WHERE DO THE BILLIONS OF DOLLARS GO?

A LOOK AT NURSING HOME RELATED PARTY TRANSACTIONS

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In February 2022, President Biden announced the most ambitious nursing home reforms[i] in decades. Central to these reforms included increasing transparency and scrutiny of nursing home finances. For years, Consumer Voice and other advocates have called for increased transparency in how nursing homes spend the billions of Medicare and Medicaid dollars they receive annually. As this report will document, the current process in place to hold nursing facility owners and operators accountable for how they spend taxpayer dollars is flawed and has resulted in a system where there is little to no transparency or accountability.

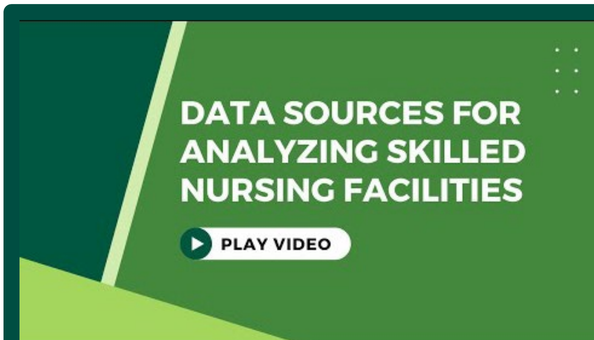
This paper focuses on the industry-wide use of related party transactions. Each year, nursing homes funnel Medicare and Medicaid dollars meant for nursing home resident care through companies they own with little to no scrutiny on how this money is used. We will use financial data provided by nursing homes to the federal government to illustrate how under the current federal cost reporting system billions of dollars likely go unaccounted for annually. Lastly, we will offer recommendations to address the lack of accountability of the industry and ensure public funds are directed to providing adequate staffing and meeting residents' needs instead of padding industry profits.

Our report found that:

- Despite billions of dollars being funneled through related party companies each year, there appears to be little to no scrutiny by the federal government on how this money is spent.
- Nursing home owners and operators routinely pay their related parties in excess of reported costs, in some instances by nearly 1200%.
- Related parties make nursing homes look less profitable, while a closer look reveals that profits may be hidden in related party transactions.
- Cost reports do not capture enough information on related party transactions to enable CMS to fulfill its regulatory obligation to ensure taxpayer dollars are going towards care and not profits to owners and operators.

Throughout this report, we also provide links to videos that provide a more in depth look into the data and available information on nursing home finances.

The videos provide a close look at how nursing homes report spending each year and how the current reporting system fails.



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Introduction

In 2020, nursing homes received $67.9 billion dollars from the Medicare and Medicaid programs to care for residents.[ii] In addition, nursing homes received billions of dollars in COVID-19 relief funds.[iii] Despite the tens of billions of dollars nursing homes receive annually, there appears to be little to no scrutiny of how these funds are used. CMS uses a payment system that bases the reimbursement rate for a nursing home resident on how much care the resident needs - nursing homes with a resident with more significant care needs will be paid more Medicare dollars under this method.[iv] Yet, CMS does little to ensure that this care is provided.

Each year, nursing homes must file Medicare cost reports with CMS[v]. In these reports, the facilities are required to disclose how they spend their revenue from all payment sources, including Medicare and Medicaid dollars.[vi] It is unclear to what extent CMS reviews these cost reports. During our review of hundreds of cost reports from nursing homes across the country we frequently found reports that contained blatant errors or were missing significant amounts of information. Additionally, as we illustrate later in this report, nursing homes frequently make payments to providers of services that far exceed the reported costs, which draws into question how the money is being used, and whether the reports are being reviewed by CMS.

This apparent lack of scrutiny of nursing home cost reports has allowed the industry to develop and employ accounting measures that appear to divert taxpayer dollars. A vehicle nursing homes use to potentially hide profits are entities known as "related parties." These are companies owned or controlled by nursing home operators that do business with their own nursing homes. Nursing home operators pay billions of dollars each year to related party companies. These often extremely lucrative arrangements have raised questions about the nature and appropriateness of these transactions and whether CMS is doing anything to assess their accuracy.

What are related parties?

