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Not-for-Profit Nursing Home Operators File Lawsuit to Overturn Illegal and Unconstitutional State Statutes
Staffing Ratios and Resource Allocation Requirements Are Arbitrary, Punitive and Unattainable

Not-for-profit and public nursing homes led by LeadingAge New York have filed a lawsuit seeking to overturn two state laws imposing arbitrary minimum staffing and spending levels during a declared statewide health care workforce emergency that has triggered the deployment of the national guard.

Enacted during the COVID-19 public health emergency, the laws establish minimum nurse and aide staffing levels in nursing homes and require that seventy percent of an organization's revenues be spent on direct care. Facilities that cannot meet the requirements are subject to penalties of up to \$2,000 per day and seizure of excess revenues.

"The combination of poor policies, lack of funding, and a workforce that is in short-supply have resulted in a perfect storm of circumstances that leaves us with no other remedy than to seek the intercession of the courts," said James Clyne, Jr., President and CEO of LeadingAge New York.

Arbitrary Enforcement of Law During Workforce Emergency

[The lawsuit names Governor Kathy Hochul](#), State Health Commissioner Marty T. Bassett, M.D. and Budget Director Robert Mujica, Jr. in their official capacities as well as the State of New York, Division of the Budget and Department of Health. It alleges that the staffing law creates arbitrary, one-size-fits-all standards that are impossible to satisfy in the context of a declared staffing emergency and are inconsistent with a 2020 Department of Health report on similar staffing ratio legislation.

The complaint lists 15 specific causes of action alleging that the laws violate the state and federal constitutions, are preempted by federal labor and nursing home laws, and violate Medicaid and Medicare requirements. It further claims that the enforcement of the minimum staffing and spending requirements represents an arbitrary and capricious executive action.

Ratios Are Inflexible and Fail to Consider Complexity of Resident Needs

Joined by approximately 80 of its nursing home members, LeadingAge New York argues that inflexible staffing ratios and the arbitrary allocation of nurse and aide hours undermine professional discretion and fail to account for the varying needs of residents. To the extent that a facility meets the overall 3.5 hours per resident day staffing standard by exceeding the RN and LPN mandated hours, but fails to meet the minimum aide hours, it will be in violation of the statute, even if the medical complexity of its residents demands higher levels of nurse care than aide care. Similarly, if a facility serves significant number of residents with dementia who require supervision and social activities, but less nursing care, and hires more recreation therapists and activity aides in lieu of nurse aides, it will also be in violation of the statute.

Health Care Worker Shortage Hurting Nursing Homes

Clyne said, "There is no army of surplus nurses and aides available to fill these positions because there is a nationwide health care worker shortage that is disproportionately affecting nursing homes. The staffing level law penalizes nursing homes thousands of dollars per day for failure to meet these arbitrary and irrational targets. This mandate will only drain nursing homes of the very resources they need to recruit and retain more staff."

In fact, LeadingAge New York estimates that the State's nursing homes would need 12,000 additional nurses and aides to comply with state law. The severe statewide nurse shortage is validated by a recent report from the Center for Health Workforce Studies, which indicates that over 67 percent of the state's hospitals reported difficulty in recruiting and retaining registered nurses due to a workforce shortage. Over 50 percent of the hospitals in the study cited the shortage for their reason in not being able to recruit and retain licensed practical nurses. The same report indicates that nursing homes and adult care facilities in New York State reported that LPNs (86.1%), experienced RNs (85.3%), CNAs (79.4%), and newly licensed RNs (79.3%) were the most difficult occupations to recruit in 2020. Nursing homes are not alone in their challenges in finding qualified nurses - but they are the lone target for fines due to the inability to meet an arbitrary staff ratio.

To date, the state has provided no financial assistance to nursing homes for COVID-19 response or for staffing to comply with this mandate. The 2021-22 budget allocated \$64 million and the 2022-22 budget allocated \$123 million for nursing home staffing – but none of these dollars have been distributed to providers.

LeadingAge NY is seeking a statewide preliminary and permanent injunction prohibiting the imposition of penalties upon nursing homes and has asked that the measures be declared unconstitutional and illegal.

The matter is being handled by attorneys David Luntz and David Morgen of Hinman Straub, P.C.