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A Mid-Year Update from Mark Parkinson

COVID Recovery Nearly Complete; Staffing Mandate Looms

The first half of 2024 has flown by, and a lot of good things have happened. But we still have some work to do. Below I share my mid-year update on both of these areas and more.

COVID RECOVERY IS NEARLY COMPLETE

After four years, we're getting close to being able to say that COVID-19 is behind us. In many respects, it is. On the clinical side, it has been behind us for a couple of years. The predictions that it would flare up and create major problems in 2024 did not materialize.

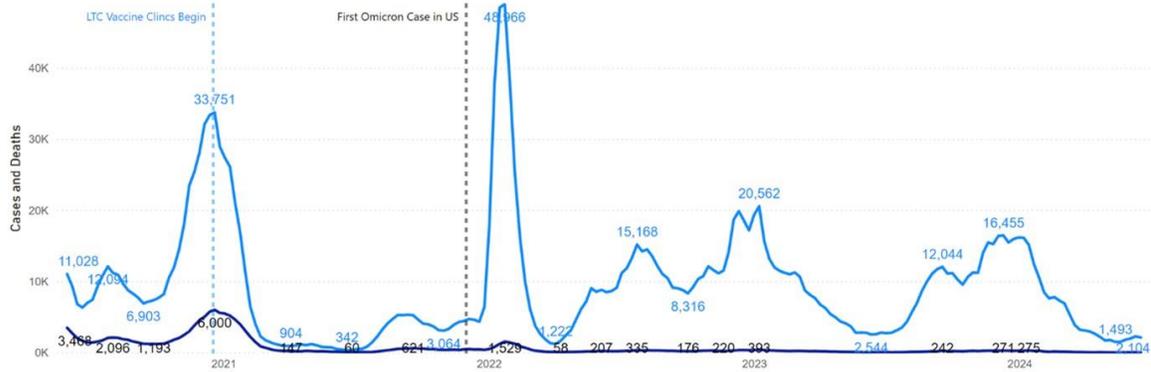
State
All

COVID-19 Among Nursing Home Residents

Total Cases	Total Deaths	Estimated Recoveries
2,044,219	171,116	1,802,083

Trend of New Cases and Deaths

● New Resident Cases ● New Resident Deaths



Data Through Week
Ending:
June 16, 2024

Source: NHSN Notes: May 24, 2020 includes collective historic data and is excluded from the graph since it does not capture that specific week. Estimated recoveries made using a 3-week disease period using NHSN cases and deaths. Latest week's data is preliminary and represents fewer nursing homes than other weeks.

Although we had an increase in COVID cases in buildings earlier in the year, we are back near the baseline once again. And even when we had our flare up in January and February, we had very few hospitalizations and deaths. In all likelihood, we will continue to have ups and downs in case counts in upcoming years, but new strains are likely to be less harmful to our residents than those in the past.

We're even getting pretty darn close to pre-pandemic census. We had a nice jump in the early part of the year but have been flat for the last three months.

