Joint Senate Hearing on Nursing Home and Assisted Living Workforce

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Introduction

I am Roxanne Tena-Nelson, Senior Advisor of Continuing Care at the Greater New York Hospital Association (GNYHA), which represents not-for-profit and public continuing care providers in the New York metropolitan area and beyond. Our members provide the full continuum of long-term care services, including skilled nursing and post-acute care, and various home and community-based services. We appreciate the opportunity to provide testimony to the Senate Standing Committees on Aging, Health, and Labor on the very real challenges our members are facing hiring and retaining high-quality personnel in the current environment.

Executive Summary

1. Our mission-driven members are extraordinarily committed to serving vulnerable older and disabled individuals, including the low-income Medicaid population, a diverse population in the metropolitan New York region. Our members also disproportionately serve specialty populations who would otherwise not have access to essential long term care services.
2. Our members outperform other continuing care providers on various quality metrics, including investing in the workforce. Our members disproportionately invest in interdisciplinary teams of physicians, advanced practice nurses, therapists, social workers, nurses, and certified nurse aides, among others – all critical members of our workforce that are necessary to providing high-quality care and enhancing quality of life.
3. While the workforce is at the heart of our members' commitment to quality care, the continuing care workforce is under extraordinary pressure right now. While the height of the COVID-19 crisis is subsiding, our members are experiencing onerous workforce challenges as they recover from the pandemic. They are struggling to promote continuing care as a valuable career choice, due largely to unfair, negative publicity during the pandemic that did not distinguish between not-for-profit and for-profit nursing homes. Thus, it is difficult to build a pipeline and hire caregivers.
4. It has also become more difficult for our members to simply survive, given the triple whammy of Medicaid underfunding, unfunded legislative and regulatory mandates, and depressed revenue due to decreased occupancy. This is evidenced by the dwindling number of not-for-profit nursing homes in the State.
5. Now more than ever, our members need your support to continue their commitment to high-performing continuing care and high-quality jobs for people working at their organizations. Continuing care must not be viewed as a burden, but rather as a critical piece of how we keep top-notch continuing care options available to New Yorkers and elevate careers in the continuing care arena.
6. To achieve this, we respectfully urge the Legislature to end, once and for all, the chronic underfunding of Medicaid nursing home reimbursement rates; impose no new unfunded mandates on not-for-profit and public nursing homes; and provide flexibility and full funding for nursing homes to meet requirements that have already been enacted, recognizing severe workforce shortages and post-pandemic nursing home staffing realities. We have included other recommendations at the end of our written testimony.

Caring Is Our Calling

Our mission-driven members are disproportionately committed to serving vulnerable older and disabled individuals, including the low-income Medicaid-eligible population, a diverse population in the metropolitan New York region. Our members are also committed to caring for several specialty populations who would otherwise not have access to essential services, including individuals with HIV/AIDS, traumatic brain injury, Huntington's disease, neurobehavioral issues, and children who need services in a long term care setting. Additionally, our members are sought out by the wider health care community, such as hospitals, for post-acute services, including dialysis, palliative, wound, and medically complex rehabilitative care.

New York State nursing facilities depend on Medicaid as the primary source of reimbursement—72% of all nursing home days are paid by Medicaid. Our members' specialty facilities are almost all Medicaid-dependent, as they care for populations of children or the disabled without the ability to obtain the employment history needed to qualify for Medicare or other insurance types. Unfortunately, it costs more to care for Medicaid-dependent residents than providers are reimbursed. In 2011, the average shortfall between the daily Medicaid payment and the daily cost of caring for a Medicaid resident stood at $42. By 2017, it had widened to $64. As a result, New York State nursing homes are reimbursed only 79% of the cost to care for their Medicaid residents. This gap will continue to widen without fixing the chronic underfunding of nursing homes, which is placing the not-for-profit and public provider community in jeopardy.

Compounding the shortfall, our members operate on thin margins, which were further exacerbated during the COVID-19 pandemic. In 2019, the average operating margin across the membership was approximately -2%. During 2020, members saw those margins decrease dramatically to nearly -12%, including dedicated Federal CARES Act funding to address the COVID-19 financial impact. Members anticipate that this dramatic financial deterioration will continue in 2021 and potentially beyond due to lower patient volumes and higher input costs.

