

Is private equity really the boogeyman in nursing home quality of care?

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Introduction

On March 1, 2022, President Joe Biden delivered his first State of the Union Address, using the eminent platform to draw attention to concerns that private equity's role in the nursing home industry has led to lower quality of care. The President called out "Wall Street firms" that are taking over nursing homes, and stated that "quality in those homes has gone down and costs have gone up." The President then promised: "[t]hat ends on my watch. Medicare is going to set higher standards for nursing homes and make sure your loved ones get the care they deserve and expect."¹

Calling private equity (PE) "predatory owners" who put profits over patients, a White House fact sheet released before the State of the Union cited various studies that concluded that PE ownership leads to worse outcomes for residents.²

In the fact sheet, the Administration unveiled a slate of reforms aimed at increasing quality of care in nursing homes. The proposals were developed by, and will be implemented by HHS. Part of that package is a planned HHS examination of "the role of private equity, real estate investment trusts (REITs), and other investment ownership in the nursing home sector."

Improving nursing home quality is a durable political issue

The Biden plan is a continuation of the federal government's admirable focus in recent years on improving nursing home quality. The recent reforms follow the Trump Administration's March 2020 rollout of the U.S. Department of Justice — HHS National Nursing Home Initiative, which was set up to pursue civil and criminal remedies against the "worst nursing homes around the country" that provide "grossly substandard care."³ Although health care reform in general has proven historically to be a politically divisive issue in American politics, improving substandard nursing homes, and targeting perceived bad actors in that space, has shown to be a durable, non-partisan priority.

Post-state of the union developments

On April 20, 2022, signaling that the Administration is intent on fulfilling the President's promises, CMS released data on 3,236 skilled nursing facilities that were sold after January 1, 2016,

displaying the buyer, seller, and whether they were organizations or individuals.⁴ Accompanying the data was an analysis by HHS restating the Administration's position that academic researchers have found "private equity acquisition of [skilled nursing facilities] is associated with increases in short-term mortality and shifts in resources from patient care toward non-patient care items." In connection with the data release, CMS Administrator Chiquita Brooks-LaSure stated that CMS is interested in tracking nursing home turnover "at the ownership level."⁵

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As the Administration continues down the path staked out in the State of the Union, the question remains — are the PE investors targeted by the Administration really the boogeyman in nursing home quality of care, or a just convenient political punching bag? Let's consider both sides of the issue and look at some possible solutions.

The case against PE in nursing homes

According to the Biden Fact Sheet, nursing homes owned by private equity are "11.1% more likely to have a preventable emergency department visit and 8.7% more likely to experience a preventable hospitalization[.]" A longitudinal study cited by the Biden administration concluded that private equity increased "mortality for residents by 10%, increased prescription of antipsychotic drugs for residents by 50%, decreased hours of frontline nursing staffing by 3%, and increased taxpayer spending per resident by 11%." Another study cited by the Biden administration found that "private equity-backed nursing homes' COVID-19 infection rate and death rate were 30% and 40% above statewide averages[.]"

Some critics say the aggressive financial tactics of private-equity firms are ill-suited for caring for some of society's most vulnerable. Private equity investment in nursing homes is often characterized

as companies, with no track record in the medical or health care industry, purchasing SNFs — and then trying to operate in a complex industry which PE leadership knows little. It is said that the overarching goal of private equity is to generate returns for investors within a short period of time; critics say that goal is ill-suited for the health care industry.

The case for PE in nursing homes

Many argue that PE is not as much a problem as the Biden Administration makes it out to be, for reasons including that: (1) only 5% of all nursing homes are owned by private equity firms; (2) the industry has seen larger private equity investors already moving away from the skilled nursing space; and (3) other ownership types, such as non-profits, historically have also had low ratings on Medicare.gov.

Although a convenient boogeyman and a nice sound bite, targeting private equity investment will not have a measurable impact on improving the quality of nursing homes overall.

Further, PE firms are known to purchase homes that already have problems and need improvement. After all, the much-criticized goal of PE is to increase a company's value for investors by improving efficiency. "Distressed" and inefficient facilities thus present the best opportunity for investment, as opposed to homes that already have high ratings and perhaps less room for improvement. That a class of investors is willing to acquire troubled homes is perceived by many as a good thing, and one that can bring under-performing homes up to spec.

Moreover, many of the nation's homes not owned by PE receive low ratings on Medicare.gov's Nursing Home Compare. Quality, staffing, and inspection issues are plainly pervasive and certainly not limited to PE.

It's also important to recognize that PE-owned facilities are subject to the same federal and state licensing and inspection requirements as any other home, regardless of ownership. In this way, the government should be agnostic as to who owns the home — because all are evaluated against the same metrics.

