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State Policy on Nursing Home Ownership Transparency and Accountability

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Presented to the Oregon Senate Interim Committee on Health Care

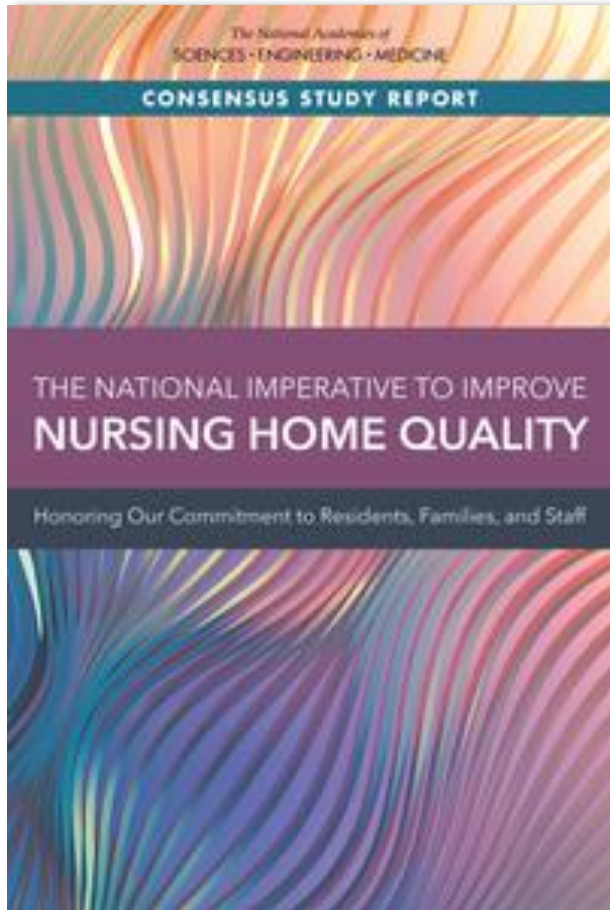
The Moving Forward Coalition

Our vision is that every nursing home will be a community in which lives are nurtured, residents are empowered, and where people want to work.

Our mission is that we will make vital changes in policy and practice through the power of bringing diverse voices together **now.**



The NASEM Report



“The way the U.S. finances, delivers, and regulates care in nursing home settings is ineffective, inefficient, fragmented, and unsustainable.”

– National Academies of Sciences, Engineering, and Medicine (NASEM) Report



NASEM Goal #3: Transparency & Accountability

GOAL 3: Increase transparency and accountability of finances, operations, and ownership

Recommendation 3A: The U.S. Department of Health and Human Services (HHS) should collect, audit, and make publicly available detailed facility-level data on the finances, operations, and ownership of all nursing homes (e.g., through Medicare and Medicaid cost reports and data from Medicare's Provider Enrollment, Chain, and Ownership System).

- HHS should ensure that the data allow the assessment of staffing patterns, deficiencies, financial arrangements and payments, related party entities, corporate structures, and objective quality indicators by common owner (i.e., chain and multi-facility owners) and management company.

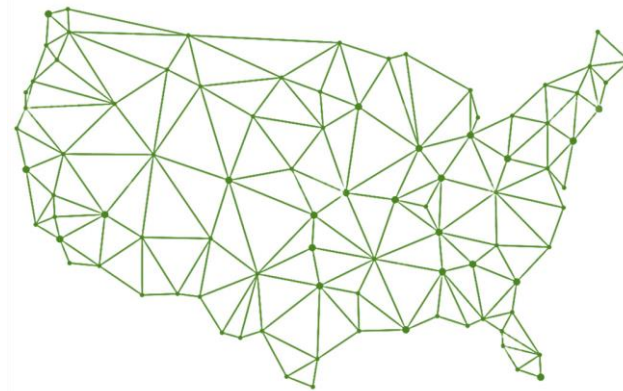
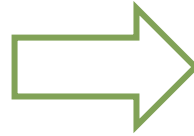
Recommendation 3B: The U.S. Department of Health and Human Services should ensure that accurate and comprehensive data on the finances, operations, and ownership of all nursing homes are available in a real-time, readily usable, and searchable database so that consumers, payers, researchers, and federal and state regulators are able to use the data to:

- Evaluate and track the quality of care for facilities with common ownership or management company.
- Assess the impact of nursing home real estate ownership models and related-party transactions on the quality of care.

