Testimony for the Department of Health Staffing Study

Provided by

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Introduction

On behalf of the membership of LeadingAge New York, thank you for the opportunity to submit testimony on staffing enhancements to improve patient safety and the quality of healthcare service delivery. LeadingAge New York represents over 400 not-for-profit and public providers of aging services and senior housing, long-term and post-acute care, as well as provider-sponsored managed long term care plans.

New York is home to approximately 3 million residents age 65 and older, representing 15 percent of the population. By 2025, 18 percent of New York's population is projected to be age 65 or older, up from 14 percent in 2010. Both the number and percentage of older New Yorkers is expected to continue to rise over the next 20 years. This growth will drive a corresponding increase in the number of New Yorkers with cognitive and functional limitations who require long-term supports and services. However, by 2025, the availability of younger New Yorkers to care for seniors both informally and in the formal care delivery system will be at its lowest point in a decade and declining. In addition, with one-third of today's older New Yorkers living at or near the poverty level, it is reasonable to expect that a significant portion of our growing senior population will continue to rely heavily on public programs – principally the Medicaid program – to cover their service needs. Any staffing mandates must consider the reality of increased Medicaid costs and the current struggle to find qualified staff, which will be exacerbated in the years to come.

LeadingAge New York strongly opposes government-mandated nurse staffing ratios requiring inflexible nurse/aide-to-resident ratios in every New York nursing home, overriding the professional judgment of clinicians and potentially limiting access to care. Any one-size-fits-all ratios that would apply to all nursing homes, regardless of size, location, physical layout or the actual care needs of residents is contrary to quality patient- centered care. Imposing staffing ratios on nursing homes and hospitals could also further deprive home and community-based services agencies and other institutional alternatives (e.g., adult care facilities and assisted living) of the staffing they need at a time when the state is seeking to rebalance the long-term care system.

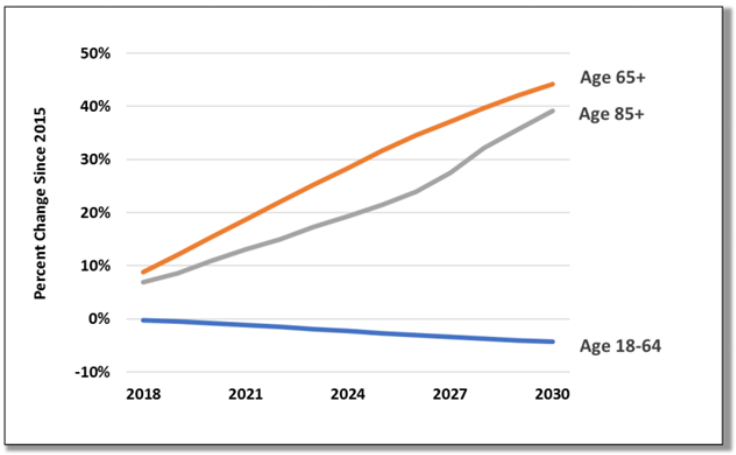
Availability of Nurses and Aides

The labor supply is already being outstripped by current demands, and future projections are daunting:

- High percentages of nursing homes in the State are currently reporting difficulty recruiting and retaining registered nurses (RNs) (47%); experienced RNs (59%); licensed practical nurses (LPNs)(56%) and certified nurse aides (CNAs) (58%).[1] Worker shortages are most commonly cited for the difficulty.
- Between 2015 and 2040, the number of adults over age 85 in New York State will double.
- A decline in the number of working age adults and large increase in the numbers of older adults will affect the availability of informal care and demand for formal services and caregivers.

