LONG TERM CARE
COMMUNITY COALITION

Advancing Quality, Dignity & Justice

TESTIMONY FOR A HEARING ON:

Nursing Home, Assisted Living, and Homecare Workforce – Challenges and Solutions

July 27, 2021

PRESENTED BEFORE:

Senate Standing Committee on Aging Chair

Senator Rachel May

Senate Standing Committee on Health Chair

Senator Gustavo Rivera

Senate Standing Committee on Labor Chair

Senator Jessica Ramos

PRESENTED BY:

Richard J. Mollot

Executive Director

LONG TERM CARE COMMUNITY COALITION

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Visit our website, www.nursinghome411.org, for quality, enforcement, and other data on nursing homes in New York and nationwide, as well as resources for residents, families and other stakeholders.

I. Introduction

The Long Term Care Community Coalition (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.

Nursing home residents are among the most vulnerable people in our society. 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 psycho-social well-being.

Residents in assisted living often have needs – and vulnerabilities – on par with those in nursing homes. In fact, in order to qualify for a "slot" in the state's Medicaid Assisted Living Program, an individual must have a nursing home level of need but be able to receive those services in a less restrictive setting than that which the traditional nursing home provides. Nevertheless, there are no minimum federal quality standards for assisted living facilities and state rules are lax, reflecting the interests of the well-financed provider industry more than the safety or well-being of New York's seniors and their families.

Numerous studies over many decades have identified staffing – both sufficiency and competency – as being the most important indicator of a facility's quality and safety. The following testimony focuses on issues that have led to persistent inadequate nursing home staffing. However, these concerns largely apply to the assisted living sector, too.

II. Inadequate Nursing Home Staffing is a Persistent & Widespread Problem in NY

Decades of research have told us what any resident, family member, or ombudsman in your community can tell you personally: staffing is key to nursing home quality. Despite this, far too many nursing homes fail to have sufficient – or sufficiently trained – staff. Unfortunately, this is a particularly longstanding problem in New York State. NYS nursing home staffing levels are persistently among the lowest in the country. According to the latest payroll-based staffing data, over 75% of NYS facilities fail to provide the amount of staff time identified in a 2001 landmark federal study as necessary to provide decent clinical care (no matter treat residents

with dignity).[1,2] In fact, over 50% of our facilities fail to provide even ½ hour of RN staff time per resident, per day, far less than the ¾ hour minimum identified in the federal study.

II. Funding is *NOT* the Problem

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

A 2014 U.S. Office of Inspector General study, *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries*,[3] 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 Medicare margins exceeding 10% for close to 20 years.[4] 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?

Private Enterprises Continue to See 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 prices….[5] Earlier this year, *McKnight's LTC News* reported "another record quarter" for one of the country's largest nursing home chains.[6] Just last week, *Skilled Nursing News* reported on a NY-based chain in its story on how nursing home operators can maximize profits by focusing on higher acuity residents.[7] Concerns about private equity's increasing

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[1] See 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.

[2] The 2010 Affordable Care Act requires facilities to electronically submit direct care staffing information (including agency and contract staff) based on payroll and other auditable data. Data for every quarter are published on our website, www.nursinghome411.org.

[3] 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.

[4] See http://www.medpac.gov.

[5] 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.

[6] Brown, Danielle, "After another record quarter, Ensign approaches pre-pandemic occupancy," *McKnight's LTC News* (February 5, 2021). Available at https://www.mcknights.com/news/after-another-record-quarter-ensign-approaches-pre-pandemic-occupancy/.

[7] Zorn, Alex, "Some SNF Operators Specialize to Take on High-Acuity Patients," *Skilled Nursing News* (July 21, 2021). Available at https://skillednursingnews.com/2021/07/some-snf-operators-specialize-to-take-on-high-acuity-patients/.

interest in the healthcare, including nursing homes, was the impetus for a recent House Ways & Means Committee hearing.[8]

Simply put, we do not believe that these individuals, for-profit companies, LLCs, private equity, etc… are buying up nursing homes in order to lose money.

III. Lack of Oversight & Accountability *IS* the Problem

Though nursing homes are entrusted with the care of frail elderly and disabled people, oversight is lax and facilities are rarely held accountable for substandard care or abject neglect, even when it leads to unnecessary suffering or death. Highly paid industry lobbyists (several of whom have provided testimony for this hearing) have long promoted a narrative in Albany that is often fanciful and, too frequently, unsubstantiated by facts. Nevertheless, they have been successful in portraying the nursing home industry, rather than residents, as the constituency whose interests should be protected by lawmakers and regulators.

As the COVID-19 pandemic amply (and painfully) demonstrated, it is time for this narrative to change.

Following are some key points that we request you keep in mind as you consider how to address low staffing and poor working conditions.

