At Many Homes, More Profit and Less Nursing

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Five months later, Mrs. Hewitt discovered that her mother had a large bedsore on her back that was oozing pus. Mrs. Garcia was rushed to the hospital. A physician later said the wound should have been detected much earlier, according to medical records submitted as part of a lawsuit Mrs. Hewitt filed in a Florida Circuit Court.

Three weeks later, Mrs. Garcia died.

“I feel so guilty,” Mrs. Hewitt said. “But there was no way for me to find out how bad that place really was.”

Death and a Lawsuit

Within a few months, Mrs. Hewitt decided to sue the nursing home.

“The only way I can send a message is to hit them in their pocketbook, to make it too expensive to let people like my mother suffer,” she said.

But when Mrs. Hewitt’s lawyer, Sumeet Kaul, began investigating Habana’s corporate structure, he discovered that its complexity meant that even if she prevailed in court, the investors’ wallets would likely be out of reach.

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Formation said in a statement that it was not reasonable to hold the company responsible for residents, “any more, say, than it would be reasonable for a landlord who owns a building, one of whose tenants is Starbucks, to be held liable if a Starbucks customer is scalded by a cup of hot coffee.”

Formation, Warburg Pincus and its affiliates all declined to answer questions regarding Mrs. Hewitt’s lawsuit.

Advocates for nursing home reforms say anyone who profits from a facility should be held accountable for its care.

“Private equity is buying up this industry and then hiding the assets,” said Toby S. Edelman, a nursing home expert with the Center for Medicare Advocacy, a nonprofit group...
that counsels people on Medicare. “And now residents are dying, and there is little the courts or regulators can do.”

Mrs. Hewitt’s lawyer has spent three years and $30,000 trying to prove that an affiliate of Warburg Pincus might be responsible for Mrs. Garcia’s care. He has not named Formation or Warburg Pincus as defendants. A judge is expected to rule on some of his arguments this year.

Complex corporate structures have dissuaded scores of other lawyers from suing nursing homes.

About 70 percent of lawyers who once sued homes have stopped because the cases became too expensive or difficult, estimates Nathan P. Carter, a plaintiffs’ lawyer in Florida.

“In one case, I had to sue 22 different companies,” he said. “In another, I got a $400,000 verdict and ended up collecting only $25,000.”

Regulators have also been stymied.

For instance, Florida’s Agency for Health Care Administration has named Habana and 34 other homes owned by Formation and operated by affiliates of Warburg Pincus as among the state’s worst in categories like “nutrition and hydration,” “restraints and abuse” and “quality of care.” Those homes have been individually cited for violations of safety codes, but there have been no chainwide investigations or fines, because regulators were unaware that all the facilities were owned and operated by a common group, said Molly McKinstry, bureau chief for long-term-care services at Florida’s Agency for Health Care Administration.

And even when regulators do issue fines to investor-owned homes, they have found penalties difficult to collect.

“These companies leave the nursing home licensee with no assets, and so there is nothing to take,” said Scott Johnson, special assistant attorney general of Mississippi.

Government authorities are also frequently unaware when nursing homes pay large fees to affiliates.

For example, Habana, operated by a Warburg Pincus affiliate, paid other Warburg Pincus affiliates an estimated $558,000 for management advice and other services last year, according to reports the home filed.

Government programs require nursing homes to reveal when they pay affiliates so that such disbursements can be scrutinized to make sure they are not artificially inflated.

However, complex corporate structures make such scrutiny difficult. Regulators did not know that so many of Habana’s payments went to companies affiliated with Warburg Pincus.

“The government tries to make sure homes are paying a fair market value for things like rent and consulting and supplies,” said John Villegas-Grubbs, a Medicaid expert who has developed payment systems for several states. “But when home owners pay themselves without revealing it, they can pad their bills. It’s not feasible to expect regulators to catch that unless they have transparency on ownership structures.”

Formation and Warburg Pincus both declined to discuss disclosure issues.

Groups lobbying to increase transparency at nursing homes say complicated corporate structures should be outlawed. One idea popular among organizations like the National
Citizens' Coalition for Nursing Home Reform is requiring the company that owns a home's most valuable assets, its land and building, to manage it. That would put owners at risk if care declines.

But owners say that tying a home's property to its operation would make it impossible to operate in leased facilities, and exacerbate a growing nationwide nursing home shortage.

Moreover, investors say, they deserve credit for rebuilding an industry on the edge of widespread insolvency.

“Legal and regulatory costs were killing this industry,” said Mr. Whitman, the Formation executive.

For instance, Beverly Enterprises, which also had a history of regulatory problems, sold Habana and the rest of its Florida centers to Formation because, it said at the time, of rising litigation costs. AON Risk Consultants, a research company, says the average cost of nursing home litigation in Florida during that period had increased 270 percent in five years.

“Lawyers were suing nursing homes because they knew the companies were worth billions of dollars, so we made the companies smaller and poorer, and the lawsuits have diminished,” Mr. Whitman said. This year, another fund affiliated with Mr. Whitman and other investors acquired the nation's third-largest nursing home chain, Genesis HealthCare, for $1.5 billion.

If investors are barred from setting up complex structures, “this industry makes no economic sense,” Mr. Whitman said. “If nursing home owners are forced to operate at a loss, the entire industry will disappear.”

However, advocates for nursing home reforms say investors exaggerate the industry's precariousness. Last year, Formation sold Habana and 185 other facilities to General Electric for $1.4 billion. A prominent nursing home industry analyst, Steve Monroe, estimates that Formation's and its co-investors' gains from that sale were more than $500 million in just four years. Formation declined to comment on that figure.