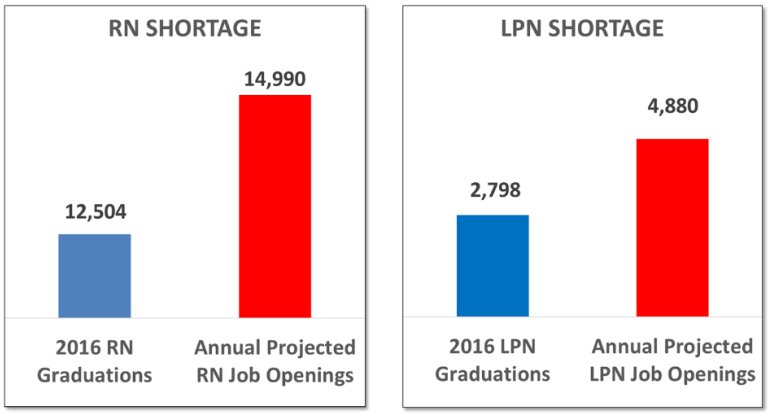
[1] Martiniano R, et. al. The Health Care Workforce in New York: Trends in the Supply of and Demand for Health Workers. Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany; March 2018.

NYS Aged Population Grows while Working Adult Age Group Declines



- As shown below, NYS nurse openings are exceeding graduations by over 4,500 positions annually.
- The NYS Department of Labor has identified home health aides (45%), personal care aides (31%) and nursing assistants (16%) as three of the top four sources of health care job openings between 2014 and 2024.

NYS Nurse Job Openings Exceed Graduations by over 4,500 Annually



Estimated Cost of this Mandate

The Safe Staffing for Quality Care Act (A.2954/S.1032) would require nursing homes to maintain staffing ratios of 2.8 hours of CNA, 0.75 hours of RN, and 0.55 hours of LPN time per resident per day. LeadingAge NY estimates that these requirements would require nursing homes to add 6,903 RNs, 461 LPNs and 10,300 CNAs at an initial annual cost of $1,057,600,000.[2]

[2] LeadingAge NY estimated the need for additional staff by comparing the daily staffing ratios required by the bill to the reported hours worked from 2017 nursing home cost reports, and applied regional averages to homes for which data was not available. To estimate the cost, we multiplied facility-specific average RN, LPN and CNA wages including benefits by the number of additional hours required.

We believe this estimate is inherently conservative, as it does not consider wage increases subsequent to 2017 or wage growth likely to occur due to increased competition for staff if this legislation were to be enacted. Researchers of the impacts of mandated nurse staffing ratios in California found that wages for all RNs in the state rose faster during the period of implementation than they did in other states at the same time. For example, with hospitals in regions outside of New York City paying 9 – 22 percent more than nursing homes for RNs[3], nursing homes could see steep increases in RN compensation if such a mandate were applied. There would be ripple effects on other providers that utilize nurses and aides including home care agencies, assisted living facilities and adult day services.

Lack of Evidence of Effectiveness

California is the only state in the US to mandate hospital-wide nurse staffing ratios. Researchers have not been able to establish a causal relationship between mandated specified ratios and quality of care.

Prior to implementing mandatory nurse staffing ratios in California, the California Department of Health Services (DHS) contracted with the University of California-Davis (Center for Health Services Research in Primary Care and Center for Nursing Research) to provide analytic and technical support. The report concluded that ". . . the literature offers no support for establishing minimum nurse-to-patient ratios for nursing units in acute care hospitals, especially in the absence of adjustments for case mix and skill mix."

An analysis of the impact of ratios in a study published by the California Health Care Foundation (Spetz and Chapman, et al. 2009) found that while skill mix increased after the implementation of the California law, most quality measures analyzed were not directly affected by ratios. This study found that the overall level of average length of stay in California stayed the same since the ratios were imposed. Other nursing sensitive measures showed similar results. Similarly, Bolton, et al. (2007) found no significant changes in falls, falls with injury, hospital-acquired pressure ulcers, or use of restraints associated with California's nurse staffing ratios. Bolton determined: ". . . anticipated improvements in nursing-sensitive patient outcomes were not observed."

