



March 23, 2022

Honorable Letitia James  
Attorney General  
State of New York  
The Capitol  
Albany, NY 12224

Re: Nursing Home Staffing

Dear Attorney General James:

I am writing on behalf of the members of LeadingAge New York, a statewide association of not-for-profit and public providers of long-term care services. I watched with interest your press conference this week on nursing home staffing and appreciated your call for adequate funding in the state budget to support the dedicated caregivers working in our nursing homes. I question, however, your support for immediate enforcement of the state's minimum nursing hours requirement, given the current staffing emergency and inadequate nursing home reimbursement. There is nothing our not-for-profit and public nursing home members would like more than to have ample staff and be able to pay them well. Unfortunately, nursing homes' ability to pay competitive wages and recruit staff in the context of a statewide health care staffing emergency depends on New York's Medicaid program which covers nearly 75 percent of nursing home days. Based on our analysis, very few nursing homes in the state would currently meet the rigorous and unrealistic, state mandated staffing standards; and, speaking on behalf of the not-for-profit and public nursing home community, it is not from a lack of effort to meet these standards, but instead, a lack of resources and a lack of available candidates for open positions.

New York's nursing homes have not had a Medicaid rate increase in 14 years, while costs have grown by a staggering 31 percent. Even before the pandemic, New York's nursing home Medicaid rates were among the lowest in the nation when compared to their costs, according to a study by a national firm.<sup>1</sup> When the pandemic hit and most states increased their Medicaid rates for nursing homes, the Cuomo administration imposed additional cuts on nursing homes, despite skyrocketing expenses for personal protective equipment, hazard pay and sick leave, and infection prevention measures.

Inadequate Medicaid rates have made it particularly challenging for nursing homes to respond to workforce shortages that have grown during the pandemic across all sectors. Our analysis of nursing home payroll data shows that, even using a conservative estimate, nursing homes would have to hire **more than 12,000** nurses and aides to comply with New York's minimum nursing hours requirements. This gap has tripled since late 2019. On average in 2019, the non-profit and public homes in LeadingAge NY's membership were staffing above the new law's requirements. During the pandemic, staffing hours dropped dramatically regardless of sponsorship or ownership. Today, even the non-profit and public homes would have to hire more than 4,000 nurses and aides to

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<sup>1</sup> Hansen Hunter & Company, "Report on Shortfalls in Medicaid Funding for Nursing Center Care – 2018 Update."

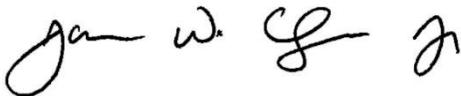
meet the requirements of the law. Those job applicants simply do not exist and will not materialize without a substantial and ongoing increase in Medicaid reimbursement that would support higher wages.

With Medicaid paying for nearly 75 percent of the days of care they deliver, and Medicare covering much of the rest, nursing homes can't raise their prices to offer higher wages like hospitals and businesses. These conditions have made compliance with the minimum staffing hours law infeasible.

Due to staffing shortages, nearly half of our members are already suspending admissions and closing units to enable appropriate levels of staffing. These efforts to staff appropriately are causing back-ups in hospitals and waitlists for services. In fact, if the minimum staffing requirements were enforced tomorrow, nursing homes would have to substantially scale back admissions even further to comply. This would only prolong the hospital stays of patients who are ready for discharge to post-acute care and would exacerbate shortages of hospital beds for patients who need acute care.

We agree that a stable, well-paid workforce is critical to the delivery of high-quality long-term care. However, this cannot be achieved overnight nor without appropriate levels of Medicaid reimbursement. We are urging the Governor and the Legislature to make available sufficient funding in the state budget to support the long-term care workforce in all settings, including nursing homes. We are also seeking a delay in the minimum staffing requirements to provide time for ramping up hiring and getting 12,000 new employees licensed and certified in order to comply with the new mandate. We hope you will join us in these efforts.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", written in a cursive style.

James W. Clyne, Jr.  
President and CEO