SPECIAL REPORT

‘They Were Traumatized’: How a Private Equity-Associated Lender Helped Precipitate a Nursing-Home Implosion

Advocates for elderly people say loans from private lenders are enabling nursing-home operators to take cash out of their homes, jeopardizing their finances.

by ANITA RAGHAVAN | POLITICO
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The day Charlie Kukuczka’s 94-year-old mother, Agnes, was abruptly uprooted from the Atrium Health and Senior Living facility outside Weston, Wisconsin, nobody from the nursing home contacted his family.

“A lot of people were shoved around like old shoes,” recalled Kukuczka. “They were traumatized. They didn’t tell them where they were going. They just woke them up and said, ‘You’re moving.’”

The episode was “heart-breaking,” said Barb Plautz, a beautician at the facility. Some of the residents, she said, “didn’t have jackets. It was cold outside. They were crying. They didn’t know why they were being kicked out.”

The Centers for Medicare and Medicaid Services later declared in a report that the disorderly relocation put residents in “immediate jeopardy.”

When Atrium Health and Senior Living in the Midwest teetered in September 2018, triggering the sudden closure of the Weston home and three others several months later, the chaos capped years of mismanagement, with Atrium’s owners enriched at the expense of vulnerable residents.

Agnes Kukuczka celebrating her 95th birthday in 2019. Kukuczka was forced to move out of the Atrium Health and Senior Living facility in Weston, Wisconsin, after the Midwest operations ran into financial difficulties. | Courtesy of Dave Kukuczka
From 2015 until just a month before the near-collapse, Atrium’s owners allegedly paid themselves more than $37 million, according to a federal grand jury indictment in the western district of Wisconsin against CEO Kevin Breslin and Atrium for Medicare and Medicaid fraud. That came after Atrium had borrowed money from a company called

MidCap Financial, an affiliate of private equity giant Apollo Global Management which is headed by Marc Rowan. The MidCap money allowed Atrium to expand its nursing home empire from the Northeast to the Midwest. The loan also enabled Atrium's owners to take money out of their business, even as bills for essentials went unpaid, putting Atrium on the path to ruin.

For many advocates for elderly people and their families, Atrium's fall demonstrated how private equity firms and their affiliated lenders, in the pursuit of profit in America's growing nursing home industry, are speculating in a way most traditional banks will not. Fledgling entrepreneurs, the advocates note, have taken advantage of their lenders' largesse to expand and build precarious empires — often while enriching themselves.

The relationship between lender and nursing home operator is symbiotic, with each feasting off of the steady stream of fees from Medicare, Medicaid and private insurers. That has left vulnerable residents — elderly people nearing the ends of their lives — at risk of being displaced when the empires crumble. State taxpayers are often left to pick up the pieces.

Washington has done little to protect them.

Efforts to beef up federal oversight of where the Medicare dollars go — whether to actual care or simply to pad owners' profits — have fallen flat. A Biden administration proposal to establish minimum staffing standards at nursing homes has sparked a lobbying campaign claiming it would force homes to close. And moves to peel back the veil on the ownership of nursing homes have failed to win bipartisan support in Congress.

"Taking care of grandma is just not a priority for Washington," said Janice Hoffman-Simen, president of the California Association of Long Term Care Medicine. President Joe Biden had all these "beautiful goals" for nursing homes but "nobody has acted on them."

Atrium Weston is in a small town more than an hour's drive west of Green Bay, populated with lower- and middle-class families much like the residents of the Atrium homes. Agnes Kukuczka was typical of its residents. She worked for a nearby supermarket for many years before retiring.

At one time, there were waiting lists to get a place at Atrium Weston and, at its peak, the facility had about 140 residents. In the beginning, "I was there every single day," recalled Plautz, the beautician. "It was a full building of people."

But, by the time it closed in 2019, its population had dwindled to about 30 residents and its reputation had nosedived. Plautz noticed a deterioration whenever ownership of the facility switched hands. "With each company change, it got worse," she recalled.

The nadir came after Breslin and his partners took over managing the Atrium homes.

Even as employees said the facilities struggled to pay for basics like food and medical supplies and they shelled out personal funds for items like slings, Breslin allegedly took a salary of $1 million a year, according to the federal indictment.

