

## MEMORANDUM

### S.3759 (Cleare)

#### *An act to amend the elder law, in relation to social model adult day services programs*

LeadingAge New York supports S.3759 (Cleare), which would establish inspection and annual self-certification requirements for social adult day care (SADC) programs and would provide additional authority to NYS Office for the Aging (NYSOFA) to establish regulatory oversight of all SADC programs regardless of payor type or funding source, not just those under the office's grant program. LeadingAge New York supports this legislation but recommends several critical amendments.

Increased oversight of SADC programs is long overdue. This legislation rightfully sets up inspection requirements for new and existing SADC programs, as well as a self-certification process that addresses administrative, fiscal, and programmatic operations, including participant and family feedback for all SADCs regardless of payor. It is our hope that this increased oversight and inspection process will encourage direct communication and guidance between the State and SADC programs. Currently, programs receive guidance and information solely through contracting managed long-term care (MLTC) plans. The lack of communication between programs and the State has created barriers to operating and better serving consumers.

While LeadingAge New York supports the core objective of this bill, we are concerned that the effective date and timeframes established by the bill are far too delayed to serve the individuals who are aging into their eighties and nineties now and could benefit from this model over the next five years. Under the current bill, self-certification of programs would begin on January 1, 2031, and inspection of existing SADC programs would start on or before December 31, 2030. While we understand it takes time to establish a process for upholding these requirements, oversight of programs should be a higher priority and requires earlier implementation. Instead, we strongly recommend that self-certification begin by January 1, 2027, and inspection for existing programs be carried out by January 1, 2028. We understand that inspections of new programs established after January 1, 2026, will begin as soon as implementation allows and are supportive of that requirement.

We also have concerns regarding the self-certification process, as several layers of self-certification already exist. The Office of Medicaid Inspector General (OMIG) already requires self-certification for SADCs that wish to contract with MLTC plans to provide Medicaid services. In addition, New York City Department for the Aging requires registration for programs in New York City. Further, each SADC program serving Medicaid beneficiaries must go through a survey process annually with each MLTC program it contracts to ensure compliance with the federal home and community-based settings (HCBS) rule. While we share the goal of providing more direct oversight and tracking of programs, we suggest that the State streamline these self-certification requirements to eliminate duplication.

Additionally, we recommend that the bill's application to adult care facilities be clarified by expressly exempting SADCs operated by adult care facilities licensed under article 7 of the social services law. A statutory and regulatory framework already exists for these programs, with oversight by the Department of Health. While we appreciate the implementation of oversight where it is needed, an additional layer

of oversight is unnecessary for adult care facilities and could inadvertently complicate the operation of these programs without any benefit to the consumer.

Lastly, the legislation imposes only one consequence for failure to self-certify and/or correct inspection deficiencies – the SADC would be ineligible to receive public funding. Since no penalty structure currently exists for this model of care, we recommend the bill be modified to include monetary penalties for noncompliance with these critical new requirements. Without this additional step, SADCs serving the non-Medicaid population will continue to operate without following the requirements of this statute, and they will have no accountable incentive for them to do so.

LeadingAge New York represents not-for-profit, mission-driven long-term care and aging services providers. Our members include nursing homes, assisted living and adult care facilities, home care and hospice agencies, managed long term care plans, and other providers, including social adult day care programs. Models such as social adult day care are an excellent example of quality home and community-based services (HCBS) which help individuals remain living at home while also receiving the care and assistance they may need. It is fortunate that SADC programs are a growing resource for aging New Yorkers, however, they require proper oversight to ensure safety, quality and responsible operation.

LeadingAge New York supports the objectives of this bill and encourages its passage. However, to strengthen and streamline the bill's implementation, we respectfully request that the above recommendations be addressed in S.3759 (Cleare).

*LeadingAge New York represents over 350 not-for-profit and public long-term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.*

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