Pennsylvania Senate Democratic Policy Committee Hearing

Solutions Around Nursing Home Funding

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Diane A. Menio, Executive Director
Two Penn Center ♦ 1500 JFK Blvd. ♦ Suite 1500 ♦ Philadelphia, PA 19102
215-545-5728
menio@carie.org
www.carie.org

Good Morning Chairperson Muth, Senator Fontana, and members of the Senate Democratic Policy Committee. My name is Diane Menio, and I am the Executive Director of the Center for Advocacy for the Rights and Interests of the Elderly (CARIE). Thank you for holding today's hearing and inviting CARIE to participate.

CARIE Background

CARIE is a nonprofit organization dedicated to improving the quality of life for older adults regardless of whether they live at home or in a facility. Since 1977, we have worked to promote their well-being, rights and autonomy and have had the privilege of working with many of your offices. Our CARIE LINE responds to all inquiries, such as housing and healthcare issues. The federal Long-Term Care Ombudsman Program advocates for long-term care consumers through which CARIE represents thousands of residents of nursing facilities and other settings in Montgomery County and Philadelphia.

PA Advocates for Improved COVID-19 Response in LTC Facilities

CARIE along with Community Legal Services (CLS) convened a statewide group of advocacy organizations to address the crisis that has unfolded in Pennsylvania's LTC facilities. In August 2020, we submitted to the Departments of Health and Human Services over 40 recommendations for improving the response to the COVID-19 crisis in long-term care facilities. In November, we submitted to the Department of Health line-by-line recommendations on how the state should amend nursing facility regulations – which have not been updated since the 1990s - to better protect residents. Here are our package 1 comments and package 2 comments on the Department of Health's proposed nursing home regulations. Finally, we issued a groundbreaking report, Separate and Unconscionable: A Report on Racial and Ethnic Disparities in Pennsylvania's Nursing Homes with Recommendations for Immediate Action with extensive research that demonstrates inequities in care before and during the COVID-19 pandemic along with recommendations and a pathway forward to facilitate essential change.

Overview

The chaos of the COVID-19 crisis has illuminated the vulnerabilities of nursing home facilities. Infection control failures and staffing shortages are just two of the longstanding problems that impact the quality of care our loved ones receive in a nursing home. Couple these long-standing problems with the crisis of COVID-19, and the result has been far worse outcomes than the virus alone would have caused. Additionally, early COVID-19 data demonstrates stark racial disparities in COVID-19 outcomes for LTC facility residents, revealing the urgent need to address racial equity through structural reforms to the long term care system.

In terms of today's focus on nursing home funding, my testimony will highlight in brief a troubling trend related to changes in ownership at nursing homes, problems related to the lack of transparency, and some recent examples of how other states are responding to these issues. Last but not least, I want to emphasize how communication with nursing home residents and residents' input is almost always overlooked and should be included in policy discussions. One specific funding related recommendation that would directly benefit nursing home residents is to increase the Personal Needs Allowance (PNA).

<u>Change in Ownership of Nursing Homes</u>

The sale of nursing facilities to investors has led to staffing cuts and other cost saving measures causing dramatic declines in the quality-of-care residents receive. When a change of ownership involves investors, the new operators create subsidiaries with no track record to avoid scrutiny and maximize profits. For example, the real estate is often separated from the nursing home's operation so the new owners can charge inflated lease or rental charges. Other subsidiaries may sell goods or services to the nursing home such as management services, laundry, food, and housekeeping. This money-spinning business model often leads to loss of staff and substandard care provided to residents.

Pennsylvania's Departments of Health and Human Services are responsible for approving licensing changes when facilities are sold. Unfortunately, the process seems to be a "rubber stamp" rather than a careful review of qualifications and suitability. As mentioned, CARIE and other advocates are involved in an advocacy campaign recommending that the Department of Health update its outdated nursing facility regulations and provide more due diligence before approving a license transfer to prevent adverse outcomes. There needs to be much more transparency so residents, family members, staff and the community is made aware of a potential change in ownership. In many instances, these stakeholders do not learn about a change in ownership until after it has occurred.

There are many examples of serious problems that have occurred in Pennsylvania and throughout the nation as a result of the sale of nursing facilities to private equity companies and other investors who have little medical or long-term care experience and whose primary goal is maximizing their profits. In 2017, Skyline Healthcare LLC, operating in an office above a pizza shop in New Jersey, received a license in Pennsylvania to operate facilities formerly owned by the Golden Living chain. Within months, Skyline stopped paying vendors for services including housekeeping, laundry, food, and critical supplies. Fourteen months after the license was granted, the Department of Health installed temporary management in these facilities after Skyline financially collapsed putting the health and safety of residents in jeopardy. Skyline wreaked havoc in facilities across Pennsylvania and other states.

