union in North America fighting to protect the interests of health care workers and their patients. In Wisconsin, SEIU represents more than 7,000 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.

Behind the Buyout: Facts about the Carlyle Group Takeover of HCR Manor Care

Private equity buyout firm: The Carlyle Group, Washington, D.C.
Company being bought out: HCR Manor Care, Toledo, Ohio

Deal value: $6.3 billion
Equity financing: $800 million (13 percent)
Debt financing: $ 5.5 billion (87 percent)

Sale price: $67 per share, representing a 20 percent premium over Manor Care's stock price on April 10

Deal announced: July 2, 2007
Deal closed: Expected to close by the end of 2007

Fees reported to date*:
$35 million to JP Morgan for fairness opinion and transaction fee
$5 million to Citigroup for fairness opinion

*The Carlyle Group will receive significant additional fees for arranging the deal: For example, buyout firms typically charge as high as 1 percent of the value of the transaction for overseeing the transaction, in this case an estimated $60 million. Buyout firms also typically are paid an annual management fee. Information regarding the management fees for this deal, if any, has not yet been made public.

Executive Compensation

Manor Care CEO Paul Ormond–Up to $186 million stock payout
Other Manor Care executives–Up to $68 million combined in stock payouts

About HCR Manor Care

HCR Manor Care, based in Toledo, Ohio, is the largest nursing home provider in the country, with more than 37,000 resident beds nationwide and $3.6 billion in annual revenue.

About the Carlyle Group

With more than $71 billion in assets under management, the Carlyle Group is one of the five largest corporate buyout firms in the nation. Washington, D.C.-based Carlyle owns companies that together employ more than 280,000 workers. The firm's three co-founders, David Rubenstein, William Conway, and Daniel D'Aniello each have a net worth estimated by Forbes at more than $2.5 billion. A recent study estimated Rubenstein's 2006 compensation at $260 million. For more information on the Carlyle Group visit www.BehindtheBuyouts.org/carlyle

Patients Are Losing Under Manor Care's Existing Care Record

Even prior to the impact of a buyout on Manor Care, the company already has a record of failing to provide all its residents with quality care:

Violations are on the rise: During the three most recent survey cycle, Manor Care's Wisconsin homes were cited for a total of 97 federal health standards violations. Furthermore, the number of violations cited jumped 59 percent in the most recent survey cycle.[2] These violations include failure to make sure the nursing home is free of hazards that could cause accidents, and failure to protect residents from neglect, mistreatment, or theft.[3]

Citations for federal health standards violations at Manor Care nursing homes nationwide have **increased nearly 30 percent**[4] over the past three inspection cycles.

Under federal law, every nursing home must undergo inspection every nine to 15 months.

Staffing levels below government standards: More than 85 percent of Manor Care nursing homes in Wisconsin already staff below a standard[5] recommended in a Centers for Medicare and Medicaid Services (CMS) study as putting residents at risk.[6]

Manor Care has problems in other states too:

- **Manor Care at Arlington Heights, Ill.:** Facility staff gave a resident an overdose of her antidepressant medication, which resulted in respiratory failure and her hospitalization. The resident was given a dose of an antidepressant drug that was four times the prescribed amount, and was later found unresponsive by facility staff. Facility staff called 911 and ran a full code; the resident was transported to the hospital, where she was intubated, put on a ventilator, and given charcoal to treat overdose-induced respiratory failure.[7]
- **Heartland of Perrysburg, Ohio:** A resident who was known to wander was left unattended, fell down a set of concrete stairs, and died. This resident, who had senile dementia and serious vision impairment, used a wheelchair. In addition to her wandering, she was also known to open doors on her own and have poor judgment of safety issues. According to a state inspection report, the resident, while unattended, opened the door to a secured stairwell, wheeled herself to the top of the stairs, and fell. A facility nurse later found her at the bottom of a flight of stairs, "face down on her right side with [her] wheelchair partially on top of her. She had no vital signs, no respirations; [her] pupils were fixed and dilated, and there

was blood from a laceration on her head." The county coroner found that the reason for the resident's death was a subdural hematoma resulting from her fall down the stairs.[8]

