

## Healthcare Impact Statement

### Regarding the Proposed Sale of Three Skilled Nursing Facilities by Eskaton Properties, Inc. to International Equity Partners

Prepared for the Office of the Attorney General  
California Department of Justice  
Healthcare Rights and Access Section

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## A. Background of this Healthcare Impact Statement

The Office of the Attorney General is reviewing the proposed sale of three skilled nursing facilities (SNFs) by Eskaton Properties, Inc., a nonprofit public benefit corporation, to International Equity Partners (IEP), a Los Angeles based investment company.

Per California Corporations Code sections 5917 and 5917.5, the Attorney General shall consider any factors deemed relevant to the proposed sale, including whether the agreement or transaction may create a significant effect on the availability or accessibility of healthcare services to, or cultural interests provided by, the affected community.

Per California Code of Regulations, title 11, section 999.5, subdivision (e)(5)-(6), the Attorney General shall prepare an independent healthcare impact statement that includes (but is not limited to):

- An assessment of the impact on Medi-Cal patients, county indigent patients, and any other class of patients.
- As assessment of the effect of the agreement on staffing for patient care areas, as it may impact the availability of care; the likely retention of employees, as it may affect continuity of care; and the rights of employees to provide input on health quality and staffing issues.

This Healthcare Impact Statement evaluates relevant factors related to the proposed sale including the performance history of the three Eskaton SNFs and International Equity Partners' proposed managers and operators of the SNFs, Cypress Healthcare Group, LLC. It concludes with recommendations.

## B. Proposed Transaction

### Eskaton Properties, Inc.

The seller, Eskaton Properties, Inc., (Eskaton) is a California nonprofit public benefit corporation, formed in 1968. It is organized and operated to provide housing, healthcare, and social services to seniors and persons with disabilities.

Eskaton's stated primary mission is to enhance the quality of life of seniors.<sup>1</sup> In addition to healthcare, Eskaton also operates homecare, adult day services, and various community programs.

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<sup>1</sup> <https://www.eskaton.org/about-us/> (accessed July 19, 2023).

Eskaton proposes to sell the following skilled nursing facilities (SNFs):

SNF	LOCATION	LICENSED BEDS
Eskaton Care Center Fair Oaks	11300 Fair Oaks Blvd., Fair Oaks, CA 95628	149
Eskaton Care Center Greenhaven	455 Florin Road, Sacramento CA 95831	148
Eskaton Care Center Manzanita	5318 Manzanita Avenue, Carmichael, CA 95608	99

International Equity Partners, LLC

The buyer, International Equity Partners LLC (IEP), is a privately held real estate company based in Los Angeles. IEP owns and operates approximately 100 healthcare facilities in California.

IEP has proposed Cypress Healthcare Group LLC (Cypress) as the manager and operator of the three SNFs. Cypress has been operating six SNFs in California since 2019 and recently began operating three additional SNFs in early April 2023.

Cypress will lease and delegate operation of the SNFs its subsidiaries as follows:

SNF	Operator
Eskaton Care Center Fair Oaks	Mackenzie LLC
Eskaton Care Center Greenhaven	Bawitdaba, LLC
Eskaton Care Center Manzanita	Baleen, LLC

**C. Skilled Nursing Facility Performance Analysis**

This Healthcare Impact Statement analyzes the potential healthcare impact on the residents of the Eskaton SNFs. The three SNFs in the sale have a total number of 396 beds where frail and clinically complex residents are receiving round-the-clock care. Almost 65% of the residents are Medi-Cal recipients. Some are living with Alzheimer’s disease (or other related dementias), making it difficult for them to advocate for themselves.

**1. Eskaton Properties, Inc. SNF Performance**

Care Compare Five Star Ratings

Care Compare performance rating for SNFs was launched by the Centers for Medicare and Medicaid Services (CMS) almost 20 years ago.<sup>2</sup> It includes a set of star ratings for each SNF that participates in Medicare or Medicaid and scores them based on performance compared with all the SNFs within the state of California and the United States. The rating system features an

<sup>2</sup> <https://www.medicare.gov/care-compare/> (accessed July 27, 2023).

overall five-star rating based on SNF performance across three types of performance domains, each of which has its own associated five-star rating:

Care Compare Performance Domain	Subject of Evaluation
Health Inspections	Outcomes of regulatory surveys/inspections
Staffing	Staffing levels and staff stability
Quality Measures	Clinical care outcomes

The three Eskaton SNFs have current overall Care Compare ratings of 4.3 stars out of 5 stars, reflecting a higher overall performance compared to other SNFs in California. Both Greenhaven and Manzanita have 5-star overall ratings. See table 1 below.

**Table 1. Eskaton SNFs Star Ratings on Care Compare as of July 2023 (higher is better).<sup>3</sup>**

Current Star Ratings for Eskaton SNFs	Fair Oaks	Greenhaven	Manzanita	Average
Overall Star Rating	3	5	5	4.3
Health Inspections	2	4	4	3.3
Staffing	3	3	3	3
Quality Measures	5	5	5	5

The Eskaton SNFs have above-average star ratings (5 stars) under the Quality Measures domain and this performance is consistent across all three Eskaton SNFs, with all three rated with 5 stars. At the same time, their Staffing star rating is consistently average (3 stars).

Points Assigned to Deficiencies

SNFs that participate in Medicare and/or Medicaid have annual onsite recertification and regulatory-focused inspections, with very rarely more than fifteen months elapsing between inspections. The Centers for Medicare and Medicaid Services (CMS) contracts with the California Department of Public Health (CDPH) to inspect SNFs in California. Inspections are unannounced and conducted by a team of healthcare professionals who spend several days in the SNF to assess whether the SNF is following federal nursing home requirements and regulations.

The Care Compare star rating for SNF regulatory performance is weighted more heavily in the calculation of a SNF’s overall star rating. The current Care Compare regulatory data is reliant on inspection results from 2019 and early 2020 due to the suspension of annual recertification surveys in 2020 and part of 2021 in response to safety concerns related to the global COVID-19 pandemic. The CDPH is slowly catching up on overdue annual recertification surveys. The delay impacts the data, especially regarding analysis of a SNF’s recent performance.

To assign a Care Compare star rating for regulatory performance on, CMS calculates each SNF’s health inspection score based on points assigned to deficiencies identified in each SNF’s three

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<sup>3</sup> *Ibid.*

most recent 12-month time periods, referred to as “cycles.” The most recent year, or cycle 1, of deficiency points is weighted more heavily than the earlier years (cycles 2 and 3). The lower the number of deficiency points, the higher a SNF will be ranked among the other SNFs in the state, and, as a result, it will receive a higher star rating in the regulatory domain on Care Compare.

Deficiency points are assigned to individual health deficiencies according to the scope and severity of the deficiency. The more serious and systemic deficiencies receive more deficiency points, with additional points assigned for substandard quality of care.<sup>4</sup> See table 3 below.

**Table 2. CMS assignment of points within the deficiency scope and severity scale.<sup>5</sup>**

Severity	Scope		
	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	<b>J</b> 50 points* (75 points)	<b>K</b> 100 points* (125 points)	<b>L</b> 150 points* (175 points)
Actual harm that is not immediate jeopardy	<b>G</b> 20 points	<b>H</b> 35 points (40 points)	<b>I</b> 45 points (50 points)
No actual harm with potential for more than minimal harm that is not immediate jeopardy	<b>D</b> 4 points	<b>E</b> 8 points	<b>F</b> 16 points (20 points)
No actual harm with potential for minimal harm	<b>A</b> 0 point	<b>B</b> 0 points	<b>C</b> 0 points

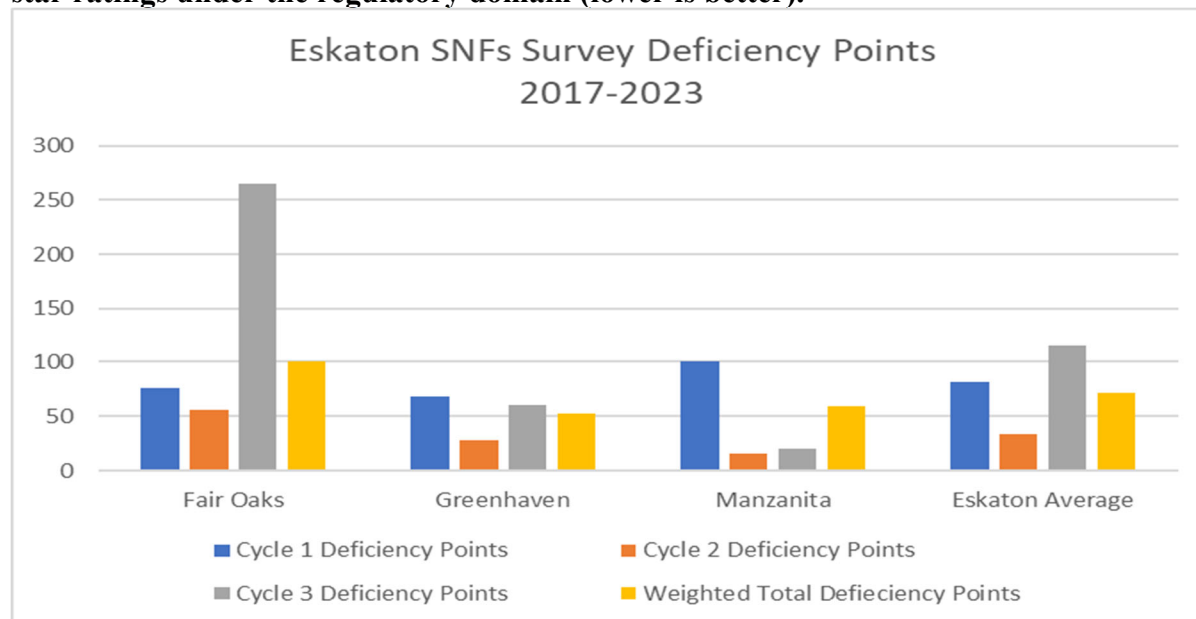
Note: Figures in parentheses indicate points for deficiencies that are for substandard quality of care.

The deficiency point totals for the three Eskaton SNFs reflect above-average performance, which is consistent with their above-average performance on the CMS Care Compare star rating (4.3 stars out of 5 stars). See figure 1 below.

<sup>4</sup> Nursing Home Compare Five-Star Quality Rating System Technical User’s Guide, June 2023, <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/usersguide.pdf> (accessed July 1, 2023).

<sup>5</sup> *Ibid.*

**Figure 1. Eskaton SNFs’ inspection deficiency points for calculating CMS Care Compare star ratings under the regulatory domain (lower is better).<sup>6</sup>**



Over the past three years, the Eskaton SNFs’ deficiency point totals have been increasing (getting worse), reflecting a slight decline in regulatory performance. According to the current Care Compare star rating cut points for weighted deficiency point totals in California, the Eskaton SNFs’ cycle 1 average weighted deficiency points place them at 3 stars in the regulatory performance domain of Care Compare. However, all three SNFs are overdue for their annual recertification survey which will reset their cycle one point total and their weighted average. See table 3 below.

**Table 3. CMS Care Compare five-star rating cut points for the State of California.<sup>7</sup>**

State	# of SNFs	1 Star	2 Star	3 Star	4 Star	5 Star
CA	1,163	>146	<146 - >92	<92 - >61	<61 - >33	<33

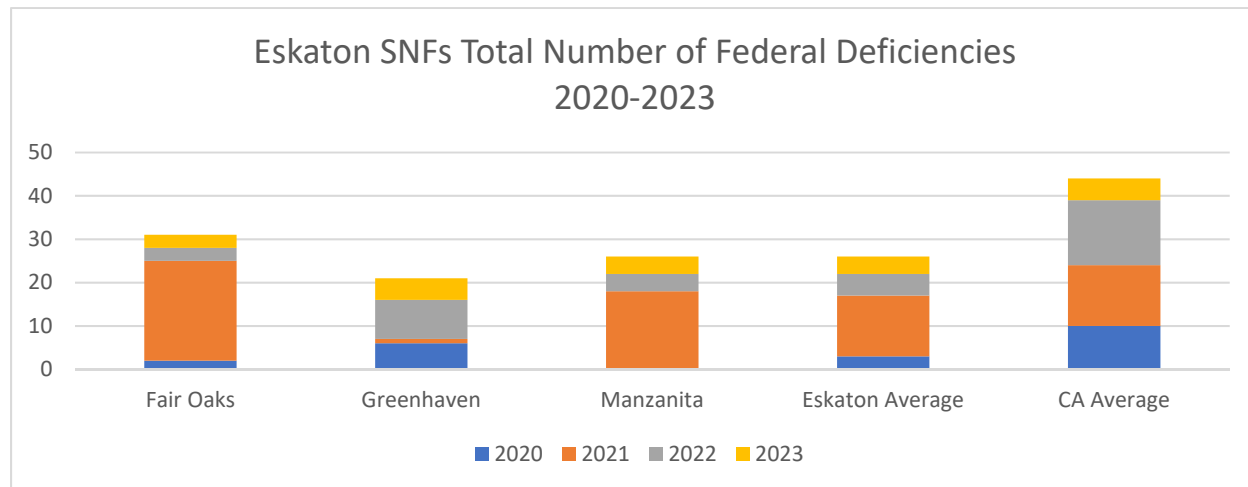
Number of Federal Survey Deficiencies

According to figure 2 below, the Eskaton SNFs have received fewer deficiencies from 2019 to 2022, but all three have been waiting more than 15 months for their annual CDPH recertification surveys and Eskaton Care Center Greenhaven has been waiting more than three years for its annual CDPH recertification survey. Two of the three SNFs had a survey in 2021. Since 2020, Eskaton SNFs received on average 40% fewer deficiencies than other SNFs in California. See figure 2 below.

