

March 16, 2021

Robert Fish
Chief Executive Officer
Genesis Healthcare, Inc.
101 East State Street
Kennett Square, PA 19348

David Harrington
Chairman of the Board
Genesis Healthcare, Inc.
101 East State Street
Kennett Square, PA 19348

Dear Mr. Fish and Mr. Harrington:

I am writing regarding your response to my January 27, 2021 letter to Genesis Healthcare, Inc. (Genesis)¹ in which I requested an explanation for the unseemly decision by the company and its Board to approve lavish bonuses for its top executive in the midst of an economic crisis and public health tragedy that killed over 2,800 residents at Genesis nursing home facilities.²

Your response – and the subsequent “restructuring” announcement by the company earlier this month that will result in a capital infusion from private equity and delisting its stock from the New York Stock Exchange³ – raise even more questions about why you rewarded your now-departed CEO, George Hager, over \$8 million in compensation since January 2020.⁴ A large portion of this pay was approved in late 2020, when it was clear that the company, under

¹ Letter from Senator Elizabeth Warren to Genesis Healthcare, Inc. CEO Robert Fish, January 27, 2021, <https://www.warren.senate.gov/imo/media/doc/2020.01.27%20Letter%20to%20Genesis%20Healthcare%20CEO%20re%20Bonuses%20for%20Top%20Executives.pdf>.

² Washington Post, “Departing CEO paid \$5.2 million ‘retention’ bonus by nursing home chain that lost 2,800 residents to covid,” Will Englund, January 20, 2021, <https://www.washingtonpost.com/business/2021/01/20/genisis-nursing-homes-ceo-bonus/>; Genesis Healthcare, Inc., “Our Services” page, accessed on January 21, 2021, <https://www.genesishcc.com/our-services/rehabilitation-therapy/our-services>.

³ Genesis Healthcare, Inc., “Genesis Healthcare Announces Strategic Restructuring Steps to Strengthen Balance Sheet and Chart Path for Recovery,” press release, March 3, 2021, <https://www.genesishcc.com/about-us/press/press-releases/genisis-healthcare-announces-strategic-restructuring-steps-strengthen>.

⁴ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren.

Mr. Hager’s watch, was already in deep financial trouble. In short, it appears that Mr. Hager walked away with an extraordinarily rich compensation package, leaving behind thousands of dead and sick nursing home residents and staff and a company in financial ruin despite being bailed out by hundreds of millions of dollars in taxpayer funds. Your residents, your shareholders, and the American public deserve an explanation for this greed and the tragedy that preceded it.

Total Compensation Awarded to Mr. Hager

Your response letter provides us with the most detailed information available to date on the compensation received by Mr. Hager since January 2020. It reveals that he received \$900,016 in base salary, \$1,035,018 in incentive compensation, \$650,000 for service during the COVID crisis, \$300,000 for consulting services, \$5,194,578 as a “retention advance offsetting his severance claims,” and a top-off of \$9,121 for health benefits. He also received 2019 incentive compensation of \$973,000 in early 2020.⁵ The letter notes that Mr. Hager returned a portion of the \$5.2 million retention advance “to be replaced by payments total \$963,412.22 in 2022.”

According to your letter, the Genesis Board “initiated discussion of Mr. Hager’s departure from the company” in March 2020 but, “to avoid a major disruption at a time Genesis needed all hands on deck,” requested that Mr. Hager remain on board.⁶ Mr. Hager did so, and the company’s fortunes continued to decline. Despite these problems, your letter indicates that in October 2020 – when the company he operated was already in dire straits – Mr. Hager was awarded his massive retention bonus. But just weeks later, the Board “made governance changes, planned more reliance on outside advisors, and entered into challenging negotiations with creditors, all of which reduced Mr. Hager’s role,” revealing “significant differences in strategic outlook between Mr. Hager and the rest of the Board.”⁷ Mr. Hager officially retired as of January 5, 2021.

Your response fails to explain why Mr. Hager, who as CEO was responsible for the company’s operations – received a \$5.2 million retention bonus despite the fact that the company was operating under dire financial conditions. It provides no explanation for why he received both a \$650,000 special payment for service during the COVID crisis and a \$300,000 consulting fee on top of his standard salary and incentives. It also fails to describe the exact incentives that Mr. Hager successfully met – despite the death of thousands of Genesis nursing home residents – in order to receive his more than \$1 million in incentive compensation. Last, it does not explain why Mr. Hager received the special payment arrangement for his \$5.2 million retention advance, how much this would save him on his taxes, or how this benefits the company, its shareholders, and its nursing home residents.

⁵ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, Appendix B.

⁶ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, at 5.

⁷ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, at 6.