- **Heartland of Bellefontaine, Ohio:** A resident's blister was left untreated and developed into an infected, necrotic pressure sore. Nurses at the facility had identified a blister on the resident's right heel, but did not put together a plan to prevent this blister from becoming a serious pressure sore. Over the following weeks, the sore got worse, developed a bacterial infection, became necrotic, began to smell bad, and was debrided. Meanwhile, the facility repeatedly failed to relieve pressure on the resident's heel; more than three months after the resident's blister became a sore, the resident was observed sitting in a chair with no interventions in place to relieve pressure on her right heel.[9]
- **Manor Care Health Services, Camp Hill, Pa.:** The facility's failure to ensure routine dental examinations resulted in one resident having surgery to remove all of her teeth. She had developed tooth decay, fractured teeth, and abscesses over the course of seven months. The resident had not been given any dental care in nearly three years, even though facility staff knew she had broken, missing, and decaying teeth, and despite an existing order from her doctor to have a dental examination. When the resident was admitted to the facility in 1998, she had all of her own teeth and had no broken teeth or mouth pain.[10]

Methodology

Data sources

Data on nursing home inspections and nurse staffing comes from the Centers for Medicare and Medicaid Services (CMS) Online Survey, Certification, and Reporting (OSCAR) data. Inspection data was collected Aug. 23, 2007, and staffing data was collected Sept. 7, 2007. Statistical analysis within the last year spans Oct. 1, 2006, to Oct. 1, 2007. Descriptions of patient care problems in individual states are from state inspection reports generated from Statements of Deficiencies and Plans of Correction generated by state inspectors as part of regular facility inspections (see below). Staffing data at each nursing home is self-reported by the facility and reflects Full-Time Equivalents (FTEs) over the two-week period prior to the completion of the inspection.

Defining a violation

Federal regulations governing patient care conditions are contained in the 1987 Omnibus Budget Reconciliation Act (OBRA) and are found in 42 CFR 483.10 ff. These guidelines are used to assess a nursing home's compliance with basic patient care standards.

State inspectors inspect facilities under contract with the Centers for Medicare and Medicaid Services (CMS). When state inspectors enter a facility, either for an annual inspection or to investigate complaints, they have a responsibility to cite all violations of state and federal regulations. This report examined only violations of federal regulations identified on annual certification surveys. Inspectors complete the CMS Form 2567, also known as the Statement of Deficiencies and Plan of Correction.

The inspection process

State inspectors visit each nursing home every nine to 15 months to ensure that facilities are complying with federal and state standards for resident care. A team of inspectors evaluates the facility for approximately one week during each inspection visit. Since a review of the care given to each resident in a facility is time-consuming, the team observes the care given to a selected number of residents, called "sample residents," who represent the overall facility.

Inspectors note violations of federal regulations on the Statement of Deficiencies and Plan of Correction, including a reference to the specific regulation violated and a description of what the inspectors found in each case. The violations are discussed with the managers of the facility being inspected, who must submit a proposed "plan of correction" to remedy each violation and prevent its recurrence. The plan of correction is then added to the statement of deficiencies.

Scope and severity of violations

As part of the enforcement regulations, inspectors are required to rate each violation for which a deficiency is cited on a scale measuring the scope and severity of the deficiency. "Scope" refers to how many of the residents of a facility are or may be affected by a particular violation. Scope may be deemed "isolated," "pattern," or "widespread." "Severity" represents the potential for harm or the level of harm that has occurred. Severity may be deemed "no actual harm—potential for no more than minimal harm," "no actual harm—potential for more than minimal harm—no immediate jeopardy," "actual harm but no immediate jeopardy," or "immediate jeopardy."

The combined scope and severity ranking of each deficiency places each deficiency somewhere on a grid which determines an alphabetical scope and severity ranking. This ranking indicates both the type of correction required and the type of penalty that may be imposed on a nursing home for failure to correct the violation.

For the purposes of this report, a facility is considered to not to be in full or substantial compliance with federal regulations if it was cited with a deficiency of scope and severity "D" ("isolated and no actual harm—potential for more than minimal harm—no immediate jeopardy,") or greater on its most recent survey. However, any violation found by inspectors is included in the total violations for a state, irrespective of level of jeopardy.