Our members are also located in the metropolitan New York area, including New York City, a region that serves an extremely diverse population of clients and staff members. The older population in New York City is increasingly more diverse than a decade ago, and the population is also more at-risk for poverty and limited English proficiency.[1] While we are proud to serve a diverse community and provide programs and services that are continually improving its cultural competency, serving a diverse community also comes with significant challenges that were worsened with COVID-19's impact on Black Indigenous People of Color (BIPOC) communities. Our members have histories of caring for low-income BIPOC communities, and they wish to continue to provide high-quality care to the older and disabled members of this community.

Our members are innovative in many ways and have been committed to mission-driven home and community-based services, in addition to the inpatient care in nursing homes. Our members are on the forefront of providing myriad home- and community-based services (HCBS), including: Programs of All-

[1] "Aging with Dignity: A Blueprint for Serving NYC's Growing Senior Population," New York, NY: NYC Comptroller SM Stringer, March 21, 2017. https://comptroller.nyc.gov/reports/aging-with-dignity-a-blueprint-for-serving-nycs-growing-senior-population/#_edn9 (accessed on July 12, 2021). See also https://nycfuture.org/pdf/The-New-Face-of-New-Yorks-Seniors.pdf.

Inclusive Care for the Elderly, managed long term care, Elder Serve at Night, adult day health care, and long term home health care. About 80% of our members provide HCBS and employ a whole host of staff members that work in these programs. Through our members' experiences, both nursing home care and HCBS care can be bolstered together to provide various high-quality jobs for a continuing care workforce that has different career needs.

Quality Is Our Focus

Our members outperform other continuing care providers on various quality metrics and on their commitment to investing in a broad spectrum of interdisciplinary team members comprising the continuing care workforce. Under the New York State Nursing Home Quality Initiative—which measures nursing homes on their quality, compliance, and efficiency—84% of our members ranked in the top three performing quintiles in comparison to just 56% of non-members.[2] This set of metrics is based on the Federal quality measures and adjusted for New York State. For example, our members disproportionately outperform other facilities on measures such as avoiding potentially avoidable hospitalizations, which allows residents to remain in their homes while the facility clinically manages the situation, and the measurement of pain. It is easy for us to imagine that life without pain is much more enjoyable and of higher quality than life with pain.

Moreover, our members are truly committed to investing in the interdisciplinary care team that is at the heart of both clinical care and quality-of-life in long term care. Our analysis of Federal payroll data demonstrates the GNYHA continuing care member's disproportionate commitment to highly qualified clinical staff, which has raised the bar for New York. Even beyond nurse staffing that is part of the quality rankings, our members are more invested in medical services demonstrated by a disproportionately higher level of attending physician presence, with almost half of our members (45%) reporting that they have salaried physicians on staff versus only 20% of non-members. Similarly, CCLC members provide a disproportionately higher investment in qualified licensed and registered staff reported in the Federal system, including staff such as advance practice nurses, social workers, a range of therapists, and other staff who elevate the quality-of-life in a facility, such as therapeutic recreation specialists. For example, our members that report respiratory therapist hours provide more than three times as many respiratory therapist hours per resident per day than non-members, delivering care that was critical to recovering COVID-19 patients over the past year. Moreover, our members have been pioneers in person-centered care, advance care that embraces staff-management committees and placing resident wishes at the center of interdisciplinary caregiving.[3]

Member continuing care staff take pride in high-quality care and value providers that strive for providing person-centered care for their residents. Our members are proud of their dedication to investing in the interdisciplinary team and the longevity of their workforce, both of which are necessary to maintain a high-functioning performance improvement program.

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[2] GNYHA Analysis of the 2019 New York State Nursing Home Quality Initiative. See https://health.data.ny.gov/Health/Nursing-Home-Quality-Initiative-Beginning-2012/aruj-fgbm (accessed July 13, 2021).

[3] Leutz, W, Bishop, CE, Dodson, L. Role for a Labor–Management Partnership in Nursing Home Person-Centered Care, *The Gerontologist*, (2010) 50 (3): 340-351. https://academic.oup.com/gerontologist/article/50/3/340/572175 (accessed July 18, 2021).

We Cannot Care Without Caregivers

At the heart of our members' care is the continuing care workforce, which is under extraordinary pressure right now. While the height of the crisis is subsiding, our members are experiencing extraordinary workforce challenges as they recover from the COVID-19 pandemic. Researchers have found that conventional fixes by policymakers, such as direct care staff-to-resident ratios, were not predictors of COVID-19 cases or deaths,[4] and we must support practical solutions to stabilize quality providers. For example, our members struggle to promote continuing care as a valuable career choice, to build a pipeline and hire caregivers, and to simply survive given the unfunded mandates on the horizon.