<sup>6</sup> Nursing Home Database Skilled Nursing Facility Search, <https://www.nursinghomedatabase.com/find/skilled-nursing> (accessed July 2, 2023).

<sup>7</sup> Nursing Home Care Compare Technical Users Guide. State-Level Health Inspection Cut Point Table, June 2023, <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/cutpointstable.pdf> (accessed July 2, 2023).

**Figure 2. Eskaton SNFs’ total number of federal deficiencies identified during inspections (lower is better).<sup>8</sup>**



Immediate Jeopardy and Actual Harm Deficiencies

CDPH inspectors rate identified federal regulatory deficiencies during annual inspections of SNFs and inspections triggered by complaints and facility reported incidents (FRIs) according to the federal deficiency scope and severity scale in table 4 below.

**Table 4. Federal Deficiency Scope and Severity Scale<sup>9</sup>**

<b>LEVEL 4</b>	<b>Immediate Jeopardy To Resident Health Or Safety</b>	<b>ISOLATED J</b>	<b>PATTERN K</b>	<b>WIDESPREAD L</b>
<b>LEVEL 3</b>	<b>Actual Harm That Is Not Immediate Jeopardy</b>	<b>ISOLATED G</b>	<b>PATTERN H</b>	<b>WIDESPREAD I</b>
<b>LEVEL 2</b>	<b>No Actual Harm With Potential For More Than Minimal Harm That Is Not Immediate Jeopardy</b>	<b>ISOLATED D</b>	<b>PATTERN E</b>	<b>WIDESPREAD F</b>
<b>LEVEL 1</b>	<b>No Actual Harm With Potential For Minimal Harm</b>	<b>ISOLATED A</b>	<b>PATTERN B</b>	<b>WIDESPREAD C</b>

<sup>8</sup> <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/ConsumerGuide.aspx> (accessed July 27, 2022).

<sup>9</sup> Nursing Home Compare Five-Star Quality Rating System Technical User’s Guide, June 2023 <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/usersguide.pdf>.



The most severe, and potentially life-threatening, regulatory deficiencies are assessed at level 3 deficiencies (actual harm) or level 4 deficiencies (immediate jeopardy). Level 3 deficiencies are regulatory noncompliance that results in a negative outcome that has compromised a resident’s ability to maintain and/or reach his/her highest practicable physical, mental, and psychosocial well-being. Level 4 deficiencies are immediate jeopardy, a situation in which immediate corrective action is necessary because the facility’s noncompliance with one or more federal regulations has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

The Eskaton SNFs are rarely cited for level 3 or level 4 regulatory deficiencies by CDPH inspectors. Since 2020, they have received a total of one level 3 actual harm deficiency. See table 5 below.

**Table 5. Eskaton SNFs’ Number of Immediate Jeopardy and Actual Harm Deficiencies.**

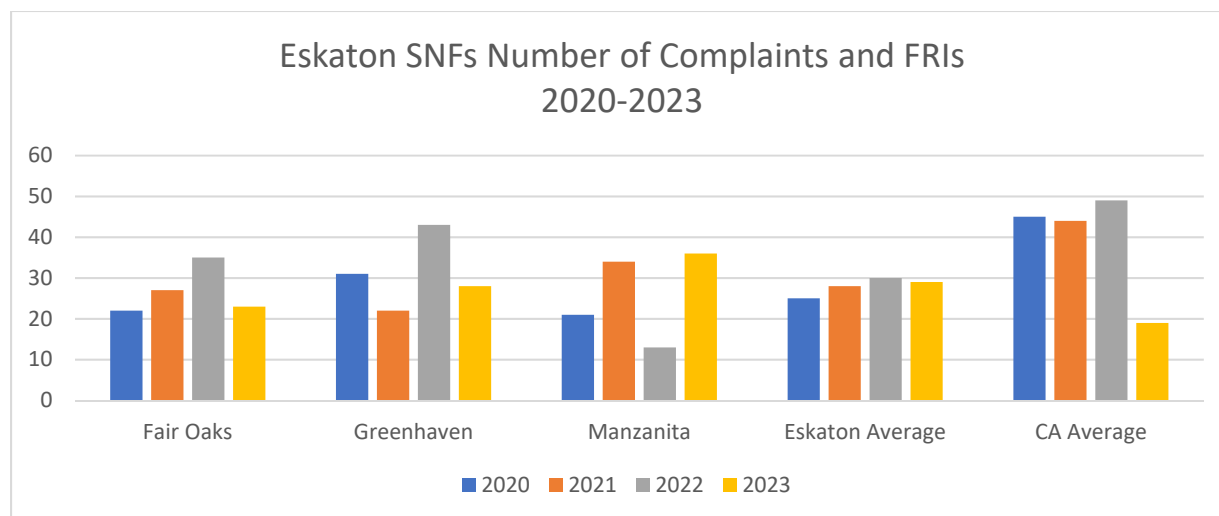
Eskaton SNFs Total Number of IJ and Actual Harm	Fair Oaks	Greenhaven	Manzanita	Eskaton Average
2020	0	0	0	0
2021	0	0	0	0
2022	0	0	0	0
2023	0	0	1	0.3

Complaints and Facility Reported Incidents

The number of complaints and FRIs that are received and investigated by CDPH is an important indicator of quality of care and of quality of life in SNFs. CDPH inspections triggered by complaints and FRIs can, and do, result in regulatory deficiencies. A complaint is a report received by CDPH from anyone concerned about the health and welfare of the residents and the staff at a SNF. An FRI is any report made to CDPH by any representative of the healthcare facility. Facilities are required to report incidents and unusual occurrences, which may include resident abuse, outbreaks of infectious diseases, disasters, fires, disruption of services, major accidents, or unusual occurrences that threaten the health and safety of patients, residents, clients, staff, or visitors.

Over the past four years, the Eskaton SNFs have performed better than other California SNFs when examining the average number of complaints and FRIs. From 2020 to 2023, the Eskaton SNFs’ average number of complaints and FRIs per SNF was 28% less than the California state average for all SNFs. See figure 3 below.

**Figure 3. Eskaton SNFs complaints and FRI (lower is better).<sup>10</sup>**



### Staff Stability

As per the California Code of Regulations,<sup>11</sup> this Healthcare Impact Statement evaluates the potential effect of the sale on staffing levels and the retention of employees, which in turn affects continuity of care, at the Eskaton SNFs.

The association between staff stability and quality outcomes has been well documented.<sup>12</sup> Measures of staff stability (staff turnover, staff retention) are mutually reinforcing measures and are important proxies for clinical outcomes of care.<sup>13</sup> In fact, CMS recently explored the relationship between staff turnover and quality and their analysis reflects that as the average staff turnover rate decreases in a SNF, the overall Care Compare star rating increases, suggesting that lower staff turnover is associated with higher overall quality.<sup>14</sup>

Staff stability and quality are intricately linked because SNF staff deliver better care when they know their residents well, and getting to know the residents well only happens over time, when the same staff can care for the same group of residents each day. Knowing the residents well means knowing how to safely transfer a resident to and from bed or chair and being able to

<sup>10</sup> CDPH data for each facility can be found at <https://www.cdph.ca.gov/programs/chcq/lcp/calhealthfind/Pages/Home.aspx>. (accessed July 27, 2023).

<sup>11</sup> Cal. Code Regs., tit. 11, § 999.5, subd. (e)(6)(E).

<sup>12</sup> Bostick, Rantz, Flesner, Riggs. Systematic Review of Studies of Staffing and Quality in Nursing Homes. JAMDA. April 2006, <https://pubmed.ncbi.nlm.nih.gov/16843237/> (accessed July 25, 2023).

<sup>13</sup> Collier and Harrington. Staffing Characteristics, Turnover Rates, and Quality of Resident Care in Nursing Facilities. Research in Gerontological Nursing. July 2008, <https://pubmed.ncbi.nlm.nih.gov/20077960/> (accessed July 25, 2023).

<sup>14</sup> CMS QSO-22-08-NH, January 2022, <https://www.cms.gov/files/document/qso-22-08-nh.pdf> (accessed July 25, 2023).

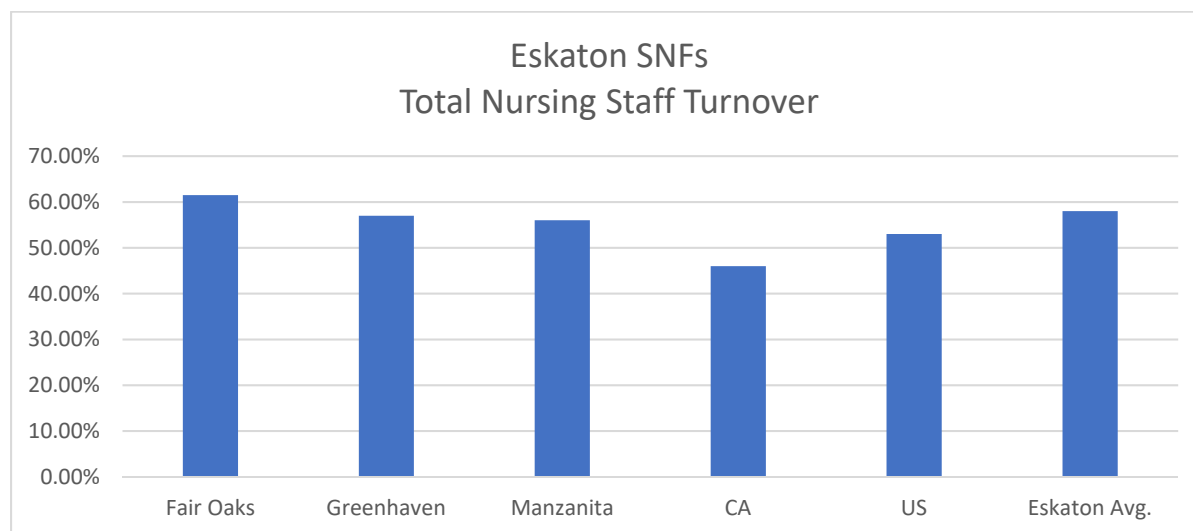
recognize changes in the resident’s skin from day to day. Knowing the residents well also means knowing what they prefer to eat and which social events they prefer to attend, which contributes to their quality of life.

The SNFs with lower direct care staff turnover rates and higher staff retention rates have a big, foundational clinical advantage over other SNFs. For example, under these conditions, SNF staff are more likely to identify a resident’s change in condition sooner. Early identification of a change in a resident enables the nursing staff to implement interventions timely to avoid a fall, a pressure sore, or a sudden drop in weight. Therefore, nursing staff stability is an important predictor of clinical quality.

### Nursing Staff Turnover Rates

The Eskaton SNFs’ staff turnover rate reflects that they have been recently experiencing staff turnover that negatively impacts their staffing star rating. The Eskaton SNFs’ average overall nursing staff turnover rate (58%) is higher than the California SNF state average (overall 46%) and national average among all SNFs (53%). See figure 4 below.

**Figure 4. July 2023 Care Compare Eskaton SNFs’ overall nursing staff average turnover rates (lower is better).<sup>15</sup>**

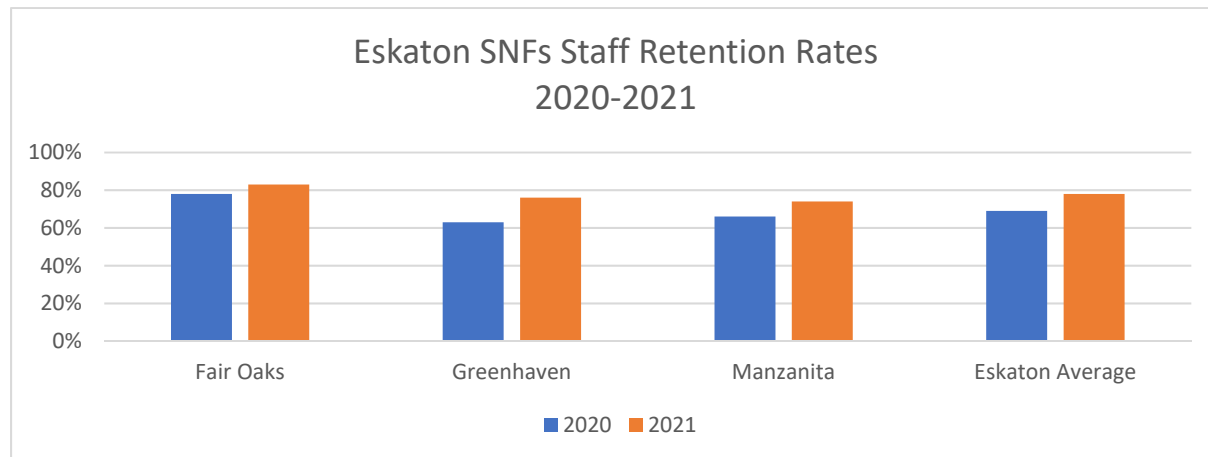


### Direct Care Staff Retention Rates

In addition to staff turnover rates, employee retention rates are an important and separate measure of staff stability in a SNF. The Eskaton SNFs have a consistently high direct care staff retention rate. During the pandemic, when most SNFs were struggling to retain their direct care staff, the Eskaton SNFs had an average staff retention rate of 74%. See figure 5 below.

