

MEMORANDUM

A.7119 (Gunther)/S.6346 (Rivera)

AN ACT to amend the public health law, in relation to establishing standard nursing home staffing levels

This legislation amends the Public Health Law to impose minimum daily hours requirements for nurses and certified nurse aides in nursing homes. It also requires the Department of Health to establish a range of civil penalties for facilities out of compliance with minimum staffing levels. LeadingAge New York opposes this legislation because its approach to ensuring appropriate staffing levels is ill-conceived and under-funded. The legislation fails to acknowledge the longstanding shortage of nurses and certified nurse aides (CNAs) that has only been exacerbated by the pandemic. Even if there were nurses and CNAs willing and qualified to fill the hours required by this legislation, the State has not provided sufficient funding to pay for them. We estimate that the full annual cost of this new requirement would exceed \$260 million.

LeadingAge New York's members recognize the critically important role that nurses and CNAs play in nursing homes. However, this proposal comes immediately in the aftermath of a State Budget that enacted minimum spending mandates on nursing homes, including requirements that homes spend at least 40 percent of revenue on resident-facing workers and 70 percent of revenue on direct resident care. These provisions already address staffing and require homes to increase spending by an annual, statewide amount of nearly \$500 million.

The latest proposal would add more than \$260 million in new costs to nursing homes without making available the funds to cover them. In the absence of adequate funding, we estimate that one-third of nursing homes statewide would have to lay off nurses in order to meet the CNA hours threshold. A quarter of our members exceed the required RN and LPN threshold, but do not meet the CNA hours requirement. In order to satisfy the requirements of this bill and avoid penalties, they would be forced to eliminate nurse positions to add CNAs, even if their medically-complex residents required more skilled nursing care, and even if they had ample CNA, recreation, and therapy staff to care for their residents. Notably, the bill also fails to recognize the various categories of professional and para-professional direct care staff employed in nursing homes in addition to nurses and certified nurse aides.

New York's nursing homes cannot continue to absorb these mandates and remain viable. Even before the pandemic, New York's Medicaid rates paid to nursing homes fell short of costs by \$64 per resident day.¹ In 2019, the most recent year for which financial data is available, two-thirds of public and non-profit nursing homes in New York had negative operating margins. The median operating margin for these homes was -2.9

¹ Hansen Hunter & Company, "Report on Shortfalls in Medicaid Funding for Nursing Center Care," November 2018. New York's \$64 per day shortfall represents the largest shortfall of the 28 states the report analyzes.

percent.² Since 2014, 13 nursing homes have closed-- 11 were not-for-profit and one was public. Nearly 50 public and not-for-profit homes have been sold to for-profit entities.

The pandemic has only deepened the financial distress of our nursing homes, and the State has not made available sufficient funding to cover existing costs and losses, much less new staffing requirements. Today, nursing homes continue to bear the cost of mandatory twice-weekly staff testing, inflated costs of personal protective equipment (PPE), and occupancy rates that have yet to bounce back to the relatively consistent thresholds they previously maintained. While most other states provided increased funding to nursing homes during the pandemic, New York State proceeded with a 1.5% cut to provider Medicaid payments. Federal Provider Relief Funds (PRF) have covered only about a third of a typical nursing home's COVID losses.

Not only has the pandemic further destabilized the financial position of nursing homes, it has also exacerbated staffing challenges. Our members strive mightily to recruit and retain nurses and nurse aides, but cannot find candidates to fill vacant positions. According to a report by the Center for Health Workforce Studies, between 2016 and 2026, there is projected to be an annual average of 14,990 unfilled RN positions and 4,880 unfilled LPN positions in New York State.³ Unfortunately, nurse graduation rates are not expected to meet the existing demand for unfilled nursing positions. Between 2013 and 2017, RN graduation rates increased by only 9 percent and LPN graduations *decreased* by 27.1 percent⁴. Similarly, 69 percent of nursing homes surveyed by the Center for Health Workforce Studies reported difficulty hiring workers for evening, night, and weekend shifts.⁴ These shortages extend to both aides and nurses and have worsened dramatically since the pandemic hit. Notably, the legislation *excludes* the current pandemic from the mitigating factors that might influence the penalty imposed for failing to meet requirements.

This legislation would impose an infeasible mandate on nursing homes and add more than \$260 million annually to health care costs, while sacrificing the hours of care delivered by nurses in many homes and further destabilizing their financial position.

For these reasons, LeadingAge New York opposes A.7119 (Gunther)/S.6346 (Rivera) and urges that it be rejected.

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.

³ "The Health Care Workforce in New York State: Trends in the Supply of and Demand for Health Care Workers," 2020, at p.26

⁴ *Ibid.* at p.23