In 2003, an article published in the *Journal of Health Law* suggested that nursing homes should undergo corporate restructuring to help avoid civil liability for negligent care.[vii] The article suggested that by creating separate, single purpose corporations, owners and operators could protect assets that would otherwise be subject to civil judgment. The article's chief recommendation was that owners separate the operational side of the nursing home from the real estate side. The article stated:

> There is an emphasis on separating the ownership of the real estate from the ownership of the operating entity that holds the license and Medicare and Medicaid provider agreements. This is normally achieved by having the operating entity lease the facility from the real-property entity. This can be accomplished even where there is identical ownership and control between and among the real-property entity and the operating entity.

The article did not mention an additional benefit to owners: the corporation they created that owns the real estate could charge rent and/or lease fees to the nursing home. This practice, charging the nursing home rent, would allow them to show a loss to the facility itself, while at the same time obscuring how this money was used.

This practice has proliferated to include not only real estate, but also companies owned or controlled by nursing home owners that provide virtually every aspect of nursing home operations. For instance, Life Care Centers, a nursing home chain with over 200 nursing homes and 25,000 beds, reported dozens of separate expenses that it paid to companies it owned on its Medicare cost reports in 2018. These self-owned organizations included management companies, staffing companies, insurance companies, and therapy companies. In 2018, Life Care paid $386,449,502.71 to related parties. Over the three-year period from 2018 to 2020, Life Care reported $1.25 billion dollars in payments to companies they in fact owned or controlled.

Since the publication of the 2003 article, this practice has come to be referred to as the use of "related party transactions." The practice has proliferated, with nearly 75%[viii] of nursing homes using related party transactions. In 2015, nursing homes funneled $11 billion dollars through related parties.[ix]

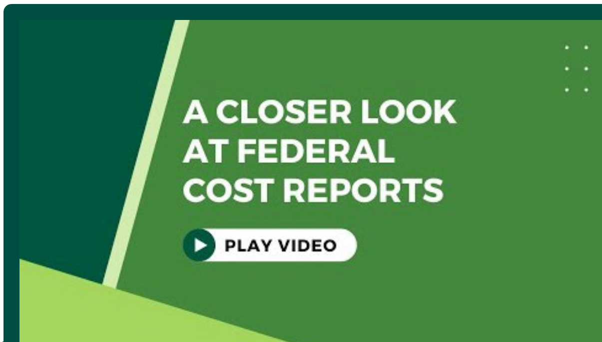
How are related party transactions reported?

Every year, CMS requires nursing homes to identify any related parties and report all payments made to them on the facility's Medicare cost report. Federal regulations[1] define related parties (organizations) largely based on common ownership and control. Generally, if an entity providing services or goods to a nursing home is owned in significant part or controlled by the nursing home owner, then it is a related party, regardless of whether it is a separate legal entity.

Each year, facilities must file electronically form 2540-10, the Medicare cost report. In addition to related party information, facilities must report data including operation costs, revenues, capital, and a variety of other important economic data on a nursing home.

Worksheet A-8-1 in the [cost](#) report concerns related parties and requires a related party to report its cost for providing a service to the nursing home. This amount does not include profit to the related party, but only the actual cost to the related party to provide the service to the nursing home. In turn, the nursing home must report how much it paid the related party for that service. (As we will see later in the report, these numbers rarely match up.)

Importantly, the costs incurred by a related party must be "reasonable and prudent." [x] CMS requires nursing home providers to be "prudent buyers"- meaning they must actively seek to minimize costs by ordering in bulk, negotiating with suppliers, and obtaining multiple quotes for goods or services.[xi] In other words, related parties may not inflate costs, but can only charge what they would pay on the open market. If a nursing home is found to have excessive costs beyond those a prudent buyer would pay, where there is no "clear justification" for the excess, CMS should not reimburse these costs.[xii]



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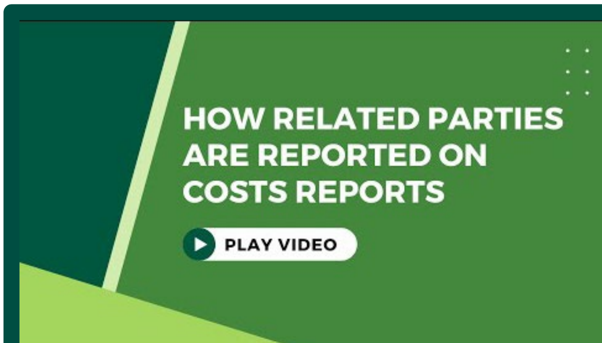

