

Testimony of Friends and Relatives of Institutionalized Aged, Inc. (FRIA)

on the Berger Commission Report

at a Public Hearing held before

The New York State Assembly Committee on Health

December 11, 2006

Good morning, I am Amy Paul, Executive Director of Friends and Relatives of Institutionalized Aged, also known as **FRIA**. We wish to thank the Committee for calling these extremely important hearings and welcome the opportunity to appear before you today.

FRIA has been the consumer's voice and resource on long term care in New York State since 1976. Through its free telephone Helpline service to over 1,000 callers annually, its family council work reaching over 20,000 residents and families, and its extensive community education programs, FRIA works with New York State residents each year to improve the quality of long term care both on an individual level and systemically. Our policy positions are informed by what consumers experience in real life, which can be very different from a policy position based on a lofty philosophical or academic approach. As such, the Berger Commission, devoid of community input, developed recommendations on long term care which raise numerous problems for consumers as a practical matter, and therefore make for poor policy. We are here to speak about the short term and future implications of the Berger Commission Report, and specifically about the changes proposed for long term care- a topic sorely and sadly overlooked by the media, pundits, and others.

Because we were concerned early about the impact of the Commission's work, and concerns increased due to the undemocratic and non-transparent process utilized by the Berger Commission in developing its recommendations, FRIA was honored to join with the *Save Our Safety Net Campaign* to bring much needed public attention to the Commission's work.

FRIA heartily supports the notion that individuals should live in the least institutionalized setting possible, rightly embraced by the Berger Commission. We were pleased to see that the Commission recognized the serious dearth of non-institutionalized long term care services in the state. But, unfortunately, it then ignored its own finding and recommended implementation of closures and downsizing of some 3,000 nursing home beds knowing full well that closings would take place before non-institutionalized services were in place or funded. How irresponsible!. Time and again, our Helpline receives calls from people in the community wanting to stay in their homes who are forced to enter nursing homes because there are no alternative community choices. The reverse is also true. We receive calls from people being discharged, with no good alternatives in the local area to move to. And, we recently learned of a case where a person was being discharged from a hospital in Schenectady needing a nursing home but there were only two nursing home settings available to the individual- one 2 hours away in Westchester and one in Ohio.

Missing overall state plan for long term care services

Our overarching concern is that the Commission's recommendations to eliminate nursing home beds were crafted in a vacuum, without the benefit of a much-needed comprehensive plan for the long term care system in this state, that addresses all of the pieces of a good system. The Berger exercise was intended largely to create efficiencies and cost savings for the state. The Commission was remiss in establishing its recommendations without defining what alternative community services would be needed statewide if beds are eliminated, ***and at what cost.*** Adding a few ALP beds here and there is not a 'plan.' Key to building a comprehensive plan so that nursing home beds can be eliminated is the development of senior, supportive and accessible housing- not an inexpensive undertaking. Also key is the development of an adequate nursing workforce that can support community-based services. How can legislators- or the public- make a determination about the merits of the Commission's recommendations if no mention is given as to what the state will be paying- in dollars for other services or in human costs for unmet health care needs- if the Commission's suggestions are allowed to stand. The consumer examples mentioned earlier evidence why eliminating beds today will, without a detailed plan for substitute community services, leave consumers without the full measure of assistance they need to sustain their lives.

Missing detailed support for key assumptions

The Commission argues that nursing homes have a low occupancy and that approximately 14% of residents can be categorized as 'low acuity', suggesting that these residents don't need nursing home level of care. First, there are many reasons for a low occupancy rate that have little to do with the *need* for the services. Poor reputation for care, nursing home admission policies that turn away low profit admissions, and hospital discharge affiliations, transportation access, physical plant, can all impact the occupancy levels of a facility- as noted in the Schnectady case an area where the Commission is suggesting bed eliminations. Second, the excess beds, if any, may well be needed as the senior population continues to increase as anticipated or in situations of health emergencies. Third, to the extent that low acuity residents are living in nursing homes it is incumbent upon us to ask why- is it that individuals prefer a congregate setting, or Medicaid won't provide sufficient home services, or some other reason. Without performing the due diligence of interviewing a sample of residents in this category, we think it is unreasonable to rely on mere assumptions in formulating policy. Fourth, the relevance of occupancy is one related largely to financial profitability- and, we understand that the state just modified the reimbursement rates upward, pegging the index more realistically. The Commission's financial analysis was based on the old reimbursement rates. It is possible that under the increased nursing home payments, more people will be admitted, care improved (especially if under the new administration government enforcement is strengthened) and occupancy rates increased.

Missing rationale for closings/ conversions

The Commission's stated basis for closing some facilities and keeping others is unclear, as evidenced by the decision to focus on Split Rock Nursing Home in the Bronx, a community identified as a high, 97%, occupancy county. A primary reason given in the report for closing Split Rock is that the administrator failed to return the Commission's phone calls. This decision flies in the face of the Commission's stated primary reliance on occupancy and community bed need. We also have serious questions about the threats to county-owned nursing homes. This needs greater study and thought, but certainly suggestions about 'privatizing' are hollow. We

should call closing by its real name- and appreciate the impact it will have on the indigent and those who have nowhere else to turn.

