

Nathan Childs

UNION ORGANIZERS

Look At Nursing Facilities

With “old labor” industries like steel and textiles relocating to the third world, “new labor” leaders are looking at health care—particularly long term care.

When the leaders of the nation’s organized labor movement arrived in Miami Beach last December for their annual strategy meeting, they were greeted with a surprise: For the first time in 40 years union penetration of the nursing and personal care facility sector had actually increased.

New numbers from the U.S. Census Bureau’s Current Population Survey indicate that union membership as a share of the sector rose from 9.6 percent in 1998 to 10.1 percent in 2000. Granted it was a low bounce—labor’s gains represent only one-half of a percentage point, or about 10,000 of the 1.7 million Americans who work in nursing and personal care facilities. But for the labor movement it was big news that provided a glimmer of hope.

From labor’s point of view, the small bump was long in coming. The nation’s largest health care union—the Service Employees International Union (SEIU)—is six years into a national campaign aimed at organizing nursing facility employees. Since 1996, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), of which SEIU is an affiliate, has made nursing facilities, hospitals, and other health providers its top organizing priority. Conservative estimates of SEIU’s long term care campaign’s six-year price tag hover around \$100 million, according to SEIU estimates.

Change In Organizing Tactics

Until recently, the campaign was marked by antagonism—recognized now by both providers and union leaders. Changes in organizing tactics and attitudes on both sides

have helped calm the relationship a bit, say union officials and providers.

“Our relationship with providers has significantly altered over the past year,” says David Kieffer, deputy organizing director of SEIU’s nursing home division. “We’re trying to solve problems rather than create them.”

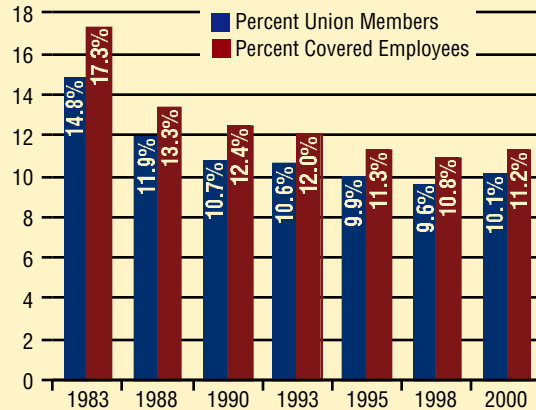
What makes SEIU and other unions eager to spend millions at long term care organizing efforts is their belief that the very existence of the labor movement is at stake. “Organize or die” is the movement’s current mantra, says Jarol Manheim, professor of media and public affairs and political science at George Washington University and author of two books on union campaigns to organize health care, “Labor Pains and the Death of a Thousand Cuts.”

The reason is simple. Just to keep membership numbers steady, and dues and pension funds in the black, the labor movement needs to organize around 300,000 new members each year to replace those lost through retirement, plant closings, and downsizings. As the U.S. economy has changed from a primarily industrial economy—driven by “old labor” trades like steel, manufacturing, and textiles—to a more service-oriented economy, the labor movement has lost influence.

Overall Decline In Membership

The high-water-mark year for unions in the private sector was 1960, when 37 percent of all nonagricultural private-sector workers were union members, according to government statistics. By 2000, only 9.1 percent of nonagricultural private-sector workers were union members, and only 13.5 percent of all American workers in both the private and public

Percentage Of Nursing Facility Employees In Unions Or Covered By Union Contracts



Source: “Union Membership and Earnings Data Book: Compilations from the Current Population Survey,” Berry T. Hirsch, David MacPherson, Bureau of National Affairs (various years)

Union Membership In Nursing Facilities (1990-2000)

	2000	1995	1990
Total U.S. nursing facility workers	1,741,400	1,716,800	1,547,200
Total unionized	176,300	170,500	164,900
Percent unionized	10.1 %	9.9 %	10.7%
Percent covered by collective bargaining agreement	11.2%	11.3%	12.4%
Mean hourly wage	\$11.37 (2000 dollars)	\$10.32 (1995 dollars)	\$10.21 (1990 dollars)
Percent working in public sector	7%	9%	12%
Percent with private-sector nonprofit employer	14%	14%	N/A
Percent female	86%	87%	88%

Source: “Union Membership and Earnings Data Book: Compilations from the Current Population Survey,” Bureau of National Affairs 2001 edition

sectors were members of a collective bargaining group (see table, above).