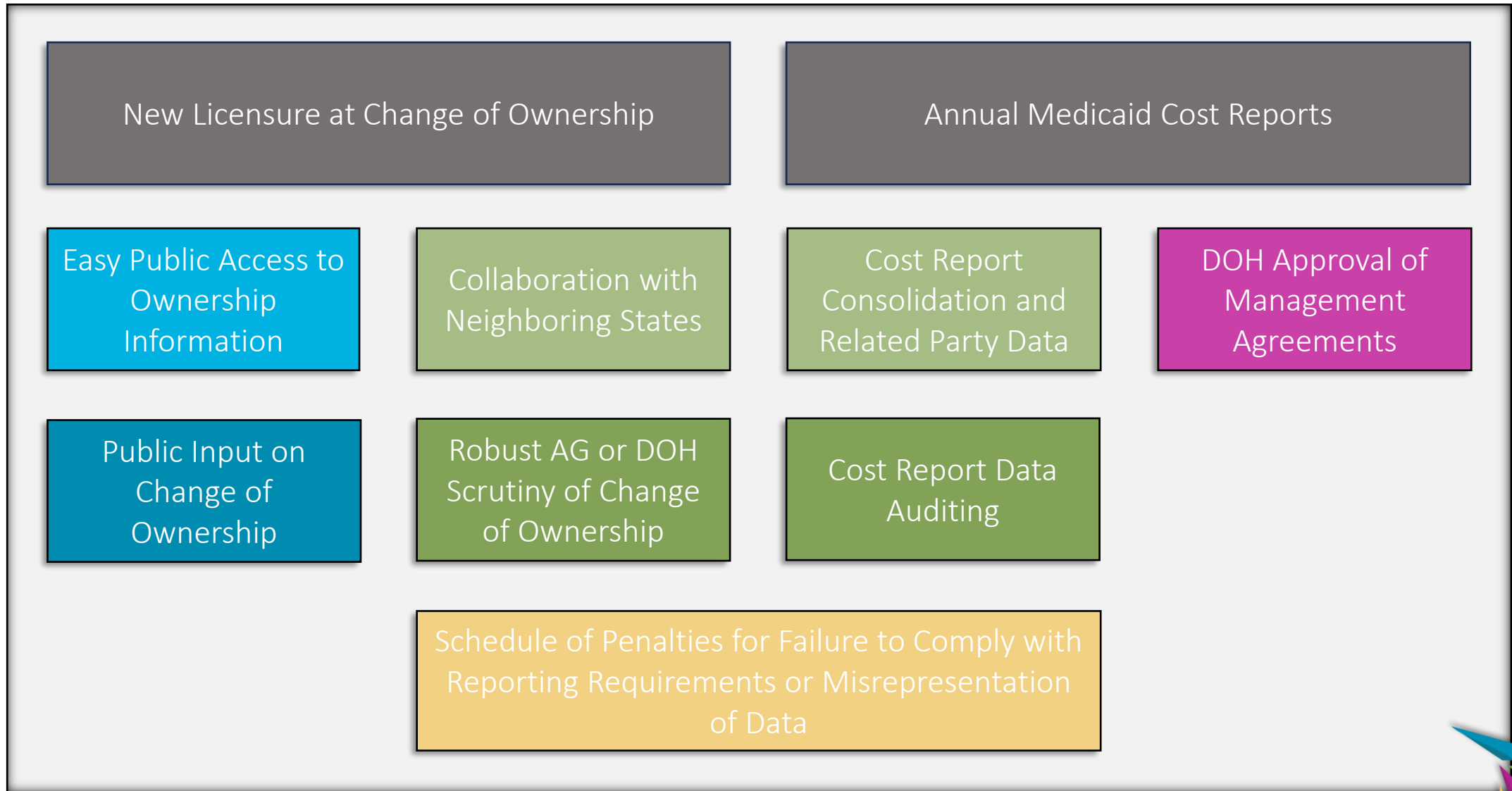


Our Coalition Work

As the federal government takes strides to improve ownership transparency and accountability, how can we bring federal and state leaders together to ensure that we're working toward an integrated system of ownership oversight?