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[1] § 413.17 Cost to related organizations.
(a) Principle. Except as provided in paragraph (d) of this section, costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.
(b) Definitions -
(1) Related to the provider. Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.
(2) Common ownership. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.
(3) Control. Control exists if an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

Lack of Transparency in How Related Parties Use Money

To ensure that nursing home owners and operators are acting as "prudent buyers" and not inflating related party costs, CMS should be reviewing cost reports, auditing them for accuracy, and also comparing reported costs of goods and services to what they would cost on the open market. However, it is unclear what process, if any, CMS has in place to review the accuracy of cost reporting, including related party transactions. Just last year, the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) announced its intent to review the auditing of cost reports, and what process CMS has in place to assure they are reasonable and accurate. [xiii]

Further complicating that analysis of whether costs are reasonable and prudent, CMS cost reports do not require related parties to report any financial information other than the cost of services it provided to a facility. Cost reports do not require a breakdown of what services were provided. Instead, costs are reported under broad categories such as "Rent," "Maintenance," or "Insurance." This absence of information is problematic in two ways. First, it is impossible to determine how money paid to related parties was used. Second, absent detailed information on what goods and services were provided to a nursing home by a related party, it is nearly impossible for CMS to determine whether these costs were "reasonable and prudent." How can CMS compare costs reported in related party reports to what those costs would be on the open market when there is no information on what goods and services the related parties reportedly provided to a nursing home?

To illustrate, Life Care Centers reported paying nearly $350 million in insurance payments to related parties during the period from 2018-2020. However, the cost report provides no information on just how this money was used. How much of it went to premium payments? How much went to overhead costs? How can CMS compare this amount to what it would cost on the open market, when it has no information on how this money was used?

Nursing Homes Frequently Make Payments to Related Parties that Exceed the Reported Costs, Absent Explanation

In addition to concerns about how money paid to related parties is used, our review of cost reports frequently found that the amount of money paid to related parties far exceeded the costs reported by the related party. Importantly, cost reports do not require this discrepancy to be explained.

To illustrate, Pruitt Health, a nursing home chain that owns roughly 90 nursing homes, reported related party costs of nearly $482 million for the years from 2018-2020. At the same time, Pruitt reported paying to these related parties roughly $570 million dollars, a payment in excess of 18%. The cost report provides no information on why Pruitt made nearly $90 million in excess payments to its related parties.

It is important to note, that these excess payments are common, and the percentage of excess payments is not consistent across corporations. This report will show how other nursing home owners and operators make payments that often far exceed the reported costs.

If these excess payments are profits, it serves an important function. It allows nursing home owners and operators to show losses or reduce profit margins in its facility cost report, while potentially hiding significant profits paid to themselves in related parties. Related party costs and payments show up as expenses on cost reports, even though that money is in fact being paid to the owners themselves. In our review of cost reports, the payments made to related parties sometimes exceeded the reported costs by nearly 1200%.

CMS Has the Regulatory Authority to Require Increased Disclosure of Nursing Home Finances

CMS does have the regulatory authority to further inspect not only related party costs, but also the finances of the related party company, as required by the Medicare Provider Reimbursement Manual. The manual states that related parties must, when requested, provide "adequate documentation to support the costs incurred by the related organization, including, **when required, access to the related organization's books and records, attributable to supplies and services to the provider**."[xiv] (emphasis added). Whether, and how often, CMS undertakes this effort is not known, and as mentioned previously, is now subject to OIG investigation. One clear safeguard would to be require related parties to provide this information on cost reports or as an addendum.

In addition, the Nursing Home Reform Act of 1987 grants the Secretary of the U.S. Department of Health and Human Services, and therefore CMS, the broad authority to oversee how Medicare and Medicaid dollars are spent.

The Nursing Home Reform Act of 1987 states:

> "It is the duty and responsibility of the Secretary of Health and Human Services] to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys." (42 U.S.C. § 1395(f)(1)).

