

United States Senate
WASHINGTON, DC 20510

March 03, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services

Dear Secretary Becerra and Administrator Brooks-LaSure:

In 2007, almost sixteen years ago, I called for “transparency, accountability, and common sense” reforms pertaining to the complex and increasingly veiled nature of nursing home ownership by private equity and its effect on the quality of care in these facilities.¹ My actions in 2007 followed a shocking New York Times article that detailed the high numbers of serious health and safety deficiencies in nursing homes that private investment companies acquired.² Just ten days after reading the Times article, as then-Ranking Member of the Senate Committee on Finance, I asked the Government Accountability Office to review the effect of private equity ownership on the quality of care provided in these facilities.³ I also held hearings to examine the topic in greater detail and wrote letters to five prominent equity firms questioning them about their management of these homes, including any legal schemes used to shield themselves from liability.⁴

My unprecedented work on this matter resulted in a new law that called for nursing homes to disclose any person or entity who exerts control over it, leases property to it, or offers administrative

¹ 155 CONG. REC. S3552, S3555 (daily ed. Mar. 19, 2009), available at <https://www.congress.gov/congressional-record/volume-155/issue-48/senate-section/article/S3552-1>.

² Charles Duhigg, *At Many Homes, More Profit and Less Nursing*, THE NEW YORK TIMES (Sept. 23, 2007), available at <https://www.nytimes.com/2007/11/16/business/16care.html>.

³ John E. Dicken et al., *Nursing Homes: Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data*, GOVERNMENT ACCOUNTABILITY OFFICE (Sept. 2010), available at <https://www.gao.gov/assets/gao-10-710.pdf>.

⁴ Nursing Home Transparency and Improvement: Hearing before the U.S. Senate Special Committee On Aging, 110th Cong. (2007), available at <https://www.govinfo.gov/content/pkg/CHRG-110shrg41836/html/CHRG-110shrg41836.htm>; Press Release, Sen. Grassley seeks review of the effect of private equity ownership on nursing home care (Oct. 2, 2007), available at <https://www.finance.senate.gov/ranking-members-news/sen-grassley-seeks-review-of-the-effect-of-private-equity-ownership-on-nursing-home-care>; Press Release, Senators ask about oversight and operation of nursing homes taken over by large private investment firms (Oct. 18, 2007), available at <https://www.finance.senate.gov/imo/media/doc/prg101707b.pdf>.

services to it.⁵ It also required facilities to provide the organizational structure of all these entities and a description of the relationships between them. Notably, the law required the Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) to complete a regulation to implement the transparency language within two years of passage. Although CMS did issue a proposed regulation in May 2011 during the Obama/Biden administration, it was never finalized.⁶

CMS's thirteen-year delay is slow even by bureaucratic standards and especially egregious given that the number of nursing homes owned by private equity has significantly increased since then.⁷ As such, I request that you follow through and finalize CMS's long overdue proposed rule that you have thus far failed to finalize and implement. What I stated in 2007 on this important topic still rings true today: "Profits of investors cannot be put ahead of quality care."⁸ We owe it to current and future patients to get this done. Please respond to me by March 17, 2023, on what your intentions are regarding this serious matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

⁵ Patient Protection and Affordable Care Act, Public Law 111-148, § 6101, 124 Stat. 699 (2010), available at <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>.

⁶ Taylor Lincoln, *Is It Private Equity? We Can't See*, PUBLIC CITIZEN (Sept. 1, 2022), available at https://www.citizen.org/article/nursing-home-transparency/#_ftn1.

⁷ Richard M Scheffler et al., *Soaring Private Equity Investment In The Healthcare Sector: Consolidation Accelerated Competition Undermined, and Patients at Risk*, AMERICAN ANTITRUST INSTITUTE, (May 18, 2021), available at <https://www.antitrustinstitute.org/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL-1.pdf> (noting that "From 2010 to 2019, there was a large increase in private equity companies buying up nursing homes, along with other investments in health care.").

⁸ Press Release, Senators Ask About Oversight and Operation of Nursing Homes Taken Over by Large Private Investment Firms, (Oct. 17 2007), available at <https://www.finance.senate.gov/chairmans-news/senators-ask-about-oversight-and-operation-of-nursing-homes-taken-over-by-large-private-investment-firms>.