State Resources for Ownership Accountability



Questions State Leaders Should Be Asking

- ✓ What information does our cost report collect? Is it consolidated?
- ✓ Does our Department of Health (or other responsible state agency) have the resources and staff to audit cost reports?
- ✓ Does DOH or another state agency have – and regularly exercise – the authority to reject change of ownership? On what basis do they make these decisions?
- ✓ With which states do we have patterns of common ownership? Does our licensure agency have contact with the relevant agency there and can we exchange data?



Questions State Leaders Should Be Asking (Continued)

- ✓ Do our licensure, Medicaid, and other relevant agencies share common terms, definitions, and naming conventions related to ownership and related parties?
- ✓ What information can the public access? How easily? Do they have a chance to provide comment or feedback at change of ownership?
- ✓ How are we verifying and enforcing reporting requirements? And do we have a schedule of penalties and collection mechanism?



Overview of Coalition Findings on State Policy

- Many states do not regularly audit or enforce provider enrollment data, cost reports or other self-reported data from nursing homes regarding ownership.
- Many states do not have accountants with the skills, knowledge, and/or bandwidth required to audit and identify specific concerns with nursing home data.
- While many states have instituted new legislation or regulations related to licensing and cost reporting (e.g., MA, PA, RI, CA, OH), success has been variable or has not been assessed.
- Many states still need to clarify terms and definitions and strengthen lines of communication with providers to clarify data expectations. Coordination, where it occurs, is largely informal and based on personal relationships.

Interviews with
Leaders in 16
States on State
Ownership and
Related Party
Data Collection,
Monitoring, and
Oversight



A Moment of Opportunity

Following issuance of the 2023 CMS ownership data final rule, states developing their own new policy have a window in which sub-regulatory guidance is being developed concurrent with federal sub-regulatory guidance.

What the Rule Asks of States

1. Align data collection for Medicaid enrollment with new requirements and update enrollment process accordingly.
2. Determine whether to follow CMS suggestions to establish change of ownership reporting requirements and collect data related to private equity company and real estate investment trust ownership.
3. Work with CMS to coordinate and publish submitted data.
4. Work with CMS to audit data – a process as yet not defined by the rule.



California: Assembly Bill 1502

- Requires change of ownership application be submitted 120 days prior and application must be approved by DPH.
- Makes applications public record.
- Disqualifies applicants who (a) had stake in nursing home with serious compliance history or (b) own 10% or more of CA licensed skilled nursing facilities (SNFs).
- Increased required financial capacity of new owner from 45 to 90 days.
- Eliminates interim management arrangements.

Time Matters.

1. Early notice gives the reviewing agency more time to audit and assess information about the deal provided by the nursing home.
2. Ensuring owners have financial capacity prevents the risk of a nursing home going bankrupt.



Rhode Island: Emergency Order 216-RICR-40-10-1

- Defines ownership specifically as ownership of “real property.”
- Prohibits acquisition or purchase of real property operated as a nursing facility without prior review and approval by RIDOH and Health Services Council.
- Requires ownership receiving license to show financial commitment to the nursing facility including on all subsequent renewals.
- Prohibits owners from reducing or taking out debt against committed capital during period of licensure.
- Grants licensure agency authority to review and reject all contracts with management companies.

Addressing Unforced Closures and Receivership.

By ensuring that owners stay invested in a nursing home through the duration of a license and overseeing new management contracts, Rhode Island hopes to slow the premature closure and transfer of control of nursing homes – which often force residents to move on short notice and/or experience drops in care quality.



Connecticut: House Bill No. 6731

- Expands ownership definition to include “beneficial ownership” and lowers ownership reporting threshold to 5%.
- Expands “change of ownership” to include transfer within family.
- Stipulates that if ownership transfer is greater than or equal to 10% of the value of facility, notification must be submitted 120 days prior and include:
 - all owners and beneficial owners, as well as owners of parent company;
 - org charts of current owner (with proposed changes), new owner and subsidiaries of new owner; relevant management contracts;
 - other licensed healthcare facilities and any complaints, sanctions, terminated licenses, and fines; criminal background check of owners.
- Authorizes commissioner of licensure agency to schedule an inspection of the facility undergoing change of ownership.
- Forbids family from applying to acquire ownership, if previous application rejected.

Family Members and Beneficial Owners.

It's not just about whose name is on the door. Family members and other stakeholders often receive significant profit from nursing home ownership. States are increasingly tracking who makes money from nursing homes beyond the immediate LLC or controlling party.





Discussion

Thank you!

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