

A CRISIS OF THEIR OWN MAKING

CASE STUDY: CONSULATE HEALTH CARE

1199SEIU
United Healthcare Workers East



EXECUTIVE SUMMARY

A Crisis Of Their Own Making

This report tells the story of an industry that was in “A Crisis Of Their Own Making” well before the COVID-19 pandemic began in 2020. A Crisis Of Their Own Making utilizes publicly available data about Consulate Health Care, Florida’s largest nursing home operator, as an illustration of the issues affecting the nursing home industry.

The nursing home industry in the U.S. is largely comprised of publicly traded companies, private investors, and private equity owners. About 70% of the nation’s 15,000+ nursing homes are under for-

profit ownership. This research paints the picture of a profitable industry; an industry that gets upward of seventy percent of its funding from taxpayer dollars, yet leverages a business model that allows owners to take money out of the nursing homes leaving low wages for workers and without regard to the level of care provided to long-term care consumers.

The Challenge

Listed below are findings we believe tell the real story about what’s broken in Florida’s long-term care delivery system:

Complex System of Ownership. The nursing home industry established a business model and operating

structure that may be used to obscure profits and avoid financial responsibility for debts and judgements. Arnold Whitman captures the issue best: “Lawyers were suing nursing homes because they knew the companies were worth billions of dollars, so we made the companies smaller and poorer, and the lawsuits have diminished.”¹

Destabilized Workforce. As a result of the nursing home operating model implemented by owners, the impact of pandemic fatigue on workers, the high resident caseloads, and understaffing issues, nursing home workers face a host of challenges including physically and emotionally demanding work, higher rates of work-injury (often without paid leave), limited training, and low wages and unaffordable health insurance.

Low wages are the root cause of the staffing crisis. The CNAs that have stayed on the job often work two jobs or more to make ends meet. Meanwhile, based upon Consulate CEO Christopher Bryson’s 2019 compensation, Bryson made more than 73 times the average Consulate employee.

The Opportunity

The COVID-19 pandemic has exposed and exacerbated what was always broken in Florida’s nursing homes and long-term care delivery system. We have a unique opportunity to seize the current moment to reimagine our long-term care delivery system and fix what is broken to make things better for our seniors and caregivers. We can start in Florida’s skilled nursing homes with these initial ideas:

- Implement **transparency** measures that require nursing homes and their home offices to annually file audited financial reports.
- Implement financial accountability measures such as medical loss ratios that direct nursing homes to spend 80-90 percent of taxpayer dollars on direct care.
- Stabilize the workforce by increasing worker **wages & benefits**.

- Increase quality of care by reinstating the **2.9** minimum certified nursing assistant **staffing** standard.

Next Steps

Florida nursing home employers continue to attribute stagnant state funding, the pandemic and unreliable workers for their inability to stabilize the long-term care workforce. However, this report’s analysis of the industry’s own data tells a nuanced and more complex story. A story that implicates the industry’s business model as the driving force behind what is broken in Florida’s long-term care delivery system. It is time for state officials to implement and enforce transparency and accountability measures to protect seniors, caregivers and consumers.

Consulate Health Care

Touted as Florida’s largest nursing home provider,² Consulate Health Care provides an informative case study into how such a prevalent nursing home industry business model impacts nursing home workers and quality of care for its residents. Our analysis of publicly available data from the State of Florida and the Centers for Medicare and Medicaid Services (CMS) found that as Florida’s largest nursing home provider³, Consulate is indicative of the practices operating within the nursing home industry as a whole.

Consulate Health Care is reportedly the sixth-largest nursing home chain in the country with 140 facilities from the Mid-Atlantic to the Gulf Coast. It is also reportedly Florida’s largest nursing home provider.

Consulate is backed by the private equity firm, Formation Capital LLC, which is owned by Arnold Whitman.

Formation Capital has been a major investor in the nursing home and senior housing industry since the late ‘90s.

Industry Origins

According to academic studies and media reports, the nursing home/skilled nursing (SNF) industry in the U.S. is largely comprised of publicly traded companies and/or private investor and private equity owners.¹⁵ About 70% of the nation's 15,000+ nursing homes are under for-profit ownership.¹⁶

According to Maureen Tkacik's report, "The Corporatization of Nursing Homes," it is a common misconception that the rise of private equity and investment tarnished the nursing home industry with its exploitative and profiteering tactics, rather these organizations just adopted, and brought into the modern era, operating models dating back to the industry's emergence.¹⁷ Among the things she points to are:

- 1950s - A Social Security Act amendment permits nursing homes to collect benefit checks and stipends from the Veterans Administration directly, on behalf of their residents.¹⁸
- 1960s - A "predator class" of nursing home owners, deemed "the Syndicate," controlled the industry with its network of straw buyers, front groups, and friends in high places (including regulatory agencies and law enforcement).¹⁹
- 1980s - The "Syndicate's" protégés adopted their operating models and brought them into the modern era.²⁰
- 1990s - Arnold Whitman,²¹ an associate of one of the Syndicate's protégés, reportedly built upon this model and contributed to its predatory nature by devising a strategy of using massive debt to buy up distressed, unwanted homes for rock bottom valuations and outsourcing operations to contractors, with no regard for care standards.

Industry Business Model

According to the study, "Hidden Owners, Hidden Profits, and Poor Nursing Home Care: A Case Study," many nursing homes today operate under an extractive profiteering model and convoluted

ownership/corporate structure. Specifically, nursing home companies are typically organized under structures wherein, "they have created complex, multiple layers of corporate ownership; created their own management companies; and placed their property into separate limited liability companies or real estate investment trusts [REITs]."⁹ It is not uncommon for the owners to have ownership stakes in each of these entities.¹⁰

Nursing homes are increasingly adopting an OpCo/PropCo structure in which separate entities run the day-to-day operations (OpCo), and serve as the owner of the home's real property (PropCo).¹¹

Such corporate structures are potentially lucrative for the nursing home owners because it allows them to take money out of the OpCo through related-entity arrangements/transactions, in which the OpCo pays rent to the PropCo, and fees to related management companies and/or vendor companies for goods and

OpCo/PropCo Benefits

- Investor-owners may outsource a SNF's day-to-day operations.²⁵ This may also include outsourcing goods and services to companies in which they have a financial interest.²⁶
- Related or non-related-business entities can charge SNFs rent, which may be inflated.²⁷
- Investor-owners and its PropCo assets can be insulated from claims against the OpCo arising from SNF operations.²⁸

OpCo/PropCo Ownership Structure

A fixture of the early and current nursing home industry is the OpCo/PropCo model. In this model, an individual nursing home's operating company (OpCo) is separated from the real estate property company (PropCo) in a series of transactions (either through leases or related party transactions) that may leave the OpCo paying inflated rent, interest, management and other service agreement fees.²³ In turn, this can make it look like the OpCo is losing money, while the investor owners may be taking money out of the OpCo through the transactions.²⁴

service.¹² Since state and federal regulators do not scrutinize nursing home payments or other expenditures, nursing homes can pay exorbitant rent and other payments to related-business entities.¹³

These ownership structures may also shield the owners from court judgments and other debts/liabilities. For example, when a nursing home is sued or subject to regulatory enforcement actions, aggrieved parties or regulators may have difficulty in “piercing the corporate veil” in order to successfully litigate a case, or to collect judgments, verdicts, or settlements.¹⁴

Consulate Ownership

Consulate Health Care is one example of the complexity of ownership in the nursing home industry. An analysis of nursing home ownership data from the Centers for Medicare and Medicaid Services (CMS) as of June 2020²⁹, showed that nearly all of Consulate’s 125+ nursing home facilities (with the exception of a single facility)³⁰ had listed between 18 to 25 different individuals or limited liability company (LLC) entities involved in the ownership or operational control of an individual facility. The CMS dataset listed individuals or LLCs that either had operational/managerial control over a facility, or had 5% or greater direct or indirect ownership interest in a facility. Yet none of the listed entities was readily identifiable as affiliated with “Consulate Health Care,”³¹ nor did the data show the hierarchy of, or relationship among, the owners, since no information was listed in the CMS dataset on ownership percentage stakes for a majority of the company’s facilities.

What is clear is that Consulate is backed by the private equity firm, Formation Capital LLC³², which is owned by Arnold Whitman. In addition to Whitman^{33 34}, others who indirectly held material ownership stakes in Consulate as of December 2020 include Robert “Bob” Hartman, Steve Fishman, David Reis and Isaac Neuberger.

