

August 1, 2023

U.S. Department of Labor  
Wage and Hour Division  
Division of Regulations, Legislation, and Interpretation  
200 Constitution Avenue, NW, Room S-3502  
Washington, D.C. 20210  
[WHDopinionletters@dol.gov](mailto:WHDopinionletters@dol.gov)

**Re: Worker Classification Opinion for Temporary Healthcare Workers in Post-Acute Care Facilities**

Dear Acting Secretary Su,

We are writing on behalf of a coalition of technology-enabled healthcare staffing companies (the “Coalition”). We request an Opinion Letter from the Department of Labor (“DOL”) concerning the classification of temporary healthcare workers who perform services in post-acute care facilities as employees rather than independent contractors. The Coalition seeks confirmation that nurses and certified nurse aides that are temporarily assigned, referred, or otherwise placed in a post-acute healthcare facility by a firm, corporation, partnership, or other legal entity, including mobile applications or web-based platforms, (each an “Agency” and collectively, “Agencies”) should be classified as employees of the Agency under the Fair Labor Standards Act (“FLSA”) based on existing federal regulations and case law.<sup>1</sup>

This request is neither sought by any party in a Wage and Hour investigation, its representative, or any third party acting on its behalf, nor by any party, its representative, or any third party acting on its behalf for use in any litigation that was initiated prior to the submission of the opinion letter request.

***Background on Temporary Nurse Staffing Agencies***

Agencies provide temporary nursing staff to a variety of post-acute care facilities, including long-term care facilities, assisted living facilities, and skilled nursing facilities (each a “Facility” and collectively, the “Facilities”) at rates or rate ranges negotiated and agreed to between the Facilities and Agencies. Nursing staff include certified nursing assistants (“CNA”), licensed practical nurses, and registered nurses. Through their respective staffing platforms, Agencies connect nursing staff to Facilities by: (1) contracting

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<sup>1</sup> At this time, the Coalition seeks guidance from the Department limited to proper classification of temporary healthcare staff who provide services in post-acute care facilities. While the Coalition would welcome guidance from the Department that addresses worker classification in healthcare settings more broadly, the Coalition has chosen to focus its present inquiry on the facts specific to post-acute care. As is described in detail below, the post-acute care industry is facing significant worker shortages and must increasingly rely on temporary nursing staff. Accordingly, the Coalition believes that the post-acute care industry—including Agencies, temporary nursing staff, and care facilities—would greatly benefit from guidance from the Department at this time.

directly with the Facilities to provide temporary nursing staff based on the Facilities' short-term staffing needs; (2) creating a repository of available shifts for temporary nursing staff to elect to work; (3) establishing pay rates or pay ranges for the shifts and setting start and end times for each shift; and (4) acting as a liaison between the Facility and the nursing staff.

The Coalition members employ their nursing staff as W-2 employees, but similar Agencies that follow the same—or substantially similar—staffing model classify their nursing staff as independent contractors. The Coalition believes that independent contractor status for temporary nursing staff working in post-acute healthcare settings violates the FLSA.

### *Need for DOL Guidance*

The temporary nursing industry has grown rapidly in recent years, and temporary nursing staff are increasingly relied upon to fill the gaps in traditional nurse staffing. This is especially true in the wake of the COVID-19 pandemic, which exacerbated already existing nationwide nurse staffing shortages. Roughly 100,000 registered nurses have left the industry as a result of the stress and difficult working conditions caused by the pandemic and over 800,000 nurses plan to leave the workforce within the next five years for the same reasons.<sup>2</sup> By as soon as 2025, the nursing industry is expected to see a 10 to 20 percent gap between nursing needs and available staff.<sup>3</sup> These shortages have had a particularly concerning impact on post-acute care facilities. As a result of the pandemic, the nursing home industry alone has lost 221,000 full-time caregivers, amounting to a workforce reduction of 14 percent.<sup>4</sup> Indeed, a June 2022 survey found that 87 percent of nursing homes are experiencing moderate to high staffing shortages. These shortages inevitably impact patients: last year, 61 percent of nursing home facilities reported they were limiting new patient admissions due to a lack of staffing, and 73 percent were concerned that staffing shortages would require them to close their facilities.<sup>5</sup>

Nurse staffing shortages are dangerous for nurses and patients alike. For nursing staff, shortages create a more stressful and demanding working environment where nursing professionals are required to care for an overwhelming number of patients. Working in understaffed conditions takes a mental and physical toll on nursing professionals, which can result in burnout and leaving the profession.<sup>6</sup> For patients, nursing staff shortages are extremely dangerous. A Facility that is not

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<sup>2</sup> Kyla Russell, *About 100,000 Nurses Left the Workforce Due to Pandemic-Related Burnout and Stress, Survey Finds*, CNN (Apr. 14, 2023), <https://www.cnn.com/2023/04/13/health/nurse-burnout-post-pandemic/index.html>.