Staffing

Staffing data at each nursing home is self-reported by the facility and reflects Full-Time Equivalents (FTEs) over the two-week period prior to the completion of the inspection.

Staffing data are then included in the OSCAR database. Facilities that do not complete the self-reported staffing form correctly have error values reported for these figures.

In this report, the average number of nurse staffing hours per patient day for Manor Care nursing homes in the state was arrived at by calculating a weighted average of nurse staffing hours. The daily staffing standard referred to in this report is 4.1 hours per resident day—the sum of recommended nurse staff hours per resident day for long-stay residents of nursing homes (i.e., residents who live in a nursing home for more than 90 days). This standard is identified in "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II final report," a Congress-commissioned report published in December 2001. The weighted average of total nurse staffing hours per resident per day was then compared to the 4.1 hours per resident day figure.

Taxpayers Will Lose Out, Face Increased Tax Burden, Wisconsin Will Lose Needed Tax Revenue

Manor Care, like most nursing home companies, receives two-thirds of its revenue from federal and state taxpayer-funded payments, including Medicare and Medicaid. However, because of the way the deal is structured, Manor Care will pay no corporate taxes while it is owned by Carlyle, cutting federal, state and local tax revenue by more than $600 million over five years, based on an SEIU analysis using conservative assumptions.

Nearly $60 million of that total will come out of state and local tax revenue. The tax revenue lost as a result of the Carlyle buyout of Manor Care will increase the tax burden of working families, and undercut funding for vital public services. Manor Care's tax payments, which totaled nearly $100 million in 2006, were predicted to increase in 2007.

Nearly $60 million in combined state and local tax revenues that will be forfeited because of the Carlyle-Manor Care deal could pay for repairs to 22 structurally deficient bridges.

Nursing Home Residents, their Families and Workers Have Come Up Losers in Other Nursing Home Takeovers

Heavy Debt Load Could Increase Pressure to Cut Costs, Risk Bankruptcy

As part of its leveraged buyout plan, Carlyle will increase Manor Care's debt to $5.5 billion—a figure more than 11 times greater than Manor Care's 2006 profits. This massive debt will increase pressure to cut costs, potentially exacerbating existing quality problems at Manor Care and increasing the risk of bankruptcy.

The high debt levels of the buyout echo those that led to widespread bankruptcies in the nursing home industry during the late 1990s. Carlyle's $6.3 billion offer is 87 percent debt. Less than a decade ago, another private equity firm bought and merged several chains with a debt-to-capital ratio of 90 percent, helping to trigger an industry collapse that led to 1,600 homes nationwide declaring bankruptcy. While the nursing home bankruptcy crisis in the 1990s was ushered in by more than a single highly leveraged buyout, a buyout with fundamentals this risky casts a shadow throughout the industry far beyond the longevity of Manor Care itself.

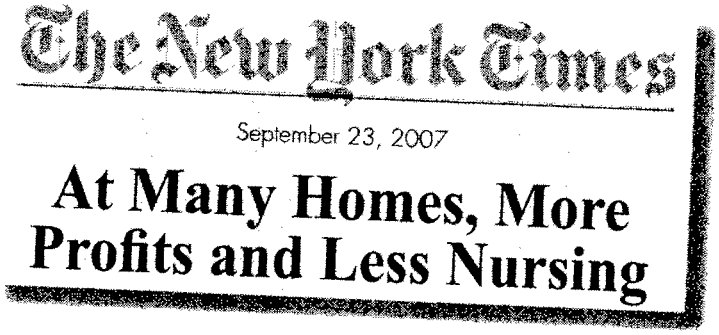
Potential for Layoffs and Unsafe Staffing Levels

According to *The New York Times* investigation, "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. During that period, staffing at many of the nation's other homes has fallen much less or grown."

Private equity buyouts of companies in any sector have become notorious for the corporate layoffs that have ensued. In the last year alone, 6,000 layoffs have been announced as a result of buyouts involving the Carlyle Group.