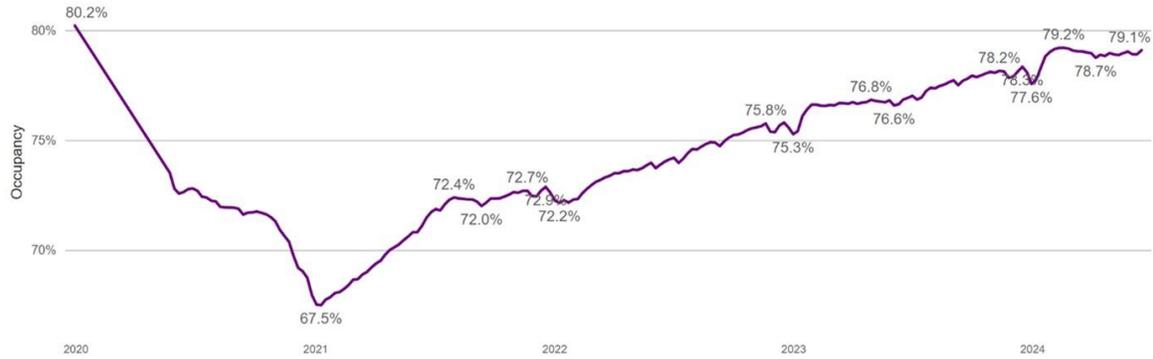
State
All

Nursing Home Occupancy

Current Average Occupancy

79.1%

Average Occupancy

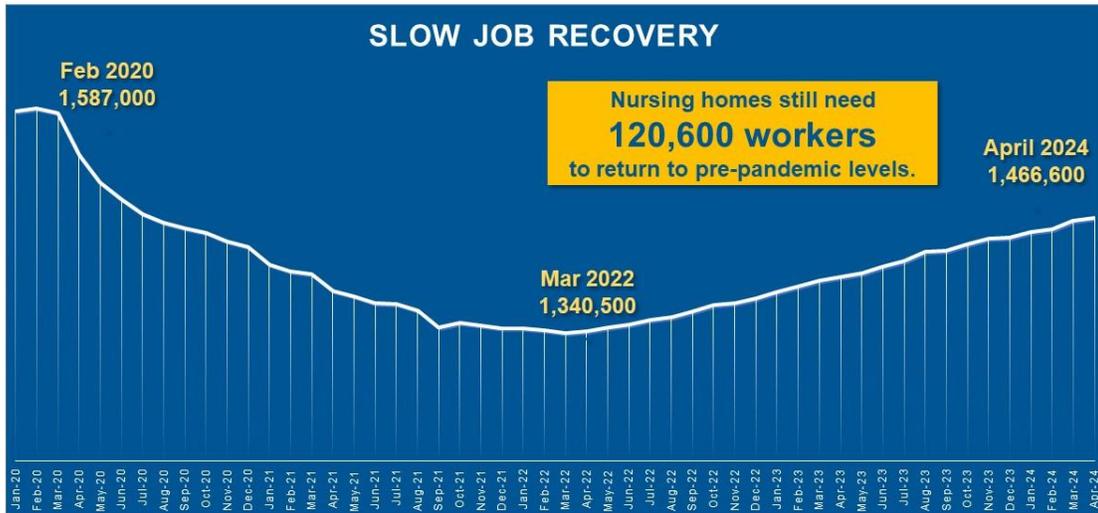


Data Through Week
Ending:
June 16, 2024

Source: Payroll-Based Journal (PBJ) and NHSN
Notes: PBJ data used to calculate 2019 average occupancy. All other occupancy data based on NHSN.

I'm hopeful that as we get through the summer, we will start climbing again. I won't be surprised if we are back to 80 percent by the end of the year. For reasons I'll discuss later in this memo, I think census will continue to rise after that.

The area that we still haven't recovered from is workforce. It has improved a little bit, but staffing remains a real challenge.



Source: Bureau of Labor Statistics (BLS) January 2020 – April 2024

We have gained back about half of the workers we lost, but we still need more than 120,000 just to get back to pre-pandemic workforce levels. This is merely one of the reasons that the Biden Administration’s minimum staffing mandate makes no sense. The workers are not there.

POLICY UPDATE – WE HAVE BEEN WINNING, BUT STILL HAVE WORK TO DO

On the policy front, we’ve had some important wins, but we still have some battles left to fight. We received nice news in April when the Centers for Medicare and Medicaid Services (CMS) announced the thirteenth Medicare increase in a row for the sector. It will be around 4.1 percent this year and start on October 1, 2024. I say *around* 4.1 percent because it could change slightly based on final inflation numbers. We will know for sure when the final rule comes out in July, but it will be around 4 percent.

We’ve also had a string of wins on Medicaid increases at the state level. Here the credit goes to our State Executives, State Associations, and active members. In state after state, we are seeing material increases in Medicaid rates. More than a handful have had increases of more than 10 percent. Part of this is also due to the AHCA Board of Governor’s decision to fund state Medicaid efforts. We now get actively involved in campaigns to boost Medicaid, and it is working. AHCA Board Chair Phil Scalo and the rest of the Board have made it clear that the Association intends to continue to invest in state Medicaid efforts.

