

# Congress of the United States

Washington, DC 20515

May 5, 2024

Lucinda M. Baier  
President, Chief Executive Officer, and Director  
Brookdale Senior Living  
111 Westwood Place, Suite 400  
Brentwood, Tennessee 37027

Ms. Baier:

We are contacting you to seek an explanation for the discrepancy between Brookdale Senior Living Inc.'s massive payouts in executive salaries, stock buybacks and dividends, and the nursing home industry's simultaneous opposition – based on claims that they are too expensive – to new rules to increase staffing and protect nursing home residents.

These two competing claims do not add up. A new analysis conducted by my office reveals that the for-profit nursing home industry diverts hundreds of millions of dollars in cash away from nursing home staff and patient care, and into the pockets of company executives and shareholders. This analysis reveals that three of the largest publicly traded nursing home companies have paid out nearly \$650 million in dividends, buybacks, and compensation to top executives since 2018.<sup>1</sup>

Between 2018 and 2023, Brookdale Senior Living handed out nearly \$68 million in dividend payments and stock buybacks, and you and other top executives received almost \$50 million in pay and other compensation between 2018 and 2022.<sup>2</sup> These massive expenditures to enrich shareholders and executives undermine the claim that nursing homes cannot afford to pay for enough staff to meet the Biden Administration's new nursing home staffing standards.<sup>3</sup>

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<sup>1</sup> S&P Capital IQ Data, CY 2018-CY 2023, on file with the Office of Elizabeth Warren; Senior Living, "The Largest Assisted Living and Senior Care Companies," Jeff Hoyt, March 13, 2024, <https://www.seniorliving.org/companies/>. Staff eliminated facilities that were not publicly traded, and/or not nursing home facilities. This analysis focuses on the financial data of three of the largest, publicly traded nursing home facilities—Brookdale Senior Living, Ensign Group, and National HealthCare Corporation.

<sup>2</sup> *Id.*

<sup>3</sup> AHCA/NCAL, "New Analysis Finds Federal Staffing Mandate Would Require 100,000 Additional Nurses and Nurses' Aides, Cost \$6.8 Billion Per Year," September 26, 2023. <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require-100%2C000-Additional-Nurses-and-Nurses%E2%80%99-Aides%2C-Cost-%246-8-Billion-Pe.aspx>.

## Strong Nursing Home Staffing Standards Would Improve Nursing Home Resident Care

On April 22, 2024, the Centers for Medicare and Medicaid Services (CMS) finalized a new rule to set a floor for minimum staffing requirements in nursing homes.<sup>4</sup> The rule requires that Medicare and Medicaid-certified nursing home facilities meet a minimum staffing ratio of 0.55 hours of registered nurse (RN) care per patient per day and 2.45 hours of nurse aide (NA) care per patient per day, as well as an overall total of 3.48 hours of nurse care per patient per day.<sup>5</sup> In addition, the new standards require that all nursing homes have at least one registered nurse on site 24 hours per day, 7 days a week.<sup>6</sup> Several independent studies support even stronger staffing standards to ensure resident safety and improved care outcomes.<sup>7</sup>

Nursing home staffing is directly linked to the quality of care residents receive. A report prepared by Senators Warren, Sanders, and Blumenthal in November 2023 revealed that nursing homes with higher staffing levels have higher overall quality ratings, lower levels of patient abuse, and higher quality care.<sup>8</sup> Another study of nursing facilities found that increasing nursing home staffing by 20 minutes per resident per day was associated with 22% fewer confirmed cases of COVID-19 and 26% fewer COVID-19 deaths.<sup>9</sup> Understaffing in nursing homes is also associated with the misdiagnosis and over-medication of residents, increasing risks of death.<sup>10</sup> Finally, a joint investigation in 2023 by the Senate Committee on Finance and the Senate Special Committee on Aging found that understaffing at nursing homes contributes to inadequate emergency preparedness.<sup>11</sup> Strong staffing standards are essential to ensure quality of care for millions of residents. The nursing home industry's opposition to the rule is alarming.

