United States Government Accountability Office

GAO

Report to Congressional Requesters

September 2010

NURSING HOMES

Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data

This Report Is Temporarily Restricted Pending Official Public Release.

G A O

Accountability ⋆ Integrity ⋆ Reliability

GAO-10-710

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-10-710, a report to congressional requesters

September 2010

NURSING HOMES

Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data

Why GAO Did This Study

Since 2007, attention has been focused on nursing home ownership by private investment (PI) firms. Nursing home providers are required to disclose parties with an ownership or control interest in order to participate in Medicare or Medicaid. CMS, the HHS agency responsible for managing these two programs, maintains ownership and chain data in its Provider Enrollment, Chain, and Ownership System (PECOS). GAO examined (1) the extent of PI nursing home ownership and firms' involvement in homes' operations, (2) whether PECOS reflects PI ownership, and (3) how HHS and states use ownership data for oversight. GAO identified PI ownership using a proprietary database and analyzed data from six PI firms about their interest and involvement in nursing homes. GAO examined PECOS data for selected PI-owned nursing home chains and discussed ownership data with officials from HHS, CMS, and six states that also collect data.

What GAO Recommends

GAO recommends that the Secretary of HHS and CMS Administrator consider requiring the reporting of certain information to make nursing home ownership structures more understandable and take other actions to improve the accuracy and dissemination of these data as HHS implements new ownership reporting requirements in the 2010 Patient Protection and Affordable Care Act. HHS concurred with all of GAO's recommendations.

View GAO-10-710 or key components.
For more information, contact John E. Dicken at (202) 512-7114 or dickenj@gao.gov.

What GAO Found

GAO found that 1,876 unique nursing homes were acquired by PI firms from 1998 through 2008. While some of the acquisitions involved entire nursing home chains, which included both the operations and any owned real estate, other acquisitions involved only the real estate. Sometimes the same nursing homes were acquired more than once. Ten PI firms accounted for 89 percent of the 1,876 unique nursing homes acquired by PI firms during this period. Of the six PI firms from which GAO collected information, those that acquired a chain reported being more involved in nursing home operations than those that only acquired the real estate. These firms had representatives on the nursing home chain's board of directors, but they generally characterized their involvement as related to the chain's strategic direction rather than day-to-day operations. PI firms that acquired real estate only had no representation on the boards of the operating companies, but officials at one PI firm observed that some leasing arrangements have the potential to affect operations.

PECOS provided a confusing picture of the complex ownership structures and chain affiliations of the six PI-owned nursing home chains GAO reviewed. The database did not provide any indication of the hierarchy or relationships among the numerous organizational owners listed for PI-owned nursing homes. Further, PI ownership was often not readily apparent in the data, which could be the result of (1) PI firms not being required to be reported because of how they structured their acquisitions, (2) provider confusion about the reporting requirements, or (3) related entities that were reported but were not easily identifiable with the PI firms. Finally, PECOS chain information was not straightforward and was sometimes incomplete, making it difficult to link all the homes in a chain. Compounding these shortcomings, CMS's ability to determine the accuracy and completeness of the reported ownership data is limited.

HHS has made limited use of PECOS ownership data. The only CMS division with routine access to PECOS data has been largely focused on populating the database and has not developed any standardized reports on nursing home ownership that it could share with interested parties. Some states collect their own ownership information but it can be limited to owners that operate in their state. As a result, tracking compliance problems among commonly owned homes or multistate chains can be ad hoc. State officials and others expressed interest in nationwide ownership data, such as PECOS, to improve nursing home oversight. Recognizing the growing interest in PECOS data, CMS has established a workgroup to consider how to accommodate the PECOS interests of other groups within the agency and is considering whether and how to provide access to external parties such as states. The implementation of the Patient Protection and Affordable Care Act provides CMS with an opportunity to address shortcomings in the current PECOS database and to make ownership information available to states and consumers in a more intelligible way.

Contents

Letter 1

Background 5
Private Investment Firms Acquired about 1,900 Nursing Homes from 1998 through 2008, although Some Acquisitions Involved Real Estate Only and Not the Operations 13
PECOS Data on PI Ownership and Chain Affiliation Are Hard to Decipher, Incomplete, and Difficult for CMS to Verify 22
HHS Has Made Limited Use of Ownership Data, but State Survey Agencies and Others Expressed Interest in Nationwide Data to Improve Nursing Home Oversight 36
Conclusions 41
Recommendations for Executive Action 44
Agency Comments and Our Evaluation 45

Appendix I **Summary of Six PI Firms' Responses about Their Interest and Involvement in Nursing Homes** 50

Appendix II **Comments from the Department of Health and Human Services** 58

Appendix III **GAO Contact and Staff Acknowledgments** 62

Related GAO Products 63

Tables

Table 1: Sample Sections of the CMS Medicare Enrollment Application 11
Table 2: Top 10 Private Investment (PI) Nursing Home Chain and Real Estate Acquirers for Calendar Years 1998 through 2008, Still Owned as of December 31, 2008 16
Table 3: Chain Home Office Information Listed in PECOS for Nursing Homes in Six PI-Owned Nursing Home Chains 32
Table 4: Summary of Responses of Six of the Top 10 Nursing Home Chain and Real Estate Acquirers as of Mid-2009 50

Figures

Figure 1: Key Stages in a Leveraged Buyout by a PI Firm 8
Figure 2: Nursing Homes Involved in PI Acquisitions, 1998 through 2008 15
Figure 3: Example of Different PI Firms That Separately Acquired the Operations and Real Estate of the Same Nursing Homes 18
Figure 4: Comparison of Organizational Ownership Information Contained in State Data from Missouri and in PECOS for One PI-Owned Nursing Home 25

Abbreviations

CMS	Centers for Medicare & Medicaid Services
GSA	General Services Administration
HHS	Department of Health and Human Services
OIG	Office of Inspector General
PECOS	Provider Enrollment, Chain, and Ownership System
PI	private investment
SEC	Securities and Exchange Commission
SPE	special purpose entity

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO
Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

September 30, 2010

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

The Honorable Pete Stark
Chairman
Subcommittee on Health
Committee on Ways and Means
House of Representatives

The nursing home industry has experienced significant restructuring in the last two decades, with many of the nation's largest nursing home companies—including publicly traded companies that owned hundreds of homes—having undergone mergers, bankruptcies, and divestitures. Recently, private investment (PI) firm ownership of nursing homes has attracted attention. The ownership interest or securities of PI firms generally are not publicly traded and their activities are not otherwise subject to federal financial disclosure requirements.[1] Thus, when a PI firm acquires a publicly traded nursing home company, essentially taking the nursing home private, the company's finances and management become less transparent. In addition, PI firms may hold their acquisitions for a short time and place large levels of debt on the acquired entity, leading to concerns that quality of care may be adversely affected. A 2007 *New York Times* investigation of nursing homes owned by PI firms reported that quality of care declined in homes after they were purchased by such firms.[2] Another study, however, did not show a definitive link between PI

[1]The Securities and Exchange Commission requires publicly traded companies to disclose financial and other information to the public. According to the Commission, this disclosure provides a common pool of knowledge for investors to decide if they want to buy, hold, or sell a particular publicly traded security.

[2]*The New York Times* investigation compared over 1,200 PI-owned nursing homes to national averages in such areas as health and safety violations, complaints, and fines. For more information, see Charles Duhigg. "At Many Homes, More Profit and Less Nursing," *The New York Times* (Sept. 23, 2007). The article uses the terms private investment and private equity; private equity is a subclass of private investment.

ownership of nursing homes and quality of care and called for more work on the issue.[3]

To determine the effect of ownership on nursing home quality of care, it is necessary to have complete and accurate ownership information that provides a clear understanding of the relationship of each owner to the nursing home and any other owners. Since at least the late 1970s, the Centers for Medicare & Medicaid Services (CMS), within the Department of Health and Human Services (HHS), has been required to collect ownership information on providers, such as nursing homes, participating in the Medicare and Medicaid programs, the largest payers of nursing home care in the nation.[4] CMS is responsible for oversight of providers that participate in these two programs. Congressional hearings held in 2007 and 2008 focused in part on quality of care at PI-owned homes and CMS's ability to identify homes with common ownership.

You asked us to look at PI ownership of nursing homes, CMS's capacity to identify nursing home owners, and the impact of PI ownership on the quality of care provided. This report addresses (1) the extent of PI ownership of nursing homes and PI firms' involvement in the operations of homes they have acquired, (2) whether PI ownership of nursing homes is reflected in the ownership information reported to CMS, and (3) how nursing home ownership data are used for oversight by HHS and states. We plan to examine the impact of PI ownership of nursing homes on the quality of care in a subsequent report.

To identify the extent of PI ownership of nursing homes, we examined PI acquisitions from 1998 through 2008, primarily using merger and acquisition data compiled by Dealogic, a company that offers financial analysis products to the investment banking industry. We assessed the procedures that Dealogic uses to collect and analyze data and determined

[3]See David Stevenson and David Grabowski, "Private Equity Investment and Nursing Home Care: Is it a Big Deal?" *Health Affairs*, vol. 27, no. 5 (2008).

[4]A provider is an entity responsible for delivering care to Medicare and Medicaid beneficiaries, such as an individual nursing home, hospital, or home health agency. CMS oversight is directed at providers. Medicare is the federal health care program for elderly and disabled individuals. Medicaid is the joint federal-state health care financing program for certain categories of low-income individuals. According to the most recent National Health Expenditure Data, combined Medicare and Medicaid payments for nursing home services were about $82 billion in 2008, which represented about 59 percent of total U.S. nursing home expenditures in 2008. Of this $82 billion, the federal share was about $58 billion.

that the data were sufficiently reliable for our purposes.[5] We supplemented the Dealogic data with information about additional acquisitions that we identified through other sources, including press releases from company Web sites, nursing home industry publications, and company filings with the Securities and Exchange Commission (SEC). Because some homes were sold more than once during the 1998 through 2008 period and also because of the way some of the PI nursing home acquisitions were structured, we report PI nursing home acquisitions in two ways. First, we report the number of unique homes PI firms acquired during the period. Second, we identify 10 PI firms that owned the most nursing homes as of December 2008. We contacted these top 10 firms—which represented almost 90 percent of all unique homes acquired by PI firms during the 1998 through 2008 period—both to confirm the numbers of homes they currently owned and to understand the extent of their involvement in the operations of these nursing homes. We confirmed the number of nursing homes currently owned for 9 of the 10 firms, representing about
78 percent of all unique nursing homes acquired by PI firms during the period.[6] We also analyzed information that 6 of these 9 PI firms provided, representing about 68 percent of unique nursing homes, on the extent of their involvement in nursing home operations.

To identify whether PI ownership of nursing homes is reflected in the ownership information collected by CMS, we examined nursing home data in CMS's Provider Enrollment, Chain, and Ownership System (PECOS), the national database of enrollment information submitted to CMS by providers in the Medicare program.[7] We obtained and analyzed extracts of

[5]Dealogic merger and acquisition data have been used in a prior GAO report on private investment. See GAO, *Private Equity: Recent Growth in Leveraged Buyouts Exposed Risks That Warrant Continued Attention*, GAO-08-885 (Washington, D.C.: Sept. 9, 2008).

[6]One PI firm did not respond to any of our data requests.

[7]This enrollment information includes a provider's legal business name and licensure information, as well as ownership information and chain affiliation. Medicare providers submit this information to CMS when they initially enroll in the Medicare program and if there is any change in this information subsequent to enrollment.

PECOS data as of August and September 2009, for 1,003 nursing homes in six PI-owned chains, using identifying information provided by PI firms.[8,9] We also interviewed officials in CMS's Division of Provider and Supplier Enrollment, responsible for PECOS, to learn what ownership information is captured by PECOS, how CMS enforces ownership disclosure requirements, and how CMS ensures the accuracy of the data. We determined that, for our purposes of reviewing ownership information collected by CMS, the PECOS data were sufficiently reliable.

To determine how other HHS components use nursing home ownership data and what data states collect to oversee providers, we interviewed the following:

- CMS's Survey and Certification Group, which is responsible for oversight of state survey activities and enforcement of nursing home quality standards;[10]
- officials from 4 of CMS's 10 regional offices, which assist the Survey and Certification Group in its oversight of state survey activities, to understand their use of and access to ownership data;[11]
- CMS components responsible for other CMS initiatives related to the collection of data that could be used to identify nursing home chains;
- six state survey agencies (California, Illinois, Maryland, Missouri, New Jersey, and Texas) that collect nursing home ownership information when they license nursing homes to operate in their jurisdictions;[12] and

[8]The 1,003 nursing homes account for most of the homes in the six PI-owned chains. CMS was not able to identify PECOS data for 3 percent of the homes using the identifying information we provided.

[9]One PI firm did not respond to any of our data requests. For three other firms, we did not obtain identifying information for the homes they owned before we had completed our requests for and assessment of PECOS data.

[10]State survey agencies, under contract with CMS, inspect nursing homes that participate in Medicare and Medicaid to help ensure the quality of resident care.

[11]To achieve geographic diversity, we selected CMS's San Francisco, Dallas, Chicago, and Atlanta regions.

[12]We contacted state survey agency officials in all 50 states and the District of Columbia to identify states that collect nursing home ownership information. We selected six states to interview that collected and maintained detailed nursing home ownership information in a database or that were actively exploring issues related to nursing home ownership. We also selected these six states based on geographic diversity.

- HHS Office of Inspector General (OIG), which has the authority to exclude nursing homes from participating in Medicare, Medicaid, and other federal health care programs.[13]

We also reviewed CMS and other federal and state documents and relevant federal regulations and statutes.

We conducted this performance audit from July 2008 through September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Over the last decade, nursing home ownership and operating structures have continued to evolve, including the development of more complex structures and an increase in private investment ownership of nursing homes. The federal government plays an important role in funding nursing home care and ensuring that residents in the nation's approximately 16,000 nursing homes participating in the Medicare or Medicaid programs receive appropriate care; collection of nursing home ownership information is one part of this effort.

Nursing Home Ownership Structures

Nursing homes must be licensed by the states in which they operate in order to participate in Medicare or Medicaid. The entity that is licensed to operate the facility is known as the provider. A provider can be an independent company that operates one facility or the provider can be part of a multiprovider chain organization.[14] Some providers contract with separate entities to manage nursing homes. In addition, the provider may or may not own the real estate where care is delivered and any associated medical or other equipment. Nursing home real estate assets can be

[13]See Social Security Act § 1320a-7.

[14]CMS regulations define a chain as two or more providers under common ownership or control. Chain affiliation is self-reported to CMS by nursing homes. According to a study conducted for HHS, about half of nursing homes are chain-owned. See David Stevenson, David Grabowski, and Laurie Coots, *Nursing Home Divestiture and Corporate Restructuring: Final Report*, a special report prepared at the request of HHS, Assistant Secretary for Planning and Evaluation, December 2006.

separated from nursing home operations for a number of reasons, including to limit liability or to obtain financing. The ownership and control relationships among these various entities can be complex. For example, the provider may own all or part of the entity it contracts with to operate the nursing home.

Providers can be one of three business types—for profit, nonprofit, or government. The majority of nursing home providers—about two-thirds—are for-profit businesses. For-profit nursing home providers include a wide range of business ownership types from sole proprietorships to large publicly traded corporations. Within the for-profit provider type, private investment firms—generally investment firms whose ownership interests are not publicly traded on a stock exchange—have been acquiring both entire nursing home chains as well as individual homes since at least the late 1990s. Restructuring of the nursing home industry following bankruptcies among several large nursing home chains, as well as increased liability litigation in states such as Florida and Texas, which prompted some chains to sell their homes in these states, created an opportunity for private investment firms to acquire nursing homes that were being sold by these chains. In addition, reliable income streams from nursing home ownership made investment in the industry attractive for PI firms.

