

MEMORANDUM

A.7085-A (Paulin)/S.3572-A (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, upon declaration of a disaster emergency, develop and submit to the Department of Health (DOH) a plan designating a location for temporary on-site storage of bodies of deceased persons who pass at the nursing home. The designated location would be used until the deceased can be safely transferred to appropriate locations for autopsy or disposition. The plan would include how the nursing home would, if they do not have such storage, construct or modify such a space, or satisfy the requirement through contract with a third party to provide mobile storage spaces.

While this may be a well-intended bill, it does not actually solve the issue it seeks to address. Rather, it places all the responsibility and cost of a broader health care community issue solely on nursing homes.

This legislation originates from 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. 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 that part of the state before the rest of the country. 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.*** While COVID was particularly devastating for the nursing home population, we have no way of knowing what the next emergency will be – and what population it will impact. Singling nursing homes out is simplistic, ineffective, and detrimental to those who are served by already under-resourced nursing homes.

The issue of managing decedent remains during emergencies is not unique to nursing homes and should be addressed by the entire community and emergency management systems in a coordinated regional approach. The state already has an infrastructure for regional planning and emergency response. Any requirements for expanded storage of decedents in the event of an emergency should fall on state or local governments, which are better equipped to manage such resources on a regional basis and appropriately respond to the next public health emergency the State may experience.

The majority of nursing homes in the state do not have the appropriate storage space that this bill requires. Thus, the legislation would require nursing homes to modify or construct such a space.

The cost alone is prohibitive. The vast majority of nursing homes are losing money every day, and the enacted budget cut Medicaid capital reimbursement by 10 percent. In addition to project costs, facilities would incur expenses related to submitting certificates of need, health equity impact assessments, and potentially reducing or eliminating other essential services or spaces.

But this is far more complex than the outright costs of creating a space. Managing an on-site morgue requires ongoing maintenance, temperature control, and compliance with health and safety regulations, all of which are costly and complex to manage. **Nursing homes are not licensed or oriented for this purpose.** The bill directs nursing homes to contract with a third party to provide mobile storage if unable to designate an appropriate space. That too will incur significant costs without effectively planning for the needs of a community in future emergencies. Currently, there is a limited quantity of appropriate mobile storage resources in the state, and it is very expensive to provide. A nursing home would have to pay a retainer to have a contract required in this bill. The result would be that nearly all nursing homes would be contracting with a limited number of vendors, which—if the demand is suddenly high—will not actually be feasible to address the need that this legislation seeks to address.

As New York's nursing homes operate amidst a healthcare workforce shortage and a Medicaid funding shortfall of more than \$1 billion annually, this bill proposes to divert precious resources away from *residents and staff* by requiring homes spend on an operational expense for a hypothetical, unknown future emergency. More than 70 percent of New York nursing homes have negative operating margins. The sheer dollars and administrative burden of this measure would impose a significant financial strain on homes that are already suffering financial losses.

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 increases enacted in the most recent state budget agreements cover less than the growth in costs over the last two years alone. Further, while the budget provided increases, it also included cuts—which, taken together, resulted in a negative position for some providers. 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, 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 public health emergency, 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-A (Paulin)/S.3572-A (Skoufis).

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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