

MEMORANDUM

A.286-A (Gunther)/S.1997-A (Jackson)

An act to amend the public health law, in relation to restrictions on consecutive hours of work for nurses.

LeadingAge New York and its not-for-profit and public members oppose this legislation which would expand penalties for violations of section 167 of the Labor Law prohibiting hospitals, nursing homes, and other facilities from requiring nurses to work more than their regularly scheduled hours, except under limited circumstances. The statutory prohibition does not apply in the event of a “health care disaster that increases the need for health care personnel; a federal, state or county declaration of emergency; where a health care employer determines there is an emergency necessary to provide safe patient care, where the emergency is an *unforeseen event* that could not be prudently planned for by an employer and does not regularly occur; or an ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence is needed to ensure the health and safety of the patient.

This bill assumes that harsh penalties will deter mandatory overtime for nurses. However, that assumption is not valid in the context of widespread staffing shortages and the state’s minimum nurse hours requirements for nursing homes. Unlike any other category of health care facility, nursing homes are subject not only to a prohibition on nurse mandatory overtime, but also to statutory minimum nurse and nurse aide hours per resident day. These minimum hours requirements apply regardless of the acuity or needs of the residents and are being enforced even though the state is experiencing a statewide disaster emergency due to healthcare staffing shortages. (see Executive Order 4.8, issued Apr. 30, 2022). Approximately 80 percent of nursing homes statewide were *unable* to comply with the minimum hours requirements in the last quarter of 2021 (the most recent quarter in which data are available).

Nursing homes are especially hard hit by staffing shortages because the state’s inadequate Medicaid rates for nursing home care prevent them from competing with hospitals for staff. Not a single dollar of the funding appropriated by the Legislature in last year’s budget or this year’s budget to support compliance with the minimum hours law has been distributed to nursing homes.

This bill will force nursing homes to choose between the harsh penalties of the minimum nursing hours law and the bill’s severe penalties for violations of the consecutive hours cap if they must mandate overtime in order to comply with minimum hours. Nursing homes will have to choose between incurring the \$2,000 per day penalty for violations of the nurse minimum hours law or the \$1,000 to \$3,000 per violation penalty set forth in this bill plus an additional 15 percent payment to the nurse(s) who are asked to work overtime. Indeed, this bill will make it even harder for nursing homes to meet the minimum hours requirements without mandatory overtime because it offers a 15 percent reward to nurses who work mandatory overtime. The additional 15 percent provides an incentive for nurses to refuse voluntary overtime and will force the homes to mandate it.

Imposing new penalties will only deplete nursing homes of the funds they need to pay workers and deliver high quality care. Our members are doing everything in their power to meet the requirements of all laws and provide the highest quality care for their residents, while supporting their dedicated staff

members. This includes paying shift differentials and paying exorbitant and unsustainable rates for staffing agencies. Although the penalties set forth in this bill are unlikely to be imposed during the staffing emergency, which presumably provides the basis for an exemption, the emergency will not last indefinitely. It is currently set to expire on May 30, 2022. When it comes to an end, nursing homes will not be able to flip on a switch and hire more nurses to enable compliance. In fact, out-of-state nurses who have been working in New York's nursing homes as a result of the staffing emergency executive order will no longer be permitted to do so. It will take time to train and license new nurses. And, nursing homes will need increased funding to compete with hospitals and staffing agencies to recruit more nurses and retain their current staff. This bill will not improve resident care. In fact, it will have the opposite effect.

For these reasons, LeadingAge NY must urge that A.286-A (Gunther)/S.1997-A (Jackson) be rejected.

LeadingAge New York represents over 400 not-for-profit and public long term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.

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