<sup>15</sup> <https://www.medicare.gov/care-compare/>.

**Figure 5. Eskaton SNFs direct care employee retention rates 2020 and 2021 (higher is better).<sup>16</sup>**



The Eskaton SNFs experienced both high turnover and high staff retention rates at the same time. This unique human resource dynamic is possible when SNFs retain a large core group of staff while, at the same time, experiencing high turnover of new staff.

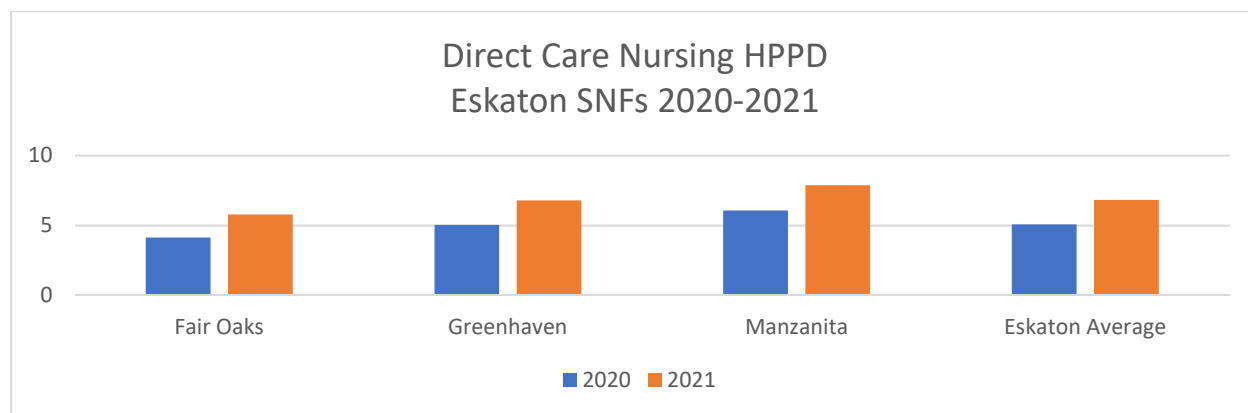
#### Direct Care Nursing Hours Per Patient Day

The Eskaton SNFs’ performance under the staffing domain of CMS Care Compare reflects consistency, with all three SNFs rated as 3 stars. A closer look reflects that the Eskaton SNFs’ current measures of direct care nursing staffing hours are higher than most SNFs in California and across the United States. However, the Eskaton SNFs’ staff turnover rates are higher than others SNFs, which negatively impacts their star rating under the Care Compare staffing domain.

The Eskaton SNFs’ staff turnover and staff retention rates are both positively impacted by their high levels of direct care nursing hours per patient day (HPPD). According to the most recent Medi-Cal cost reports, Eskaton SNFs’ direct care nursing hours were well above the state requirement of 3.50 HPPD in both 2020 and 2021. See figure 6 below.

<sup>16</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov> (accessed July 3, 2023).

**Figure 6. Eskaton SNFs’ direct care nursing staffing HPPD 2021 (higher is better).<sup>17</sup>**



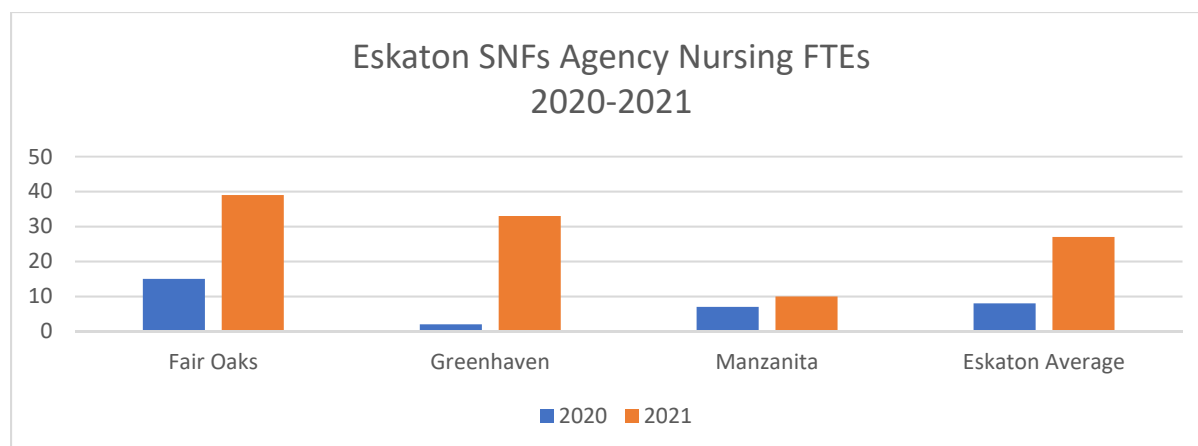
Staffing Agency Utilization

Many SNFs that struggled with COVID outbreaks, high staff turnover rates, and low staff retention rates had to fill in the vacant shifts in their nursing schedule by contracting with staffing agencies that have nurses and certified nursing assistants available to work. These staffing agencies charge the SNFs at rates that are 30-50% more than what a SNF would typically pay its own staff.

Contracted staffing agency nurses and nursing assistants often struggle to deliver quality care and service to residents at the SNFs where they have been assigned to work due to their unfamiliarity with the SNF’s residents and the SNF’s unique policies and procedures.

During the pandemic, the resident occupancy rate declined slightly at the Eskaton SNFs while staffing agency use soared from 2020 to 2021. Eskaton SNFs, like many SNFs, likely struggled with COVID outbreaks and staff instability during this timeframe. See figure 7 below.

**Figure 7. Eskaton SNFs’ Agency Nursing FTEs 2020 and 2021 (lower is better).<sup>18</sup>**



<sup>17</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

<sup>18</sup> *Ibid.*

## Quality Measures

The Eskaton SNFs' combination of higher staff turnover rates and their recently higher utilization of nurses from staffing agencies has likely negatively impacted their performance on one of two key quality measures on CMS Care Compare.

The employment of stable and consistent direct care staff who know the residents well, and who have enough time to meet the needs of each resident in their assignment, results in more support provided to the residents when they are eating, and more timely assistance with toileting and repositioning.

Two quality measures, the percentage of long-stay, high-risk residents with pressure ulcers and the percentage of long-stay residents who lose too much weight, are both highly sensitive to, and impacted by, the number of direct care staff, and the stability and consistency of the direct care staff, on duty each day.<sup>19</sup>

Care Compare definitions of the two quality measures:<sup>20</sup>

### *Percentage of Long-Stay, High-Risk Residents with Pressure Ulcers.*

This measure captures the percentage of long-stay, high-risk residents with Stage II-IV pressure ulcers or unstageable pressure ulcers. Residents at high risk for pressure ulcers are those who are impaired in bed mobility or transfer, who are comatose, or who suffer from malnutrition.

### *Percentage of Long-Stay Residents who Lose Too much Weight.*

This measure reports the percentage of long-stay residents who had a weight loss of 5% or more in the last month or 10% or more in the last six months that were not on a physician-prescribed weight loss regimen during the target period.

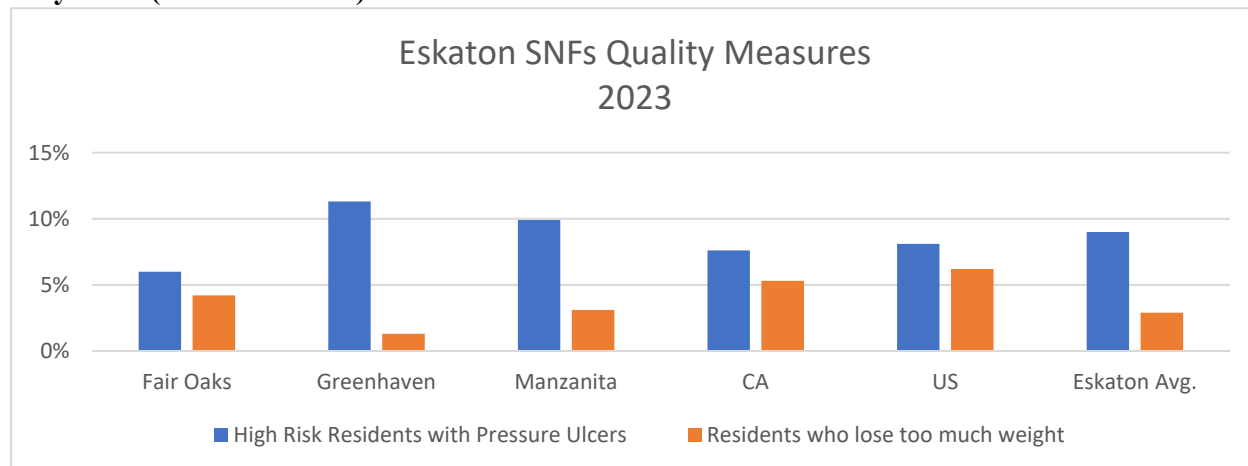
Care Compare reflects that the Eskaton SNFs are performing better than other SNFs when it comes to preventing excessive weight loss among the residents. However, at the Eskaton SNFs, the average pressure ulcer rate is higher than both the average among all the SNFs in California and in the United States. See figure 8 below.

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<sup>19</sup> Bostick, Rantz, Flesner, Riggs. Systematic Review of Studies of Staffing and Quality in Nursing Homes. JAMDA. April 2006, <https://pubmed.ncbi.nlm.nih.gov/16843237/>).

<sup>20</sup> Nursing Home Care Compare Technical Users Guide, June 2023, <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/cutpointstable.pdf>.

**Figure 8. Eskaton SNFs CMS Care Compare – percentage of long-stay residents who lost too much weight and the percentage of long-stay, high-risk residents with pressure ulcers July 2023 (lower is better).<sup>21</sup>**



**2. Cypress Healthcare Group, LLC, SNF Performance**

Cypress Healthcare Group, LLC (Cypress), the buyer-proposed manager of the three Eskaton SNFs in the transaction, is an experienced operator in the Sacramento area. Cypress currently leases and manages six SNFs. Cypress’ management involvement in its six SNFs began in April 2019 (three SNFs) and October 2019 (three SNFs). See table 6 below.

**Table 6. Cypress Healthcare Group LLC Operates these six SNFs in California.**

Cypress SNF Name	Address	# SNF Beds	Cypress Since
Sherwood Healthcare Center	4700 Elvas Ave, Sacramento	62	10/1/19
Saylor Lane Healthcare Center	3500 Folsom Blvd., Sacramento	42	10/1/19
Oak Ridge Healthcare Center	310 Oak Ridge Dr., Roseville	67	4/1/19
College Oak Nursing and Rehabilitation Center	4635 College Oak Dr., Sacramento	120	4/1/19
Asbury Park Nursing and Rehabilitation Center	2257 Fair Oaks Blvd., Sacramento	139	10/1/19
Woodside Healthcare Center	2240 Northrop Ave., Sacramento	59	4/1/19

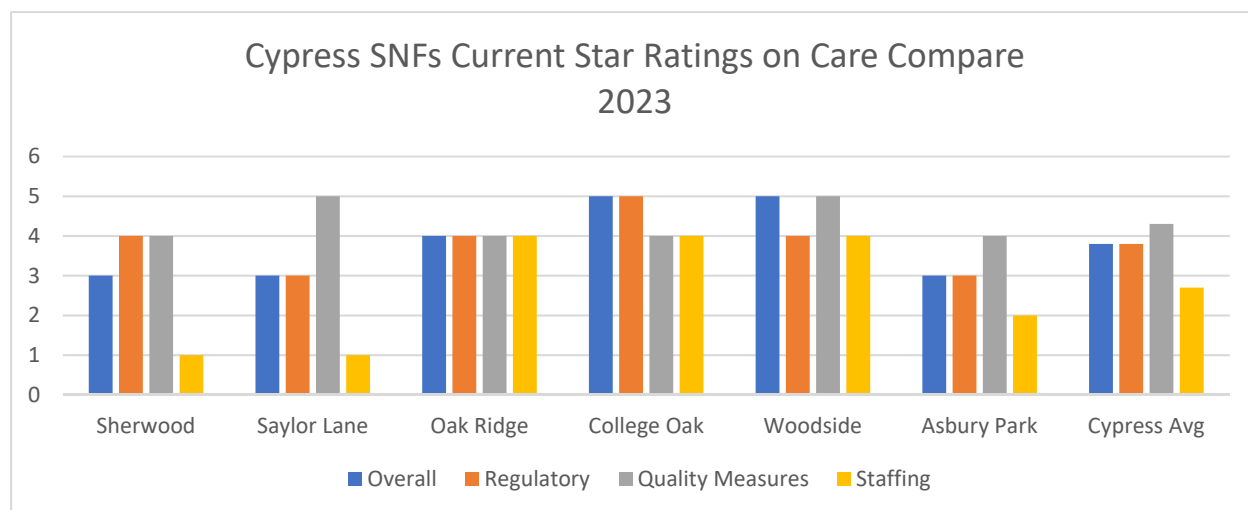
For purposes of this Healthcare Impact Statement, Cypress SNF data from Medi-Cal cost reports and regulatory databases was excluded prior to its involvement except for Care Compare star ratings, which may include data from 2019 due to pandemic-related delays in CDPH annual recertification surveys.

