LeadingAge New York

August 14, 2015

Mario Musolino
Acting Commissioner
New York State Department of Labor
Wage Board Objections
Building 12, Room 586
State Office Campus
Albany, New York 12240

Via E-Mail and U.S. Mail

Re: Fast Food Wage Board Recommendations

Dear Commissioner Musolino:

I write on behalf of the members of LeadingAge New York to offer comments on the Fast Food Wage Board's report and recommendations.

LeadingAge New York's nearly 500 members represent the entire continuum of not-for-profit and public providers of continuing care and senior services, including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs and managed long term care (MLTC) plans. Our members employ a broad array of paraprofessional and support staff, in addition to professionals, including certified nursing assistants, home health aides, personal care aides, food preparation and dining room staff, housekeeping staff, and laundry staff who often earn slightly more than minimum wage, particularly outside of New York City. More than 350,000 direct care workers are employed in New York State, earning on average $23,000 annually for full-time employment.[1]

The contribution of these workers to the operation of our members' facilities, agencies, and programs and to the lives of patients and residents is invaluable. Their jobs are often physically and emotionally demanding. They require strong interpersonal skills, excellent judgment, tremendous compassion, and sometimes the completion of a State-mandated certification program. Without question, these employees deserve to be paid a wage that would allow them to cover living expenses, and our members strive to pay their workers appropriately and to offer generous benefits.

[1] "Direct care workers" is defined as home health aides; personal care aides; and nursing assistants, aides and orderlies. Thus, these figures do not include the support staff, such as housekeeping and food service workers, employed by long-term care providers. PHI analysis of U.S. Census Bureau, Current Population Survey, pooled data from 2009, 2010, and 2011 Annual Social & Economic (ASEC) Supplement, with statistical programming and data analysis provided by Carlos Figueiredo, available at http://phinational.org/policy/state-activities/phi-new-york/workforce-facts.

13 British American Blvd. | Suite 2 | Latham, NY 12110
P 518.867.8383 | F 518.867.8384 | LeadingAgeNewYork.org

However, due to our members' heavy reliance on government funding through Medicaid, Medicare and the NYS Office for the Aging, they are typically unable to raise wages.[2] Year after year, with few exceptions, Medicare and Medicaid rates have been slashed or level-funded to balance state and federal budgets, despite rising expenses.[3] In fact, New York State has not made a cost-of-living adjustment to Medicaid rates of payment since 2008. Beginning in 2011, the State adopted an annual global cap on Medicaid spending, delegating to the Commissioner of Health and the Division of the Budget extraordinary powers to cut spending if it threatens to exceed the cap. More recently, the State's decision to mandate the enrollment of Medicaid beneficiaries with long-term care needs into managed care plans has exacerbated the financial pressures on long-term care providers. The transition to a managed care system has brought new administrative expenses, cash flow challenges, and in some cases reduced rates. Margins are typically thin or negative. For example, in 2013 the average operating margin for nursing homes in New York State was -2.7 percent, with 46 percent of facilities experiencing operating losses. Approximately 70 percent of certified home care agencies incurred negative operating margins in 2011 and 2012.[4] Against this backdrop of significant financial challenges, there is little, if any, money available for cost-of-living increases much less major adjustments to pay levels.

The Wage Board's recommended increases in the fast food minimum wage will place long-term care providers at a competitive disadvantage in the labor market. Long-term care providers already struggle to recruit and retain direct care workers and other staff. Given the taxing nature of long-term care jobs and the low wages they typically offer, it is challenging, even in the context of a uniform minimum wage, to compete with McDonald's and similar businesses for capable staff. In some areas of the State, shortages of home health aides are so profound that they are already affecting access to services. Although long-term care providers offer their employees the opportunity for job satisfaction through relationships with patients and residents, that satisfaction cannot compete with the significant wage differentials that will result from the Wage Board's proposal.

There is sufficient reason to believe that the Wage Board's recommendation would also have ripple effects in other long-term care occupations. For example, employees in licensed professions such as licensed practical nurses, social workers and therapy assistants earn more per hour than the proposed fast food minimum wage amount. However, if employers were forced to adjust their paraprofessional wages to compete with fast food establishments for labor, they would also need to increase pay for these licensed professionals to maintain appropriate differentials based on levels of responsibility, education, and credentialing. This ripple effect would add – perhaps significantly – to the financial impact of the proposal on long-term care providers.

Although the Wage Board carefully considered the potential impacts of its recommendations on segments of the fast food industry that might be in competition with the chains, it did not appear to

---

[2] For example, an estimated 84 percent of net patient revenue received by nursing homes is derived from Medicaid and Medicare. "New York's Nursing Homes, Shifting Roles and New Challenges," United Hospital Fund, 2013 at 23, available at http://www.uhfnyc.org/publications/880922.

[3] Medicare reimbursement for skilled nursing facilities has been cut by an estimated $27.4 billion nationwide since 2010. American Health Care Assoc. analysis, available at http://www.ahcancal.org/advocacy/issue_briefs/Issue%20Briefs/Medicare%20Cuts%20Timeline.pdf . Medicare payments for home health agencies have also been cut repeatedly, including a 14 percent reduction between 2014 and 2017.

[4] *Home Care Financial and Program Support Vital for Success of New Care-Delivery Models*, Jan. 2015 by the Home Care Association of New York State, http://hca-nys.org/wp-content/uploads/2015/03/2015HCAFinancialConditionReport.pdf.

consider the impacts on other industries, such as long-term care. While some might argue that the solution would be to raise the minimum wage to $15 per hour for all workers, that answer ignores the realities of long-term care financing. An across-the-board increase in the minimum wage would require a major investment of State and federal dollars. In the absence of State and federal support, such an increase would only lead to the closure of long-term care providers, limited access to care, and deterioration in the quality of services.

As the baby boomers enter retirement, New York State can no longer implement wage policies divorced from long-term care policy. Today, 2.9 million people over the age of 65 live in New York State, accounting for 15 percent of the State's population. By 2030, the number of senior citizens is expected to grow to 4 million, comprising almost 20 percent of State's population.[5] While the number and percentage of aged New Yorkers is growing, the pool of people available to care for them is shrinking. The dependency ratio (i.e., the ratio of adults under age 65 to those over age 65) will shrink from 4.3 to 3.0 between 2015 and 2030.[6]

If the State is to have a qualified long-term care workforce in adequate numbers to care for a growing population of seniors, it must consider the impacts of its wage policies on that workforce, and be ready to invest tax dollars to support the wage levels it establishes. We recommend the creation of an inter-agency commission on the long-term care workforce, with stakeholder representation. This commission would examine workforce trends and shortages and make recommendations concerning appropriate wage levels and the public funding needed to support them, training needs, and policy initiatives to strengthen recruitment and retention. We further recommend slowing the phase-in of the increase in the minimum wage outside of New York City, where long-term care workforce shortages are most severe, in order to permit the adjustment of Medicaid funding to accommodate increased wages and the consideration of the commission's recommendations. Through the concerted efforts and expertise of policymakers and stakeholders, New York can institute policies to promote access to care for senior citizens and individuals with disabilities, while ensuring adequate wages for the dedicated workers who provide that care.

We appreciate the opportunity to comment on the Wage Board's recommendations.

Sincerely,

James W. Clyne, Jr.

James W. Clyne, Jr.
President/CEO

cc: Commissioner Howard Zucker, M.D., J.D.
NYS Department of Health

---

[5] County Data Book, New York State, Table 1, NYS Office for the Aging, available at http://www.aging.ny.gov/ReportsAndData/2015CountyDataBooks/01NYS.pdf.
[6] *Ibid.*