Private Investment Firms

In general, PI firms use a combination of investment capital and borrowed capital to acquire companies with the goal of making a profit and eventually returning that profit to investors and the firm. In contrast to publicly traded firms, PI firms generally are not subject to periodic disclosure and other SEC requirements, including public reporting of income, assets, and information about company operations and leadership.[15] Consequently, information on the operations of PI firms—including a firm's acquisition and sale of companies—is generally not as readily available as that of publicly traded firms. PI firm managers say this advantage allows them to make business improvements their publicly traded competitors may be less willing to make, such as developing investment strategies that are not tied to producing profits on a quarter-by-quarter basis.

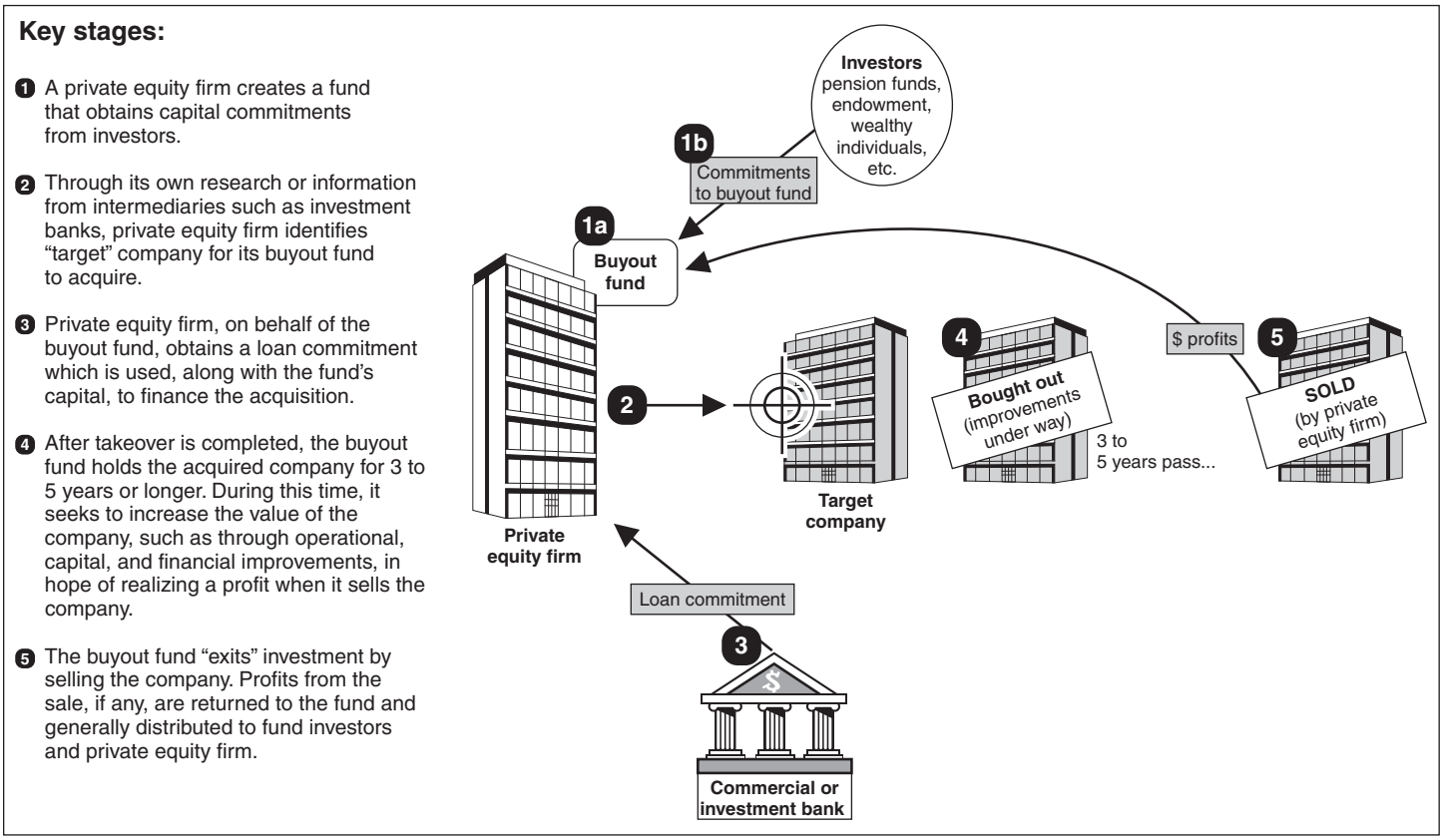
[15]Certain smaller publicly traded companies, such as those with assets of $10 million or less, are not subject to SEC public reporting requirements.

In recent years, attention has been given to a subclass of private investment called private equity. One investment strategy undertaken by private equity firms is the "leveraged buyout." In a typical leveraged buyout, a private equity firm establishes a fund and obtains capital commitments from investors. These investors often include public and corporate pension plans, endowments and foundations, insurance companies, and individuals. The fund's capital is then used in combination with borrowed capital to acquire majority or complete ownership of a company. However, most of the necessary financing for the acquisition comes from this borrowed capital, with the fund's capital representing only a small portion of the total acquisition cost.[16] After attempting to improve the financial performance of the company (which can be over a 3- to 5-year period but may be longer), the fund sells the company; any profits from the sale are returned to the fund and generally distributed to fund investors and the private equity firm. (See fig. 1.)[17]

[16]According to officials at a PI firm we spoke with, recent tightening of credit markets has made borrowed capital more difficult for private investment firms to obtain, and as a result, it has been necessary for firms to increase the amount of investment capital relative to borrowed capital that they contribute to an acquisition.

[17]For more information on leveraged buyouts, see GAO-08-885.

Figure 1: Key Stages in a Leveraged Buyout by a PI Firm



Sources: GAO analysis of information provided by private equity firms, investment banks, and commercial banks; Art Explosion (images).

Disclosure of Nursing Home Ownership

To be eligible for Medicare and Medicaid payments, nursing homes are required to submit information on individuals or certain entities, such as corporations, that have an ownership or control interest in the provider. The Social Security Act requires all Medicare and Medicaid nursing homes to disclose information on the identities of persons who have an ownership or control interest in the nursing home in order to participate in the programs.[18] Specifically, the act and related regulations define "a person with an ownership or control interest" to include a person (including certain entities) who

[18]Social Security Act §1124, codified at 42 U.S.C. §1320a-3.

- has a direct or indirect ownership interest of 5 percent or more in the nursing home provider;
- is the owner of a whole or partial interest in any mortgage, deed of trust, note, or other obligation secured by the nursing home or any of its property or assets, equal to 5 percent or more of the total property and assets;
- is an officer or director of the nursing home, if it is organized as a corporation; or
- is a partner in the nursing home, if it is organized as a partnership.

In addition, the act specifies that, to the extent determined feasible under regulations of the Secretary of HHS, nursing home providers must disclose for each person with an ownership or control interest, the name of any other provider with respect to which that same person has an ownership or control interest.

The Patient Protection and Affordable Care Act, enacted in March 2010, expanded the ownership and control reporting requirements for Medicare and Medicaid nursing homes by adding a new subsection to the statute.[19] Within 2 years of enactment (March 2012), the act will require nursing home providers to report additional information on the nursing home, including

- the name and title of each member of the governing body of the nursing home;
- each person or entity who is an officer, director, member, partner, trustee, or who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility; and
- persons or entities—referred to as "additional disclosable parties"—that with respect to the facility exercise operational, financial, or managerial control; provide policies or procedures for operations; provide financial or cash management services; provide management, administrative, clinical consulting, accounting, or financial services; lease or sublease real property to the facility; or own an interest of 5 percent or more in the real estate.

[19]See Pub. L. No. 111-148, § 6101, 124 Stat. 119, 699.

Moreover, the additional disclosable parties must report information on their organizational structure (including the legal structure by which the disclosing entity operates) and describe their relationship to the nursing home and to one another. For example, an additional disclosable party that is a (1) corporation must report its officers and directors and any shareholders whose ownership interest is equal to or exceeds 5 percent of the corporation, and (2) limited liability company, must report the percentage ownership interest for its members and managers.

Within 2 years of the enactment of these new provisions, HHS is required to promulgate final regulations that require facilities to report the information to HHS in a standardized format. The act also requires the Secretary to establish procedures to make such information available to the public within 1 year after the date the final rules are promulgated and published. Until the date the information is made available to the public, nursing homes must have this information available for HHS and other parties, including the state in which the nursing home is located, upon request.

CMS Collection and Storage of Nursing Home Ownership Information

Nursing homes report ownership and managing control information to CMS through the agency's Medicare enrollment application when they apply to participate in the Medicare program.[20] CMS stores this information in a national database called PECOS. The Medicare enrollment application requires nursing homes to report identifying information, such as their legal business name, licensure information, tax identification number, and any chain affiliation. Nursing homes must also report their ownership (by both individuals and organizations) and managing control information, as well as any adverse legal action taken against these entities. To report chain affiliation, nursing homes are asked to identify their "chain home office"—the entity responsible for providing centralized management and administrative services to homes under common ownership and common control. Nursing homes are required to submit updated information if they undergo a change of ownership or when there are any changes to ownership or other information previously provided on the Medicare enrollment application. (See table 1.) Nursing

[20]Specifically, nursing homes submit either the form CMS-855A or may use an Internet-based application to enroll in the Medicare program. We did not review the Internet-based application, which was implemented for nursing homes and other organizational entities in April 2009.

homes are required to sign the application, to certify, among other things, that the information in it is "true, correct, and complete."[21]

Table 1: Sample Sections of the CMS Medicare Enrollment Application

Identifying information
Legal business name
Tax ID
State licensure/certification
Change in ownership (if applicable)
Ownership information (by organization)
Legal business name
Tax ID
Adverse legal history
Relationship to provider:
5% or greater interest
Partner
Managing control
Ownership information (by individual)
Name
Adverse legal history
Relationship to provider:
5% or greater owner
Director/officer
Partner
Managing employee
Chain home office information
Chain home office name
Tax ID
Provider's affiliation to chain home office

Source: GAO analysis of CMS-855A.

Note: Sections shown pertain to CMS-855A.

[21]According to the Medicare enrollment application, deliberate omission, misrepresentation, or falsification of any information on the form may be punished by criminal, civil, or administrative penalties, including but not limited to the denial or revocation of Medicare billing privileges, and/or the imposition of fines, civil damages, and/or imprisonment.

CMS stores information collected through the Medicare enrollment application in the PECOS database.[22] According to CMS, PECOS, implemented in 2002, was designed to serve three purposes: (1) collect information for a provider and record the associations between a provider and entities that have an ownership or control interest in the provider, including any chain associations; (2) allow CMS to make informed enrollment decisions based on a provider's past and present business history, any reported exclusions, sanctions, and felonious behavior; and, (3) ensure that CMS makes correct payments under the Medicare program. PECOS replaced the multiple contractor systems that previously housed provider enrollment data, facilitating the nationwide screening of providers billing Medicare. The database contains information on nursing homes that have submitted a Medicare enrollment application to CMS since 2002. As of July 2010, about 81 percent of active Medicare-participating nursing homes were in PECOS.[23] Statutes and CMS regulations indicate that certain ownership information must be provided to the public upon request.[24] In a *Federal Register* announcement about PECOS, CMS noted its plan for the data to be shared with federal and state agencies as necessary to ensure proper payment of Medicare benefits, to assist with the administration of other federally funded health programs, or to assist with other activities within the state.[25]

Roles of CMS and States

Provider enrollment and oversight of nursing homes are managed by two different entities within CMS; state entities also have an oversight role. CMS's Division of Provider and Supplier Enrollment, within the Office of Financial Management, is responsible for the Medicare enrollment

[22]State agencies collect ownership information for Medicaid-participating providers, but this information is not transferred to CMS and is not included in PECOS. Nursing homes enrolled in the Medicaid program alone (and not jointly enrolled in the Medicare and Medicaid programs) accounted for approximately 4 percent of nursing homes participating in either program, as of May 2010.

[23]CMS plans to have all providers submit enrollment information for inclusion in PECOS; however, a CMS official we spoke with did not specify a completion date. Prior to this decision, PECOS records were only created as providers submitted initial enrollment applications, revalidation applications, or changes to their enrollment information, including changes of ownership.

[24]See Social Security Act §§ 1819(g)(5)(A)(iii), 1919(g)(5)(A)(iii); 42 CFR § 488.325(a)(8).

[25]See 66 Fed. Reg. 51961 (October 11, 2001).

process.[26] CMS uses contractors to handle administrative tasks related to enrollment, including the collection and verification of enrollment applications and associated information submitted by providers. For example, in processing a provider's Medicare enrollment application, CMS contractors are required to examine the adverse legal history as reported on the application for individuals and organizations having an ownership or control interest in the provider and refer matters to CMS as necessary; this adverse legal history could make the provider ineligible to participate in the Medicare program. Each contractor is responsible for these tasks within a certain geographic region of the U.S.

CMS's Survey and Certification Group is responsible for oversight of state survey activities and enforcement of nursing home quality. To participate in the Medicare program, nursing homes must pass regular inspections, also known as surveys, to ensure they comply with federal quality standards. These inspections are conducted by state survey agencies under contract with CMS. Most deficiencies identified, which can range from minor and isolated in scope to very serious and widespread throughout the nursing home, require the home to prepare a plan of correction. Results from state surveys of nursing homes are posted and routinely updated on CMS's Nursing Home Compare Web site.

Private Investment Firms Acquired about 1,900 Nursing Homes from 1998 through 2008, although Some Acquisitions Involved Real Estate Only and Not the Operations

About 1,900 unique nursing homes were acquired by PI firms from 1998 through 2008. While some of the acquisitions involved entire nursing home chains—which included both the operations and any owned real estate—other acquisitions involved only real estate. Ten PI firms accounted for most of the acquired nursing homes. Six of the 10 PI firms responded to questions and described similar investment rationales. Firms reported that they were more involved in operations after acquiring a chain than after acquiring real estate only.

[26]In a reorganization announced in February 2010, the Medicare Program Integrity Group within the Office of Financial Management, which included the Division of Provider and Supplier Enrollment, now reports to the new Center for Program Integrity headed by a Deputy CMS Administrator.

