

MEMORANDUM

A.11326 (Lee) / S.4275-A (Kavanagh)

AN ACT to amend the public health law, in relation to the closure of nursing homes

LeadingAge New York opposes this legislation which would require nursing home operators to notify the State Department of Health, municipal leaders, and the community board in New York City at least 90 days prior to an anticipated closure. This notification must include a proposed plan for closure. This bill goes further than previous versions by requiring operators and the Department of Health to publicly post these notices with closure plans on their websites. It also allows local governments or community boards to convene public or private meetings and make recommendations to the State Department of Health regarding the closure.

Nursing home closures are already subject to extensive regulatory oversight, including the submission of detailed closure plans to the Department of Health 90 days prior to an anticipated closure; meetings with residents, their representatives, and staff; the engagement of residents and their representatives in locating alternative care settings; the preservation and transfer of medical records; and notification of elected representatives once the closure plan is approved. In order to avoid disruption of care and abrupt closures, Department of Health guidance prohibits public announcements of potential closure information until receipt of the Department's written approval of an orderly closure plan. By contrast, this bill requires the notification of local officials and the resident council concurrent with the submission of the closure plan to the Department 90 days prior to the closure, authorizes local officials to conduct public meetings about the closure, and requires posting of the closure plan on websites, all prior to Department approval of the plan.

The purpose of the 90-day advance publication required by the bill is unclear. Local officials play no role in the approval or oversight of nursing home closures, unless the nursing home is operated by a local government. Moreover, the early public notification and the public meetings under this bill will not save the facility. More likely, it will exacerbate the conditions that have driven the nursing home to make the difficult decision to close and may accelerate the closure of the facility.

When a nursing home's intention to close becomes public, its staff may pursue other employment opportunities prematurely, and staff vacancies and absenteeism will grow. The home may become unable to care for even the reduced census it has admitted and may be forced to close on an expedited basis. Further, vendors and creditors that have been lenient in collecting past due payments will begin exerting all levers available to protect their interests and will further destabilize the facility. Public notice and hearings 90 days in advance of a planned closure are more likely to undermine residents' best interests than to improve the closure process.

The decision to close a nursing home does not come easily and is made only as a last resort. Nursing homes typically close because they are predominantly funded by Medicaid, and Medicaid rates do not cover their costs. In fact, New York's Medicaid rates are based on 2007 costs, discounted by 9 percent and are among the worst in the nation when compared to costs, according to the federal Medicaid and CHIP Payment and Access Commission. As a result of inadequate Medicaid rates, nursing homes face extraordinary challenges recruiting and retaining staff and covering other costs.

Not-for-profit nursing homes are often part of continuing care organizations that provide an array of both community-based and residential services for older adults and people with disabilities. Financial losses in the nursing home affect other services offered by these organizations. For not-for-profit nursing homes, closing the nursing home is a difficult decision that is made by volunteer board members who are striving to preserve a continuum of care for their communities. When financial losses in the nursing home jeopardize the financial stability of the entire continuum, the organization may have no other choice but to close the nursing home, in order to preserve the viability of other services.

The loss of a nursing home is indeed a loss for the community, the people who live there, and the dedicated staff. However, early public notice or public meetings regarding the closure will not reverse the decision or improve the lives of the residents. Providing adequate Medicaid reimbursement is the most effective strategy for preserving nursing homes.

For these reasons, LeadingAge New York opposes A.11326 (Lee) / S.4275-A (Kavanagh) and urges that it be rejected.

LeadingAge New York represents approximately 350 not-for-profit and public long term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.

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