

March 24, 2021

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Andrew M. Cuomo,

LeadingAge New York and its not-for-profit, mission-driven members support A.1052B (Bronson)/S.614B (May) with amendments to avoid unintended consequences and align with federal requirements. The legislation directs the Commissioners of Health and the Office of Temporary and Disability Assistance to promulgate regulations to require nursing homes and adult care facilities (ACFs) to allow residents to receive “personal caregiving” and “compassionate caregiving” visitors.

LeadingAge New York’s members share the concerns this bill seeks to address. Residents of adult care facilities (ACFs) and nursing homes have struggled mightily over the past year with restrictions on visitation and the loneliness and isolation that COVID has caused. We have consistently advocated for an appropriate balance between infection control and quality of life in the Department of Health’s (DOH’s) COVID-related directives. Unfortunately, even after nursing homes and ACFs have completed the federal vaccination program and over 75% of residents at New York’s facilities have been vaccinated, too many facilities are prohibited from hosting visitors due to sporadic COVID cases among staff.

Although we support the goals of this bill, it has several technical and substantive flaws that should be addressed before it is signed into law. First, the bill overlooks the significant role of the federal government in regulating nursing homes. During the COVID-19 public health emergency, the Centers for Medicare and Medicaid Services (CMS) has issued several guidance documents governing nursing home visitation. The most recent, updated on March 10, 2021, is available [here](#). The March CMS guidance takes a more liberal approach to visitation than the State’s approach and in some areas directly conflicts with DOH guidance. In addition to the CMS and DOH guidance, nursing homes, in some cases, had to adhere to local health department directives. Each of these governmental entities strikes a different balance between the competing demands of infection prevention and the need for visitation. As a result, nursing homes have been placed in the impossible position of trying to comply with inconsistent requirements. This bill would exacerbate the problem by embedding State visitation requirements in statute and eliminating any flexibility for the State Department of Health to modify its standards to align with federal regulations or guidance.

Second, personal caregiving visitors should be subject to the same requirements as volunteers in facilities. They should be subject to the same orientation, training, background check, and health status assessment as volunteers. To the extent that these visitors are regularly assisting residents with eating, ambulating, hygiene, or grooming they will require training. In addition, if a personal caregiving visitor refuses to adhere to facility policies and protocols, the facility should have the authority to exclude the visitor.

Third, although the bill creates two distinct categories of visitors who would be exempt from visitation restrictions – “personal caregiving” and “compassionate caregiving” -- it conflates the two categories by including “compassionate caregiving visitor” in the definition of “personal caregiving visitor.” Compassionate care, although broader in scope than end-of-life care, is generally time-sensitive and targeted at addressing a psychosocial or health crisis. By contrast, the “personal caregiving” category appears to offer an ongoing opportunity to visit regularly with a resident to serve as an informal caregiver. Given these differences, the two types of visitors should be subject to different requirements. Compassionate care visitors, unlike personal caregiving visitors, should not be delayed in their visitation by prolonged training, background check, or health status assessment requirements. Moreover, the CMS guidance includes valuable standards for compassionate care, and New York should align with the federal guidance.

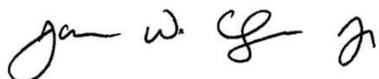
Finally, although this legislation was motivated by the COVID-19 pandemic, it will survive this pandemic. The standards for personal caregiving and compassionate caregiving visitation that are reasonable in the context of COVID-19 may not be reasonable in a different context. We recommend either limiting this legislation to the current pandemic, or including language that would ensure flexibility to respond to changing circumstances.

For these reasons, A.1052B (Bronson)/S.614B (May) should be amended to permit alignment with federal regulations and guidance; to require proper screening and training of visitors and exclusion where appropriate; to exempt facilities from liability for the activities of visitors who are negligent, abusive or fail to follow facility policies; to include distinct requirements for personal caregiving and compassionate caregiving visitors; and to assign regulatory authority for ACFs to the Department of Health. LeadingAge New York's suggested amendments have been shared with the Executive and are available upon request.

Thank you for your consideration.

Sincerely,

James W. Clyne, Jr.

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", with a stylized flourish at the end.

President and CEO
LeadingAge New York