The duties of the Secretary and CMS clearly outlined in the law are inextricably linked together. The Secretary cannot assure the "health, safety, welfare, and rights of residents" without ensuring public moneys are going towards care.

Case Studies

Below, we provide examples from nursing home cost reports to demonstrate how Medicare and Medicaid dollars are funneled through related party corporations with what appears to be little to no scrutiny from CMS. The analysis below comes from cost report data provided to CMS by nursing homes for the years 2018-2020. All of the data regarding nursing home finances is drawn directly from cost reports filed under penalty of perjury by nursing homes. We have also relied on quality data provided by CMS.

1 Life Care Centers

Life Care Centers are located in many states, including California, Washington, Tennessee, Rhode Island, and Florida. They are for-profit facilities owned by a variety of corporate entities, although ownership records from CMS frequently reflect that there is only one sole shareholder or Chairman/CEO of these corporations. Earlier this year, Forbes reported that this owner was worth $1.3 billion dollars.[xv]

Life Care Centers, like most nursing homes, uses related party transactions. As explained above, Medicare cost reports reflect that Life Care Centers pay related parties hundreds of millions of dollars each year. In the three-year period from 2018-2020, Life Care Centers paid $349,725,321 in insurance payments to related parties. During that same three-year period Life Care Centers charged its own nursing homes $82,038,399.44 in management fees. Absent from the cost report, is how the related parties used this money.

For the years 2018-2020, Life Care Centers payments to its related parties were nearly $140 million more than the costs reported by the related parties. Of the more than $1 billion total paid to related parties during this period, this represents a 12.5% payment in excess of the costs reported by the related parties.

In the following tables, the columns titled "Related Party Reported Costs" are the total costs reported by all of Life Care Centers' related parties on the cost reports for each year. The columns, "Actual Payments to Related Parties" are the total amount paid to related parties for those years. Next are the columns titled "Amount by Which the Payment Exceeds the Reported Costs" representing the amount that Life Care Centers paid to related parties in excess of the reported costs. The last column, "% Payment Exceed Reported Costs" is the percentage by which nursing homes overpaid their related parties.

Life Care Centers Total Related Party Payments				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$346,608,865.03	$386,449,502.71	$39,840,637.68	11.49%
2019	$377,038,257.00	$439,087,996.66	$62,049,739.66	16.46%
2020	$390,837,690.85	$428,695,145.37	$37,857,454.52	9.69%
Total	$1,114,484,812.88	$1,254,232,644.74	$139,747,831.86	12.54%

From 2018-2020 Life Care Centers paid $92 million dollars in lease payments to related parties from 2018-2020. This amount exceeds the costs reported by $28.1 million dollars, or 43%. Again, no explanation is provided as to why the payments exceeded the costs reported by such a significant amount.

Life Care Centers Lease Payments to Related Parties				
Year	Related Party Cost	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$20,847,437.23	$26,746,062.64	$5,898,625.41	28.29%
2019	$21,877,851.39	$32,215,989.90	$10,338,138.51	47.25%
2020	$21,277,740.11	$33,143,396.09	$11,865,655.98	55.77%
Total	$64,003,028.73	$92,105,448.63	$28,102,419.90	43.91%

Other significant related party costs to Life Care Centers are home office costs, which are monies paid to the home office by individual facilities for some kind of service. The home office is often the corporate headquarters for the nursing home operator. Life Care Centers nursing homes paid over $55 million in home office costs to related parties from 2018-2020, while the reported costs totaled about $33 million, an excess of 69%.

Home Office Costs Paid to Related Parties				
Year	Related Party Reported Cost	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$7,502,143.12	$9,307,541.20	$1,805,398	24.07%
2019	$13,262,906.70	$23,286,463	$10,023,556	75.58%
2020	$12,206,605	$23,192,387	$10,985,782	90.00%
Total	$32,971,654.82	$55,786,391.20	$22,814,736	69.19%

Using Related Parties to Make a Nursing Home Look Less Profitable

From 2018-2020 Life Care Centers reported total revenues of roughly $6.26 billion dollars. The net profit they reported for that period was $87.4 million, showing a profit margin of 1.4%. However, the reported profit margin does not account for nearly $140 million Life Care Centers paid related parties that exceeded their costs. If this additional amount is profit, it raises Life Care Centers profit margin from 1.4% to 3.63% ($136.9 million) for a total of more than $227 million.