As for Consulate’s real estate, at least three different real estate investment trusts (REITs) owned different

chunks of the Consulate portfolio as of September 2021. These are:

- Omega Healthcare, with 86 properties³⁵ (~40 in FL),³⁶
- Aurora Health Network,^{i 37} with 10 properties³⁸, and
- Welltower, with 9 properties (all in VA).³⁹

At least 3 different REITs or investor firms owned different chunks of the Consulate real estate portfolio, as of Sept 2021. They are:

- Omega Healthcare (86 properties)⁴⁰
- Aurora Health Network (10 properties)⁴¹
- Welltower (9 properties)⁴²

These 10 properties were owned by Digital Bridge/ Colony Capital but in Sept 2021, it was announced that Aurora Health Network would acquire a portfolio of assets from Digital Bridge/Colony Capital which included these Consulate SNF properties.

https://skillednursingnews.com/2021/09/highgate-capital-investments-aurora-health-network-to-buy-digitalbridges-health-care-portfoliofor-3-2b/?euid=&utm_source=snn-newsletter&utm_medium=&utm_campaign

DODGING LIABILITY

One reason the complex web of corporate nursing home ownership was devised was to potentially create barriers for residents, families or regulators to seek redress and hold owners accountable for breakdowns in facility care and safety.⁴³ The *New York Times* reported that “In the past, residents’ families

*often responded to such declines in care by suing, and regulators levied heavy fines against nursing home chains where understaffing led to lapses in care. But private investment companies have made it very difficult for plaintiffs to succeed in court and for regulators to levy chain-wide fines by creating complex corporate structures that obscure who controls their nursing homes.”*⁴⁴ Specifically, these structures potentially:

- **Limit exposure** for tort damages **to a single entity** because the burden to include related companies in a lawsuit is high, as plaintiff attorneys must convince judges that “all the companies were essentially acting as one entity and that the nursing home could not make its own decisions.” Even more difficult is holding owners personally responsible for the actions of a corporation — known as “piercing the corporate veil.”⁴⁵
- **Discourage corporate structure discovery** because it is expensive and time-consuming;⁴⁶
- **Allow financial statements in the punitive damages phase to show less income and assets.**⁴⁷ Arnold Whitman, the founder of the private

Consulate’s Attempts at Limiting Tort Liability Damages

In addition to the use of ownership structures, nursing home companies may also use insurance policies to dodge damages for tort liability. At Consulate Health Care, for example, its parent company Formation Capital reportedly bought a liability insurance product for its homes called an “eroding policy,” which allows the company to deduct its own legal fees from its ceiling. “This enabled the homes to tell plaintiffs a few months into litigation that the money was all gone.” According to Tom Edwards, a trial lawyer who has won numerous out-of-court settlements from Consulate, “A lot of lawyers won’t even take a case when they learn there’s an eroding policy on the other side.”⁴⁹

equity firm Formation Capital, discussed this strategy and said, **“Lawyers were suing nursing homes because they knew the companies were worth billions of dollars, so we made the companies smaller and poorer, and the lawsuits have diminished...”**⁴⁸

Attempts at Dodging Money Owed via Bankruptcy

The nursing home industry has seen its share of bankruptcies.^{50,51} According to Charlene Harrington, an emeritus professor of nursing and sociology at UCSF, when some skilled nursing facilities (SNFs) go bankrupt, those financial problems are often rooted in complex debt arrangements rather than government underfunding. Harrington said chains typically divide their homes into separate management companies and real estate holding companies and then pay rent to subsidiaries or related entities. *“Then they get into trouble because they have too much debt financing and they are paying too high of rent,”* says Harrington.⁵²

While some nursing homes seek bankruptcy protection due to financial troubles from operations and debt structures,⁵³ others may use it as a tool to dodge legal judgments. Specifically, liabilities from potentially costly tort litigation arising from alleged substandard patient care.⁵⁴ This bankruptcy protection strategy has been “derided by plaintiffs’ lawyers as a legal maneuver to avoid what could be catastrophic legal verdicts.”⁵⁵

In other cases, bankruptcy has been used as a tool by SNF-industry companies in attempts to dodge legal liabilities from False Claims Act (FCA) qui tam settlements or judgments. An example is discussed in the next section below.

Consulate Bankruptcy

CMC II, LLC (CMC II), the nursing home management company owned by Consulate Health Care and which provides management services to

nursing homes operated by Consulate Health Care, along with related companies including two nursing home operators, filed a petition under Chapter 11 of the Bankruptcy Code on March, 1, 2021 (“Petition”).⁵⁶ The Petition was filed in order to halt enforcement of \$257 million in judgments against CMC II and related Consulate entities following a jury trial for fraudulent claims in *Angela Ruckh v. Salus Rehabilitation, LLC, et al.*^{57,58}

On February 11, 2021, less than three weeks before the Petition was filed, executives of Consulate Health Care filed business registration paperwork in Florida for CPSTN Operations, LLC (CPSTN)⁵⁹, formed in Delaware on January 20, 2021.⁶⁰ CPSTN then submitted a “stalking horse bid” in the bankruptcy case.⁶¹ On July 27, 2021, CMC II informed the court that no other bids were submitted,⁶² making CPSTN the likely purchaser of the CMC II assets, subject to court approval.

On Sept. 1, 2021, the Debtors filed a motion to approve a settlement that, as summarized in the motion, would allow CPSTN to acquire substantially all the assets of Debtors, including the SNF facilities and management company.⁶³ CPSTN could pay as little as \$4.5 million to the U.S. Government and the False Claims Act Relator.⁶⁴

Toby S. Edelman, senior policy attorney at the nonprofit Center for Medicare Advocacy, said to the Washington Post about the Consulate case: *“that one of the largest nursing home chains in the country is allowed to evade a \$256 million court-ordered judgment against it by filing for bankruptcy and selling a handful of its facilities.”* The “pennies on the dollar” settlement undermines the government’s ability to make sure nursing homes comply with the laws regarding financial dealings and resident care.⁶⁵

Dodging Regulatory Enforcement

The corporate structures used by nursing homes make it difficult for regulatory agencies and the public to determine how entities are related and to

track systemic problems in facilities with common ownership or management.⁶⁶ Presentation slides from a long-term care industry conference,ⁱⁱ hosted by the law firm Baker Donelson in Nashville in November 2012, stated that such complex ownership structures “limit the scope of regulatory sanctions or penalties.”⁶⁷

For example, one way owners could try to dodge regulatory enforcement is through the use of related management companies, which contract with individual nursing home facilities. Management companies can maintain almost complete control and operational authority over individual facility licensees, but they have no assets to assume responsibility for liabilities of individual facilities. These management companies also do not have to sign provider agreements with the Centers for Medicare & Medicaid Services (CMS), while the individual nursing homes do. As a result, the management company can be shielded from any legal liability related to violations of the Conditions of Program Participation, and other CMS regulatory violations.⁶⁸

ⁱⁱ According to Baker Donelson law firm website, “the symposium is designed to provide long term care operators from across the country with the latest on legal and compliance issues facing their industry.” Retrieved from <https://www.bakerdonelson.com/baker-donelson-hosts-long-term-care-symposium>

OBSCURING PROFITS VIA RELATED-PARTY & OTHER TRANSACTIONS

Nursing home owners are reportedly outsourcing a wide array of goods and services to companies they control or in which they have some financial stake. For example, a 2017 analysis of nursing home financial records by *Kaiser Health News* found that nearly three-quarters of nursing homes in the U.S. —more than 11,000—engage in related-entity transactions. Nursing home owners claim that this is an efficient way of running their businesses and can help minimize taxes.⁶⁹

However, the study “*Hidden Owners, Hidden Profits, and Poor Nursing Home Care: A Case Study*,” has shown that administrative expenditures may be higher when nursing homes have many administrative layers, owners, and related entities.⁷⁰ In fact, these transactions/arrangements often allow owners to establish highly favorable contracts through which their nursing homes may pay above-market value.⁷¹ According to *Kaiser Health News*, “Owners then siphon off higher profits, which are not recorded on the nursing home’s accounts.”⁷²

The most common types of related-party transactions—leases, management agreements and vendor agreements—are discussed in detail below.

Leases

Lease agreements between nursing home owners and related entities,⁷³ or real estate investment trusts (REITs), for real estate and physical property are common in the nursing home industry.⁷⁴ For-profit nursing homes commonly rent their properties under long-term, master leases from entities held by REITs or other investors.⁷⁵ This kind of deal, known as a sale-leaseback,⁷⁶ is common because it generates great financial benefits for nursing home owners and its investors because they can reportedly charge “exorbitant” rents.⁷⁷

One such example is HCR ManorCare,ⁱⁱⁱ which was reportedly the second largest nursing home chain in the nation when it filed for Chapter 11 bankruptcy in March 2018 with \$7.1 billion of debt.⁷⁸ *The Washington Post* reported that ManorCare’s long-term financial obligations rose from less than \$1 billion to over \$5 billion while under the ownership of the Carlyle Group (a private equity firm), including after Carlyle sold ManorCare’s real estate to the healthcare REIT, HealthPeak (formerly HCP⁷⁹) in a sale-leaseback deal. Carlyle got \$6.1 billion from selling the real estate to HealthPeak, roughly the same amount Carlyle paid to acquire ManorCare just years prior. In terms of rent, HCR ManorCare was obligated to pay \$472 million annually, with rent escalators at 3.5 percent per year, to occupy the nursing homes it had once owned. HCR ManorCare also had to foot the bill for property taxes, insurance and upkeep at the homes.⁸⁰

According to a review of regulatory filings by the *New York Times*, six major health care REITs —Sabra, Welltower, National Health Investors, Omega Healthcare Investors, LTC, and CareTrust— have a business interest in more than 1,500 nursing homes.⁸¹ These leases with REITs and private investors are typically fully leveraged leases, rather than financed with traditional mortgage debt financing.⁸² Long-term lease agreements also contain annual rent escalators, typically between 2-3% or higher.⁸³ Before the pandemic, industry analysts were already warning that skilled nursing rents were too inflated and must decline by about 10% across the board in order to ensure the facilities’ long-term stability.⁸⁴

In Consulate’s case, the company has lease arrangements with at least three different REITs. They include:

Omega Healthcare, with 86 properties (as of June 2021);⁸⁵ Aurora Health Network^{iv}, with 10 properties (as of September 2021)^{86,87} and Welltower, with 9 properties (as of December 2021).⁸⁸ However, it is unclear how much money was generated to Formation Capital and Consulate’s other investor owners following the property sales to these REITs.

