



November 21, 2022

The Honorable Kathy Hochul
Governor
State of New York
The Capitol
Albany, NY 12224

Re: A.7363-A (Gottfried)/S.6522-A (Rivera)

Dear Governor Hochul:

I am writing on behalf of the non-profit and public nursing homes in LeadingAge New York's membership to ask you to veto to A.7363-A (Gottfried)/S.6522-A (Rivera). This bill amends the Civil Practice Law and Rules to prohibit the enforcement of judgments for medical debts through a lien on the debtor's primary residence or income execution orders.

We can appreciate the intent of this legislation as it relates to general hospitals, and we understand the state's interest in protecting patients from catastrophic health care expenses in the event of a health crisis that would leave them destitute. However, because Medicaid eligibility and reimbursement for nursing home care is structured differently than for hospital services, the legislation's application to nursing homes will yield unintended and inequitable results. It will enable affluent New Yorkers to receive nursing home care free of charge, and allow certain unscrupulous representatives of nursing home residents to divert resident resources for their own use instead of using them to pay for their care, while the nursing homes are left to deliver care without sufficient reimbursement or recourse. As a result, the quality of care for all nursing home residents will suffer, and the pressure on the Medicaid program will grow.

This legislation should not impose the same restrictions on nursing homes that it applies to hospitals. Reimbursement, billing, and collection practices for nursing homes and hospitals are very different, as are Medicaid eligibility rules. Notably, when a hospital patient is uninsured or under-insured and doesn't pay their share of the hospital's charges, the hospital can access funding through the state's Indigent Care Pool. Nursing homes are not eligible for funding from that pool and have no similar source of funding.

Unlike hospital patients, most individuals who need long-term nursing home care¹ in New York State qualify for Medicaid. By contrast to hospital patients, nursing home residents may qualify for Medicaid even though they have significant income; but under state and federal law, they must contribute toward the cost of their care. This contribution is called the "net available monthly income" amount or "NAMI." A nursing home's Medicaid reimbursement for each resident is reduced by the resident's NAMI amount. In addition to paying the NAMI, the nursing home resident on Medicaid may be subject to a lien on the resident's home, imposed by the state or county, if the home is not occupied by a close relative.

¹ Short-stay or post-acute nursing home services are generally covered by Medicare and are subject to Medicare reimbursement and cost-sharing rules.

A minority of long-term nursing home residents have income that exceeds the cost of their care or assets that exceed Medicaid asset limits and do not qualify for Medicaid. At admission, these residents and/or their representatives enter into an admission agreement to pay for their care.

Thus, unlike hospitals, nursing homes are reimbursed by Medicaid for the vast majority of their services, and their reimbursement is reduced by expected resident payments. Further, unlike hospital patients, many nursing home residents on Medicaid have significant income and are expected by the state and federal governments to contribute to the cost of their care. Others are relatively affluent and are deemed able to pay for their own care based on state and federal regulations. Most important, unlike hospital patients, nursing home residents do not have to choose between paying their nursing home bills and their basic living expenses; their food, shelter, and utilities are all covered by their nursing home fees. If the resident's income and assets must also be used to cover the expenses of a dependent spouse or child in the community, Medicaid eligibility regulations provide for a community spouse or family income allowance and a community spouse resource allowance to cover those expenses.

Hospital patients must meet more stringent financial eligibility requirements to qualify for Medicaid than nursing home residents and are more likely than nursing home residents to be uninsured or have inadequate health insurance that forces them to bear exorbitant deductibles, co-insurance, and out-of-network fees. Thus, hospital patients are more likely than nursing home residents to find themselves in a situation in which they cannot qualify for Medicaid, but cannot pay both their hospital bills and their mortgage or grocery bills. Further, hospitals are in a better position than nursing homes to absorb "bad debt" when uninsured or under-insured individuals are unable to pay their hospital bills – not only do they have a more diverse payer mix than nursing homes; they also have access to state funding to compensate them for bad debt through the state's indigent care pool.

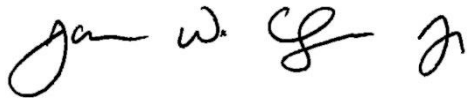
Importantly, nursing home debt collection cases typically arise because the person who holds the resident's power of attorney (the "agent") is taking the resident's money for his or her own benefit and refusing to pay for the resident's care – not because the resident does not want to, or cannot afford to, pay these expenses. Prohibiting nursing homes from enforcing judgments through liens and income executions will eliminate any incentive for the residents' agents to pay the nursing home bills. This legislation will send a message to the agents who are responsible for paying the NAMI, or the private pay amounts, that they can simply ignore the invoices. They will quickly learn that even if the nursing home secures a judgment in a collection action, it will be unenforceable. The nursing home will not be able to place a lien on the resident's home or issue an income execution against the resident's income from investments or business interests.

Nursing homes, particularly non-profit and public mission-driven providers, typically only pursue a debt collection action as a last resort, after all other available solutions to resolve a non-payment situation are exhausted. Homes would prefer to avoid litigation and legal expenses. Our members have no interest in displacing people and forcing the sale of their homes. Notably, although this legislation denies nursing homes the ability to place a lien on a residence, *the homes of Medicaid beneficiaries will still be subject to Medicaid liens placed by the state or local governments. Thus, the bill does little or nothing to protect the resident's home – it only deprives the nursing home of payment for the care it has delivered.*

This legislation threatens to further destabilize the finances of high-quality, non-profit and public nursing homes. These homes are already under financial strain as a result of inadequate Medicaid rates and the stresses brought about by the pandemic and workforce shortages. This legislation will further deprive them of the resources they need to continue operating, to compensate staff appropriately, and to provide high-quality care to vulnerable older adults. It will place at risk their ability to serve all residents, in order to protect the assets and income of residents with means whose agents refuse to pay their bills. It will also increase the pressure on the Medicaid program to cover the costs of care for affluent New Yorkers.

For these reasons, I urge you to veto A.7363-A/S.6522-A.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Clyne". The signature is fluid and cursive, with the first name "James" being the most prominent.

James W. Clyne
President & CEO
LeadingAge New York