Missing a rational, transparent system for future 'rightsizing'

Although the Commission's official report discussed elimination of 3,000 nursing home beds, it established a pernicious system for the future by permitting 'voluntary' rightsizing, without public transparency or comment. As a result of these voluntary efforts to date, over 800 nursing home beds will be eliminated in New York City, a geographic area identified by the Commission as ***in need*** of 3,666 beds. And, the Report suggests there will be a Round 2 of these changes. There is no justification for inconsistently permitting the elimination of beds in the face of such a finding of need by the Commission. Where then will the needed nursing home beds come from? 'Rightsizing' should mean adding as well as eliminating beds, but the Commission does not address this need at all. This is particularly of concern since New York City is bracing for a staggering increase in its older old population, the very group that will need long term care services. It is especially worrisome that this future system for the elimination of nursing home beds will be handled bureaucratically within the Department of Health, without opportunity for involvement by the community. Is this a new backdoor approach to eliminating additional nursing home beds in the future? Who will know about them to object and protect the elderly?

Missing guidance on ALPs

It is also troubling to see nursing home beds converted to ALPs, without appropriate safeguards and standards of care as offered within an institutional framework. Will these ALPs be different than those in Adult homes and if so, how? Is this just a 'dumbing down' of the nursing home service and an opportunity to reduce the Medicaid payment stream for which seniors will get an inappropriately reduced level of health care? On what basis will residents be transferred to these units? Will they have a choice?

Missing legislative protections for affected consumers

If and when nursing home beds are eliminated or facilities closed, it will be important to adopt specific protections for residents which protections do not now exist. Last year, we witnessed the closing of a 400+ bed nursing home in Manhattan. Residents and families were very upset and pressured to make quick decisions about where their residents should be transferred to enable the home to close. In anticipation of any closings, New York should responsibly provide legislatively for a smooth, deliberative process for the safe transfer of residents forced to leave for the state's fiscal convenience. In the interest of time we will not detail our suggestions here except to say that these protections are necessary to avoid the well-documented incidence of transition trauma that can fatally harm older individuals.

Missing connection between nursing homes and hospitals

The Commission also failed to integrate its long term care recommendations with its recommendations on hospital care. There is a very strong connection and interrelationship between the two. This interconnection was also highlighted by the NYC RAC. As more frail elderly live in the community, more people will need to access the emergency rooms of community hospitals. The frail elderly can not be expected to travel an hour or more for life sustaining health care, nor can they wait hours for emergency room care. Where will the elderly go if their local hospital is closed? How will hospital closures impact the need for nursing home sub-acute beds? This interconnection, again, goes to our point for the need for a comprehensive,

integrated, detailed funding plan for long term care before institutional changes are a fait accompli.

CONCLUSION

I think no one will disagree that long term care is a very complex and challenging subject and NY's long term care system is currently in tremendous flux. The Department of Health is **first** convening work groups beginning this month to discuss the restructuring of the system. F-SHRP, Point of Entry, the Long Term Care Compact, state reimbursement increases, and Medicaid eligibility changes are only some of the critical elements that need to be sorted out before we will have a clear picture of what New York's long term care system will and should look like. The Berger Report acknowledged the need for state action in a number of policy areas, many of which echo concerns similar to those we raise but missed the opportunity to integrate facility health with people health, as any responsible arm of the state should do.

We can't put the cart before the horse when at stake are services to the frail elderly and disabled, among our most vulnerable populations. New York needs to address these areas first if we are to truly and safely reform the facilities in our long term care system. The state needs a comprehensive, detailed plan for long term care that deals fully with all of the many components, identifies the services needed in each geographic area, calculates the costs and- most importantly- allocates funds- so that needed services are in fact in place BEFORE any beds are eliminated. The state should also ensure that any future bedding changes are made consistent with this plan. It is nothing short of an outrage to dismantle the hard wiring of the long term care system BEFORE all of the programming has been done on long term care services. The legislature should not let the tail wag the dog- The F-SHRP should not usurp the representative judgment of our elected legislators about New York's Health Care system. The demand to process and vote on this Report in only a few days is nothing short of unconscionable. Anything worth doing, is worth doing right. Let's take our time to do it right.

A final note

The long term care section of this Report has been woefully under- analyzed and largely unaddressed by the media. The elders that we represent are unable to send you letters, make phone calls, rally or visit your offices. They rely on public officials, advocates and others to protect them. While the hospital impact of the Report is certainly important, I urge you to resist the temptation to focus on that area exclusively. Please give the frail elderly your dedicated consideration as well.

Thank you for this opportunity and for considering our views.

Or, if the state is really making a decision to not pay for senior health care services, we should be honest with the public and say so, so people can know where they stand.

Will F-SHRP money be available to develop community services as alternatives? Will the proposed Long Term Care Compact enable more individuals to access nursing homes than today because of eligibility rule changes? If there are an insufficient number of accessible supportive housing programs where will POEs responsibly send our older loved ones- to Ohio?

New York State is simply not yet ready to relinquish nursing home bed slots which are the backbone and setting of last resort within our current long term care system.