Despite the modest gains in nursing facilities, overall union membership declined in 2000 by 219,000, according to a January 2002 analysis of government statistics by the nonpartisan Employment Policy Foundation (EPF). When you look

at the numbers closely, the news is even worse for private-sector trade unions. According to the analysis, public-sector government unions gained 52,000 members while private sector union membership declined by 271,000 in 2000.

AFL-CIO President John Sweeney has identified health care—and specifically long term care—as the sector that could help stabilize the union’s sagging membership and as a source of new members. Sweeney, who served as president of SEIU before taking over the AFL-CIO reins in 1995, views the nation’s health care profession—with its millions of workers, large facilities, and lack of foreign competition—as the key to a revived trade-union presence. Already heavily regulated, the profession is seen by Sweeney as an opportunity for union organizing. Most importantly, there is a reservoir of between 6.6 million and 7.7 million potentially organizable workers in the health care profession, according to a 1999 EPF report.

In 1996, Sweeney set an ambitious goal for the AFL-CIO’s affiliate unions: increase total union membership by 3 percent annually. The unions would need to net approximately 600,000 new members in order to meet the goal. Each year, the labor conglomerate has fallen short of the target.

Target Public Funding

Besides the fact that nursing facilities and hospitals cannot easily relocate, the care for some 80 percent of all nursing facility patients

is paid for by Medicaid and Medicare. Due to the nature of union negotiations, it is easier to organize and bargain for employees in the public sector, says Michael McMenamain, an employment lawyer with the Cleveland firm Walter & Haverfield LLP. As nursing facilities become more and more reliant on public funding, the

chances that the government will have a say in their collective bargaining negotiations increases.

Public-sector employees are four times more likely to join a union than their private-sector neighbors, according to the 1999 EPF report on organizing. In 2000, the “May Current Population Survey” found that 37.5 percent of all public-sector workers belonged to a union, compared with only 9 percent of all private-sector workers.

The average profile of most nursing facility personnel also dovetails nicely with labor’s plan to focus its organizing efforts on lower-wage workers, according to McMenamin. The hourly wage for nonunion nursing facility employees (\$11.37 an hour, according to the latest Census Bureau data) is more than double the \$5.15 per hour minimum, and close to 90 percent of the workers are female.

Although SEIU has a total membership of about 1.2 million workers, the union devotes nearly half of its resources to organizing. The union says it spends 47 percent of its annual budget on organizing, and its locals devote approximately 20 percent of their funds to the same task. Overall, SEIU spends a total of more than \$60 million per year on finding new members, according to the union.

Other Unions Jumping In

Given the stakes—and the large number of potential members—many unions are attempting to compete with SEIU for health care workers. The American Federation of State, County, and Municipal Employees (AFSCME) is SEIU’s closest competitor in nursing facility organizing. The United Food and Commercial Workers International Union has targeted Southern nursing facilities with its three-year-old “Care for the Caregivers” organizing campaign. The California Nurses Association and the United Steelworkers of America teamed up to form a new union, the Health Care Workers Alliance, in March 2001. Even the United Federation of Teachers won the right to represent a handful of New York City, New Jersey, and Maryland home health workers and nursing facility caregivers in the past two years.

Smaller unions interested in health care organizing have teamed up with SEIU. District 1199, also known as the National Health & Human Service Employees Union, split its strong Northeast and Midwest nursing facility membership in 1989 by affiliating with both SEIU and AFSCME. Over the past three years, the Union of Needletrades Industrial and Textile Employees has worked with SEIU to organize more than 40 nursing facilities in southern Florida.

When current SEIU President Andrew Stern rose to the position in 1996, he announced a new effort to enlist other unions in a campaign to organize and bargain with large nursing facility chains. The goal of the ongoing effort—dubbed the “Dignity, Rights, and Respect” campaign—is to organize at least 100 nursing facilities per year and build a member-organizing force of 1,000 volunteer organizers from the sector. It wasn’t the first

time SEIU sought nursing facility employees; Stern's predecessor launched a coordinated organizing campaign aimed at fledgling Ft. Smith, Ark.-based Beverly Enterprises' 900 facilities in 1983.

