

## **What Can and Must Be Done About the Staffing Shortage in Nursing Homes**

The American Health Care Association (AHCA), the primary national trade association for the nursing home industry, reports that 94% of facilities responding to their recent survey report a shortage of staff and that nearly 75% report that staffing shortages have gotten worse since 2020.<sup>1</sup> As proposed by AHCA and LeadingAge, the trade association of not-for-profit providers, in their jointly-released Care For Our Seniors Act,<sup>2</sup> more reimbursement is needed. Eighty-one percent of AHCA's survey respondents agree that higher reimbursement would enable them to offer better salaries and benefits to their workers.<sup>3</sup>

We have heard this industry message before, many, many times. It's time for a different response from the multi-billion dollar nursing home industry, most of whose reimbursement comes from public dollars.<sup>4</sup>

### **A Better Answer**

If facilities really want more staff, they need to employ an appropriate number of permanent staff and they need to pay all workers a living wage and provide them with meaningful benefits, sufficient training, and a positive work environment. These recommendations are recognized by workers and nursing facilities alike as specific, straightforward ways to improve staffing levels and quality of care for nursing home residents.<sup>5</sup>

It is unconscionable that 45% of direct care workers (including nursing home workers) live in or near poverty and that 47% of direct care workers must rely on public benefits to support themselves and their families.<sup>6</sup>

Moreover, it should not be surprising to anyone, especially in light of the pandemic, when there have been 590,966 staff COVID-19 confirmed cases and 1,972 total staff COVID-19 deaths<sup>7</sup> – when nursing home workers have literally put their lives on the line each day that they go to work – that workers are demanding better wages and working conditions.

LeadingAge's Fall 2020 report, *Making Care Work Pay: How a Living Wage Benefits Us All*,<sup>8</sup> recognized that paying workers a living wage would have multiple benefits, including reducing staff shortages, reducing staff turnover, improving health care quality, improving worker productivity, improving the financial security of direct care workers, reducing workers' reliance on needs-based public benefit programs, and improving state and local economies.

The LeadingAge report found that “The emerging literature suggests that cost savings flowing from improvements in care quality may, alone, be enough to pay for wage increases.”<sup>9</sup> In other words, **raising direct care workers' wages could pay for itself, just by improving care for residents. No increase in Medicare and Medicaid payments to facilities would be needed to pay for increasing wages for all nursing home workers to a living wage.**

LeadingAge President and CEO Katie Smith Sloan reiterated research findings that raising direct care workers' wages to a living wage would pay for itself:

Using publicly available data and standard economic simulation techniques, LeadingAge researchers found that higher wages would benefit not only direct care workers, but also the direct care field, care recipients, and the economies of local communities in which direct care workers live. The overall price tag for the wage increases would be relatively modest, and those increases would actually pay for themselves through lower turnover and higher productivity.<sup>10</sup>

In short, the LeadingAge report suggests that good policy can also be good business. Other businesses have recognized that paying workers well and treating them fairly are successful business strategies.<sup>11</sup>

There is abundant evidence that the nursing home industry receives sufficient reimbursement to pay staff well. Reimbursement needs to be redirected to resident care.

The Medicare Payment Advisory Commission (MedPAC) reported in March 2021, as it has reported annually for more than two decades, that SNFs' margins from Medicare exceed 10%.<sup>12</sup> MedPAC issued the unanimous recommendation of its members that CMS "eliminate the update to the 2021 Medicare base payment rates for skilled nursing facilities."<sup>13</sup>

At present, nursing facilities are free to direct reimbursement to businesses under common ownership and the industry's interest in doing so is ongoing.<sup>14</sup> However, facilities' related-party transactions and self-dealing practices divert money from resident care and are correlated with poorer resident outcomes.

Three years ago, Jordan Rau of Kaiser Health News reported in *The New York Times* that nearly three-quarters of all nursing facilities in the country buy goods and services, such as therapy services, management services, medications, and rent, often at inflated prices, from companies that they own and control.<sup>15</sup> The result of these related-party transactions is that facilities are able to hide profits as the cost of doing business. Rau described two New York owners whose family trusts took \$40 million of the \$145 million that their facilities received as reimbursement over an eight-year period – a 28% profit margin. Kaiser Health News's analysis found that facilities engaging in these practices have fewer nurses and aides to provide care to residents, "higher rates of patient injuries and unsafe practices," and twice as many complaints as other facilities.

