



April 3, 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: Supplemental Comments on Addition of Section 400.26 to Title 10 NYCRR & Amendment of Sections 600.1 & 710.2 of Title 10 NYCRR (Inclusion of a Health Equity Impact Assessment as Part of the Certificate of Need (CON) Process)

Via E-Mail

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

We listened with interest to the discussion at the Committee on Codes, Regulation and Legislation last week regarding the draft regulation on Health Equity Impact Assessment (HEIA) of CON applications. We regret that we were unable to participate in-person in the meeting, and we would like to supplement our earlier comments (see attached) and respond to some of the points made in the meeting as they apply to nursing home CON applications.

The discussion at the meeting focused on the CON applications subject to full review and a final determination by the PHHPC. Council members noted that the PHHPC would have the ability to review the Department's recommendations and exercise discretion to deviate from those recommendations where appropriate.

However, it is important to recognize that the majority of nursing home CON applications (including many that are critical to the well-being of residents) never come before PHHPC. Applications subject to administrative or limited review are approved or disapproved by the Department without oversight by the PHHPC.

A search of the NYSE-CON database of CON "construction" applications received between January 1, 2018 and March 30, 2023 revealed the volume of each of the following categories of construction applications from nursing homes:

- Full Review: 15
- Administrative Review: 24
- Limited Review- General, Minor Construction, Service Delivery, Non-Clinical: 176

Only the 15 applications in the full review category would come before PHHPC. **In the limited review service delivery category, the most common type of application was the addition of dialysis services for nursing home residents (either at bedside or in a "dialysis den").** Under the draft regulation, because it would involve the addition of a service, this type application would require a HEIA by an independent consultant and meaningful input from stakeholders. This would potentially delay the availability of a life-

preserving treatment on-site and require residents to continue travel to an off-site facility where they may face a heightened risk of exposures to infectious diseases, while the application is pending. Other examples of applications received in the above limited review categories that would “result in the elimination, reduction, expansion or addition of beds or services” and require an HEIA include:

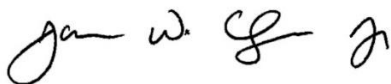
- Decertification of 2 nursing home beds to create a single room for a hospice patient.
- Decertification of 2 beds, reducing overall capacity from 362 beds to 360, by reducing a 22-bed unit to 16 beds and creating 12 single resident rooms and 2 double rooms with fully ADA compliant bathrooms, relocating 4 beds to other floors, and installing a new HVAC system.
- Adding a second shift to an adult day health care program.
- Renovating space to create an expanded rehabilitation therapy suite and decertify diagnostic radiology and clinical lab space (2 services that had not been provided by the facility in over 10 years)
- Decertification of 3 beds and renovation to develop a Geriatric-Psychiatric Skilled Nursing Program.
- Constructing an addition to create a specialty unit for bariatric residents.

Based on our reading of the draft regulation, all of these applications, if submitted after the effective date of the HEIA regulations, would require independent HEIAs and meaningful stakeholder input. The HEIA would not likely lead to a different outcome than a determination in the absence of an HEIA, but it would increase the expense and delays associated with projects like these. None of these applications would be reviewed by PHHPC; decisions would be made by the Department. However, the regulations do not disclose the standards that would be applied by the Department in making these determinations, how the HEIA would be weighed in relation to other public health, quality and safety considerations, the degree of the equity impact that would necessitate mitigation measures, or how mitigation proposals would be evaluated.

We ask that PHHPC and the Department narrow the scope of nursing home projects that are subject to the HEIA requirements and provide the standards that will guide their decisions.

Thank you very much for your consideration of these issues.

Sincerely yours,



James W. Clyne, Jr.
President and CEO

Cc: Colleen Leonard
Johanne Morne
Tina Kim
Adam Herbst
Jason Riegert
Karen Madden

Attachment