

Residential healthcare facilities and COVID-19

Testimony | Aug. 3, 2020 | Aug. 10, 2020

Senate Standing Committee on Health
Senate Standing Committee on Aging
Senate Standing Committee on Investigations and Government Operations

Assembly Standing Committee on Health
Assembly Standing Committee on Aging
Assembly Standing Committee on Oversight, Analysis and Investigation

Joint New York State Legislative Hearings on Residential Healthcare Facilities and COVID-19

Testimony provided by HANYS President Bea Grause, RN, JD

HANYS represents nonprofit and public hospitals, health systems and continuing care providers across New York. Thank you for this opportunity to discuss the state's response to the novel coronavirus in residential healthcare facilities.

I would like to begin by applauding Governor Cuomo, state and federal representatives and the New York State Department of Health for the leadership exhibited during this unprecedented public health emergency. On behalf of New York's hospitals, health systems and continuing care providers, thank you for your prompt and decisive actions that saved lives.

I also want to recognize the Legislature for the challenging work ahead of you. Without additional aid from the federal government, New York is facing fiscal pressure like we've never seen before. Very difficult decisions will be made about how to best manage the state budget. We thank you for your thoughtfulness and for opportunities like this hearing to share our members' stories and ask for your continued support.

I am testifying on behalf of our 81 member skilled nursing facilities across New York state; all are nonprofit organizations and most are affiliated with hospitals. I'd like to tell their heroic story and illustrate why their life-saving efforts should be celebrated and supported, not punished.

When the pandemic began, New York's healthcare system had to swiftly modify traditional models of care to meet the extraordinary demand for COVID-19-related services. Our member nursing homes, which are respected in their communities for the high-quality, compassionate care they provide, responded to that call. They creatively and quickly pivoted everything they do, all while continuing to provide their excellent standard of care to their residents.

As the number of COVID-19 cases increased in the spring, the state recognized the need to take immediate action to ensure life-saving medical treatment was available to all who needed it. Through numerous Executive Orders that modified or suspended regulations, healthcare was radically reshaped in our state.

Hospitals were required to quickly ramp up capacity to 150%. As a result, our member nursing homes were asked to quickly change operations to accommodate hospital surge planning. Some nursing homes converted units to intensive care units. Many were asked to increase the breadth of their services. These modifications enabled our members to answer the call to help save lives.

Despite government's swift action to support hospitals in preparing for and managing the surge, nursing homes were left by the wayside. At the beginning of the crisis, when the focus was almost entirely on hospitals, nursing homes were often left out of the discussion and subsequently the last to get resources. They faced shortages of personal protective equipment, staff and other critical resources. These problems created significant challenges for nursing homes at the height of the crisis.

Our member nursing homes and the heroes working in these facilities rose to meet the herculean challenge of responding to one of the largest public health emergencies in modern history. They continued to provide excellent care every single day, even when their own safety and that of their loved ones was at risk.

However, in spite of this, some have taken a simplistic view about the high mortality that has occurred and look to paint facilities as negligent villains.

This is simply false. It is not what we have witnessed during the last four months. The truth is quite the opposite: to care for the most vulnerable and frail New Yorkers, nursing homes are highly vigilant, keeping their residents' needs top of mind. Nursing home and adult care workers are among the most passionate healthcare providers, especially now.

Tragically, lives were lost – and our members mourn the losses in their facilities. But we must be clear about the causes of these losses. We now know much more about the virus than we did in March. Among many other factors, we have learned the virus was circulating in New York City months before our first known positive case. We now know that asymptomatic and presymptomatic carriers spread the virus, as confirmed by the U.S. Centers for Disease Control and Prevention.

While some seek to villainize nursing homes, in reality, the virus was covertly entering these facilities before any alarms were raised – long before nursing homes received mandates to bar visitors or test their staff. The recent DOH report found that the timing of the outbreaks matches this conclusion.

New York's nursing homes and adult care facilities acted heroically during the most challenging time in their history and they should be commended, not punished for it.

HANYS is committed to working with state government, the Legislature, local governments, communities and families as we pursue our common goal: ensuring that the highest quality care is accessible and affordable to all New Yorkers.

HANYS recommends the following four policy changes to keep nonprofit nursing home residents safe and ensure continued access to care:

1. Provide funding for regular staff testing and PPE.

Routine COVID-19 testing for nursing home employees remains a critical action for preventing outbreaks in facilities. However, the cost of implementing once-weekly testing for all nursing home staff is impossible for nursing homes to absorb. A rural, upstate nursing home performs 218 tests on its nursing home staff at a cost of \$104.95 per test, incurring a cost of \$22,900 per week — money that our nonprofit nursing homes simply do not have in their reserves.

This example reflects the dire circumstances for the majority of our members. These tests are necessary, but the cost must not be placed on facilities and instead must be the responsibility of public health. These supplies must be provided by the state if facilities are going to be successful in preventing the spread of COVID-19 in their facilities. Our nonprofit nursing homes need the Legislature to take action to address the immense financial burden that was placed on them.

2. Provide adequate payment for COVID-19 recovery care in nursing homes.

The crisis is not over when patients are discharged from hospitals. Often, patients recovering from COVID-19 need a high level of rehabilitative continuing care, often for an extended period of time. Care like this must be supported with adequate reimbursement. In March, the Washington State Legislature passed a bill allowing for an enhanced rate for skilled nursing facilities to accept high-need patients due to the COVID-19 emergency. The same must be done in New York.

3. Incentivize joining the long-term care workforce and other workforce support.

When the state created a portal to facilitate volunteer healthcare workers at the height of the emergency, many of our members spent days calling them, only to find most did not want to work in a nursing home. Ageism is endemic to our society and providing care in a nursing home is difficult, unglamorous work. This aversion to working in long-term care is not unique to the COVID-19

emergency; nursing homes and adult care facilities continuously struggle with staff recruitment and retention. There must be state incentives for the long-term care workforce.

4. Protect immunity during emergencies.

To ensure healthcare facilities and professionals were not unjustly held liable for conditions or outcomes for which they have limited control during this unprecedented crisis and the rapid, untested changes to models of care, the governor and legislature included language in the state fiscal year 2020-2021 enacted state budget to extend certain liability protections only for the duration of the COVID-19 emergency declaration. Without this liability protection, nursing homes would not have been able to rapidly change their entire model of care the way they did. Eliminating this liability protection would be disastrous for future emergencies.

With the continued uncertainty of COVID-19 and the persistent threats to our healthcare system from Washington, we appreciate the support of the Legislature and governor and look forward to continuing the progress we have made together. I thank you for your time and for your thoughtful consideration of our members' heroic efforts.