



April 7, 2025

Jeffrey A. Kraut
Chair, Public Health and Health Planning Council
Thomas Holt.
Chair, Committee on Codes, Regulations, and Legislation
John Rugge, M.D.
Chair, Committee on Health Planning
c/o Executive Secretary, Public Health and Health Planning Council
Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

Re: Commissioner's "Acute Labor Supply Shortage" Determination for Purposes of Nursing Home Staffing Penalties

Dear Mr. Kraut, Mr. Holt, Dr. Rugge, and Members of the Public Health and Health Planning Council:

I am writing to you on behalf of the not-for-profit and government-sponsored nursing homes represented by LeadingAge New York. We would like to bring to your attention the attached letter to the Governor and Commissioner McDonald regarding the Commissioner's recent determination that less than half of New York's Metropolitan and Non-Metropolitan Statistical Areas ("MSAs and NMSAs") were experiencing a shortage of nurses or certified nurse aides (CNAs) in the last two quarters of 2023. This determination is an element of the State's enforcement of nursing home staffing requirements and allows nursing homes in shortage areas to seek a reduction in the regulation's severe daily penalties. As the advisory and decision-making body that adopted the applicable regulation (10 NYCRR 415.13(f)) and given PHHPC's role in promoting access to high-quality care, we believe that PHHPC has an interest in this matter.

This determination not only conflicts sharply with the facts that our members are experiencing in the field, but will also have adverse effects on our health system and health care consumers. As a result of this decision, many, if not most, nursing homes in New York State are now facing penalties of up to *\$180,000 per quarter* without the ability to seek a reduction based on staffing shortages. These penalties are purely punitive and will only deplete the resources of facilities that are already facing a 25 percent shortfall between Medicaid rates and costs. In order to achieve the mandated hours, nursing homes will either have to reduce occupancy by another 8,400 beds, in addition to the 7,200 beds that are currently being kept vacant due to staffing shortages, or hire an additional 1,500 aides and nurses at a cost exceeding \$75 million annually. Rather than promoting better staffing, penalties will further diminish the ability of nursing homes to recruit more staff.

As our attached letter describes in greater detail, the national benchmark used by the Department to evaluate the availability of nurses and aides is flawed and does not reflect the realities of New York's health care labor market. Moreover, the benchmark was never disclosed to PHHPC or stakeholders as part of the rulemaking or implementation process. Our attached letter asks the Governor and Commissioner to reconsider and reverse this determination, to allow nursing homes statewide to seek reductions of potential penalties (as they have in prior quarters), and to use a more reasonable methodology for evaluating staffing shortages going forward.

Thank you for your attention to this issue of grave concern to nursing homes, the people they serve, and the health system as a whole.

Sincerely yours.

A handwritten signature in black ink, appearing to read "Sebrina Barrett". The signature is fluid and cursive, with a large initial "S" and "B".

Sebrina Barrett
President and CEO

Cc: Colleen Leonard

Attachment