In December 2020, Debbie Cenziper and colleagues at *The Washington Post* documented the self-dealing of California's largest nursing home operator, Brius Healthcare Services, whose nursing facilities paid \$103 million to related companies in 2018 for supplies, administrative services and financial consulting, and rent, among other services.<sup>16</sup> Care at many Brius facilities was so poor that, in 2014, then-Attorney General Kamala Harris took an unprecedented step of filing an emergency motion in bankruptcy court in an effort to persuade the court not to give Brius additional facilities. Harris's motion called the company a "serial violator of rules within the skilled nursing industry."

*The Naples Daily News* reported in 2018 that Consulate Health Care, the largest nursing home operator in Florida and sixth largest operator in the country (with 210 facilities and 22,059 beds in 21 states), founded in 2006 and owned by the Atlanta-based private equity firm Formation Capital, designed its facilities “to appear cash-strapped.”<sup>17</sup> The article described the chain’s individual facilities as “essentially empty shells, they pay rent, management and rehabilitation service fees to Consulate or Formation Capital-affiliated companies.” One Consulate facility paid \$467,022 in management fees and \$294,564 in rent to two companies owned by Consulate and Formation Capital. Forty-eight of Consulate’s 77 Florida nursing facilities had one or two stars, the lowest ratings, on the federal website, then called *Nursing Home Compare*.

Turnover of staff is a constant problem in the nursing home industry, which estimates that each turnover costs thousands of dollars.<sup>18</sup> Use of agency staff, which increased during the pandemic, is an expensive, and less effective, way to provide staffing for facilities. Redirecting payments to existing staff could reduce both turnover and use of agency staff and reflect a better use of reimbursement.

There is also evidence that the nursing home industry remains profitable. An analysis by David E. Kingsley and Charlene Harrington, “COVID-19 had little financial impact on publicly traded nursing home companies,”<sup>19</sup> documents that nine of 11 publicly traded companies that it reviewed “reported higher net incomes in 2020 compared to 2019.” They found “the cash-related metrics reported by publicly listed companies including the REITS, except for three companies, improved in 2020 in relation to 2019.”

In addition, as the trade press *Skilled Nursing News* reports, despite the coronavirus pandemic and low occupancy rates, a buying frenzy is now occurring, particularly among private equity firms that see an opportunity for great profits.<sup>20</sup>

## **Conclusion**

One straightforward way to channel public reimbursement to care for residents is to eliminate or significantly restrict related-party transactions and provider self-dealing. Another method establishes a “cost category reimbursement method” to require that facilities spend funds according to each specifically-designated cost category and to prohibit facilities from shifting spending to different cost categories.<sup>21</sup> A third method is enacting direct care ratios, which require facilities to spend designated portions of their reimbursement on care and services for residents and which limit the amounts that can be spent on profits and administration.<sup>22</sup> New Jersey,<sup>23</sup> at the recommendation of the Manatt firm,<sup>24</sup> and New York<sup>25</sup> have both enacted direct care ratios in response to the pandemic.

Staffing at nursing facilities can and must be improved. Methods to strengthen staffing are well-known. Reimbursement can be directed to staffing.

The question is whether we have the will to make necessary changes.

*T. Edelman, August 2021*

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<sup>1</sup> AHCA, “Survey: 94 Percent of Nursing Homes Face Staffing Shortages” (Press Release, Jun. 23, 2021), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Survey-94-Percent-of-Nursing-Homes-Face-Staffing-Shortages.aspx>. An executive summary of the survey, State of Nursing Home and Assisted Living Industry: Facing Workforce Challenges, is available at <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/Workforce-Survey-June2020.pdf>

<sup>2</sup> AHCA and LeadingAge, “Care for Our Seniors Act; Improving America’s Nursing Homes By Learning From Tragedy & Implementing Bold Solutions For The Future,” <https://www.ahcancal.org/Advocacy/Documents/Care%20for%20Our%20Seniors%20Act%20-%20Overview.pdf>

<sup>3</sup> AHCA, “Survey: 94 Percent of Nursing Homes Face Staffing Shortages” (Press Release, Jun. 23, 2021), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Survey-94-Percent-of-Nursing-Homes-Face-Staffing-Shortages.aspx>