Notably, an analysis of cost reports for Consulate facilities in Florida shows that Consulate facilities reclassified their lease expenses to related party transactions in 2018 but reported in 2017 that these expenses were not related party transactions. In 2019, Consulate’s CEO Chris Bryson noted in an interview that the company had been undergoing a process of financial restructuring, which included renegotiations of leases with their landlord partners, as well as renegotiations with banks and vendors.⁸⁹

ⁱⁱⁱ The HCR ManorCare facilities are now owned by a joint venture between the non-profit health system, ProMedica Health System and the REIT, Welltower.
<https://skillednursingnews.com/2020/10/promedica-to-phase-out-hcr-manorcare-name-rebrand-nursinghome-giant-as-promedica-senior-care/>

^{iv} These 10 properties were owned by DigitalBridge FKA Colony Capital, but Digital sold its

healthcare assets to Aurora Health Network in 2021.
[https://skillednursingnews.com/2021/09/highgate-capital-investments-aurora-health-network-to-buy-](https://skillednursingnews.com/2021/09/highgate-capital-investments-aurora-health-network-to-buy-digitalbridges-health-care-portfoliofor-3-2b/?euid=&utm_source=snn-newsletter&utm_medium=&utm_campaign=)

[digitalbridges-health-care-portfoliofor-3-2b/?euid=&utm_source=snn-newsletter&utm_medium=&utm_campaign=](https://skillednursingnews.com/2021/09/highgate-capital-investments-aurora-health-network-to-buy-digitalbridges-health-care-portfoliofor-3-2b/?euid=&utm_source=snn-newsletter&utm_medium=&utm_campaign=)

Table 1: Total Lease Expense—Land/Building

Consulate Reported Lease Expenses	2017 71 Facilities	2018 70 Facilities
Sum of LEASE EXPENSE (Related Party) ⁹⁰	\$-	\$91,426,254
Sum of Subtotal Rent/Lease of Property (Non-Related) ⁹¹	\$95,727,040	\$-

The following shows a sampling of Consulate's lease expenses from 2017-2019.^v It appears from county real estate records that Omega Healthcare Investors, Inc., a real estate investment trust (REIT),^{vi} indirectly owns or exerts control over the underlying property⁹² of 15 out of the 20 Consulate facilities in Florida with workers represented by 1199SEIU. Each individual property is owned by a Limited Liability Company (LLC), and property records indicate ownership held by the LLC and “Care of” Omega Healthcare investors, or the property is held by an “OHI” LLC (likely an acronym for Omega Healthcare Investors), or the property is held by an LLC and the listed address is OHI’s main office and suite. On their website, Omega Healthcare Investors, Inc confirms inclusion of these nursing home properties in its real estate portfolio.⁹³

Table 2: Total Lease Expense, by facility⁹⁴

Sum of LEASE EXPENSE (1199SEIU member facilities)	2017 (Non-Related)	2018 (Related Party)	2019 (Related Party)	Likely REIT/ Property owner
Bay Breeze HRC	\$964,570	\$976,395	\$770,804	Omega Healthcare ⁹⁵
Consulate at West Altamonte	\$1,663,913	\$1,655,318	\$1,381,275	Fundamental Partners III LP ⁹⁶
Consulate of Kissimmee	\$1,646,613	\$1,638,106	\$1,206,394	Consulate Healthcare ⁹⁷
Consulate of North Fort Myers	\$1,587,946	\$1,579,766	\$1,163,016	Omega Healthcare ⁹⁸
Consulate of West Palm Beach	\$1,766,459	\$1,757,309	\$1,523,345	Fundamental Partners III LP ⁹⁹
Coral Trace HC	\$1,333,530	\$1,308,955	\$1,033,345	Omega Healthcare ¹⁰⁰
Franco NRC	\$1,646,613	\$1,576,261	\$1,638,106	Fundamental Partners ¹⁰¹
Grand Oaks HRC	\$2,263,371	\$2,239,252	\$1,767,770	Omega Healthcare ¹⁰²
Heritage Park RHC	\$533,475	\$423,982	\$430,337	Formation Capital Asset Management III LLC ¹⁰³
Hillcrest NRC	\$2,576,956	\$2,529,844	\$1,997,172	Omega Healthcare ¹⁰⁴
Lake Mary HRC	\$2,228,164	\$2,193,553	\$1,731,681	Omega Healthcare ¹⁰⁵
Oaktree HC	\$410,497	\$404,237	\$319,125	Omega Healthcare ¹⁰⁶

Plantation Bay RC	\$1,953,532	\$1,940,104	\$1,531,619	Omega Healthcare ¹⁰⁷
Renaissance HR	\$1,760,280	\$1,742,240	\$1,375,406	Omega Healthcare ¹⁰⁸
Rio Pinar	\$343,617	\$337,858	\$538,355	Omega Healthcare ¹⁰⁹
Rosewood HRC	\$1,079,145	\$1,092,367	\$862,385	Omega Healthcare ¹¹⁰
Spring Hill HRC	\$3,340,360	\$3,299,679	\$2,604,924	Omega Healthcare ¹¹¹
The Palms RHC	\$1,797,135	\$1,791,748	\$1,414,488	Omega Healthcare ¹¹²
The Parks HRC	\$256,473	\$261,723	\$308,959	Omega Healthcare ¹¹³
Vista Manor	\$1,536,441	\$1,505,423	\$1,188,462	Omega Healthcare ¹¹⁴

v For all years, 'Lease Expenses – Land/Building' are reported as non-related party transactions in the cost report cover page, Part IV. In Schedule C, these lease expenses are all reclassified as related party expenses in Schedule C, and this reclassification to related party is reflected in Schedule K. The only exception is in 2017, also the only year in which LaVie Care Centers, LLC was reported as owner.

vi Omega Healthcare Investors is a triple-net, equity REIT (NYSE: OHI) that supports the goals of Skilled Nursing Facility (SNF) and Assisted Living Facility (ALF) operators with financing and capital.”
<https://www.omega-healthcare.com/omegahealthcare.com/>

Management Agreements

Another common related-entity arrangement that nursing homes have is essentially paying themselves to manage their own facilities through management contracts and fees. According to the study, *"Hidden Owners, Hidden Profits, and Poor Nursing HomeCare: A Case Study,"*¹¹⁵ these management agreements conceal profits flowing to nursing home owners. The study found that by building profits into the administrative expense category, profits were incurred (or transferred to a related entity) without disclosure on an individual nursing home's cost reports, and artificially lowered the nursing home's net income.¹¹⁶

Consulate's Management Agreements

Prior to Consulate's recent bankruptcy filing, CMC II was the manager of each of Consulate's nursing facilities (it may have a new management entity following bankruptcy). According to *The Naples*

News, "Consulate's nursing homes are designed to appear cash-strapped. While individual nursing home

LLCs are essentially empty shells, they pay rent, management and rehabilitation service fees to Consulate or Formation Capital-affiliated companies.”¹¹⁷

An analysis of available cost reports^{vii} of Consulate's Florida facilities found that home office* and management fees^{viii} paid by Consulate increased between 2017 and 2018, from \$177M to \$213M.¹¹⁸

- The average home office fees paid by Consulate's Florida facilities increased from \$4,000 per-bed in 2017 to \$4,377 per-bed in 2018.
- The average management fees payable per bed for Consulate's Florida facilities increased from \$16,437 per-bed in 2017 to \$21,069 per-bed in 2018.
- Across Consulate's Florida facilities, total home office and management fees ranged from \$16,555 to \$26,946 per-bed in 2017 and \$15,273 to \$33,052 per-bed in 2018.

- The top three facilities with the highest fees are highlighted below.

**Note: Management companies related to the nursing home operators are considered “home office” and file a home office cost report (see tables on CMC II, LLC below). It appears that the Management Fees described in relevant tables above are paid to the home office. “A management company related to the provider as defined in Chapter 10, CMS Pub. 15-1 is considered to be a home office for Florida cost reporting purposes and must submit a home office cost report.”¹¹⁹*

vii Based on available data, 2019 data was available for certain facilities represented by 1199SEIU, but not all Consulate facilities. Management Fees Payable appears in Schedule C, General ledger # 335000, Adjusted to {Sch D} Medicaid Adjusting Entries Dr(Cr), Appears as a Dr in Total Liabilities and Equity.

viii Management Fees Payable appear as a debit adjustment to the Medicaid Adjusting Entries in

Schedule C. They are not reported as related party transactions even though no management company is identified, and the only management company listed is the home office. Notably, management companies related to the nursing home operators are considered “home office” and file a home office cost report. It appears that the Management Fees described in relevant tables above are paid to the home office. “A management company related to the provider as defined in Chapter 10, CMS Pub. 15-1 is considered to be a home office for Florida cost reporting purposes and must submit a home office cost report.” Source: Florida Agency for Health Care Administration, SEXTANT – Electronic Cost Reporting for Nursing Homes, Instructions for Cost Reporting, August 2014, at page 23, available online at: https://ahca.myflorida.com/Medicaid/cost_reim/ecr.shtml

Table 3: Home Office & Management Fees Payable 2017¹²³

2017 (71 Consulate Facilities)	Home Office Fees per bed ¹²⁰	Management Fees per bed ¹²¹	Home Office + Management Fees Payable Per Bed ¹²²
Average	\$4,000	\$16,437	\$20,437
Rank 1	Brandon Health and Rehab (\$5,297)	Brandon Health and Rehab (\$21,649)	Brandon Health and Rehab (\$26,946)
Rank 2	Lake Mary (\$4,721)	Lake Mary (\$21,062)	Lake Mary (\$25,784)
Rank 3	Dolphin’s View (\$4,654)	Spring Hill (\$20,777)	Spring Hill (\$25,236)

Table 4: Home Office & Management Fees Payable 2018¹²⁴

2018 (70 Consulate Facilities)	Home Office Fees per bed ¹²⁵	Management Fees per bed ¹²⁶	Home Office + Management Fees Payable Per Bed ¹²⁷
Average	\$4,377	\$21,069	\$25,444
Rank 1	Brandon Health and Rehab Center (\$5,638)	Brandon Health and Rehab Center (\$27,413)	Brandon Health and Rehab Center (\$33,052)
Rank 2	Health and Rehab Center at Dolphin’s View (\$5,287)	Lake Mary HRC (\$27,200)	Lake Mary HRC (\$32,431)
Rank 3	Lake Mary HRC (\$5,231)	Spring Hill HRC (\$26,715)	Spring Hill HRC (\$31,636)

Other Related-Party Transactions

It may be common for nursing home companies to purchase ancillary services and support services from related companies.¹²⁸ Again Consulate serves as a prime example.

