

October 19, 2021

Chairwoman Lina Khan
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20005

Dear Chairwoman Khan:

On behalf of the American Health Care Association/National Center for Assisted Living (AHCA/NCAL), I am writing to you today about the state of the long term care (LTC) industry and to request your assistance with an anticompetitive practice with direct care staffing agencies that is unfortunately occurring. To provide some background on AHCA/NCAL, the association represents more than 14,000 nursing homes and LTC facilities, including assisted living and intellectual and developmental disability providers, across the country that provide care to approximately five million people each year.

COVID-19 has presented unprecedented and difficult challenges for the LTC sector. During 2020 when the pandemic first hit, facilities across the nation faced dire workforce shortages, record low census rates and had limited access to adequate personal protective equipment to properly combat COVID-19 in their buildings. Through the aid provided by the Provider Relief Fund in 2020 and with the development through vaccines, long term care and assisted living facilities began to see signs of recovery. Unfortunately, due to a confluence of circumstances, the LTC sector remains in grave danger.

The explosion of the Delta variant continues to impact thousands of skilled nursing, assisted living and intellectual and developmental disability centers across the US. We are beginning to see the ramifications of not only the protracted fight to combat the Delta variant in buildings, but also the complicating ramifications of the vaccination mandate. The LTC industry is in the midst of the perfect storm and will be on the verge of collapse if the workforce decline is not properly addressed by the federal government.

In fact, an August 25th *Wall Street Journal* article conveyed just how bad the labor crisis is for the LTC industry. The article specifically noted that nursing homes and residential-care facilities employed three million people in July, down 380,000 workers from February 2020, according to the Bureau of Labor Statistics. Industry employment has fallen every month except one since the World Health Organization declared Covid-19 a global pandemic in March 2020. By contrast, job losses in the leisure and hospitality industry, another hard-hit sector, began reversing in May last year, and the industry has recovered almost 80% of the jobs that were lost in the first months of the pandemic.

Our providers are doing all that they can to recruit and retain workers. Some examples include, but are not limited to, sign-on bonuses, wage increases, bonuses when someone fills a shift, calling staff who have left to entice them to come back, referral bonuses paid to staff for each employee they recruit, gift cards, providing free meals to staff, using agency staff to supplement, tuition reimbursement, PTO, flexible scheduling and providing staff training and education. AHCA/NCAL is also working on outreach to prominent refugee organizations noting that our centers are here with a variety of positions for refugees that would like to work in them.

The financial state of the sector is also very uncertain, driven largely by revenue losses and dramatically increasing labor costs. With declines in patient census (85.0% in January 2020 to 72.6% in August 2021) the industry faced \$11.3 billion in losses in 2020 and is projected to experience \$12.7 billion in losses in 2021 according to analysis by AHCA/NCAL. Labor costs are skyrocketing as facilities continue to combat COVID-19 in their buildings. In a survey conducted by AHCA/NCAL, projected 2022 contract labor costs are expected to increase on average by 106% for sample of 752 buildings. Extrapolating this calculation results in \$131,000 per building in new, projected FY22 contract labor costs, nationally, in addition to double digit in-house labor costs of on average 18% nationally.

Laying that background on this unprecedented time in the LTC sector, I need to alert you of the countless examples I am hearing of direct care staffing agencies charging supercompetitive prices to desperate LTC centers that simply need workers. In fact, I was made aware from one of our rural states (in which it can be even more challenging to find staff in rural America) of these agencies increasing their prices knowing that the LTC centers would be receiving COVID-19 specific state funding. I have also heard directly from our state affiliates of efforts in which they are trying for legislative fixes to prevent these agencies from charging double to quadruple plus of what operators pay their staff. The staffing agency worker makes only a fraction of what the agency is charging the provider for that worker.

Our providers have little choice but to pay the exorbitant prices, and hope that the agency does not poach their staff once in the building. It is also important to remember that most LTC centers are paid through the Medicare and Medicaid programs – and thus, taxpayer dollars. This price gouging is simply not sustainable for our providers and the current reimbursement system structure. This money being spent should instead be going towards other needed resources that are resident care focused.

We are requesting that the FTC use its authority to protect consumers from anticompetitive and unfair practices to investigate this activity and take appropriate action to protect LTC centers -- and ensure that our nation's elderly and those individual with disabilities receive the quality care they deserve.

Thank you in advance for your consideration of our request and please know that we are here to answer any questions you might have. Our provider members would welcome the opportunity to visit with you at any time as well about how this issue is adversely impacting the sector and those they serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Parkinson". The signature is fluid and cursive, with a prominent initial "M".

Mark Parkinson
President & CEO