LeadingAge New York ISSUE BRIEF

SENIOR HOUSING | ASSISTED LIVING | ADULT CARE FACILITIES | HOME CARE | RETIREMENT COMMUNITIES
ADULT DAY HEALTH CARE | PACE/MLTC | NURSING HOMES

Support the Development and Efficient Operation of CCRCs in New York

LeadingAge New York urges lawmakers to eliminate barriers to development, expansion, and efficient operation of Continuing Care Retirement Communities (CCRCs) in New York while preserving important resident protections. CCRCs provide a full range of services including independent housing, adult care facility (ACF)/assisted living and nursing home care to residents in a campus setting as their needs change. This innovative model encourages seniors to invest in their care and housing needs rather than divesting their resources to qualify for Medicaid-funded services. Unfortunately, while the number of CCRCs has grown considerably across the nation, only 12 CCRCs are fully operational in New York.

Enact CCRC Revitalization Legislation

Comprehensive statutory and regulatory reforms are needed to modernize the outdated provisions of Public Health Law Articles 46 and 46-A, and eliminate obstacles to developing, expanding, and efficiently operating CCRCs in New York. Lawmakers should pass A.6450 (Schimminger)/S.5172 (Hannon) to address these issues:

- ***CCRC Council:*** The CCRC Council role should be advisory, and review of new or expanded CCRCs should be considered by the Department of Health (DOH) and the Public Health and Health Planning Council;
- ***Single State Agency Oversight:*** Up to three State agencies (i.e., DOH, the Department of Financial Services (DFS) and the Office of the Attorney General) review applications and mandatory documentation for CCRCs, resulting in significant delays. Consolidate regulatory authority in DOH;
- ***Streamlining Approvals:*** Establish clear guidelines and timeframes to process applications and approvals and ensure staff resources to evaluate these requests in an efficient manner;
- ***Single Contract:*** Clarify that the CCRC residency agreement is the single contract covering all services provided by the community to streamline State surveillance and oversight;
- ***Outside Admissions:*** When assisted living/nursing home beds are first opened, there are often vacancies and CCRCs are allowed under certain conditions to admit individuals from outside of the CCRC. Clarifying standards for "outside admissions" will ensure CCRCs can meet their actuarial revenue projections;
- ***Unnecessary Requirements:*** Address statutory requirements that do not exist in other states and that make the establishment and operation of CCRCs in New York unnecessarily complex and expensive;
- ***Efficient Use of Entrance Fees:*** Allow the use of 85 percent of residents' entrance fee deposits for the cost of acquiring, constructing, and equipping the facility; and
- ***Supplemental Medicare Coverage:*** Require that residents have supplemental coverage for Medicare Part A coinsurance amounts payable for post-hospital nursing home care.

Exempt CCRCs from Burdensome Cybersecurity Regulations

Lawmakers in both houses should pass legislation [S.7940 (Seward, Akshar)] to clarify that CCRCs are not subject to DFS cybersecurity regulations. CCRCs are authorized to operate by the CCRC Council and DOH, not by DFS.

DFS adopted final regulations requiring most banks, insurers and other financial institutions to protect their customer information from cyberattacks. The regulations took effect March 1, 2017, and require all covered entities to annually certify they are complying with the regulations beginning Feb. 15, 2018. DFS just stated in writing in Feb. 2018 that CCRCs are covered by the requirements.

New York's CCRCs are much smaller than most financial institutions and insurers that are subject to these regulations. Unlike banks and most insurers, which transact with thousands of customers, often through e-commerce, CCRCs typically collect funds from only 200-400 prospective and existing residents in the form of deposits, entrance fees and monthly fees. As health care providers, CCRCs are already subject to HIPAA privacy standards and safeguards.

Compliance with these regulations will be very expensive, with one New York CCRC that has an $11 million total annual operating budget estimating a $100-125,000 first year cost and $100,000 annual cost. Among the initial requirements are retaining a Chief Information Security Officer and other personnel, and implementing a cybersecurity program to include penetration testing, vulnerability assessments and multi-factor authentication. The regulations would pose an undue burden on CCRCs, and could lead to large increases in resident fees.

Reject Proposed Nurse Staffing Ratios

Current legislation [A.1532 (Gunther)/S.3330 (Hannon] would impose specific staffing ratios for nurses and other direct care staff in nursing homes and hospitals. However, available research does not reflect that specific staffing levels produce higher quality. In fact, the only outcome of this legislation will be higher costs to CCRC residents and the Medicaid program.

From a public and fiscal accountability standpoint, nursing homes are already responsible for ensuring adequate staffing. For example:

- Staffing is already one of three domains used in the Medicare Nursing Home Compare 5-star rating system that is provided to the public for purposes of comparing facilities.
- DOH's Nursing Home Quality Initiative – which allocates $50 million based on individual facility quality scores – incorporates two staffing measures.
- The federal government requires every nursing home in the country to post in a prominent place the numbers of licensed and unlicensed direct care staff on duty for every shift.
- Under federal requirements, nursing homes must collect and submit detailed data from their payroll systems on staffing hours provided to residents, which will be publicly available in the 5-star system.

The staffing standards proposed in this legislation would cost an estimated $1 billion to implement in nursing homes each year and could have a detrimental impact on residents. Mandated, specific ratios would not provide flexibility to address variations in patient/resident care needs. Health care clinicians make staffing decisions every day based on patient/resident conditions, acuity and care plans. Every patient and resident is different, with needs that can change rapidly. Every nurse and member of the care team has unique expertise. No two nursing homes or patients are the same and treating them as such will lead to adverse outcomes.

Instead of mandating "one-size-fits-all" staffing ratios, the State should encourage entrance into the long term care field, promote recruitment and retention, assist nursing education programs that are struggling, help with the cost of nursing education, and promote nursing professions in general.

Questions

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