Corporate Restructuring

While Carlyle so far has refused to discuss specific plans for the restructuring and future operations of Manor Care, *The New York Times* investigation revealed how private equity firms that buy nursing homes create "byzantine structures" to avoid responsibility and regulation: *"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 ... 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."*


The New York Times

September 23, 2007

At Many Homes, More Profits and Less Nursing

New York Times Investigation

A front page exposé by *The New York Times* published Sept. 23, 2007, detailed how cuts to staffing and operations at nursing homes bought by private equity firms across the country have enriched top executives and buyout firms but left residents worse off. *The Times* investigation found:

- **Serious Quality of Care Deficiencies—** *"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."*

- **Staffing Cuts, Sometimes Below Legal Levels—** *"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. During that period, staffing at many of the nation's other homes has fallen much less or grown."*
- **Byzantine Structures To Avoid Regulation, Responsibility—** *"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 ... 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."*
- **Increased Profits for Private Equity Firms**—*Private equity firms "have acquired nursing homes, they have often reduced costs, increased profits and quickly resold facilities for significant gains ... Those homes, on average, were 41 percent more profitable than the average facility."*

LifeCare and Katrina: The Story Behind Another Carlyle-Owned Long Term Care Company

The only other Carlyle-owned long term care provider, LifeCare Hospitals, was alleged to have responsibility for a high profile tragedy when 24 patients in a New Orleans LifeCare hospital died awaiting evacuation after Hurricane Katrina.

A pending class action lawsuit alleges the patients died as a result of LifeCare's negligence, and that the facility lacked adequate backup power sources and had evacuation plans that were insufficient and not followed closely. It is alleged that LifeCare's medical director and top administrator were absent after the hurricane, leaving others to care for highly vulnerable patients during this critical time. Dr. John Wise, the medical director, said that nobody from the company even asked him to stay at the hospital.

Although the lawsuit does not raise claims against Carlyle despite its ownership of LifeCare at the time, Carlyle has a responsibility to take steps to avoid future tragedies at Manor Care or any other long term care providers it acquires.

Carlyle and Manor Care Executives, Bankers, Advisers Win with Hundreds of Millions in Payouts, Fees

While patients and taxpayers are among the losers in the Carlyle takeover, exorbitant rewards put Carlyle and Manor Care executives, bankers and advisers in the winner's circle:

- The takeover will result in a windfall of as much as $254 million for top Manor Care executives and directors; Manor Care CEO Paul Ormond alone could receive as much as $186 million as a result of the transaction. As the shareholder vote draws near, directors continue to exercise stock options in anticipation of a big payout.
- Employment contracts for top management also provide for continuing health care benefits, pensions and salaries after the takeover. At the same time, the company terminated its defined benefit pension plan for nonunion employees just weeks before launching its exploration of strategic options, undermining its employees' own retirement security to divest itself of a long-term financial commitment that could be unattractive to buyers.
- The Carlyle Group will receive significant fees for arranging the deal: For example, buyout firms typically charge as high as 1 percent of the value of the transaction for overseeing the transaction, in this case an estimated $60 million. Buyout firms also typically are paid an annual management fee. Information regarding the management fees for this deal, if any, has not yet been made public.
- JP Morgan Chase and Citigroup Global Group will receive nearly $35 million for their role as advisers to Manor Care in the transaction.

Carlyle Group Profits

Using assumptions consistent with JP Morgan's fairness opinion on the deal[11], Carlyle could earn a total profit of $1.84 billion upon selling Manor Care after five years—more than double its original investment.

If Carlyle keeps 20 percent of that profit as its "carry," the typical rate, nearly $370 million will go directly to pay top Carlyle managers such as co-founder David Rubenstein.

Since its founding in 1987, the Carlyle Group has generated annualized after-fee returns of 26 percent to investors in its funds, according to *Business Week*.[12]

Conclusion: How the Carlyle Group Can Commit to High Quality Long Term Care

To improve quality of care, SEIU is calling on the Carlyle Group, as part of the Manor Care deal, to commit to high quality long term care by:

1. **Ensuring that its nursing homes are in compliance with federal minimum resident care regulations at all times.**

   In the last year alone, Manor Care homes were cited for thousands of deficiencies in resident care, including residents receiving incorrect doses of medicine, receiving insufficient amounts of food and liquids and developing avoidable bedsores. The Carlyle Group needs to make an affirmative commitment to bringing all the Manor Care homes into compliance with federal regulations governing all homes that receive Medicaid and Medicare funds and keeping them in compliance at all times.

