



The National
CONSUMER VOICE
for Quality Long-Term Care



DIGNITY FOR ALL

Increase Scrutiny of Nursing Home Finances

April 6, 2023

About the Consumer Voice

The leading national voice representing consumers in issues related to long-term care

- ▶ **Advocate for public policies** that support quality of care and quality of life responsive to consumers' needs in all long-term care settings.
- ▶ **Empower and educate** consumers and families with the knowledge and tools they need to advocate for themselves.
- ▶ **Train and support** individuals and groups that empower and advocate for consumers of long-term care.
- ▶ **Promote the critical role** of direct-care workers and best practices in quality care delivery.

Welcome

- ▶ The program is being **recorded**
- ▶ Use the **Q&A feature** for questions for the speakers
- ▶ Use the **chat feature** to submit comments or respond to questions from speakers or other attendees
- ▶ Please complete the **evaluation** questionnaire when the webinar is over.
- ▶ Links to **resources** will be posted in the chat box and will be posted to the Consumer Voice website – theconsumervoice.org

Dignity for All webpage

← [Back to Current Event Listings](#)

Dignity for All: Staffing Standards Now!

February 23, 2023 - April 20, 2023



This month marks the one-year anniversary of President Biden's **announcement of historic nursing home reforms**. Creating a minimum staffing standard, which would be the most significant increase in protections for nursing home residents in decades, was central to his plan. Since his announcement, the Centers for Medicare & Medicaid Services (CMS) has embarked on a study to determine the minimum level of direct nursing care all residents need and has promised to propose a standard this spring.

The nursing home industry's opposition to a minimum staffing standard has been fierce. The voices of residents and workers have been lost in the discussion. Over the next several months, Consumer Voice and resident advocates will center the discussion of minimum staffing standards on residents and workers by holding a series of events to uplift their voices. We must ensure that the primary focus of adequate staffing is on the residents and workers!

Schedule of Events

February 23, 2023, 2:00pm ET
Staffing Standards Benefit Residents and Workers

[View the Webinar Recording and Slides»](#)

March 9, 2023, 2:00pm ET
Quality Jobs, Quality Care

[View the Webinar Recording and Slides»](#)

March 23, 2023, 2:00pm ET
Resident Voices on How Staffing Impacts Their Lives

[View the Webinar Recording and Slides»](#)

April 6, 2023, 2:00pm ET
Dignity for All: Increase Scrutiny of Nursing Home Finances

- ▶ <https://theconsumervoice.org/events/dignity-for-all-staffing-standards-now>

Speakers



Ernie Tosh
Founding Attorney
Bedsore.Law



Sam Brooks
Director, Public Policy
National Consumer Voice for Quality
Long-Term Care

WHERE DO THE BILLIONS OF DOLLARS GO?

A LOOK AT NURSING HOME RELATED PARTY TRANSACTIONS

Findings

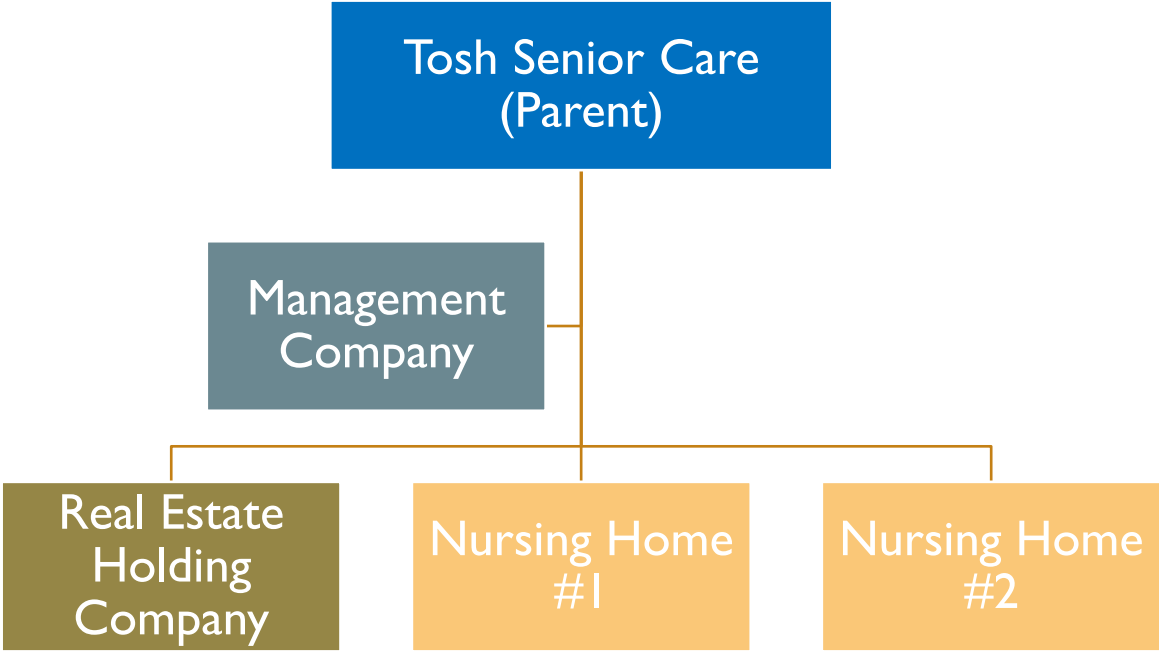
- ▶ Despite billions of dollars funneled through related party companies each year, there appears to be little to no scrutiny by the federal government on how this money is spent.
- ▶ Nursing home owners and operators routinely pay their related parties more than the reported costs.
- ▶ Related parties make nursing homes look less profitable, while a closer look reveals that profits may be hidden in these transactions.
- ▶ Cost reports do not capture enough information for CMS to fulfill its regulatory obligation of ensuring taxpayer dollars are spent on care.
- ▶ <https://theconsumervoice.org/uploads/files/issues/2023-Related-Party-Report.pdf>

