

Congress of the United States

Washington, DC 20515

September 13, 2024

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

Christopher Christensen
President, Chief Executive Officer, and
Executive Chairman
Ensign Group, Inc.
29222 Rancho Viejo Road, Suite 127
San Juan Capistrano, CA 92675

Stephen F. Flatt
Chief Executive Officer and Inside Director
National HealthCare, Corp.
100 East Vine Street
Murfreesboro, TN 37130

Dear Ms. Baier, Mr. Christensen, and Mr. Flatt:

I write regarding new public U.S. Securities and Exchange Commission (SEC) filings revealing that you and other nursing home executives were paid nearly \$70 million in 2023,¹ while at the same time claiming that you cannot afford to meet new minimum staffing requirements put in place by a Biden-Harris administration policy to improve quality of care for nursing home residents.²

On May 5, 2024, I wrote to your companies – three of the largest, publicly-owned, for-profit nursing homes in the United States – to seek an explanation for the discrepancy between your massive payouts in executive salaries, stock buybacks and dividends, and your companies’ simultaneous opposition to the Biden-Harris administration’s nursing home staffing rule on the grounds that it would be too expensive.³ Implementation of this rule will save 13,000 lives

¹ S&P Capital IQ Data [on file with the Office of Senator Elizabeth Warren]. S&P Capital IQ is a subscription-based software that uses a formula and underlying data from companies’ SEC filings and proxy statements, *see*: Ensign Group, “SEC Filings,” <https://investor.ensigngroup.net/financials/sec-filings/default.aspx>; National HealthCare Corporation, “SEC Filings Document Search,” <https://nhccare.com/investor-relations/sec-filings/#b2iSecScrollTo>; Brookdale Senior Living, “Annual Reports & Proxies,” <https://brookdaleinvestors.com/financials/annual-reports-and-proxies/default.aspx>.

² Letter from Senator Warren, Senator Blumenthal, Senator Sanders, Representative Doggett, and Representative Schakowsky to Brookdale Senior Living, May 5, 2024, <https://www.warren.senate.gov/download/20240505-letter-to-brookdale-senior-living>; Letter from Senator Warren, Senator Blumenthal, Senator Sanders, Representative Doggett, and Representative Schakowsky to the Ensign Group, May 5, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.05.05%20Letter%20to%20the%20Ensign%20Group.pdf>; Letter from Senator Warren, Senator Blumenthal, Senator Sanders, Representative Doggett, and Representative Schakowsky to the National HealthCare Corporation, May 5, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.05.05%20Letter%20to%20National%20HealthCare.pdf>.

³ *Id.*

annually;⁴ yet, industry opposition to this rule continues. The FY 2025 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, which passed the House Appropriations Committee in July 2024,⁵ included language that would prevent CMS from using funds to “administer, implement, or enforce” the staffing rule and any future rule like it,⁶ and a Congressional Review Act (CRA) resolution to overturn the rule could come up in the Senate imminently.⁷ The nursing home industry has supported both legislative attempts to overturn the rule.⁸

My May 2024 investigation found that your companies paid out a staggering \$650 million in dividends, buybacks, and compensation to top executives between 2018 and 2022.⁹ You attempted to reconcile your receipt of these massive payouts with your opposition to this life-saving rule by telling my office there are not enough nurses available to meet the Biden-Harris administration’s new standards.¹⁰ But this industry argument ignores the fact that the primary problem appears to be that nurses in nursing homes are not being paid enough.¹¹

While the pandemic played a role in nurses leaving health care positions, in nursing homes, it only accelerated an existing problem. For years, the nursing home industry has had a chronic inability to provide good pay and conditions for nursing home staff.¹² Indeed, the average nursing home loses more than half of its nursing staff within a year due to poor pay, lack of benefits, high workloads, inadequate training, poor management, and lack of career advancement.¹³ Nursing homes pay Certified Nurse Assistants (CNAs) and Registered Nurses (RNs) less than other health care providers.¹⁴ Nearly two-thirds of nursing home staff report that

⁴ USA Today, “Nursing home staffing mandate would save thousands of lives, researchers say,” Ken Alltucker, July 20, 2024, <https://www.usatoday.com/story/news/health/2024/07/20/nursing-home-staff-mandate/74416581007/>.

⁵ Committee on Rules, “H.R. 9029 - Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2025,” <https://rules.house.gov/bill/118/hr-FY2025-LaborHHS>.

⁶ H.R.9029, “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2025,” <https://www.congress.gov/bill/118th-congress/house-bill/9029/text#:~:text=Sec.%20252.,substantially%20similar%20rule>.