Now comes the area where we have work to do, and it's really just one area: the minimum staffing rule. As we've discussed frequently, we're not against more staffing.

We want it and support efforts to recruit more workers. But this final rule won't work. The 100,000+ nurses and nurse aides needed to meet the regulation are not out there. Even if they were, there is no funding to pay for them. The requirements in the rule are not possible to meet, and we must stop it.

We have two major strategies: the courts and Congress. On the judicial front, we believe we have a strong case. The requirement to have registered nurses for eight hours a day is in a statute. Only Congress can change a statute. The Biden Administration asked Congress to change this in 2021 and 2022, and Congress said no.

So, the Administration decided to do it on its own. That is not the way our system works. As a result, *AHCA v. Becerra* was filed in Federal Court last month. I'm very proud of the job our attorneys did, and if you are losing sleep over this issue, please [read our petition](#). It will give you great comfort in the strength of our case.

Our case is strengthened by the major United States Supreme Court ruling last week, which overturned a 40-year-old precedent, known as the *Chevron* Deference Doctrine. The Supreme Court ruling means that courts may no longer defer to an agency's interpretation of the law when a statute is ambiguous. Essentially, this weakens federal regulation and puts the power in the courts to independently decide "...whether an agency has acted within its statutory authority." Based on what I shared with you above, we have a strong case.

We offered LeadingAge an opportunity to join our lawsuit, and I'm pleased [they agreed](#). We were able to add LeadingAge as a plaintiff in mid-June, and this is a testament to the unity of the sector against this rule. In addition, the American Hospital Association and other provider groups [oppose the rule](#).

We expect an opinion towards the end of 2024 or early in 2025.

I believe we will win the lawsuit, but we can't be absolutely sure. Therefore, we are also working on our Congressional strategy. Every Republican member of Congress and a growing number of Democrats are against the staffing requirements. If the courts don't throw them out, we will ask Congress to do so. We will have multiple opportunities before and after the 2024 election to attempt this strategy.

For that reason, we need your help. Coming to Washington, D.C. and/or inviting a member of Congress to tour your building is helpful and important. We have [resources available](#), as well as a strong grassroots advocacy team at AHCA/NCAL that is ready to help with this effort. Don't hesitate to reach out to [Matt Smyth](#).

In the meantime, the facility assessment piece of the staffing rule goes into effect on August 8. The AHCA regulatory team has prepared extensive materials to help you prepare, including an action brief and a checklist, both of which can be [accessed on ahcancaLED](#). The team also developed an on-demand educational webinar, [Strengthening Facility Assessments to Adapt to Regulatory Changes](#). I encourage you to take advantage of these valuable resources.

In addition, we achieved a major policy win with CMS. In its guidance on the facility assessment requirement, CMS agreed with our position on what surveyors should and should not be doing. They should be looking at our facility assessments to see if we have completed the required components per regulation. They should not be judging the quality of the assessment. Please [let us know](#) if you have surveyors who begin to question your judgment on the assessment.

NCAL HITS RECORD MEMBERSHIP!

When I started at AHCA/NCAL back in 2011, we had 120,000 beds in NCAL membership. Last month, we hit 300,000! NCAL continues to be one of the most vibrant parts of our organization. We have a terrific NCAL team, led by Executive Director LaShuan Bethea. LaShuan would be the first to tell you that the credit should go to our State Executives and assisted living providers who have embraced our organization and become an integral part of it. Congratulations to NCAL Board Chair Mark Maxfield, the entire NCAL Board, and all the active leaders who came before them. They have all had a hand in this.

