December 17, 2021

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

Re: A.6057-A (Burke)/S.1783-A (Skoufis)

Dear Governor Hochul,

LeadingAge New York and its not-for-profit, mission-driven members write to you today with significant concerns surrounding A.6057-A (Burke)/S.1783-A (Skoufis), a bill which would require the Department of Health (DOH) to establish and implement an infection control competency audit, establish infection control competency standards, and require implementation of a checklist for residential care facilities and nursing homes. Under this legislation, facilities will be required to 85 eighty-five percent of an audit evaluation checklist, which will incorporate core competencies relating to infection control, personal protective equipment (PPE), staffing, clinical care, communication, and reporting. Nursing homes that do not satisfy 85 percent of the required criteria will be subject to reinspection, which will be monthly for facilities that meet less than 60 percent of the criteria.

While we support the goal of implementing strong infection prevention measures in all health care facilities and holding facilities accountable for deficiencies, this bill is duplicative of, but not identical to, nursing home infection prevention surveys and checklists already developed and implemented by the Centers of Medicare and Medicaid Services (CMS) and the State Department of Health (DOH). In the context of a pandemic and a staffing crisis, additional and duplicative administrative requirements such as these divert staff from all-important resident care responsibilities, without improving quality or outcomes.

Nursing homes have been and continue to be subject to repeated infection control surveys, audits and investigations throughout the pandemic. Many LeadingAge New York members have reported being surveyed six times over two months. These surveys are based on an infection control checklist developed by CMS. In addition to the CMS and DOH surveys, nursing homes have been inspected or audited by CDC, local health departments, OSHA, and the NYS Attorney General's office for compliance with infection prevention practices. They are surveyed against an array of regulations and guidance documents that include standards similar, but not identical to, those contained in this bill.

Although inspections and surveys can be an important component of infection control efforts if appropriately targeted, they are labor-intensive and demand that facility clinical and administrative staff turn their attention to supporting surveyor needs rather than resident needs. As an example, earlier this year a LeadingAge New York member reported a DOH survey team arriving just as a vaccination clinic was launching at the facility, forcing facility leadership to attend to the survey team, instead of the smooth operation of the vaccine clinic and the needs of the staff and residents.

Notably, nursing home quality is largely governed by detailed CMS regulations and guidance, which are enforced principally via inspections by DOH. Reliance on CMS regulations supports standardization in measurement of nursing home quality and the validity of the national Nursing Home 5 Star rating tool. Adding unique New York State infection control standards, surveys, and tools only duplicates and confuses compliance and quality measurement efforts.

Further, the overly proscriptive and imprecise wording of this legislation illustrates the danger of embedding in statute requirements that are more properly the province of regulation. For example, the bill requires facilities to implement an infection control program that includes procedures for isolation and *universal precautions*. However, "universal precautions" is a term of art that refers to measures to prevent exposures to bloodborne pathogens, generally as a result of piercing the skin. By contrast COVID-19 is generally considered to be airborne, requiring standard and

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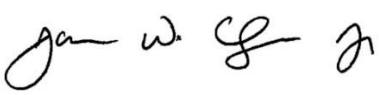
transmission-based precautions. Although drafted in response to the COVID-19 pandemic, this legislation will outlive COVID-10 and risks imposing inappropriate standards to future infectious disease outbreaks with varying modes of transmission.

Finally, the suggestion in the bill's justification that residential health care facilities were at fault for being "ill-equipped" in the early months of the pandemic is unfair. The state did not make available to nursing homes the resources that were needed to curb the spread of the disease among people receiving long-term and post-acute care services in the early months of the pandemic. There was a national shortage of personal protective equipment (PPE). COVID testing was barely available and was reserved for people who met narrow criteria. Government officials made decisions to prioritize hospitals for PPE, testing, and surge staffing; long-term care providers were not the top priority.

The dedication that long-term care staff and leaders have exhibited over the last 22 months should be applauded. Providers have been working tirelessly on the frontlines of this pandemic, and they will continue to do so. Instead of imposing duplicative requirements that will only distract providers from attending to residents, the focus of policy-makers should be on providing the resources long-term care providers need to mitigate the impact of COVID going forward.

For these reasons, LeadingAge NY urges the Governor to reject A.6057-A (Burke)/S.1783-A (Skoufis).

Sincerely,



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