

June 10, 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 on behalf of its not-for-profit, mission-driven members urges you to reject A.7119 (Gunther)/S.6346 (Rivera) which would mandate minimum staffing levels for nursing homes. The state has already addressed concerns about unscrupulous providers that may prioritize financial return over resident care by enacting minimum spending requirements in the State Budget. By prescribing additional, rigid and underfunded staffing requirements before the state addresses the persistent long term care workforce crisis, this bill threatens the viability of quality non-profit providers.

LeadingAge New York's members recognize the critically important role that nurses and CNAs play in nursing homes. Most public and non-profit homes budget for staffing levels that exceed the levels established in the bill. However, an increasing number find it impossible to find qualified candidates to fill the positions. The first step in addressing staffing concerns in nursing homes is for the state to effectively address the persistent and growing long term care workforce crisis. Staffing mandates are not feasible unless a sufficient number of qualified candidates are available and interested in doing this rewarding but difficult work.

According to a report by the Center for Health Workforce Studies, between 2016 and 2026, there is projected to be an annual average of 14,990 unfilled RN positions and 4,880 unfilled LPN positions in New York State.<sup>1</sup> Unfortunately, nurse graduation rates are not expected to meet the existing demand for unfilled nursing positions. Between 2013 and 2017, RN graduation rates increased by only 9 percent and LPN graduations *decreased* by 27.1 percent<sup>2</sup>. Similarly, 69 percent of nursing homes surveyed by the Center for Health Workforce Studies reported difficulty hiring workers for evening, night, and weekend shifts. These shortages extend to both aides and nurses and have worsened dramatically since the pandemic hit. Notably, the legislation **excludes** the current pandemic from the mitigating factors that might influence the penalty imposed for failing to meet requirements.

The \$64 million in first year funding that the State Budget allocates to nursing home staffing is a fraction of the estimated \$320 million in continuing, annual costs that the legislation would impose. In the absence of adequate funding, nursing homes statewide would have to make financial survival decisions. A quarter of our members exceed the required RN and LPN threshold, but do not meet the CNA hours requirement. In order to satisfy the requirements of this bill and avoid penalties, they would be forced to eliminate nurse positions to add CNAs, even if their medically-complex residents required more skilled nursing care, and even if they had ample CNA, recreation, and therapy staff to care for their residents.

Most of our member organizations have struggled with staff shortages for years and many incorporate innovative and flexible staffing approaches to meet resident needs that may include physicians, nurse practitioners, volunteers, recreation and therapy staff. None of these would be taken into consideration in gauging compliance with the mandate, nor would the acuity of the resident population.

By increasing competition for scarce staff the legislation would also put upward pressure on wages for all nursing staff. This would further destabilize the finances of providers whose Medicaid rates have not been adjusted for inflation for 13 years, even as they have increased wages annually to retain staff. New York's nursing homes cannot continue to

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<sup>1</sup> "The Health Care Workforce in New York State: Trends in the Supply of and Demand for Health Care Workers," 2020, at p.26

<sup>2</sup> *Ibid.* at p.23

absorb these mandates and remain viable. Even before the pandemic, New York's Medicaid rates paid to nursing homes fell short of costs by \$64 per resident day.<sup>3</sup> In 2019, the most recent year for which financial data is available, two-thirds of public and non-profit nursing homes in New York had negative operating margins. The median operating margin for these homes was -2.9 percent.<sup>4</sup> Since 2014, 13 nursing homes have closed-- 11 were not-for-profit and one was public. Nearly 50 public and not-for-profit homes have been sold to for-profit entities.

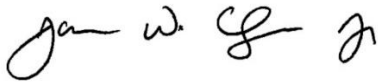
The pandemic has only deepened the financial distress of our nursing homes, and the State has not made available sufficient funding to cover existing costs and losses, much less new staffing requirements. Today, nursing homes continue to bear the cost of mandatory twice-weekly staff testing, inflated costs of personal protective equipment (PPE), and occupancy rates that have yet to bounce back to the relatively consistent thresholds they previously maintained. While most other states provided increased funding to nursing homes during the pandemic, New York State proceeded with a 1.5% cut to provider Medicaid payments. Federal Provider Relief Funds (PRF) have covered only about a third of a typical nursing home's COVID losses.

For these reasons, we ask that you reject the bill and work with us and other stakeholders to develop a strong long term care workforce as well as a long term care system that is sufficiently funded to allow these critical, difficult jobs to be financially attractive.

Thank you for your consideration.

Sincerely,

James W. Clyne, Jr.

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

President and CEO  
LeadingAge New York

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<sup>3</sup> Hansen Hunter & Company, "Report on Shortfalls in Medicaid Funding for Nursing Center Care," November 2018. New York's \$64 per day shortfall represents the largest shortfall of the 28 states the report analyzes.

<sup>4</sup> LeadingAge NY analysis of 2019 RHCFC Medicaid Cost Report data.