Consulate is backed by the private equity firm Formation Capital,¹²⁹ and has business relationships with Genesis Healthcare, a company in which Formation Capital had an ownership interest.¹³⁰

Genesis Health Care Inc. is a holding company with subsidiaries that, on a combined basis, comprise one of the nation's largest post-acute care providers with nearly 250 skilled nursing centers and senior living communities in 23 states. Genesis subsidiaries also supply rehabilitation therapy to operators in 46 states and Washington, D.C.¹³¹

Genesis was reportedly under the ownership of Formation and JER Partners from 2007 to 2015,¹³² and Formation Capital's founder Arnold Whitman sits on Genesis' board.¹³³ Robert Hartman, who also sits on the boards of Consulate Healthcare and Formation Development Group, also is on the Genesis board.¹³⁴

Genesis Health Care and its subsidiaries have provided therapy and respiratory services across Consulate's portfolio of facilities. As of December 2020, Consulate's contract with Genesis Rehabilitation Services was worth \$99.6 million,¹³⁵ while its contract with Genesis Respiratory Health Services was worth \$2.4 million in 2020.¹³⁶

Profits, Losses, and Related Party Transactions

Given the discussion above, it is not surprising that Consulate facilities in Florida reported losses in 2017 and 2018, as illustrated by the table below. These losses are, however, dwarfed by the lease expenses and home office and management fees described above.

BUSINESS MODEL'S IMPACT ON STAFFING

The related-entity arrangements mentioned above can often lead to financial pressures for the nursing home operators.¹³⁸ The structure of some of these relationships puts constant pressure on the operators to increase revenue to meet its financial obligations, which is difficult because 79% of revenue is government-paid.¹³⁹ These financial obligations typically include rent with annual escalators of 2-3%¹⁴⁰ and other lease terms, management contract fees, vendor purchases (often from related entities), taxes, maintenance costs, and debt service interest payments (often to owners). Since these costs are often fixed or escalating, the only other area where operators can exert control over costs appear to be through cuts to staffing or supplies,¹⁴¹ which can have serious implications for resident care and staff well-being.

A 2017 Kaiser Health News analysis of federal inspection and quality records revealed that nursing homes that outsource to related organizations tended to have significant shortcomings: they had fewer nurses and aides per patient, they had higher rates of patient injuries and unsafe practices, and they were

Table 5: Total Profit/Loss, Total Lease Expenses and Home Office + Management Fees

All FL Consulate Facilities	Sum of Unadjusted Totals Profit/ Loss (inverted) ¹³⁷	Lease Expenses	Home Office + Management Fees
2017	-\$59M	\$96M	\$177M
2018	-\$41M	\$91M	\$213M
Total	-\$100M	\$187M	\$389M

the subject of complaints almost twice as often as independent homes.¹⁴² Charlene Harrington, a professor emeritus of the School of Nursing at the University of California-San Francisco, has said that “Almost every single one of these chains is doing the same thing. They’re just pulling money away from staffing.”¹⁴³ Harrington also had this to say about nursing homes, “Believe me, these for-profit owners are not going to lose money,” Harrington said. “That’s the whole point of cutting all the staff. ... They’re in the business of making money.”¹⁴⁴

Consulate's Staffing Patterns

According to CMS Compare data, staffing hours per resident day (HPRD) at Consulate facilities were lower than the Florida average for all job categories analyzed in July 2021. These staffing levels were also below the 4.1 HPRD minimum for quality care recommended by nursing home experts in a landmark 2001 study for CMS.¹⁴⁵

Table 6: Consulate Average Staffing vs. Florida Average

July 2021 CMS Nursing Home Provider Data ¹⁴⁶	Reported Nurse Aide Staffing HPRD	Reported LPN Staffing HPRD	Reported RN Staffing HPRD	Reported Licensed Staffing HPRD	Reported Total Nurse Staffing HPRD
Total Consulate Average (76)	2.51	0.82	0.60	1.43	3.94
Florida Average	2.68	0.87	0.82	1.69	4.37

Note: Reporting Period for July 2021 Nursing Home Staffing Measures 1/1/2021-3/31/2021¹⁸⁴

Digging deeper into the Payroll Based Journal source data that CMS uses to calculate these measures shows additional details that may be cause for concern. For the first quarter of 2021, 68 of Consulate’s Florida facilities reported average total direct care staffing (non-administrative RNs, LPNs, CNAs, and Nurse Aide Trainees) below the state average.¹⁸⁵ For CNAs - the backbone of daily care and assistance with resident needs - 59 of Consulate’s Florida facilities reported average staffing below the state average, with 45 facilities reporting average staffing below the state-mandated minimum of 2.5 CNA hours per-resident day.¹⁸⁶

Use of Staffing Agencies/Contracted Staff

Nursing homes have increasingly used contracted staff or staffing agencies in order to meet minimum staffing level requirements. At Consulate, certain of its facilities, experienced serious staffing shortages and relied heavily on contracted staff. Examples include:

- According to a Patient Care Ombudsman (PCO)'s Report submitted to the Bankruptcy Court for the District of Delaware on April 13, 2021, Consulate's Governor's Creek facility's "retention of core staff has been problematic since the COVID-19 Public Health Emergency [...] In response, Governor's grew increasingly dependent on agency or "traveler" staff since fall 2020. At the time of PCO's visit, nearly 100% of the evening and night shift staff (nursing and nursing assistant roles) was provided by contracted, agency staff."¹⁴⁷
- Consulate's Marshall facility, also experienced the same issues. According to a Patient Care Ombudsman (PCO)'s Report from April 13, 2021, "Like the Governor's location, Marshall experienced staff departures related to the COVID-19 [...]. The location reported utilizing agency or traveler staff to meet state mandated staffing minimums for licensed nursing staff... Approximately half of the nursing shifts were covered by agency staff during PCO's site visit."¹⁴⁸ A follow up PCO report from June 14, 2021 noted that the facility had been on multiple admissions moratoriums due to continued failures to meet minimum staffing requirements.¹⁴⁹

The use of contracted/agency staff and understaffing issues are not just limited to the Governor's Creek and Marshall facilities. Further cost report analysis shows that Consulate's average spending on employed staff wages, salaries, and benefits (SWB) as a percentage of total unadjusted revenue in its Florida facilities was 26.7% in 2017¹⁵⁰ and 26.5% in 2018.¹⁵¹

Similar trends can be found at Consulate's Florida facilities represented by 1199SEIU. Cost report analyses of these facilities found that:

- Salaries, wages, and benefits remained flat at 26% of revenue between 2017 and 2018, and increased slightly to 27% in 2019.¹⁵² However, its spending on agency/contracted staff wages and salaries increased from 1% to 3% of revenue during the same period.¹⁵³
- Several facilities reported increases in spending on agency/contracted staff in 2019. The top three

facilities in 2019 reported 3% to 6% increases compared to 2018: Bay Breeze at 15%, Consulate of North Fort Myers at 11% and Consulate at West Altamonte at 6%.¹⁵⁴

- During the period of 2018-2019, total agency cost as a percentage of direct care costs also more than doubled, on average, at Consulate facilities from 3% to 8%, based on available data.¹⁵⁵

Consulate's use of agency or contracted staff raises concerns because studies have shown strong associations between RN and CNA agency use and lower quality of care. According to a study by Nicholas G. Castle and John Engberg, "The Influence of Staffing Characteristics on Quality of Care in Nursing Homes," attempts to increase staffing through agency use can have the unintended consequence of lowering quality of care, particularly when there is high turnover.¹⁵⁶ Agency staff who come and go are unable to provide nursing home residents with the same continuity of care as directly-employed, consistently assigned staff.¹⁵⁷

According to Toby Edelman, a senior policy attorney for the Centers for Medicare Advocacy, "**Most of the bad outcomes [at nursing homes] are the result of insufficient staffing, and insufficiently trained staff.** It's pretty much a universal problem."¹⁵⁸ This issue is reflected in the staffing citations issued by the Centers for Medicare and Medicaid Services (CMS) against nursing homes.¹⁵⁹ Once again, Consulate provides an informative example.