<sup>3</sup> Gretchen Berlin et al., *Assessing the Lingering Impact of COVID-19 on the Nursing Workforce*, McKinsey & Co. (May 11, 2022), <https://www.mckinsey.com/industries/healthcare/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>.

<sup>4</sup> Press Release, Am. Health Care Ass'n & Nat'l Ctr. for Assisted Living, *Report: Nursing Homes Down 221,000 Jobs Since Start of Pandemic* (Nov. 10, 2021), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/REPORT-Nursing-Homes-Down-221,000-Jobs-Since-Start-Of-Pandemic.aspx>.

<sup>5</sup> Am. Health Care Ass'n, *State of the Nursing Home Industry* (June 2022), <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/SNF-Survey-June2022.pdf>.

<sup>6</sup> Hoag Levins, *How Inadequate Hospital Staffing Continues to Burn Out Nurses and Threaten Patients* (Jan. 9, 2023), <https://ldi.upenn.edu/our-work/research-updates/how-inadequate-hospital-staffing-continues-to-burn-out-nurses-and-threaten-patients/>.

adequately staffed is less likely to be able to properly care for patients, and overworked nursing staff are more likely to be delayed in responding to patients or make medical errors that can have serious—or even fatal—consequences.<sup>7</sup>

Agencies provide temporary nursing professionals to post-acute care Facilities so that Facilities can reliably meet their existing staffing demands and ensure they can appropriately respond to healthcare needs. In an industry plagued with stress, long hours, and demanding work, nursing professionals engaged in temporary work report being able to better prioritize their own physical and mental wellbeing.<sup>8</sup> Since the beginning of the COVID-19 pandemic, the number of nurses moving to more flexible arrangements—such as travel and other per diem work—has grown by 1400 percent.<sup>9</sup>

In essence, the temporary nursing industry has emerged as one of the leading solutions to address the nurse staffing shortage in post-acute care facilities. However, for temporary nursing staff arrangements to properly serve patients and nursing professionals, it is important to ensure that temporary nursing staff are correctly classified as employees. Historically, temporary nursing staff working in post-acute care have been classified as W-2 employees. However, during the pandemic more than a half dozen technology-enabled Agencies elected to classify their nursing staff as independent contractors, taking advantage of a market that was experiencing unprecedented demand and increasing labor shortfalls. As a result, although the nature of temporary nursing work has not changed, we believe that a significant number of nurses and CNAs are improperly classified as independent contractors due to the number of Agencies that have chosen to operate under that model.<sup>10</sup>

The Coalition believes there are significant risks associated with the misclassification of temporary nurses. First, independent contractor status harms workers. Healthcare professionals who are misclassified as independent contractors are denied employment-related benefits such as overtime pay, access to employer provided health insurance options, unemployment insurance, workers' compensation, and other benefits.

Second, healthcare is a highly regulated field that requires managerial oversight and control of nursing staff; because of this, independent contractor status for temporary nursing staff working in post-acute Facilities is inappropriate. Temporary nursing staff interact directly with a vulnerable population, and they are responsible for the wellbeing and health of those patients. The nature of the job inherently requires a higher level of oversight, training, and control to ensure optimal

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<sup>7</sup> *Id.*

<sup>8</sup> *How Gig Working Technology Is Keeping More Nurses by the Bedside*, INTELYCARE (2022), <https://www.intelycare.com/wp-content/uploads/2022/04/ICRG-Report-2-Compressed-1.pdf>.

<sup>9</sup> Deirdre Baggot et al., *Healthcare Workers Moving to Gig Work in Record Numbers*, OliverWyman (2022), <https://www.oliverwyman.com/our-expertise/perspectives/health/2022/mar/healthcare-workers-moving-to-gig-work-in-record-numbers.html>.