NURSING HOME FINANCES

Related Parties in Action



**RELATED
PARTIES**

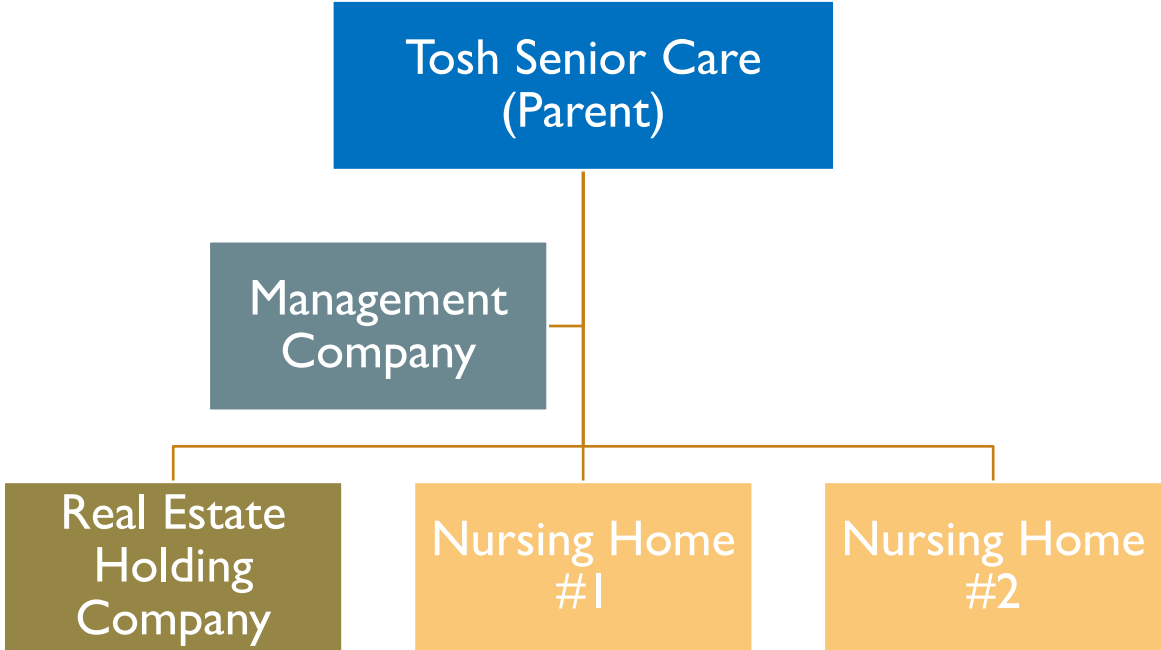


“In accordance with 42 CFR 413.17, cost applicable to services, facilities and supplies furnished to the provider by organizations related to the provider by **common ownership or control** ...”

CMS 2540-10, Section 4117, Worksheet A-8-1 Statement of Costs of Services from Related Organizations and Home Office Costs

RELATED PARTY

**RELATED
PARTIES**



WHERE IS THIS REPORTED?

CMS 2540-10 (Annual Cost Report)

05-11

FORM CMS-2540-10

4190 (Cont.)

STATEMENT OF COSTS OF SERVICES
FROM RELATED ORGANIZATIONS AND
HOME OFFICE COSTS

PROVIDER CCN:

PERIOD:

WORKSHEET A-8-1

FROM _____

TO _____

PART I - COSTS INCURRED AND ADJUSTMENTS REQUIRED AS A RESULT OF TRANSACTIONS WITH RELATED
ORGANIZATIONS OR CLAIMED HOME OFFICE COSTS

	Line No.	Cost Center	Expense Items	Amount Allowable In Cost	Amount Included in Wkst. A., col. 5	Adjustments (col. 4 minus col. 5)	
	1	2	3	4	5	6	
1	1.	CAP REL COSTS - BLDGS & FIXTURES	FACILITY LEASE	364,540.	522,000.	(157,460.)	1
2	1.	CAP REL COSTS - BLDGS & FIXTURES	HOME OFFICE - CAPIT	50,574.		50,574.	2
3	4.	ADMINISTRATIVE & GENERAL	HOME OFFICE - ADMIN	103,451.		103,451.	3
4	4.	ADMINISTRATIVE & GENERAL	HOME OFFICE - POOL	304,045.	628,356.	(324,311.)	4
5	4.	ADMINISTRATIVE & GENERAL	UNITED COLLECTIONS	1,329.	147.	1,182.	5
6	30.		UNITED CLINICAL - NU	139,789.	200,260.	(60,471.)	6
7	9.		UNITED CLINICAL - NURSING ADMIN		7,979.	(7,979.)	7
8	8.		UNITED CLINICAL - DIE	19,346.	35,221.	(15,875.)	8
9	4.		UNITED CLINICAL - AD	5,992.		5,992.	9
10	TOTALS (sum of lines 1-9) (Transfer column 6, line 10 to Wkst. A-8, col. 3, line 12)			2,541,574.	2,991,438.	(449,864.)	10

PRUITT HEALTH RELATED PARTY COSTS AND CARE QUALITY

Pruitt Health Care All Related Party Payments

Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$162,395,326.81	\$189,795,459.73	\$27,400,132.92	16.87%
2019	\$163,710,556.24	\$188,439,854.28	\$24,729,298.04	15.11%
2020	\$155,756,110.14	\$192,088,484.63	\$36,332,374.49	23.33%
Total	\$481,861,993.19	\$570,323,798.64	\$88,461,805.45	18.36%

Pruitt Health Average 5-Star Ratings

	Overall	Health Inspection	Staffing
2018	3.04	2.82	3.04
2019	2.6	2.57	2.29
2020	2.82	2.51	2.52
Avg	2.82	2.63	2.62

Pruitt Health Care Home Office Cost Related Party Transactions

Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$23,679,296.30	\$40,254,032.12	\$16,574,735.82	70.00%
2019	\$25,691,701.29	\$40,135,249.45	\$14,443,548.16	56.22%
2020	\$20,251,862.06	\$43,544,139.94	\$23,292,277.88	115.01%
Total	\$69,622,859.65	\$123,933,421.51	\$54,310,561.86	78.01%

On average, Pruitt homes were staffed at 3.43 hours per resident per day, 40 minutes less than the recommended minimum of 4.1 hprd.

LIFE CARE CENTERS RELATED PARTY COSTS

Life Care Centers Total Related Party Payments				
Year	Related Party Reported Costs	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$346,608,865.03	\$386,449,502.71	\$39,840,637.68	11.49%
2019	\$377,038,257.00	\$439,087,996.66	\$62,049,739.66	16.46%
2020	\$390,837,690.85	\$428,695,145.37	\$37,857,454.52	9.69%
Total	\$1,114,484,812.88	\$1,254,232,644.74	\$139,747,831.86	12.54%

Life Care Centers Lease Payments to Related Parties				
Year	Related Party Cost	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$20,847,437.23	\$26,746,062.64	\$5,898,625.41	28.29%
2019	\$21,877,851.39	\$32,215,989.90	\$10,338,138.51	47.25%
2020	\$21,277,740.11	\$33,143,396.09	\$11,865,655.98	55.77%
Total	\$64,003,028.73	\$92,105,448.63	\$28,102,419.90	43.91%

Home Office Costs Paid to Related Parties				
Year	Related Party Reported Cost	Reported Payments to Related Parties	Amount by Which Payment Exceeds Reported Cost	% Payment Exceeds Costs
2018	\$7,502,143.12	\$9,307,541.20	\$1,805,398	24.07%
2019	\$13,262,906.70	\$23,286,463	\$10,023,556	75.58%
2020	\$12,206,605	\$23,192,387	\$10,985,782	90.00%
Total	\$32,971,654.82	\$55,786,391.20	\$22,814,736	69.19%

HOW DO YOU GET THIS DATA?