Both Breslin, who left the company in August 2018, and the firm in which he was a partner pleaded not guilty. A trial date has not been set. Breslin's lawyer didn't respond to questions.

The Atrium facility in Weston, Wisconsin, is seen on Feb. 1, 2019, shortly after it closed. | Megan Stringer/USA Today Network

Bethesda, Maryland-based MidCap seemingly prospered, too, even as care at Atrium's Midwest nursing homes deteriorated. In the first three months of 2018 alone, the lender charged the operators of the Atrium nursing homes fees of $540,000 to extend the maturity date of loans, a lawsuit, later settled, against the lender claims. Meanwhile, at one Atrium facility in Appleton, Wisconsin, a federal inspection in May of that year found that the facility didn't ensure residents received appropriate care to prevent urinary tract infections. One resident left unchecked for seven hours was found wearing underwear soaked with urine and feces.

As the financial vise on Atrium tightened in the summer of 2018, MidCap's monthly payments rocketed from $500,000 to more than $900,000, the lawsuit against the lender alleged. The rise came amid reports of stalled food deliveries and inadequate physical therapy services because bills had gone unpaid, according to the federal indictment.

MidCap was not named in the Breslin indictment for its role in Atrium's troubles but it received a scorching rebuke for its actions when the Wisconsin Department of Health Services said it "wantonly disregarded its societal responsibilities in pursuit of profit," according to a court filing by Wisconsin Attorney General Joshua Kaul in early 2019. MidCap disagrees with this characterization, the lender said.

The lawsuit against the lender in 2019 also blamed MidCap for the failure of the Atrium nursing homes in Wisconsin claiming it "allowed and assisted Breslin in the looting of the facilities" so that it "could reap millions of dollars in fees, interest and loan repayments." MidCap denies the allegations.

And, after Atrium's financial troubles came into public view, a Wood County Circuit Court judge scolded MidCap for seeking to limit its financial commitment to the struggling nursing home by cutting funding and effectively forcing the closure of four facilities. "They refused to lend more money as they had promised to do because they didn't want those operations ongoing because those operations had been singled out as money losers, as bad ones," said Judge Nicholas J. Brazeau Jr. The move to seek the court's permission to abandon the facilities could only be called a "shocking turn," the judge said at a May 2019 hearing. MidCap told POLITICO there was no "promise" to lend money and no "shocking turn" of events.

Atrium wasn't MidCap's only troubled nursing home client.

In South Dakota, nursing homes operated by Skyline Healthcare were on the brink of failure in the spring of 2018 after MidCap cut funding amid signs that Skyline, too, could not pay its bills. As the facilities wrestled with insufficient funds, MidCap sought monies it said it was owed even though Skyline had already paid back the principal and interest on its loans, according to an August 2019 court filing contesting MidCap's claims. Included were "float" charges of more than $327,000 for funds that were immediately available as soon as they were wired, the court filing claimed, as well as a charge of nearly $109,000 for lending lines that Skyline did not use and a minimum balance fee of $27,756.17, both detailed in an affidavit submitted to the court by a MidCap official. The lender said that the credit agreement between itself and Skyline allowed for "float" interest which reflected the risk that a payment to its account could be reversed. A "float" interest feature, it noted to the court, is customary for credit lines like the one used by Skyline.

MidCap declined to answer detailed questions submitted by POLITICO. In a statement, the company said that MidCap "engages with its borrowers in a manner consistent with its duties and legal requirements as a lender and as provided in the terms of its loan agreements." The company added that "as with any third-party lender, MidCap Financial does not oversee day-to-day operations of its borrowers and is not in a position to know or manage its borrowers' operational or safety activities, particularly in instances where a borrower's fraudulent activity is intentionally well-hidden from regulators and lenders alike." In the case of both Atrium and Skyline, MidCap said it did not recover the full loan balance that it was owed.

Michael Polsky, a lawyer appointed to manage Atrium's finances as it was flailing, echoed the lender's view. "Of all the 300 some cases I have been involved in, I have never seen more extensive fraudulent conduct by the principals of a business than I have in this case," said Polsky, who as part of his practice has relationships with the banking and bankruptcy groups at every large law firm in Wisconsin, including MidCap's lawyers.