Strength In Numbers

"Over the past two years we have provided our members with \$175 million in added health care benefits," says Dave Regan, president of SEIU District 1199, the SEIU local that covers Kentucky, Ohio, and West Virginia. "The gap [between union and nonunion facilities] is growing on the benefits side."

"Health benefits and pensions are where we have the most impact," says Sal Roselli, president of SEIU Local 250 in Oakland, Calif.

In California, pressure from unionized facilities and the tight labor market are forcing nonunion centers to offer more generous benefits packages in order to keep their caregivers from jumping ship, Roselli says.

"With every home looking to hire workers, we are driving nonunion facilities to offer comparative benefits," Roselli says. "For example, the defined-benefit pension program is becoming a standard offering to workers in California nursing homes."

Expanding the health care and income security benefits offered to facility caregivers are key objectives of the union,

Year	Total U.S. Employment (in millions)	Union Members (in millions)	% Union Members
1973	75.5	18.1	24.0%
1980	87.5	20.1	23%
1985	94.5	17	18%
1990	103.9	16.7	16.1%
1995	110	16.4	14.9%
2000	120.8	16.3	13.5%

Source: "Union Membership and Earnings Data Book: Compilations from Current Population Survey," Berry T. Hirsch, David Macpherson, Bureau of National Affairs (various years)

both labor bosses say. SEIU runs both a \$1.03 billion pension fund and a Taft-Hartley managed health plan. Union campaigns have focused on pressuring providers to expand health care coverage to workers' families, particularly through the union-run health plan.

Research published in the March 2002 issue of the *American Journal of Public Health* found that between 1988 and 1998 the number of uninsured health care personnel increased 83.4 percent, from 743,000 in 1988 to 1.36 million in 1998. Nursing facilities led all other health care settings with the highest proportion of uninsured workers, according to the Harvard Medical School study. Twenty per-

cent of nursing facility workers lacked basic health coverage in 1998, compared with 8.2 percent of hospital workers.

Unionized workers at all health settings lost their health coverage at a lower rate than nonunionized health personnel over the 10-year period, according to the retrospective survey analysis. In 1988, 6.3 percent of unionized health care workers lacked coverage, compared with 8.8 percent of nonunionized caregivers. In 1998, those percentages grew to 7.8 percent of unionized personnel and 13.3 percent of nonunion workers, the study found.

Considering that 86 percent of nursing facility workers are female, extending health care insurance to children of employees is an issue that resonates with the vast majority of caregivers.

"About one-third of nursing home workers in my area get health care coverage through their employer," says Regan. "Only 5 percent can get family coverage—and that wouldn't exist if we hadn't pushed it."

That pressure hasn't quite reached more economically depressed areas, however.

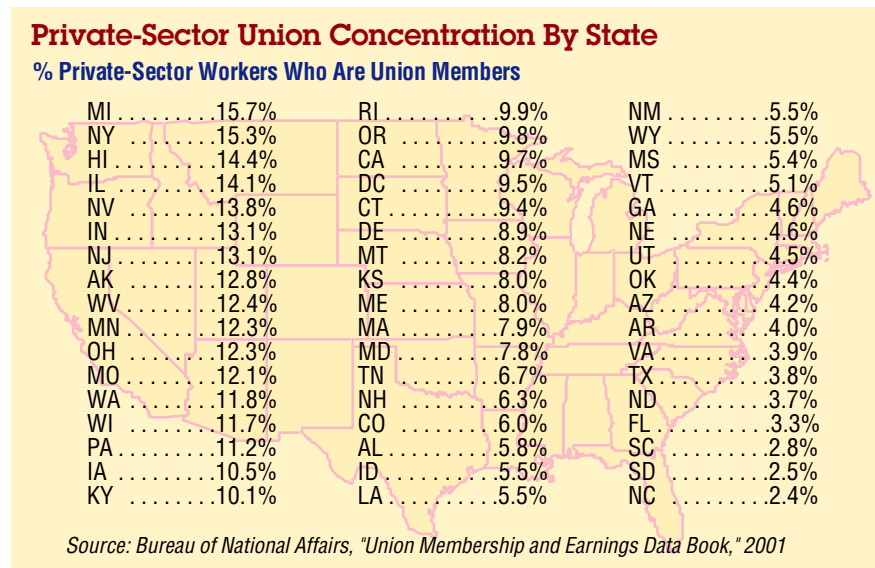
Jeannie Holley, a restorative care aide-certified nurse assistant and SEIU District 1199 member at 186-bed Mariner Health Care of Huntington, W.Va., says that employer-sponsored health insurance for her son costs her \$155 a month. Given her union-negotiated salary of \$9.40 an hour, health costs significantly cut into her monthly take-home.