Freedom of Information Act Request (FOIA) to CMS

Law Offices of
Ernest C. Tosh
2709 Thorn Lane
Grapevine, Texas 76051

Telephone: 817-946-3263

Email: ErnestTosh@ToshLawFirm.com

January 19, 2023

CMS FOIA Officer
Centers for Medicare & Medicaid Services
Mailstop N2-20-16
7500 Security Boulevard
Baltimore, MD 21244

Dear Sir or Madam:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to:

**CMS Form 2540-10 – Skilled Nursing Facility Health Care Complex
Cost Report Form**

Facility: **Facility Name**
Location: **Town, State**
Medicare Provider No.: **xxxxxx**
Time Period: **Start Date to End Date**

In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and am seeking information for use in the company's business.

I am willing to pay fees for this request up to a maximum of \$250.00. If you estimate that the fees will exceed this limit, please inform me first.

I request that the information I seek be provided in a **hardcopy** or paper format with the **signature** that appears on "worksheet S" visible.

If you have any questions about handling this request, you may telephone me at 817-946-3263.

Sincerely,

Ernest C. Tosh

ECT/mg

**FOIA
REQUEST**

WHAT IS THE BASIS FOR RELATED PARTY PAYMENTS?

Reasonable Prudent Buyer Standard

“However, such cost must not exceed the amount a prudent and cost-conscious buyer would pay for comparable services, facilities, or supplies that could be purchased elsewhere.”

*CMS 2540-10, Section 4117, Worksheet A-8-1
Statement of Costs of Services from Related
Organizations and Home Office Costs, Part 1*

PRUDENT
BUYER

ORIGINAL INCOME STATEMENT

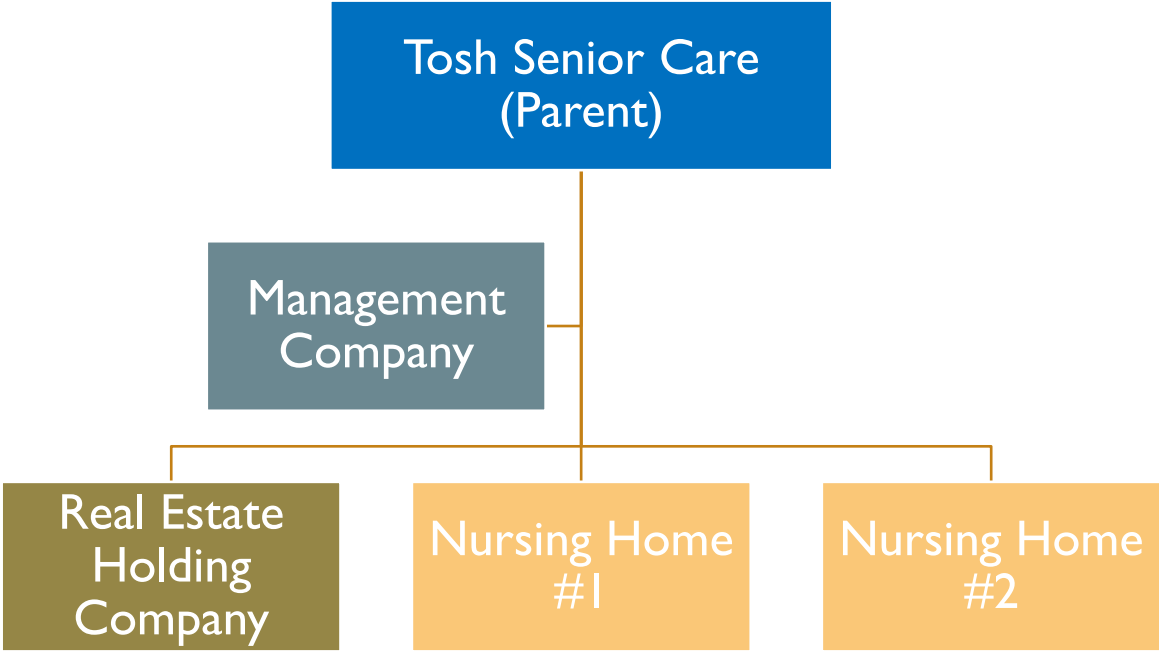
Income Statement				
Revenue				
Total Patient Revenue (Billing)	\$16,000,000			
Less: Contractual Allowances	1,750,000			
Net Patient Revenue	14,250,000			
Expenses				
Total Operating Expenses	\$13,000,000			
Net Income (Profit or Loss)				
Net Income	\$1,250,000			

INCOME
STATEMENT

Income Statement				
Revenue				
Total Patient Revenue (Billing)	\$16,000,000			
Less: Contractual Allowances	1,750,000			
Net Patient Revenue	14,250,000			
Expenses				
Total Operating Expenses	\$13,000,000			
Net Income (Profit or Loss)				
Net Income	\$1,250,000			

INCOME STATEMENT

**RELATED
PARTIES**



FIX THE INCOME STATEMENT

Income Statement

Revenue

Total Patient Revenue (Billing)	\$16,000,000
Less: Contractual Allowances	1,750,000
Net Patient Revenue	14,250,000

Expenses

Total Operating Expenses	\$13,000,000
--------------------------	--------------

Net Income (Profit or Loss)

Net Income	\$1,250,000
------------	-------------

INCOME STATEMENT

Expenses				
Real Estate (Owned)				
Mortgage Payment	\$500,000			
Taxes	100,000			
Total for Real Estate	600,000			

EXPENSES

Expenses				
Real Estate (Owned)				
Mortgage Payment	\$500,000			
Taxes	100,000			
Total for Real Estate	600,000			
Real Estate (Rented)				
Lease Payment	\$2,000,000			
Total for Real Estate	\$2,000,000			

EXPENSES

Expenses				
Real Estate (Owned)				
Mortgage Payment	\$500,000			
Taxes	100,000			
Total for Real Estate	600,000			
Real Estate (Rented)				
Lease Payment	\$2,000,000			
Total for Real Estate	\$2,000,000			
Increased Real Estate Expense	\$1,400,000	← Siphon		

EXPENSES

Income Statement

Revenue

Total Patient Revenue (Billing)	\$16,000,000
Less: Contractual Allowances	1,750,000
Net Patient Revenue	14,250,000

Expenses

Total Operating Expenses	\$13,000,000
--------------------------	--------------

Net Income (Profit or Loss)

Net Income	\$1,250,000
------------	-------------

INCOME STATEMENT

Income Statement			
Revenue			
Total Patient Revenue (Billing)	\$16,000,000		
Less: Contractual Allowances	1,750,000		
Net Patient Revenue	14,250,000		
Expenses			
Total Operating Expenses	\$14,400,000	Added \$1,400,000	
Net Income (Profit or Loss)			
Net Income (Loss)	\$(150,000)		

