

New York state enacts token safe staffing requirement for nursing homes

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A long-delayed measure intended to increase staffing at nursing homes in New York state took effect on April 1. It requires facilities to have enough employees to spend a specified minimum amount of time per day with each resident.

The reform was passed as a part of the state budget last year and had been scheduled to take effect on January 1. Governor Kathy Hochul repeatedly delayed its implementation, however, citing the ongoing pandemic and the shortage of health care workers as excuses. Her ultimate change of mind may appear to be a victory for nursing home workers, but the reform will do little to improve their working conditions. Nor will it improve care for the state's elderly and vulnerable patients.

Understaffing has long hobbled New York's nursing homes. It is a deliberate policy that companies pursue to reduce their payroll costs and increase their profits. The companies use inadequate staffing as an excuse to pressure nurses to work double and even triple shifts to compensate. As a result, nurses are not able to provide adequate care to their patients.

The twin stresses of inadequate staffing and overburdened health care workers have reduced patients' quality of life and resulted in preventable deaths. The coronavirus-related mortality among residents of New York's nursing homes became a national scandal in 2020, and the magnitude of the negligence recently became clearer. In March, Comptroller Thomas DiNapoli released an audit that found that the administration of Governor Andrew Cuomo had undercounted the number of pandemic-related deaths by at least 4,100.

The pandemic only exacerbated the already harmful consequences of understaffing at nursing homes. More than two-thirds of the state's 401 for-profit facilities

have the lowest possible staffing ratings given by the Centers for Medicare and Medicaid Services (CMS), according to a 2021 report by New York Attorney General Letitia James. The report found that nursing homes with low CMS staffing ratings at the start of the pandemic had higher COVID-19 fatality rates. This finding likely results at least partly from the fact that administrators pressured sick employees to report to work—and even to work multiple consecutive shifts—instead of quarantining themselves.

Furthermore, the report found that New York's reimbursement model for nursing homes gives owners of for-profit facilities an incentive to transfer facility funds to owners and investors, instead of investing in additional staffing to care for residents.

Instead of waging a genuine fight against dangerous understaffing, the New York State Nurses Association (NYSNA) has held a series of rallies, the primary purpose of which has been to allow nurses to let off steam. The union has coupled this tactic with appeals to Democratic politicians for reforms. But the Democratic Party is no less beholden to the health care industry and its Wall Street shareholders than the Republican Party is, and any reforms that it is pressured to enact are purely cosmetic.

The measures included in New York's current budget are no exception. The Safe Staffing Act, which has just gone into effect, requires nursing homes to employ enough workers to give each resident 3.5 hours of direct care every day. This amount of time must include no less than 2.2 hours of care provided by certified nurse assistants and 1.1 hours for licensed practical nurses or registered nurses.

When the bill was passed last year, some advocates for nursing home residents criticized this requirement as inadequate. They pointed out that the law would

allow nursing homes to use support staff, rather than registered nurses, to provide a portion of patient care hours.

In addition to the Safe Staffing Act, the budget requires nursing homes to spend at least 70 percent of their revenue on direct resident care. Moreover, it requires these facilities to dedicate at least 40 percent of revenue to resident-facing staffing, and this expenditure is included as part of the expenditure on resident care. Finally, the bill caps nursing home profits at 5 percent. These provisions also took effect on April 1.

New York is not the first state to require that health care facilities maintain a certain level of staffing. California has taken the most direct approach by limiting the number of patients that can be assigned to a nurse, depending on the unit in which he or she works. Under state law, a nurse in an operating room, for example, can be assigned no more than one patient, and a medical/surgical nurse no more than five.

But again and again, hospitals have found ways to avoid complying with this law. During the winter surge of the pandemic in December 2020, the state granted emergency waivers that allowed hospitals to exceed the maximum allowed numbers of patients assigned to nurses. These waivers placed unreasonable burdens on nurses and jeopardized patients' safety. Although the waivers expired in February 2021, hospitals can still apply for them.

These standards were still being violated in August 2021. A hospital in Eureka, California, was triaging patients in the waiting room as though a mass casualty event were taking place, according to trauma nurse, Matt Miele. "To me, it seems like the lowest staffing levels that I've seen at the time we need it the most," he told CalMatters. He often was assigned more than four patients, which exceeded the ratio mandated by the state.

To meet the new staffing standards, New York will have to hire 12,000 workers statewide, according to Sallie Williams, vice president of advancement at Heritage Ministries, a not-for-profit health care organization for the elderly, who spoke to *Erie News Now*. The staffing shortage is so severe that National Guard troops were deployed in December 2021 to assist New York nursing homes, and these troops will remain in place for at least 30 more days.

Throughout the pandemic, the number of nurses who

have retired has increased sharply. In addition, many nurses have burned out and quit because of overwork, inadequate support and inhuman levels of stress. In short, the failure of the ruling class to prepare for and respond to the pandemic in a rational way has contributed to the acute staffing shortage that the state now faces.

Nurses will not be able to gain safe staffing ratios, better pay, reasonable workloads or protection against the pandemic if they remain confined within the trade unions and direct their appeals to the capitalist state. Winning these demands will require nurses to form rank-and-file committees that are independent of the trade unions. The ultimate aim of these committees must be to confront the profit system itself, which is the root of the crisis in the health care system.



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