Genesis Healthcare's Financial Performance and Receipt of Taxpayer Funding

Regarding the company's financial performance, your letter describes the "severe financial impact" that the COVID-19 pandemic has had on Genesis, "dramatically adding to its costs while also reducing its revenues."⁸ You note that "through January 2021, Genesis estimates it has incurred expenses and lost revenues of more than \$460 million due to COVID."⁹ However, your response letter provides us with the most detailed information available to date on the taxpayer funds Genesis has received since January 2020, indicating that the company has received \$665 million in taxpayer funded grants and loans via the CARES Act and other state and federal programs – assistance that far exceeds Genesis's own estimates of its lost revenue and additional expenses due to the pandemic.¹⁰ As is outlined in the letter, Genesis received \$199.1 million in grants from the CARES Act Provider Relief Fund, \$54.5 million in federal grants for infection control, \$28.5 million under the Quality Incentive Payment Program, \$11.1 million (as of February 10, 2021) in revenue increases due to CARES Act changes to Medicare reimbursements, and \$123.7 million in state relief. In addition, Genesis reported receiving \$152 million in advance payments through the Medicare Accelerated and Advanced Payment Program (MAAP), which will be recouped beginning in April 2021, \$99.2 million in savings via deferred payroll taxes (one half of which will become due on December 31, 2021 and one half of which will become due on December 31, 2022), and \$2.3 million in state loans.¹¹ Broken down, these funds include \$417 million in taxpayer-funded grants and \$248 million in taxpayer-funded loans or deferred payments.

Your letter notes that Mr. Hager was rewarded with his millions of dollars in pay and bonuses because of his "vital and effective leadership," his "expertise, relationships, and institutional knowledge," and his "strong leadership and tireless commitment to protecting the company's residents, patients, and staff."¹² Your letter provides no indication that the company was holding its own CEO responsible for the near-bankruptcy it faced under his leadership. In fact, the information provided in your letter indicates that Mr. Hager was the beneficiary of hundreds of millions of dollars in taxpayer aid that went to the company – which he was still unable to keep out of dire financial straits.

The unseemly decision to reward Mr. Hager for his "vital and effective leadership" deserves additional scrutiny given that, just last week, the company announced a major restructuring that includes the termination of dozens of leases (leading to questions about whether residents would be forced to move, or who would be responsible for their care); the sale

⁸ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, at 2.

⁹ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, at 3.

¹⁰ Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, Appendix A, at 12.

¹¹ *Id.*

¹² Letter from Robert K. Kelner on behalf of Genesis Healthcare, Inc. to Senator Elizabeth Warren, February 10, 2021, filed in the office of Senator Warren, at 6-7.

of a large percentage of the company to private equity firm ReGen Healthcare, and the delisting of its Class A common stock from the New York Stock Exchange.¹³

Questions

Given your response and the company's restructuring, my follow-up questions regarding these matters are as follows:

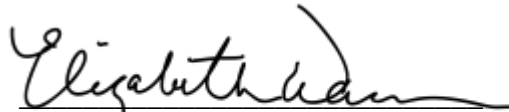
1. Why did Mr. Hager receive both a \$650,000 special payment for service during the COVID crisis and a \$300,000 consulting fee on top of his standard salary and incentives? What extra services did he provide that were not already covered by his existing generous compensation and incentive plan?
2. What were the specific incentives that Mr. Hager met in order to receive his more than \$1 million in incentive compensation in 2020? Did any of these incentives involve the health and well-being of Genesis nursing home residents? Did any of them involve the financial condition of the company, which nearly collapsed in late 2020 before being massively restructured in March 2021?
3. Why did Mr. Hager receive a special payment arrangement for his \$5.2 million retention advance under which payments are delayed until 2020 for tax purposes? How much did this arrangement save him on his taxes, and how did this arrangement benefit the company, its shareholders, or the residents of its nursing homes?
4. What was the nature of the "significant differences in strategic outlook between Mr. Hager and the rest of the Board" that are noted on page 6 of your response letter? How were these differences resolved?
5. Does the Board retain the right to claw back any of the payments received by Mr. Hager to date, or to withhold future payments that are due to him by Genesis?
6. Please provide copies of all 2020 Board minutes related to executive compensation, in particular the decision to award Mr. Hager a massive \$5.2 million retention bonus despite the fact that the company was near bankruptcy, and just weeks before the same Board made significant governance changes that led to Mr. Hager's departure.

¹³ Hospital CFO Report, "Genesis HealthCare plans to cut \$236M in debt, delist stock from NYSE," Alia Paavola, March, 3, 2021, <https://www.beckershospitalreview.com/finance/genesis-healthcare-plans-to-cut-236m-in-debt-delist-stock-from-nyse.html>.

7. Please provide detailed information on the six additional top Genesis executives that received compensation and when those payments were disbursed as well as their amounts.
8. Has the company received any additional federal or state assistance in 2021? If so, please summarize the nature and amount of this assistance.
9. How does Genesis value the \$247 million in federal and state loans and deferred payment assistance that the company received in 2020?
10. Does the new restructuring of the company affect its ability to repay these federal or state loans or deferred payments, or the requirements that it do so? If so, please explain how.
11. The restructuring announcement describes the termination of dozens of Genesis facilities leased from Welltower. What will happen to the residents and staff for each of these facilities?

Thank you for your attention to these matters, and I would appreciate a response to my questions no later than March 30, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator