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Part 3: California falls short in disclosing nursing-home ownership

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Charlene Harrington, a UC San Francisco professor emerita, has researched nursing-home ownership for more than 30 years. "These (facilities) are micromanaged at the chain level," Harrington said. "The problems usually exist throughout the chain." PAUL KITAGAKI JR. / PKITAGAKI@SACBEE.COM

Last of three parts.

Ten years ago, Pat McGinnis took the state of California to court.

As head of California Advocates for Nursing Home Reform, McGinnis was peeved that state officials failed to follow the law and collect complete and accurate nursing-home ownership information. What the state did collect, her group charged, was "often outdated and so poorly organized" it was virtually inaccessible to the public.

The advocacy group won its lawsuit, but the fight was not remotely over.

Today, McGinnis' group is back in court with a new complaint about how the Department of Public Health is overseeing the complex, multilayered nursing-home industry in California. And she is spitting mad over what she calls the department's "contempt" in keeping its promises to ferret out and fully disclose the identities of California's nursing-home owners.

"The state doesn't know who the hell owns nursing homes," said McGinnis, CANHR's executive director.

"They haven't done diddly-squat."

The lawsuits, along with tense legislative hearings this year and harsh reports, reflect a growing discontent with how the state regulates nursing homes.

California has more nursing homes than any other state, and one of the country's highest percentages of facilities owned by for-profit interests. Yet, as more private investment groups acquire skilled-nursing facilities, and ownership structures grow ever more layered and complex, the department has not kept pace with industry changes to help consumers evaluate chains – or even to identify the principals behind them.

The state says it does assemble ownership information turned over by companies, and that the law requires owners to report any changes. A spokesman for the Department of Public Health acknowledged that this detailed ownership information is not included on the public website, but said it is available upon request.

The convoluted nature of nursing-home ownership – often a tangle of interrelated limited liability companies and partnerships – has confounded other state agencies charged with oversight.

The Department of Health Care Services, for instance, which audits all nursing homes that receive Medi-Cal money, recently stated in court documents that auditors had never seen a complete list of facilities owned by the state's largest nursing-home owner, Shlomo Rechnitz of Los Angeles, until March of this year.

The federal government also has stumbled in its efforts to increase nursing-home transparency, though officials recently announced changes to help consumers find quality care.

At the heart of the issue is a problem Charlene Harrington, an academic researcher and registered nurse, has been hammering on for years: getting regulators to monitor the performance of nursing-home chains – not just individual homes.

“They need to be focusing at the chain level,” said Harrington, professor emerita of sociology and nursing at the University of California, San Francisco, who has researched the nursing-home industry for more than three decades.

“These (facilities) are micromanaged at the chain level,” she said. “The problems usually exist throughout the chain.”

Data still incomplete

In California, the complex ownership structures of many nursing-home companies – and the resulting lack of transparency for consumers – is a matter state lawmakers resolved years ago.

Or so they thought.

In 1997, the Legislature began requiring the Department of Health Services (now the Department of Public Health) to collect “accurate and up-to-date” ownership information on nursing homes, and to make it readily available to the public.

Fed up by a lack of progress, McGinnis’ San Francisco-based advocacy group took the state to court in 2004 and forced officials to sign an agreement two years later saying they would follow the law. Among many things, the department agreed to list the names and addresses of each person having a beneficial ownership interest of 5 percent or more. And, the state agreed to provide the names and addresses of parent organizations, if the nursing home was a subsidiary.

A decade later, the department’s online “Health Facilities Consumer Information System,” which allows viewers to look up individual nursing homes, falls short of these requirements. The listed data remain incomplete and frequently misleading.

In entry after entry, the confusing nature of many nursing-home organizations plays out on the state’s website. (<http://hfcis.cdph.ca.gov/>) The names of many well-known parent companies are missing from the site, and there is no attempt to catalog identities of owners with more than a 5 percent stake. Some of the state’s largest nursing-home chains – including Plum Healthcare and Mariner Health Care Management Co. – are nowhere to be found in the public database.

For instance, a consumer trying to research the Sea Cliff Healthcare Center in Huntington Beach would see on the state's website that the licensee is HB Healthcare Associates LLC.

What the consumer wouldn't learn is that the facility's parent company is The Ensign Group Inc., a publicly traded national chain based in Mission Viejo. In a highly publicized case, the corporation agreed last year to pay \$48 million to the federal government to resolve allegations that six of its Southern California facilities had knowingly submitted inflated Medicare bills for therapy services that were medically unnecessary or never provided. The company denied wrongdoing in the case.

Want to know more about Saylor Lane Healthcare Center in Sacramento? According to the state's website, the licensee of that Folsom Boulevard nursing home is S.L.H.C.C. Inc., a for-profit corporation. What the site doesn't tell you is that Saylor Lane and five other nursing homes in the Sacramento region are owned by John Lund, a Montecito businessman charged in 2008 with 18 felony counts of defrauding Medi-Cal, filing false cost reports and perjury.

According to the state attorney general's office, Lund tried to get Medi-Cal to pay for family vacations in Hawaii and Colorado, season tickets to the Sacramento Kings, tennis lessons for his children and construction and remodeling costs at homes in Granite Bay, Santa Barbara and Montecito. In 2011, Lund agreed to plead guilty to one misdemeanor count of failing to file tax returns in exchange for the state dropping all felony counts. Court records dated January 2012 show he completed his community service requirement.

In some cases, there are outright omissions in the state's database. McGinnis recently typed in Kindred Nursing and Rehabilitation on 19th Street in San Francisco, then scrolled down to the section titled "ownership information." The entry read: "None found."

The Bee determined that the "ownership information" section often names a facility's property owner, who may not have any ownership interest in the actual nursing-home operation.