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<sup>4</sup> CMS, "Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule (CMS 3442-F)," press release, April 22, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicicaid>

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

<sup>6</sup> *Id.*

<sup>7</sup> Abt Associates Inc., "Nursing Home Staffing Study: Comprehensive Report," June 2023, <https://edit.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>; National Library of Medicine, "The Relationship Between Registered Nurses and Nursing Home Quality: An Integrative Review (2008-2014)," 2015, Mary Ellen Dellefield, Nickolas G Castle, Katherine S McGilton, Karen Spilisbury, <https://pubmed.ncbi.nlm.nih.gov/26281280/>; National Library of Medicine, "Nurse Staffing and Coronavirus Infections in California Nursing Homes," August 2020, Charlene Harrington, Leslie Ross, Susan Chapman, Elizabeth Halifax, Bruce Spurlock, Debra Bakerjian, <https://pubmed.ncbi.nlm.nih.gov/32635838/>.

<sup>8</sup> Offices of Senators Elizabeth Warren, Bernie Sanders, and Richard Blumenthal, "Residents at Risk: Quality of Care Problems in Understaffed Nursing Homes and the Need for a New Federal Nursing Home Staffing Standard," November 16, 2023, <https://www.warren.senate.gov/imo/media/doc/Nursing%20Home%20Report%20110823.pdf>.

<sup>9</sup> American Geriatrics Society, "COVID-19 Infections and Deaths among Connecticut Nursing Home Residents: Facility Correlates," Yue Li, Helena Temkin-Greener, Gao Shan, and Xueya Cai, June 18, 2020, <https://doi.org/10.1111/jgs.16689>.

<sup>10</sup> New York Times, "Phony Diagnoses Hide High Rates of Drugging at Nursing Homes," Katie Thomas, Robert Gebeloff and Jessica Silver-Greenberg, September 11, 2021, <https://www.nytimes.com/2021/09/11/health/nursing-homes-schizophrenia-antipsychotics.html>.

<sup>11</sup> Majority Staff of U.S. Senate Finance Committee and U.S. Senate Special Committee on Aging, "Left in the Dark: The impact of the 2021 Texas Blackout on Long-Term Care Residents and the Need to Improve Emergency Preparedness," February 22, 2023, <https://www.finance.senate.gov/imo/media/doc/022223%20Left%20in%20the%20Dark%20Two%20Pager.pdf>.

## The Nursing Home Industry Opposes New Standards

Despite the significant benefits of safe staffing for nursing home residents, the for-profit nursing home industry has fiercely opposed the staffing mandate—and is gearing up to kill the rule now that it has been finalized. Hours after CMS finalized the rule on April 22, 2024 nursing home trade group the American Health Care Association (AHCA) said it would “vigorously defend nursing home members by any means necessary and is exploring all options,” with legal experts anticipating the industry will bring the rule to court.<sup>12</sup> Just over one week later, on April 30, the House Energy and Commerce Committee considered legislation recently approved out of Ways and Means in March that would prevent CMS “from implementing or enforcing” the Biden administration’s rule,<sup>13</sup> and in the Senate, some members are “considering other legislation to roll back the regulation or to overturn it through the Congressional Review Act,” an act that allows Congress to rescind final rules that federal agencies issue.<sup>14</sup>

The AHCA—the largest association representing long-term and post-acute care providers in the U.S. (and an organization to which Brookdale Senior Living belongs)<sup>15</sup>—in its campaign against the rule, has cited concerns about “increased operating costs” and a shortage of available nursing home staff.<sup>16</sup> You submitted a public comment to CMS on behalf of Brookdale Senior Living Inc strongly encouraging CMS to abandon the rule, arguing that it would force homes to “cease operations” due to an inability to meet the rule’s “onerous requirements.”<sup>17</sup>

This opposition makes little sense on the most obvious level: thousands of nursing homes already meet the CMS staffing requirements.<sup>18</sup> Additionally, despite claims that there is a nursing shortage, the number of nurses passing the nursing licensure exam has steadily grown since 2017.<sup>19</sup> However, turnover is high due to poor working conditions, understaffing of facilities, and

<sup>12</sup> Modern Healthcare, “Legal challenges likely for nursing home staffing mandate,” Diane Eastabrook, April 29, 2024, <https://www.modernhealthcare.com/providers/nursing-home-staffing-rule-court-lawsuit-ahca>.