<sup>10</sup> See Bureau of Labor Stat., Occupational Employment and Wages, May 2022, <https://www.bls.gov/oes/current/oes291141.htm>; Bureau of Labor Stat., Occupational Outlook Handbook: Nursing Assistants and Orderlies, <https://www.bls.gov/ooh/healthcare/nursing-assistants.htm#tab-3> (last modified Apr. 25, 2023).

patient outcomes and achieve the required standards of care. Facilities that rely on independent contractors significantly increase the risk of substandard patient care and malpractice claims because the Agencies providing independent contractor staff do not provide the necessary clinical and professional oversight for their workers, resulting in insufficient levels of training, continuing education, and support.

Finally, Facilities that utilize healthcare professionals who are misclassified as independent contractors may face increased co-employment risks, misclassification claims, and audits regarding unpaid overtime, unpaid payroll taxes, and workers' compensation liability. In sum, worker misclassification stands to harm nursing staff, patients, and facilities.

### ***FLSA Classification of Temporary Nursing Staff***

Given the growth of the industry and the inherent importance of proper worker classification, the Coalition seeks an Opinion Letter for guidance from the DOL as to appropriate worker classification for temporary nursing staff in post-acute care Facilities.<sup>11</sup>

As the Department is aware, to determine whether workers are employees or independent contractors under the FLSA, the DOL and federal courts use the "economic reality test." While the test varies slightly across different circuit courts, generally the following six factors are considered: (1) the degree of the employer's control over how the work is performed, (2) the worker's opportunity for profit or loss based on their managerial skill, (3) the worker's investment in equipment or materials, or their employment of other workers, (4) the worker's use of specialized skills, (5) the permanence and duration of the working relationship, and (6) the extent to which the work performed is an integral part of the employer's business.<sup>12</sup>

The Coalition is aware that the Department recently analyzed how those factors apply to temporary nursing staff in an enforcement action brought against a temporary nurse staffing registry in *Walsh v. Medical Staffing of America, LLC*.<sup>13</sup> In that case, the Department argued that the registry was misclassifying nurses as independent contractors and that the staffing agency should have classified its workers as employees under the FLSA. Based on the DOL's briefing and the applicable case law, the Coalition's position is that the economic reality test plainly shows that temporary nursing staff operating in post-acute Facilities should be classified as employees. While the Coalition believes that all of the factors are relevant to the temporary nursing industry in post-acute healthcare, the first two factors, (1) the degree of control that Agencies have over temporary nursing staff and (2) the workers' opportunity for profit or loss, are particularly strong indicators that an employee-employer relationship exists between the Agencies and temporary nursing staff.

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<sup>11</sup> In 2018, the Wage and Hour Division (WHD) of the Department of Labor published Field Assistance Bulletin No. 2018-4 ("FAB") to help WHD field staff "determine whether home care, nurse, or caregiver registries (registries) employers under the Fair Labor Standards Act (FLSA)." The FAB specifically addressed the home care industry, but it did not address temporary nurse staffing classification outside the home care context.

<sup>12</sup> See, e.g., *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311-12 (11th Cir. 2013).

<sup>13</sup> 580 F. Supp. 3d 216 (E.D. Va. 2022).

**Degree of Control:** Agencies have control over temporary nursing staff in post-acute Facilities. The DOL’s 2018 FAB includes several factors that are relevant to Agencies’ degree of control over their nursing staff: (1) whether the Agency conducts background and reference checks, (2) whether the Agency has the ability to hire and fire caregivers, (3) whether the Agency establishes the pay rate or range for nursing shifts, (4) whether the Agency directly pays nursing staff, and (5) whether the Agency tracks caregiver hours.<sup>14</sup> While an affirmative answer to each of these factors indicates employee status, in particular, “courts have concluded that when a registry determines nurses’ pay, that weighs towards a determination that the registry exercises significant control and the nurses are employees.”<sup>15</sup> Similarly, the existence of a set work schedule is not dispositive, especially in industries where it is common to have flexibility in scheduling.<sup>16</sup>

Agencies determine what nursing staff will be paid. At the outset, the Agency and the Facility negotiate what amount the Facility will pay the Agency for temporary nursing services. Agencies may negotiate a set rate with a Facility or may negotiate a pay range for different nursing staff, allowing the pay rate to vary slightly in order to account for changes in staffing needs. In either instance, the Facility pays the Agency according to the Facility’s and Agency’s agreed terms. Agencies then offer nursing staff access to a repository of set shifts at specific Facilities for nursing staff to accept or decline. When temporary nursing staff choose shifts, they are shown the pay rate for the shift; nursing staff do not have any ability to set their own pay rates independent of the rate or pay range determined by the Facility and Agency.<sup>17</sup> Since the Agencies serve as the payroll provider, Agencies are ultimately responsible for setting pay rates or ranges and for capping the amount that nursing staff may be paid for any shift at a Facility. Temporary nursing staff are always paid by the Agency, not the Facility.

