LeadingAge™ Connecticut

CAHCF/CCAL
Connecticut Association of Health Care Facilities
Connecticut Center for Assisted Living

November 1, 2021

The Honorable William Tong
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

Dear Attorney General Tong,

We write to you on behalf of Connecticut's two leading long-term care member associations, the Connecticut Association of Health Care Facilities and the Connecticut Center for Assisted Living ("CAHCF/CCAL") and LeadingAge Connecticut. As the representative of hundreds of nursing homes, assisted living and aging services providers, we are requesting your review of what appears to be anti-competitive and ongoing price-gouging practices of nurse staffing agencies, most often from out-of-state, occurring in Connecticut during the COVID-19 Public Health Emergency. These staffing agencies, most often from out-of-state, are taking advantage of the current workforce crisis our in-state providers are facing and are charging providers exorbitant prices for temporary staff and even hiring away the permanent staff currently working within the provider organizations.

In support of this request, we attach for your consideration letters from the American Health Care Association/National Center on Assisted Living (AHCA/NCAL) and LeadingAge recently sent to Chairwomen Lina M. Khan of the Federal Trade Commission in Washington, DC. AHCA/NCAL and Leading Age are the national affiliate parent organizations of our Connecticut long-term care associations. Both letters independently express countless examples of unscrupulous nurse staffing agency pricing practices, which essentially exploit the current shortages of long-term care staffing occurring across our nation.

CAHCF/CCAL and LeadingAge Connecticut offer to you that what is expressed in these letters is also commonly occurring in Connecticut. Our organizations have assisted Connecticut's Office of the Long-Term Care Ombudsman in gathering state specific examples of price gauging by nursing staffing agencies and we understand that they have provided examples to representatives of your office.

We are happy to provide your office with any additional information and thank you for your consideration.

Sincerely,

Mag Morelli

Matthew V. Barrett

Mag Morelli, President
Leading Age Connecticut

Matthew V. Barrett, President/CEO
CAHCF/CCAL

Cc: Lawrence Santilli, Chair, CAHCF/CCAL
Lisa Connolly, Chair, LeadingAge Connecticut

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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. I can be reached at mparkinson@ahca.org.

Sincerely,

Mark Parkinson
President & CEO

October 8, 2021

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

Dear Chairwoman Khan:

LeadingAge congratulates you on your confirmation as the Chairwoman of the Federal Trade Commission (FTC). LeadingAge represents more than 5,000 aging-focused organizations that affect millions of lives every day. Alongside our members and 38 state partners, we address critical issues by blending applied research, advocacy, education, and community building. We bring together the most inventive minds in our field to support older adults as they age wherever they call home. We make America a better place to grow old.

We are writing to request the FTC use its resources and expertise to address an issue that has become dire for both healthcare providers and long-term care providers, specifically, during the COVID-19 pandemic–the anticompetitive practices and pricing gouging of nurse-staffing agencies.

Because 80% of the COVID-19 deaths in the United States have been among people aged 65 and older, particularly those in the most frail health, long-term care providers have been on the front lines of battling the pandemic. These providers have experienced severe shortages of personal protective equipment (PPE), testing costs and shortages, and ever changing (and often conflicting) guidance from federal, state, and local governments and authorities.

But nothing compares to the crippling workforce and staffing challenges providers have faced taking care of our nation's seniors. Unfortunately, these workforce and staffing issues have been exacerbated and exploited by the actions of nurse-staffing agencies.

When facing a shortage of staff, providers are forced to contract with nurse-staffing agencies to cover shifts when workers are not available due to COVID-19 absences or the inability to hire enough staff to care for residents. The demand for the use of agency staffing has been unprecedented during the pandemic, with some aging services providers reporting that on any given day or night shift, 50% or more of the direct care staff on duty are temporary agency staff. As a result, nurse-staffing agencies have exploited this dynamic by price-gouging long-term care providers in most markets across the country. Anecdotally, we hear from members that staffing agencies charge from two to four times the wages of permanent staff.

The nurse-staffing agencies have raised rates to outrageous levels, yet providers are forced to use these arrangements because they need to staff their communities at adequate levels to care for their residents. In addition, without using agency staff, providers could face regulatory actions and penalties from state and federal agencies. The use of nurse-agency staff has increased the cost of care dramatically along with the increased costs related to the pandemic of PPE, testing, cleaning, and infection control. Furthermore, even at these inflated costs, in some areas, our members report that staffing agency workers do not dependably show up to work, causing serious challenges for the workers who are present for those shifts.

Equally concerning is that nurse-staffing agencies are also actively recruiting within and poaching employees from long-term care providers with the enticement of higher pay and then often sending these individuals back to work in those communities as agency staff – at a much higher rate. In addition to this practice being abhorrent, this puts the provider in an awkward position while dealing with their on-going workforce crisis and staff morale.

Most long-term care is paid by taxpayers through the Medicare and Medicaid programs; neither program is structured to respond to excessive costs and so monies that should go to caring for residents are diverted to paying private agencies.

We request the FTC use its authority to protect consumers and taxpayers from anticompetitive and unfair practices to investigate these activities and take appropriate action to protect long-term care providers and the seniors they serve.

Thank you for your consideration and please contact Ruth Katz (rkatz@leadingage.org), senior vice president for policy and advocacy, for additional information or to discuss this critical issue.

Sincerely,

Katie Smith Sloan

Katie Smith Sloan, President and CEO, LeadingAge