



AARP New York

**Testimony Before the
Senate Standing Committee on Health
Senate Standing Committee on Aging
Senate Standing Committee on Investigations
and Government Operations
Assembly Standing Committee on Health
Assembly Standing Committee Aging
Assembly Standing Committee Oversight,
Analysis and Investigation**

August 3, 2020

Introduction

Good afternoon Senators and Assembly members, and thank you for holding this very important hearing. I am Beth Finkel, State Director for AARP New York. AARP is a social mission organization with about 2.5 million members in New York State. I would like to submit the following testimony regarding Residential Health Care Facilities and COVID-19.

I would like to start by thanking you all for all the work you have done during this pandemic to help New Yorkers push forward in these unprecedented times. Unfortunately, many believe this pandemic is far from over and a second wave may be on the horizon. I would like to focus my remarks today on what has occurred in our nursing homes and what can be done in the future if indeed a second wave does challenge our great state. We can never again allow the tragedy of over 6,300 deaths to occur in our adult long-term facilities.

Lack of Focus on Nursing Homes and the Long-Term Care System

It was very clear to AARP and many other consumer organizations that the focus of the State and the Department of Health was not on our adult residential communities at the beginning of the pandemic. As you know, the virus's first strike was a nursing home in Washington State. We did not sufficiently heed that warning in New York. The focus in our state was on building hospital bed capacity and securing ventilators. While this was critical, our focus and planning should have included our nursing homes and

long-term care facilities. Adult care facilities house some of society's most vulnerable, many of whom have preexisting conditions.

The lack of focus on these facilities and the fact that the virus has disproportionately impacted communities of color prompted AARP, the New York Urban League, the Asian American Federation, the NAACP, the Hispanic Federation and 1199SEIU to ask Governor Cuomo for his leadership to ensure that our long-term care system was fully coordinated and had the tools necessary to battle this pandemic.

We specifically asked for a Governor-led Long Term Care COVID-19 Task Force and for the Governor's Office to work with consumers, long-term care providers, home care agencies, and unions on a coordinated, statewide basis to share information and seek solutions to improve the long-term care system. At that time we thought the task force could be modeled on the successful approach the Governor took on March 30, 2020 to coordinate New York's public and private hospital systems.

In addition to creating and overseeing a LTC COVID-19 Task Force, we asked the Governor for immediate attention to ensure the long-term care system received adequate supplies of personal protective equipment (PPE) and testing.

Please see our letter and press release attached.

Press release: <https://states.aarp.org/new-york/advocates-to-governor-establish-long-term-care-covid-19-task-force-prioritize-nursing-homes-home-care-agencies-for-ppe-testing>

Letter <https://aarp-states.brightspotcdn.com/42/1b/c779c5b241fbb23a15a5469270ae/ltc-gov-letter.pdf>

Unfortunately, the Governor did not establish such a task force or release a coordinated plan for the long-term care system for future pandemics or a second wave of the COVID pandemic. That is why we are supporting Senator May's and Assemblywoman Cruz's bill, which passed the Senate two weeks ago and awaits action in the Assembly. The bill establishes a long-term care task force to examine the state of long-term care, both home-based and facility-based, in New York, and to consider potential models for improvement. The bill also requires examination of the impact of the coronavirus pandemic on long-term care as well as the broader long-term system in New York. We believe this task force should certainly look at current staffing levels in our facilities and any possible supply chain issue for PPE in the future. AARP also strongly believes that family caregivers should be part of this task force, since they play an integral role in our long-term care system.

Visitation and Communication with Nursing Homes

AARP fully recognizes the necessity of shutting down nursing homes to visitation by families, but we also understand the devastating impact this has had on both families and their loved ones in nursing homes. Since family members often carefully monitor their loved one's health status and are often the first line of defense in identifying key issues of concern to facility staff, their lack of presence in nursing homes and adult care facilities has had serious consequences.

Not being able to visit a loved one in person and then not being able to communicate with them during this time has been one of the most frequent complaints we have heard from our membership. As families were unable to visit their loved ones,

communication between the facilities and the families was absolutely crucial. While some facilities stepped up and provided regular and effective opportunities for virtual visitation, others unfortunately did not. We even heard stories that the only communication the family received was that their loved one had died from COVID.

We are grateful that the Legislature passed and the Governor signed into law legislation requiring communication protocols for nursing homes including virtual visitation in the future. In addition, the Governor also announced the partial opening of nursing homes to families and dedicated \$1 million for the technology necessary to implement the virtual visitation program. However, recent media reports indicate very few nursing homes are actually opening up for visits. This issue certainly needs more attention by the Legislature and the State to make sure families can see their loved ones as soon as possible.

AARP strongly recommends that the Long-Term Care Ombudsman program be improved by hiring more professional staff to be trained and sent to more nursing homes throughout the state. Currently, the program relies on volunteers who are mostly retired. While they do an excellent job, they were all barred from entering nursing homes during the pandemic. If the program had more full-time staff, that staff could be allowed into the facilities, similar to the way Department of Health inspectors were allowed in facilities during the pandemic. Anyone entering a facility of course needs the necessary PPE and testing to keep themselves, residents and staff safe. Long-Term Care Ombudsmen speak on behalf of the residents. Their voices should

not be silenced if we have to shut down nursing homes to families again in a second wave.

Immunity

AARP thanks you for taking a step forward by repealing certain legal immunity for nursing homes, but repealing nursing home and long-term care facility immunity must be full and retroactive. AARP is very concerned that the more than 6,300 families who lost loved ones do not have access to the courts and, therefore, cannot hold a nursing home accountable if their loved one was harmed, neglected or abused during the pandemic, should they choose to do so.

Pursuing a nursing home neglect or abuse case in court is a difficult undertaking for a resident or family member. Nobody brings about that kind of lawsuit lightly. It is always a last resort but it must remain an option. AARP strongly believes the over 6,300 families that lost their loved ones deserve better than the legislation that was recently passed.

Moving Forward – Take the Politics Out of New York’s Nursing Home Tragedy and Learn From Our Mistakes

AARP believes that we need to take an independent, in-depth look at New York State’s nursing homes. This analysis should be conducted by an independent body, free from politics.

We agree with Governor Cuomo that we need to take the politics out of nursing homes in New York. The Governor and Legislative leaders should agree on selecting strong academic institutions in New York and from across the country that have expertise in long-term care, as well as other experts with no ties to our system, to conduct an objective review of how the pandemic was handled, and advance recommendations to help us to move forward on the issue in the future.

Such an independent review, coupled with your legislative hearing findings, would go a long way towards preventing future tragedies and would generate the necessary steps to save New Yorkers' lives in the future.

Thank you again for inviting AARP to testify today. AARP is willing and able to work with you at any time to make our long-term care system better for those residing in adult care facilities. In closing, I would like to say that I sincerely believe that there is nothing we cannot do when we all work together.