How to improve quality: Looking at the real boogeymen

As part of this debate, other ideas should be considered for improving nursing home quality.

1. Low Medicaid reimbursement rates

First and foremost, to increase quality of care in nursing homes, HHS should increase Medicaid funding. Medicaid is the primary payer for our nation's nursing homes, and yet Medicaid only covers 70-80% of the actual cost of nursing home care. These low reimbursement rates are compounded by a number of adverse

trends including that more elderly Americans are choosing Medicare Advantage plans, which reimburse less for skilled nursing services than does traditional Medicare.

Cost and quality issues common to nursing homes, caused by low Medicaid reimbursement rates, force many American families to turn to informal, unpaid, long-term care provided by family members. Economic downturns can cause these informal caregivers to return to the work force and to rely on nursing homes to care for their loved ones. A downturn, such as the one created by COVID, coinciding with America's aging baby boomers' need for long-term care is a "perfect storm" for nursing homes. These overlapping trends are far more a boogeyman than PE.

2. The increasing costs due to COVID-19

Heightened infection-control measures initiated under the pandemic have put already strained nursing homes at a greater deficit: the cost of personal protective equipment, surveillance COVID-19 testing, "hero" pay, and other pandemic-era measures have proven prolonged and costly. Although funding provided to nursing homes under the CARES Act has alleviated some financial pressure, new variants of COVID-19 mean that added costs due to the virus will continue.

3. Chronic skilled nursing facility staff shortages have been made worse by COVID-19

One of the biggest operating expenses for any nursing home is staff pay. Traditionally, nursing homes have struggled with hiring and retaining high-quality staff, due to low pay and the hard work the average nursing home job entails. Add COVID to the mix, and the related risks front-line health care workers must accept to work inside facilities, and staffing becomes even more challenging. As of January 30, 2022, COVID-19 had killed more than 200,000 residents and staff of nursing homes.⁶ Unsurprisingly, COVID has driven many quality nurses out of the industry, resulting in an even shorter supply of qualified candidates.

Indeed, nursing homes have lost 238,000 workers since the beginning of COVID-19. This is a problem that is unique to long term care. Although other health care settings, such as physician offices and outpatient care centers, are above or near pre-March 2020 levels of employment, skilled nursing facility (SNF) nurse staffing is 15% below pre-pandemic levels.⁷

4. Nursing home closures

The American Health Care Association has reported that more than half of nursing homes are operating at a loss. The inevitable consequence of this trend is possible closures of many facilities. Permanent closures caused by bankruptcy and financial unfeasibility mean that families must transfer loved ones to farther-away facilities, resulting in fewer opportunities for families to see their loved ones and to supplement facility care with informal caregiving. Alternatively, some families, faced with fewer SNFs to choose from, may be forced to forego institutional care altogether. Again, Americans are faced with a "perfect storm" — nursing home closures at the very time when Baby Boomers are aging into the need for heightened care.

Conclusion

Although a convenient boogeyman and a nice sound bite, targeting PE will not have a measurable impact on improving the quality of nursing homes overall. In fact, targeting PE may cause a grave situation to become more dire. The problems nursing homes face are complex, involve demographic trends, and the solutions are not straightforward or amenable to a quick fix. This is especially true in the current tight labor market, coupled with the lingering costs of COVID: the exiting of qualified nurses from the health care industry and increased expenditures for infection control. Time will tell if the Biden reform package's focus on the role of PE in the SNF industry moves the needle on quality of care for the 1.4 million residents in the 15,500 Medicare and Medicaid-certified nursing homes in the United States.

Notes

- ¹ See transcript of March 1, 2022, Pres. Biden State of the Union, available at: <https://bit.ly/3y0sqSl>.
- ² See White House "FACT SHEET: Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes," Feb. 28, 2022, available at: <https://bit.ly/3xZayHg>.
- ³ See DOJ press release, "Department of Justice Launches a National Nursing Home Initiative," March 3, 2020, available at: <https://bit.ly/3Ozte6x>.
- ⁴ See HHS report "Changes in Ownership of Hospital and Skilled Nursing Facilities: An Analysis of Newly-Released CMS Data," April 20, 2022, available at: <https://bit.ly/38scLjF>.
- ⁵ See Medpage Today, "CMS Releases Data on Who's Buying Nation's Skilled Nursing Facilities and Hospitals," April 21, 2022, available at: <https://bit.ly/3Kq9LLu>.
- ⁶ See Kaiser Family report, "Over 200,000 Residents and Staff in Long-Term Care Facilities Have Died From COVID-19," Feb. 3, 2022, available at: <https://bit.ly/3xRCoFh>.
- ⁷ See American Health Care Association and National Center for Assisted Living fact sheet, Jan. 2022, available at: <https://bit.ly/3MvrNE1>.

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