

MEMORANDUM

A.1365-A (Paulin)/S.15-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 develop and submit to the Department of Health (DOH) a plan for a designated location for the storage of bodies of deceased persons who pass while living in a nursing home, in the event of a declared disaster emergency that may result in excess mortality. 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 will construct new, or modify existing, space or contract with mobile storage units that meet specific requirements including refrigeration. This bill would impose yet another new and costly requirement on nursing homes that are working tirelessly to deliver high-quality care, despite rising costs and inadequate reimbursement. Rather than looking to local governments or emergency management systems to manage excess mortality during a pandemic, this bill holds nursing homes alone responsible, but does not provide any funding source for associated expenses.

The requirements proposed by this bill would be imposed because of a gut-wrenching, but unprecedented and short-lived, shortage of funeral home and municipal morgue space that arose in the New York City area during early weeks of the COVID-19 pandemic. Tragically, the state, municipalities, 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, some hospitals, funeral homes, municipal morgues, and nursing homes did not have sufficient or appropriate space to secure and honor the remains of patients and residents who had passed. It was a tragic and intensely devastating time for all who were impacted, including the providers and dedicated staff who cared for the residents.

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. The responsibility of managing decedent remains during unforeseen and dynamic emergencies is not unique to nursing homes, but this bill places the burden – and the costs associated – on only these providers.

It is important to note that 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.

Although the bill requires only “a plan” for storage of decedents’ remains, maintaining that plan would be costly. When health care providers are required to have plans to respond to emergency situations, regulators expect those plans to be capable of being executed on short notice. The plans that this bill requires would entail

that homes either build their own morgues or contract in advance with mobile units that will undoubtedly charge fees for reserving capacity. Requiring nursing homes to build and maintain dedicated spaces for the remains of deceased residents, or contract for such space, 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.

Making matters worse, the reimbursement of any capital dollars spent to comply with this legislation has been reduced by 15 percent since 2020, the year of the pandemic that this bill responds to. Should homes pursue contracted units, instead of capital projects, those contractual costs will be supported by the very Medicaid dollars that are meant to support the care being provided to residents.

The added costs of this bill would be in addition to the multitude of other expenses arising from pandemic-era requirements. For example, nursing homes are now required to dedicate precious space and funds to purchase and store a 60-day inventory of person protective equipment (PPE) – an quantity that is calculated based on the pandemic periods with the highest prevalence of COVID. Many nursing homes are renting warehouse space to store their PPE or using rooms that would otherwise serve as communal space for residents.

Meanwhile, 70 percent of the state's nursing homes are experiencing negative operating margins due to inadequate funding, and they do not have the means to comply with yet another unfunded mandate. Nursing homes rely heavily on public funding – Medicaid and Medicare – and cannot raise their prices to cover new government requirements. Medicaid rates are based on 2007 costs and continue to fall far short of costs. Nursing homes are increasingly closing beds and units and closing their doors entirely, as a result of inadequate rates that do not allow them to cover rising costs and competitive wages.

Unfortunately, the ultimate cost of inadequate funding and unfunded mandates falls on older adults and their families who struggle to find a quality provider close to home that can admit them and meet their medical and long-term care needs. The addition of new and costly requirements, at a time when nursing homes are operating on inadequate rates, and struggling to hire sufficient staff and keep beds open, is ill-considered and impractical.

LeadingAge New York must oppose this bill, as it will not serve nursing home residents well to have resources further depleted by costly and unnecessary requirements. If the Legislature would like to prioritize the development of space for decedents' remains in preparation for a future 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.1365-A (Paulin) and S.15-A (Skoufis).