<sup>21</sup> <https://www.medicare.gov/care-compare/>.

Care Compare Five Star Ratings

The current Nursing Home Care Compare star ratings of the six Cypress SNFs reflect an above-average overall performance compared to other SNFs in California. The six Cypress SNFs’ average overall star rating on Care Compare is 3.8 stars out of 5 stars. Two of the six Cypress SNFs have achieved an overall star rating of 5 stars, and none of the Cypress SNFs are rated as 1 star. See figure 9 below.

**Figure 9. Cypress SNFs’ Care Compare five-star ratings July 2023 (higher is better).<sup>22</sup>**



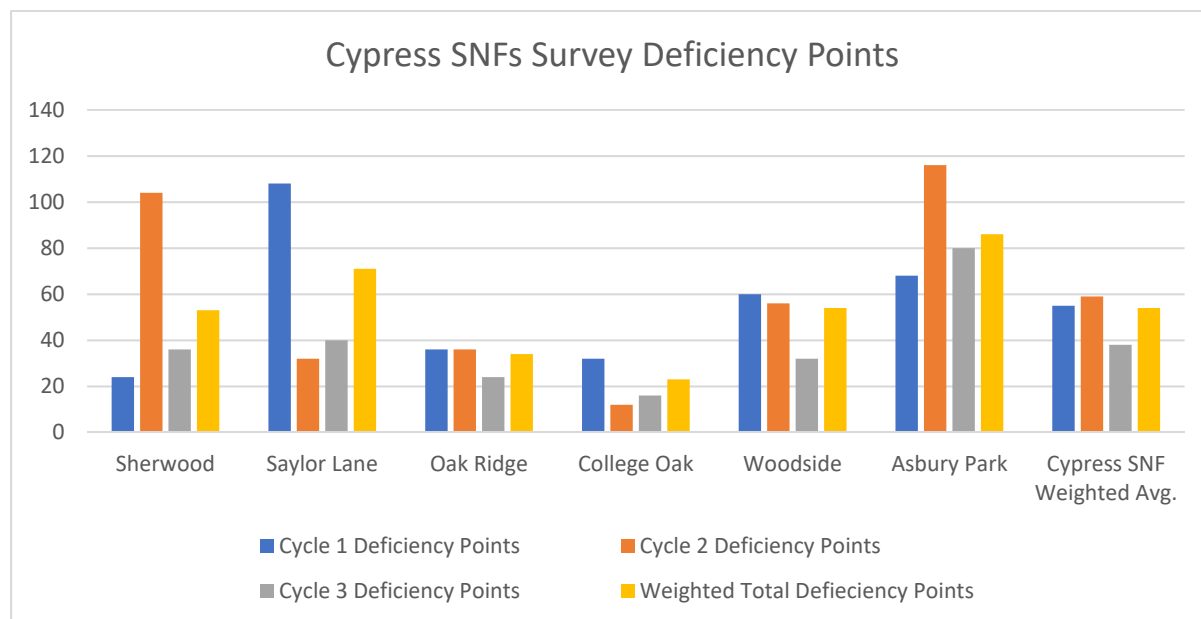
Points Assigned to Deficiencies

Cypress SNFs, in alignment with their Care Compare star ratings, are performing better than average over the two most recent survey cycles when Cypress had full operational control of their six SNFs. It is important to note that, like the Eskaton SNFs, four of the six Cypress SNFs have gone more than 24 months since their last CDPH annual regulatory recertification survey. However, the average number of deficiency points per Cypress SNF is currently 55 points and improving. See figure 10 below.

<sup>22</sup> *Ibid.*



**Figure 10. Cypress SNFs survey deficiency points for calculating their CMS Care Compare star ratings under the regulatory domain (lower is better).<sup>23</sup>**

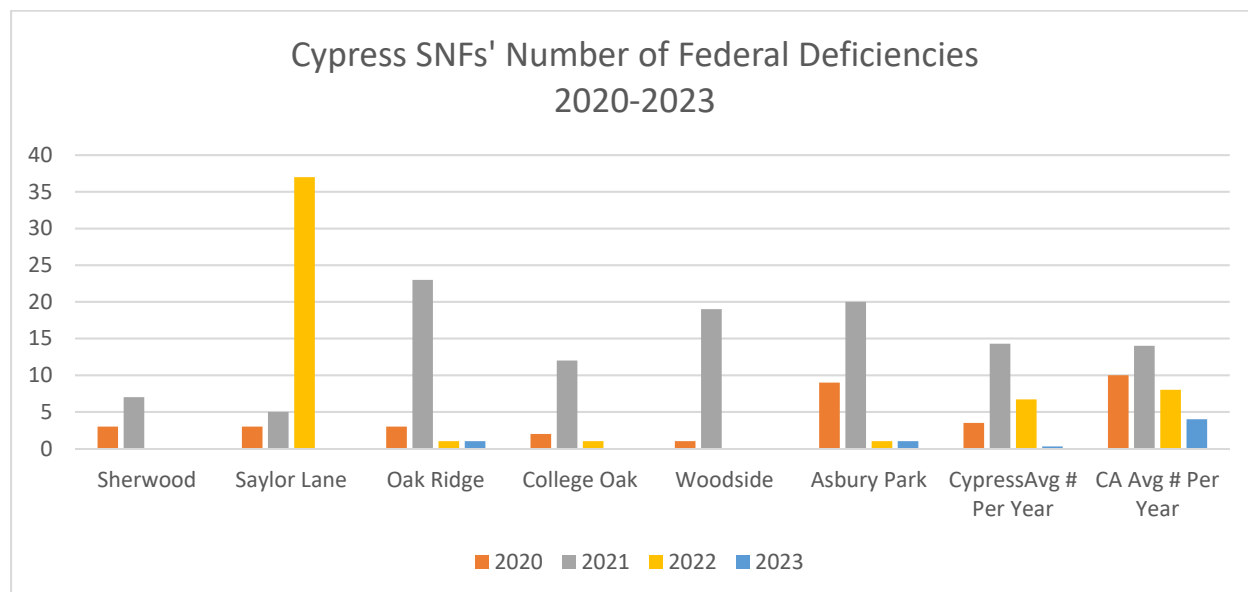


Number of Federal Survey Deficiencies

The Cypress SNFs accumulated few deficiencies in 2020, which may be in part due to CDPH suspending recertification surveys during the first year of the COVID-19 pandemic. In 2021, Cypress Healthcare’s second year of operational control, the six Cypress SNFs averaged just over 14 deficiencies, each of which was in line with the state average per SNF in California. In 2022, their average number of deficiencies declined to seven deficiencies, however one Cypress SNF, Saylor Lane, was assessed 37 deficiencies in 2022, which negatively skewed the Cypress average. See figure 11 below.

<sup>23</sup> Nursing Home Database Skilled Nursing Facility Search, <https://www.nursinghomedatabase.com/find/skilled-nursing>.

**Figure 11. Cypress SNFs’ number of federal deficiencies identified during inspections (lower is better).<sup>24</sup>**



Immediate Jeopardy and Actual Harm Deficiencies

Since Cypress took operational control of its six SNFs, collectively the group has received only one deficiency rated as actual harm and has received no immediate jeopardy deficiencies. Only Woodside Healthcare received an actual harm deficiency in October 2019, approximately six months after Cypress began operating the SNF.

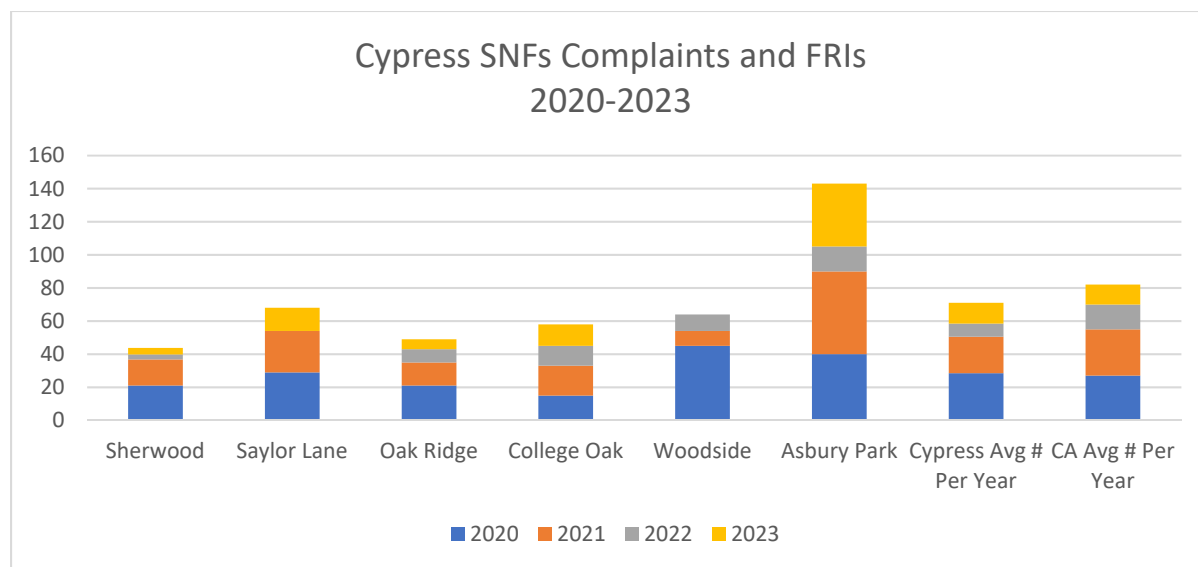
Complaints and Facility Reported Incidents

Over the past two years, the Cypress SNFs have been improving and have a lower average number of complaints and FRIs than other SNFs in California. Five of the six Cypress SNFs had total complaints and FRIs that were less than the state average for SNFs in 2022, and the improvement appears to be sustained in the first part of 2023.

In 2022, the Cypress SNFs improved their performance as their average number of complaints and FRIs were almost 50% less than the average number of complaints and FRIs than the Cypress SNFs in 2020 and 2021. See figure 12 below.

<sup>24</sup> <https://www.cdph.ca.gov/programs/chcq/lcp/calhealthfind/Pages/Home.aspx>.

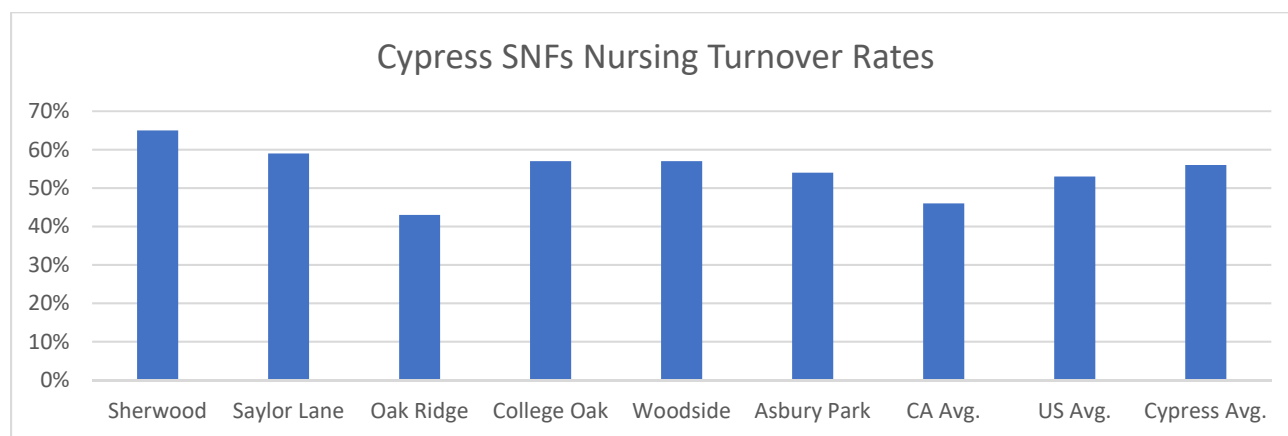
**Figure 12. Cypress SNFs’ complaints and FRIs (lower is better).<sup>25</sup>**



Nursing Staff Turnover Rates

The Cypress SNFs’ star ratings under the CMS Care Compare staffing domain reflects inconsistency across the SNFs, with two Cypress SNFs rated as 1 star and three rated as 4 stars. The Cypress SNFs’ nursing staff turnover rate reflects that they have been experiencing higher staff turnover than other SNFs in California (56% compared to 46%), which is negatively impacting their staffing star rating (2.7 stars) especially for both of the Cypress SNFs rated at 1 star under the staffing domain. See figure 13 below.

