

MEMORANDUM

A.3703 (Epstein)/S.2984 (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 90 days ahead of an anticipated closure. This notification would include a proposed plan for closure and would also be delivered to the local government officials, including the county executive, the presiding officer of the local legislative body, the facility's resident's council, and to the community board if the nursing home is located in New York City. If the local government or community board has "cause to suspect" that the operator is closing the nursing home for reasons other than the health and safety of the residents, the local official may 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 a 90-day notice requirement, approval of closure plans, the engagement of residents and their representatives in locating alternative care settings, the preservation and transfer of medical records, and more. Notably, in addition to existing requirements, this bill requires the notification and engagement of local officials. The purpose of this notification is unclear, as 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 notification and the public meetings that may ensue under this bill will lead to publicity concerning the closure at an earlier point than is currently typical. Early publicity concerning a planned nursing home closure is likely to exacerbate the conditions that have driven the nursing home to make the difficult decision to close and may accelerate the closure of the facility.

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 are unable to recruit and retain staff and cover other costs.

These conditions are forcing many of New York's nursing homes to reduce their admissions in order to ensure adequate staffing. Limits on admissions further reduce the revenue available to cover nursing homes' fixed costs, leading to a downward spiral that can result in financial failure. Often, financial losses in a nursing home affect other services for older adults and people with disabilities. Many of our not-for-profit nursing homes are affiliated with continuums of aging and disability services. When financial losses in the nursing home jeopardize the financial stability of the entire continuum, the operator may have no other choice but to close the nursing home in order to preserve the viability of other services.

Once a nursing home's intention to close becomes public, its staff will pursue other employment opportunities, 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.

The decision to close a nursing home does not come easily and is made only as a last resort. Once a closure decision is made, the local government has no decision-making or regulatory role in overseeing the closure. Convening public meetings at the local level will not save the nursing home. In fact, the public attention may accelerate the closure and may not support the best interests and smooth transition of residents.

For these reasons, LeadingAge New York opposes A.3703 (Epstein)/S.2984 (Kavanagh) and urges that it be rejected.