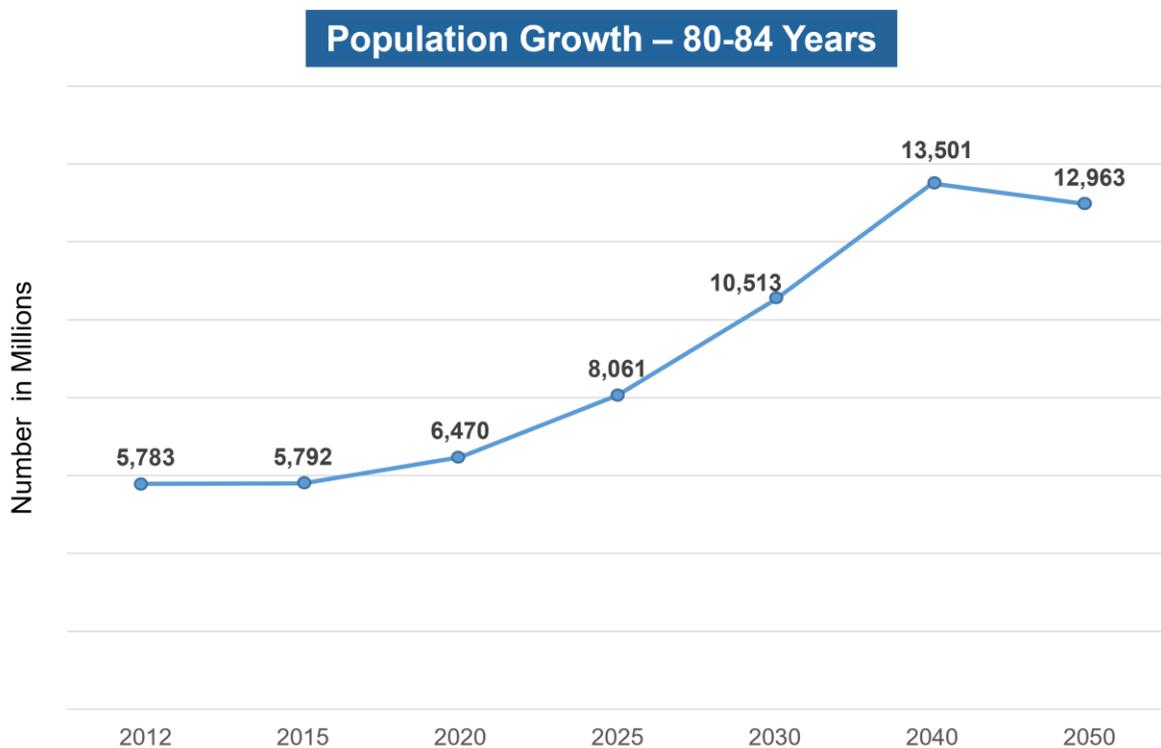
Most important, NCAL continues to deliver for the members. Federal regulation continues to be off the table. Once again, NCAL has managed various threats across the sector. On top of that, NCAL continues to develop new tools to help providers across the country. The [Assisted Living Regulatory Resource Center](#) offers the State-by-State Regulatory Review, assisted living bill tracker, and assisted living survey data.

And if you haven't already started, now is the time to begin preparing for National Assisted Living Week, which happens September 8-14, 2024, and is sponsored by [Select Rehabilitation](#). This year's theme, *Inspiring Generations*, offers many

different ways to celebrate. The NCAL team has developed [resources](#), such as the [2024 NALW Planning Guide](#), to help you plan a fun week.

THE FUTURE IS BRIGHT – SILVER TSUNAMI FINALLY HERE; FINDING WORKERS WILL BE THE PROBLEM

The silver tsunami is finally here. The key fact is that starting next year, the oldest of the baby boomers will turn 80 years old. The average age of a skilled nursing or assisted living resident is about 83 years old. We're finally hitting the point where the aging of the population will help us. This ushers in a 20-year period when the need for our services will grow dramatically.