For its part, a spokeswoman for Apollo said while the company has its roots in private equity, it is an alternative asset manager today. More than two-thirds of its assets under management are in credit products and private equity is the smallest part of its business, she noted. Apollo has $76.8 billion in assets invested in private equity, according to the company's website and, as of Sept. 30, it had $631 billion in total assets under management. The spokeswoman noted that MidCap Financial, which Apollo took a stake in in 2013, is a business which originates loans for middle-market companies. It is funded by investors "with long-duration capital," she said.

In that way, MidCap is similar to private equity funds. PE investment vehicles are also financed by investors with a long-term horizon yet they're still under pressure to generate returns, a feature of their business which makes them unsuitable players in the health care space, according to critics.

The Atrium and Skyline cases, as described in court documents, offer a rare but penetrating view of the behind-the-scenes maneuvers of big money players. MidCap was not the only lender to Atrium and Skyline but it has a sizable presence in the business of lending to nursing homes. And its actions at least in Wisconsin drew the glare of state law enforcers, sparked sharp words from a local judge and made the lender the target of litigation.

"Without the access to capital," said Sam Brooks, director of public policy at the Washington-based National Consumer Voice for Quality Long-Term Care, inexperienced nursing home operators "would not be in this space."

The risks are growing as private equity firms and their lending units are helping a new generation of owners consolidate control of the industry at a time when nursing facilities for elderly people are already in short supply.

"This is not Toys 'R' Us," the iconic retailer that folded a decade after private equity firms acquired it and saddled it with debt, said Toby S. Edelman, a senior policy attorney at the Center for Medicare Advocacy, quickly noting that she doesn't mean to diminish the job losses from the toy store chain's implosion. But "when it is a nursing home, we are talking about people's lives."

In February 2022, Biden announced sweeping nursing home reforms that included steps to lift the veil on the ownership of facilities. In November, 2023, as part of a bid to provide greater transparency of private equity's footprint in the nursing home industry, the Centers for Medicare and Medicaid Services unveiled a rule that will require nursing homes to disclose whether private equity firms own or help operate facilities. Under the new rule, a nursing home enrolled in Medicare or Medicaid will be required to provide details of "additional disclosable" parties — a group that is loosely defined. It includes any person or entity that exercises operational, financial or managerial control over the facility or provides financial or cash management services.

It's unclear if the rule will shed light on the role of a lender like MidCap. It is "too ambiguous," said Brooks, whose group pushes for better care in the nation's nursing homes and submitted comments on the rule when it was proposed. "We are concerned that a player like MidCap might believe the regulations do not apply to them."

The new rule does reveal that the Centers for Medicare and Medicaid Services is aware of the risks to residents. Its rule cites two studies published in 2021: An analysis in the National Bureau of Economic Research asserting private-equity ownership increases the short-term mortality of Medicare patients by 10 percent as some frontline staffing is cut back, and research by Weill Cornell investigators published in the Journal of the American Medical Association contending that private equity pressure to generate high investment returns could lead to reduced staffing, services, supplies or equipment adversely impacting the quality of care. The study concluded that private equity firms' acquisitions of nursing homes were associated with higher Medicare costs and increases in emergency-department visits and hospitalizations for chronic and acute illnesses.

Less explored is the role of private equity-linked lenders in the nursing home business. Such lenders appear more willing to extend loans to inexperienced operators than banks partly because they are loosely regulated investment pools, not funded by consumer deposits and untethered by banks' strict capital requirements, which have only increased since the 2008 financial crisis. "While U.S. finance companies may compete with banks, they often focus on higher-risk lending," said ratings agency Standard & Poor's broadly in an April report on a MidCap entity. And they are "not subject to the significant prudential regulatory oversight of banks' capital and liquidity."

The remoteness of private equity-linked lenders from the communities in which they're investing — inoculating them from the danger of reputational damage — also may explain their willingness to pull the plug quickly when loans sour. "Many of the new 'shadow bank' market makers are fair-weather friends," wrote JPMorgan Chase Chief Executive Officer Jamie Dimon in a letter to investors this year, broadly describing his concerns about the financial system and not singling out any one player. "They do not step in to help clients in tough times."

