

The Latino Elderly in New York, an Introduction for Elder Law Attorneys: What You Should Know About the Fastest Growing Group in the United States

By Veronica Escobar

Editors' note: This submission, written by a first-generation American Latina attorney, gives the reader insight into the Latino community, and the specific challenges it faces, which affects the delivery of services by elder law attorneys.

Latino Demographics

What is a Latino? The term "Latino" refers to a person who was either born in or can claim descent from Latin America: it is defined by geography. A Latino can be of any race, ancestry, ethnicity or religion, and can also speak a language other than Spanish (i.e., Brazilians speak Portuguese and Haitians speak Creole). The term "Hispanic" refers to a person who was either born in or can claim descent from a Spanish-speaking country: it is defined by language.

For the purposes of this article we will use the term "Latino" to refer to a Spanish-speaking person of Latin American descent.

Latinos, including the aging, are a growing population in the United States. According to the most recently available statistics released in 2014 by the Administration on Aging (an agency within the U.S. Department of Health and Human Services), the over the age of 65 Hispanic/Latino population numbered approximately 3.6 million in 2014¹ and is projected to grow to approximately 21.5 million (to 22 percent) by 2060.²

Latinos comprised approximately 8 percent of the older population in the country in 2014.³ In 2013, approximately 70 percent of the nation's older Latino population lived in four states; New York ranked fourth with 290,030 residents.⁴

This same year, 2013, approximately 66.4 percent of the total *general* New York Latino population resided in the five boroughs of New York City⁵ while 13.1 percent resided on Long Island (Nassau and Suffolk Counties).⁶ Close to 81 percent, or 2,830,813 of the Latino population of the state resided in the five boroughs and Long Island. The remaining 19 percent of the Latino population resided in the upstate counties.⁷

Unfortunately, there are no available statistics offering further details about the numbers of Latino elderly living in the boroughs of New York City. But information released in New York City's 2010 census revealed that approximately 38.2 percent of New York State's *general* 60-and-over population resided in New York City⁸ and represented 17.2 percent of the city's population.⁹

In 2014 statistics, 21 percent of New York State's Latino population spoke only English at home,¹⁰ while 79 percent spoke a language other than English.¹¹ Thirty-nine percent of the New York Latino population was foreign born and their median age 42,¹² compared to the 61 percent U.S.-born with a median age of 22.¹³

Seventy four percent, the majority of Latinos in the United States, are citizens.¹⁴ The New York statistics closely mirror those seen nationally as to citizenship.¹⁵

In terms of the undocumented population, although precise numbers can't be calculated, March 2010 statistics place that number at approximately 3.7 percent of the total Latino and Non-Latino United States population and 28 percent of the total foreign-born population.¹⁶ In the year 2012, of the top 15 states with the largest undocumented population, New York State ranked fourth.¹⁷ New York's share of the undocumented population in 2012 was approximately 750,000 (or 8.2 percent of the total in those top fifteen states).¹⁸ In 2012, approximately 79 percent of the national unauthorized immigrant population was Latino.¹⁹

Latino Attorney Demographics

When looking inward at our profession, statistics reflect that it is not racially or ethnically diverse. In fact, it is the least diverse profession in the United States.²⁰

Approximately 85 percent of the legal profession is white non-Latino.²¹ Latinos comprise five percent of the legal profession nationwide.²² In 2017, the total lawyer population in New York was 177,035.²³ For comparison, the 2016 figure was 175,195.²⁴ The last publicly available statistic, from the year 2000, put the number of Latino attorneys in New York State at 3,100; of that 2,378 were located in New York City.²⁵ In a more recent NALP survey of New York City-based law firms, approximately 5.14 percent or 626 Latinos (both male and female), were associates (out of a total associate pool of 12,172).²⁶ Latinas comprised approximately a little under half of that 5.14 percent (2.46 percent) of New York City-based associ-



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ates.²⁷ In that same year there were only 162 (2.48 percent) Latino partners (0.67 percent of that 2.48 percent were Latinas), out of a total of 586 (8.97 percent) minority partners, which was out of a total of 6,534 partners city wide.²⁸ New York City Law firm attorneys amounted to approximately 12.27 percent of attorneys statewide in 2017.²⁹

This is the backdrop for the provision of legal services to a predominantly Spanish-speaking Latino population in New York.