In the October 2016 publication of the final regulation updating the Requirements of Participation for nursing homes, the Centers for Medicare & Medicaid Services (CMS) stated as follows: "We agree that sufficient staffing is necessary, along with the need for that staff to be competent in delivering the care that a resident requires. We also agree that all of these factors are associated with quality of care. However, we do not agree that we should establish minimum staffing ratios at this time. As discussed in the preamble to the proposed rule, this is a complex issue and we do not agree that a "one size fits all" approach is best."

Nursing Home Staffing is Already Closely Monitored

Nursing homes are already required to have staffing plans tailored to individual resident care needs, and information on staffing as well as safety/outcomes is available to the public. Facilities are also required to comply with numerous regulations covering staffing adequacy, competence, processes of care and other areas.

- Under Federal posting requirements, nursing homes must record and prominently display current nurse staffing numbers by occupation for each shift, as well as the daily number of residents.

[3] Source: LeadingAge NY analysis of 2015 RHCF Medicaid Cost Reports & 2015 Institutional Cost Reports from HealthData NY.

- During standard health Inspections of nursing homes, DOH inspectors review quality of care and staff/resident interaction; including interviewing residents, family members and caregivers.
- CMS's Payroll-Based Journal (PBJ) requires nursing homes to collect staffing hours based on payroll data or other verifiable and auditable data and report this data quarterly.
- The PBJ data are, in turn, used to develop the staffing rating included in CMS's Five-Star Quality Rating System. Nursing Home Compare is an on-line resource for consumers, families and caregivers to review a nursing home's Five-Star rating for staffing, quality and compliance.
- DOH's Nursing Home Profile website also includes public information on staffing, quality and compliance.
- The federal Requirements of Participation include staffing adequacy determinations and a comprehensive facility assessment to help identify staffing levels, skill mix and competencies to address resident needs.
- DOH's Nursing Home Quality Initiative includes 14 quality measures derived from Nursing Home Compare, performance on potentially avoidable hospitalizations and three compliance components. Two staffing measures are included – a calculation of nurse staffing hours and the level of contract/agency staff use. Each facility's score is used in determining eligibility for an award from a $50 million self-funded pool.

Invest in Recruiting New LTC Workers

Workforce is not a problem looming in the distant future – it is a crisis today. Nursing homes and other long term care providers face extraordinary challenges recruiting and retaining workers -- the pool of eligible candidates is small; access to required aide certification and nursing programs is limited; home care patients are dispersed over long distances, aides must have reliable vehicles and spend hours each day driving between patients' homes; and competition with other employers, such as hospitals and even fast food and retail establishments, is fierce.

Expanding the pool of LTC workers would help nursing homes and other LTC providers to more quickly fill vacant positions, thus increasing patient care staffing. The following should be considered:

- **Utilizing DSRIP 2.0 as a vehicle for recruiting *new* workers into the LTC field**, rather than focusing almost entirely on training/retraining *existing* workers. These investments should support:
  - Expansion of aide, LPN, and RN training programs especially in rural areas;
  - Subsidies and stipends for participating in aide certification and nursing programs;
  - Subsidies for car maintenance and day care for LPNs and aides;
  - Scholarships for part-time students in nursing and aide programs in community colleges;
  - Loan forgiveness programs for nursing graduates.

- **$50 million in State funding to support initiatives to train, recruit, and retain the LTC workforce**, including programs that provide: (1) enhanced wages and benefits; (2) social supports for workers; (3) reimbursement of certificate training expenses; (4) on-the-job training; (5) high school pre-apprenticeship programs; (6) peer mentoring; (7) career ladders; and (8) additional staff to support direct care positions.

- **Civil Money Penalty (CMP) funds for CNA recruitment and retention:** The state's CMP account supports activities that benefit nursing home residents and improve quality of care or quality of life. Funding from this account should be used to create a New York Careers in Aging program, which would be used to cover the expenses of students to complete approved certified nurse aide (CNA) training and testing programs, provide CNAs with retention bonuses after 6 months of work, and fund a marketing and recruitment plan highlighting the benefits of working in a nursing home.

