

## MEMORANDUM

### A.1010-A (Bronson)/S.2022-A (May)

*AN ACT to amend the public health law, in relation to directing the department of health to make publicly available the results of all inspections conducted by such department in nursing homes and other residential health care facilities in the state during the COVID-19 state disaster emergency and thereafter.*

This bill would require the commissioner of the Department of Health to post on the Department's website the results of any inspection conducted in a nursing home within 30 days. It appears that this legislation would apply to all inspections from March 7, 2020 and thereafter.

We support the goal of this legislation to ensure that inspection findings are available to the public. In fact, the results of nursing home inspections are already available on the Centers for Medicare and Medicaid Services (CMS) "Care Compare" tool [here](#). In addition, the State Department of Health posts nursing home inspection results on its Nursing Home Profiles page [here](#). Under federal procedures, nursing home inspection results are not posted until the informal dispute resolution (IDR) process, if any, is completed. The complexity of nursing home regulations and operations can lead to disagreements between facilities and surveyors over the proper interpretation and implementation regulations. Regulations at 42 CFR 488.331 require that CMS and the States, as appropriate, offer skilled nursing homes an informal opportunity to dispute cited deficiencies upon the facility's receipt of the official survey results. The IDR process is overseen by the State to resolve these disputes and promote reliability and consistency in the survey process. During the pandemic, the IDR process has become even more important. With the issuance of dozens of new guidance documents and directives and hundreds of new requirements by federal, State and local health authorities during the pandemic, even surveyors experience difficulty in staying current with, interpreting, and reconciling the frequently changing and often unclear and inconsistent guidance. The IDR is an important tool to ensure the validity and integrity of survey findings.

The bill does not clearly state when the 30-day timeframe for posting survey results would begin to run. If the intent is for the Department of Health to post results within 30 days of the delivery of inspection results to the facility, it will likely require posting prior to the completion of the IDR process. This could result in inconsistent postings between the federal and State websites and confusion among consumers who review both sites. It could also cause unwarranted reputational harm to nursing homes that prevail in IDR processes after the initial findings are posted.

LeadingAge New York requests that the bill be amended to align with federal processes and clarify that the 30-day period begins upon the completion of any informal dispute resolution process.

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