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October 25, 2022

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Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Commissioners:

As Democratic Chairman of the House Health Committee, I write in support of the four-regulation bill package related to long-term care homes. I've written previously in support of safe staffing requirements for care facilities, so will limit my comments related to the final rules to the third package in the series, specifically change of ownership requirements.

As private equity companies continue to incorporate long-term care facilities into their investment portfolios, regulators must have ability to evaluate the purchasers, understand their history, and capture the various legal entities with ownership stakes. Without the ability to trace financial arrangements between participating entities, it is impossible to understand the bigger picture around ownership structure.

Both the Department of Health (DOH), in its oversight capacity, and community members looking for homes for loved ones must be able to understand who owns and operates these facilities. This understanding enables DOH to deny licensure to bad actors with problematic histories in the care industry. It allows consumers to understand the history of corporate entities and choose facilities with full knowledge of who owns and operates them. Finally, transparency makes it possible to understand the actual costs to government of long-term care facilities.

Corporate investment in nursing homes has resulted in complex management structures where companies will disaggregate holdings, with quality implications for the facilities. In a Forefront article on the Health Affairs website, researchers noted the common practice for corporations to sell the real estate from a long-term care facility to a separate holding company, thereby requiring the long-term care facility to pay rent. Corporate owners may also contract with their own third-party management companies, as well as companies providing nursing and therapy services. These opaque structures allow a parent company to profit while the long-term care facility appears to be in a precarious financial position.[1]

The division of these long-term care facilities into separate businesses may also have the effect of insulating them from liability. Yasmin Rafiei described this as a process to manage risk in an article published in the August 25, 2022 issue of The New Yorker magazine[2].

> One such strategy involves carving up a nursing home into multiple limited-liability companies, or L.L.C.s, to shield its parent company. Before St. Joseph's was acquired, it had been a single nonprofit nursing home. Hyman and Zanziper created a corporate web. They formed one company for the home's property (called Henrico Va PropCo L.L.C.) and another for the home's operations (Henrico Va OpCo L.L.C.). Accordius Health was the management company. The Portopiccolo Group, at the very top, was insulated from the nursing home by at least two corporate layers. In the event of a lawsuit, the nursing home would "dissolve into this welter of different legal entities," Hughes said. "It's like a sandcastle—when you touch it, it starts to break apart."

Long-term care facilities are essential components of our health and care system. We fund them with taxpayer and private dollars. There is no prohibition on profiting from investment in the long-term care sector. Nonetheless, we should be able to clearly understand what portion of taxpayer dollars fund the actual provision of care to residents, and what portion of our tax dollars are part of the profit structure for investors. Understanding ownership will help protect residents. Regular reporting and information about the business structures of these facilities will provide us that understanding.

As the regulation and commenters have noted, the General Assembly invested heavily in the long-term care industry in our most recent budget. The significant appropriation dedicated to the industry was predicated on the funds being invested in the health of our vulnerable residents. This transparency language is necessary to monitor this complex business and ensure that health is at the center of it. Without such transparency accountability is impossible.

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[1] Harrington, Charlene, Montgomery, Anne, et. al "These Administrative Actions Would Improve Nursing Home Ownership and Financial Transparency in a the Post Covid-19 Period," Health Affairs Forefront. 10.1377/forefront.20210208.597573 https://www.healthaffairs.org/do/10.1377/forefront.20210208.597573/ retrieved 10/25/2022

[2] Rafiei, Yasmin, "When Private Equity Takes Over a Nursing Home," The New Yorker, August 25,2022.

I strongly support these regulations related to transparency of ownership and am grateful to the Department for both creating high standards for transparency and allowing flexibility for future regulators to adjust to marketplace changes.

Thank you for your consideration of these comments.

Very Truly Yours,

Representative Dan B. Frankel
Democratic Chair, House Health Committee
23rd Legislative District