<sup>13</sup> Axios, “E&C considers bills overturning Biden rules,” Victoria Knight, April 30, 2024, <https://www.axios.com/pro/health-care-policy/2024/04/30/gop-bills-overturn-biden-rules>; McKnights Long-Term Care News, “Bill to block staffing rule, other LTC measures to headline Congressional hearing,” Kimberly Marselas, April 29, 2024, <https://www.mcknights.com/news/bill-to-block-staffing-rule-other-ltc-measures-to-headline-congressional-hearing/>.

<sup>14</sup> Modern Healthcare, “Legal challenges likely for nursing home staffing mandate,” Diane Eastabrook, April 29, 2024, <https://www.modernhealthcare.com/providers/nursing-home-staffing-rule-court-lawsuit-ahca>.

<sup>15</sup> AHCA/NCAL, Facility Directory, <https://members.ahcancal.org/Membership/Facility-Directory>. A facility directory search reveals Brookdale has many facilities associated with the AHCA.

<sup>16</sup> AHCA/NCAL, “New Analysis Finds Federal Staffing Mandate Would Require 100,000 Additional Nurses and Nurses’ Aides, Cost \$6.8 Billion Per Year,” press release, September 26, 2023, <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require-100%2C000-Additional-Nurses-and-Nurses%E2%80%99-Aides%2C-Cost-%246-8-Billion-Pe.aspx>.

<sup>17</sup> Comment on CMS-2023-0144-0001, “Brookdale Senior Living Comment on CMS SNF Staffing Proposed Rule,” Lucinda Baier, October 27, 2023, p. 1, <https://www.regulations.gov/comment/CMS-2023-0144-19593>.

<sup>18</sup> KFF, “What Share of Nursing Facilities Might Meet Proposed New Requirements for Nursing Staff Hours?” Alice Burns, Priya Chidambaram, Tricia Neuman, and Robin Rudowitz, September 18, 2023, <https://www.kff.org/medicaid/issue-brief/what-share-of-nursing-facilities-might-meet-proposed-new-requirements-for-nursing-staff-hours/>.

<sup>19</sup> National Nurses United Memorandum to Interested Parties, “Nurses insist: There is no ‘shortage,’ but there is a serious hospital staffing crisis,” May 15, 2023, p. 2, [https://www.nationalnursesunited.org/sites/default/files/nnu/documents/Reporter\\_Memo\\_Hospital\\_Staffing\\_Crisis.pdf](https://www.nationalnursesunited.org/sites/default/files/nnu/documents/Reporter_Memo_Hospital_Staffing_Crisis.pdf).

low pay – conditions that you are in position to rectify.<sup>20</sup> CMS’ new rule to set a minimum staffing standard would make these jobs more attractive to workers.<sup>21</sup>

### **Three of the Largest For-Profit Nursing Homes Handed Out Nearly \$650 Million in Buybacks, Dividends, and CEO Salaries since 2018**

Contrary to the industry’s claims that nursing homes are cash strapped and unable to afford the additional staff needed to comply with the rule and provide better care for residents, my staff’s review of the financial data from three of the nation’s largest publicly traded nursing home chains –National HealthCare Corporation, Brookdale Senior Living Inc, and the Ensign Group Inc. – reveals that the industry has repeatedly chosen to enrich shareholders and executives, rather than reinvest in its facilities and workforce to ensure quality care. In fact, the industry spent nearly \$650 million since 2018 on stock buybacks, dividend payments, and rich rewards to top executives.<sup>22</sup>

#### **1. Stock Buybacks and Dividends**

The data analyzed by my staff reveals that these three large, for-profit nursing homes handed out over \$423 million in dividends and stock buybacks since 2018. (Table 1) These buybacks and dividends represent excess revenues that could have been used to improve quality of care, increase staff wages, offer staff trainings, or hire new staff. Instead, they were used to enrich executives and shareholders.

