

Outline of AHLA Presentation: Private Ownership and Long-Term Care
Suzanne Koenig and Janus Pan

Slide 1: Title Slide: Private Ownership and Long-Term Care Facilities

Slide 2: Presenters

Slide 3: Topics

Presentation Thesis: Private Ownership does not yield worse care than nonprofit ownership.

- 1) Recent Enforcement Trends, and Governmental Scrutiny on Standards of Care in Long Term Care
 - a) CMS Proposed Staffing Ratios – vacated by U.S. District Court for Northern District of Texas on 4/7/25.
 - b) Government scrutiny of private-owned (including private-equity) backed care.
 - c) False Claims Act and lack of medical necessity in submitted claims, including substandard care.
- 2) Comparison of Nonprofit Care vs. Private Ownership-Backed Care (Private Equity or Direct Ownership)
 - a) Definition of Private Equity: Pooling together capital from investors to be managed by a professional advisor, to eventually sell for a profit.
 - b) Definition of Private Ownership: Direct ownership of a private company that owns or operates healthcare facilities.
 - c) When compared to nonprofit care, private ownership-backed care often has more training and teaching, better operations.

Slide 4: Comparison of Nonprofit Care vs. Private Ownership-Backed Care

- 1) Various studies indicate that private ownership does not lead to lower quality of care in nursing homes and hospital systems.
 - a) Huang (2018): Private equity ownership does not lead to lower quality for long-stay nursing home residents.
 - b) Braun (2020): Private equity-owned nursing homes did not have more COVID-19 cases than nonprofit nursing homes.
 - c) Jenkins (2022): Nonprofit hospitals did not provide more charity care than the value of their tax exemptions.

Slide 5: Sabra Example – Regulatory Hoops and Less Focus on Skilled Nursing Facilities

- 1) Sabra Health Care REIT owns large portfolio of skilled nursing assets.

- 2) Per Sabra, nonprofit skilled nursing facilities are recently bleeding cash and may not be operationally strong enough to overcome regulatory hurdles, including licensure applications.

Slide 6: Duly Example – Private Equity Cash Infusion

- 1) Duly Health and Care received private equity infusions.
- 2) Duly states that such private equity infusions have allowed it to adopt best practice software tools and clinical governance protocols.

Slide 7: Increased Governmental Scrutiny of Private-Ownership Provided Care

- 1) Recent wave of private equity bankruptcies indicate potential increased governmental scrutiny.
- 2) Previous Biden Administration's and DOJ's focus on private ownership, including National Nursing Home Initiative.

Slide 8: Decreased Federal Scrutiny of Privately-Owned Care

- 1) CMS Proposed Minimum Staffing Ratio: On-site RN 24/7; 0.55 hours per day per RN; 2.45 hours per day per Nursing Assistant; 3.48 hours per day per Total Nursing Staff.
- 2) CMS Minimum Staffing Ratio vacated on April 7, 2025 in Texas court.
- 3) Trump Administration likely to step back from private ownership scrutiny.

Slide 9: False Claims Act (FCA)

- 1) The FCA, 31 U.S.C. §§ 3729-3733, is the federal government's primary weapon to redress fraudulent claim submissions to governmental payor programs.
- 2) The FCA provides for recovery of civil penalties and treble damages.
- 3) The FCA requires "knowing" conduct, defined as (1) actual knowledge, (2) deliberate ignorance, or (3) reckless disregard.

Slide 10: FCA, Medical Necessity, and Substandard Care

- 1) "Medical Necessity" in Medicare: "No payment may be made. . . for any expenses incurred for items or services, which . . . are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y(a)(1)(A).
- 2) "Substandard Care" and "worthless services" have been used as legal theories to prove lack of medical necessity in provider-submitted claims to Medicare and Medicaid.
- 3) Genesis Healthcare example: "unnecessary therapy and hospice services".
- 4) Philip Esformes' example of medically unnecessary services billed through assisted living facilities and skilled nursing facilities.

Slide 11: FCA Focus on Nursing Homes

- 1) Healthcare providers paid government \$1.67 billion to resolve healthcare claims in 2024 and \$2.7 billion in 2023. DOJ redoubling efforts as of 2024 to enforce nursing home standards.

Slide 12: Special Notes on Receiverships

- 1) In a real-estate default, lenders/landlords can foreclose against property.
- 2) A Receiver take control of property and related businesses pending results of foreclosure.
- 3) Receivers can be appointed in State or Federal court.
- 4) The Receivership Estate includes all assets, and liabilities incurred only after Receiver's appointment.
- 5) Receivership involves both the healthcare business and the healthcare real property.
- 6) Receivership allows for orderly transition to new operator or new buyer.
- 7) Court order specifies duties of Receiver.
- 8) Receivership insulates lender / landlord from risks associated with operating a healthcare business.
- 9) Receiverships are cost-effective.
- 10) Pitfalls of receiverships include: license loss, management, funding, staff, patient/resident retention, bankruptcy filings and Tenant avoiding liabilities.

Slide 13: Special Notes on Receiverships (continued)

Considerations for facility during a receivership include:

- 1) Current cash position; future cash projections.
- 2) Smooth transition of operations, to oversee staff.

Slide 14: Issue List for Troubled Assets (including Receiverships)

- 1) Chart of considerations:
 - a) Cash Position - Current
 - b) Cash Position - Longer Term
 - c) Licensure Status
 - d) Regulatory Status
 - e) Legal Transaction Documents for Long-Term Care Facilities
 - f) Leadership
 - g) Ownership and Governance
 - h) CapEx
 - i) Market Demand Report
 - j) Labor Availability Summary
- 2) Paths Forward for Troubled Assets:
 - a) Sale (improvement to drive price, fire sale, etc.)
 - b) Closure (all of asset, certain parts of campus, etc.)

- c) Restructure / Bankruptcy (debt, management, operations, etc.)

Slide 15: Other Reference Resources

- 1) National Investment Center – Guide to Investing in Seniors Housing and Care Properties.
- 2) McKnight’s Long-Term Care Newsletter.
- 3) BridgeTheGap Podcast: Resident Advocacy in Community Distress with Suzy Koenig.

Slide 16: Takeaways

- 1) Increasing trend of private equity and private ownership acquisition of long-term care facilities, such as nursing homes and assisted living facilities.
- 2) Private ownership of long-term care facilities oftentimes results in similar or better standards of care than nonprofit ownership.
- 3) Private owners and private equity firms entering the long-term care space should watch out for regulatory scrutiny, risk of government investigations, and enforcement of standards of care such as nurse staffing ratios.

Slide 17: Takeaway Form – Management Transition Agreement for Sales of Long-Term Care Facilities

- 1) Allocates Medicare, Medicaid, and other payor payments between Buyer and Seller during the interim period between Closing and payor switches of payments.
- 2) Provides for management of facility during any receivership / interim periods.
- 3) Allocates rights and obligations associated with healthcare licenses during any interim periods.