Although Mariner of Huntington has been a union shop for many years, SEIU District 1199 has had difficulty getting the facility to switch from Mountain State Blue Cross Blue Shield to the union-run health plan, Holley says.

"Not one union employee can afford the [Blue Cross] plan," she says.

Wages, Dues

Despite the incremental gains in health coverage, unions have been less successful negotiating higher wages for their nursing facility members, Regan and Roselli acknowledge. "Given that two-thirds of the money for nursing home care comes from the state, there's just not



NLRB Takes Up Charge Nurse Status

The four remaining members of the National Labor Relations Board (NLRB) will soon review three cases addressing whether nursing facility and dialysis clinic charge nurses and occupational health physicians are “supervisors” under federal labor law and therefore cannot join in collective bargaining.

The cases will be the first time NLRB has addressed the charge nurse issue since the U.S. Supreme Court overturned the panel’s definition of “supervisor” in May 2001. In *NLRB v. Kentucky River Community Care Inc.*, the court ruled 5-4 that charge nurses exercise an adequate amount of on-the-job “independent judgment” to make them supervisors under the National Labor Relations Act.

However, the court ruled that the term “independent judgment” is ambiguous and left case-by-case decisions on the subject up to NLRB’s discretion.

NLRB is currently made up of four members, three of whom are recent re-

cess appointments by President Bush. The new political character of the board, which until last year was majority Clinton administration appointees, has some observers curious to see which way the panel will rule.

“We don’t know what the Bush board will do,” says Tom Walsh, a labor attorney with the White Plains, N.Y., office of Jackson, Lewis, Schnitzler & Krupman, who represented the nursing facility employer in *Kentucky River*. “They might be more conservative than their predecessors, but there is no way to know.”

NLRB Regional Director Gary Kendellen ruled in late January that all three groups of professional employees did not exercise sufficient independent judgment to be considered supervisors. The employers, Madison Center Genesis Eldercare, Renex Dialysis Clinic of Bloomfield, and Concentra Medical Centers were granted review of their cases by the board in March.

Previous NLRB panels have been concerned that a strong ruling classifying charge nurses as supervisors would “deny registered nurses the opportunity to join unions altogether,” says Louis Todisco, an attorney with the Hartford office of Murtha Cullina LLP.

“A common misconception is that *Kentucky River* made all charge nurses *ipso facto* supervisors,” Todisco says. “The case really left that judgment up to the board.”

The board is expected to take its time ruling on the cases, according to an NLRB spokesperson.

In January, President Bush made two recess appointments to the board following concerns that the administration’s nominees would face an uphill confirmation battle in the Senate.

much wiggle room on wages,” Roselli says.

Regan says that unionized facilities in his area tend to pay about 10 percent higher wages than the nonunion competition, although U.S. Census figures cannot confirm or refute the claim.

Out in the trenches, Holley says wages for entry-level nurse assistants at her unionized facility start at \$6.85 an hour. A competing unionized facility nearby pays the same starting wage. Neither facility offers the union pension plan, she says.

Holley estimates that she pays about \$8 every two weeks in dues to SEIU District 1199, or about \$208 a year. Regan says his local charges translate into about \$28 or \$29 a month for the typical nursing facility worker.

Roselli charges his California members a little more: two times the average hourly rate of the bargaining unit, plus a \$2 spe-

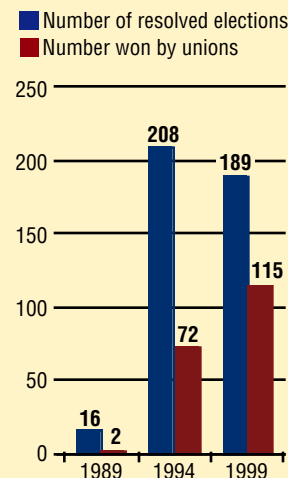
cial assessment. Union workers can expect to see the strike fund special assessment—dubbed the Unity Fund by SEIU headquarters—to jump to \$5 per member per month in 2005, he says.

