

MEMORANDUM

A.7085 (Paulin)/S.3572 (Skoufis)

AN ACT to amend the public health law, in relation to requiring nursing homes to designate dedicated storage spaces for the storage of the bodies of deceased persons

LeadingAge New York opposes this legislation which would require nursing homes to develop and submit to the Department of Health (DOH) a designated location for the storage of bodies of deceased persons who pass while living in a nursing home. The designated location would be used until the deceased can be safely transferred to appropriate locations for autopsy or disposition. This bill would impose yet another new and costly requirement on nursing homes that are struggling to deliver high-quality care despite rising costs and inadequate rates. This requirement would be imposed because of a gut-wrenching, but unprecedented and short-lived, shortage of funeral home and morgue space that arose in the New York City area during early weeks of the COVID-19 pandemic.

The early months of the COVID-19 pandemic were traumatizing in innumerable ways. Tragically, New York State and health care providers were ill-equipped to respond to what was a once-in-a-century global pandemic that hit the New York City metropolitan area before most of the United States. During the early weeks of the pandemic, particularly in New York City and the metropolitan area, there were hospitals, funeral homes, and nursing homes that did not have sufficient or appropriate space to secure and honor the remains of patients and residents who had passed. Funeral homes and the medical examiners' office were overburdened and could not keep up with the demand for their services. This was an unprecedented situation that occurred in the first weeks of a pandemic that resulted in unusually high mortality rates.

Although the issues with securing decedents that arose in the early weeks of the pandemic were largely due to insufficient capacity in funeral homes and municipal morgues that receive decedents from health care providers, this bill would impose a new and expensive requirement on nursing homes alone. Moreover, under current and ordinary circumstances, it is not necessary for nursing homes to maintain refrigerated "storage" spaces for the remains of residents who have passed. Aside from those early weeks of the pandemic in 2020 in the New York City metropolitan area, we are unaware of any situation in which space has been lacking for the remains of a nursing home resident in New York State. Typically, a resident's remains are released to a funeral home selected by the resident or their family, or to the medical examiner or county coroner within hours of the death. Requiring nursing homes to build and maintain dedicated spaces for the remains of deceased residents would divert precious resources from the provision of care for residents. In addition to requiring the investment of resources in building and operating a temperature-controlled space, this bill would likely require the sacrifice of communal or clinical spaces or resident rooms that would otherwise support the delivery of a high quality of life and quality of care to residents.

The added costs of this bill would be in addition to the multitude of new expenses arising from pandemic-era requirements, including the requirement to maintain and store a 60-day inventory of patient protective equipment (PPE). Under DOH regulations, the required PPE inventory is based on use rates during peak periods of COVID prevalence—an excessive amount, given current use rates, that results in wasted supplies and

space. Providers must dedicate precious space and funds to unnecessary supplies that expire and must be discarded before they can be used. Many nursing homes are renting warehouse space to store their PPE or using rooms that would otherwise serve as communal space for residents. This bill would require them to dedicate additional funds and space for a purpose that will not benefit the people residing in nursing homes, and will not be necessary except under the rarest of circumstances.

Adding to the burdens of this bill is the fact that the costs of building and maintaining this space will not be counted toward the minimum direct care spending requirements enacted in 2021. Moreover, facilities will have to incur the expense not only of constructing or renovating this space, but also of submitting a certificate of need application to support the project, and to the extent that beds or services must be reduced or eliminated in order to create this space, facilities will be required to retain an independent consultant to conduct a health equity impact assessment of the project. None of these expenditures will contribute to the experience of care received by residents.

Nursing homes, and the vast majority of residents who live in these facilities, rely heavily on public funding – Medicaid and Medicare. More specifically, Medicaid pays for the care of over 60,000 New Yorkers residing in nursing homes, and it pays for approximately 75 percent of nursing home days. Meanwhile, Medicaid rates are based on 2007 costs, and the rate adjustment enacted in the State Fiscal Year 2023-24 Budget amounts to only a 3.5-4.5 percent increase when the elimination of the \$187 million in staffing funds is taken into account. The continued addition of new and costly requirements, at a time when nursing homes are struggling to hire sufficient staff to provide quality care to residents, despite grossly inadequate rates, is ill-considered.

LeadingAge New York must register its opposition to this bill, as it will not serve nursing home residents well to have resources further depleted by costly and unnecessary requirements. Rather, nursing home residents would best be served by state policies and investments that consistently consider the implications for older adults. If the Legislature would like to prioritize the development of space for decedents' remains in preparation for another global pandemic, we recommend the State be required to establish additional regional or municipal morgues to meet the goal of this legislation.

For these reasons, LeadingAge New York opposes A.7085 (Paulin)/S.3572 (Skoufis).