Agencies conduct background checks before hiring nursing staff and require nursing staff to have a valid nurse license and certain medical documentation, such as vaccination information. Although Agencies do not have day-to-day direct, in-person supervision of nursing staff, that level of supervision is not required to prove

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<sup>14</sup> U.S. Dep’t Of Labor, Wage & Hour Div., Field Assistance Bull. No. 2018-4, Determining Whether Nurse Or Caregiver Registries Are Employers Of The Caregiver (2018) (“FAB No. 2018-4”). The FAB includes additional factors that are less relevant to post-acute care facilities and are not included here.

<sup>15</sup> Brief for Appellee (“DOL Brief”) at 29, *Su v. Med. Staffing of Am., LLC*, No. 22-1290 (4th Cir. Nov. 4, 2022); see also *Gayle v. Harry’s Nurses Registry*, 594 F. App’x 714, 717 (2d Cir. 2014) (citing as evidence of control the fact that nurses’ hourly rate was “fixed” by the registry, not negotiated by the nurses).

<sup>16</sup> See DOL Brief, at 30-32 (citing *Verma v. 3001 Castor, Inc.*, 937 F.3d 221, 230 (3d Cir. 2019); *Lilley v. BTM Corp.*, 958 F.2d 746, 750 (6th Cir. 1992); *Doty v. Elias*, 733 F.2d 720, 723 (10th Cir. 1984)).

<sup>17</sup> Although the Coalition does not believe this distinction impacts the nature of the Agencies’ control over temporary nursing staff, it is worth clarifying that some Agencies allow temporary nursing staff to “bid” for a certain pay rate. In those instances, the Agency sets the maximum allowable bid and the “suggested” bid. Temporary nursing staff cannot bid more than the maximum amount that the Agency allows. In those instances, the Agency controls what is the allowable pay range, often a range of a few dollars, at which a shift may be selected.

an employer-employee relationship, especially where there is pre-hire screening and some level of oversight to track a worker's hours and quality of work.<sup>18</sup> Agencies maintain clear oversight of temporary nursing staff: any concerns that a Facility has with temporary nursing staff, whether related to their clinical or professional services or otherwise, are directed to the Agency—not the nursing staff—for the Agency to address. Only Agencies can discipline temporary working staff. For instance, only Agencies have the ability to remove nursing staff from their platforms or restrict nursing staff from working at particular Facilities based on feedback from those Facilities. Moreover, Agencies' oversight of their workers is not limited to monitoring Facilities' concerns. Agencies have the ability to track nursing staff's shifts and monitor the hours that nursing staff work at any particular Facility. Though temporary nursing staff do not have a set schedule, their hours are driven by what shifts the Agency makes available to its nursing workforce.

**Opportunity for Profit and Loss:** Temporary nursing staff in post-acute Facilities do not have the necessary opportunity for profit and loss to classify them as independent contractors. Workers may be classified as independent contractors if they can exercise their managerial skills to obtain greater profits.<sup>19</sup> On the other hand, a lack of exposure to potential losses is a strong indicator that workers are employees.<sup>20</sup> Temporary nursing staff are not in business for themselves. Temporary nursing staff cannot increase their profits through the exercise of managerial skills and can only earn more by working more shifts. The rates they earn for shifts are set by the Agencies. They do not have opportunities to generate new business or identify new client Facilities and are reliant on the Agencies to connect them with work opportunities. Temporary nursing staff do not have exposure to potential losses, and are paid directly by the Agencies, regardless of whether the client Facilities have already paid the Agencies.

The Coalition believes the degree of control and opportunity for profit and loss factors are strong indicators that nursing staff should be classified as employees. In addition to these two factors, the Coalition believes the other four factors of the economic reality test confirm that temporary nursing staff in post-acute Facilities are properly classified as employees:

**Investment in Equipment or Materials:** Workers' investment in materials or equipment required to complete their tasks may indicate that they are independent contractors. However, the nature of this investment is important: significant capital investments in equipment or materials may be indicative of independent contractor status, but simply bringing one's own tools to work is generally insufficient to

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<sup>18</sup> See *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 814 (6th Cir. 2015).

<sup>19</sup> See *Schultz v. Cap. Int'l Sec., Inc.*, 466 F.3d 298, 307-08 (4th Cir. 2006) (noting that workers could not "exercise or hone their managerial skill to increase their pay" and the employer "paid a set rate for each shift worked").

