



Joint Committee on Elder Affairs 5/15/23 Hearing

H.623 An Act to improve quality and care in nursing homes

Sponsor: Rep. Carol A. Doherty

**Co-Sponsors: Reps. Ruth Balser, Christopher Hendricks, Rodney Elliott,
James Hawkins, James B. Eldridge**

May 15, 2023

Senator Patricia Jehlen
Joint Committee on Elder Affairs, Chair

Delivered by email: Patricia.Jehlen@masenate.gov

Representative Thomas M. Stanley
Joint Committee on Elder Affairs, Chair

Delivered by email: Thomas.Stanley@mahouse.gov

Dear Chair Jehlen and Chair Stanley:

Dignity Alliance Massachusetts (Dignity Alliance) is providing this testimony in strong support of **H.623 An Act to improve quality and care in nursing homes** in order to improve the quality of care, dignity, and quality of life of Massachusetts nursing home residents. Dignity Alliance is a broad-based group representing a wide range of stakeholders dedicated to transformative change to ensure the dignity of older adults, people with disabilities, and caregivers. We are committed to advancing new ways of providing long-term services, support, living options, and care while respecting choice and self-determination. Dignity Alliance works through education, legislation, regulatory reform, and legal strategies for this mission to become reality throughout the Commonwealth.

Section-by-Section Summary:

Section 1. According to the National Consumer Voice for Quality Long-Term Care, research has shown that staffing in nursing homes - numbers of staff, skills mix, and training - are critical indicators of quality care and positive resident outcomes.¹ H.623 includes a higher standard staffing level than the existing 3.58² hours per resident per day (HPRD) to be more in line with current research and by calling for a “minimum” 4.1 HPRD, including a .75 RN HPRD. Unfortunately, MA did not “raise the bar” with implementing the 2021 3.58 HPRD rate, which was based on the 2017 statewide average HPRD that was in the “lower-bound” HPRD level in the CMS 3-star rating system³.

According to a 2001 CMS study, HPRD levels higher than 4.1 are necessary just to prevent harm or jeopardy to residents⁴. While this higher level is critical for the safety of residents, H.623 recognizes that these CMS standards do not take into account the higher acuity level of the resident population that exists 20+ years after publication of the 2001 report, and do not consider quality of life and dignity issues which are important components of the nursing home requirements and rightful expectations for residents and their families.

Consequently, H.623 sets the new standard of 4.1 HPRD as a "minimum", allowing for increases "to meet resident nursing care needs, based on acuity, resident assessments, care plans, census, and other relevant factors..."⁵ The purpose of this section is to promote sufficient professional staff for nursing homes to improve quality and safety for residents and staff. This change is also expected to be incorporated in new CMS regulations being advanced by the Biden Administration⁶.

Rationale: Numerous studies have shown that understaffing nursing homes **can harm the health of residents**, who suffer more bedsores, more weight loss, more overprescribing of anti-psychotic medications, and — during the pandemic — more COVID-19 cases and deaths.

Appropriate Nurse Staffing Levels for U.S. Nursing Homes, [Appropriate Nurse Staffing Levels for U.S. Nursing Homes \(sagepub.com\)](#), by Charlene Harrington, Mary Ellen Dellefield, Elizabeth Halifax, Mary Louise Fleming, and Debra Bakerjian:

ABSTRACT: US nursing homes are required to have sufficient nursing staff with the appropriate competencies to assure resident safety and attain or maintain the highest practicable level of physical, mental, and psychosocial well-being of each resident. Minimum nurse staffing levels have been identified in research studies and recommended by experts. Beyond the minimum levels, nursing homes must take into account the resident acuity to assure they have adequate staffing levels to meet the needs of residents. This paper presents a guide for determining whether a nursing home has adequate and appropriate nurse staffing. We propose five basic steps to: (1) determine the collective resident acuity and care needs, (2) determine the actual nurse staffing levels, (3) identify appropriate nurse staffing levels to meet residents care needs, (4) examine evidence regarding the adequacy of staffing, and (5) identify gaps between the actual staffing and the appropriate nursing staffing levels based on resident acuity. Data sources and specific methodologies are analyzed, compared, and recommended. The goal is to assist nursing home nurses and administrators to ensure adequate nursing home staffing levels that protect resident health, safety, and well-being.