Richard Scheffler, professor of health economics and public policy at the University of California at Berkeley, elaborated, saying "a bank like Wells Fargo — they want to protect their brand name." But private equity firms, he said, "would be willing to take some smacks on their trade name to get a higher rate of return."

Private equity firms, he added, "look for regulatory cracks and, in health care, there are a huge number of them."

Despite the billions of dollars that the government pours annually into nursing homes through Medicare and Medicaid, the industry has struggled to serve a growing population of elderly people. Rising costs and a devastating pandemic exposed the sector's frailties and left its workers overwhelmed.

The challenges have forced many independent, family-owned homes to sell to bigger regional players or directly to private equity.

For a time, the investors seemed like they offered an answer to the industry's problems. Consolidation of smaller facilities, the thinking went, could yield economies of scale and cost savings that could be used to improve resident care.

The flood of steady government payments into nursing homes helped too, making them attractive for the investors.

Medicare and Medicaid spend more than $100 billion a year on nursing homes and continuing care retirement communities and an ever-larger share of federal dollars goes to skilled nursing facilities which are either owned outright by private equity funds, or, as in the case with Atrium and Skyline, are financed by a private equity-linked lender.

Defenders of private equity argue that the funds provide much-needed capital to an industry that must grow to serve an aging society. Yet, private equity's focus on short-term revenue generation may align poorly with the practices needed to serve a vulnerable population, academics and consumer advocates said.

The emphasis on consolidation is not "primarily to deliver higher quality healthcare more efficiently, but to engage in financial arbitrage and to gather leverage that can be used to bargain against suppliers, payors and patients," stated a May 2021 report by Scheffler; Laura Alexander, then-vice president of policy at the American Antitrust Institute, which advocates for stricter merger scrutiny; and James Godwin, at the time a researcher at the Nicholas C. Petris Center on Health Care Markets and Consumer Welfare, a group focused on improving care for low- and middle-income households.

One sign that the private equity industry's investment in the sector is not a panacea to the nation's nursing home crisis is the rising number of nursing home facility closures. Between June 2015 and June 2019, more than 550 nursing homes that were certified by Medicare, Medicaid or both closed, according to a February 2020 report by LeadingAge, a group of nonprofit elderly services providers, with closures accelerating through the study period. "The closure of nursing homes is on an upward trajectory," warned LeadingAge on the eve of the pandemic.

As of 2021, roughly 70 percent of nursing homes were for-profit facilities. This includes those owned by private equity firms, which comprised 11 percent of all nursing homes, according to the Centers for Medicare and Medicaid Services, noting estimates vary. The statistic underestimates the influence of private equity in the nursing home business because it fails to take into account the indirect roles played by private equity-affiliated lenders like MidCap.

Some of the challenges that policymakers are contending with have their roots in a legal strategy aimed at shielding owners' assets from liability that gained currency two decades ago: Splitting the ownership of the real estate of a nursing home property from the company running the facility.

The separation, posited in a 2003 article in the Journal of Health Law, was seen as a way to protect owners of nursing homes from claims arising from Medicare and Medicaid program violations. It had an added benefit: The corporation that owned the real estate could charge rent to the nursing home. This "would allow them to show a loss to the facility itself, while at the same time obscuring how this money was used," according to a 2023 Consumer Voice report entitled "Where do the Billions of Dollars Go? A Look at Nursing Home Related Party Transactions."

The split played to the strength of private equity firms. It also presented a lucrative opportunity to lenders like MidCap, which provides operating loans that are typically secured by the fee payments flowing into the nursing homes from Medicaid, Medicare and private insurers. And it was popular with fledgling operators like Breslin and Joseph Schwartz of Skyline who, unlike seasoned nursing home owners, had limited access to capital.

MidCap, which lends to both owners of nursing home properties and to their operators, was willing to give smaller, independent players like Breslin and Schwartz the financial firepower to expand.

Schwartz was indicted in early 2022 for allegedly failing to pay nearly $39 million in payroll and unemployment taxes on behalf of his workers. He pleaded not guilty to all counts in the indictment. Schwartz's lawyer didn't respond to questions.

A trial date hasn't been set. MidCap was not named in the indictment.

