

June 13, 2023

Jeffrey A. Kraut
Chair, Public Health and Health Planning Council
Thomas Holt
Chair, Committee on Codes, Regulations, and Legislation
c/o Executive Secretary, Public Health and Health Planning Council
Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

Re: 20-22 Amendment of Section 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment Requirements)

Via E-Mail

Dear Mr. Kraut, Mr. Holt, and members of the Public Health and Health Planning Council:

I am writing on behalf of the members of LeadingAge New York -- non-profit and public providers of long-term and post-acute care services -- to offer comments on the above-referenced regulation relating to the nursing home stockpiles of personal protective equipment (PPE).

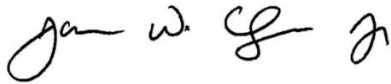
We support the proposed change in the regulation's methodology for calculating the PPE inventory to be maintained by facilities previously designated as "COVID-only" nursing homes. The proposed change would define "applicable positivity rate" for these facilities as 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate during specified periods, rather than the greatest of the three potential positivity rates set forth in the current regulation. Under the latter definition, COVID-only facilities have been required to maintain PPE stockpiles based on rates at or approaching 100 percent. This has led to wasted resources.

We very much appreciate this proposed change in the regulation, but we continue to seek the following additional changes in this regulation and in state policy, as noted in our March 26, 2023 letter to the Council:

- The method of calculating average annual census should be specified in the regulation;
- The requirement to "possess and maintain" the specified inventory should be modified to allow use of stockpiles during supply chain disruptions;
- Medicaid rates must be adjusted to reimburse nursing homes for the cost of their PPE stockpiles;
- The State should initiate a collaborative effort to right-size the government stockpile and develop an appropriate allocation methodology for the next supply chain disruption; and
- The State should consult with clinical experts on an ongoing basis to determine which supplies are needed in facility stockpiles given evolving epidemiology and development of new equipment.

Thank you very much for your consideration of these issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", written in a cursive style.

James W. Clyne, Jr.
President and CEO

Cc: Colleen Leonard
Adam Herbst
Val Deetz
Jaclyn Sheltry
Mark Furnish
Emily Lutterloh