



June 13, 2025

Jeffrey A. Kraut

Chair, Public Health and Health Planning Council

Thomas Holt

Chair, Committee on Codes, Regulations, and Legislation

c/o Executive Secretary,

Public Health and Health Planning Council

Empire State Plaza, Corning Tower, Room 1805

Albany, New York 12237

**Re: Repeal and Replace 710.1 of Title 10 NYCRR (Approval of Medical Facility Construction)**

Dear Mr. Kraut, Mr. Holt, and Members of the PHHPC:

I am writing on behalf of the members of LeadingAge New York to offer comments on the above-referenced proposed regulations on the PHHPC agenda for adoption. As you know, our members are not-for-profit and government-sponsored providers of long-term care and aging services. Among our members are nursing homes, adult day health care programs, and PACE centers that would be subject to these regulations.

Overall, the amendments to Part 710 represent a step in the right direction, but do not go far enough. The proposed increases in the construction cost thresholds that trigger the various levels of review are helpful in several respects. They reflect rising construction costs since the last regulatory update, and more importantly, they reduce regulatory steps that lead to delays in approval and create administrative burdens for both providers and the Department of Health. Those delays too often lead to increases in project costs when interest rates or the costs of materials or labor rise.

Unfortunately, the proposed changes do not address the real challenges facing our members that need to make facility upgrades or reconfigure beds or services. First, major construction projects have become nearly impossible due to the successive cuts in capital reimbursement for nursing homes (15% in the aggregate since 2020), and an equity contribution requirement of 25 percent that is very difficult to meet for most homes, given inadequate reimbursement, and an imputed occupancy of 90 percent for reimbursement purposes which further cuts capital funding for homes that are forced to reduce occupancy in order to meet staffing ratios. Many of New York's nursing homes are forced to operate in outdated facilities -- many of which are 50 years or older -- due to outdated and insufficient reimbursement. Those that have updated in recent years were then hit with capital reimbursement cuts that have impacted their ability to make debt service payments on approved capital costs of those projects. Those that need to make capital investments today are experiencing difficulty finding willing lenders, given the reimbursement environment. All of this has a negative impact on the quality of life of our residents.

We recognize that PHHPC has little to no role in Medicaid rate setting. However, it could influence the equity requirements for capital projects and the 90 percent imputed occupancy requirement. In addition, the badly outdated residential health care facility construction caps, not updated since 2007, must be updated so that they do not thwart new construction. We ask that the Department of Health and PHHPC consider those changes in a future round of regulatory reforms.

In addition to the challenging reimbursement environment, nursing homes that seek approval of even modest capital projects face prolonged delays in approval and unnecessary regulatory hurdles. The installation of a therapy pool, the renovation of a sunroom, or the expansion of rehabilitation therapy space should not require more than 12 months of review. Homes that seek to add dialysis dens (space to offer dialysis services onsite to a small number of residents) must obtain an independent health equity impact assessment (HEIA) from an external entity, even though the health equity, clinical, and quality of life benefits of on-site dialysis are obvious and non-controversial. One facility reported that the estimated cost of an HEIA was \$60,000 for a \$150,000 project. This expense is unnecessary and should not be required, given the fiscal challenges of nursing homes and the positive impacts of these projects on resident care and quality of life.

We support the expansion in the scope of projects that are subject only to notice requirements under the proposed regulation. We hope that the expansion of the notice process will reduce delays in CON processing and construction start dates. We ask that it be expanded further. We also request that future rulemaking exclude minor nursing home projects like dialysis dens from health equity impact assessments. More than 70 percent of nursing home days are paid for by Medicaid, and like diagnostic and treatment centers that serve significant percentages of Medicaid beneficiaries, nursing homes should be exempt from these assessments.

Lastly, we ask that the Department and PHHPC track the time from application submission to approval by project type and facility type to see precisely where delays are occurring and how these delays might be addressed.

That said, as noted above, we support many aspects of the proposed regulations, including the following:

- We support the increase in the project cost threshold that determines the need for CON review to over \$30 million for a general hospital and \$8 million for all other facilities. However, we question the wide disparity between the cost threshold for hospitals and nursing homes. A project cost of \$8 million reflects a comparatively small project. Non-hospital projects with higher costs that do not reflect major services changes should be eligible for a limited review.
- We support the removal of adult day health care programs from the administrative review requirements. Most of the State's adult day health care programs have not reopened since the pandemic, due to staffing shortages and fiscal challenges. Many counties have no adult day health care capacity at all. There is little danger of an over-saturation of adult day health care programs in New York.

- We support the expansion of limited review to cover mobile medical vans. Our members that offer medical care to older adults in the community are interested in expanding access to services through mobile medical units. This would facilitate such access.
- We support the expansion of the notice process to include architecturally self-certified projects that are currently subject to limited review and that do not involve a significant change in beds or services.
- We support the proposal that makes projects principally funded through state grants eligible for administrative review rather than full review. In addition, such projects should not be subject to financial feasibility review. The project budget for such projects has already been vetted through the request for proposal process.

Thank you very much for your consideration of these recommendations.

Sincerely yours,



Sebrina Barrett  
President and CEO

Cc: Colleen Leonard  
Valerie Deetz