Section 2. Purpose is to encourage efforts to place a resident back in their community.

Many people view the move to a nursing home as a one-way trip. But new government initiatives, combined with nursing homes' shifting business models, are encouraging more seniors to return home. Unfortunately, not all round trips are voluntary: Nursing homes are forcing out some residents. Under federal rules, all nursing-home residents are asked every few months, as part of quarterly care plan meetings⁷, whether they want to talk to someone about returning to the community. If a resident is interested, nursing homes must help the senior get more information on a potential move.

Recommended articles supporting transition to the community:

[A Nursing Home Stay Can Be Temporary | Kiplinger](#)

[When to Leave a Nursing Home and Move Back Home \(elderlawanswers.com\)](#)

Section 3. Research, as well as the COVID pandemic experience clearly demonstrates that viruses are easily transmitted when people live in close quarters. Two or less residents per room, as recommended by the Governor, offers more privacy, as well as safety.

Most nursing home residents prefer to have private rooms to protect their privacy and dignity, but **shared rooms with one or more other residents remain the default option**. These multi-occupancy rooms increase residents' risk of contracting infectious diseases, including COVID-19. CMS is exploring ways to accelerate phasing out rooms with three or more residents and to promote single-occupancy rooms.

Section 4. Purpose is to develop a system to ensure that the human rights of all residents and staff of nursing homes are protected.

Ethical Issues in Long-term Care: A Human Rights Perspective [Ethical Issues in Long-term Care: A Human Rights Perspective | SpringerLink](#) - [Nancy Kusmaul](#), [Mercedes Bern-Klug](#) & [Robin Bonifas](#) - [Journal of Human Rights and Social Work](#)

Abstract: Nursing home residents do not relinquish human rights just because they need care. In nursing homes in the USA, federal law guarantees certain rights to residents. This article provides a broader context for understanding the federal resident rights in the USA by examining them within the context of the United Nations Universal Declaration of Human Rights and the National Association of Social Workers Code of Ethics. In the USA, resident, family, and staff education of resident rights is typically the social worker's responsibility. Two challenges, both of which can lead to ethical dilemmas and human rights violations, are discussed: substance use and resident-to-resident aggressive behavior. Social workers have an important role in developing sound organizational policies which support resident rights and in educating and supporting staff, families, and residents in understanding these rights with the intention of preventing conflicts when possible and addressing conflicts when necessary. Because many long-term nursing home residents will spend their remaining months or years within the nursing home, the home becomes their world where their rights should be respected and realized.

Section 5. Research has shown that clients of the Department of Mental Health and Department of Developmental Services enjoy rights that are not given to residents of nursing homes. This will equalize the rights of all residents.

Study prepared by Jeni Kaplan jkaplan@cpr-ma.org

Thank you for the opportunity to provide testimony regarding such important issues to protect nursing home and rest home residents. We must strive to make improvements to ensure the safety and dignity of all living in long-term care.

Contact: Richard T. Moore, Chair, Dignity Alliance Legislative Committee, rmoore8743@charter.net

Dignity Alliance Massachusetts, a grass-roots coalition of aging and disability service and advocacy organizations and supporters, works to secure fundamental changes in the provision of long-term services, support, and care. A coalition of more than 30 organizations, committed to a new vision of dignity and care for older and disabled people in Massachusetts! Positions are not necessarily the opinions of all members.

¹ *Staffing Matters*, The National Consumer Voice for Quality Long-Term Care, March 2022, <https://theconsumervoice.org/uploads/files/issues/Staffing-Matters.pdf>.

