

MEMORANDUM

A.5316-A (Reyes)/S.3838-A (Hinchey)

AN ACT to amend the public health law, in relation to the release of medical records in an electronic format

LeadingAge New York opposes this legislation, which would require all healthcare providers in New York State to provide, upon the request of the patient or “qualified person,” “all electronic medical records” through a web portal. This requirement would be a challenging and unaffordable endeavor for many long-term care providers, which rely more heavily on Medicaid reimbursement than other health care providers. For example, Medicaid pays for over 73% of nursing home days and over 80% of licensed home care services in New York, and Medicaid rates fall far short of the cost of care.

Implementing a patient portal for “all electronic medical records” requires significant upfront and ongoing investments, including the purchase and adoption of the necessary software, secure and HIPAA-compliant cloud storage capacity, and integration with electronic health records systems. It also requires continuous maintenance and updates, data management, cybersecurity safeguards and monitoring, and training of staff, residents and families. The patient portal must comply with a host of privacy and security regulations, and any breach or deviation from standards exposes the health care provider to fines and damages.

Notably, long-term care providers, unlike hospitals and physician practices, were not eligible for federal funding for electronic health record (EHR) adoption under the HITECH Act. As a result, their EHR infrastructure tends to be less sophisticated than other health care providers, and interoperability and data exchange continue to be significant challenges.

Moreover, this bill, if enacted, could create inconsistencies between state law and federal regulations which would raise the price of development and implementation of compliant web portals, as well as the lead time needed to do so. Federal regulations governing access to electronic health records include extensive standards for the technology to be used, necessary data elements, as well as exemptions and exclusions for certain types of information and situations.

Finally, this legislation would take effect six months from enactment – an unreasonably short period that will not allow providers to budget for and implement the technology to meet its requirements.

The imposition of this new, unfunded mandate on not-for-profit long-term care providers will divert resources that are needed to provide care to residents and patients.

For these reasons, LeadingAge NY opposes A.5316-A (Reyes)/S.3838-A (Hinchey) and urges that it be rejected.

Contact: Sarah Daly at sdaly@leadingageny.org