New York State NURSES ASSOCIATION One strong, united voice for nurses and patients

Joint Senate Hearing of the Committees on Aging, Health and Labor:
Nursing Home, Assisted Living, and Homecare Workforce – Challenges and Solutions
July 27, 2021

Testimony presented on behalf the New York State Nurses Association by Diedre Gilkes, RN

NYSNA represents more than 40,000 registered nurses across New York State for collective bargaining. We are the state's largest RN union and are on the forefront of the fight to expand health care to all New Yorkers, to protect the rights of nurses and other healthcare workers, and to maintain safe, high quality care.

The nursing home industry has for many years been in a state of crisis. Quality of care is bad and has gotten steadily worse due to continuous cuts in state reimbursement rates and Medicaid funding. This has placed enormous pressure on nursing homes to cut costs in an industry that is extremely labor intensive – in nursing homes the quality of care is directly correlated with how many registered nurses, licensed practical nurses and nursing aides are hired to provide care for residents.

The impact of this dynamic on the nursing workforce has been dramatic. Nursing homes in general have extremely high rates of worker burnout and turnover, with annual rates of turnover of nursing staff that are more than 100%.

Nursing home operators, particularly in the 2/3 of nursing homes that are privately operated and for-profit, have responded by pushing nursing staff to care for more patients, adding more resident care responsibilities, and slashing the amount of higher paid registered nurses in the staffing mix.

These structural problems were worsened and became starkly apparent during the ongoing COVID pandemic. Many nursing homes operating on shoe-string budgets were caught unprepared – nursing homes did not have enough N95 respirators and other PPE. The lack of registered nurses made implementation of effective infection control protocols difficult or impossible. Many staff were exposed and sickened themselves, making the situation even more critical. The result was plainly visible to all – thousands of residents died unnecessarily, thousands of staff were sickened or died, and already high turnover rates worsened as more staff left the industry.

NYSNA believes that the legislature and state DOH should implement the following measures to address these systemic problems and begin to address the critical issues facing residents, RNs and other nursing workforce issues: (1) Implement minimum safe staffing standards; (2)

1. Implement minimum mandatory nurse staffing standards

The legislature took some important first steps to force nursing home operators to improve staffing levels. The FY2022 budget included legislation to require nursing home operators to spend a minimum percentage of revenues on direct patient care and on staffing. In addition, the legislature passed a minimum staffing law requiring nursing homes to provide at least 3.5 hours of nursing care to each resident, of which at least 2.2 hours must be nursing aides and 1.1 hours must be licensed nurses (RNs or LPNs).

This legislation is a good start, but it is not enough to ensure proper patient care or to seriously address existing factors that contribute to worker burnout, turnover and staff recruitment and retention problems.

It should be noted at the outset that the minimum standard of 3.5 hours per resident per day is already being met by most nursing homes. The new regulation will only directly improve staffing in the worst staffed nursing homes (mostly the for-profit operators) but will not mean much to nurses in most facilities that are already meeting this standard.

The new staffing legislation also fails to address the ongoing problem of reducing the number of RNs in the staff mix (saving employers money). RNs are a critical component of providing proper resident care and play a big role in implementing effective infection control measures.

NYSNA believes that the proper amount of direct care in nursing homes is 4.1 hours of nursing care per resident per day, including a minimum of 2.8 hours of nursing aide time and 1.3 hours of licensed nursing time. Of the 1.3 hours of licensed nursing care, the standard should include a minimum of 0.75 hours of registered nurse time.

We accordingly urge the legislature to consider legislation to lift the minimum staffing standard in phases to improve the quality of care. Improved staffing will help to address turnover rates, job dissatisfaction and recruitment and retention by improving day-to-day working conditions and making nursing homes a more desirable career option.