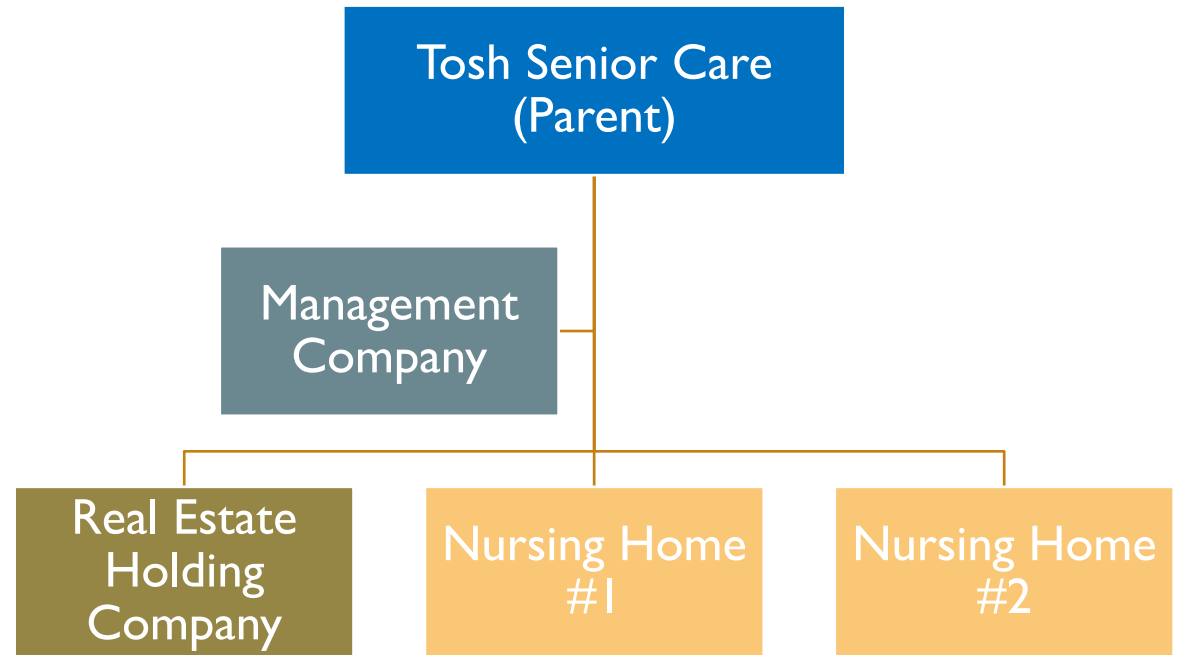
INCOME STATEMENT

NO TRANSPARENCY

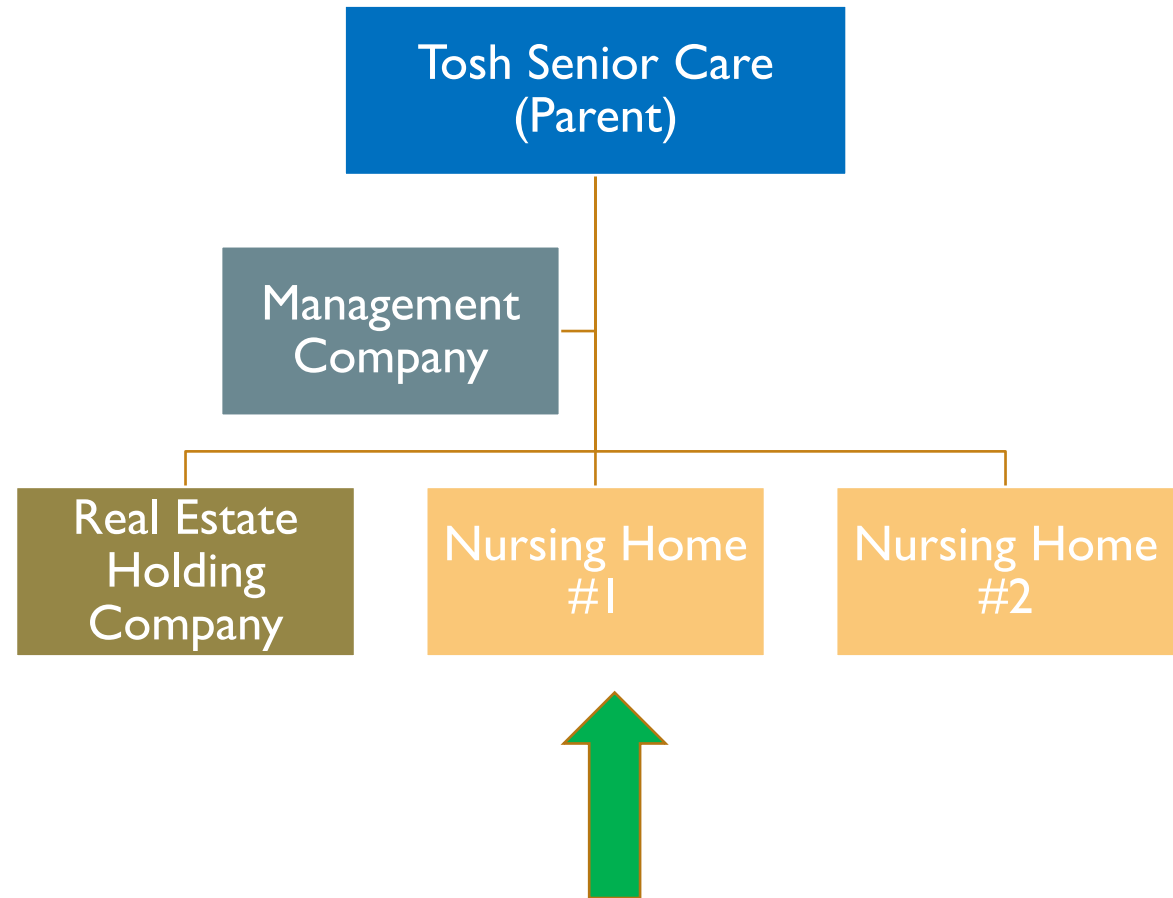
Hidden money, horrible outcomes.