About 1,900 Unique Nursing Homes Were Acquired by Private Investment from 1998 through 2008

We identified 77 acquisitions of nursing homes by PI firms from 1998 through 2008, involving a total of 1,876 unique nursing homes.[27,28] These acquisitions represent about 12 percent of the 15,711 nursing homes that participated in Medicare and Medicaid as of December 2008 and about 18 percent of for-profit nursing homes.[29] Sometimes the same nursing homes were involved in more than one acquisition. For example, in some cases a nursing home operating company was purchased by a PI firm in one acquisition and the real estate for the same home was purchased by a different PI firm in a separate acquisition. In other cases, nursing homes were acquired more than once by different PI firms. For example, one set of nursing homes was acquired three separate times by three different PI firms from 1998 through 2008. Considering the 77 acquisitions cumulatively, the nursing homes involved would total over 2,500. Figure 2 shows the number of homes acquired, by year, over the 11-year time period. The majority of nursing homes (73 percent) were acquired by PI firms from 2004 through 2007, a period characterized by acquisitions of large nursing home chains.[30]

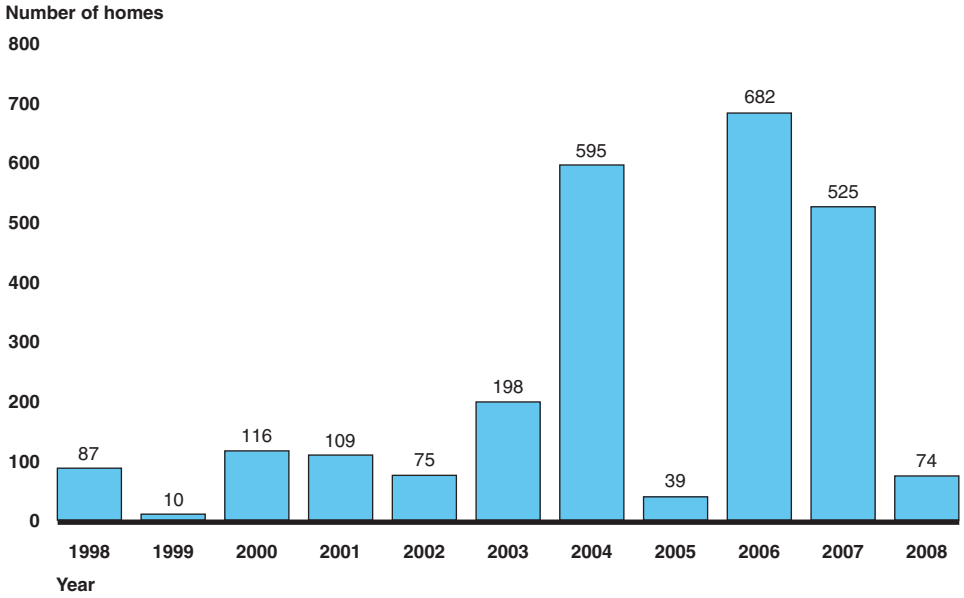
[27]We considered acquisitions in which PI firms acquired at least a majority stake in the nursing home. Acquisitions include all transfers of operations and/or acquisitions of leasehold interests, which give an entity the right to operate on a property. We also included nursing homes added to the chains after they were acquired by PI Firms.

[28]Previously only rough estimates of the extent of PI ownership of nursing homes have been reported. See Charles Duhigg, *The New York Times* (Sept. 23, 2007), and David Stevenson and David Grabowski, *Health Affairs*, vol. 27, no. 5 (2008).

[29]A portion of the 1,876 unique nursing homes acquired by private investment from 1998 through 2008 may not be part of the 15,711 nursing homes that participate in Medicare or Medicaid as of December 2008. Some nursing homes may have closed or do not currently participate in Medicare or Medicaid and others are no longer owned by PI firms.

[30]Three of the top five largest nursing home chains identified in the June 2009 issue of *Provider* magazine were owned by PI firms. The magazine's voluntary survey of nursing home providers is one of the few available sources for the size of nursing home chains and shows rankings based on data reported by the chains.

Figure 2: Nursing Homes Involved in PI Acquisitions, 1998 through 2008



Source: GAO analysis of Dealogic data and other information describing acquisitions of nursing homes.

Note: Number of nursing homes includes homes that may have been involved in multiple acquisitions including (1) homes acquired more than once by PI firms during the period, and (2) separate acquisitions in which one PI firm acquired the nursing home real estate while a different PI firm acquired the operating company that leases the real estate.

Ten Firms Accounted for Most of the Nursing Homes Acquired by Private Investment Firms, but Some Acquisitions Did Not Involve the Operations

Considering only the most recent acquirers as of the end of 2008, 10 PI firms accounted for most nursing homes acquired from 1998 through 2008. Table 2 shows the names of the nursing home chains, if applicable, and the number of nursing homes acquired by the 10 firms from 1998 through 2008 and still owned as of the end of the period. In some cases, the PI firms owned only operations or only real estate as of December 2008. The 10 firms accounted for 89 percent of the 1,876 unique nursing homes acquired by PI firms during the period.

Table 2: Top 10 Private Investment (PI) Nursing Home Chain and Real Estate Acquirers for Calendar Years 1998 through 2008, Still Owned as of December 31, 2008

PI firm	Name of nursing home chain(s) acquired[a]	Number of chain homes acquired and still owned	Number of homes where real estate only was acquired and still owned	Total
Abe Briarwood/National Senior Care[b]	Integrated Health Services Mariner Health Care	382		**382**
Fillmore Capital Partners	Beverly Enterprises	324		**324**
The Carlyle Group	HCR ManorCare	279		**279**
Formation Capital[c]	Genesis HealthCare	180	65[d]	**245**
SMV/SWC[e]	N/A		189[f]	**189**
GE Capital, Healthcare Financial Services[g]	N/A		162[d,h]	**162**
Warburg Pincus	Centennial HealthCare Florida Healthcare Properties[i]	115		**115**
Onex	Skilled Healthcare	75		**75**
The Straus Group	CareOne[j]	20	38[k]	**58**
Lydian Capital	Trilogy Health Services	49		**49**

Source: GAO analysis of Dealogic data and other information describing acquisitions of nursing homes.

N/A = Not applicable

Note: This analysis takes into account cases in which the initial PI acquiring firm subsequently sold some or all of its homes to another entity, either another PI firm or a non-PI entity. Nursing homes sold to other PI firms were associated with the most recent PI acquiring firm; nursing homes sold to non-PI entities were removed from the analysis. In addition, in cases where one PI firm acquired the real estate for a set of nursing homes and another PI firm acquired the nursing home operating company that leased the real estate, the nursing homes were included in the counts for both PI firms; this was the case for 315 nursing homes.

[a]For real estate-only acquisitions, we do not list the names of the nursing home chains from which the real estate was acquired.

[b]Abe Briarwood and National Senior Care are controlled by the same individuals. For the purpose of this analysis, the acquisitions of these entities were grouped together and the entities collectively referred to as Abe Briarwood/National Senior Care.

[c]Formation Capital joined with PI firm JER Partners to acquire 226 of the 245 homes.

[d]Formation Capital and GE Capital, Healthcare Financial Services partnered to acquire the real estate of five nursing homes. These homes are included under the totals for both firms.

[e]The same individuals were involved in the ownership of SMV and SWC. For the purpose of this analysis, the acquisitions of these entities were grouped together and the entities collectively referred to as SMV/SWC.

[f]All 189 nursing homes acquired by SMV/SWC are leased to operators acquired by Abe Briarwood/National Senior Care. The principal of SMV is also one of the three principals of National Senior Care. A second principal at National Senior Care has an ownership interest in SMV. Two complaints filed in New York State court provide information about the parties involved in Abe Briarwood/National Senior Care's and SMV/SWC's acquisitions of nursing homes. See *Schron, et al. v. Grunstein, et al.*, No. 650702/2010 (N.Y. Sup. Ct., filed June 23, 2010); *Mich II Holdings LLC, et al. v. Schron, et al.*, No. 10-600736 (N.Y. Sup. Ct., filed Mar. 23, 2010).

[g]GE Capital, Healthcare Financial Services is part of General Electric Company, which discloses general corporate activity to the SEC. For 2006, General Electric Company disclosed that it acquired several senior housing portfolios from Formation Capital.

[h]Of the 162 properties owned or leased by GE Capital, Healthcare Financial Services, 112 are leased or subleased to operating companies acquired by Warburg Pincus.

[i]Florida Healthcare Properties was cofounded in December 2001 by Warburg Pincus and long-term care executives to acquire the operations of 49 nursing homes in Florida. In 2004, Florida Healthcare Properties acquired the operations of Centennial Healthcare from bankruptcy.

[j]The Straus Group founded CareOne, which acquired 20 nursing homes through 2008.

[k]Sixteen of the nursing homes for which The Straus Group acquired the real estate were operated by a company that was owned by a PI firm (Investcorp International). This PI firm owned the operating company from 1998 through 2007.

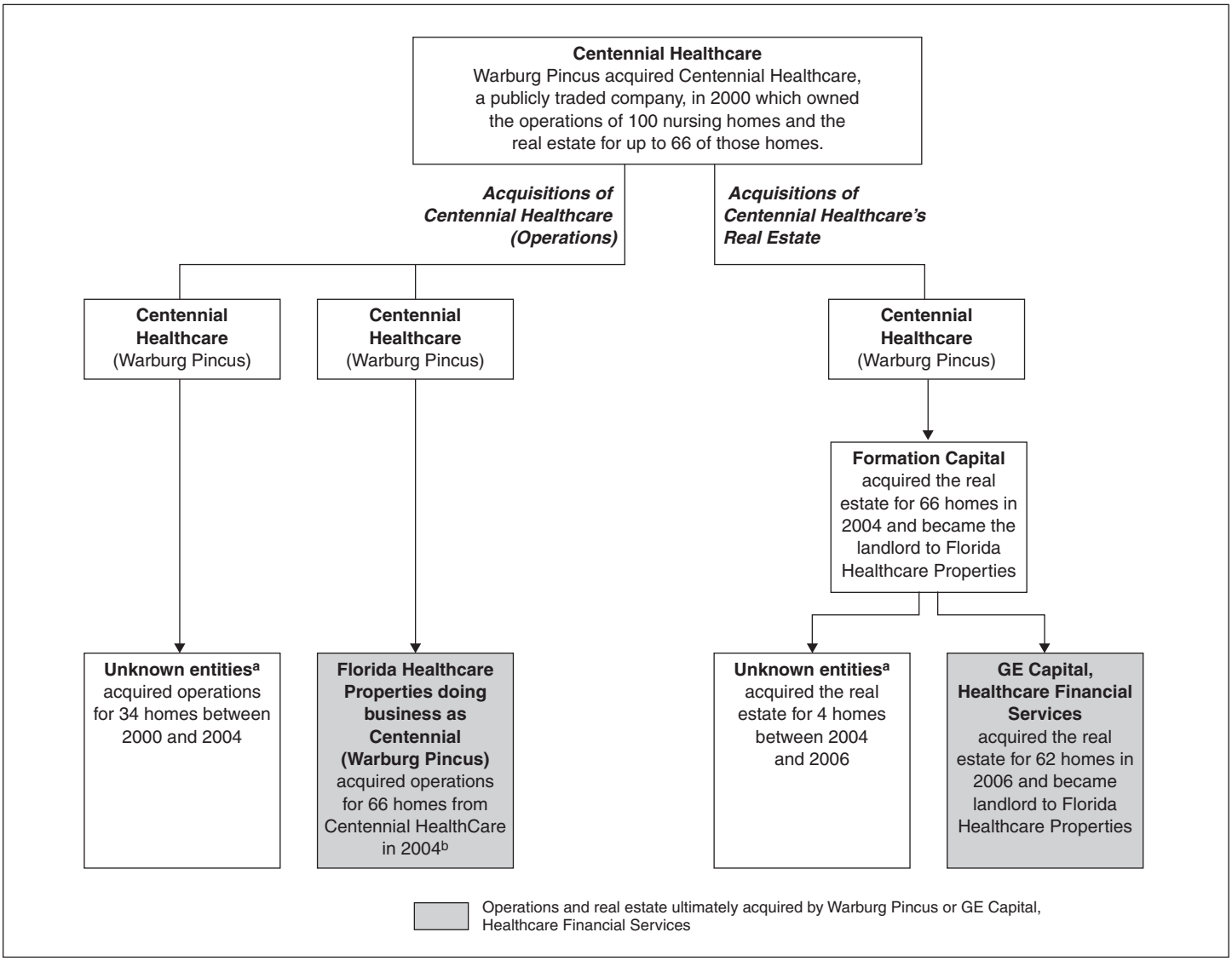
- **Six of the top 10 PI firms acquired an entire nursing home chain or founded a company that became a nursing home chain**. For example, the PI firm The Carlyle Group acquired the nursing home chain HCR ManorCare.[31] Another PI firm, Warburg Pincus, cofounded Florida Healthcare Properties in 2001, which then became a chain by acquiring the operations for 49 nursing homes.[32]

- **Two of the top 10 PI firms acquired only the real estate and leased at least a portion of their nursing homes to operating companies acquired by other PI firms**. Two firms—SMV/SWC and GE Capital, Healthcare Financial Services—acquired the real estate for 353 nursing homes and leased 299 (85 percent) of their properties to nursing home operating companies acquired by other top 10 PI firms. For example, GE Capital, Healthcare Financial Services leased 112 properties to operating companies acquired by Warburg Pincus. (Fig. 3 illustrates how Warburg Pincus and GE Capital, Healthcare Financial Services separately acquired the operations and real estate of the Centennial Healthcare nursing home chain.)

[31]The proportion of the real estate owned by the nursing home chains acquired by PI firms differed. For example, the nursing home chain HCR ManorCare owned the real estate for 98 percent of its homes, while the nursing home chain Beverly Enterprises owned the real estate for 76 percent of its homes.

[32]Florida Healthcare Properties did not acquire the real estate for any nursing homes. According to Warburg Pincus, their investment strategy since 2004 has focused on the ownership of nursing home operations. This firm told us that as of 2008 it only owned nursing home operations and not real estate.

Figure 3: Example of Different PI Firms That Separately Acquired the Operations and Real Estate of the Same Nursing Homes



Source: GAO analysis of Dealogic data and other information describing acquisitions of nursing homes.

[a]GAO was unable to determine the entities that acquired these nursing homes.

[b]Florida Healthcare Properties was cofounded in December 2001 by Warburg Pincus and long-term care executives to acquire the operations of 49 nursing homes in Florida. In 2004, Florida Healthcare Properties acquired the operations of 66 nursing homes from Centennial Healthcare through bankruptcy. Florida Healthcare Properties is now known as LaVie Care Centers.

- **Two of the top 10 PI firms both acquired a nursing home chain and made real-estate-only acquisitions**. Formation Capital bought the Genesis nursing home chain, but it also partnered with GE Capital, Healthcare Financial Services to acquire the real estate of five nursing homes.[33] A second firm, The Straus Group, invested in the CareOne nursing home chain but also separately purchased the real estate only of 58 nursing homes.

According to information gathered from 2009 through 2010, 9 of the top 10 PI nursing home acquirers reported owning 1,503 nursing homes, compared to the 1,496 nursing homes that they acquired as of December 31, 2008.[34] We were unable to obtain current ownership data from 1 of the top 10 PI nursing home acquirers.

Most of the Six PI Firms That Responded to Our Questions Described Similar Investment Rationales and Were More Involved in Operations When Acquiring Chains Than Real Estate Only

Most of the six PI firms that responded to our questions described similar reasons for investing in the nursing home industry; officials from five of these six PI firms cited increased demand for long-term care due to an aging population. For example, officials at one PI firm noted that no new homes had been built in recent years and anticipated that demand for senior housing would exceed the available supply. Officials at four PI firms told us they expected to hold their investments for time frames ranging from 3 to more than 20 years. However, one of these PI firms has already sold one of the portfolios it acquired and had planned on selling its other portfolios. (See app. I for more details on each firm's nursing home investment rationale.)

Of those that responded to our questions, four PI firms reported acquiring entire nursing home chains.[35] Officials from all four of these firms reported

[33]Formation Capital also purchased the Tandem Health Care nursing home chain but subsequently transferred the nursing home operations to a newly formed unrelated third party company. The transfer, in effect, made Formation Capital a real estate owner with no ownership in the operating company.

[34]This difference reflects both divestitures and new acquisitions of nursing homes by the firms.