The legislature should also establish clear demarcations between minimum staffing for long-term residents and special patient populations in acute, sub-acute or short-term intensive rehab units (vented, comatose, and short-term rehabilitation patients). Separate staffing standards should be included in legislation for these units because the current staffing is reported in the aggregate for each nursing home, and many of these staff hours are not being provided to “regular” long-term residents. This creates a false impression about the level of care on the “regular” floors, which is creates an inflated and false picture of the actual nursing care being received by long-term residents.

2. Improve staff working conditions, pay and benefits

Salaries and working conditions in the nursing home industry are worse than in hospitals and other Article 28 facilities. This is a major contributing factor in the high turnover and staff burnout.

To address this issue, the legislature should consider measures to require or incentivize employers to meet local, regional or statewide benchmarks for pay and health and pension benefits.

In addition, the legislature should consider enacting legislation to mandate that all employers create active committees in all nursing homes that give the workers a direct say in establishing staffing plans, infection control and other workplace safety measures, and general working conditions.

This type of process was included in the recently enact hospital nurse staffing legislation and in legislation mandating such committees in adult assisted living facilities.

The legislature should require similar worker committee structures in all nursing homes.

3. Increase Medicaid reimbursement rates to providers, with strict oversight to ensure compliance

The problems in the quality of resident care and workforce instability cannot be resolved without increased funding for nursing home operators to meet minimum staffing standards and address workforce recruitment and retention.

As is well known, the state has consistently and substantially reduced nursing home reimbursement rates to the point that it is basically impossible to provide proper care and employ a stable workforce.

The legislature should increase Medicaid reimbursements to nursing home operators and consider additional capital and funding mechanisms specifically linked to improved staffing levels and perhaps to targets on reducing turnover of staff.

4. Encourage expansion of union representation of nursing home workers

Though many nursing home nursing staff is unionized, there are many facilities that are partially or wholly non-union.

Given well documented differences in pay, benefits and empowerment in determining working conditions between unionized and non-union workforces, the legislature should consider higher Medicaid reimbursements or other bonus payments for unionized facilities.

This would provide an incentive for employers to accept union representation in their facilities and would level the playing field between non-union facilities and those with higher wage, health insurance and/or pension costs.

Encouraging and expanding unionization of the long-term workforce will increase the attractiveness of long-term care work and will reduce the major impetus for burnout and turnover of staff.

5. Reduce the role of for-profit nursing home operators

For-profit private nursing home operators, in many cases supported in their acquisition of existing nursing homes by private equity and other private investors, are taking on an increasing role in the long-term care industry.

The expansion of for-profit operators in terms of total capacity and resident market share has led to a corresponding reduction in the number of non-profit and public long-term care facilities. Currently, about 67% of the total market in New York is controlled by for-profit operators.

According to the NY AG's report issued in January of 2021, poor staffing was a major contributing factor in

the high mortality rates in NY nursing homes. Moreover, the worst staffing is found in the for-profit segment of the industry. According to data published by CMS and highlighted in the AG report:

- There was a direct correlation between poor staffing and higher death rates - Mortality rates in the worst rates nursing homes were 44% higher than those in the best staffed facilities.
- For-profit nursing homes represent most of the worst staffed facilities – 81% of "1 Star and "2 Star" facilities were owned by for-profit operators, while 88% of "5 Star" facilities were non-profit or publicly owned.
- For-profit providers, according to CMS data provided an average of 3.45 hours of care per resident day, compared to 4.14 hours in non-profit homes and 4.40 hours in government operated facilities.

Given the negative effect of the increasingly for-profit composition of the nursing home industry and the glaring differences in staffing levels, quality of care, mortality and worker pay and benefits between the for-profit and non-profit/government sectors, the legislature should seriously consider measures to reverse the existing trends and return to a non-profit and direct government role in providing care for the aged.

NYSNA recommends that the legislature immediately freezes any additional CON approvals for the establishment of new or acquired nursing homes by for-profit entities.

We would further recommend measures to reverse the trend toward for-profit care by more strictly enforcing regulations such as staffing, fraud or false claims violations, and patient care metrics by revoking or rescinding licenses of abusive operators.