2. **Ensuring that its nursing homes are staffed at levels recommended by the federal government.**

   According to self-reported data at least 88 percent of Manor Care nursing homes are staffed at levels below those recommended by the Centers for Medicaid and Medicare Services. If residents are to get sufficient nutrition, correct medication and develop trusting relationships with staff, Carlyle Group needs to affirmatively commit to achieving and maintaining recommended staffing levels.

3. **Disclosing the impact of its Manor Care buyout to the nursing home residents, workers and taxpayers in each state.**

   Nearly two-thirds of Manor Care's revenue comes from taxpayer-funded Medicaid and Medicare payments. The lack of transparency inherent in the private equity business model is troubling given this dependence on public financing. Therefore, the Carlyle Group needs to commit to full public transparency on the impact of the buyout and its reorganization plans on employees, communities and taxpayers.

4. **Structuring its buyout so that Manor Care staff has a role in the reorganization and benefit from its outcome.**

   As the front-line staff that cares for residents, Manor Care employees bring important experience and best practices to the table. As such, the buyout should create economic opportunities that align the long-term interests

of staff in building the value of the company just as has been done for senior management. In order to concentrate on providing the best possible resident care, these employees should be guaranteed a voice at work, paychecks that can support a family, retirement benefits and quality, affordable healthcare coverage.

5. Creating a Quality Care Fund and a new advisory committee comprised of Manor Care staff, resident advocacy groups and other stakeholders to improve patient care in all Manor Care homes.

By buying Manor Care, the Carlyle Group will be in control of one of the largest long term and post-acute care companies in the country, a company that depends on taxpayer funded healthcare programs for more than two-thirds of its revenue. Carlyle should welcome the involvement of Manor Care staff and others on a newly created advisory body that will determine the best practices for addressing current Manor Care staffing and resident care shortcomings. For $250 million a year through the life of the buyout, Carlyle Group could establish an annual Quality Care Fund to implement the committee's plans and make Manor Care the pre-eminent company it claims to be.

Appendix: Manor Care nursing homes in Wisconsin

Manor Care Health Services–Appleton
1335 S. Oneida St.
Appleton, WI 54915

Manor Care Health Services–Fond du Lac
265 S. National Ave.
Fond du Lac, WI 54935

Manor Care Health Services–East
600 S. Webster Ave.
Green Bay, WI 54301

Manor Care Health Services–West
1760 Shawano Ave.
Green Bay, WI 54303

Heartland Health Care Center–Washington Manor
3100 Washington Road
Kenosha, WI 53144

Heartland Health Care Center–Pewaukee
N26 W23977 Watertown Road
Waukesha, WI 53118

Heartland Health Care Center–Platteville
1300 N. Water St.
Platteville, WI 53818

Manor Care Health Services–Shawano
1436 S. Lincoln St.
Shawano, WI 54166

Endnotes

1 April 10 is the day before HCR Manor Care announced it had retained JP Morgan to help it evaluate "strategic alternatives."

2 Based on information from "About the Nursing Home–Inspections," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 8/23/2007.

3 Manor Care Health Services–Appleton, certification survey dated 3/22/2007.

4 Based on information from "About the Nursing Home–Inspection Results," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 8/23/2007.

5 Based on information from "About the Nursing Home–Staff," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 9/7/2007.

6 Schnelle, et al. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II final report. Centers for Medicare and Medicaid Services, December 2001.

