



**Testimony of Pamela Walz, Esq., Community Legal Services of Philadelphia  
Before the Pennsylvania Senate Democratic Policy Committee  
October 26, 2021**

Good morning Senator Fontana, Senator Muth and members of the Senate Democratic Policy Committee. Thank you for the opportunity to testify today.

Community Legal Services (CLS) provides free civil legal assistance to low-income Philadelphians. Approximately 10,000 clients have received legal representation from CLS in the past year. CLS assists clients facing the loss of their homes, incomes, health care and even their families. CLS attorneys and other staff provide the full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work.

CLS' Health and Independence Unit, where I work, focuses on legal cases involving public benefits, access to health care and long term services and supports, and protecting the autonomy of older adults and people with disabilities. We work closely with our local long term care ombudsman programs and regularly assist clients who are experiencing legal issues connected to nursing facilities, including payment issues, involuntary discharges, residents' rights violations and quality of care problems.

There has been a lot of discussion about workforce shortages in nursing facilities and we have heard arguments that there are not enough workers to raise staffing levels. But the truth is that we

need increased staffing levels in order to improve quality of care and also to improve the quality of nursing home jobs so that the industry can attract the workers that are needed.

The Department of Health's proposed revision to its nursing facility licensing regulations would increase the minimum required level of direct nursing care from 2.7 to 4.1 hours per resident per day. Research firmly supports the need for this increase. The US Department of Health and Human Services, the Institute of Medicine and a consensus among top nursing care experts have long recommended minimum staffing levels of 4.1 hours per resident per day.<sup>1</sup>

There is a documented relationship between staffing and outcomes, including lower death rates, higher numbers of successful discharges to home, improved functional outcomes, fewer urinary tract infections and a lower probability of weight loss and pressure ulcers.<sup>2</sup> Without adequate staffing, residents' call bells go unanswered, putting them at risk of trying to get up to get to the bathroom by themselves even when it's not safe, risking injury. Residents who are bedbound don't get turned often enough, placing them at risk of developing painful and life-threatening pressure ulcers. Residents who need assistance to eat don't get enough assistance and are at risk of weight loss.

Even before the pandemic, a majority of nursing homes did not have adequate staffing levels. This left them at great risk once the pandemic began. We have all witnessed the horrific toll that COVID-19 took on residents of nursing homes. Nearly 80,000 residents of nursing facilities and personal care

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<sup>1</sup> A 2001 Department of Health and Human Services study urged the adoption of a minimum of 4.1 nursing hours per resident day (hprd), broken out as .75 RN hours, .55 LVN/LPN hours, and 2.8 CNA hours. The study found this minimum number of hours necessary to ensure consistent, timely care to residents. A 2001 Institute of Medicine report also called for 4.1 hours. The recommendation of a 4.1 hour minimum was confirmed by a 2004 observational study of nursing home staffing and a 2011 re-analysis by Abt Associates. Organizations including American Nurses Association, the Coalition of Geriatric Nursing Organizations, and the National Consumer Voice for Quality Long-Term Care having also endorsed the minimum of 4.1 hprd standard, have recommended that at least 30% of total nursing care hours should be provided by licensed nurses, and have recommended that RNs should be on duty for 24 hours per day.

<sup>2</sup> John F. Schnelle et al., "Relationship of Nursing Home Staffing to Quality of Care", *Health Services Research* v. 39(2), (April 2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361005/>.

homes have contracted COVID-19 in Pennsylvania and 14,378 of these residents died. Again, staffing levels play an important role: several studies have found that nursing homes with high quality ratings on nurse staffing were less likely to have large outbreaks and had fewer cases and deaths per bed and a lower probability of having a resident with COVID-19.<sup>3</sup> Additional studies have found an association between higher staffing and fewer COVID-19 cases and deaths and a lower likelihood of experiencing an outbreak.<sup>4</sup> We need improved staffing levels to improve nursing home quality of care generally, but the past 20 months have laid bare the need for adequate staffing to prevent loss of life to infectious disease in this pandemic and future ones.