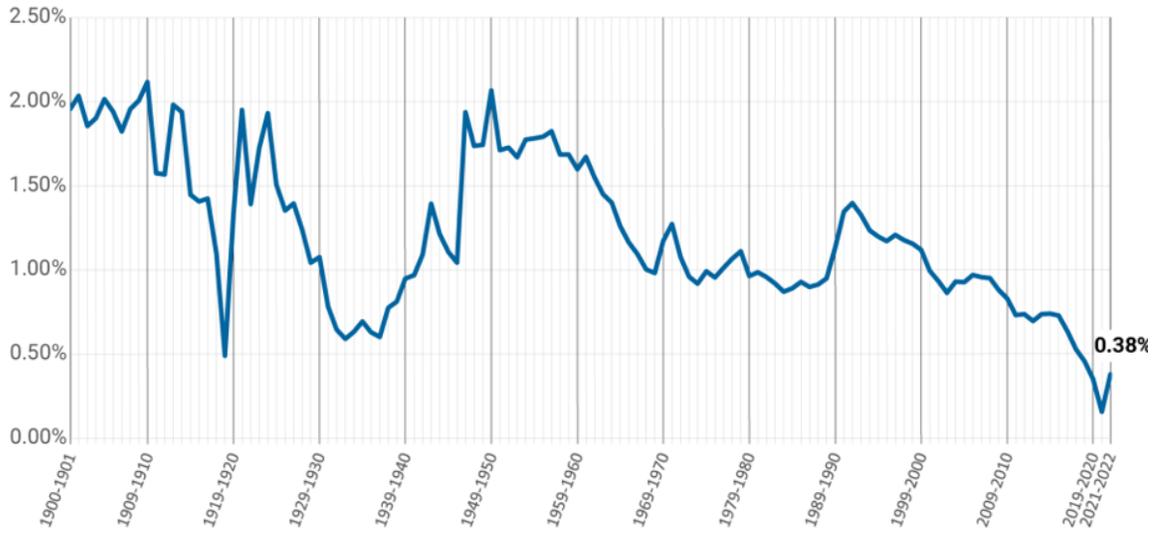


While demand for our services is increasing, the supply is not. The reality is that 750 nursing homes have closed since the start of the pandemic. Assisted living construction has slowed dramatically. Census is going to keep getting better.

The challenge will be finding workers to take care of our residents. While the number of older people is increasing, the overall population is not. This chart shows that population growth in the US is hitting historic lows.

