

December 15, 2021

The Honorable Kathy Hochul
Governor
State of New York
NYS State Capitol
Albany, NY 12224

Re: A.191-A/S.1451-A

Dear Governor Hochul,

LeadingAge New York and its not-for-profit, mission-driven members write to you today with concerns surrounding legislation A.191-A (Gottfried)/S.1451-A (Rivera), which would require a health equity impact assessment as part of the review of any certificate of need (CON) application submitted by a health care facility licensed under Article 28 of the Public Health Law. Under this bill, a hospital, nursing home or diagnostic and treatment center (DTC) seeking CON approval would be required to submit a health equity impact assessment with its application that demonstrates how the project would address health care access and disparities. This assessment would have to be prepared by an independent entity with public engagement.

We fully support the sponsors' commitment to health equity, and in fact, note that older adults and people with disabilities are too often overlooked in policy initiatives aimed at addressing inequities in health care access and outcomes. However, although this bill is well-intentioned, it is overbroad and would prolong an already burdensome CON process. In fact, it may have the unintended effect of delaying projects that would improve access, quality, and/or physical plant changes to support infection prevention.

This bill would apply to every CON application for construction or renovation of Article 28 facilities, or for the establishment or change of ownership of these health care facilities, that requires the review or approval of the Public Health and Health Planning Council (PHHPC) or the Commissioner of Health. Under Department of Health regulations, the only construction projects that do not require PHHPC or Commissioner of Health approval are routine maintenance and repair projects, non-clinical infrastructure projects, and equipment replacements. Thus, all other construction and establishment applications would be subject to this requirement. For example, a nursing home that is seeking to convert double rooms to single rooms or create larger common areas to help prevent the spread of COVID would have to hire an independent consultant to prepare a health equity assessment of the project. There are many other health care facility establishment and construction projects that require prompt review and approval and would not benefit from a health equity assessment.

The CON approval process is already lengthy, involving several layers of review and submission of multiple schedules, plans, policies, financial statements, schematics, etc. A decision on an application can take months to over a year, resulting in increased costs and delays in needed facility upgrades or expansions of services. For full and administrative review projects that involve a public need review (typically applications involving the establishment of a health care facility, major service additions or reductions, and larger construction projects), the impact on medically-underserved groups is already an element of the existing public need review. For less significant projects, submission of a health equity impact assessment may add little value.

Furthermore, nursing homes are already required under longstanding DOH regulations [10 NYCRR 709.3(m)] to provide access to Medicaid beneficiaries under a formula that is based on the regional average percentage of Medicaid admissions. Adherence to Medicaid access is already required as a contingency for full review nursing home CON

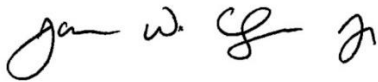
projects. Notably, more than 70 percent of nursing home days are paid for by Medicaid and most of the remainder are paid by Medicare. Moreover, unlike hospitals and many clinics, nursing homes do not have access to indigent care funding under Public Health Law 2807-k.

Finally, because they are heavily reliant on Medicaid funding which has not provided adequate reimbursement for nursing home services for many years, nursing homes do not have the resources to retain an independent consultant to prepare a health equity assessment each time they submit a CON application. This additional expense will only add to long-term care costs, which are funded primarily through Medicaid.

LeadingAge New York and its members wholeheartedly support the goal of eliminating disparities in health care access and outcomes. The long-standing under-funding of long-term care and senior services, which has been starkly highlighted by the COVID-19 pandemic, has contributed to the disparities experienced by older adults and people with disabilities. An increase in Medicaid reimbursement for LTC providers would offer a more direct way to address these disparities.

For these reasons, A.191-A (Gottfried)/S.1451-A (Rivera) should be limited to acute care hospitals and clinics and limited to only those CON applications that are subject to full review. While the bill as written is well-intended, LeadingAge NY strongly urges that this legislation either be rejected or amended to address these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", written in a cursive style.

James W. Clyne, Jr.
President and CEO
LeadingAge New York