Our members have been battered by misconceptions in the public's eye and unfairly blamed for challenges brought on by the COVID-19 virus. In reality, our members successfully cared for thousands of residents during the height of the pandemic and have continued to keep residents and staff safe from this novel virus. In the spring of 2020, our members and their amazing teams of caregivers came to work each day when most others could stay safely at home, providing the compassion and companionship that the residents needed during lockdown. While our members knew their work was helping so many residents and their families, they have been dispirited by their being vilified in the press and among the public. Even though many residents and families recognized the sacrifices of our members with kind thank you notes and calls, our members never received the credit that they deserved. The risks involved with the COVID-19 virus and the lack of recognition from the public have caused staff members to leave the field and have created great difficulties in attracting new staff. From March to May 2020, researchers have reported that the number of direct care professionals dropped by 280,000 nationally across the long term care sector, 50,000 of which worked in long term care facilities.[5]

For years, our members have been particularly committed to developing innovative workforce programs that create intergenerational and meaningful experiences for young people in the care of older and disabled people. For example, since 2006, one member has been committed to a Geriatric Career Development (GCD) program, which is lifting a diverse group of students out of poverty with a career path in geriatric health care. The GCD's two-pronged approach provides a path for low-income high school students, with an immersive three-year curriculum that includes college readiness, health career exploration activities, internships, mentorship and clinical training, and a path for out-of-school, unemployed at-risk young adults, with a three-month program that engages, trains, and supports disconnected young adults to begin meaningful career paths in geriatric health care.

Another example is a Certified Nurse Assistant apprentice program to address chronic staffing challenges in long term care with a working solution that gathers people from all walks of life and provides the

[4] B.E. McGarry, Gandhi, A.D., Grabowski, D.C., and Barnett M.L., "Larger Nursing Home Staff Size Linked to Higher Number of COVID-19 Cases in 2020," *Health Affairs*, August 2021, 6. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2021.00323 (accessed on July 15, 2021).
[5] Weller, C. "Home Care Aides Keep Working Amid Massive Health Risks." *Forbes*, July 15, 2020. https://www.forbes.com/sites/christianweller/2020/07/15/home-care-aides-keep-working-amid-massive-health-risks/?sh=28881723641c (accessed on July 13, 2021). See also Campbell, S, et.al. "Caring for the Future: The Power and Potential of America's Direct Care Workforce." Bronx, NY: *PHI*, Jan 12, 2021. https://phinational.org/resource/caring-for-the-future-the-power-and-potential-of-americas-direct-care-workforce/ (accessed on July 13, 2021).

infrastructure and support to turn these cohorts into effective caregivers with a career path in long term care. The apprentice program incorporates opportunities for people not typically exposed to the health care field. It also provides targeted educational opportunities combined with experiential learning at a nursing home, elevating the training needed in long term care to encourage opportunities for career advancement, build a solid foundation of competencies among the nursing frontline staff, and address the current gap in the skills needed to care for the increasingly frail individuals with multiple and more complex comorbidities in long term care. The list does not stop here, and our members are always ready to work with partners, schools, and other educational programs to improve the continuing care workforce and expose people to meaningful jobs with career ladder opportunities in the not-for profit and public sector. The issue with these innovative programs is that they lack sustainable funding streams, which can help replicate their success.
Exacerbating the continuing care workforce environment are staffing mandates included in two major laws passed this year and scheduled to take effect in January 2022: the 70-40 staffing spending law passed in the final State budget, which we supported as an alternative to staffing standards, and the hourly nurse staffing law passed by the Legislature and recently signed by the Governor, which we opposed.

Around 90% of our members are estimated to meet the 70-40 spending requirements compared to less than 50% of non-member nursing homes. Additionally, our members on average spend 10% more of their revenue on direct care and resident-facing staff expenses than non-member nursing homes. However, we are still concerned that the capital exemption process insufficiently considers the major capital needs of the not-for-profit and public providers that wish to both invest in person-centered physical environments and in services that the larger health care system needs such as ventilator and dialysis services for post-acute care patients.