[35]One PI firm (of the six that responded to our questions) acquired nursing home chains in some transactions and real estate only in other transactions. Accordingly, we discuss this firm's behavior as appropriate for that individual acquisition, i.e., we consider it a "chain acquirer" when it purchased the chain's operations, which may or may not have included the real estate, and a real estate-only acquirer when it acquired a chain's real estate holdings but not its operations.

holding seats on the chains' corporate boards of directors. In general, they characterized their involvement as related to the strategic direction of the chain rather than overseeing day-to-day operations, which all four of these PI firms described as the dominion of each chain's executive management. Three of the four PI nursing-home-chain acquirers said they kept the same executive management after they acquired a chain because it was already well managed; one firm believed the chain it acquired had quality-of-care challenges and ultimately hired a new chief executive officer, who is a physician.[36] Some firms noted improvements made across chains since acquisition. For example, according to officials of one PI firm acquirer, among other things, it directed capital to hire directors of clinical education, train facility staff, and reduce staff turnover. Another firm helped create an independent quality committee to provide the board with independent expert guidance on assessing quality-of-care data.

Two of the four PI nursing-home-chain acquirers reported dividing the operations and real estate into separate companies for tax or financing purposes while still retaining them under common ownership. Officials at these two firms noted the benefits of having nursing home operations and real estate under the same ownership. One commented that when operating and real estate companies are unaffiliated, tensions can arise over responsibility for improvements, reducing incentive to make improvements to the facility.[37] One real-estate-only acquirer strongly disagreed with this statement and noted that a landlord with a triple net lease has a great incentive for ensuring the real estate is appropriately maintained. This firm said such leases clearly state the responsibilities of the real estate owner and the operator with respect to facility improvements and said that disagreements have been few and limited.

[36]The PI firm said that it was aware that the chain it acquired had a Corporate Integrity Agreement with the HHS OIG. This quality-of-care Corporate Integrity Agreement, imposed in 2000 and amended in 2004, required the nursing home chain to seek outside technical assistance to identify changes that would help address quality problems across the nursing home chain's facilities. For more information on these agreements see GAO, *Medicare Fraud and Abuse: DOJ Has Improved Oversight of False Claims Act Guidance*, GAO-01-506 (Washington, D.C.: Mar. 30, 2001) and *Poorly Performing Nursing Homes: Special Focus Facilities Are Often Improving, but CMS's Program Could Be Strengthened*, GAO-10-197 (Washington, D.C.: Mar. 19, 2010).

[37]This firm leased some of its nursing homes from unaffiliated real estate owners; however, it planned to cease operations at these locations unless it could purchase the real estate for these properties, according to a firm official.

The three PI firms (of those that responded to our questions) that made real estate-only acquisitions had no representation on the boards of the operating companies to which they leased real estate, and so were not in a position to directly control the resources or change the policies of these companies. All three real estate-only acquirers leased real estate to nursing home operators under "triple net" agreements, through which, in addition to rent, the operator agrees to pay all real estate taxes, property insurance, and maintenance on the property (including capital costs).[38] Two firms' leases calculated a base rent plus rent as a percentage of the operator's adjusted net income or excess cash flow—ranging from 35 to as much as 50 percent.[39,40] In addition, while officials at all three firms emphasized that they "do not tell the nursing home operators how to run their businesses," officials at two of the three PI firms that acquired real estate indicated they monitor clinical performance at acquired homes. These officials said they would consider terminating a lease if poor or declining care persisted, although they had not encountered such a situation. The remaining real estate acquirer told us it had never monitored the quality of care provided by the operators to whom it leased facilities, but would like to start monitoring operations, given the risk to its investment should an operator it leases to lose its state license to operate a nursing home.

[38]These leases are also sometimes referred to as "full net" leases. In arrangements we reviewed, the real property for a number of different facilities was leased under a single agreement, which was referred to as a master lease agreement. Typically, the master lease agreement was made with a nursing home company (chain) and each individual nursing home was a separate company that subleased the real estate from its chain.

[39]According to officials at one of these PI firms, as of August 2010, the firm had restructured the master leases in three of its portfolios and no longer collects a portion of the rent based on an operator's adjusted net income. Instead, the firm collects a base rent subject to a built-in annual escalator. This firm cited business reasons for restructuring its leases.

[40]Officials at a PI firm that acquired a nursing home chain told us that such leasing arrangements can have negative consequences. They explained that the real estate owner shares profits with minimal risk, but when revenues decline, nursing home operators are more likely to cut staff to pay the base rent and to maintain a level of profitability.

PECOS Data on PI Ownership and Chain Affiliation Are Hard to Decipher, Incomplete, and Difficult for CMS to Verify

PECOS provided a confusing picture of the ownership structures and chain affiliations of the six PI-owned nursing home chains we reviewed.[41] For example, nursing homes had multiple owners listed in PECOS, but no indication of the hierarchy or relationships among the owners was provided. PI ownership of the homes, moreover, was not always readily apparent in the data. Some states we interviewed collect ownership information that better captures the relationships among owners, but states still report challenges untangling complex ownership structures. Adding to the difficulties deciphering the data, we also found that in some cases the data were incomplete—including ownership information for homes whose real estate was acquired by a PI firm and chain information for several homes. CMS's ability to determine the accuracy and completeness of ownership data reported by nursing homes is limited.

PECOS Data on PI Nursing Home Ownership Are Hard to Decipher

Even though our analysis of PECOS was informed by extensive research on PI nursing home acquisitions, the complex ownership structures established by some PI-owned nursing home chains we reviewed made PECOS data hard to decipher and PI ownership was not always evident.[42]

Nursing homes often have numerous owners listed, but no information provided in PECOS to indicate how they may be related. For the six chains we reviewed, the number of organizational owners listed per home ranged from 1 to 26, with an average of 8 organizational owners per home.[43] The multitude of organizational owners may have reflected the complex ownership structures created by some nursing home companies. For example, one PI entity that owned a nursing home chain created:

[41]We reviewed PECOS data for nursing homes in the following six PI-owned nursing home chains: Centennial HealthCare (now known as LaVie Care Centers), Genesis HealthCare, Beverly Enterprises (now known as Golden Living), HCR ManorCare, Mariner Health Care (now known as SavaSeniorCare), and Trilogy Health Services.

[42]For our analysis, we reviewed PECOS data for 1,003 nursing homes in six chains acquired by PI firms. A total of nine PI firms were involved in the ownership of these six nursing homes chains. One of the chains was acquired by two PI firms, and the real estate for two other chains was owned by separate PI firms.

[43]The Medicare enrollment application asks providers to report organizations with ownership and/or managing control and categorize them as having either 5 percent or more ownership interest in, a partnership interest in, or managing control of the provider. We report on entities in the first two categories and refer to them as "organizational owners."

- separate limited liability companies for the operation of each individual home in the chain;
- separate limited liability companies that owned the nursing home real estate;
- a separate company that leased all the properties from the real estate holding companies and then subleased them to the operating companies; and
- a holding company set up to own the entire chain.

Beyond inventorying these ownership entities, PECOS currently provides no information to indicate any hierarchy or relationships among the organizational owners listed, such as whether one entity is a parent or a subsidiary of another. Moreover, while entities with at least 5 percent direct or indirect ownership of the assets of the provider are listed in PECOS, the database does not include information on their specific ownership percentage, adding difficulty to determining the hierarchy and relationships among the owners listed.[44] Because we had additional information, we were able in some cases to recognize the varying levels of ownership reported in the data, including entities that were holding companies, private investment funds with no employees, or entities that were investors in the private investment firm or an affiliate, relationships that were not otherwise apparent from the data. For example, the Washington State Investment Board, which invests state and local pension funds, was listed among the owners for homes acquired by one PI firm, and the California Public Employees Retirement System was listed among the owners for nursing homes acquired by another PI firm. According to the PI firms, these two entities are passive investors; that is, they do not play a role in management of the nursing home chains.

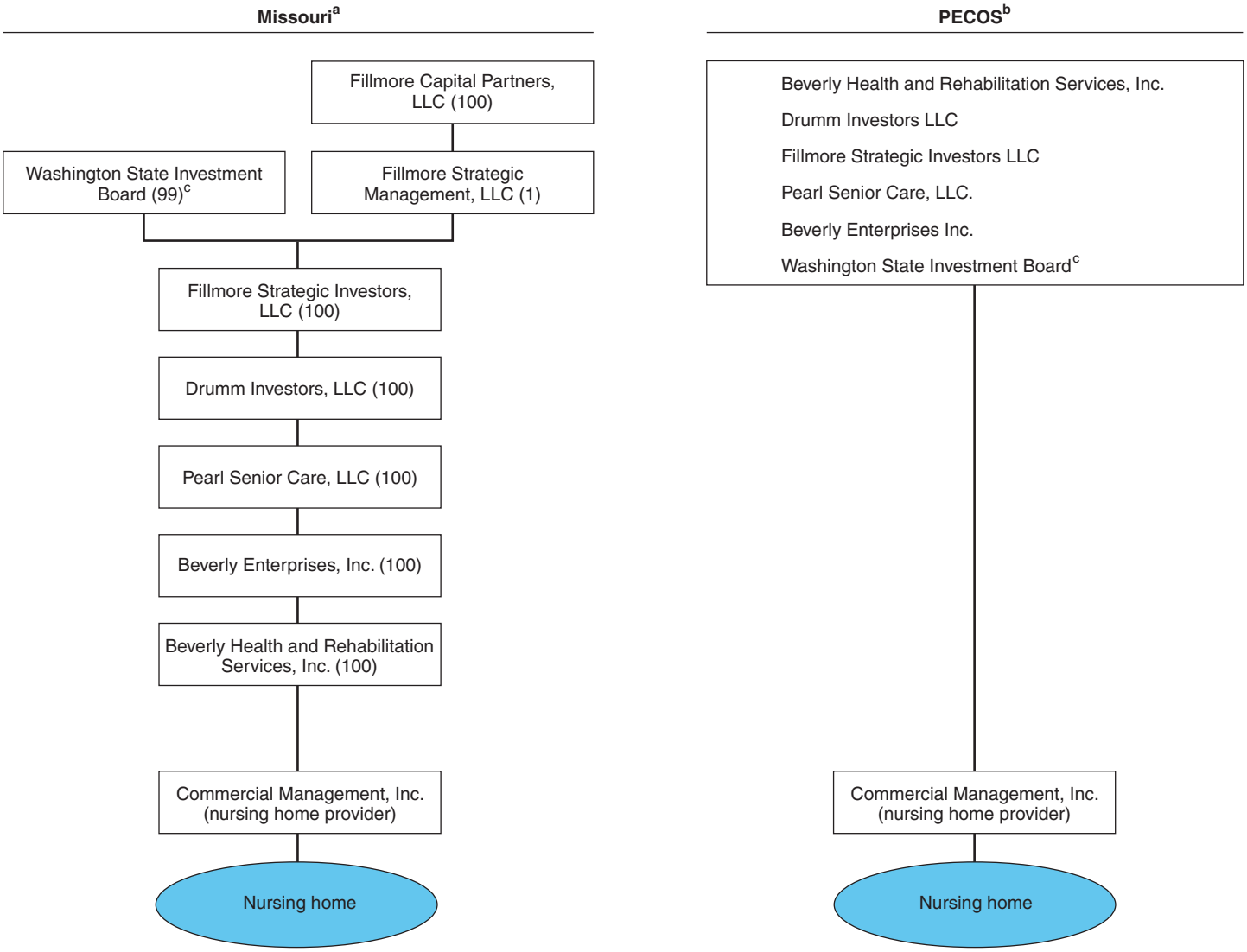
Fully capturing these complex relationships among nursing home owners poses challenges for a data system such as PECOS. For example, in documents one PI-owned nursing home chain submitted to a state agency, the chain's delineation of its ownership structure took several pages to describe and included a detailed chart of the ownership structure. CMS officials said that providers can supply such organizational charts when they submit Medicare enrollment information, but these documents are

[44]In contrast, information provided to some states indicate the percentage ownership by each reported entity.

maintained outside of PECOS by CMS contractors; currently, PECOS does not have the capacity to store them.

Some states that we interviewed that collect nursing home ownership information for licensure purposes collect information to capture relationships among owners. Officials at two states we interviewed maintain databases that attempt to capture the hierarchy of the ownership structure surrounding the nursing home. Missouri's ownership database, for example, can be used to identify successive levels of ownership (see fig. 4), which is not possible to discern with the data in PECOS.

Figure 4: Comparison of Organizational Ownership Information Contained in State Data from Missouri and in PECOS for One PI-Owned Nursing Home



Source: Missouri Department of Health and Senior Services as of October 2009 and PECOS as of August 2009.

Note: Punctuation inconsistencies reflect how the data appeared in the Missouri and PECOS databases.

[a]Number in parentheses indicates percentage ownership in the entity below.

[b]Additional entities listed in PECOS as having "managing control" included: Fillmore Strategic Management, LLC and Beverly Enterprises Inc. According to the Medicare enrollment application, a managing organization is one that exercises operational or managerial control over the provider or conducts the day-to-day operations of the provider and need not have an ownership interest in the provider.

[c]According to a representative of the PI firm, the Washington State Investment Board is a passive investor and does not play an active role in management of the nursing home chain.

State officials also told us, however, that they are challenged by complex ownership structures among nursing homes. State officials from Missouri, Maryland, New Jersey, Illinois, and California cited complex ownership structures—including multiple layers—as obscuring ownership or making oversight difficult. State officials also observed that nursing home chains have set up separate limited liability companies as operators of each home and they do not always obtain information that identifies the ultimate parent owner.[45] For example, Illinois officials noted that they do not always obtain ownership information for the parent company, such as a private equity firm, and sometimes their records only show the individual limited liability company as the owner, such that a nursing home set up as an individual limited liability company in one town would not be linked to a home from the same chain set up as a limited liability company in another town.

Expanded reporting requirements contained in the Patient Protection and Affordable Care Act and regulations to implement the act provide CMS with an opportunity to address some of these issues. In particular, the act requires homes to provide the identity of and information on "additional disclosable parties" and their relationship to the nursing home and one another. In addition, the act requires that nursing homes report the organizational structure of additional disclosable parties organized as limited liability companies including, for example, their members, and managers, and as applicable, their percentage ownership interest in the company. While these expanded reporting requirements may provide more insights into the relationships among some of the owners in PECOS, they may not capture the hierarchy and relationships across all the numerous owners currently being reported.

PI ownership was often not readily apparent in PECOS. The Medicare enrollment application does not ask for information on the business type of organizational owners, including whether they are PI firms, so it is not possible to use PECOS to identify all PI-owned nursing

[45]One state official noted that complex ownership structures, including those with a different limited liability company reported as the owner for each facility within the chain, complicate identifying who is actually in charge of a home's management and expenditures. The official said that the state's reliance on self-reported information makes it difficult for state officials to identify the "true decision makers."

homes. When we tried to identify the specific private investment firms we were aware of in the ownership data in PECOS, we found that the entities through which the PI firms acquired nursing homes were often listed. In some cases, associating these entities with the PI firm was relatively straightforward, as the entities had names that were readily identifiable with the PI firms. For example, among the many owners listed for homes in the HCR ManorCare chain, were the entities Carlyle Partners V MC, L.P. and Carlyle MC Partners, L.P., two private investment funds managed by The Carlyle Group, the PI acquirer of the chain.

