

October 8, 2021

Angela Profeta  
Deputy Secretary for Health  
Executive Chamber  
The Capitol  
Albany, NY 12224

Kristin Proud  
Acting Executive Deputy Commissioner  
NYS Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Re: Staffing Crisis and Nursing Home and Assisted Living and HERDS Surveys

Dear Ms. Profeta and Ms. Proud:

I am writing on behalf of the members of LeadingAge New York – not-for-profit and public providers of long-term/post-acute care and senior services – to recommend changes in the state’s approach to collecting data on nursing home and assisted living staffing in order to improve the quality of the information you are receiving and your ability to respond to the staffing crisis.

We share your interest in collecting valid data on the staffing crisis in long-term care in order to respond with appropriate and effective interventions. This morning, the daily HERDS survey was modified by adding four new questions that appear aimed at gauging the level of staffing shortages in nursing homes and assisted living facilities. However, because the questions are limited to the period after 9/27 and to employee departures as a result of unwillingness to be vaccinated, the data collected will not accurately depict the level of shortages in facilities. In fact, they may mask the extent of the crisis (the new questions are attached as an exhibit to this letter).

It is critically important for the state to recognize that:

- The majority of individuals who left their jobs as a result of the vaccine mandate did not leave on September 27<sup>th</sup> (for nursing homes) or October 7<sup>th</sup> (for adult care facilities). They have been exiting since the mandate was first announced on August 16. At a minimum, **if the state wants to measure the impact of the vaccination mandate on staff departures, it should ask facilities for the “total reduction in workforce since 8/16.”**
- The announcement of the vaccination mandate accelerated a staff exodus that has been taking place since the onset of the pandemic. Staff are exiting both due to the vaccination mandate and challenging conditions on the job – performing physically and emotionally demanding work garbed from head to foot in plastic, responding to distressed residents and families, taking on extra hours to fill vacant shifts, and managing their own family

responsibilities. **If the state wants to measure the actual reduction in workforce in these facilities (not just the reduction directly and explicitly related to the vaccination mandate),** it should ask facilities in Question 1 for the reduction in workforce measured from an earlier date, prior to the announcement of the mandate. It should also add a Question 1(e) seeking the total number of employee resignations and retirements since that date not directly due to unwillingness to get vaccinated.

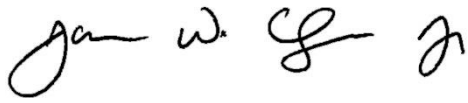
Our members are seeing their staffing spiral downward at an alarming rate. Most have suspended admissions and closed units due to staffing concerns. The next step will be to seek the permission and assistance of the Department of Health to transfer residents to other facilities. This is a last resort, as it causes extraordinary distress to residents and families. Moreover, it is unlikely that there will be capacity in other facilities to receive transfers.

**The state must balance the needs of collecting accurate data from facilities with the need to deliver critical services to nursing home and assisted living residents.** It must carefully consider this trade-off when it imposes administrative responsibilities on nursing homes and assisted living facilities, in light of staffing shortages. The staffing crisis means that facilities are taking an “all hands on deck” approach to caring for residents. Administrators, executives and managers need to be on the units as much as possible to assist with direct care. Having to complete the HERDS survey every day takes away from the provider’s ability to attend to the myriad of other critical issues they need to right now. And, every time the Department amends survey questions without notice, facilities must spend the morning gathering and checking data from various departments in their organizations. This diverts personnel from the important responsibility of caring for residents.

Notably, Governor Hochul, through her executive order, waived several statutes and regulations to relieve hospitals of administrative responsibilities so that staff could focus on patient care. **None of these waivers has any measurable impact or provides any meaningful relief of administrative burdens on nursing homes or assisted living facilities.** Nursing homes and adult care facilities are required to complete daily HERDS surveys – 365 days per year – and face fines if they are submitted even 15 minutes late. They have been doing this since March of 2020. We are unaware of any rationale for the daily submission. **We urge the Department to reduce the frequency of the HERDS survey data collection to once weekly, and to reduce the number of questions to those that are truly needed and yield useful information.** We also urge the Department to work with LeadingAge New York in advance of making changes to the survey to help ensure that you are able to obtain the information you are seeking, and that providers are prepared to provide it. These changes would acknowledge the workforce crisis in long-term care and represent an initial step toward mitigating it.

Please understand that we want the state to have an accurate representation of the staffing levels in facilities so that it knows where and how to dedicate resources. However, the current approach will not provide you with the information you need. Thank you very much for your consideration of these issues. We would welcome an opportunity to meet with you at your convenience to discuss this further.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr." with a stylized flourish at the end.

James W. Clyne, Jr.  
President and CEO

Cc: Valerie Deetz  
Adam Herbst

## Exhibit

The new survey questions ask facilities to provide:

1. Total reduction in workforce since **9/27** as of today \_\_\_\_

Rule: (Q1) must equal  $1a+1b+1c+1d$

1a. Total number of employee terminations as a result of being unvaccinated without an exemption as of today \_\_\_\_

1b. Total number of employee resignations and retirements due to unwillingness to get vaccinated as of today \_

1c. Total number of employees on unpaid leave/furlough as a result of being unvaccinated without an exemption who are NOT willing to get first dose as of today \_\_\_\_

1d. Total number of employees on unpaid leave/furlough as a result of being unvaccinated without an exemption and who are awaiting first dose as of today \_\_\_\_