<sup>20</sup> See *Gayle*, 594 F. App'x at 717-18 (finding that the opportunity for profit or loss factor "weigh[ed] heavily in favor of the nurses' status as employees" where they had "no downside exposure" and earned an hourly wage); *Dole v. Snell*, 875 F.2d 802, 810 (10th Cir. 1989).

establish independent contractor status.<sup>21</sup> Temporary nursing staff at post-acute Facilities may choose to bring their own equipment to complete their work, but such equipment typically requires minimal investment (e.g., a stethoscope). Temporary nursing staff largely rely on the medical equipment that is available at their respective post-acute care Facilities, and they do not contribute to capital investments for such equipment. Moreover, nursing staff cannot “invest” in additional personnel or hire other individuals to assist them in their work, which weighs against classifying them as independent contractors.<sup>22</sup>

**Use of Specialized Skill:** Courts consider whether workers use their specialized skills to independently exercise business initiative and, in the healthcare context, they consider whether workers are dependent on Agencies to find opportunities, as opposed to using their own specialized business skills to find clients.<sup>23</sup> While temporary nursing staff exercise technical skills to care for patients, those skills are the same as those deployed by permanent nursing staff in the Facilities in which temporary staff work. In other words, the skills that temporary nursing staff rely on are not specialized in comparison to their peers. Moreover, that is not the “skill” that has historically been considered under the economic reality test. Rather, nursing staff do not exercise any specialized entrepreneurial or business skills to independently exercise business initiative or engage in client outreach. Agencies make nursing shifts available to nursing staff; nursing staff do not find opportunities on their own.

**Permanence and Duration of the Relationship:** Courts consider the nature of the profession to assess the permanency of a particular working relationship. For example, in *Brock v. Superior Care, Inc.*,<sup>24</sup> the Second Circuit held that nurses working for a nursing registry, many of whom had worked under thirteen weeks, should be classified as employees. The court noted that “the fact that these nurses are a transient work force reflects the nature of their profession.”<sup>25</sup> It is important to note that this inquiry does not examine the permanency of a relationship between a nurse and a specific *Facility*, but instead looks at how permanent the relationship is between a nurse and an *Agency*. While temporary nursing staff are not obligated

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<sup>21</sup> See *Schultz*, 466 F.3d at 308; *Acosta v. Paragon Contractors Corp.*, 884 F.3d 1225, 1236 (10th Cir. 2018) (“The mere fact that workers supply their own tools or equipment does not establish status as independent contractors; rather, the relevant investment is the amount of large capital expenditures, such as risk capital and capital investments, not negligible items, or labor itself.” (quoting *Dole*, 875 F.2d at 810)).

<sup>22</sup> See *Schultz*, 466 F.3d at 308 (noting that a prohibition on workers hiring others to help them with their work weighed against a finding of independent contractor status).

<sup>23</sup> See, e.g., *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1060-61 (2d Cir. 1988); *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 345 (5th Cir. 2008) (“Generally, we look for some unique skill set, or some ability to exercise significant initiative within the business.”); *Martin v. Selker Bros.*, 949 F.2d 1286, 1295 (3d Cir. 1991) (“[T]he use of special skills is not itself indicative of independent contractor status, especially if the workers do not use those skills in any independent way.”).

<sup>24</sup> 840 F.2d 1054 (2d Cir. 1988).

<sup>25</sup> *Id.* at 1060-61.

to work with a particular staffing company for any amount of time, in the Coalition's experience, many do work with the same staffing companies for extended time periods.<sup>26</sup>

**Work Is an Integral Part of Agencies' Business:** Workers are more likely to be classified as employees when they provide services that are integral to the employer's business.<sup>27</sup> Courts have found an employment relationship where the business "could not function without the services its workers provide."<sup>28</sup> Agencies' business model is to connect nursing professionals with work opportunities at the Facilities; the labor that nursing professionals perform is absolutely integral to that business. Temporary nurse staffing companies simply could not exist without the work done by nursing professionals.