In contrast, PI ownership of other homes we examined was difficult to identify in PECOS. In four of the PI-owned chains we examined, PI firms or entities readily identifiable with the PI firms were not apparent among the organizational owners reported for any of the nursing homes in the chains or were listed for only a small fraction of the homes. The number of homes in these four-PI owned chains for which PI ownership was not readily apparent in PECOS accounted for 62 percent of the 1,003 nursing homes we examined. We were not able to fully explain this situation. It is possible that some PI firms, by virtue of how they structured their transactions to acquire the homes, may not have been required to be reported by the governing statute at the time. It is also possible that entities were reported that we did not recognize were related to the PI firm. On the other hand, PI firms may not have been reported, even if required, for other reasons, for example, due to confusion about the reporting requirements. Specifically, we found the following:

- Representatives of one PI firm that was not listed in PECOS among the owners for any of the homes in the chain it acquired said that a special purpose entity (SPE) was created for the acquisition of the chain and was reported as an owner on the Medicare enrollment application.[46] The SPE, which was not readily identifiable with the PI firm, was reported for only about three-quarters of the chain's homes.[47] The representatives said that the PI firm itself did not own any interests in the SPE and so was not on the application. Individuals associated with the PI firm were listed as officers/directors for most of the homes in the chain.

[46]An SPE is a legal entity created to fulfill narrow, specific, or temporary objectives, primarily to isolate financial risk. An SPE's operations are typically limited to the acquisition and financing of specific assets or liabilities.

[47]Although the firm told us that the SPE was disclosed to the contractor, it could not explain why it was not listed as an owner for all of the chain's homes.

- Another PI firm, which was also not reported as an owner for any of the homes in the chain it acquired, did own the SPE used to acquire the chain, according to officials of the nursing home chain. However, the officials said that after closing on the acquisition, the title to each of the homes was held by a subsidiary of the company that operates all the homes and therefore the SPE neither holds title to nor operates the homes but rather is an indirect owner. The SPE, which was not readily identifiable with the PI firm, was listed among the organizational owners in PECOS for a small portion of the homes. The statute currently requires the reporting of persons and certain entities that have an ownership or control interest of at least 5 percent, including indirect interests, in the assets of the provider entity.

- A third PI firm sold the real estate for most of the homes in the chain to another company shortly after the acquisition; the company then leased the facilities back to an affiliate of the PI firm. The affiliate was listed as an owner in PECOS for most of the homes in the chain; the PI firm was not. The individuals involved in the PI firm's purchase of the nursing home chain are also principals of the affiliate, some of whom were reported in PECOS as individuals having an ownership interest for a portion of the homes in the chain.[48]

- Finally, for one PI firm, the company the PI firm formed to fund its acquisition of the chain, which was readily identifiable with the firm, appeared as an owner in PECOS but for less than 20 percent of the homes in the chain. In this case, the chain's representatives said they had been instructed by the CMS contractor to report only two levels of ownership above the nursing home. As a result, the ownership information reported by this chain was far from complete, and no common owner, including the PI firm, was apparent for all of the homes. The representatives of the chain said that they decided to submit complete ownership information for their homes, on their own initiative, and were in the process of doing so, working with a new CMS contractor.[49]

[48]Actually, the PI firm itself was a newly created entity formed by a group of real estate investors specifically for this acquisition. Less than 1 year after this acquisition, this same group of investors pursued the acquisition of another nursing home chain through another entity created specifically for that acquisition, but the chain was ultimately sold to another acquirer.

[49]We also found that no information on organizational owners was reported for 19 of the 1,003 homes we examined.

PECOS does not provide a clear picture of individuals in the ownership structure. The information in PECOS on individuals with an ownership or control interest in the provider is collected separately from and is not linked to information about organizational owners and does not provide a clear picture of where they fit in the ownership structure. Specifically, the Medicare enrollment application asks for the names and even the birth dates of individuals with an ownership or control interest—including those with 5 percent or more direct or indirect ownership in the provider, with a partnership interest in the provider, or who are directors or officers of the provider—but it does not ask for the organization they are affiliated with or their titles. As a result, it is not clear if individuals reported as having a 5 percent or more ownership or control interest are direct or indirect owners of the nursing home provider. In addition, CMS has not required providers to report information about individuals who are partners, officers, or directors of entities above the nursing home provider level, such as members of the nursing home chain's board of directors, which in some cases would include representatives of the PI firm. Identification of these entities is important because they are ultimately responsible for the management of the chain. Providers may be reporting such individuals, but it was not possible for us to distinguish this in the data because they are broadly categorized as officers or directors with no information included on their affiliated organizations. This issue could be addressed when HHS implements the reporting provisions of the Patient Protection and Affordable Care Act.

In contrast, two states we contacted—Missouri and Texas—collect more comprehensive information about individuals with ownership or control interests in the nursing home provider and in entities above the provider level. These states also collect information on the specific positions of reported individuals in these entities, such as president, secretary, member, or general or limited partner.

PECOS Data for a PI Firm That Acquired Real Estate Only Were Incomplete and PECOS Chain Ownership Information Was Not Collected in a Straightforward Manner

In addition to the challenges in identifying PI owners in PECOS data, we found that the data were sometimes incomplete and that the information on chain ownership was not collected in a straightforward manner, making chain associations difficult to identify.

One PI firm that acquired real estate only was not reported. A PI firm that leased nursing home real estate to a provider but that also had a security interest in the assets of the provider was not reported in PECOS; however, a security interest may constitute an ownership or control interest for purposes of Section 1124 that could obligate disclosure as an

owner on the Medicare enrollment application.[50] For example, we found that one firm was not reported in PECOS among the owners of the nursing homes within the chain for which it owned the real estate. However, a lease agreement indicates that the PI firm also had a security interest in the nursing home's assets that could obligate reporting of the entity as the holder of an ownership or control interest. Officials with the PI firm told us that they were not familiar with the application's reporting requirements. CMS officials noted that it may not be clear to providers that these entities must be reported, as the instructions on the application do not specifically indicate that a security interest is a reportable interest, and that going forward CMS may need to revise the application to make this explicit. The Patient Protection and Affordable Care Act requires that entities and individuals that lease or sublease real property to nursing homes be reported, whether or not they have a security interest or other reportable interests. Such information, however, will not be reported to HHS until after it issues a final rule implementing the act's requirements, which may not be for several years.[51]

Some states currently collect information on nursing home real estate owners. For example, Illinois collects information on nursing home real estate owners, if different from the operator, and requires the submission of any lease agreements. Illinois officials told us that the state also requires operators to report individuals who directly or indirectly own at least 5 percent of the nursing home real estate and their percentage stake. With this information the state can then identify at the state level if the same individuals have ownership stakes in both the nursing home real estate and the operating company. CMS also has acknowledged real estate owners in issuing guidelines on its notification policy for poorly

[50]In general, a security interest is an interest in property, other than real estate, which is given as security for a debt or obligation. HHS's Office of General Counsel indicated that a holder of a security interest in the property of the nursing home of at least 5 percent could be considered a person with an ownership or control interest that would have to be reported. Among the entities with ownership or control interests that are required to be reported under Section 1124 of the Social Security Act are persons (including entities) who are the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of its property or assets, which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the provider. This is not explicit on the Medicare enrollment application.

[51]Pub. L. No. 111-148, § 6101(a), 124 Stat. 699.

performing nursing homes designated as Special Focus Facilities.[52] The guidelines direct notification to owners of the building and land if separate from the holder of the provider agreement and described such owners as an "accountable party."

PECOS chain information was not straightforward and sometimes was incomplete. PECOS was established in part to make provider-chain associations clear, but we found that making these associations in PECOS was not straightforward because of the way the data were collected; in addition, the chain data were sometimes incomplete.[53] Rather than requiring providers to report all of the homes that are part of the same chain, CMS requires each home to report its chain home office.[54] The chain home office is the entity responsible for providing centralized management and administrative services to providers under common ownership and common control.

When we reviewed the chain data in PECOS for the six PI-owned chains for which we had information, we found that most, but not all, of the homes belonging to the same chain could be identified through their chain home office information, in particular by using the name of the chain home office administrator. Not all homes within the same chain were associated with the same chain home office. For example, most of the homes in the Trilogy Health Services chain were divided among three different chain home offices. The three groups of homes could not be effectively linked by the chain home office name or address fields in PECOS, but they did share the same chain home office administrator. CMS officials told us that the one way they have to link homes reported under different chain homes offices is if the homes have the same chain home office administrator listed. However, in some cases, homes belonging to the same PI-owned chain were reported under different chain home

[52]Nursing homes designated as Special Focus Facilities are subject to more vigorous oversight and enforcement actions. See GAO, *Nursing Homes: CMS's Special Focus Facility Methodology Could Better Target the Most Poorly Performing Nursing Homes, Which Tended to Be Chain Affiliated and For-Profit* GAO-09-689 (Washington, D.C.: Aug. 28, 2009).

[53]Chain information is important because determining if an individual nursing home is part of a larger chain may not be obvious, as chains often do not affix a "brand name" to their homes.

[54]Prior to June 2003, information on whether owners of a nursing home also owned other Medicare or Medicaid facilities was collected by state survey agencies. Each provider was required to provide a list of the other facilities with which it was affiliated.

offices with different chain home office administrators, which can make linking all of the homes belonging to the same chain more challenging. Table 3 shows chain information in PECOS for the six nursing home chains we examined.

Table 3: Chain Home Office Information Listed in PECOS for Nursing Homes in Six PI-Owned Nursing Home Chains

Nursing home chain	Chain home office name	Chain home office address	Chain home office administrator[a]	Percentage of homes listing chain home office
Centennial HealthCare (now known as LaVie Care Centers)	Centennial Healthcare Holding Co. LLC	400 Perimeter Center Neter, 650, Atlanta, GA	Administrator A	2
	Shoreline Healthcare Management, LLC	303 Perimeter N Ctr, 500, Atlanta, GA	Administrator B	83
	Sea Crest Health Care Management LLC	10210 Highland Manor Dirve, Ste 250, Tampa, FL	Administrator C	2
	Senior Solutions Healthcare Management and Consulting Services LLC	1200 Brush Hill Rd, 500, Milton, MA	Administrator B	9
	No chain home office information reported in PECOS	N/A	N/A	4
Genesis HealthCare	Genesis Elder Care Corp	101 East State Street, Kennett Square, PA	Administrator A	1
	Genesis Healthcare Corporation	101 East State Street, Kennett Square, PA	Administrator A	92
	Genesis Operations LLC	101e State St, Kennett Square, PA	Administrator A	1
	NeighborCare Inc	101 E. State Street, Kennett Square, PA	Administrator B	2
	No chain home office information reported in PECOS	N/A	N/A	4
Beverly Enterprises (now known as Golden Living)	Beverly Enterprises Inc	650W Alluvial Ave, Fresno, CA	Administrator A	16
	Golden Gate National Senior Care LLC	1000 Fianna Way, Fort Smith, AR	Administrator B	1
	No chain home office information reported in PECOS	N/A	N/A	83
HCR ManorCare	HCR Manor Care Services Inc	333 N Summit Street, 16th Floor, Toledo, OH	Administrator A	100

Nursing home chain	Chain home office name	Chain home office address	Chain home office administrator[a]	Percentage of homes listing chain home office
Mariner Health Care (now known as SavaSeniorCare)	Mariner Health Care, Inc.	One Ravinia Dr., Suite 1500, Atlanta, GA	Administrator A	1
	SavaSeniorCare LLC	One Ravinia Drive, Suite 1500, Atlanta, GA	Administrator B	8
	SSC Equity Holdings LLC	5300 W Sam Houston Parkway North, Suite 100, Houston, TX	Administrator B	81
	SSC Special Holdings LLC	920 Ridgebrook Road, Sparks, MD	Administrator C	1
	No chain home office information reported in PECOS	N/A	N/A	9
Trilogy Health Services	Center for Community Reentry Inc.	9400 Williamsburg, Plz 300, Louisville, KY	Administrator A	51
	Trilogy FSC Investors, LLC	1650 Lyndon Farm Ct, Louisville, KY	Administrator A	13
	Trilogy Health Services, LLC	1650 Lyndon Farm Ct, 201, Louisville, KY	Administrator A	31
	No chain home office information reported in PECOS	N/A	N/A	5

Source: GAO analysis of PECOS data, as of August and September 2009.

N/A = Not applicable.

Note: Punctuation and other inconsistencies reflect how the data appeared in PECOS.

[a]Actual names of the chain home office administrators are omitted from this table.

In addition to the difficulty of using PECOS to identify all homes in a chain, we found that one large PI-owned chain did not report chain home-office information for more than 200 homes. Officials from the nursing home chain indicated that when the chain was acquired by the PI firm, most of the nursing homes were set up under separate licensees and had not yet been branded with the chain name, so the company made the decision not to report these homes as part of a chain. The officials said they have since reversed this decision and are in the process of updating the chain information for these homes. They noted that prior to the acquisition by the PI firm, they reported all the homes in the chain under one chain home office.

Completeness and Accuracy of Provider Reported Ownership Data Is Difficult to Verify and CMS Contractor Performance May Contribute to Problems in PECOS Data

Some of the problems we observed with the ownership and chain data in PECOS are due in part to CMS's limited ability to recognize when the information reported by providers is incomplete or inaccurate. CMS's contractors have several responsibilities for verifying information reported on the Medicare enrollment application. For example, contractors are required to check that the reported legal business names and tax identification numbers of providers and organizational owners match those in Internal Revenue Service documentation. CMS contractors are also responsible for following up with providers to resolve missing or inconsistent information. For example, a CMS official explained that if contractors independently came across ownership associations that should be reported, the contractor should contact the provider. A CMS official acknowledged, however, that the agency and its contractors may not always be aware of missing or inconsistent information. For example, the CMS official confirmed that the agency would not necessarily know if a provider's chain affiliation was not reported.[55] One CMS official explained that the agency does not have the resources to delve into the relationships of the entities reported to identify if there are any more owners not being reported. The official explained that CMS relies on the ownership information that is self-reported to CMS and that the agency is not "looking behind" what is reported to verify that the ownership information is complete.

Contractor performance may also contribute to the completeness of the data in PECOS. As noted earlier, representatives of one nursing home chain told us that its CMS contractor instructed them to report only two levels of ownership above the nursing home provider, resulting in several entities going unreported as owners for many of the homes. In another example involving the same contractor, chain information was not reported for more than 200 homes. After some investigation, a CMS official confirmed that, based on the information reported on the Medicare enrollment application for these homes, the contractor should have followed up with the provider about the lack of data reported. However, the contractor's office responsible for processing this provider's applications had since closed, and the current contractor was not able to ascertain whether this follow up had occurred. Finally, in a third example, when we noted that a specific organizational owner was not reported for all homes in a chain, an official from the PI firm that acquired the chain

[55]Officials from some states we contacted indicated that they also faced difficulties in verifying self-reported information and detecting inaccurate or incomplete submissions.

said this entity was reported on all the Medicare enrollment applications submitted and suggested that the data may reflect the CMS contractor's preference for what is entered into PECOS from the application.

The performance of CMS contractors is overseen by project officers in the agency's Center for Medicare Management, which developed a new on-site audit program to review contractors' management of provider enrollment functions. According to a CMS official, the on-site audits are designed to pick up on instances in which contractors failed to follow up with providers about missing information on the Medicare enrollment application. The on-site audits, however, cover all provider types, not just nursing homes; focus on the processing of the application as a whole, not on particular sections of the application, such as the ownership sections; and, according to a CMS official, do not attempt to verify the accuracy or completeness of the ownership information reported on the application. According to a CMS official, as of August 2009, the agency had conducted two on-site audits under the new program.[56] Beyond on-site audits CMS does not conduct checks on the PECOS database for internal consistency, such as whether nursing homes reported to be part of a chain in fact have a common owner reported. A CMS official said the agency would like to be able to conduct such checks but lacks the necessary resources given other priorities.