**Figure 13. July 2023, CMS Care Compare Cypress SNFs’ overall nursing staff average turnover rates (lower is better).<sup>26</sup>**



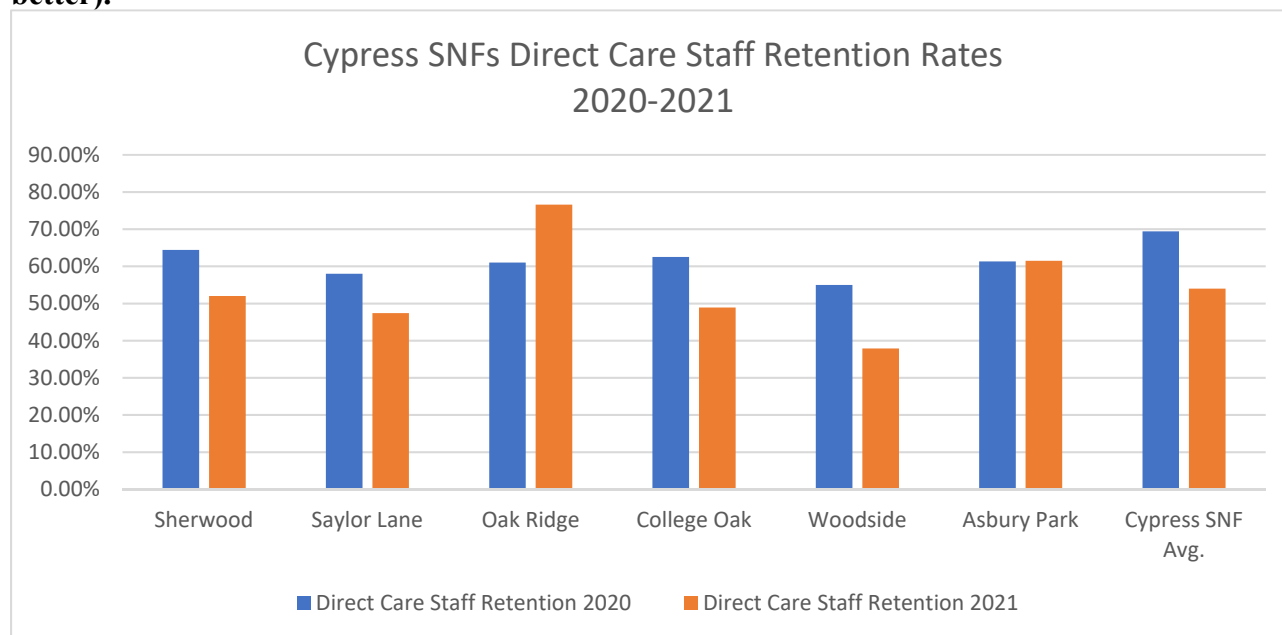
<sup>25</sup> *Ibid.*

<sup>26</sup> <https://www.medicare.gov/care-compare/>.

Direct Care Staff Retention Rates

Direct care staff retention rates are a separate and equally important measure of staff stability in a SNF. The Cypress SNFs saw their direct care staff retention rate decline from 69% in 2020 to 54% in 2021. See figure 14 below.

**Figure 14. Cypress SNFs direct care employee retention rates 2020 and 2021 (higher is better).<sup>27</sup>**



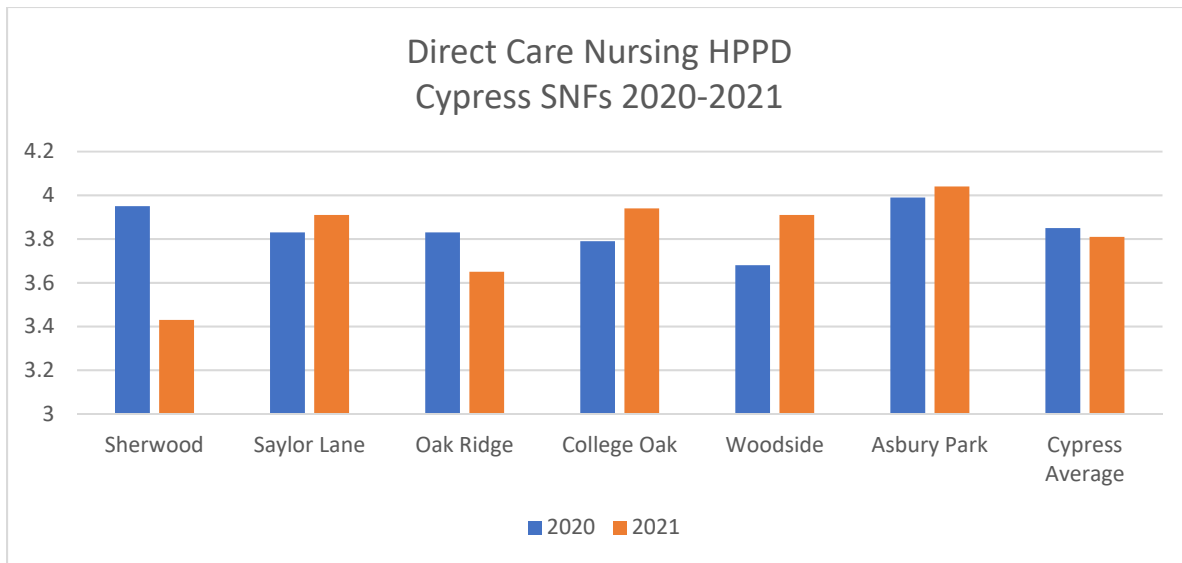
Direct Care Nursing Hours Per Patient Day

The Cypress SNFs’ average staff turnover and staff retention rates may be negatively impacted by their levels of direct care nursing HPPD on CMS Care Compare. However, it appears from the cost report that both Sherwood and Saylor Lane may have made an error reporting their census to CMS at more than 100% occupancy, which likely resulted in the reporting of incorrect staffing hours. The error occurs when the Minimum Data Set (MDS) coordinator fails to discharge residents timely thereby artificially inflating the census and reducing the nursing hours per resident per day. When Sherwood and Saylor Lane are excluded, the Cypress SNFs’ average nursing HPPD are higher than the average among all the SNFs in the United States but lower than the average among California SNFs.

It is important to note that the Cypress SNFs maintain a consistently high occupancy rate (89%), which impacts their direct care nursing HPPD. According to the most recent Medi-Cal cost reports, Cypress SNFs’ direct care nursing HPPD were consistent year over year and well above the state requirement of 3.50 HPPD in both 2020 and 2021. See figure 15 below.

<sup>27</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

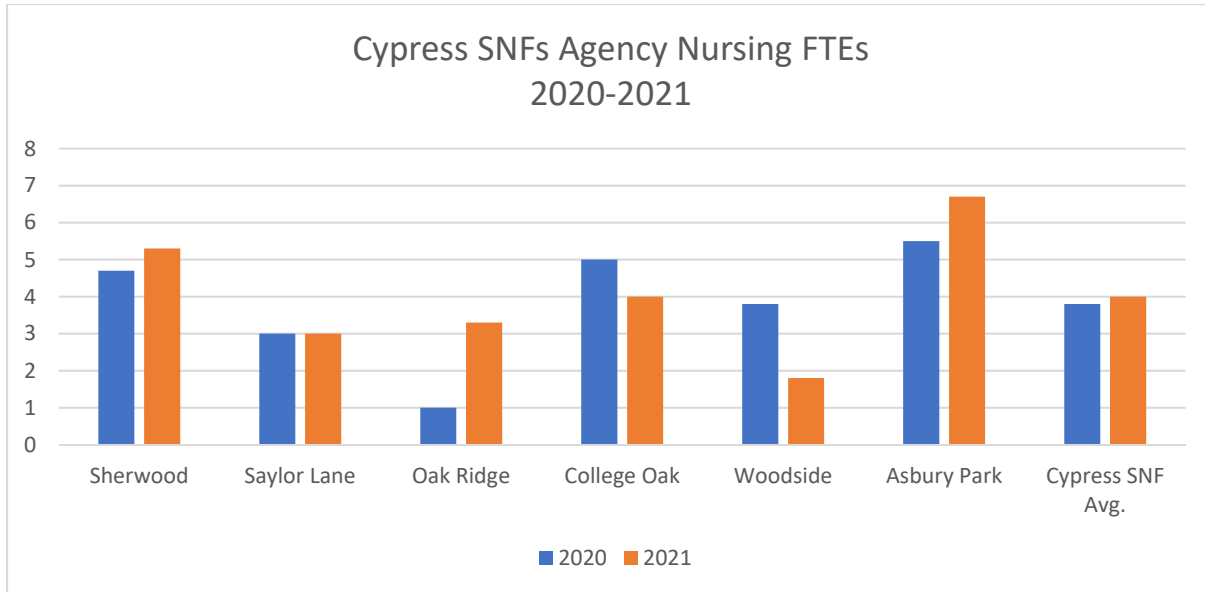
**Figure 15. Cypress SNFs’ direct care nursing staffing HPPD (higher is better).<sup>28</sup>**



Staffing Agency Utilization

Unlike most SNFs in California and nationwide, during the middle of the pandemic, staffing agency use increased only slightly from 2020 to 2021 in the Cypress SNFs. See figure 16 below.

**Figure 16. Cypress SNFs’ Agency Nursing FTEs 2020 and 2021 (lower is better).<sup>29</sup>**



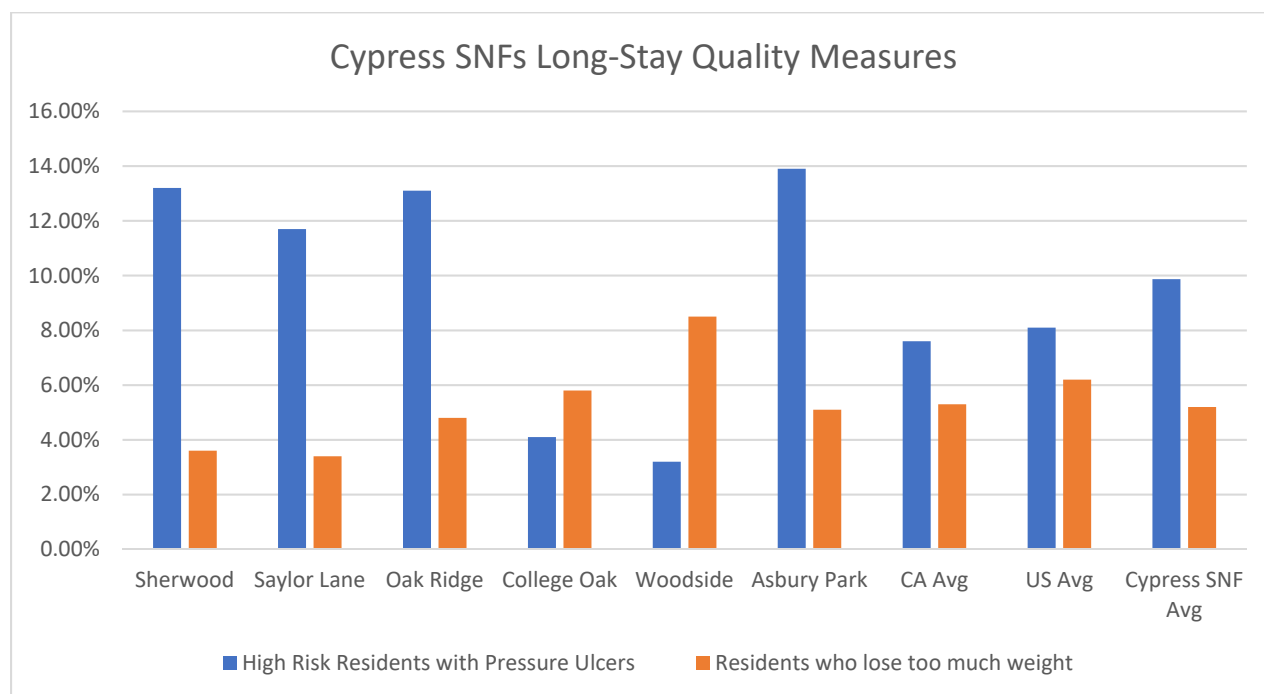
<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

## Quality Measures

Across all the Cypress SNFs, the number of residents who lose too much weight is less than other SNFs in both California and the United States. However, the percentage of long-stay, high-risk residents with pressure ulcers is greater than 11% in four of the six Cypress SNFs, which is higher than the average in both California (7.6%) and the United States (8.1%). See figure 17 below.

**Figure 17. Cypress SNFs CMS Care Compare – percentage of long-stay residents who lost too much weight and residents with long-stay, high-risk pressure ulcers July 2023 (lower is better).<sup>30</sup>**



### **3. Comparing Eskaton and Cypress Skilled Nursing Facilities' Performance**

The Eskaton SNFs and Cypress SNFs care for different types of nursing home residents. Cypress SNFs care for more short-stay residents who will transfer to a lower level of care in less than a month, whereas Eskaton SNFs care for some short-stay residents, but generally care for more long-stay residents who will stay more than 100 days.

Medi-Cal cost reports from 2020 and 2021 reflect that the Cypress SNFs had 30% more short-stay Medicare and managed care (most likely Kaiser, which administers a large number of Medicare managed care plans in the area) residents than the Eskaton SNFs (34% vs. 23.8%). In addition, Cypress SNFs saw an increase in short-stay residents from 2020 to 2021 while Eskaton SNFs experienced a decline in their short-stay resident population. Both groups of SNFs had a

<sup>30</sup> <https://www.medicare.gov/care-compare/>.

high average number of new admissions each year due to their high percentage of managed-care residents. See table 7 below.