<sup>4</sup> “Nursing Home Industry is Heavily Taxpayer-Subsidized” (CMA Special Report, Jul. 9, 2021), <https://medicareadvocacy.org/wp-content/uploads/2021/07/Special-Report-SNF-Subsidies.pdf>

<sup>5</sup> PHI, *Federal Policy Priorities for the Direct Care Workforce*, p. 4 (2021), citing “Workforce Data Center.” Accessed 6/8/2021. <https://phinational.org/policy-research/workforce-data-center/>. The report is accessed through a link at <http://phinational.org/resource/federal-policy-priorities-for-the-direct-care-workforce/>; Robyn I. Stone and Natasha Bryant, *Feeling Valued Because They Are Valued: A Vision for Professionalizing the Caregiving Workforce in the Field of Long-Term Services and Supports*, p. 3 (Jul. 2021), [https://leadingage.org/sites/default/files/Workforce%20Vision%20Paper\\_FINAL.pdf](https://leadingage.org/sites/default/files/Workforce%20Vision%20Paper_FINAL.pdf). See “Reports Call for Changes for the Direct Care Workforce” (CMA Alert, Jul. 15, 2021), <https://medicareadvocacy.org/reports-call-for-changes-for-the-direct-care-workforce/>, identifying similarities in the strategies recommended in the reports.

<sup>6</sup> PHI, *Federal Policy Priorities for the Direct Care Workforce*, p. 4 (2021), citing “Workforce Data Center.” Accessed 6/8/2021. <https://phinational.org/policy-research/workforce-data-center/>. The report is accessed through a link at <http://phinational.org/resource/federal-policy-priorities-for-the-direct-care-workforce/>

<sup>7</sup> CMS, “COVID-19 Nursing Home Data,” <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg/> (as of the week ending Jul.18, 2021)

<sup>8</sup> <https://leadingage.org/sites/default/files/Making%20Care%20Work%20Pay%20Report.pdf>

<sup>9</sup> *Id.* 5.

<sup>10</sup> Katie Smith Sloan, “Helping Essential Workers Become Valued Professionals” (Blog Post, Sep. 15, 2020), <https://leadingage.org/conversations-katie/helping-essential-workers-become-valued-professionals>

<sup>11</sup> David Gelles, “Hubert Joly Turned Around Best Buy. Now He’s Trying to Fix Capitalism,” *The New York Times* (Jul. 15, 2021), <https://www.nytimes.com/2021/07/15/business/hubert-joly-corner-office-best-buy.html?searchResultPosition=1>

<sup>12</sup> Medicare Payment Advisory Commission, *Report to the Congress: Medicare Payment Policy*, p. 199 (Mar. 2021), [http://medpac.gov/docs/default-source/reports/mar21\\_medpac\\_report\\_to\\_the\\_congress\\_sec.pdf?sfvrsn=0](http://medpac.gov/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf?sfvrsn=0)

<sup>13</sup> *Id.* 196

<sup>14</sup> See Amy Stulick, “Diversified Services Lines Make SNFs Better Positioned for Post-Pandemic World,” *Skilled Nursing News* (Jun. 20, 2021), <https://skillednursingnews.com/2021/06/diversified-service-lines-make-snfs-better-positioned-for-post-pandemic-world/>

<sup>15</sup> Jordan Rau, “Care Suffers as More Nursing Homes Feed Money Into Corporate Webs,” *The New York Times* (Jan. 2, 2018), <https://www.nytimes.com/2018/01/02/business/nursing-homes-care>

<sup>16</sup> Debbie Cenziper, “Profit and Pain: How California’s largest nursing home chain amassed millions as scrutiny mounted,” *The Washington Post* (Dec. 31, 2020), <https://www.washingtonpost.com/business/2020/12/31/brius-nursing>

<sup>17</sup> Ryan Mills and Melanie Payne, “Neglected: Florida’s largest nursing home owner represents trend toward corporate control,” *Naples Daily News* (May 31, 2018), <https://www.naplesnews.com/story/news/special-reports/2018/05/31/floridas-largest-nursing-home-owner-part-growing-national-trend/581511002/>

<sup>18</sup> Dorie Seavey, “The Cost of Frontline Turnover in Long-Term Care” (Oct. 2004), A Better Jobs Better Care Practice & Policy Report, [https://www.leadingage.org/sites/default/files/Cost\\_Frontline\\_Turnover.pdf](https://www.leadingage.org/sites/default/files/Cost_Frontline_Turnover.pdf), estimated, in 2004, that the direct cost of direct care staff turnover is at least \$2,500. The report identified direct and indirect costs of turnover for facilities as well as costs at the service delivery level (reduced quality of care for residents, care not provided, worker injuries and stress) and at the third-party payer level (financial drain of turnover, increased “downstream” medical costs).

