

# LONG TERM CARE COMMUNITY COALITION

---

*Advancing Quality, Dignity & Justice*

TESTIMONY FOR A MEETING ON:  
STAFFING ENHANCEMENTS AND PATIENT/RESIDENT QUALITY  
IMPROVEMENT INITIATIVES IN HOSPITALS AND NURSING HOMES  
OCTOBER 22, 2019

PRESENTED BEFORE:  
THE NEW YORK STATE DEPARTMENT OF HEALTH

PRESENTED BY:  
RICHARD J. MOLLOT  
EXECUTIVE DIRECTOR  
LONG TERM CARE COMMUNITY COALITION

## I. Introduction

Thank you for the opportunity to testify today.

My name is Richard Molloy. I am the executive director of the Long Term Care Community Coalition (LTCCC). LTCCC is a non-profit, non-partisan organization dedicated to improving care and quality of life for residents in nursing homes and assisted living. As a coalition, we include a range of organizations and individuals representing the interests of the elderly and disabled, and their caregivers, across New York. LTCCC focuses on systemic advocacy, conducting research on LTC issues to identify the root causes of problems and develop practicable recommendations to address them.

My comments today are focused on nursing home care. Nursing home residents are among our most vulnerable citizens. By definition, they require 24-hour a day monitoring and care. For these reasons, there are federal and state standards to ensure that residents are protected and receive the care and services they need to attain their highest practicable medical, emotional and social well-being.

While there are efforts underway to help people access long term care services outside of nursing homes, nursing homes will always provide critical services, particularly as our citizens age and more people live longer with dementia and other chronic conditions. In fact, recent research indicates that over ½ of people who reach their late 50s will need nursing home care at some point. In addition to the substantial public need for nursing home care, there is a substantial public investment; New York taxpayers pay for a significant majority of nursing home care.

Thankfully, there are numerous nursing homes in NY that provide good care, treat their residents with dignity, and demonstrate a commitment every day to fulfilling the promise they make to NY residents and families as well as taxpayers. Unfortunately, too many of our nursing homes fail to take essential resident protections seriously. They take our money every day, and promise to provide good care, but fail to do so.

**We appreciate Governor Cuomo's commitment to establishing safe staffing levels to address longstanding deficiencies in nursing home staffing in New York.<sup>1</sup> Staffing is widely recognized as the most important factor in respect to the safety and dignity of life in a nursing home. The widespread failure to provide sufficient staffing, with the appropriate competencies, is responsible for unnecessary resident suffering, heartbreak for New York families, and a waste of millions of tax payer dollars every year for substandard – or worthless – services.**

## II. We Know What Minimum Staffing Is Necessary

A landmark federal study, published in 2001, identified 4.1 hours of nursing staff time per resident per day (HPRD) as necessary to meet the clinical needs of the typical nursing home resident. That

---

<sup>1</sup> Statement from Governor Andrew M. Cuomo, June 22, 2019. <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-190>.

number has, essentially, been the benchmark for close to two decades.<sup>2</sup> While 4.1 HPRD or higher does not guarantee high quality care or decent living conditions, staffing below 4.1 HPRD is an indicator that a facility's residents are at higher risk of abuse and neglect, and that the public may not be getting the level of services that we are paying the nursing home to provide.

Since it has been close to 20 years since the 2001 study was undertaken, further study on staffing would be useful. However, the results would inevitably indicate that more than 4.1 HPRD is needed. Why?

- The 2001 study did not assess how much nursing staff is needed to meet the quality of life and basic dignity needs that every human being has and which providers are paid – and contractually agree – to provide;
- The study was not focused on measuring the staffing levels necessary to provide the quality of care specifically required by federal regulations; and
- The facilities selected for the study were not required to be providing “high quality of care.”

Unsurprisingly, other studies have indicated that 4.1 HPRD is a low baseline. In 2000, several experts found that “[m]inimum total number of direct nursing care staff is 4.13 hr per resident day. Total administrative and direct and indirect nursing hours is 4.55 hr per resident day. Staffing must be ADJUSTED UPWARD for residents with higher nursing care needs.”<sup>3</sup>

A 2016 study, focused only on nurse aide (CNA) care staffing needs, found that residents need 2.8 to 3.6 HPRD of CNA care, on average, to keep rate of care omissions below 10%.<sup>4</sup> That is approximately 20% higher than the CNA time identified in the 2001 federal study.<sup>5</sup>

### III. Fiscal Implications of Sufficient Staffing - Funding is NOT the Problem

#### Private Enterprises Continue to See NY Nursing Homes as Valuable & Profitable

We continue to see private, for-profit companies buying up nursing homes in New York. In 2015, *The New York Times* reported on the “bull market” for nursing homes, noting that “[s]ale prices of nursing homes averaged \$76,500 per bed last year — the second consecutive year of record-breaking

---

<sup>2</sup> Abt Associates (Prepared for the Centers for Medicare and Medicaid Services), *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*, Report To Congress: Phase II Final (December 2001). Available at <https://theconsumervoice.org/uploads/files/issues/CMS-Staffing-Study-Phase-II.pdf>.

