

MEMORANDUM

A.191 (Gottfried)/S.1451 (Rivera)

AN ACT to amend the public health law, in relation to health equity assessments in the establishment or construction of a hospital

LeadingAge New York seeks to raise concerns regarding this proposed legislation, which would require a health equity impact assessment to the review of any certificate of need (CON) application submitted by a health care facility licensed under Article 28 of the Public Health Law. Under this bill, a hospital, nursing home or diagnostic and treatment center seeking any type of CON approval would be required to submit a health equity impact assessment with its application that demonstrates how the project would address health care access and disparities. This assessment would have to be prepared by an independent entity with public engagement.

LeadingAge New York and its members wholeheartedly support the goal of eliminating disparities in health care access and outcomes. We note in particular the challenges faced by older adults in accessing health care and in overcoming the fragmentation of health care services. The long-standing disparities in the allocation of public funding for long-term care and senior services, which have been starkly highlighted and exacerbated by the COVID-19 pandemic, must also be acknowledged and addressed.

Although well-intentioned, this bill would prolong an already burdensome CON process and may have the unintended effect of delaying projects that would improve access and quality. The CON application process applies to a broad array of health care facility establishment and construction projects, many of which have only an attenuated connection to health equity, including such projects as the replacement of a roof or sprinkler system. The CON approval process is already lengthy, involving several layers of review and submission of multiple schedules, plans, policies, financial statements, schematics, etc. A decision on an application can take months to over a year, resulting in increased costs and delays in needed facility upgrades or expansions of services. For full and administrative review projects that involve a public need review (typically applications involving the establishment of a health care facility, major service additions or reductions, and larger construction projects), the impact on medically-underserved groups is already an element of the existing public need review. For less significant projects (e.g., roof replacement), submission of a health equity impact assessment may add little value.

Finally, many of the elements of the health equity impact assessment set forth in the bill are not relevant to nursing homes. Notably, nearly 75% of nursing home residents are Medicaid beneficiaries. Nursing homes are already required under longstanding DOH regulations [10 NYCRR 709.3(m)] to provide access to Medicaid beneficiaries under a formula that is based on the regional average percentage of Medicaid admissions. Accordingly, adherence to Medicaid access is already required as a contingency for any full review nursing

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home CON project. Moreover, unlike hospitals and many clinics, nursing homes do not have access to indigent care funding under Public Health Law 2807-k.

Finally, because they are heavily reliant on Medicaid funding which has not provided adequate reimbursement for nursing home services for many years, nursing homes do not have the resources to retain an independent consultant to prepare a health equity assessment each time they submit a CON application. Medicaid capital reimbursement to nursing homes and hospitals was cut in the 2019-20 budget. This legislation would layer a potentially costly mandate on top of this cut. This additional expense will only add to long-term care costs, which are funded primarily through Medicaid.

For these reasons, A.191 (Gottfried)/S.1451 (Rivera) should be limited to acute care hospitals and clinics and limited to only those CON applications that are subject to full review.