



February 13, 2019

Katherine Ceroalo
Bureau of House Counsel, Reg. Affairs Unit
NYS Department of Health
Corning Tower, Room 2438
Empire State Plaza
Albany, NY 12237

RE: I.D. No. HLT-51-18-00016-P: Nursing Home Weekly Bed Census Survey

Dear Ms. Ceroalo:

I am writing on behalf of the membership of LeadingAge New York to comment on the proposed addition of Section 415.32 to Title 10 NYCRR relative to weekly reporting of nursing home bed census data. LeadingAge NY represents approximately 400 not-for-profit and public providers of long-term and post-acute care and senior services throughout New York State, including nursing homes which would be affected by this proposal.

As noted in the regulatory publication, the proposed regulatory amendments would codify the current requirement that nursing homes electronically submit weekly bed census data to the Department of Health (DOH) through the Health Commerce System (HCS).

LeadingAge NY does not object to the requirement for nursing homes to report bed census data on a weekly basis to ensure that such data are available to respond to natural disasters and other emergency events, as cited in the Regulatory Impact Statement (RIS). As a practical matter; however, DOH would likely reach out directly to facilities in the event of a natural disaster or other emergency event to obtain real-time information on bed availability.

However, the RIS also refers to, "alert[ing] the Department to significant changes in nursing home occupancy, improving the Department's ability to take appropriate action." The rulemaking does not, but should, further elaborate on what is meant by this statement and describe what an "appropriate action" might be and where such action is authorized in law or the regulations of the Department.

The RIS indicates that no other alternatives exist to reliably secure the needed data. There is an existing requirement and process to gather these data. We believe that facility compliance could be improved if DOH would send the weekly reminder email to nursing homes on Wednesday of each week rather than on Tuesday. These reminders could be more effective if

they are sent at a point in time when facilities can immediately act on the reminder and enter the data into the HCS. In addition, to maximize data reporting consistency, DOH should ensure that reporting instructions are explicitly clear regarding specialty bed categories and whether they are properly included in a facility's reported total capacity and census data.

Adopting a regulatory change rather than seeking to improve compliance through less burdensome means such as altering the timing of weekly reminders and clarifying the instructions will only add to the regulatory burden of operating a nursing home and could subject a facility to additional inspection deficiencies. If there is any possibility that non-compliance with this proposed regulation could result in a financial penalty to a nursing home, then this should be clearly disclosed in the *Costs to Private Regulated Parties* and *Costs to Local Government* sections of the RIS.

Thank you for the opportunity to provide input on the proposed regulation. If you have any questions on our comments, please contact me at (518) 867-8383 or dheim@leadingagency.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel J. Heim', with a long horizontal flourish extending to the right.

Daniel J. Heim
Executive Vice President

cc: Sheila McGarvey