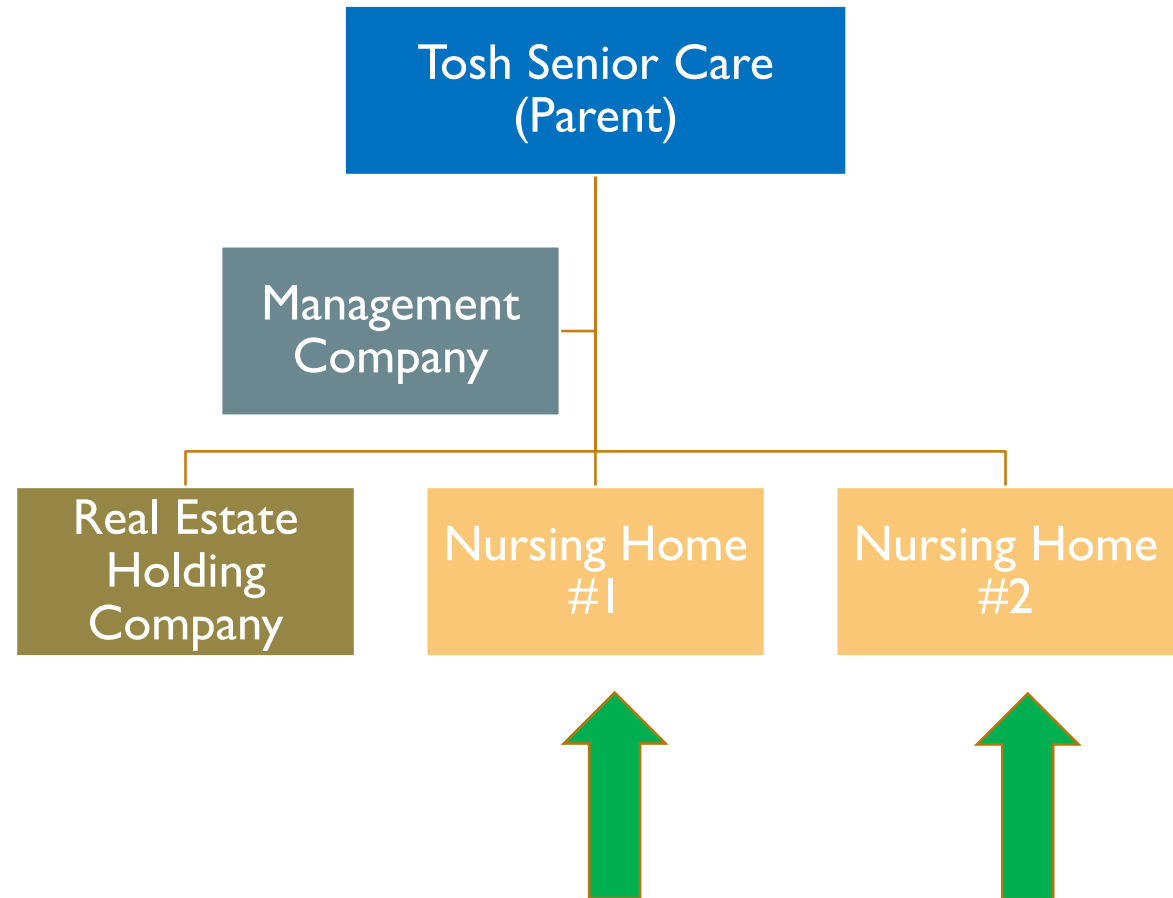
CORPORATE STRUCTURE



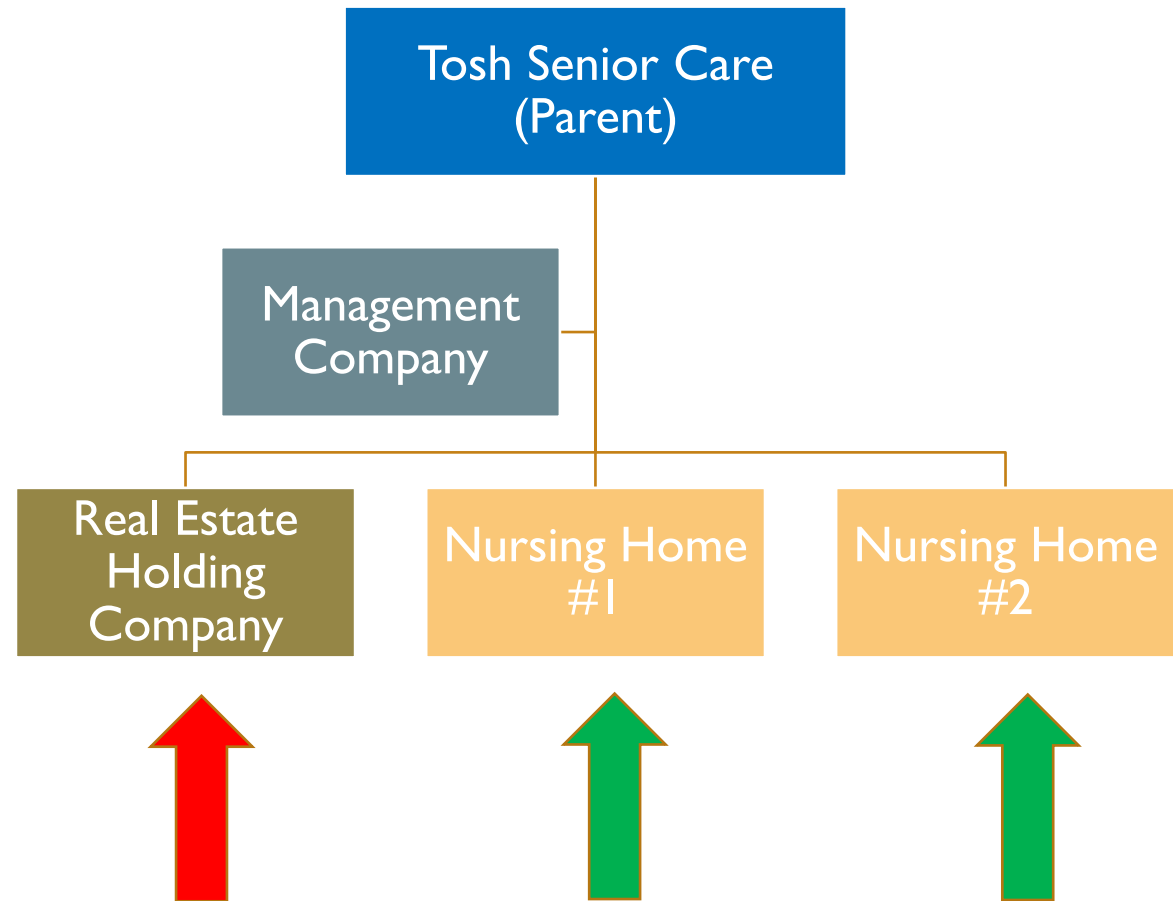
FINANCIAL REPORTING



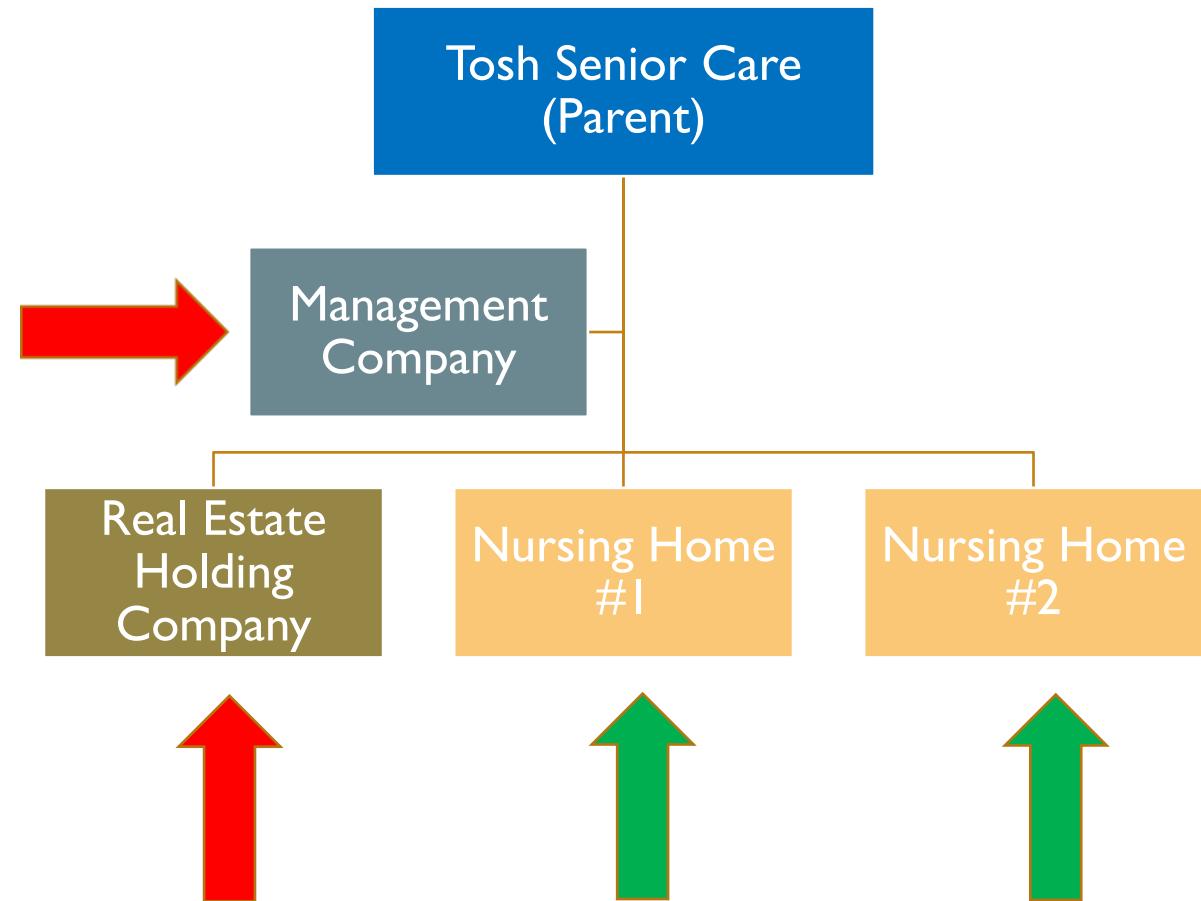
