



September 21, 2021

Howard A. Zucker, M.D., J.D.  
Commissioner of Health  
NYS Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Re: Vaccination mandate and workforce crisis in long-term and post-acute care providers

Via Email

Dear Commissioner Zucker:

I am writing on behalf of the members of LeadingAge New York – non-profit and public providers of long-term and post-acute care services – regarding the COVID-19 vaccination mandate imposed on health care personnel working in most regulated settings. LeadingAge New York's members include a variety of providers affected by the vaccination mandate: nursing homes, adult day health care programs, adult care/assisted living facilities, certified home health agencies, licensed home care services agencies, hospice programs, and PACE programs. Our members understand the importance of vaccination and have invested substantial resources in maximizing COVID-19 vaccination among their personnel. Despite their efforts, there remain many staff who do not plan to get vaccinated, even at the risk of losing their jobs. We have shared with the state the very serious staffing crisis that these providers are facing, and we are concerned that we are headed into an alarming situation for some of the state's most vulnerable populations as the September 27<sup>th</sup> and October 7<sup>th</sup> deadlines for compliance with the vaccination mandate approach.

With federal mandates on the horizon for the vast majority of the provider types covered by the state's mandate, **we urge the state to delay its mandate until the federal regulations, which are expected in October, are issued.** For those providers that will be covered by both mandates, a delay would allow the state to align its regulations with the federal regulations and avoid imposing inconsistent requirements on the same providers. For those providers that are covered by only one mandate, mirroring the federal requirements will avoid incentives for personnel to migrate from a setting with a less favorable set of requirements to one that is more favorable.

Similarly, to avoid unwanted shifts between settings, the state mandate should cover other providers that were overlooked in the initial regulation, such as private physician and dental practices and Consumer Directed Personal Assistance Program (CDPAP) personnel. If these provider types are not subject to the same mandates as other providers, nurses may migrate from long-term care and hospital jobs to physician practice jobs, and home care aides may migrate from licensed home care agencies to the CDPAP. Further, the long-term care consumers who are served by nursing homes, ACFs, and home care agencies also have doctor and dentist appointments, where they may be exposed to the virus with devastating consequences.

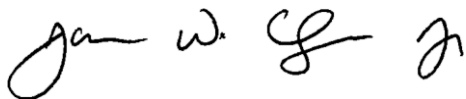
To be clear, delaying the state mandate and aligning with the federal regulations will not solve the workforce shortages our members are experiencing. As you know, the workforce challenges pre-date the pandemic and have only worsened. However, pivoting to adopt the federal mandate offers all parties more time to plan for this crisis and avoids the waste of resources on reconciling conflicting requirements. In addition, we request that the state provide at least a 90-day grace period from any penalties it might impose on providers as they work to implement the vaccination mandate and combat staffing shortages.

We also urge the state to work with providers to develop a plan to manage this staffing crisis. We have heard state officials reference staffing plans as a way to mitigate the current crisis. However, these plans are typically developed to address short-term emergencies. They cannot be effective when every provider is implementing its emergency plan and competing for emergency staff, with no end in sight for the need. Our long-term and post-acute care providers are already closing units and suspending admissions due to staffing shortages. The next step is to transfer residents and patients already under their care, but there may be no other providers to receive them. We hope to work with you to enhance staffing flexibilities and develop staffing resources to enable long-term and post-acute care providers to continue to provide high-quality care to their residents and patients.

These providers have been working tirelessly and heroically for a year and a half to protect vulnerable New Yorkers from COVID-19 and other health risks, while providing the highest possible quality of life. The older adults and people with disabilities under their care need and deserve qualified caregivers in adequate numbers to meet their needs. New York has consistently been at the forefront of fighting COVID-19, and it is commendable that the state moved to protect vulnerable populations by implementing a vaccine mandate early on. But now that the federal government has followed New York's lead, there is no reason for the state to divert its own resources and provider resources to pursue the implementation of duplicative requirements. Instead, we hope to jointly focus our resources on addressing staffing needs.

Thank you very much for your consideration of these issues.

Sincerely yours,

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

James W. Clyne, Jr.  
President & CEO

cc: Kristin Proud  
Adam Herbst  
Val Deetz  
Ursula Bauer  
Angela Profeta