<sup>19</sup> Kingsley DE, Harrington C. COVID-19 had little financial impact on publicly traded nursing home companies. *J Am Geriatr Soc.* 2021;1–4. <https://doi.org/10.1111/jgs.17288>

<sup>20</sup> “Acquisition Market Continues to be on Fire for Nursing Homes” (Jul. 7, 2021), <https://skillednursingnews.com/2021/07/acquisition-market-continues-to-be-on-fire-for-nursing-homes/>; “Skilled

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- Nursing Sector Sales Surge, Despite Occupancy Woes,” (Jul. 11, 2021), [https://skillednursingnews.com/2021/07/skilled-nursing-sector-sales-surge-despite-occupancy-woes/?itm\\_source=parsely-api](https://skillednursingnews.com/2021/07/skilled-nursing-sector-sales-surge-despite-occupancy-woes/?itm_source=parsely-api); “White Oak Healthcare Partners Brings on Dopoulos, Plans Aggressive Growth in Skilled Nursing,” (Jul. 12, 2021), [https://skillednursingnews.com/2021/07/white-oak-healthcare-partners-brings-on-dopoulos-plans-aggressive-growth-in-skilled-nursing/?itm\\_source=parsely-api](https://skillednursingnews.com/2021/07/white-oak-healthcare-partners-brings-on-dopoulos-plans-aggressive-growth-in-skilled-nursing/?itm_source=parsely-api)
- <sup>21</sup> Charlene Harrington, Leslie Ross, Dana Mukamel, and Pauline Rosenau, “Improving the Financial Accountability of Nursing Facilities,” (Jun. 2013), <https://www.kff.org/wp-content/uploads/2013/06/8455-improving-the-financial-accountability-of-nursing-facilities.pdf>
- <sup>22</sup> Charlene Harrington, Leslie Ross, Dana Mukamel, and Pauline Rosenau, “Improving the Financial Accountability of Nursing Facilities,” (Jun. 2013), <https://www.kff.org/wp-content/uploads/2013/06/8455-improving-the-financial-accountability-of-nursing-facilities.pdf>
- <sup>23</sup> A4482/S2758, [https://www.njleg.state.nj.us/2020/Bills/A4500/4482\\_R2.PDF](https://www.njleg.state.nj.us/2020/Bills/A4500/4482_R2.PDF) (“The direct care ratio shall require 90 percent, or such higher percentage as the commissioner may establish by regulation, of a facility’s aggregate revenue in a fiscal year to be expended on the direct care of residents” (§3.c(2)). The Commissioner “shall determine which components of the reporting requirements shall be attributed to direct patient care, administrative costs, and profits” (§3.c(2)). The Commissioner or designee may audit financial information reported by facilities (§3.c(3)).
- <sup>24</sup> *Recommendations to Strengthen the Resilience of New Jersey’s Nursing Homes in the Wake of COVID-19*, p. 36 (Jun. 2, 2020), (“create a direct care ration (DCR) reporting and rebate requirement” to require “facilities to use no more than a certain percentage of revenues for administrative costs and profits”), [http://d31h2lzk6di2h5.cloudfront.net/20200603/ca/d9/da/fc/201e7410ca8c06560498e758/Manatt\\_Recommendations\\_New\\_Jersey\\_LTC\\_Resilience\\_6-2-2020\\_final\\_2.pdf](http://d31h2lzk6di2h5.cloudfront.net/20200603/ca/d9/da/fc/201e7410ca8c06560498e758/Manatt_Recommendations_New_Jersey_LTC_Resilience_6-2-2020_final_2.pdf)
- <sup>25</sup> A3007C/S2507C, FY 2022 enacted budget, signed by the Governor April 19, 2021, requires facilities to spend 70% of revenues on direct resident care, caps profits at 5%, adding a new §2828 to the public health law, <https://www.budget.ny.gov/pubs/archive/fy22/ex/30day/hmh-artvii-newpart-gg.pdf>