

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

TESTIMONY FOR:

JOINT LEGISLATIVE PUBLIC HEARING ON 2023 EXECUTIVE BUDGET

FEBRUARY 28, 2023

PRESENTED BY:

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LONG TERM CARE COMMUNITY COALITION

www.NursingHome411.org

Thank you for inviting me to provide testimony today.

My name is Stefan Foster. I am a policy researcher for the Long Term Care Community Coalition, a second-year law student at the City University of New York School of Law, and a former volunteer ombudsman with the New York State Long-Term Care Ombudsman Program.

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. In this hearing, I will discuss evidence demonstrating that substandard nursing home care is not inevitable; rather, it results from a lack of enforcement, oversight, and transparency of the state's nursing homes.

Roughly 117,000 people reside in nursing homes in New York State. Unfortunately, these vulnerable individuals are far too often subjected to substandard care, abuse, and neglect. In New York's 600-plus nursing homes, care problems persist not because facilities lack resources but, rather, because we fail to enforce the laws protecting residents and fail to hold accountable a powerful provider industry funded almost entirely by New York taxpayers. As an ombudsman for several years, I saw the harm that insufficient staffing leads to, and how it hurts the residents above all.

We have long known that staffing is a widespread and persistent problem in the state's nursing homes. A landmark 2001 federal study identified 4.1 hours of nursing staff time per resident per day (HPRD) as necessary to meet the clinical needs of the typical nursing home resident. Sadly, most New York facilities, which receive public funds to provide sufficient staffing, fail to meet that mark. In fact, New York consistently ranks near the bottom of US states, with an average staffing ratio of just 3.46 HPRD, according to federal data. At the same time, roughly one-fourth of facilities *do* meet the 4.1 HPRD minimum. This shows that sufficient staffing *is* possible. But without accountability for substandard care and neglect, it is essentially voluntary.

The nursing home industry complains that it does not receive enough money to provide decent care and humane conditions for residents. However, the recent lawsuits by Attorney General Letitia James against several major New York nursing home operators indicate that rampant financial fraud and self-dealing are resulting in understaffing and avoidable resident harm. Too many nursing homes use related-party transactions to hide profits by funneling vital public funds away from resident care into companies that they themselves own. Sadly and cynically, they then use the results of this malfeasance to support their specious argument that they are underfunded. It is worth noting that a report by the Empire Center, a conservative-leaning, non-partisan think tank, found that related companies account for about two-thirds of operators' net income. In just one of the Attorney General's lawsuits, a New York nursing home is alleged to have paid a related party **over \$15 million** in fraudulent rent costs.

The implications are clear: we need to take meaningful steps at every level – from empowering families to improving government enforcement to strengthening financial integrity – to stop nursing home operators from putting profits before the basic needs and dignity of their residents.

It is noteworthy that, in December 2021, more than 200 New York nursing homes filed a federal lawsuit against the state, seeking to overturn and stop implementation of the state’s modest financial accountability law which requires nursing homes to spend at least 70% of their revenue on resident care and limits a facility operator’s profits to 5%. In its complaint, the industry divulged that it had more than \$500 million in excess income in 2019 alone. *That’s enough to pay for over 26 million additional nurse aide hours.* Imagine what a difference that would have made in the lives of residents as well as care staff. The fact that the industry itself admits to hundreds of millions of dollars in excess annual funding is a clear indication that reform is needed.

We must improve oversight and accountability for nursing home care in our state. One resident who experiences inhumane care is one too many, and sadly, I have observed many. We must stop the resurgence of the utterly deplorable conditions previously witnessed in Willowbrook in the form of today’s nursing homes. New York taxpayers have the right to expect that the billions of dollars we provide nursing homes every year are used with integrity. New York’s seniors and persons with disabilities, and their families, have the right to expect that residents receive the decent care and treatment with dignity that every nursing home agrees to provide (and which every resident deserves). To accomplish this, we must fully implement the laws around sufficient staffing and financial accountability which the legislature promulgated two years ago in the face of the devastation wrought by the COVID pandemic. As we emerge, hopefully, from the worst of the pandemic, it is essential that we stand up for residents and families, rather than bow to pressure from New York’s nursing home “moguls” and their highly paid lobbyists to weaken those laws and other critical safeguards.

We thank you for your interest in the well-being of residents and their caregivers, and for the opportunity to provide testimony. We would welcome the opportunity to provide further input on specific proposals and to be a resource to you, and your constituents, in the future.

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The Long Term Care Community Coalition (LTCCC) is a nonprofit, nonpartisan organization dedicated to improving quality of care, quality of life and dignity for elderly and disabled people in nursing homes, assisted living, and other residential settings.

LTCCC focuses on systemic advocacy, researching relevant national and state laws, regulations, and data in order to identify relevant issues and develop practicable recommendations to improve quality, efficiency, and accountability. LTCCC uses this research and the resulting recommendations to educate policymakers, consumers, and the general public. Consumer, family, and LTC Ombudsman empowerment are fundamental to our mission.

Please visit our website for more information about our work, the latest data on nursing home staffing and other quality indicators, and our Learning Center, with free resources for residents, families, and the public.

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