



COMMITTEE ON PUBLIC HEALTH

March 17, 2021

Testimony of Jean Mills Aranha

In SUPPORT of S.B. 1030, An Act Concerning Long-Term Care Facilities, WITH SUBSTITUTE LANGUAGE.

My name is Jean Mills Aranha and I am the Managing Attorney of the Stamford office of Connecticut Legal Services, Inc., where I practice elder law. Connecticut's legal aid programs are private non-profit law firms that provide free legal services to low-income residents of Connecticut, including residents of long-term care facilities. I served on the Governor's Nursing Home and Assisted Living Oversight Working Group, and on its Staffing Levels subcommittee.

Our elderly and disabled population has suffered greatly and disproportionately during the COVID-19 pandemic. While the pandemic laid bare many deficiencies in care in skilled nursing facilities, it did not create all of them. Nor will the easing of the pandemic cure such deficiencies. S.B. 1030 makes many changes that will improve the quality of care and make a needed positive difference in the lives of the residents of long-term care facilities.

I support all of the provisions of S.B. 1030, with some suggested substitute language to clarify Sections 7 and 13. As a member of the Staffing Levels subcommittee, I will address the bulk of my testimony to Section 13 of the bill.

Section 13

Inadequate staffing in nursing homes is a longstanding problem. In the 1970's, my mother, a registered nurse, worked nights in one. She was supposed to administer medications and keep up with compliance paperwork. But she couldn't bear watching the call lights of the residents go unanswered, due to lack of enough nurse's aides. Instead, she went to the residents herself to help them with their basic needs. She eventually left that job, as she couldn't meet the residents' needs with the available staff.

In 1987, the federal Nursing Home Reform Act was passed, requiring every nursing home to have sufficient staff to care properly for its residents. Specifically:

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable level of physical, mental, and psychological well-being

of each such resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population...¹

Federal law does not mandate any specific number of hours of care that must be provided. Under a regulation promulgated over thirty years ago, Connecticut requires only 1.9 hours of care per resident per day.²

In 2000, the federal Department of Health and Human Services (now CMS) issued a report to Congress after nearly ten years of studying the relationship between nursing staff levels and quality of care for residents. Facilities staffing at lower levels had residents with increased risk of bedsores, malnutrition, abnormal weight loss, and preventable hospitalizations. **The study found that a minimum of 4.1 hours of nursing care per day resident, per day, was needed to meet the federal quality standards at that time.**³ Resident acuity has only increased during the last 20 years, so a similar study today might well find a higher necessary minimum.

Nursing homes with more staffing had better outcomes during the pandemic. The Mathematica report found that “[n]ursing homes with higher staffing ratings had significantly fewer cases and deaths per licensed bed.”⁴ An academic study looking at Covid-19 infection incidence and death in Connecticut nursing homes found that “[a]mong facilities with at least 1 confirmed case, every 20 minutes (per resident day) increase in RN staffing was associated with 22% fewer confirmed cases...Among facilities with at least 1 death, every 20 minutes increase in RN staffing significantly predicted 26% fewer COVID-19 deaths.”⁵ The New York State Attorney General reported that New York City facilities with the lowest staffing ratings had almost twice the death rate of facilities with the highest staffing ratings.⁶

The pandemic also showed that the number of social workers and recreational staff in most facilities is too low. These staff are vital to the well-being of the residents, and there are not enough of them. The Working Group found that the ratios of residents to these staff should be lower. This bill tasks the Commissioner of DPH with lowering these ratios. I suggest substitute language to clarify that the ratios, and not the number of staff, should be reduced.

But staffing levels are not important just during a pandemic. Many studies have found that staffing levels are too low in many nursing homes.⁷ The National Consumer Voice for Quality Long-Term Care has long advocated for increased staffing. I attach their fact sheet outlining the many problems caused by lack of sufficient staff, including malnutrition and dehydration,

¹ 42 C.F.R. §483.35.

²Section 19-13-D8t (m) Reg. Conn. State Agencies.

³ U.S. Centers for Medicare and Medicaid Services, Abt Associates Inc. *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Report to Congress: Phase II Final*. Baltimore, MD: CMS; 2001.

⁴ *A Study of the COVID-10 Outbreak and Response in Connecticut Long-Term Care Facilities*, p.19, Mathematica Final Report, September 30, 2020, DPH #2021-0041.

⁵ *COVID-19 Infections and Deaths among Connecticut Nursing Home Residents: Facility Correlates*. Li,Y., Temkin-Greener, H., Gao, S., Cai, Xueya, doi:10.1111/jgs.16689.

⁶ New York State Office of the Attorney General Letitia James, *Nursing Home Response to the COVID-19 Pandemic*, pp. 28-29, Revised January 30, 2021.

⁷ See, for example, *The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes*, Harrington, C., et al., Health Services Insights 2016:9 13-19 doi:10.4137/HIS.S38994.

injuries from falls, avoidable declines in ability to move, preventable hospitalizations and death. Connecticut's legal services programs have supported raising nursing home staffing levels for many years.

The pandemic did not cause the staffing deficiencies in care in nursing homes, although it exacerbated them. Now that our attention has been focused on the needs of these residents, and after they have suffered the highest proportion of illness and death, we owe it to them to make improvements in our long-term care facility systems for the future. The proposed minimum of 4.1 hours of care per resident per day is a modest ask, given that this minimum was established over 20 years ago, and backed by further study since. It also offers potential cost savings, as unnecessary hospitalizations are reduced by better care.