⁷ Skilled Nursing News, “Legislation To Overturn CMS’ Nursing Home Staffing Mandate Introduced in Congress,” Shelby Grebbin, May 15, 2024, <https://skillednursingnews.com/2024/05/legislation-to-overturn-cms-nursing-home-staffing-mandate-introduced-in-congress/>.

⁸ LeadingAge, “Congressional Committee Advances Funding Bills for Key Federal Agencies,” Juliana Bilowich, July 11, 2024, <https://leadingage.org/congressional-committee-advances-funding-bills-for-key-federal-agencies/>.

⁹ Office of Senator Elizabeth Warren, “Warren, Lawmakers Call out Hypocrisy of Nation’s Largest Public, For-Profit Nursing Homes for Opposing New Biden Admin Staffing Rule While Spending Millions Enriching Executives and Shareholders,” press release, May 6, 2024, <https://www.warren.senate.gov/newsroom/press-releases/warren-lawmakers-call-out-hypocrisy-of-nations-largest-public-for-profit-nursing-homes-for-opposing-new-biden-admin-staffing-rule-while-spending-millions-enriching-executives-and-shareholders>.

¹⁰ Responses to May 5, 2024 Letter to Brookdale Senior Living, National HealthCare Corporation, and the Ensign Group, [on file with the Office of Senator Elizabeth Warren].

¹¹ Economic Policy Institute, “EPI comments on CMS’s proposed rule on minimum staffing standards for long-term care facilities,” Monique Morrissey, November 6, 2024, <https://www.epi.org/publication/epi-comments-cms-proposed-rule-ltc-minimum-staffing-standards/>.

¹² *Id.*

¹³ National Consumer Voice, “HIGH STAFF TURNOVER: A JOB QUALITY CRISIS IN NURSING HOMES,” September 8, 2022, p. 1, https://theconsumervoic.org/uploads/files/issues/High_Staff_Turnover-A_Job_Quality_Crisis_in_Nursing_Homes.pdf.

¹⁴ Economic Policy Institute, “Nursing home owners are pushing Congress to block a new minimum staffing rule,” Monique Morrissey, June 4, 2024, <https://www.epi.org/blog/for-profit-nursing-home-owners-are-pushing-congress-to-block-a-new-minimum-staffing-rule/>.

they do not have paid leave, 40 percent of CNAs do not have health insurance through their employer,¹⁵ and nurses widely report receiving inadequate training.¹⁶ To top it off, the workloads of nurses and other nursing home staff are far too high: on average, CNAs in nursing homes provide care to 13 residents per shift, with 1 in 10 CNAs in the United States responsible for 19 or more residents at a time.¹⁷

These conditions make it impossible to provide high-quality care and create a vicious cycle in which nursing homes with higher staff turnover contribute to poor nursing home conditions, leading to even more turnover. All the while, executives get rich – regardless of whether the nursing homes they oversee provide high-quality care.

It is insulting that the for-profit nursing home industry, which receives billions of taxpayer dollars annually to run its operations,¹⁸ appears to prefer lining the pockets of its executives and shareholders rather than creating sustainable working conditions for nurses and staff. New public SEC filings for your companies reveal that in 2023, top executives at your companies received nearly \$70 million in compensation – a nearly 30 percent increase over their 2022 pay (\$54 million). Over the past five years, your companies have paid senior executives and directors over \$250 million.

Table 1. Total Executive Compensation of Three of the Largest Publicly Traded For-Profit Nursing Homes in the U.S., 2019-2023¹⁹

Company	Total Top Executive Compensation by Year				
	2019	2020	2021	2022	2023
Brookdale Senior Living, Inc.	\$6,918,521	\$9,245,697	\$10,154,726	\$9,960,760	\$10,874,379
National HealthCare, Corp.	\$5,555,999	\$4,505,937	\$7,633,198	\$4,402,202	\$5,735,918
Ensign Group, Inc.	\$24,424,196	\$30,537,187	\$29,679,865	\$40,568,813	\$50,188,050
TOTAL	\$36,898,716	\$44,288,821	\$47,467,789	\$54,931,775	\$66,798,347

¹⁵ National Consumer Voice, “HIGH STAFF TURNOVER: A JOB QUALITY CRISIS IN NURSING HOMES,” September 8, 2022, p. 7, https://theconsumervoicework.org/uploads/files/issues/High_Staff_Turnover-A_Job_Quality_Crisis_in_Nursing_Homes.pdf.

¹⁶ *Id.*, p. 8.

¹⁷ *Id.*, p. 7.