Regarding the nurse staffing law, our members are extremely concerned about the cost of complying and the severe labor shortages, even before the law becomes effective. We estimate that the law will cost our members about $40 million annually and for all facilities around $300 million, and there is currently insufficient dedicated funding to support the law's implementation. While legislators have publicly promised to do everything necessary to obtain the funding for nursing homes to comply with this law, the underlying Medicaid shortfall, the existing not-for-profit sector's financial fragility, and severe labor market shortages remain major hurdles to implementation.

Residents and Families Need Your Support

Now more than ever, our members, the residents they care for, and the families that depend on us need your support to continue their commitment to high-performing continuing care and high-quality jobs for people working at their organizations. Continuing care must not be viewed as a burden, but rather a critical piece of how we keep top-notch continuing care options available to New Yorkers and elevate careers in the continuing care arena. While many of our members are committed to providing HCBS for our most vulnerable populations, care in nursing homes will be necessary, especially for some of the most vulnerable who don't have the ability to maintain community-based supports.

In addition to Medicaid underfunding and unfunded legislative and regulatory mandates, our not-for-profit members, which were financially fragile pre-COVID-19, are still experiencing decreased occupancy levels. Prior to the pandemic, member average occupancy rates were approximately 95%. Occupancy rates precipitously declined during the height of the pandemic, with some members facing lower than 70%

occupancy for months, and these rates have yet to fully recover. Recent data suggests members are still experiencing occupancy rates of just 80%. Only last month, the state of emergency ended and the May 10 executive order prohibiting COVID-19-positive patients from being discharged to continuing care settings was lifted, yet occupancy levels have not returned to pre-pandemic levels.

The triple whammy of the Medicaid shortfall, unfunded mandates, and low occupancy has worsened the prospects of recovery for not-for-profit nursing homes in the State. New research this month revealed that improved Medicaid funding and support for person-centered care will be key to keeping the unique number of staff members small and reducing the risk of COVID-19.[6] In 2018, the New York State Attorney General's Office—in a report released by its Charities Bureau—sounded an alarm over the accelerating loss of high-quality, community-based, not-for-profit long term care providers in New York State due to closures or conversions. Citing research linking not-for-profit sponsorship with especially strong quality outcomes in patient care and patient satisfaction, it flagged the deeply concerning trend that, in recent years, New York has lost close to 5% of its not-for-profit nursing homes annually. For years, researchers have highlighted the value of the not-for-profit and public sector in New York,[7] and such research is supported by the recent national report highlighting support needed for better jobs to have better continuing care.[8] Some members who have endured the decade-long underfunding and remained committed to funding solid benefits for their workforce have no other choice than to close or convert high-performing facilities, which is a grave loss for the residents and families who need nursing home care.

To build a continuing care system for the future that nurtures high-performing nursing home care with a robust not-for-profit presence, we recommend the following:

1. Fix the decade-long Medicaid payment issues resulting in the significant Medicaid shortfall to stabilize a long term care system that is recovering from the COVID-19 pandemic
2. Stop imposing unfunded mandates on not-for-profit and public nursing homes
3. Provide flexibility and funding for staffing mandates that have already been enacted, recognizing severe workforce shortages and the post-pandemic environment
4. Dedicate funding to support organizations that have been disproportionately advancing home and community-based services and person-centered care
5. Ensure that continuing care providers are financially viable and can continue caring for specialty populations and maintaining access to care for these populations

[6] McGarry, Larger Nursing Home Staff Size, *Health Affairs*, 8. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2021.00323 (accessed on July 15, 2021).

[7] D.C. Grabowski, Feng, Z., Hirth, R., Rahman, M. and Mor, V. Effect of Nursing Home Ownership on the Quality of Post-Acute Care: An Instrumental Variables Approach, *J Health Econ*. (Jan 2013) 32(1): 12–21. See also N.G. Castle and J. Engberg. Organizational Characteristics Associated with Nursing Home Turnover, *The Gerontologist* (2008) 46 (1): 62-73.

[8] R. I. Stone and Bryant, N., "Feeling Valued Because They Are Valued: A Vision for Professionalizing the Caregiving Workforce in the Field of Long-Term Services and Supports," *LeadingAge LTSS Center@UMass Boston*, July 2021. https://leadingage.org/sites/default/files/Workforce Vision Paper_FINAL.pdf (accessed July 13, 2021).

6. Support providers that have been committed to innovations to improve quality, care transitions, emergency preparedness, clinical best practices, and replicable workforce programs that have proven to be successful
7. Support providers that have a clear commitment to caring for and employing diverse populations and lifting communities out of poverty with meaningful careers