

Testimony for NYS Hearing Monday August 3 - 9:00 am

Judith D. Grimaldi. Esq. MSW

Partner

Grimaldi & Yueng

9201 Fourth Avenue

Brooklyn, NY11029

Also representing Brooklyn's Bay Ridge Age Friendly Steering Committee.

Good morning. Chairpersons and members of the New York State Senate and Assembly Committees on Health, Aging and Investigations/Oversight. Thank you for holding **this** public hearing this morning on the COVID-19's impact on residential healthcare facilities and other long-term care settings. I am pleased to have been invited to give testimony along with other aging care activists and thought leaders on this important topic and as the need to address the overall gaps in care given in our State's long term care facilities

My name is Judith D. Grimaldi, an elder law attorney practicing in Brooklyn NY for over 35 years. I am a past chair of the NYSBA's Elder Law Section, Past Chair of the NYC Bar Association's Legal Problems of the Elderly Committee and Past Chair of NY's Chapter of the National Academy of Elder Law Attorneys (NAELA) and I currently serve on the steering committee of Bay Ridge, Brooklyn's Age Friendly Committee.

My practice puts me in contact with many elders who have be adversely impacted by the Corona virus. I hope I can give you a concise consumer perspective from witnessing the disastrous impact of Covid on elders and disabled who are cared for in institutional and/or residential facilities. We all know that the residents of nursing homes, assisted living facilities, adults homes and congregate care and residential communities have been the hardest hit by this new virus. I will not repeat the statistics as there are many expert statisticians to do that. We know the death rate was extraordinarily sad among this population. My goal is to tell you the story of this suffering in a personal and graphic way to encourage us all to do better and do it more quickly as the suffering among this group continues. My focus today is to advocate for the lifting of restricted visitation rules continuing in these residential settings. This unnecessarily restrictive social isolation may be doing more harm than good. To illustrate my point I am will outline the story of the Ling Family of New York City. I have their permission to do so.

You would enjoy meeting the Ling family. They are kind warm and capable. The three adult professional children cared for and their lively mother Linda Ling. She lived independently in her apartment in lower Manhattan before her admission to a nursing home. Her children are architects who have designed some remarkable buildings, but they were helpless to rescue their mother from death grip of a combination of poor care nursing home care and the Corona virus.

Mrs. Linda Ling entered Gouverneur Nursing Facility, a 295 bed NYC Health and Hospitals/Gotham Health facility, located at 227 Madison St, Manhattan, NY 10002 on March 16, 2020 at the start of outbreak of the Virus in New York State. She died there on April 23, 2020. Mrs. Ling was admitted to this home with a broken pelvis and sacral bones because of a fall in her apartment. She and the family were upbeat and optimistic that she would return home after her rehabilitative stay. Unfortunately, it was downhill from day one. Mrs. Ling was used to speaking with her daughter daily to go over her routines. This was an important touchstone for both the mother and daughter. During the five weeks of her Gouverneur stay, which sadly was the last weeks of her life, Mrs. Ling family had family contact just 12 times. During these weeks, the family attempted to be in contact with the social workers, nursing staff and administration; but their calls and messages went unanswered. The family's requests to hire and pay for private aides to help facilitate care and communication, in light of the home's claim of insufficient staff, was also refused. When Mrs. Ling was able to speak to her daughter, she complained of the lack of care, her loss of appetite, pain and other health needs. She pleaded, "They don't care here, and they don't care". This proved to be true from the daughter's perspective as well. The daughter's requests for a psychologist evaluation, an assessment of the cause of her mother's loss of appetite and the treatment of her mother's overall depression did not occur, although promised. On April 3, 2020, three weeks after their mother's admission to the home, the family finally learned that their mother was not participating in physical therapy, and she had lost her ability to walk or transfer. This was a shock. In addition, she was losing weight and needed two person to assist with all of her transfer. Their mother was wasting away and they could do nothing to stop it. They were willing to do move heaven and earth for their mother but the system blocked all their efforts.

On April 7, 2020, a local home care agency informed the daughter, Erica Ling, that Gouverneur had slated her mother for discharged to her home. The family had never received a call from Gouverneur to alert them of this discharge. On April 8 the daughter, Erica after many attempts, finally made contact with a substitute social worker and a substitute nurse. There was no talk of discharge instead she learned that the psychological evaluation had not occurred as there was no longer a psychologist on staff, the physical therapy was discontinued and the home was now concentrating on her mother's need to eat and treat her worsening bed sores. Her assigned social worker was unavailable to discuss any treatment or supposed discharge. She was told she was out sick. In other words, the place was in chaos, staff was new, unfamiliar with the patients and the situation was worsening daily for Mrs. Ling and by extension likely for many of the home's residents.

After several more weeks of little communication, on April 21, the family learned that their mother, in a worsening condition, was admitted to NY Presbyterian, Lower Manhattan, for blood work, testing and suspected Covid 19. On April 24, Mrs. Ling died in the hospital of an untreated urinary tract infection **not COVID**. The reason for Mrs. Ling's death gives evidence to the nursing home's failure to provide the primary care intended...pandemic aside. It was the isolation, poor care, lack of health monitoring, overstressed and inadequate systems and staff in the nursing home that killed Mrs. Ling. We may not be able to control the Corona Virus, but we can control these care and administrative failings and that is our challenge today.

I have included a letter, written by Erica H. Ling, the daughter of Linda Ling about her family's experience as part of my testimony. She bravely agreed to write her painful story of the seemingly unnecessary death of her mother and the impact on her family amid the Covid crisis. The following paragraph was especially poignant to me and I share it now

“When I picked up our mother's belongings from Gouverneur on April 27, three days after she died, I was shaken and angered to discover at least 15 pieces of unopened mail addressed to her, including a small album of photos of her home and loved ones. They were postmarked April 3 and still grouped in rubber bands. I had asked that someone help my mother open her mail and did not think to ask repeatedly. She was too weak to answer the phone in her room. The letters were her only contact with the outside world besides the few FaceTime calls which we treasured.”

The nursing home never gave the family the chance to visit which certainly was available under the federal CMS compassionate care visitation exception. The facility either was too callous to care or too over whelmed to arrange what may have been life saving interventions, Ms. Ling's story is just one of the many and my testimony is aimed at admitting this did happen and is still happening today and not to let this continue.

The COVID -19 nursing home crisis has put a spotlight on the declining care in our state's nursing homes and congregate care living options for the elderly, disabled and special needs populations. We have dressed up the homes, we note corporate branding slogans and the fancy lobbies, but the care is poor, the staff morale is low, the patient to staff ratios are substandard and unenforced. Public funding has decreased and the profit motive in many homes is the only bottom line. Covid has exposed the problems that have been there for years and are growing. These is our challenge to fix now and it is not the time to offer these homes blanket liability immunity in light of their poor performance.

The elder law community is ready to roll up our sleeves and work with you. We have formed task force to address specific areas in which lawyers' special skills can be made available in the areas of legislation, community outreach , education, and advocacy, We hope we can further a partnership with our elected officials to change a care system that impacts our vulnerable elderly and disabled and their families.

On a specific note, I entreat you to use your influence with the NYS Department of Health and the nursing facilities to begin to open their doors to compassionate and safe family visitation and to reexamine the unnecessarily restrictive current visitation rules. We need to reconsider the dangers of this policy, as clearly illustrated in Mrs. Ling's story. This is an immediate action, which the legislature can take now and we urgently request your action.

Respectfully submitted,
Judith D. Grimaldi, Esq. MSW
Brooklyn, New York 11209