The lender has avoided legal tarnish despite the critical role it played in the troubled expansions of Atrium and Skyline. Thanks in part to its generous funding, Schwartz, an insurance broker with little experience running nursing homes, amassed about 90 facilities in 18 months. Breslin, fortified with MidCap's money, expanded from New Jersey to the Midwest, taking the operating reins of profitable facilities owned by the Rice family in Wisconsin in 2015, only to drive the homes toward bankruptcy three years later.

A lawyer for owner Larry Rice said his client had no comment.

The Rice homes were the centerpiece of Breslin's westward push. As part of his expansion, he also assumed the operations of other facilities including the now-shuttered Atrium Weston home and three others that were leased from Sabra Health Care REIT, a large real estate investment trust that invests in properties in the health care sector.

At least 15 percent of the roughly $2 billion in real estate-linked health care loans that MidCap once touted on its website have gone to companies – including giant nursing home operator Genesis HealthCare — that have since run into operational or financial problems, according to a POLITICO analysis. And some of MidCap's biggest flops aren't showcased on its website. Among them: Philadelphia's storied Hahnemann University Hospital, which went bankrupt a year-and-a-half after MidCap financed its takeover by a private equity firm. MidCap declined to comment on the performance of its borrowers.

In the case of Atrium and Skyline, it is MidCap's role in providing operating loans to fund the day-to-day running of facilities that has raised the most questions among critics.

In South Dakota, MidCap said in court papers its loans helped Skyline bridge the gap between the date it provided skilled nursing services and the date it was paid for them.

But while owners of nursing home properties may need financing to fund the purchase of a facility, much like a homeowner requires a mortgage to buy a home, consumer advocates argue that operating loans in this industry are largely unnecessary.

Many companies need loans to operate because they don't have cash on hand to weather ebbs and flows in their businesses while waiting for customers to pay. Operating loans or working capital lines help tide over companies between the time an order is placed and fulfilled and when payment is rendered.

But that's less of an issue with nursing homes where a steady stream of cash arrives from Medicare, Medicaid and private insurers. Instead, say critics, operating loans are often used as a mechanism for the owners and private equity firms and real estate investment trusts to extract money from the facilities.

"When you think of a nursing home, it is a constant inflow of money," said Ernest Tosh, a plaintiffs' attorney in Texas who brings elder-abuse cases. He said that nursing home operators tend to seek operating loans — often referred to as revolving lines of credit — because they don't want their money tied up in the business. "When the business starts faltering, they are taking larger and larger amounts on the line of credit until they go bankrupt," he said. "If the revolving lines of credit weren't there, the owners would have a stronger interest in managing the business properly."

Charlene Harrington, professor emerita of sociology and nursing at the University of California, San Francisco, concurs. "The way they financially manage these companies," she said, "is to look like they are losing money every year." When payments from Medicare and Medicaid flow in, the nursing homes pay their bills and the owner-operators pull out excess cash, said Harrington.

Born in the ashes of the financial crisis, MidCap was started in 2008 by a group of health care bankers from Merrill Lynch. The late Thomas Lee, a private equity luminary, was an early investor. He predicted that MidCap was a company that can "do well by doing good."

Among its clients was Breslin, a former executive of Care One, a large nursing home company in New Jersey. After Breslin left Care One, he worked as a consultant for Larry Rice, a businessman in Wisconsin who owned a group of nursing homes.

In 2014, he persuaded Rice to enter into a deal where Breslin and a company he had newly formed would eventually acquire the nursing home properties Rice owned in the Midwest.

MidCap stepped in to help finance the transaction, which followed the same playbook of countless nursing home deals: A split of the facilities' real estate from the operations of the nursing home.

At the end of 2014, MidCap extended a $50 million loan to companies controlled by Rice, according to a credit agreement among MidCap, unnamed "additional lenders," and the Rice entities which was included in private litigation in the case. Long-time residents of Appleton, Wisconsin, Rice and his family had both owned and operated a successful chain of skilled nursing, rehabilitation and assisted living facilities for more than 40 years. They were known for taking pride in their business and regularly visited the homes. Following Breslin's overture, the Rices continued to own the real estate on which the 22 facilities stood; the MidCap real estate loan was secured by mortgages on the properties.

