



REGULATING NURSE STAFFING AGENCIES

At the height of the COVID-19 Omicron surge, 31 percent of hospitals and 85 percent of nursing homes reported critical staffing shortages. A recent survey of health care organizations found 95 percent have relied on temporary allied staffing in 2021. Over 200 bipartisan members of the U.S. House of Representatives have expressed concern over staffing agencies who are “vastly inflating price by three or more times pre-pandemic rates, and then taking 40 percent or more in profits.” These representatives and several organizations have pressed the Biden administration to act swiftly. This debate series examines the pros and cons of federal oversight of nurse staffing agencies.

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“There are countless stories of hospitals losing nurses, only to have the same nurse rehired by a staffing agency. This adds senseless costs to the system. The federal government should investigate these abuses as well as issue new policies to prevent this opportunistic behavior.”

In 2020, the federal government spent \$87 billion in COVID-relief on hospitals and \$20 billion on nursing homes.^{P.1} Congress did not intend for these dollars to be transferred to opportunistic nurse staffing agencies who are taking advantage of a national Public Health Emergency (PHE).

NURSE STAFFING AGENCIES COST THE AMERICAN TAXPAYER.

During the COVID-19 PHE nurse staffing agencies have been a critical resource to staff American hospitals and nursing homes. In 2020, 60 percent of total hospital and 86 percent of nursing home expenditures were attributable to federal programs supported by

^{P.1} Accounting for Federal COVID Expenditures in the National Health Expenditure Accounts. *Centers for Medicare & Medicaid Services*. <https://go.cms.gov/3JyS17E> Accessed on March 20, 2022.

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“The pandemic exposed how we have underinvested in nursing for years. Rather than regulate travel nursing agencies, Congress should invest in more nursing education and work to boost the overall supply.”

While hospital and nursing home lobbyists are asking the federal government to intervene and set price caps for nurse staffing agencies, to do so would be foolhardy, shortsighted and unfair to the nursing profession. Increased demand and prices for contract nursing, due to the pandemic, is a predictable, temporary market reaction to a lack of sufficient nursing supply.

NURSE STAFFING AGENCIES SHOULD BE ABLE TO OPERATE IN A FREE, UNREGULATED MARKET.

It has been reported that since the outbreak of the COVID-19 pandemic, demand for travel nurses increased 284 percent in one year, and that there are more than 40,000 travel nurse positions open on any given day.^{C.1} This is the

^{C.1} Devereaux M. Travel nurses ‘a double-edged sword’ for desperate hospitals. *Modern Healthcare*. Sept 16, 2021.

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taxes.^{P.2} Given the overwhelming federal support of these settings of care, costs from nurse staffing agencies directly hit the pockets of U.S. taxpayers. Ninety-five percent of health care facilities reported hiring staff from contract labor firms during the PHE.^{P.3} Hospital contract labor has more than doubled in the past decade. In 2020, contract labor ranged from a few thousand dollars to over \$280 million for some large health systems.^{P.4} However, the majority of costs are being retained as profit for staffing agencies. Earnings reports from two top staffing agencies found extreme gains in the third quarter of 2021, with one firm reporting \$74 million—almost triple net income over third quarter 2020 and another firm reporting a profit of \$23.4 million in 2021, up from a loss of \$1.3 million in the same quarter in 2020.^{P.5}

NURSE STAFFING AGENCIES EXACERBATE RURAL NURSING SHORTAGES.

Even with the added pressures of the COVID-19 pandemic, the U.S. is still not in the midst of a national nursing shortage, but certain rural areas in the U.S. are experiencing shortages.^{P.6} Demand for travel nursing grew by 35 percent in 2020, suggesting it is the major workforce change that has led to shortages in rural areas of the U.S.^{P.7} These shortages are directly related to an increased supply of nurse staffing agencies who are enticing the workforce with exotic locations and salaries 10 times higher than what

^{P.2} Analysis of National Health Expenditures data tables. *Centers for Medicare & Medicaid Services*. <https://go.cms.gov/3JCblLH> December 15, 2021. Accessed on March 21, 2022.

^{P.3} Survey: 2021 Temporary Allied Staffing Trends. *AMN Healthcare*. <https://bit.ly/3wAwNTb> December 13, 2021. Accessed on January 27, 2022.

^{P.4} Top 20 Hospitals by Highest Contract Labor Expense. *Definitive Healthcare*. <https://bit.ly/36oHD45> Accessed on March 15, 2022.

^{P.5} Mensik H. Staffing Firms Defend Traveling Nurse Rates as Industry Groups, Congress Push for Investigation. *HealthcareDive*. February 3, 2022.