### ***Proposed Rulemaking on Worker Classification***

The Coalition is aware that DOL recently issued a Notice of Proposed Rulemaking regarding employee classification under the FLSA.<sup>29</sup> The Coalition does not believe that anything in the Proposed Rulemaking alters the analysis for Agencies under the FLSA. In fact, the Proposed Rule would only strengthen the existing argument in favor of classifying temporary nursing staff as employees. The Proposed Rule offers several points of clarification that support the Coalition's position:

1. The Proposed Rule emphasizes that "temporary work is common in some industries, and that a lack of permanence in these work relationships is also not indicative of independent contractor status."<sup>30</sup> The Proposed Rule specifically addresses the nursing industry: "the Second Circuit determined that the lack of permanence did not preclude the nurses from being employees because this reflected 'the nature of their profession and not their success in marketing their skills independently.'" <sup>31</sup>
2. The Proposed Rule clarifies that based on existing case law across several circuits, the "opportunity for profit or loss" factor is specifically based on the exercise of a worker's managerial skill.<sup>32</sup>

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<sup>26</sup> See, e.g., *Walsh*, 580 F. Supp. 3d at 223 ("Defendants' pay records indicate that the relationship between Defendants and the nurses is permanent in nature.")

<sup>27</sup> *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 815 (6th Cir. 2015) ("The more integral the worker's services are to the business, then the more likely it is that the parties have an employer-employee relationship.").

<sup>28</sup> *Acosta v. Off Duty Police Servs., Inc.*, 915 F.3d 1050, 1055 (6th Cir. 2019); see also *Schultz v. Cap. Int'l. Sec., Inc.*, 466 F.3d 298, 309 (4th Cir. 2006) (finding that security agents were employees of a company "formed specifically for the purpose" of supplying a particular security detail).

<sup>29</sup> Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62218 (proposed Oct. 13, 2022).

<sup>30</sup> *Id.* at 62244.

<sup>31</sup> *Id.* (citing *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1061 (2d Cir. 1988)).

<sup>32</sup> 87 Fed. Reg. 62218, 62237.



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- 3. For the “investment” factor, the Proposed Rule considers the nature and reason of an employee’s investment in addition to its value and amount, specifically noting that the investment must be “capital or entrepreneurial in nature” to support independent contractor status.<sup>33</sup>

Given the Proposed Rule only stands to enforce the Coalition’s position that temporary nursing staff are properly classified as employees, the Coalition believes it would be beneficial for the nursing industry for DOL to issue an Opinion Letter at this time, even though the Rulemaking is still pending.

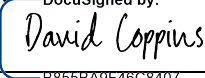
### Conclusion

The Coalition believes that temporary nursing staff who are connected to nursing shifts at post-acute care facilities through Agencies must be classified as employees under the FLSA and seeks guidance responding to our position. We understand that the inquiry is fact intensive and no one factor is dispositive; however, assuming the facts presented above are materially true, are Agencies that classify nursing staff as independent contractors compliant with the FLSA, or are there elements of the foregoing description that indicate, as the Coalition believes, that temporary nursing staff at post-acute care facilities must be classified as employees?

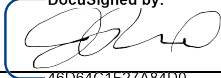
The Coalition appreciates DOL’s consideration of these issues and welcomes additional guidance. If there are any questions regarding this letter, please contact Michael Berdik, IntelyCare, Inc. Chief Legal Officer, at (617) 721-0185 or [mberdik@intelycare.com](mailto:mberdik@intelycare.com).

Sincerely,

**IntelyCare, Inc.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: David Coppins  
Title: Chief Executive Officer

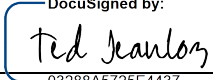
**Gale Healthcare Solutions, LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Tony Braswell  
Title: President and Founder

**ShiftMed, LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: E. Todd Walrath  
Title: President & CEO

**connectRN, Inc.**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Ted Jeanloz  
Title: Chief Executive Officer

<sup>33</sup> *Id.* at 62241.

This letter has been endorsed by the following healthcare staffing organizations:

- Advantis Medical Staffing
- AMN Healthcare
- Assured Healthcare Staffing LLC
- ATC Healthcare Services
- Blu MedStaff, LLC
- Camillus Staffing, LLC
- Davin Healthcare Workforce Solutions, Inc.
- Favorite Healthcare Staffing LLC
- GigWorx Healthcare
- GrapeTree Medical Staffing, LLC
- HealthPro Innovation Workforce Solutions, LLC
- HealthTrust Workforce Solutions
- Integrity Health Group, LLC
- LeaderStat, LTD
- Medical Solutions L.L.C.
- MedPro Healthcare Staffing
- OneStaff Medical
- OPA Medical Staffing, LLC
- Pluto Healthcare
- Provenir LLC
- Superior Medical, LLC
- Supplemental Health Care
- TemPositions Health Care, Inc.
- The Royster Group
- Travel Nurse Across America, LLC
- Trusted Health, Inc.