CARIE's ombudsman have witnessed the impact of change in ownership at various facilities within our service area including St. Monica's in South Philadelphia. In 2014, the Archdiocese of Philadelphia announced an agreement of sale with Center Management Group, for six nursing homes and one assisted living facility. In Philadelphia, the sale included St. Monica Manor, Saint John Neumann, and Immaculate

Mary Home. Prior to the sale, St. Monica's was considered a place to go to receive quality care. After the sale, CARIE's ombudsman received complaints and observed staffing cuts and poor-quality care. In addition, prior to the change in ownership at St. Monica's there were no complaints related to illegal discharges that, for example, may occur when Medicare coverage ends. Since the sale, it has been among the top complaints. The reduced staffing and other factors proved to be deadly when COVID-19 ravaged the facility. At one point, staff were forced to wear trash bags when PPE was not available.

To summarize, residents, staff, and communities often suffer negative consequences when a change of ownership occurs at nursing homes involving investors. Residents often receive poorer care due to staff reductions and other cost cutting measures. Many residents rely on Medicaid and are particularly disadvantaged in that they essentially are not able to move to another facility even if living conditions become untenable as highly rated facilities tend to avoid admitting residents on Medicaid. Staff may lose their jobs or experience a loss in pay, benefits, and tenure under the new management. Communities often lose a valuable resource as when the need arises for nursing home care, people often prefer living in their own communities. A change in ownership may mean they are faced with a draconian choice of going to a poor performing facility or moving away from families and friends.

Transparency of How Public Funds are Used

Revenue and expense is typically hidden at nursing facilities and there is no transparency into how revenues are spent. Increased transparency and accountability may help demonstrate providers' claims that they are losing money or that profit margins are too thin to address staffing issues or quality concerns. Transparency and accountability across providers' ownership structures and finances is particularly challenging. Increased funding should be directed to better wages, benefits, and training for staff. Transparency is a vital mechanism to ensure resources are being directed to care and not excess profit. (See Health Affairs article: https://www.healthaffairs.org/do/10.1377/hblog20210208.597573/full/)

Other States' Nursing Home Funding Related Policy Initiatives

Here is a brief summary of how other states are responding to nursing home funding. According to Kaiser Health News, - https://khn.org/news/article/3-states-limit-nursing-home-profits-in-bid-to-improve-care/ Massachusetts, New Jersey and New York "have set requirements for how much nursing homes must spend on residents' direct care and imposed limits on what they can spend elsewhere, including administrative expenses, executive salaries and advertising and even how much they can pocket as profit. Facilities that exceed those limits will have to refund the difference to the state or the state will deduct that amount before paying the bill." For New York, starting on 2022, nursing facilities will have to spend at least 70% of their total revenue on residents' care. Massachusetts' law requires nursing homes to spend at least 75% of all revenue on residents' care. New Jersey's law requires nursing homes to spend at least

90% of revenue on residents' care but state regulators have proposed that the requirement only apply to Medicaid funding. All three states plan to increase Medicaid payments to facilities that comply.

In October, California Senate Bill 650, the Corporate Transparency in Elder Care Act of 2021, was signed into law to create increased transparency for the public regarding nursing facilities' ownership and finances.

As required by legislation, the Illinois Department of Healthcare and Family Services' prepared this overview and report, HFS Comprehensive Review of Nursing Home Payment with Recommendations for Reform. It studied nursing home payment rates and how to use quality metrics and staffing requirements with the use of additional funding.

While it is too soon to know the impact of these measures, they demonstrate a potential path forward.

Personal Needs Allowance (PNA)

Prior to the pandemic, a common concern expressed by residents whose care is subsidized by Medicaid was the desire to have an increase in their Personal Needs Allowance (PNA). The COVID-19 pandemic exacerbated the need for residents to have more than the $45 per month income for their out-of-pocket expenses. (Personal care home residents on SSI receive only $85 per month.) In Pennsylvania, this allowance has not been increased since 2007. For a number of years, bills were introduced but never passed. House Bill 1606 from last session proposed to increase the PNA to $65 per month. Increasing the PNA would help improve the quality of life and dignity for residents to help pay for items and services we take for granted including, mobile phones, clothing and shoes, and television service.

Conclusion

Other additional nursing home funding issues to consider is to improve the old building stock to ensure better ventilation and a move to private rooms. Investing in technology so residents can access the world like other citizens is also worthy of consideration. We appreciate your concern for the life, health, and well-being of long-term care residents. Please count on us in any of your efforts to support older Pennsylvanians. Thank you for your attention to this important issue and for the opportunity to testify. I am happy to take any questions you may have.