

**The Appropriations, Human Services and Public Health Committees
Virtual Listening Session, September 2, 2020
Testimony submitted by Kevin Brophy, CT Legal Services**

Re: Nursing Facility Testing, Involuntary Discharges, Staffing and Funding

I am the Director of the Elder Law Unit of Connecticut Legal Services, a non-profit legal aid agency. My testimony is submitted on behalf of my low income elderly clients, who reside in nursing homes and residential care homes.

As we are all acutely aware, Connecticut has witnessed that nursing home residents are among the most vulnerable to COVID-19 and that the elderly are the most at risk. Over 2,800 nursing home residents have died from COVID-19, which is 64% percent of the total number of deaths in Connecticut.

To protect this at-risk population, we recommend the State of Connecticut take the following steps:

1. Testing of Asymptomatic Nursing Home Staff, when there is community transmission: An important part of CT's overall strategy to prevent the transmission of COVID-19 in nursing homes must be the continued testing of staff and residents. Frequent testing is critical to preventing a resurgence of COVID-19 in nursing homes.

As to staff testing, it is important that Connecticut consider the rate of community transmission. New cases of COVID-19 in a nursing home will almost certainly be brought in by staff, who likely will be unknowing carriers. As highlighted by the Mathematica interim report (A Study of the COVID-19 Outbreak and Response in CT Long Term Care Facilities, 8/14/2020), prevalence of COVID-19 in the surrounding community was a major predictor of its presence in nursing homes.

The Governor's current Executive Order # 7 AAA does not mention consideration of community virus rates and focuses only on discontinuing testing after a 14 day period of no infection within the facility. Recently, the Center for Medicare and Medicaid Services (CMS) issued a Memorandum that included the standard for testing of asymptomatic nursing home staff. It recommended benchmarks for testing, linked to the COVID-19 positivity rate, county by county, throughout the country. <https://www.cms.gov/files/document/qso-20-38-nh.pdf>. Testing of staff should be monthly if the COVID-19 rate in that county is < 5%. It should be weekly if the rate is between 5 and 10%, and twice weekly if the rate exceeds 10%.

We believe it is important that Governor Lamont's Executive Order # 7 AAA be modified to reflect the need to consider community transmission per the CMS guidelines. There needs to be a clear governmental order that the public, including residents and families, can depend and rely on.

2. Governor Lamont's Executive Order # 7 XX: This EO suspended the involuntary discharge of residents from nursing homes and residential care homes to homeless shelters. This policy should be made permanent by amending our state discharge statutes (Conn. Gen. Stat. §§ 19a-535 and 19a-535a). These residents are considered to be at high risk for contracting the virus as they are often elderly and have underlying medical conditions. Sending them to a homeless shelter without adequate health care safeguards will increase the likelihood of them becoming hospitalized, ending up back in a nursing home or dying. Additionally, the language used in this EO should be amended to include all "inappropriate placements" not limited to homeless shelters. This would include referrals to hotels, motels or to family situations that will not be safe or able to support the health needs of the individual. Facility staff must be required to explore safe housing options for this vulnerable population.
3. Need for Increased Staffing Levels: Connecticut facilities fall far short of the staffing levels that national studies say are needed in order to provide adequate care (4.1 hours per resident per day). Not surprising, this inadequacy has been highlighted during this COVID-19 pandemic. Many Connecticut nursing home residents were not being properly cared for. As the Mathematica report illustrated, nursing homes with higher staffing ratings had fewer COVID-19 cases and deaths.

Research at the federal and state levels has shown that the most effective way to improve staffing is to set appropriate staff to resident ratios in state law. Better staffing and better care reduce staff turnover, lowers workers compensation premiums, and reduces the incidence of resident hospital visits. Unfortunately, instead of increasing staffing ratios, we are currently witnessing the opposite. Nursing home staff are currently being laid off. We recommend that CT require 4.1 hours of staff time per resident per day.

4. Continue to Provide Funding for Personal Protective Equipment and Testing of Residents and Nursing Home Staff: As the Mathematica interim report indicated, Connecticut should continue its work with federal partners and private industry to procure and distribute PPE to nursing homes as needed. We would also encourage the state to continue to provide funding for as needed testing of nursing home staff beyond the current cut-off of October 31.

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