7 Manor Care at Arlington Heights, complaint investigation dated 6/7/2007.

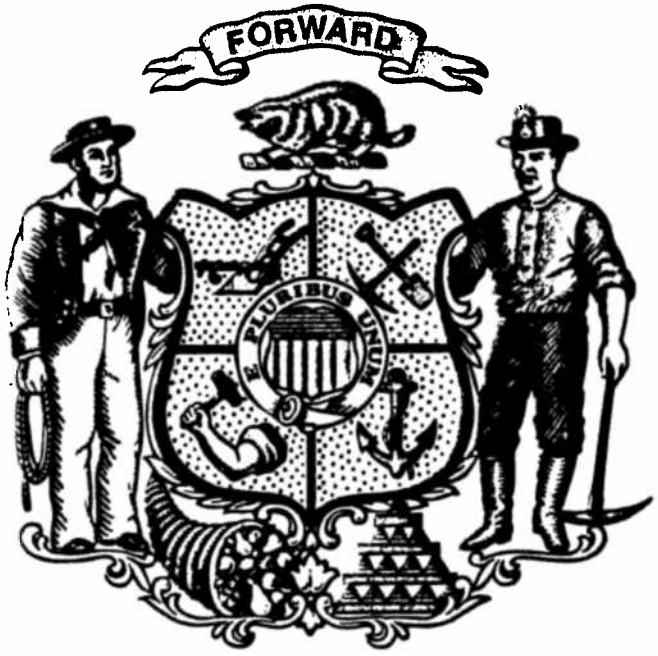
8 Heartland of Perrysburg, certification inspection dated 1/26/2006.

9 Heartland of Bellefontaine, complaint investigation dated 1/2/2007.

10 Manor Care Health Services–Camp Hill, complaint investigation dated 6/8/2007.

11 Assumptions include a constant growth rate, an exit multiple of EBITDA equivalent to the purchase multiple, a five-year hold period, and an IRR (Internal Rate of Return) of 21 percent.

12 Thornton, Emily. "Carlyle Changes Its Stripes, *Business Week*, Feb. 12, 2007.


FORWARD
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Date ?

How Carlyle Group Can Commit to High Quality Long-Term Care

- **The Carlyle Group should ensure that its nursing homes are in compliance with federal minimum resident care regulations at all times.**
  In the last year alone, Manor Care homes were cited for thousands of deficiencies in resident care, including residents receiving incorrect doses of medicine, receiving insufficient amounts of food and liquids and developing avoidable bedsores. The Carlyle Group needs to make an affirmative commitment to bringing all the Manor Care homes into compliance with federal regulations governing all homes that receive Medicaid and Medicare funds and keeping them in compliance at all times.

- **The Carlyle Groups should ensure that its nursing homes are staffed at levels recommended by the Federal Government or required by state regulations where higher.**
  According to self reported data at least 88% of Manor Care nursing homes are staffed at levels below those recommended by the Centers for Medicaid and Medicare Services. If residents are to get sufficient nutrition, correct medication and develop trusting relationships with staff, Carlyle Group needs to affirmatively commit to achieving and maintaining recommended staffing levels.

- **The Carlyle Group should disclose the impact of its Manor Care buyout to the nursing home residents, workers and taxpayers in each state.**
  Nearly two-thirds of Manor Care's revenue comes from taxpayer-funded Medicaid and Medicare payments. The lack of transparency inherent in the private equity business model is troubling given this dependence on public financing. Therefore, the Carlyle Group needs to commit to full public transparency on the impact of the buyout and its reorganization plans on employees, communities and taxpayers.

- **The Carlyle Group should structure its buyout so that Manor Care staff has a role in the reorganization and benefit from its outcome.**
  As the front-line staff that cares for residents, Manor Care employees bring important experience and best practices to the table. As such, the buyout should create economic opportunities that align the long-term interests of staff in building the value of the company just as has been done for senior management. In order to concentrate on providing the best possible resident care, these employees should be guaranteed a voice at work, paychecks that can support a family, retirement benefits and quality, affordable health care coverage.

- **The Carlyle Group should create a Quality Care Fund and a new advisory committee comprised of Manor Care staff, resident advocacy groups and other stakeholders to improve patient care in all Manor Care homes.**
  By buying Manor Care, the Carlyle Group will be in control of one of the largest long-term and post-acute care companies in the country, a company that depends on taxpayer funded health care programs for more than two-thirds of its revenue. Carlyle should welcome the involvement of Manor Care staff and others on a newly created advisory body that will determine the best practices for addressing current Manor Care staffing and resident care shortcomings. For $250 million a year through the life of the buyout, Carlyle Group could establish an annual Quality Care Fund to implement the committee's plans and make Manor Care the preeminent company it claims to be.


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More Profit and Less Nursing at Many Homes

By CHARLES DUHIGG

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.

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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.