FINANCIAL REPORTING



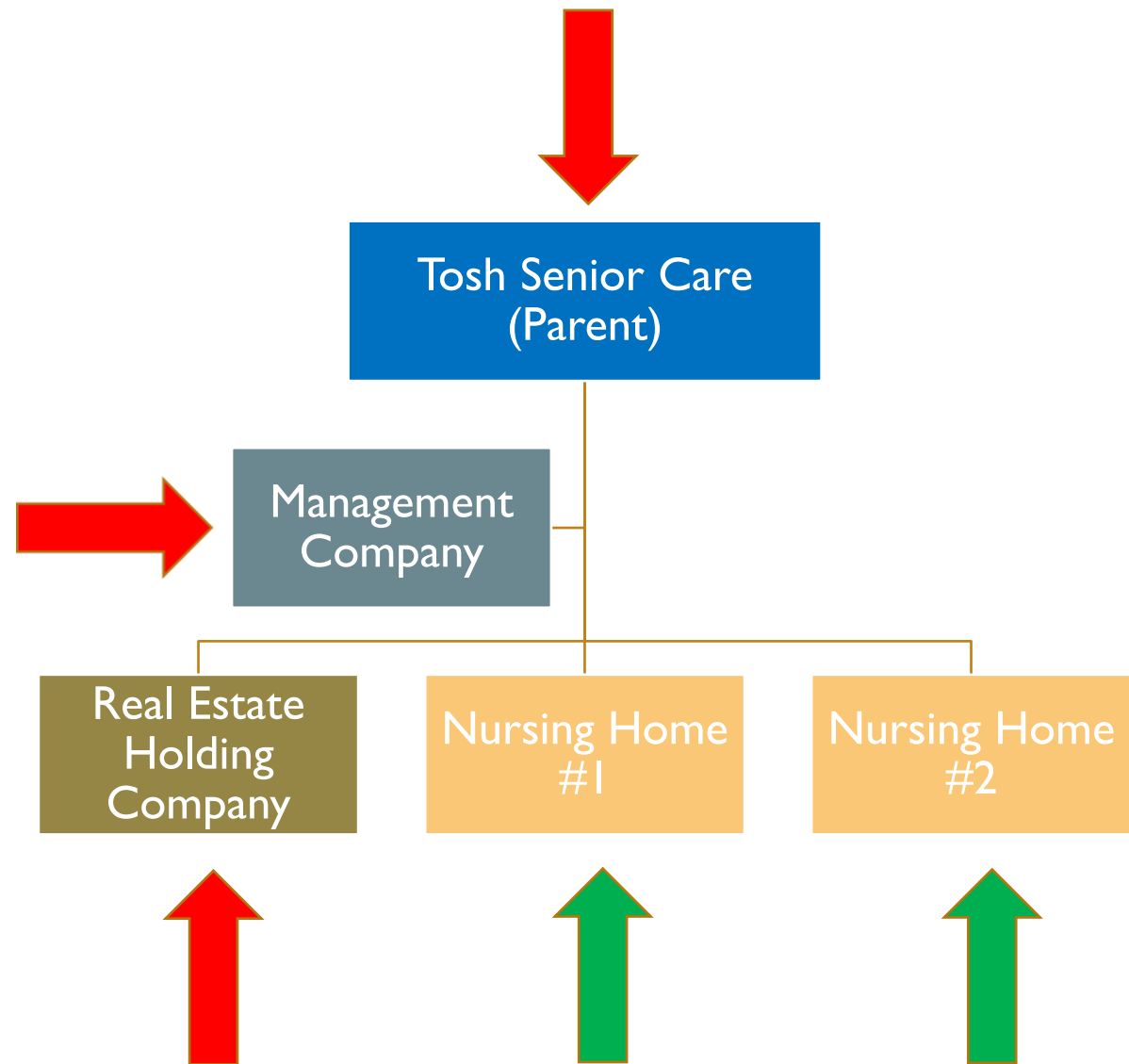
FINANCIAL REPORTING



FINANCIAL REPORTING



**FINANCIAL
REPORTING**



DOES THIS
AFFECT
STAFFING?