^{P.6} National Academies of Sciences, Engineering, and Medicine. *The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity*. *The National Academies Press*. 2021.

^{P.7} Yang YT, Mason DJ. COVID-19's Impact on Nursing Shortages, the Rise of Travel Nurses, and Price Gouging. *Health Affairs Forefront*. January 28, 2022. Capacity for COVID-19 Response and Recovery. *Chest*. 2021. 159(5): 1894-1901.

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principal reason why the cost of contract nursing services has been on the rise. Basic economic principles hold that as demand increases, so does price. While much of the increase in demand arose from pandemic-related staffing challenges, other pent-up frustrations with many nursing work environments likely also played a role.^{C.2} This is evidenced in high staff turnover rates for newly graduated nursing hires, with first- and second-year hires leaving their jobs at rates of 30 and 57 percent, respectively.^{C.3}

Nurses have also said they feel taken advantage of, especially when subjected to furloughs, frequent scheduling changes, and changing occupational health requirements, including vaccine mandates, after serving dutifully for over a year with no protections at the outbreak of the pandemic. For those nurses able to travel, the increased demand for travel nurses has provided them with a unique opportunity to increase their incomes. As one nursing academic put it recently, “Can anyone blame nurses for turning the tables, for working within the system’s own flawed, profit-driven logic, for charging what the market will bear?...Isn’t it telling that the industry has only asked the government to step in now, when nurses are the ones wielding their market power?”^{C.4}

NURSE STAFFING AGENCIES SHOULD BE PAID WITH FEDERAL COVID RELIEF MONEY ALLOCATED TO PROVIDERS.

It is especially irksome that hospitals are seeking to impose price caps on traveling nurses after receiving unprecedented taxpayer support.^{C.5} In the past two years, Congress authorized rates nearly \$200 billion dollars for providers in special

^{C.2} National Nurses United Sets the Record Straight on Nurse Staffing. *National Nurses United*. <https://bit.ly/3lUcv9D> August 26, 2021. Accessed on March 15, 2022.

^{C.3} DeGregorio S. Hospitals desperately need staff. But capping travel nurses’ pay won’t help. *The Washington Post*. March 15, 2022.

^{C.4} *Ibid*.

^{C.5} Accounting for Federal COVID Expenditures in the National Health Expenditure Accounts. *Centers for Medicare & Medicaid Services*. <https://go.cms.gov/3JyS17E>. Accessed on March 20, 2022.

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hometowns can offer.^{P.8} In 2020 and 2021, average weekly pay for travel nurses doubled (above 2019), where travel nurses can earn between \$5,000 and \$10,000 per week, allowing large portions of the workforce to take weeks off between assignments and leave gapping staffing holes behind.^{P.9} During the pandemic, the top priority for U.S. hospitals was to keep the cumulative 878,613 COVID hospitalizations from turning into additional deaths.^{P.10} Meanwhile, in their rapacious quest to recruit new contract nurses, nurse staffing agencies have been handing out bonuses, offering free private housing, and providing generous travel reimbursements. This unfair playing field is creating major gaps in the nursing workforce.

NURSE STAFFING AGENCIES ENGAGE IN PRICE GOUGING.

The National Conference of State Legislators defines price gouging as taking advantage of spikes in demand by charging exorbitant prices, often after a natural disaster or other state of emergency.^{P.11} Such cases of price gouging are enforced by state attorney generals and result in civil and criminal penalties. The American Hospital Association and American Health Care Association believe nurse staffing agencies are exploiting the shortage of health care personnel during the COVID-19 pandemic by price gouging that suggests widespread coordination and abuse of market position.^{P.12}

Further, members of Congress have written to federal officials encouraging “one or more of the federal agencies with competition and consumer protection authority to investigate

^{P.8} Miranda L. Rural Hospitals Losing Hundreds of Staff to High-Paid Traveling Nurse Jobs. *NBCNews*. September 15, 2021.

^{P.9} Ibid.

^{P.10} COVID-19 Hospitalizations. *Kaiser Family Foundation*. <https://bit.ly/3ut1OWu> March 8, 2022. Accessed on March 20, 2022.

^{P.11} Price Gouging State Statutes. *National Conference of State Legislatures*. <https://bit.ly/3Lc3cDB> March 10, 2022. Accessed on March 15, 2022.

^{P.12} Letter to Jeffrey Zients. *American Hospital Association, American Health Care Association, and National Center for Assisted Living*. January 27, 2022. <https://bit.ly/3qArSHE> Accessed on March 15, 2022.

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Provider Relief Funds.^{C.6} Specifically, inpatient acute care hospitals receive a 20 percent reimbursement premium for treating Medicare patients with the COVID-19 virus.^{C.7, C.8} These funds were intended to help providers cover the additional and unforeseen costs that arose during the pandemic, including higher staffing costs.