1. **Nursing homes voluntarily agree to participate in Medicaid and Medicare**. Facilities that do not wish to meet these standards are free to operate private facilities. However, when a nursing home participates in these programs, it agrees to meet – or exceed – all of the minimum standards for every resident, every day.
2. **Nursing homes derive almost all of their profits off of public funding** via the Medicare and Medicaid programs. Taxpayers should not be offering a free ride to operators that openly flout minimum standards, harming both vulnerable residents and care staff.
3. **Since the federal standards were implemented in 1991, nursing homes have been required to have sufficient staffing**, with the necessary skills and competencies, to ensure that every resident is able to attain and maintain their highest practicable physical and psycho-social well-being. This is based on each individual resident's needs and goals, as identified through a periodic assessment. Thirty years later, there is simply no excuse for inadequate staffing or the substandard care that, naturally, results from it. And **there is no excuse for allowing nursing homes to operate like a Dickensian factory, doling out one-size-fits-all care and services of low quality and value**.
4. **The nursing home industry has claimed – for decades – that it operates on "razor thin" margins, yet provides no verifiable data to substantiate these claims**. In fact, the large majority of nursing homes utilize related-party transactions, identified by *The New York*

[8] Examining Private Equity's Expanded Role in the U.S. Health Care System (March 25, 2021). https://waysandmeans.house.gov/legislation/hearings/oversight-subcommittee-hearing-examining-private-equity-s-expanded-role-us

Times as a mechanism through which nursing homes funnel tax-payer funds allocated for care away from the nursing home and into hidden profits.[9]

5. **Until recently, there were no limits on profits and surpluses** that nursing homes could pull away from resident care and staffing (while, at the same time, sending highly-paid lobbyists to Albany to fight for higher reimbursement rates and fewer requirements).
6. The nursing home industry has claimed – for decades – that it is very difficult to hire staff. In fact, **nursing home turnover is "nearly 100%"** on average.[10] Staff, a high percentage of whom are women of color, suffer from low pay and demeaning working conditions in an occupation recognized year after year as one of the most dangerous in the country. At the same time, nursing home operators maximize profits not only by maintaining dangerously low staffing levels, but also by perpetuating a system which severely limits career stability and growth – and the higher salaries that accompany them.
7. **Nursing homes that do not have sufficient staff or supplies to meet their residents' needs are required to arrange for a safe and appropriate transfer and not accept new residents** unless and until they have sufficient staffing and supplies. The inability (or unwillingness) to find and retain sufficient staff is not a legitimate excuse, legally or morally. **Nursing homes are not supposed to operate as if they are a warehouse or a gerbil farm.**

IV. Recommendations

Hold Nursing Homes Accountable for Meeting Federal & State Nursing Home Requirements

1. **Nursing homes are already paid – and legally obliged – to have sufficient staffing** to meet the clinical needs of residents, provide a meaningful quality of life, and services with dignity. **Nursing homes should *not* be awarded more taxpayer money for a job poorly done**.
2. The legislature should **hold a hearing on nursing home oversight**, including the extent to which Department of Health (DOH) policies and procedures were sufficient to hold nursing homes accountable for providing appropriate staffing in the years prior to the COVID-19 pandemic and during the pandemic.
3. The legislature should **require that DOH provide information on nursing home and assisted living staffing on its website** for every licensed facility, including staffing hours, average salaries, patterns, and turnover rates.

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[9] Rau, Jordan, "Care Suffers as More Nursing Homes Feed Money Into Corporate Webs," *The New York Times* (January 2, 2018). Available at https://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html.

[10] Spanko, Alex, "Nursing Homes Have 94% Staff Turnover Rate — With Even Higher Churn at Low-Rated Facilities," *Skilled Nursing News* (March 2, 2021). Available at https://skillednursingnews.com/2021/03/nursing-homes-have-94-staff-turnover-rate-with-even-higher-churn-at-low-rated-facilities/#:~:text=Even%20before%20COVID-19%2C%20the%20median%20staff%20turnover%20at,published%20this%20week%20in%20the%20journal%20Health%20Affairs..

4. The legislature should request that DOH revive its annual report on nursing home profits.
5. The legislature should **commission an independent study on staff turnover**, focusing on the characteristics of facilities with low turnover vs those with high turnover and the impacts of high-turnover on workers, particularly in communities of color.

Meaningful Financial Penalties

Minimum standards are only meaningful if they are enforced. **For too many facilities, it makes financial sense to hire less staff and provide inferior services since there are minimal (if any) penalties when they fail to provide decent care**. Following are some of our recommendations to improve accountability. All of them have been either adopted by or proposed in other states.

1. Texas provides its state agency the ability to fine repeat noncompliant nursing facilities without offering the facility a chance to first correct the violation.[11]
2. Texas law also provides for additional penalties if a facility fails to maintain a correction of certain deficiencies "until at least the first anniversary of the date the correction was made."[12]
3. California law provides for a fine of up to $100,000 when a deficiency has resulted in a resident's death.[13]

V. Conclusion

Approximately 25% of our nursing homes provide sufficient staffing, demonstrating that it ***is*** possible. However, in the absence of accountability for inadequate staffing and substandard care, too many nursing homes make the business decision to cut back on staffing costs in order to maximize profits and surpluses.

We thank you for your interest in the well-being of nursing home and assisted living residents, as well as their caregivers, and for this opportunity to present testimony. We would welcome the opportunity to work with you to ensure that residents are safe and able to live with the dignity that we all desire and deserve.

[11] Tex. Health & Safety Code Ann. § 242.0665.
[12] *Id*.
[13] Cal. Health & Safety Code §1424.5.