

## MEMORANDUM

### A.4757-A (Gottfried)/S.5908 (Rivera)

#### *An act to amend the public health law, in relation to enhancing transparency and oversight of residential health care facilities*

While there are various aspects of this legislation to which LeadingAge New York does not object, we have significant questions and concerns on other provisions.

Section 1 of the bill would amend Public Health Law (PHL) § 2803-d to redefine "physical abuse" as "abuse" and add the misappropriation of resident property to the definition of abuse. However, the legislation fails to define the broader term "abuse," which raises concerns about how and when the reporting requirements and other aspects of PHL § 2803-d would apply. Federal regulations at 42 CFR § 483.12 provide detailed definitions of abuse, neglect and misappropriation of property. They also create reporting timeframes that differ from those contained in PHL § 2803-d. We believe that if the state statute is to be modified that a detailed analysis should be conducted to determine the degree of consistency with federal requirements and to arrive at a rationale for any differences in policy.

Section 2 of the bill would add a new section 2803-w to the PHL requiring a nursing home to contract with an Independent Quality Monitor approved by the Department of Health (DOH) where warranted due to operational deficiencies demonstrating the existence of certain conditions. It is not clear whether this revision in state statute reflects the federally-defined process already in place in these circumstances. Furthermore, the language requires written mandatory corrective plans to include caps on administrative and general costs that are unrelated to providing direct care, "(including providing at least minimum staffing levels as determined by the department)." We are concerned about this provision since there is no definition of, or current statutory or regulatory standard for, "minimum staffing levels."

Section 3 would add a new PHL § 2803-x to require nursing home operators to notify DOH of any common or familial ownership and attesting on an annual basis as to the accuracy of the information on file regarding ownership. While we have no objection to this requirement, we are very concerned about subdivision (3) of this section, which would preclude a nursing home operator from guaranteeing the debt or other obligation of a party which has not received establishment approval. LeadingAge NY member nursing facilities are operated by not-for-profit and governmental organizations, and oftentimes these organizations seek to serve their communities with senior housing and other services which are not subject to establishment approval. This provision could directly interfere with expanding access to senior housing and services, contrary to other state policies. Furthermore, an operator would be required to notify DOH at least 90 days before mortgaging or encumbering a facility. Operators are already required to notify DOH and receive approval of a mortgage loan for such debt to be eligible for Medicaid reimbursement.

Finally, Section 4 would add PHL § 2803-y to require nursing homes to provide the facility's approved residency information to prospective residents and to post the information on the facility's website. In

addition to the admissions agreement, facilities would be required to post information on non-governmental rates charged to residents. Typically, facilities charge a range of rates based on type of room, type of accommodation (single or double), unit type and location, and other factors. These multiple rates may not lend themselves to valid comparisons across facilities, and could serve to be very confusing for prospective residents and their representatives.

For these reasons, LeadingAge New York opposes A.4757-A (Gottfried)/S.5908 (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, adult care and assisted living facilities, senior housing, adult day care programs, certified home health agencies, and managed long term care plans.*

LeadingAge New York (formerly NYAHSA)

13 British American Blvd., Suite 2 | Latham, New York 12110-1431 | P 518.867.8383 | F 518.867.8384 | [www.leadingageny.org](http://www.leadingageny.org)

---

*Inspire Serve Advocate*