With this additional taxpayer support, hospitals and nursing homes have largely been able to bear the near-term, added costs associated with increasing contract nursing prices. This was recently verified by the Medicare Payment Advisory Commission, which found that in 2020 – at the height of the pandemic – hospitals maintained on average an all-payer total margin of 6.3 percent, a level similar to the average over the past 15 years.^{C.9}

NURSE STAFFING AGENCIES PROVIDE SHORT-TERM RELIEF TO ENABLE LONG-TERM REFORM.

According to the Bureau of Labor Statistics 500,000 nurses are expected to leave the workforce this year, bringing the overall shortage to 1.1 million nurses in 2022.^{C.10} This underscores the bigger problem – America has an insufficient supply of trained nurses. Nurse staffing agencies provide short-term relief that enables our healthcare system the time necessary to develop a comprehensive long-term workforce solution. Regulating nurse staffing agencies, with ill-conceived policies like price controls, would only exacerbate the problem by prompting more retirements and discouraging qualified

^{C.6} Ochieng N, Biniek JF, Musumeci MB, Neuman T. Funding for Health Care Providers During the Pandemic: An Update. *Kaiser Family Foundation*. January 27, 2022.

^{C.7} P.L. 116-136. The Coronavirus Aid, Relief, and Economic Security Act. March 27, 2020. Section 3710. Medicare hospital inpatient prospective payment system add-on payment for COVID-19 patients during emergency period.

^{C.8} Swagel P. Preliminary Estimate of the Effects of H.R. 748. *Congressional Budget Office*. April 27, 2020.

^{C.9} Medicare Payment Policy: A Report to Congress. Chapter Three: Hospital Inpatient and Outpatient Services. *Medicare Payment Advisory Commission*. March 2022.

^{C.10} Data Brief: Workforce Issues Remain at the Forefront of Pandemic-related Challenges for Hospitals. *American Hospital Association*. <https://bit.ly/3wN3A7R>. January 2022. Accessed on March 20, 2022.

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this conduct to determine if it is the product of anticompetitive activity or violates consumer protection laws.”^{P.13} Currently seven states (MD, ID, IN, KS, NY, OR, and PA) have introduced bills to address price gouging by nurse staffing agencies.^{P.14} It is only a matter of time before state attorney generals and the Department of Justice also take up the mantle.

CONCLUSION

The business practices of nurse staffing agencies have been entirely shameful. Taking advantage of healthcare providers, during an unprecedented international pandemic, is unconscionable. We need federal oversight of nurse staffing agencies immediately.

^{P.13} Welch P, and Griffith H. Letter to COVID-19 Response Coordinator Jeffrey Zients. <https://bit.ly/3JHU5ui> Accessed on March 15, 2022.

^{P.14} Plescia M and Gooch K. 7 States Considering Legislation to Prevent Price Gouging by Staffing Agencies. *Becker's Healthcare*. March 9, 2022.

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candidates from entering the profession. Rather than focus on nurse staffing agencies, the federal government should use its influence and resources to grow the future supply of trained nurses. Late last year the National Academy of Medicine released a 466-page, 10-year strategic plan on modernizing the nursing workforce – which should be the government’s sole focus.^{C.11} Our healthcare system desperately needs greater support for nursing schools, loan support for future nursing students, prioritized grants to recruit new faculty to teach, and federal support for graduate nurse training through the Medicare program, as is commonly done now for physicians.

CONCLUSION

Rather than overreact and impose unwarranted regulation on one small segment of the health staffing system, Congress should take a wiser, longer-term approach to the issue to ensure a sufficient supply of nurses for America’s future patients.

^{C.11} National Academies of Sciences, Engineering, and Medicine. *The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity*. *The National Academies Press*. 2021.



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are government regulatory and reimbursement systems and how those systems impact patient care and the supply of health care providers. Prior to joining the faculty at Marquette, Professor Grabert served as Senior Health Policy Advisor to the U.S. House of Representatives Committee on Ways and Means and held senior policy positions at the American Hospital Association and the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services. Professor Grabert received her undergraduate degree from the University of Wisconsin-Madison, and her graduate degree from Emory University. To submit a potential topic for consideration for a future edition of this series, please email Professor Grabert at lisa.grabert@marquette.edu.

ABOUT THE SERIES EDITOR: LISA M. GRABERT, MPH

Lisa M. Grabert, MPH, is a research professor at Marquette University College of Nursing. In addition to conducting health services and health policy research, she teaches graduate courses at Marquette on health policy. Her subspecialties