[56]In addition, according to a CMS official, at least 15 desk reviews, which are more informal and limited in scope, have been conducted since 2005. This official said that no formal on-site audits of contractors were conducted from 2006 through 2008. Prior to that, from 2000 to 2005, the agency conducted 4 to 10 on-site audits each year under a different program to evaluate contractor performance.

HHS Has Made Limited Use of Ownership Data, but State Survey Agencies and Others Expressed Interest in Nationwide Data to Improve Nursing Home Oversight

The use of PECOS nursing home ownership data has generally been limited to the Medicare enrollment process and only CMS's Division of Provider and Supplier Enrollment has routine access to the database. State survey agencies expressed interest in having routine access to nationwide ownership data, such as the information stored in PECOS because they lack a systematic way of learning about the performance of nursing homes in other states with the same owners as those applying to operate in their states. CMS officials told us that the PECOS database was not developed with the objective of providing access to external users, such as states or other offices within HHS. Although these officials indicated that CMS had no immediate plans to give states access to the database, they are considering how such access could be provided.

HHS's Use of PECOS Ownership Data Has Been Limited

Within HHS, use of the PECOS ownership data has been limited. Only CMS's provider enrollment division has routine access to PECOS data. To date, the division has focused primarily, but not exclusively, on populating PECOS and has not developed any standardized internal reports on nursing home ownership data that could be shared within HHS. Specifically, ownership data are used when providers apply to participate in Medicare to screen out individuals or entities that are not approved to participate in the Medicare program.[57] CMS contractors review the ownership information to identify if any reported owners are in the HHS OIG's Medicare Exclusion Database or on General Services Administration's (GSA) debarment list of entities debarred or excluded from receiving federal contracts. The contractors perform such reviews when the Medicare enrollment application is submitted and ownership information is entered into PECOS, but until recently did not perform subsequent checks as the GSA or OIG lists were updated.[58] During a CMS program integrity check in June 2009, CMS found individuals and organizations that were in the OIG Medicare Exclusion Database or on the GSA debarment list and should have been denied association with a Medicare provider, but were nonetheless affiliated with active PECOS enrollment records.

[57]For example, contractors must screen all reported owners for any adverse actions against them, such as a felony conviction or a conviction related to the delivery of an item or service under Medicare.

[58]A CMS official said that in April 2010 the agency implemented a new process whereby every individual in PECOS will be checked against the HHS OIG's Medicare Exclusion Database on a monthly basis. The practice of checking the GSA debarment list only when a Medicare enrollment application is submitted will remain the same.

Prior to the enactment of the Patient Protection and Affordable Care Act, officials in CMS's Survey and Certification Group told us that they did not consider ownership when looking at nursing home quality issues.[59] In an April 2010 letter, however, the group's director indicated that with respect to the expanded nursing home ownership disclosure requirements in the Patient Protection and Affordable Care Act, the group's responsibilities include linking quality of care performance information with ownership data.

Other CMS components and HHS organizations we spoke with also do not have access to PECOS or similar ownership data and have noted challenges to oversight and enforcement. For example, the CMS regional offices we spoke with reported relying on informally collected ownership information, and several expressed some interest in access to a national nursing home ownership database, such as PECOS, as a means to identify quality-of-care problems at homes under common ownership. One regional office official said it would be helpful to have all ownership percentage stakes disclosed. Officials from HHS's OIG division that negotiates quality-of-care Corporate Integrity Agreements with nursing home chains, told us that they may learn about systemic issues across commonly owned homes through anecdotes or multiple referrals, but otherwise do not have a systematic way to determine if the owner of a home it investigates owns other nursing homes, which might cause the HHS OIG to expand its investigation. Furthermore, an official from CMS's Office of Financial Management said that he often has to rely on Google Web searches to identify nursing home owners because he does not have access to PECOS despite his role in financial integrity. A CMS official from the agency's Financial Management Systems Group told us that the agency was just starting a workgroup to examine the PECOS interests of other groups within CMS and how to provide access to accommodate those groups' needs. The scope of this workgroup, however, does not extend to providing access to PECOS to groups outside CMS or other HHS offices, including OIG.

[59]In May 2008 testimony, the CMS Administrator said that CMS's oversight protocols are directed at providers, not the nursing home owners. CMS officials have said that the agency's relationship is with the individual nursing home and not the parent company.

State Survey Agencies Used the Nursing Home Ownership Information They Collected for Oversight, and Expressed Interest in Access to a Nationwide Database

While the state survey agencies we interviewed collect and use nursing home ownership data, that information is limited to nursing homes that operate in their states, but many nursing home companies operate in multiple states. Several state officials we interviewed expressed an interest in nationwide ownership data, such as the information stored in PECOS, as a means for more effective oversight.

Many state agencies collect nursing home ownership information primarily through state licensure and renewal applications. Each state is responsible for establishing its own licensing requirements.[60] Among the six states we interviewed who used ownership data, agency officials reported using the information for oversight purposes and to engage directly with the owners of nursing home chains to improve conditions at particular homes. For example, officials in Maryland, Illinois, and New Jersey cited cases where they used ownership information to contact the owners, including landlords, to address patterns of poor care within a home or across a chain.[61] A Maryland official said that providing oversight at the higher chain level is important because they have observed instances of chain owners shifting staff from other nursing homes to the home where the state identified problems, resulting in problems showing up at the homes that lost staff resources.

However, state agency officials in four states we interviewed told us that they have difficulty obtaining information on chains that operate homes in other states, even though many nursing home companies operate in multiple states. As a result, state agencies, which with CMS share responsibility for nursing home oversight, have limited information about the poor performance of nursing home owners in other states, including the owners who currently are applying to operate in their state.[62] With

[60]An official with a private investment-owned nursing home chain stated that they submit more ownership information to certain states than CMS because such states were very specific and detailed in their application form's reporting requirements, such as requiring reporting of the specific percentage of ownership held or reporting of related companies.

[61]At the same time, state officials we interviewed also indicated limits on the extent to which they are permitted to engage nursing home owners in their efforts to address violations and improve care. For example, a state official said that, although informally they may view the parent corporate owner as accountable for the homes they control, any formal state actions must be against the entity that holds the license, "even if that entity is a straw entity."

[62]Some of the six states we interviewed had regulations allowing them to ask nursing homes about their compliance histories in other states.

limited access to ownership data, many of the state officials we interviewed told us that they learn about owners of poorly performing nursing homes informally.[63] In a recent case investigated for quality and fraud issues by the Connecticut Attorney General's Office, officials were only able to learn about a nursing home chain's complex ownership structure, including the 44 related entities that owned the nursing homes, through bankruptcy documents. Connecticut state officials noted that they rely on gathering information on out-of-state owners from other states on a case–by-case basis.

State agencies we spoke with expressed strong interest in routine access to national nursing home ownership data, such as PECOS, as a means for more effective oversight of entities controlling nursing homes.[64] Officials in one state told us access to PECOS would enable them to check the ownership information nursing homes submit to the state and compare it to what homes are reporting to CMS. CMS officials confirmed that states do not have access to the PECOS database and, in fact, it was not developed with the objective of providing access to external users, such as

[63]An official in one state we interviewed reported that the state took steps to enhance its ability to obtain ownership information—such as by training staff to send back forms until complete, threatening to withhold state licensure, or threatening fines until all ownership entities are reported—but still faced challenges identifying nursing home owners. An official in another state explained that relying on self-reported information, particularly for nonpublicly traded companies, is a challenge because it requires the nursing home to provide accurate and complete information; if the nursing home is not forthcoming, it is hard to catch.

[64]Until 2003, CMS also collected provider ownership information separately from the Medicare enrollment form data, using a specific ownership and control interest disclosure form that was collected annually by state agencies. Use of this form was discontinued in part because some of this information was collected on the Medicare enrollment application. With the discontinuation of this form, state access to federally collected ownership information has been limited.

states or other offices within HHS.[65] According to CMS officials, states may request specific information in PECOS, such as a list of all nursing homes owned by a specific individual or entity, but no such requests have been made. As noted earlier, the agency has not developed any standardized reports on nursing home ownership that it could easily share with states.[66] Rather, it would respond to each request on a case-by-case basis.[67] Recognizing the growing interest in PECOS data, CMS is considering whether and how it could provide access to external parties, such as states. The official responsible for this effort said that it is a long-term project.

Several state officials and a nursing home patient advocate told us that nursing home ownership information should be readily available to the public. The Patient Protection and Affordable Care Act requires that ownership and control information be publicly available no later than 1 year after the promulgation of final regulations that implement expanded collection of such data. Even prior to this act, federal law required CMS to make ownership information available to the public upon request.[68] According to a CMS official, the agency has responded to public requests

[65]The Privacy Act of 1974, 5 U.S.C. Section 552a governs the collection, maintenance, use, and dissemination by federal agencies of personally identifiable information that is maintained in systems of records. The Privacy Act allows federal agencies to disclose such information without the individual's consent if the disclosure of that information is to be used for a purpose that is compatible with a purpose for which the information is collected. The Privacy Act requires that agencies give the public notice of those disclosures that an agency believes are compatible with the purposes for which the information was collected and publish those compatible uses in the *Federal Register*. In a *Federal Register* notice establishing the purposes under which disclosures from the PECOS database could be made consistent with the Privacy Act, HHS indicated it would provide information from the PECOS database to another federal or state agency in order to enable the agency to administer a federal health benefit program, or as necessary to enable such agency to fulfill a federal legal requirement that implements a federally funded health benefits program, or to investigate fraud and abuse in federally funded health benefit programs. See 66 Fed. Reg. 51961 (Oct. 11, 2001).

[66]CMS produces a monthly PECOS extract, which provides a snapshot of ownership data on active providers. The extract was developed to eliminate the need for CMS staff to fulfill many one-time and ongoing data requests. However, it does not include data on providers that are updating their enrollment information.

[67]CMS noted that responding to such requests could require programming resources and result in the agency charging the state a fee for providing the information. CMS has the authority to charge fees for services provided in connection with the requests for this information. 42 CFR §401.140.

[68]See Social Security Act §§ 1819(g)(5)(A)(iii), 1919(g)(5)(A)(iii); 42 CFR § 488.325(a)(8).

for nursing home ownership information by providing copies of individual Medicare enrollment applications after redacting any privacy protected information, such as owners' Social Security numbers.[69] CMS has received some extensive requests for information stored in PECOS, but when individuals were told the cost of redacting privacy protected information, the requests were withdrawn.

We found that five of the six state agencies we interviewed—California, Illinois, Maryland, New Jersey, and Texas—have posted or are in the process of posting some of the statewide nursing home ownership information they collect on publicly available Web sites. According to a Maryland official, the state decided to post detailed nursing home ownership information on its Web site because it concluded that access to ownership information was a "consumer issue" and that residents and their families had a right to know who owns any given nursing home. New Jersey survey agency officials told us that the state had enacted a law in 2007 giving the public access to state-collected nursing home ownership information because a nursing home resident's family wanted to move a relative to a nursing home with a different owner but found that they could not identify which nursing homes were owned by which owners.

Conclusions

Consistent with the name *private* investment, the information on PI nursing home acquisitions is *private*—limited to what such firms choose to release. We found that the identification of PI firm nursing home acquisitions was difficult and that CMS's PECOS database had limitations in identifying and helping users to decipher PI nursing home ownership structures. The ability of PECOS to shed any further light on these acquisitions is undermined by several factors, including the increasing complexity of nursing home ownership structures since the development of requirements for reporting such data, CMS's focus on populating PECOS with limited oversight of the reporting and recording of the data, and limited use of the data. State experiences with the collection, use, and public disclosure of ownership data provide insights on how HHS could address these limiting factors. Moreover, our findings can help inform HHS as it develops regulations to implement the Patient Protection and Affordable Care Act and refines the Medicare enrollment application and

[69]CMS had no data on the number of requests for nursing home ownership information because until recently the agency's request tracking system did not enable searches by topic.

PECOS to reflect the expanded reporting requirements on nursing home ownership and control contained in the act.

PECOS Database

Because limited information is available about companies that are not publicly traded, the acquisition of nursing homes by PI firms underscores the need for complete, accurate, and clear ownership and chain affiliation data. PECOS does not include information on the business type of organizational owners that would identify them as PI firms, making our research and the cooperation of PI firms essential to examining PI ownership and chain affiliation in the database. When we reviewed the data in PECOS for homes we knew were PI-owned, we noted the following limitations:

- Numerous owners were reported for each home with no information on the hierarchy of, or relationship among, the owners. However, some states that collect ownership data do attempt to capture the hierarchy of the ownership structure.

- Three of the six PI firms we reviewed were not listed in PECOS as the owners of any of the nursing homes they acquired and an entity readily identifiable with a fourth firm was listed as the owner for less than 20 percent of its homes. We were not able to ascertain whether or not all of these PI firms were required to be reported. However, the goal of collecting ownership and control information is undermined if all entities with reportable ownership or control interests are not reported, including the ultimate owners.

- Information on individual ownership is collected separately from, and is not linked to, organizational owners. Further, providers are not required to report individuals who are partners, officers, or directors above the nursing home provider levels, such as members of the board of directors who provide strategic direction to a nursing home chain.

- Homes belonging to the same chain were not always associated with the same chain home office, requiring us to link homes through the use of other data elements, such as the address of the chain home office or the chain home administrator.

In addition, confusion about what was required to be reported on the Medicare enrollment application and CMS contractor performance contributed to problems with PECOS data. Although it may be difficult for CMS's contractors to recognize when the information reported by providers is incomplete or inaccurate, oversight of these contractors with

respect to their verification of ownership data is limited. The importance of CMS oversight is demonstrated by the fact that PI firms told us that (1) some of the data we found missing on the application had been submitted to CMS's contractor or (2) data were missing because they were following their contractor's instructions.

Provisions in the recently passed Patient Protection and Affordable Care Act may provide an opportunity to address some of the problems we found. For example, the act requires that the organizational structure of what are termed "additional disclosable parties" be provided along with descriptions of the relationships of these parties to the nursing home and to each other.[70] More detailed information on persons and entities with an ownership or control interest would clarify the relationships among some of the organizational owners listed in PECOS. The act also requires providers to identify members of the governing body of the nursing home.

Use of PECOS Data

Only CMS's Division of Provider and Supplier Enrollment has routine access to PECOS and this division has been largely focused on populating the database, which was about 81 percent complete as of July 2010. Although this division has made limited use of nursing home ownership data, CMS recognizes that other groups within the agency may have an interest in such data and has started a workgroup to study the issue. In addition, state survey agencies have expressed interest in more routine access to nationwide ownership data to improve nursing home oversight. For example, one state official told us that the state had made state-collected nursing home ownership data publicly available because consumers had a right to know if the owner of a home operated other nursing homes. Currently, CMS addresses both state and public requests for nursing home ownership data on a case-by-case basis and is unable to give states direct access to the database.[71] CMS is aware of state interest in PECOS data and is beginning to think about how to provide such access. Although the utility to states and consumers of the ownership information in PECOS in its present state is debatable because the information is sometimes hard to decipher, the implementation of the Patient Protection and Affordable Care Act provides CMS with an opportunity to collect

[70]Additional disclosable parties in the act include persons or entities that exercise operational, financial, or managerial control over the facility.

[71]See the Freedom of Information Act, 5 U.S.C. §552; the Privacy Act of 1974, 5 U.S.C. § 552a.

meaningful ownership information and to make it available in an intelligible way.