The loan was part of a complex deal in which Breslin's group would buy the operations of the Rice facilities for $1, but not the real estate, according to court papers. The Rices, in turn, leased back the real estate to the Breslin group for $203,000 a month in rent, according to court papers. The Breslin group also covered the monthly interest and principal payments on the real estate loan.

The draw for the Rices? A provision in the lease that the Breslin-led group would have to buy the underlying real estate for $90 million no later than March 1, 2017, if certain financial yardsticks were met.

At the same time, MidCap extended a working capital line of as much as $10 million to Atrium, which took over as the operator of the facilities. The working capital line was secured by Atrium's accounts receivable — the regular payments it received from Medicare, Medicaid and private insurers.

The loan agreement allowed MidCap to keep a tight grip on monies flowing into Atrium and gave it a window into the company's financial health. Under the operating loan agreement, the borrowers had to pay MidCap fees and expenses in connection with audits and inspections of books.

"MidCap Financial had complete control over… any inbound funds for the organization," said Robert Parkins, who was chief financial officer of Atrium Midwest from 2015 to mid-2016, at a Wisconsin Department of Workforce Development tribunal in January 2020. The tribunal was hearing appeals by Atrium executives over delinquent unemployment insurance taxes.

To fund its operating costs, Parkins said, Atrium typically received daily loans from MidCap. The amount was based on pending reimbursements for care that were due to the nursing home company. After Medicare, Medicaid and private insurers paid the company each day, Atrium wired money to MidCap. To his knowledge, "no one at Atrium had the ability to access those funds …Those funds were transferred directly to MidCap to pay down lines of credit."

Asked if it was possible for MidCap to turn off the spigot, Parkins testified: "If the numbers didn't work that day, there was no funding available for the day."

Parkins, who left the company in early 2017, didn't respond to requests for comment. MidCap said it "did not manage Atrium's daily cash flows in any way."

For its financing efforts, MidCap was to be well-rewarded. It received fees for its role as a lender. Its position as agent — carrying out administrative duties for itself and other lenders in connection with the loan — came with numerous other benefits. As a condition of the $50 million real estate loan, the Rice-controlled companies had to put money in escrow for property taxes and insurance premiums; they received no interest on those funds. There was a reserve for capital expenditures that required the borrowers to pay MidCap $83.33 a bed per month at each facility for at least 1,236 beds, according to the 2014 loan agreement among MidCap, the other lenders and the Rice-controlled companies.

All the reserve and escrowed monies could be mixed with the general funds of MidCap and weren't to be held in trust for the benefit of the borrowers, the loan agreement said, suggesting it was free capital that MidCap could use for other purposes. MidCap declined to comment.

The interest rate on the $50 million real estate loan was at least 6.5 percent, double the prime lending rate at the time, according to the credit agreement.

After MidCap's loan on the Rice properties closed, worrying signs emerged.

At first, bill payments were late; some vendors had to wait months. Then suppliers began to refuse to continue delivering food and goods without payment upfront. Meanwhile, the new operators were pulling out $1 million a month in payments to themselves, according to an exhibit and testimony at the Wisconsin tribunal, and MidCap was receiving at least $3.25 million a year in interest on its $50 million loan to the Rice entities.

Mike Braun, a cash management employee for Atrium in Wisconsin, was among the first to sound the alarm. He noticed that Atrium New Jersey was borrowing money from the newly acquired, profitable operations in the Midwest.

In an Oct. 27, 2015 email to Brian Kirkpatrick, Atrium's chief financial officer, Braun detailed that between June and October of that year the Atrium facilities in New Jersey borrowed $6.4 million from the Midwest operations.

"We are spending far more than we are bringing in," Braun warned Kirkpatrick in 2015. "We are living on the 'float,' if all checks came in and were cashed, we wouldn't have the funds available to cover them… I don't know how sustainable living beyond our means is."

Kirkpatrick, who left the company in 2016, declined to comment.

Braun's concern was that the company hadn't "really slowed down what we are borrowing from the Midwest coffers to meet the East obligations… This level of borrowing against Midwest is not sustainable as they will, eventually, run out of room to borrow." Also, Braun noticed that Atrium was routinely pushing up against the credit limit on its operating loan from MidCap.

