

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,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan, President and CEO, LeadingAge