**Table 7. Percent of Medicare and managed care residents, and the average number of new admissions at Eskaton SNFs and Cypress SNFs.<sup>31</sup>**

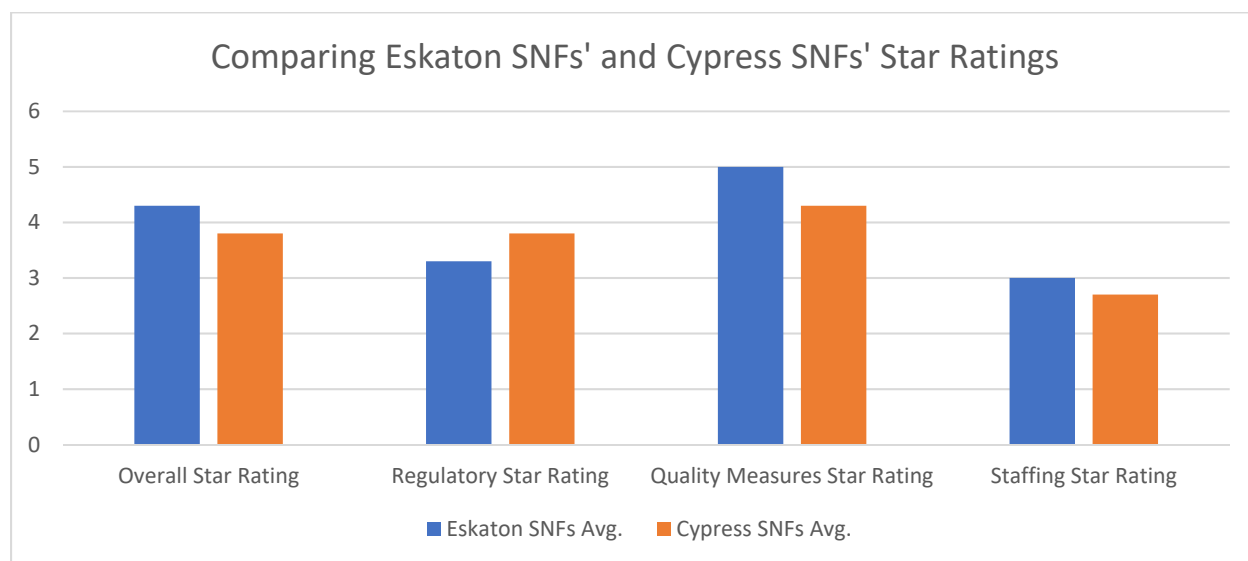
Medi-Cal Cost Reports 2021	Eskaton SNFs Avg.	Cypress SNFs Avg.
Percent of Medicare Residents	5.8%	16%
Percent of Managed Care Residents	18%	18%
Percent Short-Stay Residents	23.8%	34%
Average Number of New Admissions per SNF	512	398

The Cypress SNFs’ average number of managed care residents increased by almost 25% from 2020 to 2021. Managed care residents usually have shorter lengths of stay than Medicare residents. At Asbury Park SNF in Sacramento, almost a third of all residents (32%) are covered by managed care plans and 606 new residents were admitted in 2021 alone.

Care Compare Five Star Ratings

The three Eskaton SNFs have a slightly higher overall star rating than the Cypress SNFs (4.3 Stars vs. 3.8 Stars), however it is important to note that the Cypress SNFs’ regulatory star rating is better than that of the Eskaton SNFs (3.8 Stars vs. 3.3 Stars). Both Eskaton SNFs and Cypress SNFs are currently performing well in the Quality Measures domain in Care Compare. See figure 18 below.

**Figure 18. Comparing Eskaton SNFs’ and Cypress SNFs’ Care Compare Star Ratings (higher is better).<sup>32</sup>**



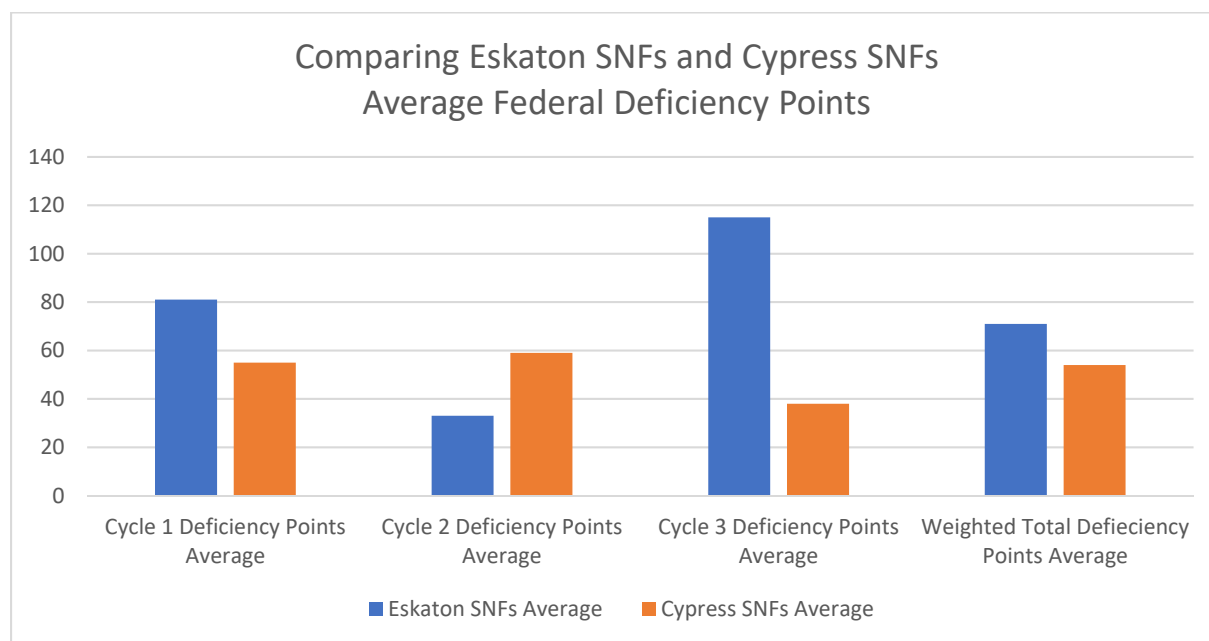
<sup>31</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

<sup>32</sup> <https://www.medicare.gov/care-compare/>.

### Points Assigned to Deficiencies

Cypress SNFs are outperforming the Eskaton SNFs within the regulatory performance domain of CMS Care Compare. Both groups of SNFs have been waiting an average of 20 months since their last federal regulatory focused recertification survey (Eskaton 27 months, Cypress 20 months). Since Cypress Healthcare Group took operational control of their six SNFs, they have been performing well from a regulatory compliance perspective. See figure 19 below.

**Figure 19. Comparing Eskaton SNFs’ and Cypress SNFs’ points assigned to deficiencies (lower is better).<sup>33</sup>**



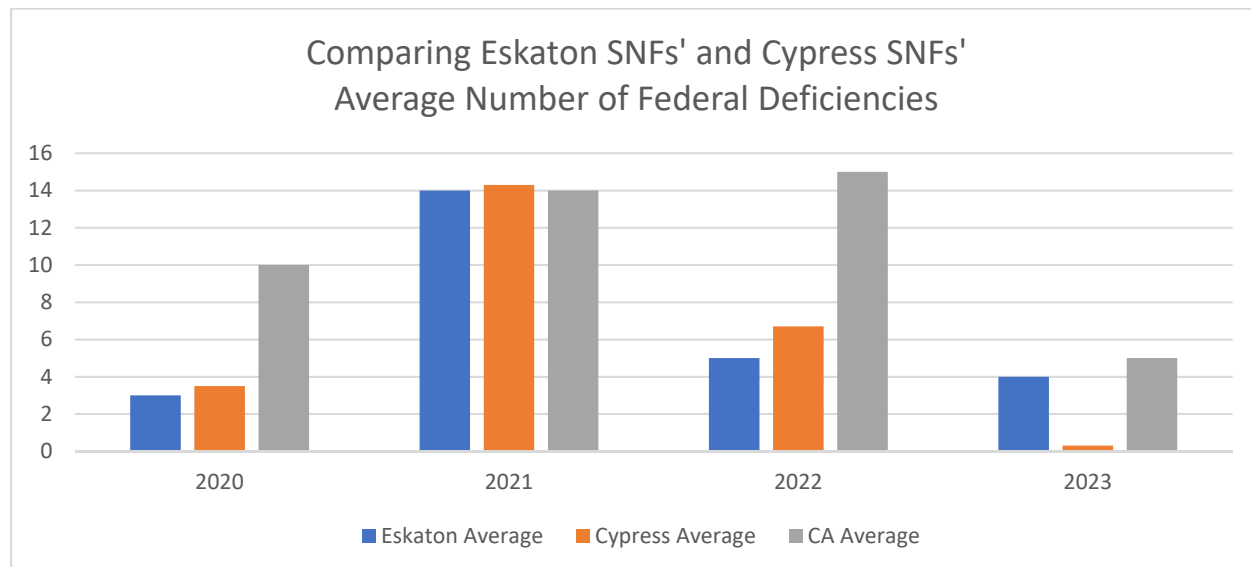
### Number of Deficiencies

In 2022 and 2023, both the Eskaton and the Cypress SNFs are minimizing their number of deficiencies from CDPH and performing better than other SNFs in California. See figure 20 below.

<sup>33</sup> <https://www.cdph.ca.gov/programs/chcq/lcp/calhealthfind/Pages/Home.aspx>.



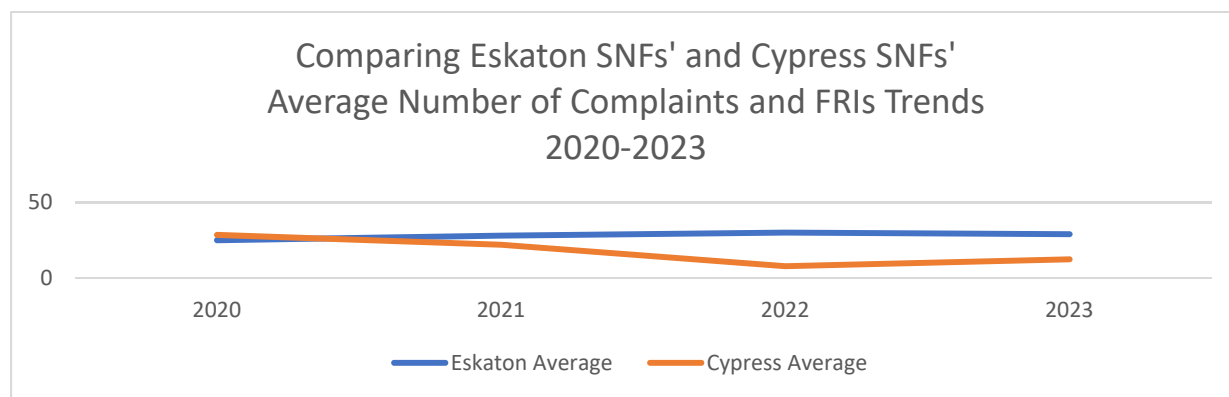
**Figure 20. Comparing Eskaton SNFs' and Cypress SNFs' average number of federal deficiencies from 2020 to 2023 (lower is better).<sup>34</sup>**



Number of Complaints and Facility Reported Incidents

The average number of complaints and FRIs in Cypress SNFs has trended down since Cypress took operational control of six SNFs in the Sacramento area. During the same timeframe, the Eskaton SNFs' average number of complaints and FRIs has increased slightly. See figure 21 below.

**Figure 21. Comparing Eskaton SNFs' and Cypress SNFs' Average Number of Complaints and FRIs (lower is better).<sup>35</sup>**



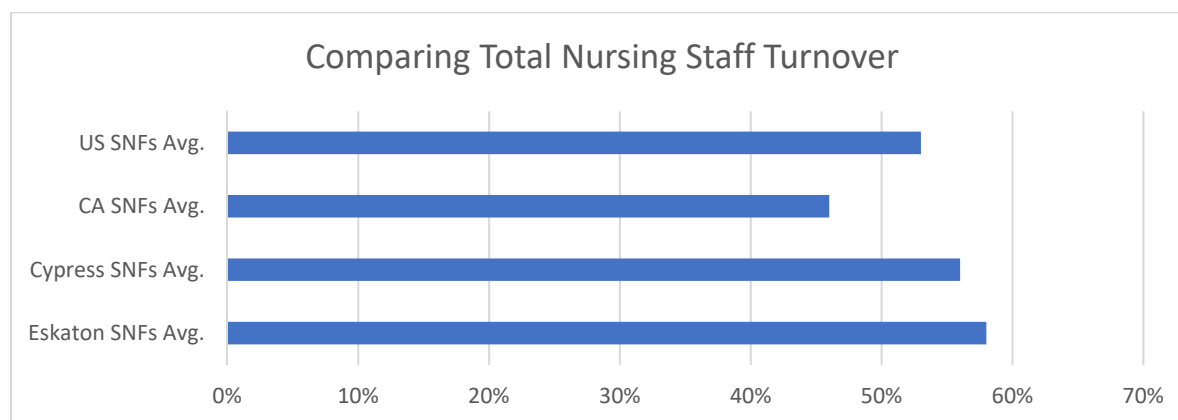
<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

### Nursing Staff Turnover Rates

The Eskaton SNFs' average nursing staff turnover rate is slightly higher than that of the Cypress SNFs (58% compared with 56%), and both groups of SNFs have higher average turnover rates than other SNFs in California (46%), and the United States (53%). See figure 22 below.

