

MEMORANDUM

A.5684-A (Gottfried)/S.4893-A (Rivera)

An act to amend the public health law, in relation to requirements for residential health care facilities and nursing homes

LeadingAge New York would oppose A.5684-A because it could impede the consolidation of not-for-profit entities and delay necessary staffing contracts. We support the intent of the bill to ensure that only those individuals and entities that meet high standards of character and competence are approved to operate nursing homes. We also support the goal of ensuring the transparency of contractual arrangements between nursing home operators and management entities and staffing agencies. However, we are concerned that this bill may delay or prevent consolidations among not-for-profit nursing homes and may delay necessary contractual arrangements for management or staffing services.

Given the financial distress experienced by many non-profit nursing homes, consolidation with another non-profit nursing home or a hospital may be the only way to avert a closure or sale to a for-profit entity. While not entirely clear, it appears that the definition of a “controlling person” may include the parent of a not-for-profit corporation seeking to consolidate with another not-for-profit. The bill would prohibit the Public Health and Health Planning Council (PHHPC) from approving a change in ownership or sponsorship of a facility based solely on a two-star or lower rating on the part of the applicant. This provision is overly restrictive. The CMS star ratings are a general barometer of facility quality -- they are based on a complex algorithm with various components and weights. A facility’s overall star rating cannot be viewed in isolation. It may have a two-star overall rating, even though it has a five-star rating on quality measures, simply because it had a bad survey three years earlier. The PHHPC should have the discretion to approve a change of ownership involving a two-star facility, if other quality measures indicate that its current quality is high and its operator’s character and competence otherwise satisfy the law’s standards.

Further, it is unrealistic and may be detrimental to the sound operation of a nursing facility to require 90-days notice of any management or staffing contract. During the pandemic, many nursing homes that never relied on staffing agency contracts were forced to use them to maintain safe staffing levels, and many had to enter into contracts on relatively short notice. In some cases, they learned that the agency they had originally retained would be unable to meet their needs and had to quickly identify alternatives.

Finally, in the event that a not-for-profit entity consolidates with another not-for-profit or a hospital, the new parent should not be required to retain all employees. While retention of all staff is ideal, one goal of a consolidation is to promote efficiencies. It may be unnecessary for the consolidated entity to have two CFOs, two IT directors, two directors of social work, etc. This provision would unnecessarily drive up the costs of the consolidated entity at a time when Medicaid reimbursement is not covering costs, and not-for-profits are facing the prospect of closure or sale.

For these reasons, LeadingAge New York urges the legislature to reject A.5684-A/S.4893-A.