An analysis of CMS nursing home deficiency citation data, which is typically updated on a quarterly basis,^{xi} showed that between September 30, 2016 and April 23, 2021^x the most common citation Consulate's Florida facilities received from nursing home inspectors in the CMS-defined category of "nursing and physician services" was "failing to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift."¹⁶⁰ During this period, 86 of these citations were issued against Florida nursing homes.¹⁶¹ Consulate facilities accounted for 24% (or 21 of 86) of those citations.¹⁶² What's more, Consulate's staffing citations

were not concentrated within just a few facilities; these staffing citations were spread across 20 different Consulate facilities,¹⁶³ suggesting potentially widespread understaffing. This is highly concerning since Consulate is reportedly the largest nursing home provider in Florida,¹⁶⁴ it has the potential to set the standard in the state.

^{ix} Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release. https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf, p3

^x This is based on CMS health deficiency data that was updated by CMS, or had a "processing date" of May 1, 2021. CMS' description of the dataset says that it includes "a list of nursing home health citations in the last three years." <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>. However, the actual dataset itself includes all deficiency citations, and their associated inspection dates, for all U.S. nursing home providers where the initial inspections occurred during the period of Jan. 30, 2015 through April 28, 2021. For Florida-specific nursing home providers, this same dataset only listed deficiency citations where inspections occurred during the period of Sept. 30, 2016 through April 23, 2021. This variability may be because health deficiencies are driven by complaints or new inspections, which vary by provider. <https://www.jdsupra.com/legalnews/cms-brings-changes-to-nursing-home-65270/>

The CMS health deficiency data retrieved from <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>, accessed May 2021

PROFITEERING MODEL AND UNDERSTAFFING'S IMPACT ON QUALITY OF CARE

Since most of the bad outcomes at nursing homes are the result of insufficient staffing and insufficiently trained staff,¹⁶⁵ it is informative to see how nursing facilities have performed on quality metrics. This includes examining:

- Performance on the Centers for Medicare and Medicaid's (CMS) "star rating" system which assesses nursing homes on specific quality metric criteria;¹⁶⁶
- Whether nursing facilities have had serious quality issues that warrant placement on special federal watch lists;¹⁶⁷
- Whether nursing facilities have had a high number of deficiency citations issued by CMS, nursing home providers must be in compliance with CMS-specified health and safety requirements in order to participate in, and thus, receive funding from, the Medicare and Medicaid programs.¹⁶⁸
- Whether nursing facilities have received penalties or other "remedies" for said CMS deficiencies. Providers who wish to be Medicare and Medicaid-certified providers are subject to [inspection] surveys to assess compliance with the CMS/Medicare Conditions of Participation (CoPs) and other regulations.¹⁶⁹ Inspection surveys may give rise to enforcement actions called remedies.¹⁷⁰

Once again, Consulate provides a notable example, as the company has had concerning performance on the quality metrics mentioned, which will be discussed in further detail below:

CMS Star Quality Ratings

CMS created a quality rating system for nursing homes. Nursing homes with five stars are considered to have above average quality, while those with one star are considered to have substandard quality.¹⁷¹

Overall quality ratings are based on nursing home performance on three domains, each of which has its own rating, including:¹⁷²

- Health inspections, which are based on the number, scope and severity of deficiencies identified during the three most recent annual inspection surveys, as well as substantiated findings from the most recent 36 months of complaint investigations and focused infection control surveys.¹⁷³
- Staffing level data, specifically payroll based journaling data submitted quarterly to CMS pertaining to 1) registered nurse (RN) hours per resident per day; and 2) total nurse (the sum of RN, licensed practical nurse (LPN), and nurse aide) hours per resident per day.¹⁷⁴
- Quality measures (QM), or ratings that have information on 15 different physical and clinical measures for nursing home residents. The QMs offer information about how well nursing homes are caring for their residents' physical and clinical needs.¹⁷⁵ These are typically updated quarterly.¹⁷⁶

Nursing home providers could see changes in their overall star rating for any number of reasons pertaining to any changes in the domains described above, where a change in any one of the domains can affect the overall rating. Nursing home providers can expect to see periodic changes in their ratings, as these ratings are typically updated on a quarterly basis.^{xi}

Based upon star quality ratings data as updated by CMS on May 1, 2021,^{xii} more than 65% of Consulate's facilities in Florida received overall star ratings of 1-star (18 out of 75 Consulate facilities), or 2-stars (31 out of 75 Consulate facilities) from CMS.¹⁷⁷ In fact, Consulate facilities accounted for 30% or 18 of the 60 nursing homes in Florida that received an overall 1-star CMS rating.¹⁷⁸ Consulate also accounted for 25% or 31 of the 124 nursing homes in Florida that received a 2- star overall CMS rating during this period.¹⁷⁹

^{xii}Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release.

https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf, p3;

<https://www.jdsupra.com/legalnews/cms-brings-changes-to-nursing-home-65270/>

^{xiii}Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release.

https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf, p3

This is based on CMS Nursing Home Provider Information that was updated by CMS, or had a "processing date" of May 1, 2021.—Retrieved from <https://data.cms.gov/provider-data/dataset/4pq5-n9py>, accessed May 2021

In addition to the Overall 5-star rating, CMS also assigns nursing homes a separate rating for health inspections. The health inspection rating contains the three most recent health inspections and investigations due to complaints. This information is gathered by trained, objective onsite inspectors who follow specific processes to determine whether nursing homes have met Medicaid and Medicare's minimum quality requirements¹⁸⁰ Based upon star quality ratings data as updated by CMS on May 1, 2021,^{xiii} more than half of Consulate's 75 Florida facilities received 1-star ratings on health inspections. Nearly 79% of Consulate's Florida facilities (or 59 out of 75 Consulate facilities) received either 1 (39 out of 75 facilities) or 2-star (20 out of 75 facilities) ratings on health inspections.¹⁸¹

Consulate's CMS Star Ratings Compared to Peers

What's more, Consulate's average in CMS star ratings were lower than the Florida average across the board on overall, health inspection and quality measure ratings (with the exception of long-stay QM ratings)¹⁸². For example, Consulate's average overall rating for its Florida facilities was 2.4, compared to the Florida state average of 3.5, while its average health inspection rating was 1.9, compared to the state average of 2.8.¹⁸³

Table 7: Consulate Star Ratings

July 2021 CMS Nursing Home Provider Data ¹⁸⁷	Overall Rating	Health Inspection Rating	QM Rating	Long-Stay QM Rating	ShortStay QM Rating	Staffing Rating	RN Staffing Rating
Total Consulate Average (76)	2.4	1.9	3.6	3.9	3.4	3.4	3.15
<i>Florida Average</i>	<i>3.5</i>	<i>2.8</i>	<i>3.9</i>	<i>3.7</i>	<i>3.9</i>	<i>3.9</i>	<i>3.75</i>

Special Focus Facilities (SFF)

The CMS Special Focus Facility (SFF) list is comprised of nursing homes that have a history of serious quality issues or are included in a special program to stimulate improvements in their quality of care. Most nursing homes have an average of 6-7 deficiencies per inspection.¹⁸⁸

However, a minority of nursing homes have: 1) more problems than its peers (or twice the average number of deficiencies); 2) more serious problems than its peers (including harm or injury to residents); and 3) a pattern of serious problems over time (as measured over the three years prior to the nursing home being deemed an SFF facility). The methodology for identifying facilities for the SFF program is based upon results from three years of health inspections. The number of nursing homes on the candidate list is based on five candidates for each SFF slot, with a minimum candidate pool of five nursing homes and a maximum of 30 per state. Since there are a limited number of slots, perpetual violators of basic health and safety requirements are potentially denying opportunities to other operators who are interested in improving their provision of care.¹⁸⁹

The methodology for identifying facilities for the SFF program is based on results from three years of inspections, which are converted into points based on the number of deficiencies cited and the scope and severity of those citations. The facilities with the most points in a state then become candidates for the SFF program.¹⁹⁰

The Florida Consulate facilities on this SFF list (as updated on Dec 8, 2021) include:¹⁹¹

Table 8: Consulate Florida Special Focus Facilities

Facility	Address	City	State	# Months on SFF Candidate list ¹⁹²
Keystone Rehab and Health Center¹⁹³	1120 W. Donegan Ave	Kissimmee	FL	6
Consulate Health Care of Tallahassee¹⁹⁴	1650 Phillips Rd	Tallahassee	FL	22
Heritage Park Rehab¹⁹⁵	2826 Cleveland Ave	Fort Myers	FL	11

^{xiii}Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July, and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release. https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf, p3

This is based on CMS Nursing Home Provider Information that was updated by CMS, or had a "processing date" of May 1, 2021.—Retrieved from <https://data.cms.gov/provider-data/dataset/4pq5-n9py>, accessed May 2021.

CMS Deficiencies

Nursing home providers must be in compliance with CMS-specified health and safety requirements in order to participate in, and thus, receive funding from, the Medicare and Medicaid programs.¹⁹⁶ As such, providers are subject to periodic inspection surveys to assess compliance and any noncompliance is deemed a "deficiency."¹⁹⁷ Thus, examining the types of CMS deficiencies cited in Florida nursing homes provides invaluable insight into the quality of care issues within these facilities.