Recommendations for Executive Action

We are making 11 recommendations to the Secretary of HHS and the Administrator of CMS.

As the Secretary of HHS develops regulations to implement the expanded nursing home ownership reporting and disclosure requirements contained in the Patient Protection and Affordable Care Act, we recommend that the Secretary, given the complex arrangements under which nursing homes can be acquired and operated, consider requiring the reporting of the following five types of information:

- the organizational structure and the relationships to the facility and to one another of *all* persons or entities with direct or indirect ownership or control interests in the provider (as defined in the act), such that the hierarchy of all intermediate persons and entities from the provider level up to the chain and the ultimate owner is described;
- for entities reported as having ownership or control interests, specify whether or not the entities have an operational role; for example, special purpose entities created solely for the purpose of acquiring the nursing home but having no operational role should be identified as such;
- the percentage ownership interest in the provider for all entities and individuals who have an ownership or control interest (as defined in the act);
- the names and titles of the members of the *chains'* governing body; and
- the organizational affiliation of individuals with an ownership or control interest (as defined in the act).

To ensure proper administration of current reporting requirements, we recommend that the Administrator of CMS issue guidance on the circumstances under which the holder of a security interest in a provider may be considered to have a reportable interest.

To ensure that all providers that belong to the same nursing home chain can be readily identified, we recommend that the Administrator of CMS require each provider to report the identity of other nursing homes that are part of the same chain.

To improve the usability and accuracy of the ownership and control information collected and stored in PECOS, we recommend that the Administrator of CMS take the following three actions:

- Expand the scope of CMS's existing workgroup intended to make PECOS data available within the agency by developing a comprehensive strategy for disseminating PECOS data to HHS, states, and the public; for example, CMS could develop and make available standardized reports on nationwide ownership data and could include ownership information on its Nursing Home Compare Web site.

- Examine state systems to identify best practices for the collection and public dissemination of nursing home ownership and chain information, including ways in which states make the hierarchy among owners more apparent.

- More closely monitor the activities of CMS contractors that review the ownership and control information submitted by providers that participate in Medicare and Medicaid to help ensure its accuracy and completeness.

To help ensure that the requirements for the collection of ownership and control information from nursing home providers that participate in Medicare and Medicaid keep pace with evolving ownership structures, we recommend that the Administrator of CMS periodically review the requirements related to reporting on the agency's provider enrollment form to ensure that it promotes accurate and complete reporting of nursing home ownership information consistent with the statute.

Agency Comments and Our Evaluation

We provided a draft of this report to HHS for comment and also invited the nine PI firms that cooperated with our study to review the draft. In its written comments, HHS concurred with all 11 of our recommendations and provided CMS's response to those recommendations. HHS's comments are reproduced in appendix II. In addition, five of the nine PI firms reviewed the draft and provided oral comments. Officials from some of the firms noted that our report offered a fair and balanced depiction of the subject matter, but some PI firm officials also expressed concerns about how PI firms were portrayed. Two of the six state survey agencies we interviewed provided technical comments on relevant excerpts of the draft report, which we incorporated as appropriate.

CMS

CMS concurred with all of our recommendations and said that it planned to implement them in various ways, including through the development of new regulations or revisions to the Medicare enrollment process. Specifically, CMS said that it would

- consider mandating the reporting of the five types of information we specified in our recommendations, such as the names and titles of the members of the nursing home chain's governing body, when developing regulations to implement the expanded ownership disclosure and reporting requirements in the Patient Protection and Affordable Care Act;
- require reporting of the holders of a security interest in a provider and identifying all the homes belonging to the same chain through revisions to the Medicare enrollment application and instructions;
- develop a strategy for examining the wider dissemination of ownership information, as well as an action plan for contacting states about their collection and dissemination of ownership and chain information;
- conduct additional monitoring of CMS contractors to include, but not be limited to, evaluating the ownership and control information submitted with enrollment applications as part of annual reviews of the enrollment process, other focused reviews of provider enrollment, and general contract oversight; and
- periodically review the Medicare enrollment application to ensure it is updated to reflect complete reporting of nursing home ownership information consistent with the statute.

CMS also provided several technical comments, which we incorporated as appropriate.

PI Firms

Officials from two of the five PI firms that provided oral comments said our report provided a fair and balanced depiction of PI ownership of nursing homes. Officials from one firm said the report described real-estate-only acquisitions well and officials from the other PI firm considered the report to be a thorough and comprehensive treatment of the subject matter. In general, PI firm officials commented on our portrayal of the firms, the data in PECOS on the nursing homes they owned, and expanded nursing home ownership reporting requirements in the Patient Protection and Affordable Care Act.

Portrayal of PI firms. Officials from some PI firms expressed concerns that our report implied that PI ownership of nursing homes was somehow unique and therefore warranted special scrutiny. Officials from one firm stated that there was little difference between nursing homes owned by PI firms and those owned by public shareholders, beyond SEC reporting requirements for the latter. For example, officials from one firm noted that all homes, regardless of ownership, are subject to state licensure and disclosure requirements and routine surveys to ensure compliance with federal quality standards. Officials representing two firms also commented that the use of complex ownership structures is not unique to companies owned by PI firms. One official made the point that the nursing home's ownership structure prior to its acquisition by a PI firm was in many ways just as complex and not at all unusual for a public company. Other officials noted that multiple layers of ownership exist across the corporate world and are not particular to the nursing home industry or to health care. Similarly, officials at one firm wanted us to note that PECOS ownership data and chain affiliation are hard to decipher for all nursing homes, not just those owned by PI firms. Because our study focused on the ownership of nursing homes by PI firms and how PI nursing home ownership was captured in PECOS, we did not examine how PECOS captures the ownership of nursing homes by other entities. As a result, our conclusions were limited to the complexity of PI ownership structures and the limited ability of PECOS to help to clarify the relationships among the entities and individuals reported as having an ownership or control interest.

PI firms' PECOS data. Officials representing two PI firms were concerned that our report implied that the ownership information in PECOS was not clear or was problematic because providers did not submit necessary information to CMS. Officials at one firm also thought the tone of the report suggested that PI firms were trying to hide information and stressed that they had disclosed all required information and were very forthcoming with information. Officials representing two PI firms also said that there was no way for firms to see whether the information they provided on the Medicare enrollment application was correctly entered into PECOS. Nursing home providers now have the option of using CMS's internet-based PECOS to submit, change, and view their enrollment information online, but we did not review this system, which was implemented for nursing homes in April 2009.

Our finding that the ownership data in PECOS were hard to decipher focused in large part on shortcomings in the collection of data for PECOS, such as the lack of information on how entities and individuals with

reported ownership or control interests are related. We also found that in one case complete ownership information was not reported for homes in one PI-owned chain in part due to incorrect advice provided to a PI firm by a CMS contractor. In another instance, PI ownership was not reported because it may not have been clear that entities with a security interest should be reported. Finally, chain home office information, which is required to be reported was missing for most of the homes in the chain acquired by one PI firm. An official with the nursing home chain said that the company had separately provided information on the homes in the chain it acquired to another office in CMS but that this information had not been integrated into PECOS. The official commented in general about problems with information being siloed at CMS in separate data systems.

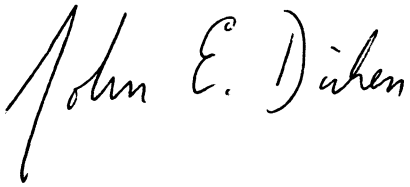
Patient Protection and Affordable Care Act. Officials representing two of the PI firms noted their support for the expanded ownership reporting requirements included in the Patient Protection and Affordable Care Act, but officials at these firms also expressed caution on which entities or individuals should be subject to disclosure and how detailed reportable ownership data should be. For example, officials with one firm told us that decision makers, but not necessarily all owners or investors, should be reportable, and in particular, they did not believe that owners they considered passive investors, such as public pension funds, should be reported. An official from this PI firm suggested that what should matter from a policy perspective is the entity responsible for the care provided (the nursing home company) and the entity that controls it (the private investment firm). An official with another PI firm stressed the importance of a reporting system that makes clear which entities control or play a role in decision-making, and that even a system that displays a hierarchy and ownership percentages may not adequately reflect this role. The official stated that a designation such as managing partner denoted an entity with decision-making responsibility. We recommended that HHS consider requiring providers to identify whether reported ownership entities have an actual operational role, which we believe would help address this issue.

An official representing another PI firm expressed a different view and said that CMS needs to capture more detailed ownership information similar to what some states collect so that it has complete information on all ownership layers. This comment is consistent with our recommendation that CMS examine states systems to identify best practices for the collection of nursing home ownership information.

The PI firms also provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Health and Human Services, the Administrator of the Centers for Medicare & Medicaid Services, and appropriate congressional committees. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-7114 or at dickenj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



John E. Dicken
Director, Health Care

Appendix I: Summary of Six PI Firms' Responses about Their Interest and Involvement in Nursing Homes

Most of the Six PI Firms That Responded to Questions Described Similar Investment Rationales and Were More Involved in Operations after Acquiring a Chain Than after Acquiring Real Estate Only

Of the six firms that responded to our questions, most described similar investment rationales.[1] While leasing arrangements with nursing home operators may have the potential to influence the operations of the homes, firms that acquired a chain reported that they were more involved in nursing home operations than firms that acquired real estate only. Table 4 summarizes PI firm responses on such issues as the time frames for closing out their investments, or exit strategy, and being on the board of directors of the nursing home chain.

Table 4: Summary of Responses of Six of the Top 10 Nursing Home Chain and Real Estate Acquirers as of Mid-2009

PI firm	Acquired a chain	Acquired real estate only	Exit strategy (in years)	Focus on demographic demand	Split operations and real estate	On the board of directors of chain	Kept the same chain executives	Monitor quality of care	Collect rent partially as a percentage of net income
A	Yes	No	3 to 9	Yes	Yes[a]	Yes	Yes	Yes	N/A
B	Yes	No	—	Yes	—	Yes	Yes	—	N/A
C	Yes	No	At least 20	Yes	Yes[a]	Yes	No	Yes	N/A
D	Yes	Yes	—	Yes	Yes[b]	Yes[c]	Yes[c]	Yes	Yes[b]
E	No	Yes	3 to 5	Yes	—	No	N/A	Yes	Yes
F	No	Yes	None	No	—	No	N/A	No	No

Source: GAO summary of six private investment firm responses.

Legend: — = response not provided

N/A = Not applicable

[a]Separated operations and real estate into separate companies but kept them under common ownership.

[b]Only applicable for the firm's real estate acquisitions.

[c]Only applicable for the firm's chain acquisition.

[1]Three of the six firms acquired a nursing home chain, two acquired nursing home real estate only, and one acquired both a nursing home chain and made separate real estate only acquisitions. We describe the latter firm in two categories: (1) its chain acquisition is included with those firms that acquired a chain and (2) its real estate only acquisitions are included with those firms that acquired nursing home real estate only. Three of the nursing home chains we discuss were publicly traded prior to their acquisition by PI firms.

PI Firms that Acquired a Chain

Investment Rationale. Four of the six PI firms (firms A, B, C, and D) acquired nursing home chains, and officials at all four described increased demand for long-term care due to an aging population as their attraction to those investments. To help meet demographic demand, officials at firms A and D said they sought high-quality chains that focused on providing post-acute care to high-acuity patients (those with clinically complex problems) and indicated that these chains had top notch management already in place.[2] An official at firm C said the firm was attracted by the improvements it could make to the nursing home chain.

Officials at all four PI firms characterized their investments as "long term," but the number of years they planned to hold the investments differed.[3] Officials at firm A said they planned to hold their investment 3 to 9 years, during which time the firm intended to expand the number of patients the chain served to meet the long-term growth potential of the industry. An official at firm C indicated that it was likely the firm would maintain its investment in the chain for at least 20 years. Officials at firms B and D did not specify a range or number of years.

Structural Changes. Officials at firms A and C said they divided the operations and the real estate into separate companies for tax or financing purposes but kept those companies under common ownership. An official at firm C explained that the creation of separate operating and real estate companies was designed to attract investors who wanted exposure to only one side of the nursing home company. In hindsight, however, the official said that the separate entities created for the acquisition were not worth the legal costs and reporting requirements and that the firm planned on collapsing the operating and real estate companies to simplify the organizational structure. Officials at firms B and D did not mention any changes to the organizational structure of the chains they acquired.

Officials at firms A and C explained the benefits from having operations and real estate under the same chain ownership. An official at firm A stated that it was unlikely that the real estate could be converted to

[2]For each period of a covered hospital stay of at least 3 days, Medicare covers up to 100 days of posthospital care for persons needing skilled nursing or rehabilitation services.

[3]PI firms that classify themselves as "private equity" typically have an exit strategy when they acquire a company. Generally, they have 5 years to invest the capital raised from investors and 5 years to return the capital and expected profits to its investors. See GAO-08-885. All four PI firms that acquired a nursing home chain classify themselves as private equity.

another use and that therefore it made sense for the nursing home operator, who is licensed to run the home, to own the real estate. An official noted that an operating company that does not own its real estate is unable to use the property as collateral for a loan. Finally, officials at this PI firm told us that the chain's common ownership structure should reassure patients that the chain would take responsibility for any problems that occur.[4] An official at firm C said that the chain leases some of its nursing homes from unaffiliated real estate owners but that it planned to cease operations at those locations if it was unable to purchase the real estate. Another firm official noted that tension over responsibility for improvements can arise in any industry with unaffiliated operating and real estate companies—leaving the operator with less incentive to make those improvements. One real-estate-only acquirer strongly disagreed with this statement and noted that a landlord with a triple net lease has a great incentive for ensuring the real estate is appropriately maintained. This firm said such leases clearly state the responsibilities of the real estate owner and the operator with respect to facility improvements and said that disagreements have been few and limited.

Involvement in Nursing Home Operations. Officials at all four PI firms that acquired a chain said that they held seats on the chains' boards of directors. In general, they characterized their involvement as related to the strategic direction of the chain and indicated that they are not involved in day-to-day operations. They noted that the updates they receive at board meetings help to guide their decisions for the strategic direction of the chain.

Strategic direction. Officials at all four PI firms described the chain's executive management as the ultimate decision maker for the chain, and officials at firms A, B, and D indicated their involvement in nursing home operations primarily ensured that the chain continued the objectives it already had set for itself. Officials at firm A said they had helped the chain implement an ongoing transformation from a focus on custodial care to becoming primarily a provider of postacute care and rehabilitative services to higher acuity patients. This official said that the board of directors ensured that the staff at the facilities could meet this goal. Although the nursing home chain already had this goal in place as a

[4]In oral comments on a draft of this report, officials of this PI firm said that splitting the operations and real estate assets should not have a bearing on quality of care. In such scenarios, they said that the operating entity is still responsible for quality of care. This PI firm may now be considering splitting real estate from operations.

publicly traded company, officials at the PI firm said that they helped to achieve this goal by allowing the chain to make investments more quickly. They also emphasized that the chain does not turn away residents to meet its strategic objective.

Management changes. Officials at firms A, B, and D said they kept the same executive management after they acquired the chain because the chain was already well managed. An official who worked at the chain prior to firm A's acquisition told us that the firm helped hire more regional office managers and more managers overall but also felt that minimal organizational changes had occurred after acquisition by the PI firm. In contrast, an official at firm C believed that the chain the firm acquired had quality of care challenges and later hired a physician as chief executive officer.[5] An official at this firm indicated that the firm's goal was to help transform the nursing home industry and, as a result, the firm recruited managers that held the same values.