Combined, the three companies paid out over \$423 million in buybacks and dividends between 2018 and 2023, and Brookdale Senior Living gave out nearly \$68 million. (Table 1)

**Table 1. Dividend Payments and Stock Buybacks by Three of the Largest Publicly Traded Nursing Home Companies in the U.S. 2018-2023** <sup>23</sup>

Year	Company Name		
	National HealthCare Corporation	The Ensign Group, Inc.	Brookdale Senior Living Inc.
<b>2018</b>	\$30,700,000	\$9,420,000	\$7,320,000
<b>2019</b>	\$32,080,000	\$17,080,000	\$27,270,000
<b>2020</b>	\$31,970,000	\$36,750,000	\$22,160,000

<sup>20</sup> National Nurses United Memorandum to Interested Parties, “Nurses insist: There is no ‘shortage,’ but there is a serious hospital staffing crisis,” May 15, 2023,

[https://www.nationalnursesunited.org/sites/default/files/nnu/documents/Reporter\\_Memo\\_Hospital\\_Staffing\\_Crisis.pdf](https://www.nationalnursesunited.org/sites/default/files/nnu/documents/Reporter_Memo_Hospital_Staffing_Crisis.pdf);

Institute for Women’s Policy Research, “Solving the Nursing Shortage through Higher Wages,” Vicky Lovell, 2006, p. 8,

[https://people.umass.edu/econ340/rn\\_shortage\\_iwpr.pdf](https://people.umass.edu/econ340/rn_shortage_iwpr.pdf).

<sup>21</sup> Institute for Women’s Policy Research, “Solving the Nursing Shortage through Higher Wages,” Vicky Lovell, 2006, pp. 8-9, [https://people.umass.edu/econ340/rn\\_shortage\\_iwpr.pdf](https://people.umass.edu/econ340/rn_shortage_iwpr.pdf).

<sup>22</sup> S&P Capital IQ Data, CY 2018-CY 2023, on file with the Office of Elizabeth Warren.

<sup>23</sup> S&P Capital IQ Data.

<b>2021</b>	\$32,870,000	\$23,380,000	\$4,820,000
<b>2022</b>	\$44,500,000	\$43,750,000	\$4,290,000
<b>2023*</b>	\$38,040,000	\$14,820,000	\$1,920,000
<b>TOTAL</b>	<b>\$210,160,000</b>	<b>\$145,200,000</b>	<b>\$67,780,000</b>

These estimates represent only three of the largest publicly traded nursing home companies. Thousands of nursing homes are owned by private equity firms, private real estate investment trusts, or other private corporations that do not make their profits publicly available and therefore cannot be included in these estimates.<sup>24</sup>

## 2. High Executive Salaries

The data analyzed by my staff further indicates that Brookdale Senior Living and other large for-profit nursing home chains are richly rewarding their top executives, paying them hundreds of millions of dollars, while refusing to invest in safe staffing levels, even as seniors are forced to live in nursing homes with deplorable conditions.<sup>25</sup> In total, these three nursing home chains paid their top executives over \$220 million from 2018-2022. (Table 2)

You personally received over \$15 million in compensation from 2018-2022. Your other top directors and executives also made millions of dollars. Brookdale Senior Living's Former Executive VP & CFO received nearly \$6 million in this five-year period, and your former Executive Vice President of Strategic Operations made over \$3 million in only three years (2018-2020).<sup>26</sup> In total, Brookdale's top executives and directors were paid nearly \$50 million in this five-year period (see Table 2). The other four large nursing home companies also paid out millions of dollars in compensation for executives and board members.

**Table 2. Total Executive Compensation of Three of the Largest Publicly Traded For-Profit Nursing Homes in the U.S. 2018-2022** <sup>27</sup>

Year	Company Name		
	National HealthCare Corporation	The Ensign Group, Inc.	Brookdale Senior Living Inc.
<b>2018</b>	\$4,434,788	\$19,592,785	\$12,661,803
<b>2019</b>	\$5,555,999	\$24,424,196	\$6,918,521
<b>2020</b>	\$4,505,937	\$30,537,187	\$9,245,697
<b>2021</b>	\$7,633,198	\$29,679,865	\$10,154,726
<b>2022</b>	\$4,402,202	\$40,568,813	\$9,960,760

<sup>24</sup> Fortune, "For-profit groups have vacuumed up over 70% of America's nursing homes, and health advocates are worried: 'The care gets really bad'" Harris Meyer and KFF Health News, March 12, 2024, <https://fortune.com/2024/03/12/nursing-homes-for-profit-private-equity/>.

<sup>25</sup> Human Rights Watch, "US: Concerns of Neglect in Nursing Homes," March 25, 2021, <https://www.hrw.org/news/2021/03/25/us-concerns-neglect-nursing-homes>.