"Every single step the department has made in terms of disclosure of ownership information has not only been against the law – but also against the settlement agreement," McGinnis said. "We're discussing our next steps to get the department to comply with the law."

In Los Angeles, Molly Davies, the head of a countywide nonprofit ombudsman program, said that she and her staff had to resort to basic Google searches and Corporation Wiki charts to track a large owner in her region whose homes had been the target of complaints.

Davies is vice president of the WISE and Healthy Aging program, which attempts to resolve consumer complaints involving long-term care facilities. It was not until fairly recently that the Department of Public Health supplied her office with a detailed list of that owner's facilities and his maze of interrelated companies, Davies said.

"It's very difficult to hold someone accountable when you don't know who to hold accountable," Davies said.

'An enormous loophole'

In its new lawsuit against the state, McGinnis' group alleges that the Department of Public Health fails to dig deeply enough into the ownership structures and "permits and even encourages large skilled-nursing chains to create multiple levels of ownership and control."

The suit, filed in San Francisco Superior Court, contends that the department is not adequately investigating ownership groups before proposed sales and acquisitions, as required by law. The lawsuit says the state is investigating ownership structures only at the nursing-home facility level or one ownership level above, thus "creating an enormous loophole for all multilayer nursing-home organizations."

By limiting the scope of their review, state officials are not fully vetting the individuals "entrusted the care of elderly and disabled individuals," the suit states.

The case is pending.

The Department of Public Health said it could not comment on pending litigation.

The department responded to The Bee in writing about how it collects nursing-home ownership data. According to an email from spokesman Corey Egel, the department routinely verifies ownership information during surveys and complaint investigations but "must rely on facilities to self-report (ownership) changes."

Egel acknowledged in the email that the department displays only the licensee and facility information on its public website, omitting specific ownership information.

The department keeps the ownership data in an in-house "licensing database," he said, and will make it available to citizens who file a California Public Records Act request. "... (A)nd under some circumstances the information may be subject to redaction based on mandated

confidentiality requirements,” he wrote.

An individual also may visit a district office to view ownership data in the facility’s public file, he said.

McGinnis said she is outraged that the department requires a Public Records Act request before releasing ownership information from its database.

“That’s public information,” she said. “It’s under the law that it has to be available to the public. They are completely wrong.”

Assemblywoman Mariko Yamada, D-Davis, outgoing chair of the Aging and Long-Term Care Committee, said that lawmakers must continue to press for transparency and accountability within the nursing-home industry. Yamada helped lead a joint oversight hearing in January to examine allegations that complaints of abuse and misconduct were piling up at the department, and that investigations were being opened and closed haphazardly.

“This is a multibillion-dollar private industry that is drawing down public dollars,” said Yamada, who is completing her final term in the Assembly. “There shouldn’t be anything proprietary.”

Feds cite progress

While statewide ownership information is not available “at this time” through the state’s public website, Egel stated, he did note that California consumers can obtain detailed ownership data for individual facilities from the U.S. Centers for Medicare and Medicaid Services (<http://www.medicare.gov/nursinghomecompare/search.html>).

But the federal government’s database of nursing homes and their owners is not a one-stop, full-service solution for consumers, either.

Federal lawmakers passed the Nursing Home Transparency and Improvement Act of 2009, which increased demands on nursing-home operators to report detailed information about their ownership, management and financing structures. The reform package, which became part of the Affordable Care Act, followed congressional hearings in 2007 and 2008 that examined transparency issues and care problems within the industry.

But challenges remain.

The Bee found that ownership data in the updated database were “unavailable” for about 8 percent of the nation’s nursing homes. That number was higher for California, with 12 percent of the ownership data missing.

The cumbersome federal database includes more than 12,000 entries for California alone. Some homes list multiple directors and officers but no owners. Others list more than 20 separate people or organizations as having at least a 5 percent ownership stake in a single home, a mathematically dubious proposition.

Additionally, hundreds of ownership records in the federal database show individual names or a quirky mishmash of licensing companies – not the parent chain that owns each facility. Sometimes Jacob Wintner, who along with business partner Ira Smedra owns one of the state’s largest nursing-home networks, is listed as an owner along with others with the Wintner family name, usually through a licensing company called Win Win Enterprises; sometimes he is listed as an owner along with licensing companies with names such as KF Ontario Healthcare; sometimes he is listed as a “managing employee” or “director” of a home that is licensed to a company in which he is a partner.

Jack Cheevers, spokesman for the Centers for Medicare and Medicaid Services, said his department has made progress on implementing reforms and bolstering its website.

“CMS continues to evaluate the most appropriate way to require reporting of nursing-home ownership information,” Cheevers said.

Last month, the agency tackled a controversial problem with its consumer website.

A hallmark of the federal government’s website is its five-star rating system, created by the Centers for Medicare and Medicaid Services to help consumers assess the quality of individual facilities and link homes to their owners.

But the rating system has been widely criticized for relying on facilities to self-report some crucial data, such as staffing levels, leaving it vulnerable to skewed or even falsified reporting.

“Garbage in, garbage out,” complained veteran elder-abuse attorney Lesley Ann Clement of Sacramento.

CMS announced in October that it will overhaul the system, including a provision that facilities' staffing levels be verified through payroll data. The agency also plans to revise its scoring methodology used in determining a facility's rating.

Harrington, the UCSF nurse who has researched the industry, said she's pleased the federal government is finally going to collect verifiable staffing information.

But a glaring gap remains, she said.

"They're still not looking at anything at the chain level," she said. "Each survey is done at the individual facility level.

"As long as they don't think that's important – either the state or the feds – then I don't think it's ever going to get taken care of."

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