LeadingAge New York

OPPOSE

SENIOR HOUSING | ASSISTED LIVING | ADULT CARE FACILITIES | HOME CARE | RETIREMENT COMMUNITIES
ADULT DAY HEALTH CARE | PACE/MLTC | NURSING HOMES

MEMORANDUM

A.6052 (Lunsford)/S.1785-A (Skoufis)

AN ACT to amend the public health law, in relation to requiring infection updates and infection control planning in residential health care facilities

LeadingAge New York writes to oppose this legislation, which expands the current pandemic emergency plans required of nursing homes by adding a requirement to notify all residents and their families or guardians within twelve hours of a pandemic-related infection being detected. The legislation also requires nursing homes to prepare separate accommodations for residents at risk of infecting others, otherwise known and referred to as "cohorting". While the intent of this legislation is laudable, particularly for the time at which it was drafted, LeadingAge NY opposes its passage as it would add another layer of unnecessary requirements in an area of already complicated, and at times contradictory, regulations. Moreover, the cohorting procedure described in the bill does not reflect current best practices or allow for flexibility in response to an evolving virus and changes in public health recommendations.

Nursing homes are regulated by both the federal and state governments, and during the COVID-19 pandemic federal and state guidance have frequently been out of sync. This has caused confusion for nursing home staff, residents, families, and even surveyors and local health authorities. First, there are already stringent federal requirements regarding communications with families on COVID infections in nursing homes. Under existing federal regulations, homes must inform residents, their representatives, and all resident families by 5 p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID-19, or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other. They also must provide any cumulative infection updates for residents, their representatives, and families at least weekly.

Given these federal notification requirements and the existing family notification requirements of PHL 2803(12), a twelve-hour notification requirement is unnecessarily burdensome. With rapid tests, open visitation, and the lifting of community masking requirements, nursing home staff and residents are frequently testing positive. A twelve-hour notification requirement that *all* residents and family members be notified of any infection in the building would often require twice daily notification of hundreds of individuals. This proposed twelve-hour notification requirement goes further than existing federal regulation to the detriment of the resident. Nursing home staff must be given the ability to focus on resident care, especially when there is a potential COVID outbreak in a facility, and especially in light of the severe staffing shortages that providers and staff are facing.

Similar to the family communication requirements around COVID, cohorting is also governed by the Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) guidance. Additionally, cohorting practices are heavily driven by the particular facts of each outbreak in each facility. The proposed blanket requirement to have a separate area in which to cohort residents who are

"suspected" of being infectious, including a "designated infectious disease care unit" does not reflect the complexity of cohorting to prevent transmission, nor does it reflect current best practices.
Cohorting protocols are evolving, and in some situations, facilities are advised by epidemiologists to isolate or quarantine in place, particularly if an infection is suspected but not confirmed. Shifting residents to different units can result in further transmission of the disease, especially with today's variants and vaccinations. Residents may be infected with COVID and not test positive or show symptoms. Residents may exhibit symptoms, but may not test positive for 5-7 days. Cementing these requirements in statute, when the virus is evolving and public health guidance is changing, is not beneficial to residents or staff. In fact, it may have the opposite effect.

Moreover, this legislation and cohorting requirement does not exhibit any recognition of the residents' rights and the fact that a long-term care resident's room is his or her home, with personal photos and mementos. A resident's unit is a familiar neighborhood with friends and caregivers. Those few familiar faces have become even more meaningful to residents that may not get frequent visits from other family or loved ones. Moving a resident to a different room or unit should not be taken lightly. It should be done only when public health guidance supports it.

For these reasons, LeadingAge New York opposes A.6052 (Lunsford)/S.1785-A (Skoufis) and urges that it be rejected.

LeadingAge New York represents over 400 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.

Contact: Sarah Daly at sdaly@leadingageny.org