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.1999-A (Gottfried)/S.1783 (Skoufis)

An act directing the department of health to establish and implement an infection inspection audit and checklist on residential care facilities, nursing homes and long-term care facilities

LeadingAge New York opposes this legislation which would require the Department of Health (DOH) to establish and implement an infection control competency audit, establish infection control competency standards, and require implementation of a checklist for residential care facilities nursing homes. Under this legislation, facilities will be required to meet eighty percent of an audit evaluation checklist, which will incorporate core competencies relating to infection control, personal protective equipment (PPE), staffing, clinical care, communication, and reporting.

While we support the goal of implementing strong infection prevention measures in all health care facilities and holding facilities accountable for deficiencies,, this bill is duplicative of nursing home infection prevention surveys and checklists already developed and implemented by the Centers of Medicare and Medicaid Services (CMS) and the State Department of Health (DOH).

Nursing homes have been subject to repeated and ongoing infection control surveys, audits and investigations throughout the pandemic. CMS and DOH are conducting infection control surveys every time a nursing home's number of reported COVID cases crosses a threshold. Many LeadingAge New York members report being surveyed six times over two months. These surveys are based on an infection control checklist developed by CMS. In addition to the CMS and DOH surveys, nursing homes have been inspected or audited by CDC, local health departments, OSHA, and the NYS Attorney General's office for compliance with infection prevention practices. They are surveyed against an array of regulations and guidance documents that include standards similar, but not identical to those contained in this bill.

Although these inspections and surveys can be an important component of infection control efforts if appropriately targeted, they also divert clinical and administrative staff from critical patient health and safety responsibilities and should not be unnecessarily duplicative. Most recently, a LeadingAge New York member reported a DOH survey team arriving just as a vaccination clinic was launching at the facility, forcing facility leadership to attend to the survey team, instead of the smooth operation of the vaccine clinic and the needs of the staff and residents.

Notably, nursing home quality is largely governed by detailed CMS regulations and guidance, which are enforced principally via inspections by DOH. Reliance on CMS regulations supports standardization in measurement of nursing home quality and the validity of the national Nursing Home 5 Star rating tool. Adding unique New York State infection control standards, surveys, and tools only duplicates and confuses compliance and quality measurement efforts. Since the inception of the pandemic, nursing homes have been subjected to inconsistent and often conflicting requirements and guidance by various public health and regulatory authorities. Guidance and direction provided by DOH have often been contradicted by local health departments and have often varied from guidance offered by CMS and CDC. This bill would only contribute to the confusing array of inconsistent requirements by imposing a new set of infection control requirements that are similar, but not identical to, those adopted by other health authorities.

Importantly, the justification for this bill suggests that residential health care facilities are at fault for the pandemic and its impact on residents due to a lack of preparedness. It was well-known even before the COVID-19 outbreak hit New York that older adults and those with underlying health conditions were more vulnerable to infection and serious illness or death as a result of COVID. However, in the early months of the pandemic, the resources that were needed to curb the spread of the disease among people receiving long-term and post-acute care services were not available. There was a national shortage of personal protective equipment (PPE). COVID testing was barely available and was reserved for people who met narrow criteria. Government officials made decisions to prioritize hospitals for personal protective equipment, testing, and surge staffing; long-term care providers were not the top priority.

Staffing - a challenge pre-pandemic – was and continues to be further challenged by precautionary quarantines, furlough requirements, and other factors such as childcare issues with schools closing. These are all factors that were out of the providers' control.

Blaming facilities for these deaths overlooks the dedication long-term care staff have exhibited over the last 11 months. They have been working tirelessly on the frontlines of this pandemic, and they will continue to do so. Instead of imposing duplicative requirements, the focus of policy-makers should be on developing the resources long-term care providers need to mitigate the impact of COVID going forward. To prevent the spread of the virus in long-term care settings, we need consistent access to PPE, timely test results, and surge staffing and the resources to pay for them.