SEIU District 1199 aims to organize 12 to 15 new nursing facilities this year using some of the “unity” funds. Local 250 is even more ambitious. Roselli says his union is targeting 50 new elder-care centers this year.

Although the tactics may differ from state to state and provider to provider, the underlying goals of the organizing campaign do not change, says Manheim. SEIU and the other unions have three goals: obtaining “card check” (a mechanism that allows certification of union representation without going through the National Labor Relations Board’s [NLRB] secret ballot elections), employer “neutrality” to organizing efforts, and the creation of master

Unions Winning More Elections in Nursing Facilities

National Labor Relations Board Representation Election Statistics, 1989-1999



Source: National Labor Relations Board

agreements that consolidate bargaining among provider companies' facilities.

The unions are eager to get card check recognition agreements. Under card check agreements, the unions are only required to gather signed cards from 55 percent of the employees in a specified work group in order to represent them. The card process replaces the NLRB's secret ballot where a simple majority is required.

The recent toning down of SEIU's campaign tactics is connected to the union's quest for card check and other less-contentious representation certification methods, says SEIU's Kieffer. "We're trying to partner with providers and help them solve some problems, like finding affordable health insurance and accessing available training funds," he says. "A little less than half our [organizing] work [in nursing facilities] last year involved either card check or something less than the full

NLRB election—a sign that the employer respects the wishes of the employees."

NLRB-governed secret ballots often intensify conflict between providers and unions, as multiple trade unions vie for the facility's bargaining unit, Kieffer says. Despite SEIU's interest in avoiding the ballots, statistics show that unions are winning five times more of the representation elections in nursing facilities than they did in 1989 (*see table, page 31*).