Best Practice Studies

Studies in related professions can offer us insight into best practices. A 2014 financial study entitled “The Hispanic American Experience” offers valuable feedback about the Latino community and their interaction with service providers who, like us, work on sensitive issues.³⁰ There were 1,023 households participating,³¹ and it reported on the financial planning and readiness of Latinos.

Participants indicated that the primary barriers to accessing services were lack of trust of service providers and lack of understanding of the financial products and services.³² Based on this study, Latinos are half as likely than the general population to have a financial advisor and are “significantly” less likely to have been contacted by a financial advisor regardless of their income level.³³

In the author’s opinion the failure to be contacted is significant. Even more telling was that these same respondents stated they were likely to work with an advisor—if contacted (emphasis added).³⁴ The study also showed that the Latinos surveyed largely receive information or advice about finances from informal networks like family, friends, their local bank and the media (television, radio and social media).³⁵

This same study found that the language spoken at home strongly influenced preferred professional providers.³⁶ Among those who spoke Spanish only or predominantly at home, half preferred a bilingual financial advisor³⁷ and 49 percent also indicated that having information written materials in their native language was important.³⁸ The latter is indicative of the need for more multilingual professionals and for accessible information in the areas of law as well.

Effects of Demographics on Quality of Long-Term Care

There are other studies specifically focusing on issues of aging, Latino elderly, and their long-term care. These reflect similar results as the financial study—with language, cultural competency as well as access to resources as the most important factors.

How many Latinos live in nursing homes in New York State? According to statistics from the Kaiser Family Foundation for 2014 (the latest year available), Latinos comprised 8.6 percent, or approximately 9,313, of nursing home residents in the state.³⁹ The total number of nursing residents in the state at the time was approximately 108,291.⁴⁰

According to a Centers for Disease Control Study on long-term care released in 2016 and looking at the years 2013-2014, it found Latinos were represented in adult day care programs at 20.3 percent nationally, while they only accounted for 7.7 percent, 5 percent and 5.5 percent of home health agency clients, nursing home and hospice residents, respectively.⁴¹ They accounted for a mere 2.2 percent of assisted living residents.⁴² Why is this important? There is existing literature that discusses the lesser quality of care Latinos receive in nursing homes.

A 2010 study, which looked at the years 2000 to 2005, found that while Latinos use long-term care services less frequently, they have a greater rate of disability than non-Latinos.⁴³ It also correctly stated that differences exist among the different Latino groups with regard to immigration patterns, education and income levels and these could account for disparities in long term care usage.⁴⁴ The results painted a picture of a group that is not homogeneous, but overall is receiving lower quality care in nursing homes compared to those where the majority of residents are white non-Latino. The study looked at disparities in nursing home performance by assessing nursing home deficiencies, staffing levels, and financial viability.⁴⁵ There were three nursing home categories: 1) those with no Latino residents, 2) those with a maximum of 15 percent Latino residents; and 3) those with 15 percent or more Latino residents.⁴⁶ The study found that the percentage of white non-Latino residents declined, while the percentage of Latinos increased, from 5 percent in 2000 to 6.4 percent in 2005.⁴⁷ The study found that the percentage of Medicaid supported residents in nursing homes with more than 15 percent Latino residents was 30 percent higher than in those with fewer Latinos and more than 60 percent higher in all white nursing homes.⁴⁸ Perhaps not coincidentally, elderly Latinos are more likely to reside in poor performing nursing homes than white non-Latino elderly.⁴⁹

The authors of this study acknowledged that they could not account for differences in patterns among the different Latino groups.⁵⁰ There were also geographic differences, and this made it difficult to determine whether ethnicity or geography influenced the patterns.⁵¹ Another factor is the varying migration patterns among the Latino groups; the time it occurred in history or their age at time of migration,⁵² i.e., older Cuban Americans are more likely to be long-term U.S. residents compared to more recently arrived Mexican counterparts. This may be

advantageous to the former in accessing higher quality nursing homes.⁵³

The authors further noted that they did not address the confounding variable of nursing home care quality with access to resources.⁵⁴ However, they did find that the more Medicaid dependent a nursing home is, the less likely it is to have access to resources to improve quality of care.⁵⁵ Under-resourced facilities care for a disproportionate number of patients both poor and from minority groups.⁵⁶

A similar study, published a year later in 2011, found that changing demographics across the country appeared to drive the racial and ethnic makeup of nursing home residents.⁵⁷ It also remarked that changes in long-term care may also be responsible for the shifts and that as a result minority older people may face hurdles in accessing home and community-based care.⁵⁸ Hence the need for more legal services and providers in their dominant language, if that is Spanish, and in their geographic area.