I note that the bill as drafted appears to have typographical errors in the number of RN, LPN and CNA hours, so that the number of aggregate hours does not total 4.1. I offer substitute language to correct those errors.

Section 7

This Section requires testing of staff and residents of long-term care facilities during an outbreak of an infectious disease. The Commissioner of the Department of Public Health is to determine the frequency of testing. We believe that guidance from the Centers for Disease Control and Prevention concerning community spread should be added to the factors to be considered by the Commissioner. I attach suggested substitute language to make this addition.

Section 14

Section 14 creates a right for "non-verbal residents" to have electronic monitoring devices in their rooms in a long-term care facility. There are careful protections for privacy of roommates and others, and requirements for notice. Although we support the concept of allowing electronic monitoring, we believe that all residents should have the right to have electronic monitoring devices if they so choose and they comply with the privacy and notice requirements outlined.

Thank you for considering my comments, and please support this important bill.

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SUBSTITUTE LANGUAGE for S.B. 1030: An Act Concerning Long-Term Care Facilities

Proposed by Connecticut's Legal Services Programs

PROPOSED SUBSTITUTE LANGUAGE, S.B. 1030

Section 7:

Each long-term care facility shall, during an outbreak of an infectious disease, test staff and residents of the facility for the infectious disease at a frequency determined by the Department of Public Health as appropriate based on the circumstances surrounding the outbreak, ~~and the impact of testing on controlling the outbreak, and any guidance issued by the federal Centers for Disease Control and Prevention related to testing based on levels of community spread of the infectious disease.~~

Section 13:

(b) On or before January 1, 2022, the Department of Public Health 161 shall (1) establish minimum staffing level requirements for nursing homes of at least four and one-tenth hours of direct care per resident, per day, including ~~three and three-quarter~~ hours of care by a registered nurse, ~~fifty-five~~ fifty-four hundredth hours of care by a licensed practical nurse and two and ~~eight-tenths~~ eighty-one hundredth hours of care by a certified nurse's assistant, (2) modify staffing level ratios of residents to staff requirements for social work and recreational staff of nursing homes such that the ratios requirements are lower than the current requirements, as deemed appropriate by the Commissioner of Public Health, and (3) eliminate the distinction between a chronic and convalescent nursing home and a rest home, as defined in section 19a-171 of the general statutes, as such distinction relates to nursing supervision, for purposes of establishing a single, minimum direct staffing level requirement for all nursing homes.

NURSING HOMES NEED MORE STAFF!

What is the problem? Far too often there are not enough certified nursing assistants (aides) and nurses in nursing homes to provide the care each resident requires. Most nursing home residents need some type of help with activities such as walking, eating, going to the bathroom or getting out of bed. Others may need constant supervision or have complex medical conditions. Chronic understaffing in many nursing homes across the country harms residents and prevents them from getting even the most basic care they need.

What happens to residents when there are not enough staff?

Residents suffer physically. They experience:

- Painful pressure ulcers (“bed sores”)
- Malnutrition
- Unplanned weight loss
- Dehydration
- Incontinence
- Avoidable declines in ability to move
- Injuries – including fractures – from falls due to lack of assistance
- Preventable hospitalizations
- Death

Residents suffer emotionally. They experience:

- Loneliness, fear and sense of isolation
- Lack of ongoing, valued relationships with staff
- Loss of dignity

Who else suffers when there are not enough staff?

- **Staff:** When too few staff care for too many residents, injuries often result. Nursing assistants suffer a rate of on-the-job injury that is among the highest of any occupations.
- **Families of residents:** Family members become worried, distressed, upset and anxious when their loved ones don’t get the care they need.
- **You, the American taxpayer:** When poor care due to understaffing harms residents or makes them sicker, they are usually sent to the hospital, where thousands of Medicare dollars from taxpayers will be spent attempting to reverse the harm.

Doesn't the federal government require minimum staffing levels to protect residents?
NO! Current federal regulations require "sufficient" staffing to meet the needs of residents. "Sufficient" is not defined. Instead, each nursing home can decide for itself how many certified nursing assistants and nurses to assign, leaving open the possibility that a facility can cut staffing levels dangerously low to drive up profits.

Are there recommended staffing standards? **YES!** A study by the federal government determined that nursing home residents need at least 4.1 hours of care per day: 2.8 hours from nursing assistants, .55 hours from licensed practical nurses and .75 hours from registered nurses. This is the minimum amount of care needed to prevent common quality of care problems like pressure ulcers, dehydration, and losing the ability to carry out daily tasks like eating, dressing, and walking.

What can you do?

- **Join the Consumer Voice Nursing Home Staffing Campaign by:**
 - Going to: <http://www.theconsumervoice.org/betterstaffing>
 - Emailing us at: info@theconsumervoice.org
 - Calling our toll free number: (866-992-3668)

- **Contact your members of Congress by:**
 - Emailing them a message using our easy online system. Go to: http://wfc2.wiredforchange.com/o/8641/p/dia/action3/common/public/?action_KEY=9692
 - Signing our campaign postcard and mailing it to us.

You don't even need to know who your members are – we'll take care of that for you!

Many congressmen/women and senators don't know about understaffing in nursing homes. They hear from nursing home owners and operators, but rarely from residents, family members and other concerned citizens. Tell them that they need to protect nursing home residents by increasing the staffing levels in our country's nursing homes.

- **Spread the word!** Tell everyone you know about the need for more staff in nursing homes and ask them to also contact their members of Congress.

****For more information or citations, please contact The Consumer Voice.***

The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c)(3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.