An analysis of CMS nursing home deficiency citation data, which is typically updated on a quarterly basis,^{xiv} found that Consulate Health Care has consistently been the Florida nursing home chain^{xv} with the highest raw number of deficiencies cited by CMS between September 30, 2016 and April 23, 2021.^{xvi} As the largest provider in Florida,¹⁹⁸ one would expect Consulate to have the highest raw number of deficiencies. However, it is notable that the deficiencies appear to be spread amongst many Consulate facilities.¹⁹⁹ Consulate's Florida peers also appear to follow a similar trend. The top three providers with the highest number of deficiencies in each deficiency category during this period are as follows:²⁰⁰

Table 9: Florida Nursing Home Chain Deficiencies

Category of Deficiency	Operator	# Deficiencies Cited	# Facilities cited
Administration-1.	Consulate	84	44
	Portopiccino Group ^{xvii}	18	12
	Sovereign	15	12
Environmental-2.	Consulate	128	56
	Greystone Health	33	17
	Portopiccino	31	15
Freedom from Abuse, Neglect, and Exploitation-3.	Consulate	73	36
	Greystone	19	11
	Palm Healthcare Management	19	7
Infection Control-4.	Consulate	162	70
	Greystone Health	39	22
	Sovereign	38	26
Nursing and Physician Service	Consulate	61	31
	Portopiccino	17	9
	ProMedica (formerly HCR ManorCare)	15	9
Nutrition and Dietary-5.	Consulate	176	64

	Greystone Health	54	22
	Sovereign Health Care	51	23
Pharmacy Service-6.	Consulate	281	74
	Sovereign	66	22
	Portopiccino	62	18
Quality of Life and Care-7.	Consulate	589	75
	Portopiccino	135	20
	Greystone Health	116	27
Resident Assessment & Care Planning-8.	Consulate	287	74
	Portopiccino	66	18
	Sovereign	61	28
Residents' Rights-9.	Consulate	313	73
	Portopiccino	83	19
	ProMedica (formerly HCR ManorCare)	78	17

^{xiv}Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July, and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release. https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf, p3 ^{xv}The analysis excludes facilities for which its nursing home chain affiliation or parent company is unknown.

^{xvi}This is based on CMS health deficiency data that was updated by CMS, or had a "processing date" of May 1, 2021. CMS' description of the dataset says that it includes "a list of nursing home health citations in the last three years" <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>. However, the actual dataset itself includes all deficiency citations, and their associated inspection dates, for all U.S. nursing home providers where the initial inspections occurred during the period of Jan 30, 2015 through Apr 28, 2021. For Florida-specific nursing home providers, this same dataset only listed deficiency citations where inspections occurred during the period of Sept 30, 2016 through Apr 23, 2021. This variability may be because health deficiencies are driven by complaints or new inspections, which vary by provider. <https://www.jdsupra.com/legalnews/cms-brings-changes-to-nursing-home-65270/>

The CMS health deficiency data retrieved from <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>, accessed May 2021

^{xvii}Portopiccino Group is a private firm that owns and does business as several nursing home brands, including Orchid Cove, Peak Healthcare, Accordius Health and Pelican Health. Some of the deficiencies cited between 2015-2021 may have preceded Portopiccino's ownership of the facilities. - <https://www.barrons.com/articles/as-the-pandemic-struck-a-private-equity-firm-went-on-a-nursing-home-buying-spree-51596723053>; https://www.washingtonpost.com/local/portopiccino-nursing-homes-maryland/2020/12/21/a1ffb2a6-292b-11eb-9b14ad872157ebc9_story.html

1. There were 16 FL facilities that received 26 "administration"-related citations for this period, but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.

2. There were 36 FL facilities that received 64 "environmental"- related citations for this period, but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
3. There were 27 FL facilities that received 55 "abuse"- related citations for this period, but excluded from the analysis because the owner/operator of the facilities is not known, or it was a publicly owned facility, or part of a hospital system.
4. There were 53 FL facilities that received 97 "infection control"-related citations for this period but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
5. There were 43 FL facilities that received 84 "nutrition and dietary"-related citations for this period but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
6. There were 53 FL facilities that received 124 "pharmacy"-related citations for this period but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
7. There were a group of 59 FL facilities that received 224 "quality of life"-related citations this period but was excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
8. There were 54 FL facilities that received 134 "resident assessment" –related citations this period but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.
9. There were 52 FL facilities that received 149 "resident's rights"-related citations this period but excluded from the analysis because the owner/operator of the facilities is not known, it was a publicly owned facility, or part of a hospital system.

CMS Penalties & Fines

Nursing home providers who wish to be Medicare and Medicaid-certified providers are subject to [inspection] surveys to assess compliance with the CMS/Medicare Conditions of Participation (CoPs) and other regulations.²⁰¹ Inspection surveys may give rise to enforcement actions called remedies, which may include monetary penalties.²⁰²

According to CMS penalty data from the past three years,²⁰³ Consulate is also the Florida nursing home operator with the highest dollar amount of monetary penalties issued by CMS for care breakdowns between January 27, 2018 and March 2, 2021.²⁰⁴ Consulate has been the Florida nursing home operator with the highest dollar amount of penalty fines in every year for the period between January 27, 2018 and March 2, 2021.²⁰⁵ This is concerning because it appears that these penalties and fines were spread across a large number of Consulate's facilities.²⁰⁶

Table 10: Consulate Star Ratings

Nursing Home Operator	\$ Penalties 2018-Apr 2021	# Facilities Cited
Consulate	\$2,918,218	53
Sovereign Healthcare	\$1,008,834	15
Portopiccino	\$771,501	13
Greystone health	\$692,156	12
ProMedica	\$563,535	14
Gulf Coast Healthcare	\$510,495	5
Sun Coast Nursing Centers	\$417,469	8
PCPMG of Florida, LLC	\$345,940	1
Life Care Centers	\$322,655	6
Infinite Care	\$304,134	7

Table 11: Florida Nursing Home Chain Fines

Year	Operator/Owner	Fine \$ Amount	# Facilities Receiving Fines
<i>2018^{xviii}</i>	Consulate	\$792,275	19
	Sovereign Healthcare	\$606,460	5
	Greystone Health	\$506,928	3
	ProMedica	\$393,422	6
	Campus Hill Care, Inc.	\$178,554	1
<i>2019</i>	Consulate	\$1,266,080	31
	Portopiccino	\$427,350	7
	Gulf Coast Health Care	\$398,533	3
	PCPMG of Florida, LLC	\$345,940	1
	Sun Coast Nursing Centers	\$343,639	4
<i>2020</i>	Consulate	\$804,964	33
	Fair Havens Intermediate HoldCo, LLC / Ventura Services LLC	\$267,764	1
	Cross Landing Health & Rehab	\$220,464	1
	Key West FL HoldCo	\$197,196	1
	Portopiccino	\$158,955	8
<i>2021 (thru Apr)</i>	Consulate	\$54,899	3
	Portopiccino	\$23,865	3
	Nspire Healthcare ^{xix}	\$21,372	1
	Greystone	\$16,785	2
	PSL Rehab and Healthcare Holdings LLC	\$15,510	1

^{xviii}In 2018, there were four facilities for whom operator/owner could not be identified and those facilities altogether received a total of \$579,134 in fines.

^{xix}Consulate –related entities and executives are listed on the corporate business filings of Nspire Healthcare, including "CMC II Investors," the law office address of Consulate's General Counsel, Daniel Dias, as well as the former CEO and Co-founder of Consulate, Joseph Conte.

Medicare Termination

Healthcare providers must meet basic health and safety requirements in order to participate in, and thus, receive funding from, the Medicare and Medicaid programs. Those providers, who wish to participate in the programs and become Medicare-certified providers, are subject to [inspection] surveys to assess compliance with the CMS/Medicare Conditions of Participation (CoPs) and other regulations.²⁰⁷ Inspection surveys may give rise to enforcement actions called remedies if surveyors find violations of CoPs, or other deficiencies with healthcare rules and standards. Remedies are based upon the scope and severity of the violation.²⁰⁸ Generally, inspectors give **providers** six months to remedy the violations and fall back into substantial compliance with regulations, but continued failures to do so may result in the provider being terminated from the Medicare and Medicaid programs.²⁰⁹

Heritage Park Rehabilitation and Healthcare in Fort Myers, Florida, is a notable example of Consulate's failure to correct breakdowns in care despite numerous chances from regulators. According to correspondence from CMS, the facility was being kicked out of Medicare and would close on August 14, 2021 for "failure to meet basic health and safety requirements."²¹⁰

According to CMS, this drastic measure of terminating a provider agreement is "generally a last resort after all other attempts to remedy the deficiencies at a facility have been exhausted."²¹¹ According to news reports, the facility dealt with numerous issues over the past year, including "safety complaints from staff members and spikes of COVID-19 cases amid the pandemic."²¹² It is notable that the facility was also on the Florida state nursing home watch list for several deficiencies since at least 2019.²¹³

IMPACT ON WORKERS

The nursing home model described above thrives on cost cutting and inadequate staffing, which are two issues that have long plagued the industry.²¹⁴ The workers most impacted are direct care workers such as certified nursing assistants (CNAs), who typically provide most of the hands-on care in nursing homes, including assistance with bathing, dressing and eating.²¹⁵ According to a study by Noelle DennyBrown et al, "COVID-19 Intensifies Nursing Home Workforce Challenges," CNAs comprised 64 percent of employee full-time equivalents in nursing homes in 2016.²¹⁶

The study also had other compelling findings. For example, the study found that in addition to understaffing issues and high resident caseloads, nursing home workers face a host of other challenges including physically and emotionally demanding work, higher rates of work-injury (often without paid leave), limited training, and low wages and benefits.²¹⁷

In fact, the study also concluded that low wages are an underlying cause of staff shortages, both before and during the COVID-19 pandemic. The study highlighted how nursing assistants (including CNAs) earned \$14.77 per hour

and nursing facility nursing assistants earned \$14.25 per hour, according to Bureau of Labor Statistics figures from May 2019.²¹⁸ While wages have increased slightly in the past decade, they have failed to keep up with inflation. As a result, the study discussed how a significant proportion of CNAs access some form of public assistance, with:²¹⁹

- 21% on Medicaid; ²²⁰
- 22% on food and nutrition assistance; and²²¹
- 31% lacking affordable housing. ²

The nursing home model also disproportionately impacts marginalized communities because the CNA workforce is overwhelmingly comprised of women and minorities. According to the study, "COVID-19 Intensifies Nursing Home Workforce Challenges," The composition of the CNA workforce is as follows:²²⁴

- 90% Women
- 54% Minorities · 35% Black
 - 11% Hispanic/Latino
 - 5% AAPI
 - 3% Other Races
- 21% Born outside the US/immigrants
- 31% CNAs have children under the age of 18, and 15% have children under the age of 5.