Quality-of-care monitoring. Officials at two firms gave specific examples of how they oversee quality of care. An official at firm C told us that the firm helped its chain introduce best practices and standardized training to nursing home staff. According to firm officials, the firm directed capital to, among other things, hire directors of clinical education, train facility staff to focus on the awareness of each patient's individual needs, and reduce staff turnover. One senior official at this chain said that all the personnel, from the caregivers to management, have gone through a significant cultural change since the PI firm had acquired it. An official at the firm said that if the firm had not purchased this particular chain, a different PI firm would have taken over and he believes that the quality of care would have suffered.[6] However, an official of the firm emphasized that each nursing home within the chain made more decisions about the care provided inside the home than did the chain's board of directors.

Officials at another firm explained that they receive reports on quality of care—including CMS's 5-star ratings—to help guide management decisions. The firm helped create an Independent Quality Committee to

[5]The PI firm said that it was aware that the chain it acquired had a corporate integrity agreement with HHS's Office of the Inspector General. For more information on these agreements see GAO-01-506 and GAO-10-197.

[6]The PI firm said that the nursing homes would have been over-leveraged with debt and the real estate would have been separated and sold to another company.

provide the board with independent expert guidance on reading and assessing quality of care data. After examining the data, the board discusses how to address problems. An official with the chain said that it can take underperforming homes and improve them by sharing resources across the chain.

Capital improvements. Officials at all four PI firms indicated that they were directly involved in capital improvements or expansion plans for the chains they acquired. Firm A said it helped the chain to undertake investments that furthered the chain's long-term expansion strategy. This chain has sought approval from state governments to build several new facilities. Firm B said it mainly helps with decisions about the nursing homes' capital structure and the capacity to fund the development of new homes.

PI Firms That Made Real-Estate-Only Acquisitions

Investment Rationale. Three of the six PI firms (firms D, E, and F) made real-estate-only acquisitions. Officials of firms D and E described increased demand in long-term care due to an aging population as a factor that attracted them to those investments. For example, officials at firm D said the business and organizational models they developed brought needed investment into the nursing home industry after a decline in the late 1990s. Similarly, officials at firm E said that no new nursing homes had been built in recent years and that the demand for senior housing will exceed the available supply. In contrast, an official of firm F described the firm's investments in nursing home real estate as an opportunity to acquire additional real estate; that is, they did not view their nursing home real estate acquisitions any differently than their acquisitions of commercial or residential real estate.

These three firms had different exit strategies for their nursing home real estate investments. Although officials at firm D described one of their nursing home real estate investments as "long term," they did not specify a time frame. However, they have sold other nursing home real estate investments in 1 to 5 years from the initial investment. Officials at firm E said they acquired nursing home real estate with the goal of selling the investments at a profit 3 to 5 years later. After declining growth in real estate value, the firm sold one portfolio of such investments about 2 years after the initial acquisition and had planned on selling its other portfolios.[7]

[7]PI firms typically use the term portfolio to refer to a set of nursing homes acquired as an investment.

In contrast, an official at firm F said the firm's acquisitions were a mechanism to collect rent and they had no intention of selling.

Involvement in Nursing Home Operations. The three PI firms that made real-estate-only acquisitions had no representation on the boards of the operating companies to which they leased real estate. Through their lease arrangements with nursing home operators, however, they may have the potential to influence the operations of the homes.

Lease arrangements. All three PI firms lease the real estate to nursing home operators under "triple net" agreements.[8] Officials at firm E told us that triple net leases are the industry standard for nursing homes. Under these agreements, in addition to rent, the operator agrees to pay all real estate taxes, property insurance, and maintenance on the property (including capital costs). These officials said that because the average age of their facilities was 30 years, they required the operators to make an annual per-bed deposit for maintenance. This deposit was refunded when the nursing home operator submitted evidence (paid invoices) that it had undertaken maintenance.

Firms D and E had leases with the nursing home operators that calculated a base rent plus rent as a percentage of the operator's adjusted net income or excess cash flow—ranging from 35 to 50 percent.[9] Officials at firm E said that they examined whether an operator could meet the terms of the lease before they made an initial investment in the property. According to officials at this PI firm, the major variable that influenced a nursing home operator was not the operator's ability to pay debts and rent, but rather the level of reimbursement received for resident care. However, officials at a PI firm that purchased a nursing home chain told us that such leasing arrangements can have negative consequences. They explained that the real estate owner shares profits with minimal risk, but when revenues

[8]These leases are also sometimes referred to as "full net" leases. In arrangements we reviewed, the real property for a number of different facilities was leased under a single master lease agreement. Typically, the master lease agreement was made with a nursing home company (chain), and each individual nursing home was a separate company that subleased the real estate from its chain.

[9]According to officials at one of these PI firms, as of August 2010, the firm had restructured the master leases in three of its portfolios and no longer collects a portion of the rent based on an operator's adjusted net income. Instead, the firm collects a base rent subject to a built-in annual escalator. This firm cited business reasons for restructuring its leases.

decline, nursing home operators are more likely to cut staff to pay the base rent and to maintain a level of profitability.

Separation of real estate from operations. Officials at firms D and E told us that the separation of real estate and operations under unaffiliated companies benefited the operator by allowing greater access to capital for the nursing home. Officials at firm D said that they purchased nursing homes and separated the entities that owned the real estate from those that operated the facilities. They said they created this structure to attract financial lenders and investors back to the nursing home industry and reduce the risk associated with the closure of facilities because of high insurance premiums resulting from litigation. According to officials at this firm, this structure still ensured that the legal process could reach an accountable party to help address potential quality-of-care problems.

Quality-of-care monitoring. While officials at all three firms reported that they do not tell the nursing home operators to whom they lease how to run their businesses, officials at firms D and E monitored the operators' quality of care. Officials at both firms said that good quality of care resulted in good financial outcomes. They indicated that they would consider terminating a lease if poor or declining care persisted, but officials at neither firm said they had encountered such a situation. Officials at firm D said their involvement at the operating level is typically limited to oversight of their tenants through an affiliated asset management company. The asset managers are expected to monitor compliance with the lease, perform financial reviews and analyses, conduct on-site inspections of each facility's physical plant, and continuously review each facility's clinical performance. Officials at firm E said that the terms of their leases required nursing home operators to have plans of correction that addressed quality-of-care problems.[10] Officials at this firm told us that they have clinical staff to help them interpret state survey reports of the nursing homes to which they lease real estate. If clinical care declined below a certain point at a home, the officials said that they would increase their monitoring. While these officials said they would ask the home's

[10]For most deficiencies, a nursing home is required to prepare a plan of correction. See GAO, *Nursing Homes: CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit*, GAO-09-689 (Washington, D.C.: Aug. 28, 2009).

operator how it planned to address resident care problems, they emphasized that they would not tell the operator what to do.[11]

In the more than 5 years they had owned nursing home real estate, an official at firm F told us that the firm had not monitored the quality of care provided by the operators to whom it leased facilities. However, the official said the firm would like to start monitoring operations, because—unlike their other commercial investments—they do not manage the operations of their nursing homes. Should an operator lose its state license to operate a nursing home, the official of the firm told us that their investment would be at risk, because it can be difficult to identify a new nursing home operator or to convert the property to another use. Although the official at this firm said the firm would intervene before an operator lost its license, the firm did not consider monitoring quality of care until approached by an independent third party that said it could help interpret operators' state survey results.

[11]This PI firm was a nursing home operator's lender in 2006 and, in its capacity as lender, provided working capital financing, which helped to fund the cost of a temporary manager, a federal sanction, when the operator was unable to pay for help to address quality of care problems at the facility. As the lender, the PI firm sent several staff, including nurses, to the facility and monitored the progress toward correcting the care problems. In 2007, the PI firm acquired the real estate for this home through foreclosure. For more information on temporary management see GAO, *Nursing Homes: Opportunities Exist to Facilitate the Use of the Temporary Management Sanction*, GAO-10-37R (Washington, D.C.: Nov. 20, 2009).

Appendix II: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

SEP 15 2010

John Dicken
Director, Health Care
U.S. Government Accountability Office
441 G Street N.W.
Washington, DC 20548

Dear Mr. Dicken:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled: "Nursing Homes: Complexity of Private Investment Purchases Demonstrates Need for CMS to Improve the Usability and Completeness of Ownership Data" (GAO-10-710).

The Department appreciates the opportunity to review this report before its publication.

Sincerely,

Jim R. Esquea
Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "NURSING HOMES: COMPLEXITY OF PRIVATE INVESTMENT PURCHASES DEMONSTRATES NEED FOR CMS TO IMPROVE THE USABILITY AND COMPLETENESS OF OWNERSHIP DATA" (GAO-10-710)

The Department appreciates the opportunity to review and comment on the subject GAO Draft Report. GAO's study focused on private investment (PI) firm ownership of nursing homes, Center for Medicare & Medicaid Services' (CMS) capacity to identify nursing home owners, and the impact of PI ownership on the quality of care provided. During this study, the GAO:

- Identified PI ownership using a proprietary database, and analyzed information from six PI firms about their interest and involvement in nursing homes.
- Reviewed data on selected PI-owned nursing home chains from CMS's Provider Enrollment, Chain and Ownership System (PECOS).
- Discussed ownership data with officials from the United States Department of Health & Human Services (DHHS), CMS, and six states that also collect ownership data on nursing homes.

In its report, the GAO made several recommendations to the Secretary of HHS and the Administrator of CMS. CMS responses are below.

GAO Recommendation

In developing regulations to implement the expanded nursing home ownership reporting and disclosure requirements contained in the Affordable Care Act, the Secretary should consider mandating the reporting of the following types of information:

- The organizational structure and the relationships to the facility and to one another of all persons or entities with direct or indirect ownership or control interests in the provider, such that the hierarchy of all intermediate persons and entities from the provider level up to the chain and the ultimate owner is described;
- For entities reported as having ownership or control interests, whether the entities have an operational role;
- The percentage ownership interest in the provider for all entities and individuals who have an ownership or control interest;
- The names and titles of the members of the chains' governing body;
- The organizational affiliation of individuals with an ownership or control interest.

CMS Response

CMS agrees with this recommendation and will consider it when developing regulations to implement the expanded ownership and disclosure requirements in Affordable Care Act.

1

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "NURSING HOMES: COMPLEXITY OF PRIVATE INVESTMENT PURCHASES DEMONSTRATES NEED FOR CMS TO IMPROVE THE USABILITY AND COMPLETENESS OF OWNERSHIP DATA" (GAO-10-710)

GAO Recommendation

The Administrator of CMS should issue guidance on the circumstances under which the holder of a security interest in a provider may be considered to have a reportable interest.

CMS Response

CMS agrees with this recommendation. CMS anticipates addressing it by revising the Medicare enrollment application to: (1) require providers to disclose any party that has the security interest referred to in § 1124(c)(2)(C)(ii), and (2) describe the types of security interests that must be reported when initially enrolling into the Medicare program or when reporting a change of information.

GAO Recommendation

The Administrator of CMS should require each provider to report the identity of other nursing homes that are part of the same chain.

CMS Response

CMS agrees with this recommendation and will incorporate these requirements into a future version of the enrollment application and corresponding instructions.

GAO Recommendation

The Administrator of CMS should expand the scope of CMS's existing workgroup intended to make PECOS data available within the agency by developing a comprehensive strategy for disseminating PECOS data to HHS, states, and the public.

CMS Response

CMS agrees with this recommendation, and will develop a strategy to examine the feasibility of sharing certain information in PECOS with other agencies within HHS, the States, and the public.

GAO Recommendation

The Administrator of CMS should examine State systems to identify best practices for the collection and public dissemination of nursing home ownership and chain information, including ways in which the State make the hierarchy among owners more apparent.

2

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "NURSING HOMES: COMPLEXITY OF PRIVATE INVESTMENT PURCHASES DEMONSTRATES NEED FOR CMS TO IMPROVE THE USABILITY AND COMPLETENESS OF OWNERSHIP DATA" (GAO-10-710)

CMS Response

CMS agrees with this recommendation. CMS will develop a plan of action for contacting States for background information and feedback on their collection and public dissemination of nursing home ownership and chain information, as well as how to establish the hierarchy among owners more apparent.

GAO Recommendation

The Administrator of CMS should more closely monitor the activities of CMS contractors that review the ownership and control information submitted by providers that participate in Medicare.

CMS Response

CMS will monitor the contractors' performance in this area. This additional monitoring may include but will not be limited to evaluating ownership and control information submitted with applications selected as part of the annual review of the provider enrollment process, evaluating ownership and control information as part of other focused provider enrollment reviews that may be conducted throughout the year, and as part of general contract oversight.

GAO Recommendation

The Administrator of CMS should periodically review the requirement related to reporting on the agency's provider enrollment form to ensure that it promotes accurate and complete reporting of nursing home ownership information consistent with the statute.

CMS Response

CMS agrees with this recommendation. CMS will periodically review the provider enrollment application to ensure that it is updated to reflect accurate and complete reporting of nursing home ownership information consistent with the statute.

3

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

John Dicken, (202) 512-7114 or dickenj@gao.gov

Acknowledgments

In addition to the contact name above, Walter Ochinko, Assistant Director; Jennie Apter; Ramsey Asaly; Joanne Jee; Dan Lee; Linda McIver; Luis Serna; Amy Shefrin; and Jessica Smith made key contributions to this report.

Related GAO Products

Poorly Performing Nursing Homes: Special Focus Facilities Are Often Improving, but CMS's Program Could Be Strengthened. GAO-10-197. Washington, D.C.: March 19, 2010.

Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment. GAO-10-70. Washington, D.C.: November 24, 2009.

Nursing Homes: Opportunities Exist to Facilitate the Use of the Temporary Management Sanction. GAO-10-37R. Washington, D.C.: November 20, 2009.

Nursing Homes: CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit. GAO-09-689. Washington, D.C.: August 28, 2009.

Medicare and Medicaid Participating Facilities: CMS Needs to Reexamine Its Approach for Funding State Oversight of Health Care Facilities. GAO-09-64. Washington, D.C.: February 13, 2009.

Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses. GAO-08-517. Washington, D.C.: May 9, 2008.

Nursing Home Reform: Continued Attention Is Needed to Improve Quality of Care in Small but Significant Share of Homes. GAO-07-794T. Washington, D.C.: May 2, 2007.

Nursing Homes: Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents. GAO-07-241. Washington, D.C.: March 26, 2007.

Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety. GAO-06-117. Washington, D.C.: December 28, 2005.

Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight. GAO-03-561. Washington, D.C.: July 15, 2003.

Nursing Homes: Public Reporting of Quality Indicators Has Merit, but National Implementation Is Premature. GAO-03-187. Washington, D.C.: October 31, 2002.

Nursing Homes: Federal Efforts to Monitor Resident Assessment Data Should Complement State Activities. GAO-02-279. Washington, D.C.: February 15, 2002.

Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives. GAO/HEHS-00-197. Washington, D.C.: September 28, 2000.

Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality. GAO/HEHS-00-6. Washington, D.C.: November 4, 1999.

Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable. GAO/HEHS-99-154R. Washington, D.C.: August 13, 1999.

Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit. GAO/HEHS-99-157. Washington, D.C.: June 30, 1999.

Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents. GAO/HEHS-99-80. Washington, D.C.: March 22, 1999.

Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards. GAO/HEHS-99-46. Washington, D.C.: March 18, 1999.

California Nursing Homes: Care Problems Persist Despite Federal and State Oversight. GAO/HEHS-98-202. Washington, D.C.: July 27, 1998.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, http://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Please Print on Recycled Paper