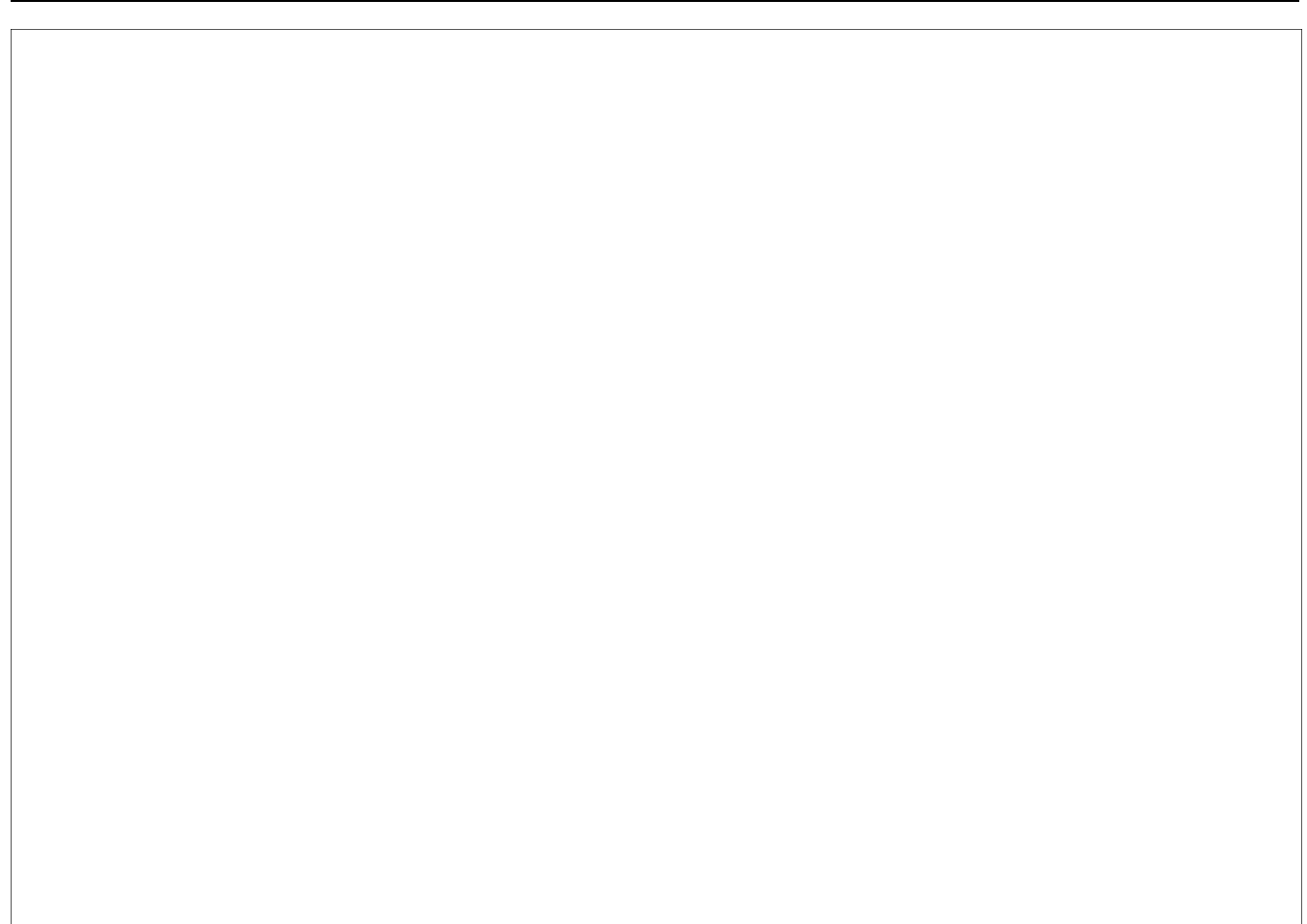
Legislative Changes Sought

Besides ensuring card check, unions are looking for legislative changes that would increase their membership and make organizing easier. Most of the recent SEIU campaigns and contract negotiations have been timed to coincide with state legislative sessions, as was the case in the West Virginia campaign earlier this year, the aggressive summer 2001 campaign in Cali-

fornia, and District 1199's spring 2001 statewide strike in Connecticut.

Union lobbyists commonly back legislation that would establish staff-to-patient ratios in nursing facilities, ban mandatory overtime for nurses and nurse assistants, and ban the use of any state funds to "assist, promote, deter, or discourage union organization." The last legislative effort, known as the "neutrality" law, has already been successful in California and New York. The law restrains providers from talking to their personnel before a union representation vote.

"Basically it ties your hands as an employer," says Nancy Armentrout, director of legislative affairs at the California Association of Health Facilities (CAHF). "Because Medicaid pays for the majority of nursing facility care, anything you do on facility grounds, whether it's holding a meeting or even just talking at the water



cooler about the union, can be prosecuted as an illegal use of state funds.”

The only alternative is to meticulously separate state-match Medicaid funds and federal and private funds into distinct bank accounts, which is not feasible for many providers, says Armentrout. CAHF has launched a court challenge to the law, arguing that the National Labor Relations Act preempts the provision. In February 2001, Maryland State Attorney General Robert Zarnoch came to the same conclusion and advised the legislature that the “neutrality” proposal was preempted by federal law. SEIU has introduced the measure in 15 states since 1999, according to a CAHF analysis.

With such a focus on organizing, some critics say SEIU has a harder time representing nursing facility workers than convincing them to join. Part of the problem, say critics like McMenemy, is that the

economics of the current long term care financing system prevent unions from making their campaign promises of higher wages a reality. Particularly in the wake of the Medicare cuts following the 1997 Balanced Budget Act, the multifacility providers targeted by SEIU’s early corporate campaigns could not afford to pay their workers more.

Bumper Year For Union

In January, SEIU announced that 2001 was the union’s second best organizing year ever. The union brought in a total of nearly 80,000 workers. Of the total, a little more than half were health care workers.

The union currently represents between 105,000 and 110,000 nursing facility workers nationwide, out of the 176,300 unionized workers in the sector, according to Kieffer. The trade union picked up between 4,500 and 7,000 new nursing facili-

ty members in 2001, Kieffer says. Between 1997 and 1999, SEIU’s victories in nursing facility organizing campaigns “trended down,” mainly due to the bankruptcies and financial difficulties providers faced, Kieffer says.

Considering SEIU has spent about \$100 million on nursing facility organizing over the past six years, the union spent between \$2,429 and \$3,777 per new member gained in 2001. For the union to continue investing so heavily, SEIU must feel it’s accomplishing key internal objectives by organizing nursing facilities, says George Washington University’s Manheim. Pension fund contributions and initiation fees may make up some of the organizing cost, but protecting the unions’ health care turf probably also plays a role. “Remember that the unions are businesses too,” notes Manheim. “It takes a lot of money and effort to launch these campaigns.” ■