<sup>3</sup> Harrington, C., et. al., “Experts Recommend Minimum Nurse Staffing Standards for Nursing Facilities in the United States,” *The Gerontologist*, Vol. 40, No. 1, 5-16 (2000). [Emphasis in original.]

<sup>4</sup> Schnelle, J., et. al., “Determining Nurse Aide Staffing Requirements to Provide Care Based on Resident Workload: A Discrete Event Simulation Model,” *JAMDA* 17 (2016) 970e977.

<sup>5</sup> The 2001 Abt study identified an upper range of 2.8 CNA HPRD. We subtracted 2.8 from the upper range of the 2016 Schnelle study, 3.6, resulting in .8 which is 22% of 3.6.

prices....<sup>6</sup> We do not believe that these individuals, for-profit companies, LLCs, etc... are gobbling up nursing homes in New York so that they can lose money as a result.

### **One-Third of Medicare Short-Term Rehab Residents are Harmed**

A 2014 Office of Inspector General study, *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries*,<sup>7</sup> found that an astonishing one-third of residents who went to a nursing home for short-term care were harmed within an average of 15.5 days, and that almost 60% of that harm was preventable and likely attributable to poor care.

This is particularly striking because Medicare reimbursement rates are extremely high. The Medicare Payment Advisory Commission (MedPAC) has reported that nursing homes are overpaid by the Medicare program and have enjoyed margins exceeding 10% for more than 15 consecutive years.<sup>8</sup> Why can't nursing homes take care of these highly profitable patients? What are the implications for our elderly residents, particularly the majority of residents who have dementia?

## **IV. Can We Learn from Enhancements in California or Massachusetts?**

In short, no. California's staffing regulation is far too low and, of even greater concern, it allows for facilities to apply for a waiver to be exempted from the staffing requirement. According to a report in *Kaiser Health News*, at its inception over half of the state's nursing homes had asked for an exemption.<sup>9</sup>

In Massachusetts, our colleagues at the Massachusetts Advocates for Nursing Home Reform (MANHR) reported that:

A couple of years ago, MA reviewed all regs to "streamline" regs, and that's when we lost a staffing standard that was in place for about 25 years --- 2.6HPRD, 2.0 CNA 0.6 RN/LPN. Albeit low, but still a benchmark. Was replaced with a watered down version of new federal reg: 150.007(2)(d)....<sup>10</sup>

---

<sup>6</sup> Thomas, Katie, "In Race for Medicare Dollars, Nursing Home Care May Lag," *The New York Times* (April 14, 2015). Available at <https://www.nytimes.com/2015/04/15/business/as-nursing-homes-chase-lucrative-patients-quality-of-care-is-said-to-lag.html>.

<sup>7</sup> Available at <https://oig.hhs.gov/oei/reports/oei-06-11-00370.asp>. Six percent of those who were harmed died, and more than half were rehospitalized.

<sup>8</sup> See <http://www.medpac.gov>.

<sup>9</sup> Ostrov, Barbara Feder, "More Than Half Of California Nursing Homes Balk At Stricter Staffing Rules," *Kaiser Health News* December 7, 2018). <https://khn.org/news/more-than-half-of-california-nursing-homes-balk-at-stricter-staffing-rules/>. See also, "A Trojan Horse for Nursing Home Residents: The Insidiously False Promise of the New Minimum Staffing Requirements," California Advocates for Nursing Home Reform. [http://www.canhr.org/newsroom/newdev\\_archive/2018/20180430.A\\_Trojan\\_Horse\\_for\\_Nursing\\_Home\\_Residents.html](http://www.canhr.org/newsroom/newdev_archive/2018/20180430.A_Trojan_Horse_for_Nursing_Home_Residents.html).

<sup>10</sup> Excerpt of email from MANHR.

## V. How Can We Achieve Sufficient Staffing? – Recommendations

### Enforcement of Existing Staffing Standards

Since passage of the federal Nursing Home Reform Law in 1987, every nursing home has been required – and receives payment – to have sufficient staff to ensure that each and every one of its residents receives the care and services he or she needs to attain and maintain his or her highest practicable physical, emotional, and social well-being.

Federal regulations implementing the Reform Law, federal Interpretive Guidance, and the 2017 requirements for state surveyors each detail specific expectations for identifying low and insufficient staffing and holding providers accountable when they fail to meet these expectations.