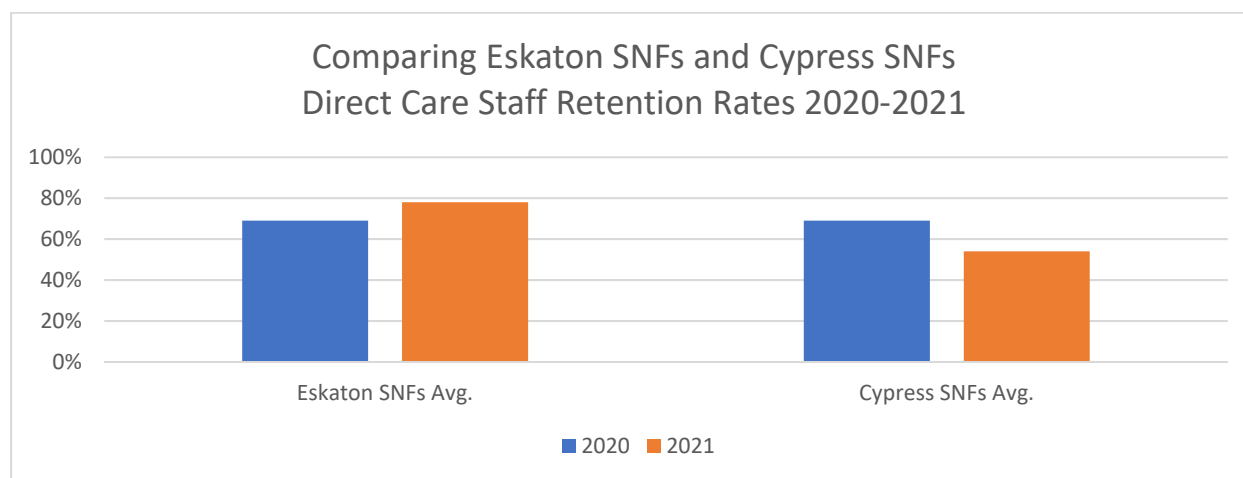
**Figure 22. Comparing Eskaton SNFs' and Cypress SNFs' Average Total Nursing Staff Turnover Rate (lower is better).<sup>36</sup>**



### Direct Care Staff Retention Rates

From 2020 to 2021, the Cypress SNFs saw their average direct care staff retention rate trend decline by 29% while the Eskaton SNFs saw their average direct care staff retention rate improve. See figure 23 below.

**Figure 23. Comparing Eskaton SNFs and Cypress SNFs average direct care staff retention rates (higher is better).<sup>37</sup>**



<sup>36</sup> <https://www.medicare.gov/care-compare/>.

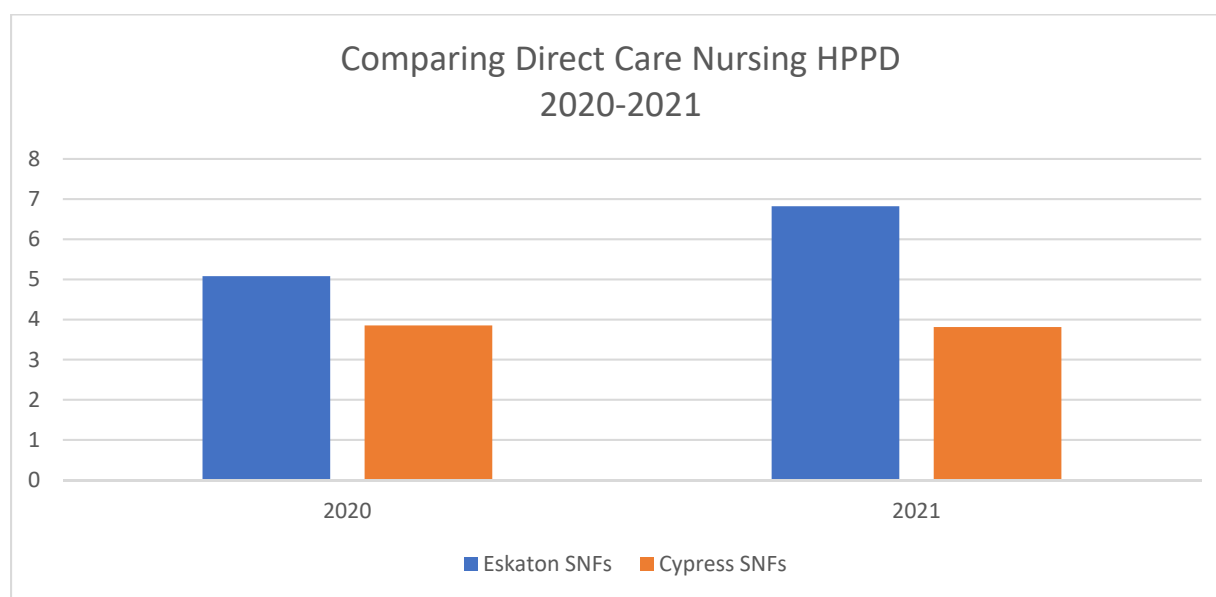
<sup>37</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

### Direct Care Nursing Hours Per Patient Day

The Cypress SNFs consistently staff lower than the Eskaton SNFs. CMS Care Compare reflects that the Eskaton SNFs' average nursing hours was higher than the Cypress SNFs. Cypress SNFs are staffing above the CDPH requirement, however, as previously mentioned, their group average may be negatively impacted by an apparent census error in two of the six Cypress SNFs.

According to the most recent Medi-Cal cost reports, Cypress SNFs direct care nursing hours were well above the state requirement of 3.50 HPPD in both 2020 and 2021, but below the average at the Eskaton SNFs. See figure 24 below.

**Figure 24. Comparing Eskaton SNFs' and Cypress SNFs' direct care nursing HPPD (higher is better).<sup>38</sup>**

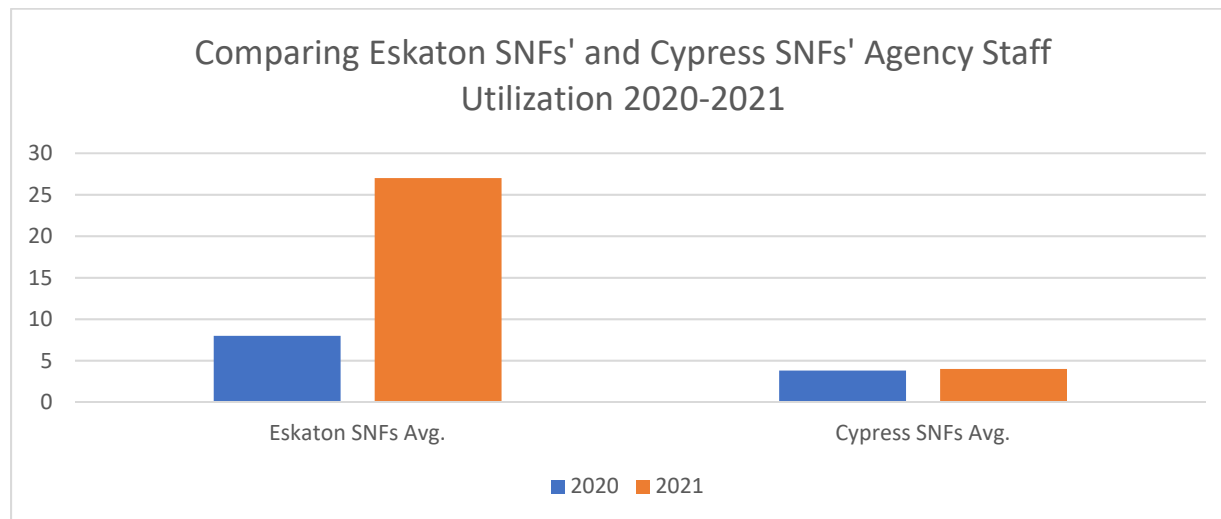


### Staffing Agency Utilization

The high utilization of nurses and certified nursing assistants from staffing agencies is the byproduct of staff instability. The Eskaton SNFs had to rely on a higher number of contracted nursing staff from staffing agencies in 2021 compared to 2020. In fact, the Eskaton SNFs saw their average number of agency staff full-time employees (FTEs) almost triple from 2020 to 2021 and their agency costs soar. At the same time, the Cypress SNFs experienced only a very slight increase in agency nursing staff FTEs. The Cypress agency costs went up because the agency nurses' hourly rates increased. Both groups of SNFs faced similar pandemic-related challenges in the same county, but the Cypress SNFs were less reliant on agency nurses, apparently choosing to staff a little lower, but with their own staff who likely knew their residents better. See figure 25 below.

<sup>38</sup> <https://www.medicare.gov/care-compare/>.

**Figure 25. Comparing Eskaton SNFs’ and Cypress SNFs’ Agency Staff FTEs from 2020 to 2021 (lower is better).<sup>39</sup>**

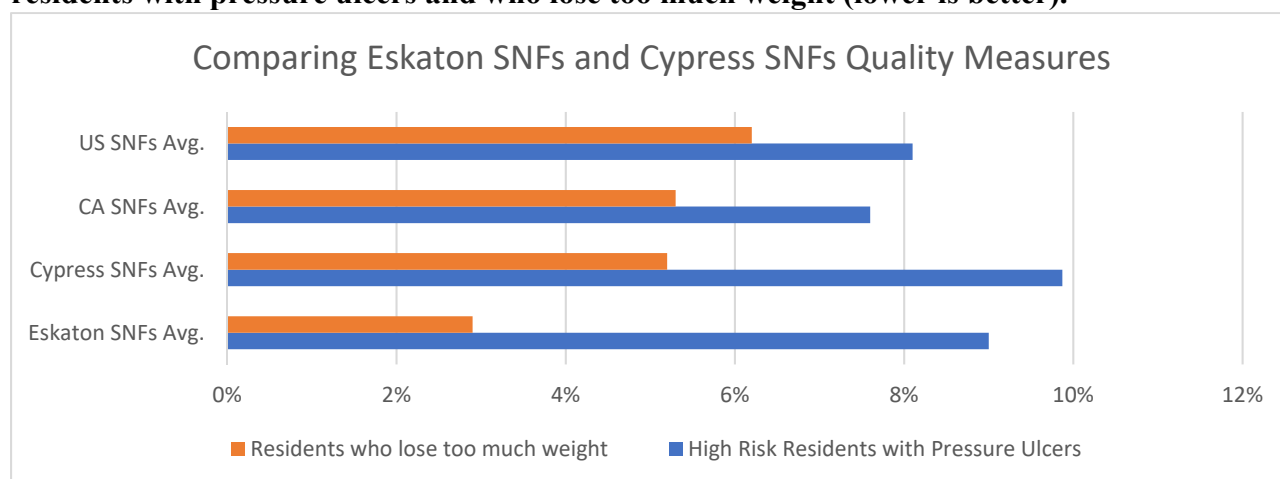


### Quality Measures

According to Care Compare, the Eskaton and Cypress SNFs are both struggling to keep their percentage of long-stay, high-risk residents with pressure ulcers below both the California SNF average of 7.6% and the nationwide SNF average of 8.1%. On July 3, 2023, the Eskaton SNFs’ average pressure ulcer rate was 9% and the average at the Cypress SNFs stood at 9.87%.

The percentage of residents who lose too much weight is just 2.9% at the Eskaton SNFs, which is below the Cypress SNFs’ average of 5%. However, both groups of SNFs average less than other SNFs in the state (5.1%) and SNFs nationwide (6%). See figure 26 below.

**Figure 26. Comparing Eskaton SNFs’ and Cypress SNFs’ percentages of long-stay residents with pressure ulcers and who lose too much weight (lower is better).<sup>40</sup>**



<sup>39</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

<sup>40</sup> <https://www.medicare.gov/care-compare/>.