Inadequate Staffing in Life Care Centers from 2018-2020

While Life Care Centers was paying its related parties $140 million more than their costs, residents in Life Care Center homes were, on average, receiving insufficient nursing care. A 2001 CMS study found that nursing home residents need, at a minimum, 4.1 hours per resident day (hprd) (4 hours 6 minutes in a 24 hour period) of direct nursing care to prevent harm and poor outcomes.[xvi] At Life Care Centers, however, residents received only 3.82 hprd on average for the period of time from 2018-2020, an amount insufficient to provide the most basic care, putting residents at risk of poor health outcomes and harm.

Life Care Center Quality Ratings

Life Care Centers, on average, provided mediocre care to nursing home residents during the years 2018-2020. According to quality data from CMS, Life Care Centers on average maintained 2.91 stars out of 5 on CMS's Health Inspection (HI) Five-Star Quality Rating System. [2] As noted above Life Care Centers often provided inadequate staffing, resulting in only a 3.24 rating out of 5 on CMS's star rating system.

Star Ratings				
	Overall	HI	Staff	QM
2018	3.79	3.06	3.25	4.36
2019	3.32	2.9	3.14	3.69
2020	3.34	2.76	3.33	3.8
AVG	3.48	2.91	3.24	3.95

[2] CMS maintains a website Care Compare, which provides a variety of information on every Medicare funded nursing home in the United States. Central to the Care Compare website is a five-star rating system designed to give consumers an idea of how nursing homes perform when compared to other nursing homes. Although the failures of this system has been well documented, it is the primary source of care quality information when it comes to nursing homes.

2 Pruitt Health

Pruitt Health owns nearly 90 nursing homes in several states, including Georgia, North and South Carolina and Florida. For the three years from 2018-2020, Pruitt Health paid related parties $570,323,798.64. The reported costs for this period of time were $481,861,993.19, meaning they made excess payments to related parties of $88.5 million dollars, or 18.36%.

Pruitt Health Care All Related Party Payments				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$162,395,326.81	$189,795,459.73	$27,400,132.92	16.87%
2019	$163,710,556.24	$188,439,854.28	$24,729,298.04	15.11%
2020	$155,756,110.14	$192,088,484.63	$36,332,374.49	23.33%
Total	$481,861,993.19	$570,323,798.64	$88,461,805.45	18.36%

The most lucrative transactions for Pruitt's related parties were the lease payments that facilities were required to pay. Over the three-year period, Pruitt Health paid $121,345,764.16 in lease payments to related parties (itself), despite reporting costs of $83,099,902.88, resulting in excess payments of 46.02%.

Pruitt Health Care Related Party Lease Payments				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$26,835,666.79	$37,550,543.49	$10,714,876.70	39.93%
2019	$29,322,638.34	$40,496,802.20	$11,174,163.86	38.11%
2020	$26,941,597.75	$43,298,418.47	$16,356,820.72	60.71%
Total	$83,099,902.88	$121,345,764.16	$38,245,861.28	46.02%

Similarly, reported home office costs proved to be a bonanza to Pruitt Health's related parties, with payments over the three-year period totaling $123,933,421.51. The costs reported by those related parties was $69,622,859.65, an excess payment of 78.01%.

Pruitt Health Care Home Office Cost Related Party Transactions				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$23,679,296.30	$40,254,032.12	$16,574,735.82	70.00%
2019	$25,691,701.29	$40,135,249.45	$14,443,548.16	56.22%
2020	$20,251,862.06	$43,544,139.94	$23,292,277.88	115.01%
Total	$69,622,859.65	$123,933,421.51	$54,310,561.86	78.01%

For the three-year period from 2018-2020, Pruitt Health Care reported an aggregate loss for their homes of $77,879,837.34. However, as noted, during that period they paid related parties $570,323,798.64. This amount includes over $88 million in unexplained excess payments to related parties.

Similar to Life Care Centers, while hundreds of millions of dollars were being paid to related parties from 2018-2020, nursing home residents were residing in poorly rated homes. Pruitt homes perennially perform poorly on CMS' 5-Star Rating system,[3] with the average overall 5-Star rating of 2.82 in 2020. Similarly, the average Health Inspection and Staffing 5-star rating in 2020 were 2.51 and 2.52, respectively. Six percent of Pruitt Health homes had a resident abuse icon on Care Compare, meaning that residents in those facilities had been subject to abuse in 2020.

