

Memorandum in Support

ELDER LAW AND SPECIAL NEEDS SECTION

ELDER #4

March 9, 2021

S. 1168
A. 108-A

By: Senator Rivera
By: M. of A. Gunther
Senate Committee: Health
Assembly Committee: Ways and Means
Effective Date: 180th day after it shall have become a law.

AN ACT to amend the public health law, in relation to enacting the "safe staffing for quality care act".

LAW & SECTION REFERRED TO: Section 2805 of the public health law.

THE ELDER LAW AND SPECIAL NEEDS SECTION SUPPORTS THIS LEGISLATION

The Elder Law & Special Needs Section's Task Force on Long Term Care Reform Facility Reform & Oversight **SUPPORTS 108A(Gunther)/S.1168(Rivera) Safe Staffing for Quality Care Act**. Our section represents clients who are older adults, have mental illness and/or cognitive disabilities. We support this legislation that would require minimum: staffing ratios in every nursing home; direct the Public Health and Health Planning Council to consider staffing violations when reviewing character, competence, and standing in the community for applications and renewals of certificates of incorporation of a hospital; require the establishment of a nursing home council; allow for private right of action by employees; and require public disclosure of information about direct care staffing.

The costs of understaffing, in terms of the lives and health of New Yorkers in healthcare facilities is significant and the problem of understaffing and consequent harm to nursing home residents is not new. Safe direct care nurse staffing saves lives and there is an increasing body of evidence that clearly shows staffing is one of the most important factors in quality care. Nursing homes have been required, and paid, to have safe staffing for more than twenty years and, New York State nursing homes have among the lowest resident-to-staff ratios in the country.

The COVID-19 pandemic exposed many existing workforce deficiencies, one of the most obvious being understaffing, which undoubtedly contributed to the spread of disease and the resultant disproportionate illness and death among residents. The lack of sufficient numbers of skilled staff members at a time of heightened need for delivery of health care to residents with quickly emerging acute conditions had tragic consequences. Registered Nursing (RN) level care, insufficient before the pandemic, was lacking in the areas of triage, assessment, intervention, stabilization and the transfer of residents into higher level care beds.¹ This was especially true

¹ *Registered Nurse (RN) vs. Licensed Practical Nurse (LPN)*. 2020 August 13) [RegisteredNursing.org](https://www.registerednursing.org)

during night shifts.² As a result, staff members, such as CNA's, often working without enough PPE, were likely called upon to perform tasks outside the scope of their practice areas or experience.³

The Safe Staffing for Quality Care Act sets minimum care hours per resident per day (hprd) in residential health care facilities: Registered Nurses (RNs): 0.75 hprd; Licensed Practical Nurses (LPNs): 1.3 hprd; and Certified Nurse Aides (CNAs): 2.8 hprd. These minimum standards are those that a 2001 comprehensive congressionally mandated study found that are critical staffing thresholds necessary to maximize quality outcomes.

Safe staffing matters and recent studies have shown that nursing homes that have more nurses are more successful in containing COVID-19 cases and deaths among residents than nursing homes with lower nurse staffing levels. Every resident who lives in a nursing home, regardless whether it is for short-term rehabilitation services or long-term care, expects to receive safe, quality care. This is not happening, and New York State has allowed for nursing home operators to follow the ineffective "sufficient" staffing standard, causing harm to residents and staff. This should be considered in light of the fact that Nursing Home residents and staff represented only 8% of COVID-19 cases nationwide yet suffered 41% of the deaths as of August 13, 2020.⁴

The staffing ratios set forth in the Safe Staffing for Quality Care Act, which existed in various forms since the 1990s, will save lives and requires nursing homes to implement reforms to recruit and retain a nurse staffing workforce. Once passed, the Safe Staffing for Quality Care Act will require nursing homes, within two years, to do what they legally promised: ensure that each resident receives the services and care needed to attain or maintain their highest practicable physical, mental, and psychosocial well-being.

Notably, the *Corona Virus Commission for Safety and Quality in Nursing Homes*, convened at the request of CMS, in its Final Report dated September, 2020, recommended that CMS issue a guidance based on research that sets forth evidence based, person-centered minimum care standards, specifying hours of care per resident per day during normal and emergency operations alike and require nursing homes to adhere to these standards.⁵ Minimum staffing requirements are in effect in 33 other states. New York State should step up and join them to improve resident care and save lives. The evidence has been "in" for years and New York State should pass a minimum staffing bill now.

For all the foregoing reasons, the Section on Elder Law & Special Needs' Task Force on Long Term Care reform **SUPPORTS** this legislation.

² *Corona Virus Commission for Safety and Quality in Nursing Homes*, Final Report (Sept. 2020, pg. 41)

³ *ANA Nursing Staff requirements to meet the demands of today's long-term care consumer*. (2014, Nov. 12)

⁴ *More Than 40% of the U.S. Coronavirus Deaths are Linked to Nursing Homes*. The New York Times (2020, Aug. 13)

⁵ *Corona Virus Commission for Safety and Quality in Nursing Homes*, Final Report (Sept. 2020, pg. 43)