Protected Assets in Shell
Corporations



Siphoned Money so they
don't show a Profit



Why Understaff?

WHY UNDERSTAFF?



Protected Assets in Shell Corporations (limited risk to operations)



Siphoned Money so they don't show a Profit (great excuse to cut staffing)



Why Understaff? (Increases profits to the ownership)

The Rise of Private Equity Ownership

- ▶ Private equity are investment companies seeking short term profits.
- ▶ Model is to suck out as much money from a company within 7 years and then move on.
- ▶ According to CMS, private equity owns roughly 11% of nursing homes (citing MEDPAC report).

▶ Private Equity = Bad Care

- ▶ Ample evidence shows residents in nursing homes owned by P/E receive poorer care when compared to other homes.
 - ▶ Private equity nursing home ownership increased mortality of Medicare residents by 10% (National Bureau of Economic Research).
 - ▶ CMS itself cites evidence of the poor quality of care, in recent proposed regulation, and is taking action to require owners to disclose whether they are P/E.
- ▶ **IMPORTANT: Private Equity did not create the current dysfunctional financial system, it identified and exploited it**

▶ Portopiccolo Group

- ▶ Two primary individuals: Simcha Hyman and Natfali Zanziper.
 - ▶ In 2015, when they created Portopiccolo, they were 25 and 32 y.o., respectively.
 - ▶ According to the New Yorker, they now own roughly 130 homes across the country.
- ▶ Poster child for P/E and care declines.
- ▶ CMS continues to allow them to purchase homes, despite story after story of horrible care.

Portopiccolo in TN

- ▶ Purchased Roughly 12 homes in TN over the past 4-5 years.

MIDTOWN CENTER FOR HEALTH AND REHABILITATION	141 N MCLEAN BLVD	MEMPHIS	TN	38104
SMITH COUNTY HEALTH AND REHABILITATION	112 HEALTH CARE DR	CARTHAGE	TN	37030
WILLOW BRANCH HEALTH AND REHABILITATION	415 PACE STREET	MCMINNVILLE	TN	37110
FOOTHILLS TRANSITIONAL CARE AND REHABILITATION	1012 JAMESTOWN WAY	MARYVILLE	TN	37803
RIVER GROVE HEALTH AND REHABILITATION	1520 GROVE ST BOX 190	LOUDON	TN	37774
FAIRPARK HEALTH AND REHABILITATION	307 N FIFTH ST BOX 5477	MARYVILLE	TN	37801
CREEKVIEW HEALTH AND REHABILITATION	3300 BROADWAY NE	KNOXVILLE	TN	37917
RED BOILING SPRINGS TN OPCO LLC	309 MAIN ST	RED BOILING SPRINGS	TN	37150
MT PLEASANT HEALTHCARE AND REHABILITATION	904 HIDDEN ACRES DR	MOUNT PLEASANT	TN	38474
SODDY-DAISY HEALTH CARE CENTER	701 SEQUOYAH ROAD	SODDY-DAISY	TN	37379
MAGNOLIA CREEK NURSING AND REHABILITATION	1992 HWY 51 S	COVINGTON	TN	38019

Midtown Center, Memphis

- ▶ Related party transaction from 2018, the year before being purchased by Portopiccolo

05-11 FORM CMS-2540-10 4190 (Cont.)

STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME OFFICE COSTS	PROVIDER CCN:	PERIOD: FROM _____ TO _____	WORKSHEET A-8-1
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PART I - COSTS INCURRED AND ADJUSTMENTS REQUIRED AS A RESULT OF TRANSACTIONS WITH RELATED ORGANIZATIONS OR CLAIMED HOME OFFICE COSTS

	Line No.	Cost Center	Expense Items	Amount Allowable In Cost	Amount Included in Wkst. A., col. 5	Adjustments (col. 4 minus col. 5)	
	1	2	3	4	5	6	
1	4.	ADMINISTRATIVE & GENERAL	MANAGEMENT FEE		444,587.	(444,587.)	1
2							2
3							3
4							4
5							5
6							6
7							7
8							8
9							9
10	TOTALS (sum of lines 1-9) (Transfer column 6, line 10 to Wkst. A-8, col. 3, line 12)				444,587.	(444,587.)	10

Midtown Center, Memphis

- ▶ Related party transaction from 2020, after being purchased by Portopiccolo

05-11 FORM CMS-2540-10 4190 (Cont.)

STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME OFFICE COSTS	PROVIDER CCN: _____	PERIOD: FROM _____ TO _____	WORKSHEET A-8-1
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1	2	3	4	5	6		
1	4.	ADMINISTRATIVE & GENERAL	MANAGEMENT FEE	700,631.	834,467.	(133,836.)	1
2	1.	CAP REL COSTS - BLDGS & FIXTURES	RENT		1,760,000.	(1,760,000.)	2
3	1.	CAP REL COSTS - BLDGS & FIXTURES	DEPRECIATION	447,677.		447,677.	3
4	1.	CAP REL COSTS - BLDGS & FIXTURES	INTEREST	1,304,878.		1,304,878.	4
5							5
6	44.	PHYSICAL THERAPY	THERAPY CO	552,377.	593,954.	(41,577.)	6
7	45.	OCCUPATIONAL THERAPY	THERAPY CO	512,681.	551,270.	(38,589.)	7
8	46.	SPEECH PATHOLOGY	THERAPY CO	361,000.	388,172.	(27,172.)	8
9	49.	DRUGS CHARGED TO PATIENTS	PHARMACY	229,068.	229,068.		9
10	TOTALS (sum of lines 1-9)			5,241,733.	5,490,352.	(248,619.)	10
	[Transfer column 6, line 10 to Wkst. A-8, col. 3, line 12]						

Midtown Center, Memphis

2018 Related Party Transactions Before Portopiccolo
\$444,587

2020 Related Party Transactions After Portopiccolo
\$5,490,352

05-11	FORM CMS-2540-10	4190 (Cont.)
STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME OFFICE COSTS	PROVIDER CCN:	PERIOD: FROM _____ TO _____
		WORKSHEET A-8-1