Pruitt Health Average 5-Star Ratings			
	Overall	Health Inspection	Staffing
2018	3.04	2.82	3.04
2019	2.6	2.57	2.29
2020	2.82	2.51	2.52
Avg	2.82	2.63	2.62

Staffing was also inadequate in Pruitt homes. According to payroll data from CMS, Pruitt homes provided 3.43 hprd on average over the three-year period from 2018-2020. This means that residents were receiving 40 minutes less than 2001 federal recommendations of the minimum care needed to prevent poor resident outcomes.[xvii]

3 Brius

Brius owns and operates roughly fifty nursing homes, mainly in California. Like Pruitt Health and Life Care Centers, the use of related parties has proven very beneficial to Brius's related parties. Of the three chains examined in this report, Brius operates the poorest performing homes, according to the CMS Care Compare website. Brius homes perform particularly poorly on health inspection ratings, where the average for all Brius homes barely musters two stars.

Brius 5 Star Ratings			
Year	Overall	Health Inspections	Staffing
2018	2.94	2.03	3.02
2019	2.48	2.09	2.58
2020	2.72	2.25	2.75
Average	2.71	2.12	2.78

Brius cost reports routinely contained missing information. For instance, it was common to find payments to related parties without any reported costs. This inexplicable omission appears to have gone unnoticed by CMS, since some of the reports are nearly five years old. In addition, Brius's cost reports show exorbitant excess payments to related parties, with some payments being almost 1700% higher than the reported costs. These omissions and unexplained anomalies contributed to our belief that CMS was placing little to no scrutiny on these cost reports.

[3] CMS maintains a website Care Compare, which provides a variety of information on every Medicare funded nursing home in the United States. Central to the Care Compare website is a five-star rating system designed to give consumers an idea of how nursing homes perform when compared to other nursing homes. Although the failures of this system has been well documented, it is the primary source of care quality information when it comes to nursing homes.

Brius Total Related Party Payments				
Year	Related Party Reported Costs	Reported Related Party Payments	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$20,690,539.65	$65,964,286.36	$45,273,746.710	218.81%
2019	$19,356,845.13	$71,717,410.03	$52,360,564.900	270.50%
2020	$21,934,460.99	$80,885,979.02	$58,951,518.030	268.76%
Total	$61,981,845.77	$218,567,675.41	$156,585,829.64	252.63%

The chart above shows that Brius paid related parties (themselves) nearly $157 million more than their reported costs over three years, or 252.63%. Much of these excess payments came from lease payments Brius nursing homes paid to related parties (themselves).

Brius Total Related Party Lease Payments				
Year	Related Party Reported Costs	Reported Related Party Payments	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	$5,453,429	$46,710,752.63	$41,257,323.63	756.54%
2019	$3,320,501	$51,003,901	$47,683,400.00	1436.03%
2020	$3,046,743.93	$54,607,213.76	$51,560,469.83	1692.31%
Total	$11,820,674	$152,321,867	$140,501,193	1188.61%

The use of related parties potentially helps Brius disguise its profitability. According to the aggregated cost reports for Brius, that despite revenues of $1.99 billion dollars over three years, they were only able to make a profit of roughly $38.77 million dollars, or 1.94%. However, if the excess payments to related parties are in fact profit that amount increases to $156.6 million or a factor of four.

Conclusion and Recommendations

In order to protect nursing home residents, CMS must take action to hold nursing homes accountable for how they spend tens of billions of taxpayer dollars each year. Billions of dollars are funneled through related parties every year and it is not clear that the federal government has any idea whether the amounts paid to these companies are reasonable and prudent. A closer look at the current cost reports raise significant questions about how Medicaid and Medicare dollars are being used. They suggest that nursing homes may be hiding profits in related party transactions. This practice allows nursing home owners to portray their nursing homes are operating at a financial loss or making small profits, when in reality they are making money.

