MEMORANDUM

A.8775 (Burke)/S.7726 (Skoufis)

An act to amend the public health law, in relation to directing the department of health to establish and implement an infection inspection audit and checklist on nursing homes

LeadingAge New York and its not-for-profit, mission-driven members write to you today with concerns surrounding A.8775 (Burke)/S.7726 (Skoufis), a bill which amends Chapter 768 of the laws of 2021 by establishing that the nursing home infection inspection control checklist must be consistent with the infection control survey standards issued by the federal government. LeadingAge NY is gratified to see the proposed checklist is better aligned with existing federal requirements, however, these amendments now threaten to impose costly and duplicative penalties on nursing homes not meeting *100 percent* of the infection control audit. While we support the goal of implementing strong infection prevention measures in all health care facilities and holding facilities accountable for deficiencies, this bill is duplicative of nursing home infection prevention surveys and checklists already developed and implemented by the Centers of Medicare and Medicaid Services (CMS) and the State Department of Health (DOH). In the context of a pandemic and a staffing crisis, we maintain that redundant administrative requirements such as these divert staff from all-important resident care responsibilities, without improving quality or outcomes.

Federal regulations and guidance already require the state to conduct infection control surveys of nursing homes that meet certain triggers (e.g, 3 or more new COVID cases) and at least 20 percent of their nursing homes annually, in addition to the routine recertification surveys that are required at least every 18 months. This bill goes further and will require the state to do another annual review of all nursing homes. In the event that a nursing home does not meet 100 percent of the checklist criteria, the facility will be deemed non-compliant and will be subject to recurring infection control surveys every 90 days until the facility meets all of the established criteria. These surveys are labor-intensive, requiring the attention of facility leadership and participation of direct care staff.

Importantly, this legislation imposes penalties for non-compliance, as does existing federal guidance. So, although the audit checklist itself will principally align with existing CMS requirements as was recommended, facilities will now be at risk not only of repeated surveys, but also of duplicative penalties from both State and Federal government. While repeated surveys and penalties may be warranted for facilities with a pattern of infection control deficiencies or serious deficiencies, the imposition of duplicative surveys and penalties for missing one component of an infection control competency checklist is counterproductive and will divert both staffing and financial resources from direct resident care and implementation of infection prevention measures.

Nursing homes have been and continue to be subject to repeated infection control surveys, audits and investigations throughout the pandemic based on the existing infection control checklist developed by CMS. Many LeadingAge New York members have reported being surveyed six times over two months. In addition to the CMS and DOH surveys, nursing homes have been inspected or audited by CDC, local health departments, OSHA, and the NYS Attorney General's office for compliance with infection prevention practices. They are surveyed against an array of regulations and guidance documents that include standards similar to those contained in this legislation.

Finally, this legislation requires nursing homes to have dedicated staffing teams for cohorted areas charged with limiting the spread of a contagious or infectious disease. While dedicated staffing teams are appropriate as an infection prevention measure, this goal will not be achievable for providers in our current environment. In the context of severe staffing shortages, such as those we are experiencing now, it is impossible to have dedicated and consistent staffing teams for each cohort.

In summary, imposing an additional layer of oversight, bearing similar infection control competency checklist requirements that already exist in law, while threatening duplication of potential penalties to providers that are doing their best to serve residents during a years-long pandemic and a staffing crisis, is counterproductive. It will only further direct administrative staff time away from the quality of life and quality of care needs of residents.

For these reasons, LeadingAge NY opposes A.8775 (Burke)/S.7726 (Skoufis) and urges that it be rejected.