05-11	FORM CMS-2540-10	4190 (Cont.)
STATEMENT OF COSTS OF SERVICES FROM RELATED ORGANIZATIONS AND HOME OFFICE COSTS	PROVIDER CCN:	PERIOD: FROM _____ TO _____
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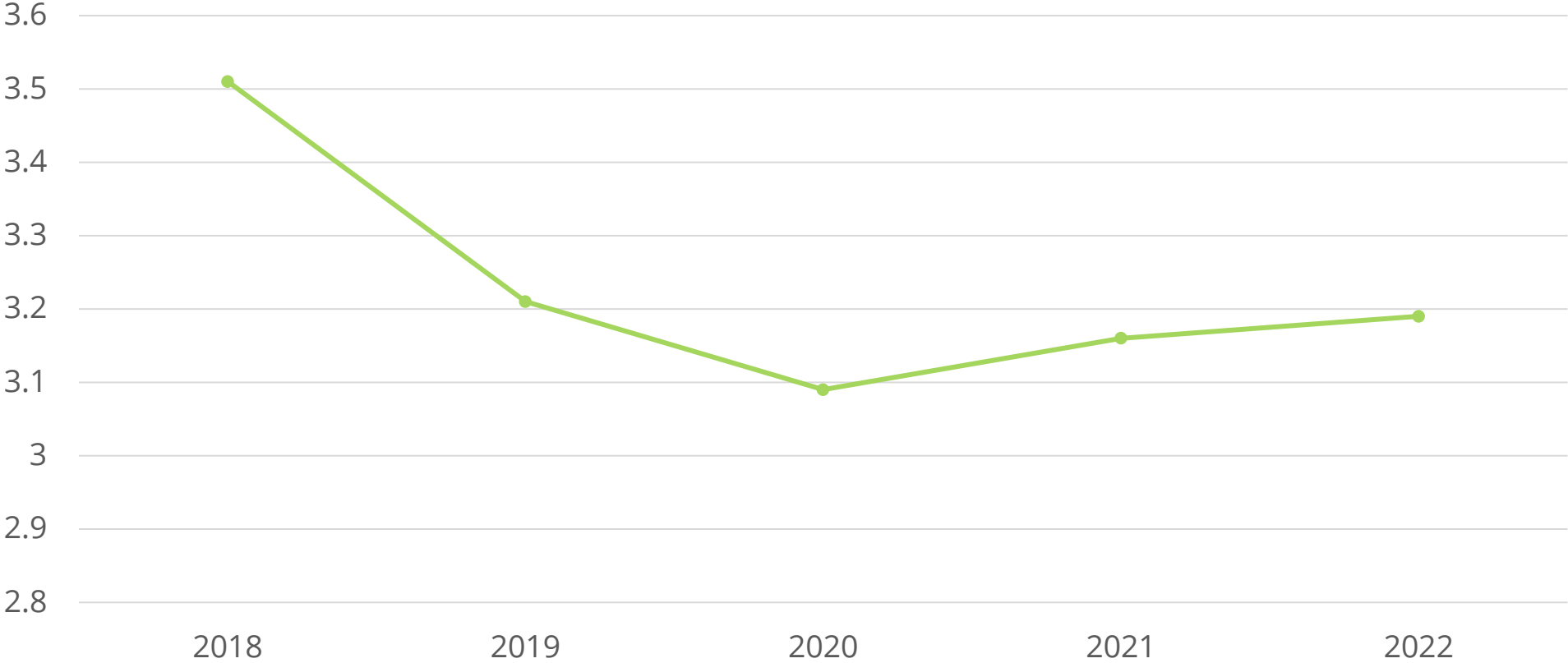
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Staffing Declines in Portopiccolo's Homes in TN

Direct Care Hours Per Resident Per Day



BIGGEST
QUESTION?



IS POOR CARE DUE
TO UNDER
REIMBURSEMENT OR
UNDER UTILIZATION?

Biggest Question



EASY ANSWER?



CONSOLIDATED
FINANCIAL REPORTS
FROM THE PARENT TO
THE BOTTOM OF THE
CORPORATE
STRUCTURE AND
DISCLOSURE OF
OWNERSHIP ALL THE
WAY TO THE
INDIVIDUAL
INVESTORS.

Easy Answer



NEXT STEP



FEDERAL MINIMUM
STAFFING
REQUIREMENT



“BUT THAT’S AN
UNFUNDED
MANDATE, WE WILL
NEED ADDITIONAL
GOVERNMENT
MONEY TO PAY FOR
IT !!!”

Every Industry Lobbyist



WE DON'T KNOW IF
THIS IS AN
UNFUNDED
MANDATE BECAUSE
WE DON'T KNOW
HOW MUCH PROFIT
THE NURSING HOME
CHAINS MAKE. IT
MAY ALREADY BE
FULLY FUNDED; WE
JUST NEED
CONSOLIDATED
FINANCIAL
STATEMENTS TO
FIGURE THAT OUT.



3

Resources

Dignity for All webpage

← [Back to Current Event Listings](#)

Dignity for All: Staffing Standards Now!

February 23, 2023 - April 20, 2023



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The nursing home industry's opposition to a minimum staffing standard has been fierce. The voices of residents and workers have been lost in the discussion. Over the next several months, Consumer Voice and resident advocates will center the discussion of minimum staffing standards on residents and workers by holding a series of events to uplift their voices. We must ensure that the primary focus of adequate staffing is on the residents and workers!

Schedule of Events

February 23, 2023, 2:00pm ET
Staffing Standards Benefit Residents and Workers

[View the Webinar Recording and Slides»](#)

March 9, 2023, 2:00pm ET
Quality Jobs, Quality Care

[View the Webinar Recording and Slides»](#)

March 23, 2023, 2:00pm ET
Resident Voices on How Staffing Impacts Their Lives

[View the Webinar Recording and Slides»](#)

April 6, 2023, 2:00pm ET
Dignity for All: Increase Scrutiny of Nursing Home Finances

- ▶ <https://theconsumervoice.org/events/dignity-for-all-staffing-standards-now>

Tell your Members of Congress To Support Staffing Standards and Transparency



The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

Specialized Information for:

Long-Term Care Consumers Family Members Advocates

Tell Congress to Support Standards for Nursing Home Staffing and Transparency

The Biden Administration is on the brink of implementing **important reforms** for nursing homes - requiring staffing standards and increasing transparency and accountability for owners and use of public money. We need Members of Congress to show their support for these proposals that will promote meaningful improvements in care for residents. Tell your Members to support nursing home staffing and transparency!

Use the form below to send them a message.

Recipients

- Your Senators
- Your Representative

Contact

- Required fields
- Title:
- First Name:
- Last Name:

Message

- Subject:

Dear [Decision Maker],

I'm writing to urge you to support the critical nursing home reforms the Biden administration proposed last year, including a minimum staffing standard in nursing homes, and increasing transparency and accountability around ownership and finances. Implementing these provisions would be the most significant increase in protections for nursing home residents in decades.

Go here to tell your members of Congress to stand with nursing home residents and support a minimum staffing standard and transparency in nursing home finances:

<https://secure2.convio.net/tncv/site/Advocacy?cmd=display&page=UserAction&id=195>



The National
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for Quality Long-Term Care

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