Importantly, this model allows for money to be diverted away from care for residents and from nursing home workers to the pockets of owners and operators. Public money meant to support jobs with fair pay where staff are well-trained and supported is instead funneled off to a complex system of transactions with virtually no accountability. Residents go without care and workers are permanently underpaid and overburdened, leading to staff turnover rates at over 50% per year.[xviii]

To protect nursing home residents, CMS should take the following steps:

Auditing of Cost Reports by CMS

While cost reports are supposed to be reviewed to determine whether they contain accurate information, during our review of cost reports, there was no evidence of scrutiny of the reports. Often, reports were missing information and contained glaring errors, such as facilities adding too many numbers to a cost reporting line or omitting necessary data. CMS must actively audit cost reports and take incorporate automated and manual systems to ensure the information submitted by nursing homes is complete and accurate. CMS must hold owners and operators accountable for submitting cost reports that contain incorrect or missing information.

In addition, CMS must make cost reports available to the public. Currently, cost reports may only be obtained through Freedom of Information requests. While CMS releases some cost report information, it is largely indecipherable and incomplete. This policy violates federal law, which requires that copies of cost reports be made available to the public.[xix] Consumers, advocates, and researchers will be able to use this information when evaluating nursing homes and use of Medicaid and Medicare dollars. Further, the increased transparency and scrutiny of cost reports could incentivize nursing homes to use public dollars more prudently and ensure those dollars are being used for direct resident care.

Consolidated Cost Reports

As shown in this report, it appears that tens of billions of Medicare and Medicaid may be unaccounted for annually. CMS must require broader disclosure by nursing home owners of financial operations through consolidated cost reports. Consolidated cost reports would require owners and operators to report financial information on all companies related to the operation of the nursing homes, including related parties, holding companies, shell corporations, and other entities some nursing homes use to mask ownership and profit taking. Increased disclosure would require facilities to account for the billions of dollars paid to related parties (themselves) annually by increasing the amount of financial information required to be disclosed by related parties.

As noted, the Nursing Home Reform Act of 1987 obligates CMS to ensure that taxpayer dollars are spent for their intended purposes. The use of consolidated cost reports would help prevent nursing home owners and operators from avoiding the scrutiny of law and regulations by shining a light on accounting and ownership tricks currently use to avoid accountability for how they spend public dollars.

Because CMS has not taken steps to require more accountability of how Medicare and Medicaid dollars are spent, some states have taken steps themselves. In 2021 California passed SB 650[xx], which requires all nursing homes to submit consolidated cost reports. Pennsylvania[xxi] also recently implemented this requirement and New Jersey[xxii] is currently considering legislation. Virginia has required consolidated cost reports for years.

States should not have to step in where CMS has failed in its regulatory duty, however. By requiring increased disclosure through the use of consolidated cost reporting, CMS would ensure that Medicare and Medicaid dollars are going toward resident care in every state.

Implement a Minimum Staffing Standard

Currently, CMS does not require nursing homes to provide a minimum amount of direct nursing care hours for each resident per day. The current regulations only require “sufficient” staff.[xxiii] This opaque and ambiguous standard has resulted in nursing home residents across the country receiving wildly varying—and often inadequate-- care. As noted above, for years the gold standard for a minimum staffing standard has been 4.1 hours per resident day. With a definite and clear standard, nursing home owners, like the ones whose payments to related corporations are documented in this report, would be forced to use money for staff.

Medical Loss Ratio (Profit Cap)

States such as NJ[xxiv], NY,[xxv] and PA[xxvi] passed laws and created regulations in the wake of the COVID-19 crisis in an effort to address the long-standing issues that precipitated the devastation in nursing homes. Several states capped how much profit a nursing home could make. When this was done in New York, 238 of 615 for-profit homes filed suit claiming they would have to return $510 million in excess income to the state under the new law.[xxvii]

Requiring a certain amount of every dollar go towards resident care will reduce the likelihood of money being diverted, such as to related parties or to boost profits. Our tax dollars are intended for care of vulnerable nursing home residents, not for lining the pockets of owners.

Until CMS implements and enforces standards around the use of public dollars, nursing homes will continue to have sub-standard care. Key to President Biden’s promise of a minimum staffing standard is ensuring that the money we give nursing homes to implement the standard is used for care.[xxviii] The solution is not in more money for the nursing home industry, but more accountability for how current dollars are spent.

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