In terms of the ethnic/racial minority elder nursing home population, the study found that between 1999 and 2008 it outpaced the same population as a whole in metropolitan areas with a high concentration of these populations.⁵⁹ Ultimately, the nursing home population should mirror the country's elder population.⁶⁰ Will nursing homes be able to provide culturally competent and sensitive care?⁶¹ A closer analysis showed that the percentage of racial/ethnic minorities in nursing homes correlated to the overall percentage of elderly in the same minority group but that no such correlation existed for white non-Latinos.⁶² The authors suggested that this meant the white non-Latino elderly had more options and more of an ability to pay for assisted living facilities.⁶³ In contrast, minority elders were more likely to have limited alternatives to nursing homes.⁶⁴ When they reside in nursing homes, the homes are usually of lower quality, with fewer resources, more reliance on Medicaid and less care than those in affluent communities.⁶⁵

According to the National Hospice and Palliative Care Organization (NHPCO), less than 10 percent of eligible Latinos use hospice care nationally.⁶⁶ Some of the reasons for this are lack of knowledge and religious or spiritual beliefs.⁶⁷ It was also found that Latinos are less likely to complete advance directives and some of the factors are poor communication with their physicians, religious or spiritual beliefs and language barriers.⁶⁸

The study highlighted that each ethnic group within the Latino ethnicity is different, and even more differences exist in each subculture within that group.⁶⁹ Families also have their own cultures.⁷⁰ Therefore, the authors recommended that properly trained bilingual staff is essential in order to make the information available and understood and⁷¹ that workshops, seminars and courses

should be provided to educate the community about the available options.⁷²

In our profession, a good first step would be to have fully bilingual support staff. Proficiency in a language is insufficient, especially when it comes to important decision making. A further step would be to have this staff attend legal trainings to gain a better understanding of the law, the work you do and the clientele you serve. They should attend CLEs, not every single one that you do, but those that will serve to enhance their work and your practice. An even better step is to go out into the community and educate the public.

Not surprisingly, the authors found that more assimilated and higher socioeconomic status Latinos were more likely to use hospice.⁷³

As attorneys, we can take away a few lessons from this. You must meet the client where they are and ensure that you have people working with you who are sensitive to and knowledgeable about the communities they intend to serve. I am fully bilingual; however, when I assist clients *who are Spanish-speaking only* in executing their advance directives, wills or other documents I make sure there is an official interpreter in the room.

While I read the English version of the document, the interpreter translates my words into Spanish. Even though I could easily read the document to them in Spanish, I personally feel I am better able to focus on my role as attorney by doing this. Obviously, if they have a question I counsel them in Spanish as I am an attorney and *counselor* at law. These are the roles I am best suited for.

Another study examined older Latinos' attitudes toward end-of-life planning,⁷⁴ and although the sampling was small,⁷⁵ the methodology used to assess the best way to provide guidance was insightful—and unsurprising. The subjects were divided among three groups: The “control group” received standard information; i.e., the New York State Health Proxy Form and instructional booklet in English and Spanish. The second group—“Conversación A” (Conversation A)—received a one-hour protocol in their homes, and there was a dialogue in Spanish that addressed Advance Directives, role of the agent, the importance of advance planning; medical, legal and value issues; and how to begin a conversation with loved ones and the standard information in the control group. The third group—“Conversación B” (Conversation B)—was the “intensive” in that, in addition to being conducted in Spanish and offering the same dialogue as in Conversation A, it also covered other themes developed in a focus group: burden of decision making, control (for decision making), communication, family relationships, religion and spirituality.⁷⁶ Of note is that the authors chose to work with majority Spanish-speaking individuals who, on average, had only completed up to a sixth-grade

education.⁷⁷ The authors admitted that findings could be different among Latinos with more education.⁷⁸

Their study concluded that Conversation A made a significant difference in both attitudes toward and comfort with end-of-life planning, while Conversation B only made a significant difference in attitude.⁷⁹ The authors surmised that Conversation B was too much for a person to think about in one session; considering end-of-life is a difficult subject, and the authors felt the topic was a powerful one that deserved additional time—in a separate meeting.⁸⁰

Additionally, the authors underscored the impact of a single session in the participants' native language as significant.⁸¹ The study showed that, with respect to the control group, printed materials in Spanish were insufficient, especially if dealing with individuals with limited educations.⁸²

From this author's experience working within the Latino community, it is often the adult children, sometimes U.S.-born, of Latino elderly clients who make the first contact with attorneys and other professionals. Typically, when I speak to the parent(s), they are often unprepared for aging and sometimes resistant to doing any kind of planning. This can be the result of factors such as lack of language sophistication, education, socioeconomic status, overall fear of the process and, sometimes, fear of family discord.