Exorbitant Exec Comp: Consulate CEO Makes 73x the Average Worker

Meanwhile, as shown in the table below, Consulate's top executives' compensation increased significantly between 2017-2019—**nearly 75%**. **From 2017 to 2019 the top three^{xx} Consulate executives collectively received nearly \$6.6 million in compensation.**

Table 12: Consulate Executive Compensation

Officer	Title	2017 Exec Comp	2018 Exec Comp	2019 Exec Comp	Totals 2017-2019
Christopher Bryson	CEO	\$1,014,758	\$1,171,030	\$1,770,606	\$3,956,394
Todd Mehaffey	COO	\$462,243	\$553,130	\$508,813	\$1,524,186
Steve Van Camp	CFO	\$111,139	\$461,630	\$493,954	\$1,066,723
Greg Hayes	Controller, CFO			\$282,156	\$282,156
Totals²²⁵		\$1,588,140	\$2,185,790	\$2,773,373	\$6,829,459

In contrast, Consulate employees represented by 1199SEIU were making, on average, \$13.92 per hour as of 2020. If this average wage is a fulltime employee,²²⁶ then Consulate's CEO Christopher Bryson is making more than 73 times the average Consulate employee (based upon Bryson's 2019 salary).²²⁷

Table 13: 1199SEIU Consulate Nursing Home Wages

Averages. Consulate Wage Data, 2020 (1199SEIU)	# Workers	Avg. Worker Hours	Avg. Worker Pay Rate
Bay Breeze HRC	27	8.09	\$14.84
Consulate at West Altamonte	65	7.89	\$14.61
Consulate of Kissimmee	38	8.45	\$14.07
Consulate of North Fort Myers	45	8.91	\$13.94
Consulate of West Palm Beach	63	7.95	\$12.99
Coral Trace HC	43	11.03	\$13.86
Franco NRC	75	9.46	\$11.77
Grand Oaks HRC	58	11.71	\$13.90
Heritage Park RHC	58	7.65	\$14.20
Hillcrest NRC	142	8.07	\$12.63
Lake Mary HRC	53	10.02	\$14.33
Oaktree HC	25	9.76	\$11.90
The Palms RHC	62	7.91	\$15.57
Plantation Bay RC	50	8.58	\$14.85
Renaissance HR	73	9.10	\$13.67
Rio Pinar	78	8.79	\$13.66
Rosewood HRC	54	9.38	\$14.91
Spring Hill HRC	76	9.15	\$14.21
The Parks HRC	58	8.46	\$14.90
Vista Manor	45	8.31	\$13.55
Averages	59	8.93	\$13.92

- Average Consulate worker wage: \$13.92
- CEO comp: \$1.77M (2019)
- CEO makes 73x the average worker

High Worker Turnover

Inadequate staffing and low pay has been a perpetual problem in nursing homes; thus, it is unsurprising that turnover rates at nursing homes are quite high.

Nursing home workers, such as Summer Trosko, have said that they are used to colleagues leaving the job

due to burnout from understaffing and low pay, *"They get tired and just can't take it anymore and quit... Many are replaced by people who have just graduated from high school with little training."*²²⁸

According to the study, "High Nursing Staff Turnover In Nursing Homes Offers Important Quality Information" -by Ashvin Gandhi, Huizi Yu, and David C. Grabowski that was published in Health Affairs, a health policy journal- a comprehensive look at the turnover rates in 15,645 nursing homes across the country found high turnover rates likely made it harder for nursing homes to put in place strong

infection controls during the pandemic and contributed to rampant spread of the coronavirus.²²⁹

Specifically, the study looked into the “Association between Nursing Home Staff Turnover and Infection Control Citations,” based on data from 2017 to 2019. The study found that “turnover was positively associated with the probability of an infection control citation. Staff turnover should be considered an important factor related to the spread of infections within nursing homes.”²³⁰

Under a conceptual framework developed by Castle and Engberg (2007), increased staffing turnover can negatively impact quality of care through a number of pathways, including:²³¹

- Disrupting the continuity of care;
- Increasing the presence of inexperienced staff;
- Lowering the standard of care;
- Causing psychological distress for residents,
- Diverting resources from direct caregiving to recruiting, hiring and training new staff, and
- Increasing the workload for remaining staff.

The authors noted there are several strategies that both nursing homes and policymakers could employ that have the potential to reduce turnover:

One is to increase wages and benefits, which may improve retention. Wage pass through programs are one method that have been successful in raising staff wages.²³²

- Another strategy is to implement robust paid sick leave policies at the federal level. As it stands now, such policies exist in some states and local municipalities, but they are not universally available. As a result, many nursing assistants have limited leave or none at all and many staff return to work without fully recovering from illness, which may lead to further infections.²³³
- Third, many positions in the nursing home setting have no career ladder without additional years of

training. Creating a career ladder within an organization and investing in staff may also reduce turnover.²³⁴

- At the organizational level, culture is an important factor influencing staff turnover. Investment in leadership training and models that change facility culture have the potential to improve quality of care.²³⁵

COVID-19

According to Dr. Jamila K. Taylor, director of health care reform at the think tank the Century Foundation, “Nursing homes were already grappling with ensuring quality care, meeting standards in terms of cleanliness and proper hygiene before COVID-19, and COVID-19 just sort of blew all of that up.”²³⁶ In fact, according to a Government Accountability Office (GAO) report, in the five years preceding the pandemic (2013-2017) more than 80% of nursing homes were issued citations for infection control failures, while half had perpetual problems.²³⁷ Specifically, the GAO report found widespread failures in implementing the very infection control practices that are crucial in limiting the spread of COVID-19.²³⁸ These included failures in proper hand hygiene, proper mask use and other personal protective equipment, and isolating ill patients.²³⁹ Given Consulate's place as the largest nursing home operator in Florida, looking at how the company fared in terms of infection control practices and understaffing before and during the Covid-19 pandemic provides valuable insight into the nursing home industry.

Infection Control Issues

CMS Infection Control Deficiencies

An analysis of CMS nursing home deficiency citation data, which is typically updated on a quarterly basis,^{xxi} found that between January 2, 2018 and April 28, 2021,^{xxii} Consulate facilities have received

160 citations from CMS related to infection control deficiencies.²⁴⁰

The most common infection control citation CMS issued against Consulate facilities during this approximate three-year period was related to a failure to provide and implement an infection prevention and control program, with 141 citations.²⁴¹

Time Period	# Infection control citations
2018	52
2019	56
2020	43
2021 (thru Apr)	9
Total	160

Worker Safety/Infection Control OSHA Complaints

Consulate facilities have also been the subject of substantiated OSHA complaints for failing to protect workers in Florida from infection during the pandemic.²⁴² Examples include:²⁴³

- A complaint from 5/8/2020 alleged that Heritage Park Rehabilitation and Healthcare had failed to: 1) Implement adequate procedures to protect employees from contracting COVID-19; 2) Provide adequate PPE such as face shields/goggles, masks, gloves and gowns to CNAs, EVS and Dietary workers who entered rooms with positive or presumptive positive COVID-19 patients; 3) Have procedures in place to inform employees the areas where positive and presumptive positive COVID-19 patients were being treated; 4) Perform testing to identify COVID-19 individuals entering the facility; and 5) Ensure that trash was adequately sealed and disposed.
- A complaint from 07/06/2020 alleged that Shoal Creek Rehabilitation Center failed to provide employees with N95 respirators after they had been soiled, and failed to train employees on procedures to extend the life of the respirators.
- A complaint from 8/4/2020 alleged that Consulate Health Care of Safety Harbor failed to provide employees with PPE when caring for residents who had tested positive for COVID-19. Management also failed to inform employees of positive COVID-19 results of residents.

^{xxi}Publicly available information about SNFs on Care Compare (CMS' public data portal) is typically updated, or refreshed, each quarter in January, April, July, and October; however, the refresh schedule is subject to change and not all measure data will be updated during each quarterly release. https://data.cms.gov/provider-data/sites/default/files/data_dictionaries/nursing_home/NH_SNFQRP_Data_Dictionary.pdf_p3

^{xxii}This is based on CMS health deficiency data that was updated by CMS, or had a "processing date" of May 1, 2021. CMS' description of the dataset says that it includes "a list of nursing home health citations in the last three years." <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>. However, the actual dataset itself includes all deficiency citations, and their associated inspection dates, for all U.S. nursing home providers where the initial inspections occurred during the period of Jan 30, 2015 through Apr 28, 2021. For Florida-specific nursing home providers, this same dataset only listed deficiency citations where inspections occurred during the period of Sept 30, 2016 through Apr 23, 2021. Consulate facilities only received deficiencies related to infection control where inspections occurred between January 2, 2018 and April 28, 2021.