<sup>26</sup> S&P Capital IQ Data.

<sup>27</sup> *Id.*

<b>TOTAL</b>	<b>\$26,532,124</b>	<b>\$144,802,846</b>	<b>\$48,941,507</b>
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### **3. Nursing Homes Use Other Schemes to Hide Profits and Enrich Executives at the Expense of Resident Care**

Massive payouts to executives and shareholders are not the only way that nursing home revenues are diverted from patient care. A detailed new analysis released earlier this month revealed that nursing homes artificially decrease their profit margins by redirecting profits to “related parties.”<sup>28</sup> By paying especially high rents or management service fees to a related party that shares the same owner as the nursing homes, these businesses are able to hide up to two thirds of their profits.<sup>29</sup> Nursing homes are increasingly using this deceptive tactic to bolster their arguments to Congress that it can’t meet quality standards, when in reality their reported losses are funneled back into their own pockets: between 2001 and 2021, nursing home payments to related parties more than doubled.<sup>30</sup> This is additional evidence that nursing homes can afford to meet higher staffing standards, but are simply unwilling to do so.

### **Conclusion**

There are approximately 1.2 million nursing home residents in the United States.<sup>31</sup> We are grievously disappointed by the nursing home industry’s opposition to the Administration’s efforts to ensure these residents receive high quality care, and seek an explanation for why Brookdale Senior Living and other for-profit nursing home companies – which handed out nearly \$650 million in buybacks and dividends and have richly rewarded their top executives – claim they cannot afford to meet CMS’ new minimum staffing standards. We therefore request that you provide the following information by May 20, 2024:

1. How does the Board of Brookdale Senior Living determine executive compensation and bonuses for you and other top executives?
  - a. What considerations are factored into bonuses received by you and other top executives?
  - b. Specifically, are any bonuses determined by quality of care metrics?
  - c. Are bonuses tied to profits?
  - d. Do you receive any kind of bonus tied to reducing staff or other expenses?
2. What is the average annual compensation for registered nurses (RNs) and nurse aides (NAs) at Brookdale Senior Living facilities?
3. What is the rate of turnover of nursing staff in Brookdale Senior Living facilities?
  - a. What is the average tenure of licensed nurses?
  - b. What is the average tenure of nurse aides?
4. How much does Brookdale Senior Living spend annually on training for its nursing staff?

<sup>28</sup> STAT, “Nursing home owners can hide nearly two-thirds of their profits, new study shows,” Brittany Trang, March 7, 2024, <https://www.statnews.com/2024/03/07/nursing-homes-hide-profits-with-related-party-ploys/>.

<sup>29</sup> *Id.*

<sup>30</sup> National Bureau of Economic Research, “Tunneling and Hidden Profits in Health Care,” Ashvin Gandhi and Andrew Olenski, March 4, 2024, p. 10, [https://www.nber.org/system/files/working\\_papers/w32258/w32258.pdf](https://www.nber.org/system/files/working_papers/w32258/w32258.pdf).

<sup>31</sup> U.S. Department of Health and Human Services, Office of Inspector General, “Nursing Homes,” February 29, 2024, <https://oig.hhs.gov/reports-and-publications/featured-topics/nursing-homes/>.

5. Please provide any complaints or comments submitted to the company by nurses or other staff including the words “under-staffed,” “staffing,” and “salary”.
6. Please provide a list of all lobbying or advocacy expenditures by Brookdale, including contributions to the AHCA that may have been used to lobby or advocate against the finalized nursing home staffing standards from January 2021 through the present.

Thank you for your attention to this matter.

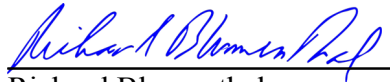
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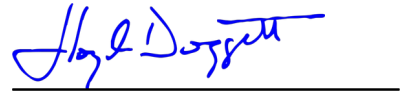
Elizabeth Warren  
United States Senator



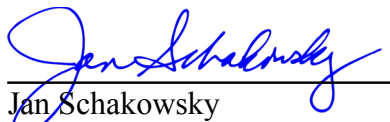
Bernard Sanders  
United States Senator



Richard Blumenthal  
United States Senator



Lloyd Doggett  
Member of Congress



Jan Schakowsky  
Member of Congress