FIGURE 1

US annual population growth, 1900-01 to 2021-22*



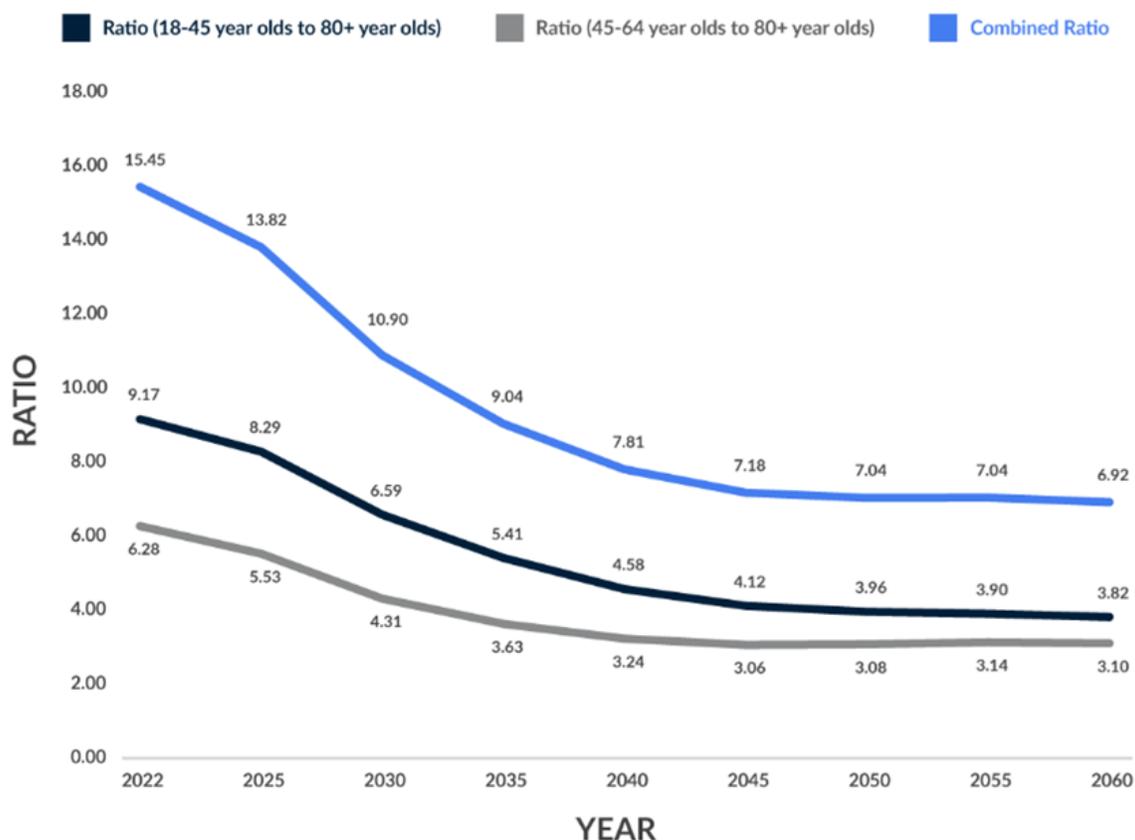
*July 1 to July 1 of each year

Source: William H. Frey analysis of U.S. Census Bureau historical population estimates, including 2020-22 annual estimates released December 22, 2022



The net result is that it will continue to be hard to find workers.

Additionally, the number of young people for every person over 80 years old will decline dramatically in the future. Our brilliant research team put together this next chart that shows the declining ratios of two age groups, 18-44 year olds and 45-64 year olds, to 80+ year olds in the country.



The challenge will be how to find workers.

QUALITY IS A KEY PART OF THE ANSWER

The labor shortage issue requires more than one solution. It involves smarter immigration policies and dedicated workforce training programs. But it also involves us getting better at recruiting and retaining employees. There are exceptional providers out there who have proven that by intentionally focusing on employee engagement and satisfaction, we can lower our turnover rates dramatically.

One of your best strategies to do this is to get involved in the AHCA/NCAL [National Quality Award Program](#). This is one of the best programs we have to offer. It's time tested. Thousands of buildings have gone through the program over the last 20+ years, and the results speak for themselves. Silver and Gold award recipients have higher occupancy, lower turnover, better clinical results, and a better bottom line.

We recently announced the 2024 [Bronze](#) and [Silver](#) recipients, who will be honored this fall in Orlando; more to come on that soon. This year, more than 700 long term care organizations from 48 states earned the Bronze Award, and nearly 140 organizations from 31 states earned the Silver Award. Congratulations to each of you on this amazing achievement!

We are also quickly approaching sign up for the 2025 AHCA/NCAL National Quality Award Program. The Quality team will host a Quality Award Program [kick-off webinar](#) on Tuesday, July 9 at 2 PM Eastern to help you learn more about the program and help you start your journey. Then the Intent to Apply portal opens in August. Please consider getting involved this year.

PROVIDER NETWORKS CONTINUE TO GROW

Provider-owned networks continue to grow, with more than 1,700 member facilities already participating! Participating providers have demonstrated success driving new value-based models that improve quality outcomes and managed care contracts. Since 2020, nine states have launched their own networks, including Iowa, Ohio, Indiana, Louisiana, Kentucky, Florida, North Carolina, Florida, and Minnesota. Several more will launch networks in 2024: Michigan, Massachusetts, Virginia, Tennessee, and possibly more.

Some of the additional, unexpected benefits of these networks that providers have found value in include credentialing, claims escalation/recoupment, and eliminating payment audits. The networks are proving to be an effective strategy with managed care, and we will continue to partner with our State Affiliates to determine if a network is appropriate for your state.

I'M GOING TO DISNEY WORLD!!!!

I love Disney World. My first visit was in 1974, and I've been hooked ever since.



It's fitting that [Delivering Solutions 24](#) – the AHCA/NCAL Convention & Expo this year is in Orlando, October 6-9. We're doing everything we can to make this the best one ever. And how bad can it be when we're in Orlando?!

Sadly, this will be my last Convention as your CEO. It's been such an awesome 14 years. I'm so grateful. I hope to see you in October at my one last hurrah.

In the meantime, keep up the fight. I promise you that we will keep fighting in D.C. And I'm as confident as ever that we're all going to come out of all these challenges intact and better than ever. Thanks for the continued honor to represent you in D.C.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark P. ...". The signature is written in a cursive, flowing style.

Mark Parkinson
President & CEO, AHCA/NCAL

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