² Nursing Facility Accountability and Supports Package 2.0, 9/10/20, <https://www.mass.gov/doc/covid-19-nursing-facility-accountability-and-supports-package-20/download>: Nursing facilities will be required to meet an Hours Per Patient Day (HPPD) staffing minimum of 3.5 by January 2021. The related footnote indicates that 3.5 is comparable to "...an amount equivalent to the lower bound HPPD level in the CMS 3-star range", the low end of the a mediocre rating. The 3.5 HPPD was increased to 3.58 when implemented, but still a low rating.

³ 10/18/19 Nursing Facility Taskforce Workforce Presentation, Massachusetts Senior Care Association, presented by Tara Gregorio, 10/18/19 Nursing Facility Taskforce Workforce Presentation, slide 18 <https://www.mass.gov/doc/october-18-2019-presentation-msca/download>.

⁴ Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Report to Congress: Phase II Final Volume 1 Contract # 500-0062/TO#3, Prepared for Centers for Medicare and Medicaid Services, Prepared by Abt Associates Inc. Cambridge, MA, December 24, <https://theconsumervoice.org/uploads/files/issues/CMS-Staffing-Study-Phase-II.pdf> Overview of Phase II Report-Background: [https://theconsumervoice.org/uploads/files/issues/HHS_Staffing_Study_-_Background_\(1\).pdf](https://theconsumervoice.org/uploads/files/issues/HHS_Staffing_Study_-_Background_(1).pdf), page 6: "...For each measure, there was a pattern of incremental benefits of increased staffing until a threshold was reached at which point there were no further significant benefits with respect to quality when additional staff were utilized.

⁵ Op.Cit., page 11: "...Although the Phase II analysis did not identify different staffing levels that maximized quality for different case mix groupings, it did find that adverse outcomes were significantly higher at the same staffing levels for facilities of higher case mix. The investigators concluded that higher staffing levels are warranted for facilities with residents of higher acuity and functional limitations..."

⁶ On 2/28/22, the Biden-Harris Administration announced a set of **wide-ranging reforms** aimed at improving the quality of nursing home care for residents. These reforms take aim at long-standing issues that have plagued nursing home care for decades, including poor staffing, inadequate enforcement, and lack of transparency in nursing home ownership and how taxpayer dollars are spent.

Then on 4/15/22, CMS issued a [Request for Information \(RFI\)](#) regarding the implementation of a minimum staffing standard in nursing homes and seeking public input, so we are currently waiting for CMS decision on a federal staffing standard. Rationale for the proposed staffing reform:

Establish a Minimum Nursing Home Staffing Requirement. The adequacy of a nursing home's staffing is the measure most closely linked to the quality of care residents receive. For example, a [recent study](#) of one state's nursing facilities found that increasing registered nurse staffing by just 20 minutes per resident day was associated with 22% fewer confirmed cases of COVID-19 and 26% fewer COVID-19 deaths. CMS intends to propose minimum standards for staffing adequacy that nursing homes must meet. CMS will

conduct a new research study to determine the level and type of staffing needed to ensure safe and quality care and will issue proposed rules within one year. Establishing a minimum staffing level ensures that all nursing home residents are provided safe, quality care, and that workers have the support they need to provide high-quality care. Nursing homes will be held accountable if they fail to meet this standard.

⁷ <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-B>:

§ 483.21 Comprehensive person-centered care planning.

“...(b) *Comprehensive care plans.*

“...(iv) The facility must develop and implement a comprehensive person-centered care plan for each resident, consistent with the resident rights set forth at [§ 483.10\(c\)\(2\)](#) and [§ 483.10\(c\)\(3\)](#), that includes measurable objectives and timeframes to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan must describe the following:

In consultation with the resident and the resident's representative(s)—

(A) The resident's goals for admission and desired outcomes.

(B) The resident's preference and potential for future discharge. Facilities must document whether the resident's desire to return to the community was assessed and any referrals to local contact agencies and/or other appropriate entities, for this purpose.

(C) Discharge plans in the comprehensive care plan, as appropriate, in accordance with the requirements set forth in [paragraph \(c\)](#) of this section...”