MEMORANDUM

S.3366 (Rivera)
An act to amend the public health law, in relation to hospital establishment

LeadingAge New York opposes this legislation which would require that persons or entities with operational authority over a hospital be subject to establishment approval by the Public Health and Health Planning Council (PHHPC). The bill specifies the responsibilities that indicate "operational authority" over a hospital and provides that any person or entity that exercises any of these responsibilities must be approved by the PHHPC. In effect, the legislation would for the first time require PHHPC approval of provider affiliations that do not result in a merger or "active parent" relationship. LeadingAge New York must oppose this bill, as it would add an unnecessary layer of approval that would hinder the ability of not-for-profit nursing homes to affiliate with other facilities and/or health systems in order to maintain the viability of their organizations.

Under existing law and regulations, PHHPC approval is required of the establishment of a parent-subsidiary relationship, when the parent organization assumes certain core governance, financial, and operational responsibilities. In addition, existing regulations require Department of Health approval of certain management agreements. However, looser affiliations under a common parent, in which each facility maintains control over its own key leadership and over major organizational decisions, do not require DOH or PHHPC approval.

This legislation would go beyond existing regulations and require PHHPC approval of these loose affiliations. The PHHPC approval process is extensive, typically requiring several months and sometimes more than a year. It involves Department of Health reviews and recommendations by multiple levels of staff, a formal recommendation memorandum for the PHHPC, and the calendaring of the application for a PHHPC Establishment Committee meeting and a meeting of the full Council.

The delays occasioned by these additional layers of review are likely to impede time-sensitive affiliations between not-for-profit nursing homes and other not-for-profit facilities or health systems. New York's not-for-profit nursing homes are struggling mightily to remain financially viable in an environment with outdated Medicaid reimbursement, a health care workforce crisis, and steeply rising costs. Since 2014, more than 75 public and not-for-profit nursing homes have closed or been sold to for-profit operators. For a growing number of LeadingAge New York's nursing home members, which are exclusively not-for-profit and government-sponsored, the only way to avoid selling to a for-profit entity or closing their doors entirely is to affiliate with another not-for-profit. Through these affiliations, organizations can achieve economies of scale and efficiencies that enable them to improve their financial positions.

These affiliations typically do not typically involve "active parent" arrangements that would require PHHPC approval under existing law and regulations – the affiliating nursing homes and/or hospitals are already be approved by PHHPC, and the parent is not assuming the enumerated core responsibilities. Significantly, under existing regulations, any change in the number of certified beds as a result of the affiliation requires Department of Health approval. In addition, management agreements among the affiliated entities requires Department of Health approval. Thus, the financial and operational soundness of the management arrangement and the supply of existing beds are ensured through Department of Health approval.

Nevertheless, this legislation would add PHHPC review and approval of nursing home affiliations to the existing Department of Health approvals of service changes and management agreements. It is unclear what value is added by PHHPC approval of affiliations among established not-for-profit nursing homes. However, the added burden of additional reviews and delays is significant. If a necessary affiliation is delayed by Department of Health reviews and PHHPC approvals, the financial status of one or both parties may spiral downward, rendering the affiliation infeasible and closure or sale inevitable.

For these reasons, LeadingAge New York opposes S.3366 (Rivera).

LeadingAge New York represents over 400 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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