Many – about 25% - of our nursing homes take this obligation, and their commitment to their residents and communities seriously, by providing good staffing. However, in the absence of meaningful enforcement (i.e., penalties for failing to meet these important standards), most nursing homes have lower staffing.

In short, we are operating on an honor system for resident care and safety. It is not working successfully for New York State nursing home residents, New York families, or New York tax payers.

### Minimum Numerical Staffing Standards

New York is now one of the minority of states that fails to set minimum safe staffing requirements for its nursing homes. Staffing standards are needed now more than ever to counter abuse and neglect, the increasing corporatization of nursing home care and current efforts by the provider industry lobbyists to quash nursing home requirements and accountability.

LTCCC strongly supports the Safe Staffing for Quality Care Act. We thank Assembly leaders for their support last year and urge the Governor & State Senate to do their parts to make this happen in 2020.

## VI. Conclusion

Many of our nursing homes do a good job in caring for their residents. However, increasing corporatization, the largely unbridled power of industry lobbyists, and lack of accountability perpetuate a system in which, far too often, it is both acceptable and profitable to provide poor care. Though staffing is key to resident safety and dignity, as well as the efficient use of the public funds that pay for most nursing home care in New York, too many nursing homes operate with insufficient staffing. As a result, residents in nursing homes in communities across New York suffer every day: unnecessary pain, humiliation, even death.

I thank you again for your interest in the well-being of our nursing home residents and for this opportunity to present testimony. We would welcome the opportunity to work with you and other state leaders to ensure that our nursing homes residents have access to the care and other staff necessary to ensure that they are safe and able to live with the dignity that we all desire and deserve.

## VII. Appendix – Selected Reports Underscore the Need for Action on Low Staffing & Safety

“An Assessment of the Impact of Low Staffing Levels on Quality of Nursing Home Care in New York,” LTCCC (2019). <https://nursinghome411.org/wp-content/uploads/2019/06/LTCCC-Policy-Brief-NY-State-Nursing-Home-Staffing-Quality-2019.pdf>.

“It’s Almost Like a Ghost Town.’ Most Nursing Homes Overstated Staffing for Years,” *The New York Times*, <https://www.nytimes.com/2018/07/07/health/nursing-homes-staffing-medicare.html>.

“As NY shifts to for-profit nursing homes, abuse and neglect complaints spike,” *City & State*, <https://www.cityandstateny.com/articles/policy/healthcare/as-ny-shifts-to-for-profit-nursing-homes%2C-abuse-and-neglect-complaints-spike.html>.

“Understaffing often plagues nursing homes, but state rarely cracks down,” *The Buffalo News*, <https://buffalonews.com/2019/02/14/state-health-department-rarely-cites-nursing-homes-for-understaffing/>.

“Nursing Homes Are a Breeding Ground for a Fatal Fungus: Drug-resistant germs, including *Candida auris*, prey on severely ill patients in skilled nursing facilities, a problem sometimes amplified by poor care and low staffing,” *The New York Times*, <https://www.nytimes.com/2019/09/11/health/nursing-homes-fungus.html>.

“After nursing home stay, bedsores lead to man’s agonizing death,” *The Buffalo News*, [https://buffalonews.com/newsletter\\_promo/after-nursing-home-stay-bedsores-lead-to-mans-agonizing-death/](https://buffalonews.com/newsletter_promo/after-nursing-home-stay-bedsores-lead-to-mans-agonizing-death/).

“Letters: Safe Staffing bill allows better care,” *The Buffalo News*, <https://buffalonews.com/2019/01/03/letters-safe-staffing-bill-allows-better-care/>.

“Residents suffer as only 8% of N.Y. nursing homes comply with proposed staffing law,” *The Buffalo News*, <https://buffalonews.com/2018/12/10/only-49-new-york-nursing-homes-comply-with-proposed-minimum-staffing-law/>.

“Two city nursing homes sued for inadequate care and staffing,” *Crain’s New York Business*, <https://www.craigslist.com/health-care/two-city-nursing-homes-sued-inadequate-care-and-staffing>.

“New York Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness,” USDHHS Office of Inspector General, <https://oig.hhs.gov/oas/reports/region2/21701027.asp>.

“107 New York nursing homes receive lowest fed rating: What to know about staffing, quality,” *Rockland/Westchester Journal News*, <https://www.lohud.com/story/news/health/2019/05/16/107-new-york-nursing-homes-received-lowest-rating-check-local-scores/3682011002/>.

“NY’s Nursing Home Staffing Shortages Raise Concerns About Quality of Care,” *CityLimits.org*, <https://citylimits.org/2019/08/26/nys-nursing-home-staffing-shortages-raise-concerns-about-quality-of-care/>.