When Braun's worries went unheeded internally, he alerted a MidCap employee, sending him a spreadsheet of the $1 million in cash outflows that went every month to Atrium's owners even as bills were going unpaid.

Braun suggested that MidCap audit Atrium, checking with vendors to see if they had been paid.

"You are not going to find any vendors in our accounts that are over 90 days but if you go to the vendors and ask them directly you will find invoices over 90 days," Braun, in an interview, said he told the MidCap banker. Braun said he gave the banker the names of two vendors whose invoices had not been paid for more than 90 days.

About a week later, Braun said, the MidCap banker told him the audit was complete and no anomalies found. Braun said when he asked if the vendors had been audited, the banker said "no." MidCap didn't comment on Braun's account.

Meanwhile, at the nursing homes, problems emerged.

"There were weeks we struggled to pay the staffing companies to come in on weekends and care for these members," testified Todd Myszka, director of cash management, accounts payable, payroll and benefits at Atrium from December 2015 until he was terminated at the end of June 2016, at the Wisconsin tribunal. "There were weeks that we were cut off. We couldn't place an order for food until we made a payment. And that was providing food to the residents of these nursing homes. And every single one of those weeks that we struggled the owners took out their guaranteed payments."

Myszka couldn't be reached for comment.

In 2017, a year before Atrium Midwest ran into financial difficulty, $11.6 million was distributed to partners in Atrium Health and Senior Living even as the company lost $12.1 million. In 2018, $3.7 million was distributed after a loss of nearly $2 million, according to the partnership's tax returns.

"The owners appear to have milked this entity pretty well," said Robert D. Church Jr., a managing director focusing on health care fraud and abuse at Eisner Advisory Group who reviewed the company's tax returns for POLITICO. "The fact that they have capital accounts to the tune of a negative $122 million in 2018, which have grown from a negative $77 million in 2015, along with substantial yearly distributions to partners, makes it appear like they have been soaking up the cash and have been apparently doing it for years."

Months before the Atrium facility in Weston closed, Maintenance Director Mark Tessmer had a hunch that it wouldn't survive. Some weeks employees would get paper checks rather than direct deposits of wages to their bank accounts.

At other times, when he went to the hardware store to buy supplies for repairs, the nursing home's credit card was declined. Then, Atrium Weston's food department had to start buying food from the local grocery stores with the facility's credit card "because the food vendor had stopped supplying food," he said.

Residents noticed a change. "I feel like we ate Campbell chicken soup for days," in the weeks before Weston's closure, one resident was quoted saying in a federal inspection report.

Nikoll Friet, the nursing home administrator at the Atrium facility in Chilton, Wisconsin, spotted a difference in the summer of 2018. When she joined straight out of college in August 2017, "it was a very family-like facility, there was a lot of longevity with the staff," she recalled. But then she began hearing from local vendors that they weren't getting paid. "Eventually payroll started to bounce," she said. Staffers who had surgeries found out that they had no insurance coverage even though they were paying premiums each month, said Friet. The federal indictment accuses Atrium of failing to turn over employee insurance premiums for health care coverage.

At some point that summer, it got so perilous that Friet said she had to personally pay for at least three body slings, at a cost of about $300 each, to move residents safely. "If you had ripped slings, which is what we had in the facility — at times they were tearing — that's a huge risk for residents," she said.

Atrium Chilton and Weston were among four shuttered facilities that accounted for $1.5 million of the total $5.6 million loss at Atrium Midwest between Sept. 7 and Nov. 30, 2018, according to court papers.

At the time of its closure, Atrium Weston was run by an external company, Health Dimensions Group, that was appointed when Atrium was on the brink of collapse. "We were in constant communication [with MidCap] about the financial needs and, specifically when funding stopped for the four, I raised my concerns about resident safety" with MidCap, said Erin Shvetzoff Hennessey, chief executive officer of Health Dimensions. Hennessey said the evacuation of Weston by county authorities began before her team could inform residents and their families.

Polsky, the lawyer appointed to manage Atrium's finances, said in an interview the chain of events that ensued was unexpected. "We thought the state would agree to an expedited relocation plan, not a statutorily mandated plan," he said. Since September 2018, "MidCap has funded the continued operations of all 34 Midwest Atrium facilities," he wrote in a court filing in January 2019. He noted MidCap was not required to provide funding for the facilities under Wisconsin law, the loan documents or the financing order put in place when Atrium was tottering.

