

MEMORANDUM

A.108 (Gunther)/S.1168 (Rivera)

AN ACT to amend the public health law, in relation to enacting the "safe staffing for quality care act"

LeadingAge New York opposes this legislation that amends the Public Health Law to create specific staffing ratios for nurses and other direct-care staff in hospitals and nursing homes. Available research does not bear out that specific staffing ratios result in improved quality of care or quality of life. In fact, the only outcome of this legislation will be higher operating costs and less quality of life programming for nursing home residents.

From a public and fiscal accountability standpoint, nursing homes are already responsible for ensuring adequate staffing. For example:

- Staffing is already one of three domains used by CMS in the Nursing Home Compare 5-star rating system that is provided to the public for purposes of comparing facilities. The 5-star rating for staffing is based on two case-mix adjusted measures:
 1. Total nursing hours per resident day (RN + LPN + nurse aide hours); and
 2. RN hours per resident day. The hours reported in 5-star reflect both facility employees (full time and part time) and agency/contract staff.
- New York's Nursing Home Quality Pool includes the following two staffing measures among the quality measures for which facilities receive scores:
 1. The CMS 5-star staffing rating; and
 2. The level of temporary contract/agency staff.

A total of \$50 million is distributed under the quality pool each year (which is funded out of the base).

- In 2001, federal legislation mandated that every nursing home in the country post in a prominent, public place the numbers of licensed and unlicensed direct care staff on duty for every shift. The final regulations on posting nurse staffing information in nursing homes were published by CMS in late October 2005 and remain in effect.

The staffing standards proposed in this legislation (i.e., upper end of the range) would conservatively cost an estimated \$1.06 billion annually to implement in nursing homes. The legislation would require more than an hour of additional staff time per resident per day when compared to current staffing levels. The typical downstate nursing home would see a \$15 per resident day cost increase if it were to increase aide staffing to meet the standard. For a home serving 200 residents, that totals over \$1 million per year for increased aide staffing.

The 83 homes that the State has identified as most financially vulnerable (i.e., those that qualified for 2012 financially disadvantaged facility designation) would see their costs increase by \$140.6 million per year, an average of \$1.7 million per home. A precondition to the designation is a negative margin, so all of these homes are already losing money on operations and struggling to survive. Few would be able to sustain an unfunded mandate that would increase costs to such a magnitude. Without additional funding from Medicaid, facilities would be forced to make other cuts to programs and services that enhance residents' quality of life.

LeadingAge New York is not convinced that these costs are justified. While staffing and quality are related, the raw number of nurses and aides do not automatically translate to quality outcomes. Studies suggest that there is a point of diminishing returns, meaning that staffing levels above a certain threshold yield minimal results. CMS Nursing Home Compare data bears this out:

- Of the 377 homes receiving 3 or fewer stars for staffing, 286 or 75.6 percent, were awarded 4 or 5 stars for quality measures that indicate positive outcomes
- Conversely, 241 homes received 4 or 5 stars for staffing, yet 163 or 63.5 percent, scored 3 or fewer stars on their survey (periodic inspection).

By arbitrarily focusing exclusively on the numbers of nurses and aides, the legislation also fails to take into account that several other professionals and paraprofessionals such as therapy personnel, activities aides and housekeeping staff also contribute significantly to the resident experience of care and quality outcomes.

Additionally, although nursing is one of the most rapidly growing fields, nursing education programs simply cannot keep up with the current demand; some schools are only able to admit about 25% of the applicants. Universities cite the cuts in funding and subsequent loss of staff positions as the cause of their inability to meet the needs of the number of potential students applying (add to that the aging-out of the nurses qualified to teach). There simply is not an adequate supply of licensed nursing staff to fill the ratios as proposed under this legislation. Given the shortage, LeadingAge New York is concerned that nursing homes will struggle to recruit and retain quality staff, given the significant competition for experienced nurses.

Before mandating a number, the State should be looking at ways to encourage entrance into the field, promote recruitment and retention of nurses and aides, assist nursing education programs that are struggling, assisting (as they have in the past) with the cost of nursing education, reducing burdensome paperwork requirements that take direct care workers away from the bedside, and promoting the field of nursing in general.

For these reasons, LeadingAge New York opposes A.108 (Gunther)/S.1168 (Rivera) 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.