



December 18, 2021

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

Dear Chairwoman Khan:

On behalf the [Advancing Excellence in Long-Term Care Collaborative](#), we are writing to you today to alert you to the current, rampant 'price gouging' by direct care staffing agencies, and to request your assistance to end this anticompetitive practice. Advancing Excellence is a not-for-profit forum consisting of organizations and individuals committed to improving long-term care quality of care and quality of life for long term care residents.

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.

COVID-19 has presented unprecedented and difficult challenges for the LTC sector. Since the beginning of the pandemic, facilities across the nation have faced dire workforce shortages, recorded 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 availability of vaccines, long term care and assisted living facilities have begun to see signs of recovery. Unfortunately, due to a confluence of circumstances, the LTC sector remains in grave danger.

The explosion of the Omicron variant continues to impact thousands of skilled nursing, assisted living and intellectual and developmental disability centers across the US. The ramifications of the protracted fight to combat the Omicron variant in buildings and the ramifications of the vaccine mandate have exacerbated staffing shortages at all levels in these facilities and care centers. 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, a November 17th Health Workforce Technical Assistance Webinar reported on the preliminary findings of an ongoing study, "Determining the Impact of the COVID-19 Pandemic on the Nursing Workforce in the US." According to the Bureau of Labor Statistics, while hospital employment has remained down by approximately two percent throughout the pandemic, nursing facility employment is down by about 15%. This rate in nursing home employment has not recovered and continues to decline sharply.

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.

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 the American Health Care Association/National Center for Assisted Living (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.

Adding to these challenges, we now have countless direct care staffing agencies charging supercompetitive desperate LTC centers that simply need workers. For an October 21st Kaiser Health News article, “Travel nurses temporary assignments in hospitals or other health care that have staffing shortages. The contracts typically last a and usually pay more than staff positions.” Efforts are some states to try prevent these agencies from charging quadruple plus of what operators can afford to pay their staffing agency worker makes only a fraction of what the charging the provider for that worker. The remainder of the goes to the staffing agency, rather than to patient care.

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Our providers have little choice but to pay the exorbitant 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.

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

Sincerely,



Barbara Bowers
Chair Advancing Excellence in Long Term Care Collaborative



Patrick Luib
Chair Gerontological Advanced Practice Nurses Association, Long Term Care Special Interest Group

Organizations and individual members of Advancing Excellence in Long-Term Care Collaborative

➤ **Organization Members**

- American College of Health Care Administrators
- American Geriatrics Society
- American Health Care Association
- AMDA – The Society for Post-Acute and Long-Term Care Medicine
- American Association of Post-Acute Care Nursing
- American Society of Consultant Pharmacists
- Center for Aging Research and Education, School of Nursing, University of Wisconsin-Madison
- Gerontological Advanced Practice Nurses Association
- LeadingAge
- National Association of Health Care Assistants
- National Association for the Support of Long Term Care
- National Certification Council for Activity Professionals
- Pioneer Network
- The Green House Project
- The Joint Commission

➤ **Provider Members**

- A.G. Rhodes
- Green Hills
- The Evangelical Good Samaritan Society

➤ **Supporting Members**

- MatrixCare
- Optum Complex Care Management
- Pathway Health

➤ **Individual Members**

- Justin Amrhein
- CC Andrews
- Carol Benner
- Barbara Bowers

- Jane Brock
- Steven Buslovich
- Maggie Calkins
- Janice Dabney
- Raj Mahajan
- Barbara McFadden
- Jay Sackman
- Theresa Schmidt
- Victoria Walker
- Audrey Wathen
- Shennoy Wellington-Roberts