

Elder Justice Coordinating Council
Remarks of Lori Smetanka, Executive Director
National Consumer Voice for Quality Long-Term Care
June 21, 2022

Good morning, Chairwoman Barkoff and members of the Elder Justice Coordinating Council. I am Lori Smetanka, Executive Director of the National Consumer Voice for Quality Long-Term Care. The Consumer Voice is a national non-profit advocacy organization that works with and on behalf of individuals receiving long-term care and services to achieve quality care, quality of life, and protection of rights. We also are proud to host and operate the National Long-Term Care Ombudsman Resource Center through a grant from the Administration for Community Living, where we provide training, technical assistance, and support to State and local Long-Term Care Ombudsman Programs. Through their work, Ombudsman Program representatives provide critical advocacy, support, information and resources to long-term care facility residents and their families. Thank you for inviting me to speak today, and for including this panel focused on nursing home issues.

For more than 25 years I have worked in this field, where I have had the opportunity to talk with many residents, families, ombudsmen, facility staff, and others about the experiences of residents. A recurring theme, which research and data clearly show, is that the single most important element for ensuring that residents receive the care and services they need is having the necessary staff in a facility. Adequacy of staff includes numbers of staff, skills mix, and training.

When there are not enough staff to provide care, residents may not get out of bed for hours, or even days. They have long wait times to be helped to the bathroom – often resulting in the person urinating or defecating themselves, and then waiting longer for someone to help clean and change them. Antipsychotic drugs are inappropriately given to residents to control behavior or for the convenience of staff. Teeth aren't brushed, and residents who need assistance moving and turning often develop pressure sores as they lie in the same position for countless hours. Residents tell us that showers are regularly skipped due to short staffing – so instead of receiving two showers a week, she may receive one, sometimes none.

At the end of her life, my grandmother lived in a nursing home and needed help with eating. When I would visit and would help feed her, it would take 20-30 minutes, or more, for her to finish her plate of food. A staff member caring for 20 residents – a common occurrence in today's nursing homes – would be hard pressed to spend that amount of time helping one resident eat. We learned during the pandemic that many facilities are highly dependent on the informal care that families provide when onsite.

Short staffing also puts great stress on the staff themselves, who are at increased risk of injury, and often have to make the difficult choice of deciding which residents to assist and what kinds of assistance they can provide. Short-cuts get taken and mistakes are more frequently made. Staff also don't have the opportunity to connect on a personal level with the residents, because they are rushing to get on to the next task.

The critical shortage in staffing that currently exists in many areas today is part of a longer, systemic problem. Low wages and benefits, poor working conditions, and inadequate training and support are some of the factors that lead to high turnover and difficulty attracting new workers into this field.

We cannot allow this broken system to continue. Immediate changes need to be made that include minimum requirements for staffing and increased accountability and transparency for facilities – both to meet quality standards and to account for the use of public dollars. We commend the Biden Administration for the bold set of reforms proposed in late February that would begin to address these issues and we support their implementation.

Despite well-established research showing that nursing homes with higher averages of nursing care per day have higher overall ratings, better health inspection ratings, and fewer instances of abuse, we continue to have weak federal policies around nursing home staffing. Facilities are required to have “sufficient staff” – a standard that is vague, subjective, and difficult to measure. As average daily staffing decreases, so does a facility's overall rating and performance in health inspections, and instances of abuse rise.

In the nursing home reforms proposed by the Biden Administration on February 28, 2022, a key element is the creation of a federal minimum staffing standard, based on the findings of a new study being commissioned. Any staffing standard must include a baseline, or minimum, below which a facility cannot go, and must also include adjustments for resident acuity to assure higher staffing levels when residents have higher care needs.

Facilities must also be held accountable for meeting minimum quality standards. Penalties for not complying must be meaningful and appropriate for deficiencies cited; and we cannot allow chronic bad actors to continue owning and operating facilities. There could and should be better federal agency coordination around facility and corporate monitoring, data sharing and analysis, and referrals of cases and complaints. Increased collaboration, including among agencies on this Council and the programs you oversee, would leverage the power and resources of the federal government to both systemically and individually address bad actors in the system, and would improve conditions for residents.

Additionally, we must insist on greater transparency and accountability for the billions of dollars of public funds nursing homes receive. The nursing home industry claims that it does not receive enough money to hire the necessary staff, nor to provide high-quality care to which residents are entitled. The truth, however, is that shell games such as submission of incomplete and inaccurate cost reports, and strategies such as the use of related-party

transactions, have been employed to divert attention from how money is really spent, and to make financial accountability more difficult. Information that is available, however, reveals a profitable industry that diverts resources away from direct care to profits and other expenses.

It is essential, then, for the Administration's proposed reforms around transparency be implemented. CMS should implement sections of the Affordable Care Act, passed more than ten years ago still not fully implemented, which require transparency in nursing home ownership and finances. Additionally, facilities should be required to submit audited, consolidated cost reports, that are reviewed by CMS. We would also encourage the administration to require that a minimum percentage of facility revenue be spent on direct care to residents.

One resident who has lived in a nursing home for more than a decade told me that she sees the changes that occur when her facility is bought and sold. She said suddenly there are fewer staff working on the floor, fewer supplies available, and lower quality items, especially in the food department. Billions of our tax dollars are given to nursing homes each year, but little to no scrutiny is placed on how those dollars are spent. Essential to a minimum staffing standard is ensuring that dollars go where intended – towards patient care.

There has been much rhetoric from the nursing home industry that they view implementation of a minimum staffing standard as an unfunded mandate. The law is clear, however, that the Secretary of Health & Human Services has full authority to set standards that ensure nursing homes provide each resident with high quality care and that Medicare and Medicaid payments are spent on resident care. That would include the setting of a minimum staffing standard.

Instead, what we have is a long-standing unfulfilled mandate for residents – one that entitles each resident to attain or maintain his or her highest practicable level of physical, mental, and psychosocial well-being. Nursing home owners and operators voluntarily agree to meet this standard in return for federal funding. While the providers have received the funding, nursing home residents have largely not received the care and services to meet this promise.

I thank you for the opportunity to be here today and share these remarks. I also thank and commend the Administration for prioritizing these issues and putting forth their important reforms that, when implemented, can make a critical difference for residents.

Next, in a short video, we'd like you to hear directly from residents about their experiences when there are not enough staff available. These residents participated in a dialogue in late 2021 hosted by the Consumer Voice.