

September 12, 2022

The Honorable Kathy Hochul
Governor
NYS State Capitol
Albany, NY 12224

Re: A.2211 (Simon)/S.3932 (Savino)

Dear Governor Hochul,

LeadingAge New York is writing on behalf of over 400 not-for-profit long-term care provider members regarding legislation A.2211 (Simon)/S.3932 (Savino), which is awaiting delivery to your desk for action. While we appreciate the spirit of this bill, there are some amendments we would urge you to consider.

It is important to note that the Department of Health (DOH) currently requires assisted living residences (ALRs), including those with enhanced (EALRs) and special needs (SNALR) certifications, to notify DOH and submit a “closure plan” at least 120 days prior to the anticipated date of a closure. DOH has comprehensive “Facility Closure Plan” Guidelines setting forth 24 detailed requirements that must be strictly followed prior to the closure of any long-term care facility.

One of the weaknesses of the current process, is the lack of a timeframe for the review of the closure plan by the Department. The choice to close an ALR, EALR and/or SNALR does not come easily and does not happen often. When a provider closes, it is typically due to financial distress and an inability to continue to operate, so a prolonged closure process may not ultimately be to the benefit of the residents. This bill seeks to impose a 120-day timeframe from *the date that the operator provides written notice to residents of the plan to close*, and written notice to residents cannot occur until DOH approves the closure plan. Thus, DOH should have 30 days to review and approve a closure plan in recognition of the urgency of the situation.

Paragraph (c) of section 2 of the bill prohibits the operator from increasing any rent, fees, or other surcharges prior to the approval of the plan for closure and/or decertification by the commissioner. We urge that this paragraph be amended to expressly permit the operator to increase the monthly rate to account for any increase in Social Security Income (SSI). The current SSI rate is so woefully inadequate, and it is critical that providers that serve SSI recipients be able to increase their rates if the federal government increases the federal portion of the benefit.

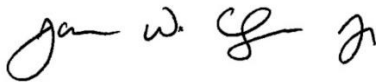
It is also important to make clear that the requirements in this bill should not apply to the circumstance under which an operator modifies or discontinues the provision of a service it has been approved to discontinue, provided it does not result in closure or surrender of an operating certificate. Such changes should not be subject to this comprehensive and lengthy process.

Finally, section 5 of the bill requires the imposition of civil penalties for certain failures related to this process. We recommend that the imposition of civil penalties be at the discretion of the Health Commissioner. Given that closure of ALRs is a rare occurrence, there may be extenuating circumstances that should be considered in the imposition of penalties.

LeadingAge NY supports the spirit of this bill, which is to protect vulnerable residents in the unfortunate and unusual circumstance of closure. We agree that a careful and thoughtful transition for each individual resident is critical in the event of closure and, as such, is already a key aspect of the existing process. Amendments to this legislation would ensure the smoothest transitions possible, and would better meet the bill's legislative intent.

For these reasons, we urge the Governor to consider the proposed amendments to A.2211 (Simon)/S.3932 (Savino).

Sincerely,

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
LeadingAge New York

Attachment

STATE OF NEW YORK

3050

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. SIMON, ARROYO, BLAKE, BARRETT,
BRAUNSTEIN,
COLTON, COOK, DINOWITZ, GOTTFRIED, JAFFEE, JOYNER, M. G. MILLER,
OTIS,
PERRY, STECK, MOSLEY, ABINANTI, L. ROSENTHAL, CARROLL, D'URSO,
BARRON

-- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to specifying
proce-
dures for the closure and/or decertification of assisted living
resi-
dences

The People of the State of New York, represented in Senate and
Assembly, do enact as follows:

Section 1. Title 2 of article 46-B of the public health law is amended by
adding a new section 4653-a to read as follows:

§ 4653-a. Closure of assisted living residences. 1. In the
event that an operator of an assisted living residence elects to close
and to surrender an operating certificate and/or certification as an
enhanced or special needs assisted living residence, the following
provisions shall apply:

(a) The operator shall notify the appropriate regional office of the
department in writing prior to the anticipated date of closure of the
assisted living residence and/or the decertification of such assisted
living residence.

(b) Such written notice shall include a proposed plan for closure
and/or decertification. The plan shall be subject to the approval of the
commissioner, shall include timetables for all steps entailed in the
closure process and shall describe the procedures and actions the operator
will take to:

(i) notify residents and the residents' representatives of the
closure, and/or decertification, including provisions for termination of
admission agreements and involuntary discharge;

(ii) assess the needs and preferences of individual residents;

(iii) assist residents in relocating and transferring to appropriate
alternative settings; and

(iv) maintain compliance with approved plan until all residents have relocated.

(c) Such plan of closure shall be approved by the commissioner within thirty days of submission, unless the commissioner notifies the operator that such written notice does not meet the requirements of this section. The notice shall be deemed approved if not acted upon by the commissioner within thirty days of submission.

2. (a) The operator shall take no action to close the assisted living residence prior to approval from the commissioner of the plan for closure and/or decertification.

(b) The operator shall not close the assisted living residence until all residents thereof have transferred to appropriate alternative settings.

(c) The operator shall not increase the amount of any rent, fees or other surcharges imposed upon the residents of the assisted living residence, their residents' representatives, and/or any applicable health insurance plan, long term care plan or other insurance plan providing payment to the residence on behalf of the resident prior to the approval of the plan for closure and/or decertification by the commissioner; provided that an operator shall not be prohibited from amending an admission agreement to account for increases in Social Security Income.

(d) The operator shall not accept new residents or applications for residency after the operator has notified the appropriate regional office of the department that the operator intends to close and/or decertify the assisted living residence.

3. As part of the final approval of the closure plan, the department, center for health care quality and surveillance and operator shall agree upon a target closure date, which shall be at least one hundred twenty days from the actual date that the operator provides written notification to the residents and the residents' representatives of the closure. In providing notification of such target closure date, the operator shall also notify residents and the residents' representatives that additional time will be provided to residents who make good faith efforts, as determined by the commissioner, to secure an alternative setting and have demonstrated a reasonable basis for needing more than one hundred twenty days to transfer to an appropriate alternative setting, so long as it remains safe and appropriate to reside in the assisted living residence at such time.

4. The operator shall implement the approved plan to ensure that arrangements for continued care which meet each resident's social, emotional and health care needs are effectuated prior to closure and/or decertification.

5. Failure to notify the department of intent to cease operations, failure to submit a plan for closure and/or decertification, failure to execute the approved plan for closure and/or decertification and closing an assisted living residence before all residents have been appropriately relocated, shall may result in the imposition of civil penalties in accordance with section twelve of this chapter when the commissioner deems appropriate.

6. The commissioner may promulgate such rules and regulations as he or she deems necessary to implement the provisions of this section.

7. This section shall not apply when an operator modifies or discontinues the provision of a service it has been approved to provide which does not result in closure or surrender of an operating certificate.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all closures of assisted living residences occurring on or after such effective date and to all closures of assisted living residences pending such effective date; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for

50 the implementation of this act on its effective date are authorized and

51 directed to be made and completed on or before such effective date.