



October 6, 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 their mounting struggles and staffing shortage concerns, as we approach the October 7th deadline for COVID-19 vaccination of staff working in adult care facilities (ACFs), home care, and hospice agencies. LeadingAge New York's members include a variety of providers affected by the State's vaccination mandates: nursing homes, adult day health care programs, ACFs, certified home health agencies, licensed home care services agencies, hospice programs, and Programs of All-Inclusive Care for the Elderly. Our membership also includes managed long-term care (MLTC) plans that contract with our home care agencies. Our members have been working diligently since January to educate their employees on the importance of vaccination and ensure access to the vaccine. Much of this effort has entailed ongoing one-on-one conversations with staff to help address individual concerns, questions, and confusion. Despite these considerable efforts, many staff members, especially in home care, do not plan to get vaccinated.

Vaccination of home care workers is particularly challenging. Home care agencies were not part of the early federal vaccination Pharmacy Partnership for Long Term Care and are not easily organized for a targeted vaccination effort due to their decentralized staff and patient populations. While some of our agencies have strong staff vaccination rates, many will experience a significant loss of staff, with some agencies seeing a 25 to 40 percent reduction in their workforce due to vaccine refusal. The likelihood of staff migration to the hospitality or service fields or the Consumer Directed Personal Assistance Program also poses a threat to this workforce and the patients they serve. Our member MLTC plans, which facilitate the delivery of most Medicaid personal care services statewide, are extremely concerned about the potential reduction and gaps in care for elderly and disabled Medicaid beneficiaries across the state due to losses of home care nurses and aides.

Staffing challenges in hospitals and nursing homes continue to be severe, and this next phase of the mandate will only compound the crisis. Hospitals continue to endure major staff shortages, postpone elective surgeries, and close specific units. Most nursing homes have stopped admitting new residents, closed whole wings or units, and some are considering transferring residents to other facilities due to a lack of staff to care for them. Many ACFs have stopped taking admissions as well. Additional shortages of staff in ACFs, home care, and hospice will create an absence of care for many and an inability for patients to move from one setting to another depending on need. Staff shortages will likely play out in several ways: those at home who may have to forgo home care due to lack of an aide may end up needing care in an ER, hospital, or long-term care facility in their community; those being discharged to home from a hospital or skilled nursing facility will likely not obtain the follow-up post-acute home care they require due to a lack of

nurses and aides to deliver care; and those who are reaching out for the first time for home care or congregate care may not receive any care at all in any setting due to the staffing shortage crisis.

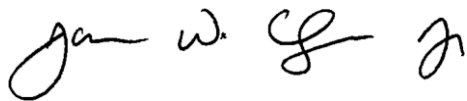
Unfortunately, the interventions announced to date to mitigate staffing shortages are focused principally on hospitals. For example, the majority of the flexibilities set forth in the Governor's recent Executive Order operate to support hospital staffing. Providers regulated by the Department of Health (DOH) have been directed to contact the DOH Surge and Flex Operations Center when they are experiencing health care personnel staffing, patient care capacity, or other triage concerns. Thus far, none of our members that have reached out to this resource have received any assistance. The surge staffing resource created early in the pandemic has long favored hospital settings that can afford to pay more for staff than long-term/post-acute care providers. In addition, the State's proposal to deploy the National Guard, DMAT teams, or staffing crews to address workforce shortages does not appear to be a feasible solution for individuals who need care at home.

The State must take swift and immediate action to support long-term and post-acute care providers as they continue to deal with this crisis. Providers need significant financial support to recruit additional workers. We urge the State to ask the federal government to expedite distribution of Home and Community-Based Services enhanced federal Medicaid matching monies (HCBS eFMAP) to incentivize vaccination, recruitment, and retention of staff. In addition, we urge the State to return the COVID-19 flexibilities afforded to providers during the state Public Health Emergency, ensure that all health care provider types are included in the mandate, significantly reduce or eliminate the Health Emergency Response Data System (HERDS) reporting for nursing homes and ACFs so that administrators and staff can address the care and staffing concerns at hand, and work in conjunction with long-term care providers to devise both a short- and long-term approach to addressing this very real threat to patient care and our workforce.

Current staff losses due to the vaccination mandate only exacerbate a longstanding issue that has worsened as a result of COVID-related costs and losses, Medicaid rate cuts, and an exodus this past year of staff who are burned out. 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 ensuring 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.

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.", with a stylized flourish at the end.

James W. Clyne, Jr.
President & CEO

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