“Despite numerous attempts” to get funding from Sabra Health Care, which owned the facilities that were shuttered, “Sabra has been unwilling to provide any such funding other than agreeing to a forbearance of administrative rent,” Polsky said in the January 2019 court filing.

For its part, MidCap said that it “consistently funded well in excess of its contractual obligations set forth in the loan agreement, to its own financial detriment, in the interest of supporting residents.” As of May 27, 2021, MidCap had a claim of “not less than $22 million” against the Midwest Atrium facilities, a court filing states. Besides advancing funds for resident care, the filing said that “due to the significant amount of administrative expenses incurred” after the appointment of a lawyer to manage Atrium’s finances, MidCap had to increase its revolving loans to the Rice and Atrium facilities.

At Skyline in South Dakota, the financial strains came to a head around the same time.

In late April 2018 MidCap declined to continue funding the Skyline facilities, triggering a panicked email from Debbie Menzenberg, a nursing home administrator in South Dakota, beseeching the state to step in.

“Skyline is insolvent,” she emailed state officials on April 28, noting the facilities in South Dakota had enough food and medical supplies for residents until May 2 and enough housekeeping and laundry supplies until May 1.

“There is no way to continue operations and all residents are at risk,” she wrote in her email, sparking a series of events that would lead to Skyline relinquishing control and MidCap’s bid to collect on the float fees.

Menzenberg couldn’t be reached for comment.

To better protect nursing home residents, Brooks of Consumer Voice believes there needs to be greater accountability, not just of nursing home operators but also of their financial backers. “When you are bankrolling fraud, you should be held accountable for it,” he said.

Brooks supports capping profits as one way to discourage short-term investors in nursing homes by requiring that a fixed percentage of every dollar go towards care. “By preventing the siphoning off of Medicare and Medicaid dollars to excessive profits, we would drive out people who look at this as an investment and are less focused on resident care,” he said.

As a first step, Brooks and other advocates are pushing for greater transparency in how nursing homes spend the billions of dollars they get each year from Medicaid and Medicare. They want to lift the veil on the actual costs of care to expose nursing homes that do business with other companies that they own or control to pad their profits.

In compiling its report this year, Consumer Voice discovered that the amount of money paid industrywide to related parties for goods and services far exceeded the costs reported. Sometimes, the payments made to related parties exceeded the reported costs by nearly 1,200 percent, Consumer Voice noted.

In 2021, Sen. Ron Wyden (D-Ore.), introduced the Nursing Home Improvement and Accountability Act to provide more funding to audit Medicare cost reports.

Last year, Rep. Jan Schakowsky (D-Ill.) proposed the Linking Investors and Nursing Home Quality Act to require in-depth financial disclosure by nursing home owners and operators and to impose sanctions for not providing the information. Neither moved forward.

Chances of reform are even slimmer now. In May, the House Energy and Commerce Committee passed sweeping bipartisan legislation, known as the Patient Act, which included a disclosure provision targeted at the private equity industry. But, more recently, when the House Ways and Means Committee approved a health care package to promote price transparency by hospitals, health plans and pharmacy benefit managers, a provision that was designed to reveal private-equity ownership of nursing homes was pulled. The move prompted Democrats to walk away from the bill.

Of course, all the legislative efforts and even the proposed CMS rule on greater disclosure of nursing home ownership depend on regulatory enforcement.

Tosh, the Texas plaintiffs attorney and an author of the Consumer Voice report on related party transactions, came away convinced that CMS "is completely falling down on the job."

Some of the cost reports he reviewed were blank, languishing in CMS databases for years. Others were riddled with errors.

"CMS has the ability to change this but they aren't," he said.

Sara Lonardo, CMS senior adviser and press secretary, said that "CMS appreciates stakeholder and public feedback concerning our programs." She reiterated that "strengthening transparency" around nursing home operations continues to be a priority for the Biden administration.

But for families of residents of shuttered homes, any new action by CMS or Congress will come too late.

"Something has got to change," said Charlie Kukuczka, recalling his mother's plight. "You can't just overcharge… and treat people like dirt."

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