

December 17, 2024

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

Re: A.3703 (Epstein)/S.2984 (Kavanagh)

Dear Governor Hochul,

LeadingAge New York and its not-for-profit, mission-driven members write to you today in opposition to A.3703 (Epstein)/S.2984 (Kavanagh). This legislation would impose additional requirements on nursing home closures that are largely duplicative of existing rules and further, could potentially cause harm to the stability and quality of resident experience in these facilities.

This legislation would require nursing home operators to notify the State Department of Health (DOH) 90 days in advance of an anticipated closure. This notification would include a proposed plan for closure and be delivered to local government officials, including the county executive, the presiding officer of the local legislative body, the facility's residents' council, and, if applicable, the community board in New York City. If any of these local entities have "cause to suspect" that the closure is for reasons other than resident health and safety, they may convene public or private meetings and make recommendations to the State Department of Health regarding the closure.

Nursing home closures are already subject to rigorous regulatory oversight, including a 90-day notice requirement, approval of closure plans, engagement of residents and their representatives in finding alternative care settings, and the preservation and transfer of medical records. Adding another layer of notification and engagement of local officials, who have no formal role in the approval or oversight of nursing home closures unless the nursing home is locally operated, is unnecessary. The purpose of the bill's additional notification is unclear and could lead to premature publicity concerning the closure. Early publicity could exacerbate the conditions that led to the difficult closure decision, and potentially accelerate the process, creating further instability for residents, families and staff.

Once a nursing home's closure intention becomes public, staff may seek other employment, leading to increased vacancies and absenteeism, which could force an expedited closure and affect the daily lives and wellbeing of residents. Additionally, vendors and creditors, upon learning of the closure, may demand payments more aggressively, further destabilizing the facility.

Nursing home closures are predominantly driven by the inadequacy of Medicaid reimbursement from the State. The majority of nursing home residents depend on Medicaid to pay for their care, but Medicaid rates are still based on 2007 cost report data, discounted by 9 percent. While our membership and the people we serve are grateful for the modest increases provided in recent years, they do not begin to cover the costs of providing care in 2024. This inadequacy in funding makes it difficult for nursing homes to recruit and retain staff and manage

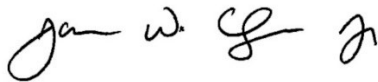
other expenses, often forcing them to limit admissions to ensure adequate staffing. These limitations reduce revenue, creating a downward spiral that can lead to financial failure.

The decision to close a nursing home does not come easily and is made only as a last resort. Local government does not have a regulatory role in these closures, and their involvement will not alter the fundamental financial challenges faced by these facilities. Convening public meetings at the local level once a closure decision has been made and filed with the DOH will not save the nursing home or its residents. At that point, the financial losses will be too great. Instead, the public attention may accelerate the closure, creating a more chaotic transition for residents rather than a smooth one.

Further, absent any significant change in the state's approach to reimbursing nursing homes, communities will continue to see nursing homes close, and no amount of public engagement at that juncture will address the fundamental problem.

For these reasons, LeadingAge New York urges that A.3703 (Epstein)/S.2984 (Kavanagh) be rejected.

Sincerely,

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

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