¹⁸ Centers for Medicare and Medicaid Services, “CMS Acts to Improve the Safety and Quality of Care of the Nation’s Nursing Homes,” press release, July 29, 2022, <https://www.cms.gov/newsroom/press-releases/cms-acts-improve-safety-and-quality-care-nations-nursing-homes>.

¹⁹ S&P Capital IQ Data [on file with the Office of Senator Elizabeth Warren].

Despite cries throughout the industry that nursing homes cannot meet the Biden-Harris administration's staffing standards because the nursing home industry has not recovered from the COVID-19 pandemic,²⁰ nursing homes have demonstrated "powerful positive progress toward full recovery from the impact of the pandemic," in the words of Brookdale's CEO and President, Lucinda Baier.²¹ Executives' pay at each of these companies has surpassed their pre-pandemic values. In 2023, the Ensign Group alone paid its executives nearly double what it paid them at the start of the COVID-19 pandemic in 2020.

In their second quarter 2024 earnings announcements, executives at your companies touted the immense profits you have already made this year. National HealthCare Corporation (NHC) reported over \$15 million in profits in the second quarter of 2024, up from \$12 million for the same period in 2023, representing an increase of 25 percent.²² As a result, NHC announced it will increase the value of common dividends paid to shareholders this quarter by 3.4 percent.²³ Meanwhile, the Ensign Group announced an increase in its estimated annual revenue of at least \$4.20 billion.²⁴ The company reported having approximately \$477.3 million cash on hand – money that could be reinvested into worker salaries and improved conditions at their facilities.²⁵ Ensign further bragged about cutting costs in order to achieve these higher margins: "[o]ne of the foundational elements of our consistent performance has been to insist that the prices we pay will result in a cost structure that allows us to achieve high margins over a long period of time," the company said.²⁶ Without a national staffing minimum in place, the for-profit nursing home industry can continue to shovel profits to its executives and shareholders at the expense of patient lives.²⁷

The basis of your opposition to minimum staffing standards appears to be quite simple: greed. My office's May 2024 investigation found that your companies paid out nearly \$650 million in stock buybacks, dividends, and salaries to executives and shareholders, all the while claiming nursing homes could not afford to meet the new standards. New revelations that your companies collectively increased their executive pay by nearly 25 percent just last year, combined with the record-high profits your companies touted in the first two quarters of 2024, reveal once again that you have plenty of money available to provide high-quality care – but instead are using it to

²⁰ American Health Care Association, "Data Show Nursing Homes Continue to Experience Worst Job Loss Of Any Health Care Sector," press release, January 19, 2023, <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Data-Show-Nursing-Homes-Continue-to-Experience-Worst-Job-Loss-Of-Any-Health-Care-Sector.aspx>.

²¹ Brookdale Senior Living, "Brookdale Announces Second Quarter 2024 Results," August 8, 2024, https://s26.q4cdn.com/858530099/files/doc_earnings/2024/q2/earnings-result/Brookdale-Announces-Second-Quarter-2024-Results.pdf.

²² National HealthCare Corporation, "NHC Reports First Quarter 2024 Earnings," May 10, 2024, <https://nhccare.com/wp-content/uploads/2024/05/Earnings-Announcement.pdf>.

²³ National HealthCare Corporation, "NHC Announces 3.4% Increase in Common Dividend," May 9, 2024, <https://nhccare.com/wp-content/uploads/2024/05/Dividend-Announcement.pdf>.

²⁴ Ensign Group, "The Ensign Group Reports Second Quarter 2024 Results; Raises Annual Earnings and Revenue Guidance," July 25, 2024, <https://investor.ensigngroup.net/news/news-details/2024/The-Ensign-Group-Reports-Second-Quarter-2024-ResultsRaises-Annual-Earnings-and-Revenue-Guidance/default.aspx>.

²⁵ *Id.*

²⁶ *Id.*

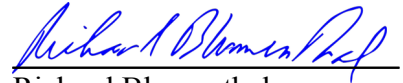
²⁷ USA Today, "Nursing home staffing mandate would save thousands of lives, researchers say," Ken Alltucker, July 20, 2024, <https://www.usatoday.com/story/news/health/2024/07/20/nursing-home-staff-mandate/74416581007/>.

enrich yourselves and other executives. The Biden-Harris administration's nursing home staffing rule will ensure that the nursing home industry prioritizes the patients it is intended to serve. I hope you will rethink your opposition to this rule.

Sincerely,



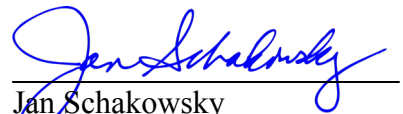
Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator



Bernard Sanders
United States Senator



Jan Schakowsky
Member of Congress