Programmatic Initiatives

- **Allow for advanced CNAs/medication technicians:** Enact legislation to allow CNAs with additional training to administer medications in nursing homes under the supervision of a registered nurse. The state is facing a significant nursing shortage, and many nurses express dissatisfaction with the repetitive task of routine medication administration. Meanwhile, aide-level workers are leaving health care to pursue other jobs due to wage restrictions and job satisfaction. Allowing these additional responsibilities can provide increased job satisfaction, allow for wage increases, a career ladder, and improved staff retention.
- **Modify training required of paid feeding assistants:** New York regulations require feeding assistants who support nursing home residents at meals to undergo more extensive training than federal regulations require. As a result, many nursing homes continue to use CNAs to assist some residents at meals who might otherwise be fed by a paid feeding assistant. If State regulations were aligned with the federal requirements, nursing homes could expand their use of feeding assistants and allow CNAs to focus on higher level tasks.
- **Facilitate cross-certification, streamline in-service training requirements, and promote the availability of competency exams of direct care workers:** Streamline the certification and re-certification of CNAs, home health aides (HHAs), and personal care aides. Currently, CNAs that seek to become HHAs must either take the 75-hour HHA training course or take a competency exam in lieu of training. However, only CNAs with one year or more of hospital experience are eligible to take the evaluation in lieu of the course. Veterans trained by the US military as medical technicians or medics are also eligible for competency evaluations in lieu of training. CNAs who work in nursing homes do not appear to be eligible for competency evaluations in lieu of the full course. Expanding access to competency evaluations and streamlining or aligning training and in-service requirements would expand the pool of aides and reduce duplicative in-service requirements.
- **Facilitate cross-training and lateral transfers across health and LTPAC settings:** Providers of health, LTC, behavioral health, and developmental disability services and unions should join together with regulators and educational institutions to explore cross-training and inter-disciplinary service opportunities in order to alleviate workforce shortages. The regulatory and practice barriers to transfers across settings should be identified and the impact of removing them evaluated.
- **Support informal caregivers:** The state should offer expanded respite benefits, direct financial assistance, greater tax incentives, training programs, and education and community outreach programs for informal caregivers. This would help consumers and their families to reduce their reliance on formal caregivers and delay the need for Medicaid covered LTC costs.
- **Expand efforts to recruit young adults and "young" seniors for LTPAC careers:** Support programs like MercyCare in the Adirondacks which is successfully utilizing younger senior volunteers to provide supportive services to other seniors in need. In addition, assist providers to replicate career exploration programs in secondary schools and institutions of higher education, like the Geriatric Career Development Program of The New Jewish Home which provides academic and career

development assistance to at-risk New York City youth, through an in-depth, work-based learning program in a geriatric long-term care setting.

- **Support relevant federal legislation:** The **Nursing Home Workforce Quality Act** (H.R. 1265) would grant CMS greater flexibility in reinstating providers' CNA training programs; making suspension of a training program a discretionary remedy available to survey agencies. In addition, nursing homes subject to a lockout would regain their authority to train CNAs once the deficiencies for which they were cited are corrected. The **Geriatric Workforce Improvement Act** (S. 299) would address the widening gap between the number of health care providers educated and trained to meet the special needs of people as they age, and the rapidly growing population of people aged 65 and over. The bill would reauthorize the Geriatric Workforce Enhancement Program for another five years, with authorized funding increased to $45 million per year.

LeadingAge NY remains committed to partnering on the *Department of Health and Nursing Home Associations Collaboration to Improve Nursing Home Quality* on other initiatives aimed at addressing workforce issues, regulatory flexibility, and quality measurement and enhancement.

Founded in 1961, LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing care including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs, and Managed Long Term Care plans. LeadingAge New York's 400-plus members serve an estimated 500,000 New Yorkers of all ages annually.