Adequate staffing level requirements are also one of the keys to addressing the workforce shortage. Staff turnover, which was 128% even before the pandemic began, is a huge problem in nursing facilities. Estimates are that each turnover of a staff person costs thousands of dollars.<sup>5</sup> One of the reasons that staff leave is because they are overworked and become demoralized because there is not enough staff to enable them to provide quality care. Inadequate wages and benefits are also a big part of the problem. Forty-five percent of direct care workers (including nursing home workers) live in or near poverty and 47% must rely on public benefits to support themselves and their families. A 2020 report from Leading Age, *Making Care Work Pay: How a Living Wage Benefits Us All*, identified many positive effects which would result from paying a living wage to direct care workers. These include reducing staff shortages, reducing turnover, improving quality of care, improving worker productivity,

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<sup>3</sup> <https://www.kff.org/coronavirus-covid-19/issue-brief/factors-associated-with-covid-19-cases-and-deaths-in-long-term-care-facilities-findings-from-a-literature-review/>

<sup>4</sup> *Id.*

<sup>5</sup> Dorie Seavey, “The Cost of Frontline Turnover in Long-Term Care” (Oct. 2004), A Better Jobs Better Care Practice & Policy Report, [https://www.leadingage.org/sites/default/files/Cost\\_Frontline\\_Turnover.pdf](https://www.leadingage.org/sites/default/files/Cost_Frontline_Turnover.pdf) (estimated in 2004 that the direct cost of direct care staff turnover is at least \$2,500).

making workers more financially secure and less reliant on public benefits programs, and strengthening the economies of the communities where direct care workers live.<sup>6</sup>

Paying for the staffing levels and wage increases which are so badly needed will require additional funding on an ongoing basis. SEIU has estimated that the additional cost to reach the 4.1 hour per day staffing level is \$350 million per year in state funding. These state funds would be matched by an approximately equivalent amount of federal Medicaid funding. Another one-time bailout will not resolve these crises – instead we need dedicated, ongoing funding to pay for adequate staffing and wages. As we think about these costs, it's worth considering that raising wages and staffing levels may pay for itself by improving quality of care: the Leading Age report found “that cost savings flowing from improvements in care quality may, alone, be enough to pay for wage increases.”<sup>7</sup>

It is essential to make sure that increased funding goes to wages and staffing, rather than to profits. In recent years, there has been a huge shift in nursing home ownership to for-profit operators, including private equity investors whose aim is to maximize short term profits. It has become a common practice for the owners of these nursing facilities to sever from the facility the ownership of the building in which it is located. The nursing facility is then obliged to pay rent to the building's owner, which is another company owned and controlled by the same entity which owns the nursing facility. Similarly, these nursing facilities commonly purchase goods and services, such as therapy and management services from companies that they also own and control, often at inflated prices. Directing funds through these related-party transactions makes it possible for the owners of these facilities to conceal the profits they are making. Repeated leveraged buy-outs also result in facilities having to make heavy debt and interest payments. Residents are harmed as a result: a Kaiser Health news researcher found that facilities engaging in these profit-maximizing practices have lower staffing levels, higher rates of

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<sup>6</sup> <https://leadingage.org/sites/default/files/Making%20Care%20Work%20Pay%20Report.pdf>

<sup>7</sup> Id.

patient injuries and twice as many complaints as other facilities.<sup>8</sup> We have seen it happen over and over in Pennsylvania, as nursing facilities which were once valued resources in their communities are taken over by for-profit operators who reduce staffing, wages and benefits. Quality of care then deteriorates dramatically.

In order to avoid public funds being funneled to profits through these mechanisms, we strongly urge you to require that additional funding be directed to increased staffing and wage increases. One way to do this is through a direct care spending ratio to require facilities to spend a minimum percentage on direct care staffing and wages. Massachusetts, New York and New Jersey have taken this route, requiring facilities in their states to spend between 70 and 90% of their revenue on patient care. This approach would ensure that nursing facilities have and utilize resources to care for their residents while leaving them with enough revenue to cover overhead and a fair profit.

Quality of care deficiencies in our nursing homes predated the pandemic, but the massive loss of life as COVID-19 exploited their weaknesses made it difficult to look away from the problem. We owe it to residents to act on what we have learned to improve care by ensuring adequate staffing levels and a stable, fairly paid workforce. If we are ever going to improve the long-standing unacceptable conditions in our long term care system, the moment to act has to be now. Thank you again for the opportunity to testify today, and I'd be happy to respond to any questions.

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<sup>8</sup> Jordan Rau, "Care Suffers as More Nursing Homes Feed Money Into Corporate Webs", New York Times (Jan. 2, 2018), <https://www.nytimes.com/2018/01/02/business/nursing-homes-care.html>.