This variability may be because health deficiencies are driven by complaints or new inspections, which vary by provider. <https://www.jdsupra.com/legalnews/cms-brings-changes-to-nursing-home-65270/>

The CMS health deficiency data retrieved from <https://data.cms.gov/provider-data/dataset/r5ix-sfxw>, accessed May 2021

COVID-19 Exacerbates Existing Understaffing

Adequate personal protective equipment (PPE) and staffing are critical to protect nursing home residents and staff during the COVID-19 pandemic. However, the study "Severe Staffing And Personal Protective Equipment Shortages Faced By Nursing Homes During The COVID-19 Pandemic" from Brian E. McGarry, David C. Grabowski, and Michael L. Barnett, found that roughly "1 in 5 nursing homes reported a severe shortage of PPE and any shortage of staff." ²⁴⁴

Given that staffing was an issue for Consulate before the pandemic, it is not surprising that staffing shortages have perpetuated during the pandemic.

As part of its COVID-19 data reporting to the CDC/CMS, nursing homes were required to report any staffing shortages, or shortages in nursing, clinical, nurse aide, and other staff.^{xxiii} An analysis of CMS COVID-19 nursing home data shows the number of weeks Consulate reported staffing shortages and how the system compared to the Florida state totals:

Table 14: Staff shortage summary 2021²⁴⁵

2021 Consulate/ Florida Total	# Weeks of reported Nursing Staff shortage	# Weeks of reported Clinical Staff shortage	# Weeks of reported Aides shortage	# Weeks of reported Other Staff shortage
Qtr1	68/978	12/206	61/1,061	34/431
Qtr2	94/1,196	15/124	86/1,240	47/484
Qtr3	19/252	4/27	17/250	16/114
Grand Total	181/2,426	31/357	164/2,551	97/1,029

Table 15: Staff shortage summary 2020²⁴⁶

2020 Consulate/Florida Total	# Weeks of reported Nursing Staff shortage	# Weeks of reported Clinical Staff shortage	# Weeks of reported Aides shortage	# Weeks of reported Other Staff shortage
Qtr2	19/245	1/78	26/314	4/169
Qtr3	75/1,026	11/207	84/1,158	24/518
Qtr4	61/898	12/207	60/980	40/466
Grand Total	155/2,169	24/492	170/2,452	68/1,153

^{xxiii}The data posted by CMS is what nursing homes submitted through the Centers of Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) system. CMS and CDC perform quality assurance checks on the data and may suppress data that appear to be erroneous. The data is not altered from what nursing homes report to the NHSN system.

FL Nursing Home Staffing Shortages During Pandemic

As part of its COVID-19 data reporting to the CDC/CMS, which is updated on a weekly basis,²⁴⁷ nursing homes were required to report any staffing shortages, or shortages in nursing, clinical, nurse aide, and other staff.^{xxiv} The week ending July 25, 2021 was chosen as the period of analysis because that was the point at which COVID-19 cases in Florida were quickly trending up once again,^{xxv} but had not quite reached its peak.²⁴⁸ It is informative to examine whether nursing home operators were reporting staff shortages during this time, to see whether they had sufficiently staffed their facilities to handle potential increases of COVID-19 cases in their facilities, as COVID-19 cases were surging in the state generally.

A closer look at CMS COVID-19 nursing home data for the week ending 7/25/21 shows that if a nursing facility reported staff shortages in one worker type/classification; it also typically reported shortages in others. The most common shortages appeared to be in nursing, e.g. if a facility reported a shortage in nursing staff, it also typically reported a corresponding shortage in nursing aides.²⁴⁹

When looking at Consulate's reported staffing shortages compared to its Florida peers, we see that Consulate consistently had the highest raw number of facilities reporting staffing shortages across every job category for the week ending 7/25/21.²⁵⁰

Consulate's reporting of staffing shortages for the week ending 7/25/21, as compared to its Florida nursing home chain competitors, can be found below.

²⁵¹

^{xxiv}The data posted by CMS is what nursing homes submitted through the Centers of Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) system. CMS and CDC perform quality assurance checks on the data and may suppress data that appear to be erroneous. The data is not altered from what nursing homes report to the NHSN system.

^{xxv}At this point in time, COVID-19 cases in Florida were at the midpoint between its lowest number of cases over the summer in June, and its peak number of cases in mid-August 2021.- Patrick, Steve. "Florida COVID-19 cases down to levels last seen in mid-July." 24 Sept 2021. Retrieved from <https://www.news4jax.com/news/florida/2021/09/24/florida-covid19-cases-down-to-levels-last-seen-in-mid-july/>

Nursing

Nursing home providers were required to report shortages in nursing staff, including registered nurses, licensed practical nurses, and vocational nurses.²⁵²

Of the facilities that submitted data for the week ending 7/25/21, 89 Florida nursing homes reported shortages in nursing staff.²⁵³

Consulate accounted for 23 of those 89 facilities. In other words, of all the Florida nursing homes that reported nursing shortages for the week ending 7/25/21, Consulate accounted for 26% of the state shortage in nurses. But when looking at nurse staffing shortages within its own ranks, Consulate was comparable to its peers in having a sizable chunk of its facilities reporting nurse shortages, or 35% of its facilities within the company.

Top FL Nursing Home Chains	# Facilities w/ shortage	% of state shortage	# Chains' facilities	% Chains' facilities ^{xxvii}
Consulate	23	26%	65	35%
Greystone	6	7%	27	22%
Gulf Coast Health Care	6	7%	17	35%
Life Care Centers	4	6%	15	27%

Nurse Aides

Nursing home providers were required to report shortages in certified nursing assistants, nurse aides, medication aides, and medication technicians.²⁵⁴ If a facility reported a shortage in nursing staff, it also typically reported a corresponding shortage in nursing aides.

Of the facilities that submitted data for the week ending 7/25/21, 86 Florida nursing homes reported shortages in nurse aides. ²⁵⁵ Consulate accounted for 20 of those 89 facilities. In other words, of all the Florida nursing homes that reported nurse aide shortages for the week ending 7/25/21, Consulate accounted for 23% of the state shortage in nurse aides. But when looking at staffing shortages within its own ranks, Consulate was comparable to its peers in having a sizable chunk of its facilities reporting nurse aide shortages, or 31% of facilities within the company.

Top FL Nursing Home Chains	# Facilities w/ nurse aide shortage	% of state shortage	# Chains' facilities ^{xxviii}	% Chains' facilities ^{xxix}
Consulate	20	23%	65	31%
Gulf Coast Health Care	6	7%	17	35%
Solaris	4	5%	14	29%
Palm Healthcare	3	4%	13	23%
Greystone	3	3%	27	11%

^{xxvi}This is the number of facilities that submitted data and passed CMS' data quality assurance check for the period ending 7/25/21.

^{xxvii}This is the number of facilities that submitted data and passed CMS' data quality assurance check for the period ending 7/25/21.

^{xxviii}This is the number of facilities that submitted data and passed CMS' data quality assurance check for the period ending 7/25/21.

^{xxix}This is the number of facilities that submitted data and passed CMS' data quality assurance check for the period ending 7/25/21.

Clinical Staff Shortages

Nursing home providers were required to report shortages in physicians, physician assistants, and advanced practice nurses.²⁵⁶

Sixteen (16) nursing home facilities in Florida reported shortages in clinical staff, six of which were Consulate facilities. LifeCare Centers reported 3 facilities, while the rest of the providers reported 1 facility with shortages.²⁵⁷ ²⁵⁸ Consulate accounted for 6 of those 16 facilities. In other words, of all the Florida nursing homes that reported clinical staff shortages for the week ending 7/25/21, Consulate accounted for 38% of the state shortage in clinical staff.

Top FL Nursing Home Chains	# Facilities w/ Clinical Staff shortage	%of state shortage
Consulate	6	38%
Life Care centers	3	19%

Other Staff Shortages

Nursing home providers were required to report shortages in other staff or facility personnel, regardless of clinical responsibility or resident contact not included in the categories above (e.g, environmental services).²⁵⁹

Forty-six (46) Florida nursing home facilities reported shortages in other staff. Again, Consulate had the highest number of facilities reporting such a shortage with 10. The other operators with the highest number of other staff shortages were Gulf Coast, Life Care, and Greystone.²⁶⁰ Consulate accounted for 10 of those 46 facilities. In other words, of all the Florida nursing homes that reported other staff shortages for the week ending 7/25/21, Consulate accounted for 22% of the state shortage in other staff.

The fact that Consulate Health Care reported persistent staffing shortages in every job category more than a year into the COVID-19 pandemic is highly troubling. It is particularly concerning because a study by academics from Harvard's T. H. Chan School of Public Health, Beth Israel Deaconess Medical Center, and the London School of Economics Social and Health Policy Department, found that nursing homes with greater staffing or higher performance on quality measures may be better at containing the spread of COVID-19 among staff and residents. The study, which examined eight (8) states, including Florida, found that nursing homes with better staffing or higher performance on quality measures may be better at containing the spread of COVID-19 among staff and residents.²⁶¹

Top FL Nursing Home Chains	# Facilities w/ Other Staff shortage	% of state shortage
Consulate	10	22%
Gulf Coast Health Care	4	9%
Life Care Centers	3	6%
Greystone	3	6%

The study notes that "these findings suggest that poorly resourced NHs with nurse staffing shortages may be more susceptible to the spread of COVID-19...Although guidance on best practices on infection control are important, **policies that provide immediate staffing support may be more effective at mitigating the spread of COVID-19.**"²⁶²

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