Many of the older Latinos who consult with me know what a Last Will and Testament ("a will") is; however, there are times when they have failed to know and/or recognize the value of advance directives. In other words, they are more familiar with the concept of death and the role a will plays upon death than they are with incapacity and why legal protection is necessary should they have a stroke, for example. Simply, they do not understand the breadth of the law available to protect them.

My experience has also shown me that Spanish-speaking clients whose adult children are more knowledgeable with respect to planning seem to be better prepared when they meet with me. The issues I mentioned are not foreign to elder law attorneys generally, but when language and culture are factors the attorney may not be equipped to address them.

Another interesting study was caregiving from the perspective of paid and family (unpaid) caregivers.⁸³ There were two essential criteria for the study: 1) that the caregiver identify as Latino/a, and 2) for the ill individual to have a terminal illness.⁸⁴ The sample was 20 caregivers and all were interviewed in their homes.⁸⁵ Half of them were caring for a person utilizing hospice services, while the other half was caring for a person not utilizing those services.⁸⁶ Thirteen caregivers were family and unpaid, while the remaining seven were paid caregivers.⁸⁷

Four of the unpaid family caregivers had no help; another four received help from other family members, while the remaining received help from a combination of family, friends and community.⁸⁸

Twelve of the family caregivers preferred speaking Spanish.⁸⁹ The study related individual caregivers' stories in their own words and found that, in addition to the ill family member, many Latino caregivers have to deal with intergenerational issues, limited financial resources, and families fragmented due to geographic distance and immigration laws.⁹⁰ The authors stressed that the provision of respite and additional support for the caregiver are critical.⁹¹

Based on this author's own knowledge, the likely reason for caregiver respite is obvious: (1) when you are dealing with stressors, on top of caregiving for a loved one, there is not only strain on the caregiver and patient relationship, but negative impact on the caregiver. (2) Caregiver self-care is obligatory, irrespective of race or ethnicity. (3) In immigrant communities, with stressors that may not exist in longer established ones, self-care can be challenging or seemingly elusive to obtain, irrespective of race or ethnicity.

Lastly, but not less important, the study also emphasized how essential Spanish language written materials and bilingual medical and health and other professionals were, especially those trained to provide services understanding cultural idiosyncrasies.⁹² The statistics and anecdotes underscore the importance of meaningful and personal outreach, education and cultural sensitivity, which may also include language competency and knowing that one size does not fit all—especially with such a heterogeneous group like Latinos. If these things were put into place, we would likely find a population more proactive in preparing for their old age and securing not only their financial futures but also that of their families. The public is there...you just need to know where and how to meet them.

Endnotes

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6. Nassau County, available at <http://www.pewhispanic.org/states/county/36059/> (Nassau County).

- Suffolk County, available at <http://www.pewhispanic.org/states/county/36103/> (Suffolk County).
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Westchester County, available at <http://www.pewhispanic.org/states/county/36119/214,087> or 22 percent of county population.

Orange County, available at <http://www.pewhispanic.org/states/county/36071/>. 69,166 18 percent of county population.

Monroe County, available at <http://www.pewhispanic.org/states/county/36055/>. 55,805 or 7 percent of county population.

Rockland County, available at <http://www.pewhispanic.org/states/county/36087/>; 50,686 or 16 percent of county population.

Erie County, available at <http://www.pewhispanic.org/states/county/36029/>; 43,364 or 5 percent of county population.

Dutchess County; available at <http://www.pewhispanic.org/states/county/36027/>; 32,136 or 11 percent of county population.

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 15. American Bar Association, Commission on Hispanic Rights and Responsibilities: *Latinos in the United States Overcoming Legal Obstacles, Engaging in Civic Life* at 9 http://www.americanbar.org/content/dam/aba/images/commission_on_hispanic_legal_rights_responsibilities/hispanicreportnew.pdf 62.9 percent U.S. Born; 37.1 percent Foreign Born. Of the foreign born population, approximately 26.2 percent are non-citizens.
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