

## MEMORANDUM

### A.10569 (Paulin)/S.9323 (Martinez)

***AN ACT to amend the public health law, in relation to establishing pediatric palliative care homes that would fall under the category of residential care facilities***

This bill would create a new Public Health Law residential care facility classification with enhanced Medicaid reimbursement for pediatric palliative care centers (PPCCs), but would exempt these facilities from the establishment and licensure requirements typically applied to health care facilities and programs. These requirements are intended to ensure quality care, the character and competence of operators, alignment with community need, and the financial viability of proposed services. LeadingAge New York and its not-for-profit, mission-driven members support the goal of A.10569 (Paulin)/ S. 9323 (Martinez) the bill to expand access to residential palliative care in a homelike environment for medically-complex children at the end of life; however, we cannot support this bill as written.

LeadingAge New York is a 350-member association of not-for-profit and public long-term care providers representing all provider types on the long-term care continuum, including hospice and palliative care providers.

The bill would authorize the creation of PPCCs as a new type of facility, called a “residential care facility,” that is authorized to provide hospice and certain nursing home services. However, the bill would exempt PPCCs from the Public Health Law establishment and licensure provisions applicable to hospices and nursing homes. Although the bill places “residential care facilities” under Article 28 of the Public Health Law, it does not include them in the establishment provisions of Article 28. Similarly, the bill explicitly exempts PPCCs from the establishment provisions applicable to hospice programs under Article 40 of the Public Health Law. Generally, all health care facilities, home care agencies, and hospice programs established under the Public Health law are required to demonstrate the character and competence of their operators, the public need for services, and the financial viability of the proposed services. This bill provides no such foundation for PPCCs. Moreover, facilities and hospice programs established under Article 28 or Article 40 of the Public Health Law are prohibited from being publicly traded. As written, the bill would allow publicly-traded companies and other multi-tiered, investor-owned entities to own and operate PPCCs, potentially undermining transparency and accountability for quality of care and regulatory compliance.

While exempting PPCCs from the Public Health Law’s establishment requirements, the bill would make PPCCs eligible for hospice reimbursement, as well as funding available to “licensed residential care facilities,” HCBS waiver funding, nursing home funding for respite care, and an enhanced PPCC Medicaid rate. We are concerned that the lack of establishment and licensure standards for PPCCs and the availability of potentially significant funding opportunities could open the door to PPCC providers that are not mission-driven and do not provide high-quality care.

For all health care providers licensed and regulated by the Department of Health under the Public Health Law, the baseline establishment qualifications are set by statute—not merely by regulation. For providers that meet the basic qualifications set forth in law and comply with the law’s establishment process, Department of Health regulations detail the minimum operating standards. To allow the Department of Health to create establishment and licensure criteria and processes from whole cloth via regulation, as this bill contemplates, would deviate from the framework applicable to every other provider type overseen by the Department of Health.

LeadingAge New York supports efforts to expand access to high-quality hospice and end-of-life care for New Yorkers, but opposes piecemeal carve-outs from core establishment and licensure requirements. Service-specific establishment and certification requirements are the basis for regulatory requirements and surveillance oversight to protect patients. Allowing certain providers to bypass those requirements risks unintended consequences that could compromise quality of care and program integrity, while creating an uneven playing field for providers that must comply with law and regulation.

For these reasons, LeadingAge New York opposes A.10569 (Paulin)/S.9323 (Martinez) and urges that it be rejected.

*LeadingAge New York represents over 350 not-for-profit and public long term care providers, including nursing homes, adult care and assisted living facilities, senior housing, adult day care programs, certified home health agencies, hospice and managed long term care plans.*

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