Property Related Expenses

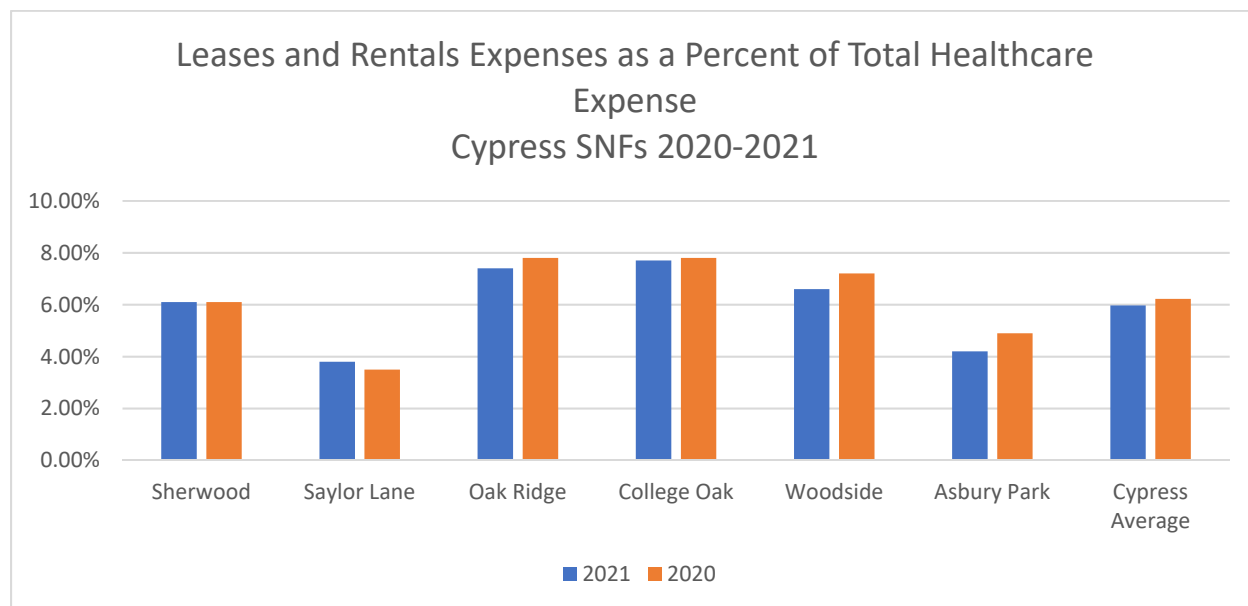
It is important to note that, on average, Cypress SNFs spend significantly more on property-related expenses than the Eskaton SNFs, especially under leases and rentals. In 2021, Cypress SNFs’ leases and rent expenses averaged \$647,900 per SNF while Eskaton SNFs averaged \$35,000 per SNF. With Cypress’ establishment of new LLCs for each Eskaton SNF in the sale, the property-related expenses at the new Cypress SNFs are likely to increase to the average across all the current Cypress SNFs. The potential significant increase in property related expenses (leases and rentals) at the Eskaton SNFs in the sale may result in expense reductions in other areas, such as staffing, to offset the additional lease property-related costs. See table 8 below.

**Table 8. Eskaton SNFs’ and Cypress SNFs’ annual lease and rental expenses 2020 and 2021.**<sup>41</sup>

Leases and Rental Expense	Eskaton SNFs’ Average	Cypress SNFs’ Average
2020	\$15,300	\$615,290
2021	\$35,000	\$647,900

At the Cypress SNFs, the average of leases and rentals as a percentage of total healthcare expenses declined from 2020 to 2021 from 6.22% to 5.97%. See figure 28 below.

**Figure 28. Leases and Rentals as a Percent of Total Healthcare Expenses at the Cypress SNFs.**<sup>42</sup>

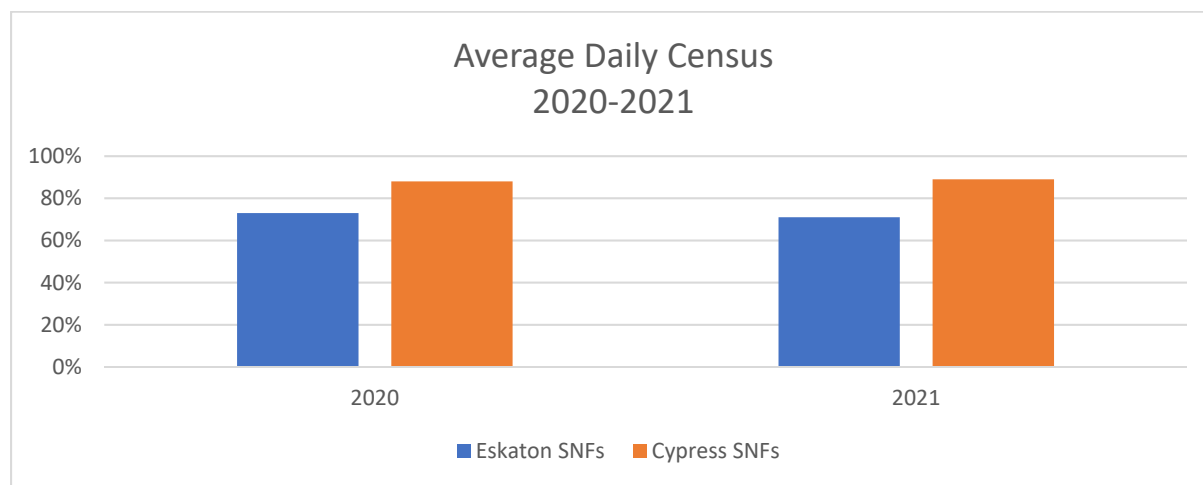


<sup>41</sup> Medi-Cal cost reports 2020 and 2021, <https://reports.siera.hcai.ca.gov>.

<sup>42</sup> *Ibid.*

Cypress could increase census at the Eskaton SNFs in the sale and use that revenue to offset the lease payment expense without impacting healthcare-related costs. From 2020 to 2021, the Eskaton SNFs saw their average overall occupancy rate decline from 73% to 71%. At the same time, the average daily occupancy rate at the Cypress SNFs increased from 88% to 89%. See figure 27 below.

**Figure 27. Comparing the average daily census at the Eskaton SNFs and the Cypress SNFs.**<sup>43</sup>



#### **D. Recommendations Related to Operations**

The recommendations to the Office of the Attorney General are made within the context of:

- California Code of Corporations, sections 5917 & 5917.5, and California Code of Regulations, title 11, section 999.5, subdivision (e)(5)-(7).
- Eskaton and Cypress SNFs' operational, regulatory, clinical, and financial performances between 2020 and 2023.
- Notice of the Sale of three Eskaton SNFs submitted to the California Attorney General pursuant to California Code of Regulations, title 11, section 999.5, subdivision (a)(1)(A). The Asset Purchase and Sale Agreement (APSA) is dated March 23, 2023.

Recommendations to the Office of the Attorney General within this Healthcare Impact Statement are based on the following key findings across a broad range of SNF performance measures.

#### **Key Findings Regarding the Analysis**

1. Over the past four years, the seller (Eskaton), and the buyer-proposed operator (Cypress), have operated their SNFs in compliance with state and federal regulations.

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<sup>43</sup> *Ibid.*

2. There is a public interest in ensuring that the level of care provided to the residents at the Eskaton SNFs does not decline as a result of the sale to IEP.
3. The Eskaton SNFs have a slightly higher overall star rating on CMS Care Compare than the Cypress SNFs; however, the Cypress SNFs' regulatory star rating is better than that of the Eskaton SNFs.
4. Since Cypress took operational control of their six SNFs, they have been performing well from a regulatory compliance perspective. In fact, Cypress SNFs are outperforming the Eskaton SNFs within the regulatory performance domain of CMS Care Compare.
5. Eskaton and Cypress SNFs are minimizing their number of regulatory deficiencies from CDPH and performing better than other SNFs in California.
6. The Eskaton SNFs' average number of complaints and FRIs has increased slightly over the past few years while, at the same time, the average number of complaints and FRIs in Cypress SNFs has trended down.
7. The average nursing staff turnover rates at both Eskaton and Cypress SNFs is slightly higher than the average turnover rates at other SNFs in California, and the United States.
8. From 2020 to 2021, the Cypress SNFs' average direct care staff retention rate trend declined by 29% while the Eskaton SNFs' average direct care staff retention rate improved.
9. Cypress SNFs' direct care nursing hours are above the state requirement of 3.50 HPPD, but below the average at the Eskaton SNFs.
10. Eskaton SNFs saw their average number of agency staff FTEs almost triple from 2020 to 2021. At the same time, the Cypress SNFs experienced only a very slight increase in agency staff FTEs.
11. Both the Eskaton and the Cypress SNFs' average percentage of long-stay, high-risk residents with pressure ulcers is higher than the average in California and the United States. However, both groups of SNFs average fewer residents losing weight than other SNFs in the state and SNFs nationwide.

**Overall Recommendation: Approval of the Proposed Transaction**

Based on my experience and the findings summarized above, there is only a slight possibility that the transaction could have a negative effect on staff stability, staff consistency, and direct care staffing hours, which would negatively impact the health and wellbeing of the residents at the Eskaton SNFs in the sale. Therefore, I recommend that The Office of the Attorney General consider approval of the proposed sale of the Eskaton Skilled Nursing Facilities to IEP, with only the standard a set of specific conditions related to monitoring the healthcare impact of the sale for three to five years from the first day following the applicable closing date of the APSA for each Eskaton SNF.

Standard Recommendations:

a.) Participation in Medicare. For five years from the applicable closing date of the APSA, the operator and/or licensee of the Eskaton SNFs shall be certified to participate in the Medicare program and have a Medicare Provider Number (or provider number for any successor program to Medicare) to provide the same types and levels of skilled nursing services to Medicare beneficiaries at the Eskaton SNFs as required in these Conditions.

b.) Notification of Changes. For five years from the applicable closing date of the APSA, IEP, and all owners, managers, lessees, or operators of the Eskaton SNFs or any portion thereof shall be required to provide written notice to the Attorney General 60 days prior to entering into any agreement or transaction to do any of the following:

1. Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of any of the three Eskaton SNFs or any portion thereof.
2. Transfer control, responsibility, management, or governance of the three Eskaton SNFs or any portion thereof. The substitution, merger, or addition of a new member of the governing body, general partner, or limited partner of IEP that transfers the control of responsibility for, or governance of, any of the three Eskaton SNFs or any portion thereof shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body, general partner, or limited partners of IEP or any arrangement, written or oral, that would transfer voting control of the members of the governing body, general partner, or limited partners of IEP shall also be deemed a transfer for purposes of this Condition.

c.) Continuous operation of SNFs.

1. For five years from the applicable closing date of the APSA for Eskaton Care Center Fair Oaks, the SNF shall be operated and maintained as a SNF with 149 skilled nursing beds and shall maintain the same licensure, types, and/or levels of services being provided including, but not limited to occupational therapy, physical therapy, and speech therapy. The operator or licensee of Eskaton Care Center Fair Oaks shall not place all or any portion of the Eskaton Care Center Fair Oaks' skilled nursing licensed-bed capacity or services in voluntary suspension or surrender its license for any beds or services.
2. For five years from the applicable closing date of the APSA for Eskaton Care Center Greenhaven, the SNF shall be operated and maintained as a SNF with 148 skilled nursing beds and shall maintain the same licensure, types, and/or levels of services being provided including, but not limited to occupational therapy, physical therapy, and speech therapy. The operator or licensee of Eskaton Care Center Greenhaven shall not place all or any portion of the Eskaton Care Center Greenhaven's skilled nursing



licensed-bed capacity or services in voluntary suspension or surrender its license for any beds or services.

3. For five years from the applicable closing date of the APSA for Eskaton Care Center Manzanita, the SNF shall be operated and maintained as a SNF with 99 skilled nursing beds and shall maintain the same licensure, types, and/or levels of services being provided including, but not limited to occupational therapy, physical therapy, and speech therapy. The operator or licensee of Eskaton Care Center Manzanita shall not place all or any portion of the Eskaton Care Center Manzanita's skilled nursing licensed-bed capacity or services in voluntary suspension or surrender its license for any beds or services.

d.) Prohibition on discrimination.

For five years from the sale, at all three Eskaton SNFs, IEP shall prohibit discrimination on the basis of any protected personal characteristic identified in state and federal civil rights laws, including California Civil Code section 51 and title 42, Code of Federal Regulations, section 18116. Categories of protected personal characteristics include:

1. Gender, including sex, gender, gender identity, and gender expression.
2. Intimate relationships, including sexual orientation and marital status.
3. Ethnicity, including race, color, ancestry, national origin, citizenship, primary language, and immigration status.
4. Religion.
5. Age.
6. Disability, including disability, protected medical condition, and protected genetic information.

Respectfully Submitted July 18, 2023:

David J. Farrell

David J. Farrell  
Consultant  
Farrell Consulting Services  
(510) 725-7409

### **Qualifications of David J. Farrell**

- California licensed nursing home administrator since 1990.
- Published author and coauthor of two books, “Meeting the Leadership Challenge in Long-Term Care” and “A Long-Term Care Leader’s Guide to High Performance,” and 20 articles related to improving clinical and human resource outcomes in senior care communities.
- Served on the Centers for Medicare and Medicaid Services (CMS) technical expert panel, which designed the Quality Assurance Performance Improvement (QAPI) federal regulation and provider education materials.
- Key contributor in the design and implementation of the education curriculum and measurement strategy of a CMS-funded national pilot study titled “Improving Nursing Home Culture.”
- Served as project manager of California’s and Rhode Island’s federally funded Quality Improvement Organizations (QIOs) under contract with the CMS as part of the National Nursing Home Quality Initiative.
- Served as the chairman of California’s Advancing Excellence in Nursing Homes campaign.
- Serves as lead faculty for the state Long Term Care Leadership Academies in Iowa and California where he trains and coaches nursing home and assisted living Administrators and Directors of Nursing in developing and utilizing high performance leadership skills to improve staff stability and quality of care.
- Serves as the lead consultant on the Alameda County Public Health Department long-term care facility COVID outbreak team, where he assists in the development and implementation of comprehensive countywide strategies designed to prevent and mitigate COVID-19 outbreaks in 600 long-term care facilities in Alameda County.
- Testifying expert witness, nursing home administration, since 2020.