2021 Legislative Hearing on Home Care and Long-Term Care Workforce

Testimony
Submitted by:

Ami J. Schnauber
Vice President, Advocacy and Public Policy
LeadingAge New York

Tuesday, July 27, 2021

INTRODUCTION

On behalf of the membership of LeadingAge New York, thank you for the opportunity to provide testimony on workforce challenges impacting nursing homes, adult care facility (ACF)/assisted living providers (hereafter collectively referred to as "assisted living"), home care agencies, and the seniors they serve. LeadingAge New York represents over 400 not-for-profit and public providers of long-term care (LTC) and post-acute care, aging services, and senior housing, as well as provider-sponsored Managed Long Term Care (MLTC) plans. The providers we represent embody the full continuum of services an individual may need as they age. This testimony addresses the urgent need for the State to address workforce needs in the context of demographic change, and to approach these issues holistically, with the entire continuum in mind.

Providers across the LTC continuum are facing extraordinary and unprecedented workforce challenges. These challenges pre-date the pandemic, driven by demographic changes, inadequate reimbursement, competitive labor markets, and regulatory requirements that hinder recruitment. COVID-19 has exacerbated existing staffing shortages and depleted provider financial resources. Our members report more severe workforce shortages statewide and at all levels than ever before. They are trying every possible creative strategy to recruit and retain staff, from signing and retention bonuses to career ladder programs, to no avail. They report dozens of open positions and few, if any, applicants. And, today's shortages will only worsen as our population ages and the working-age population shrinks.

For too many years, New York's principal focus for LTC has been to reduce Medicaid spending on these services. Year after year, New York's LTC sector has borne deeper Medicaid cuts than any other health care sector, while costs have risen and administrative requirements have grown exponentially. At the height of the pandemic, when most states poured resources into their LTC systems, offering Medicaid rate increases, staffing support, and other funding, New York State cut Medicaid reimbursement by 1.5 percent. By contrast, according to the Kaiser Family Foundation, during the pandemic, more than two-thirds of states increased Medicaid payments for home and community-based services (HCBS) providers, and more than half increased Medicaid payments to nursing homes.[1] As the primary payer for LTC services in New York and nationwide, Medicaid bears responsibility for the financial viability of the sector, its ability to provide access to high-quality care, and its capacity to compensate staff appropriately for the difficult and essential services they perform.

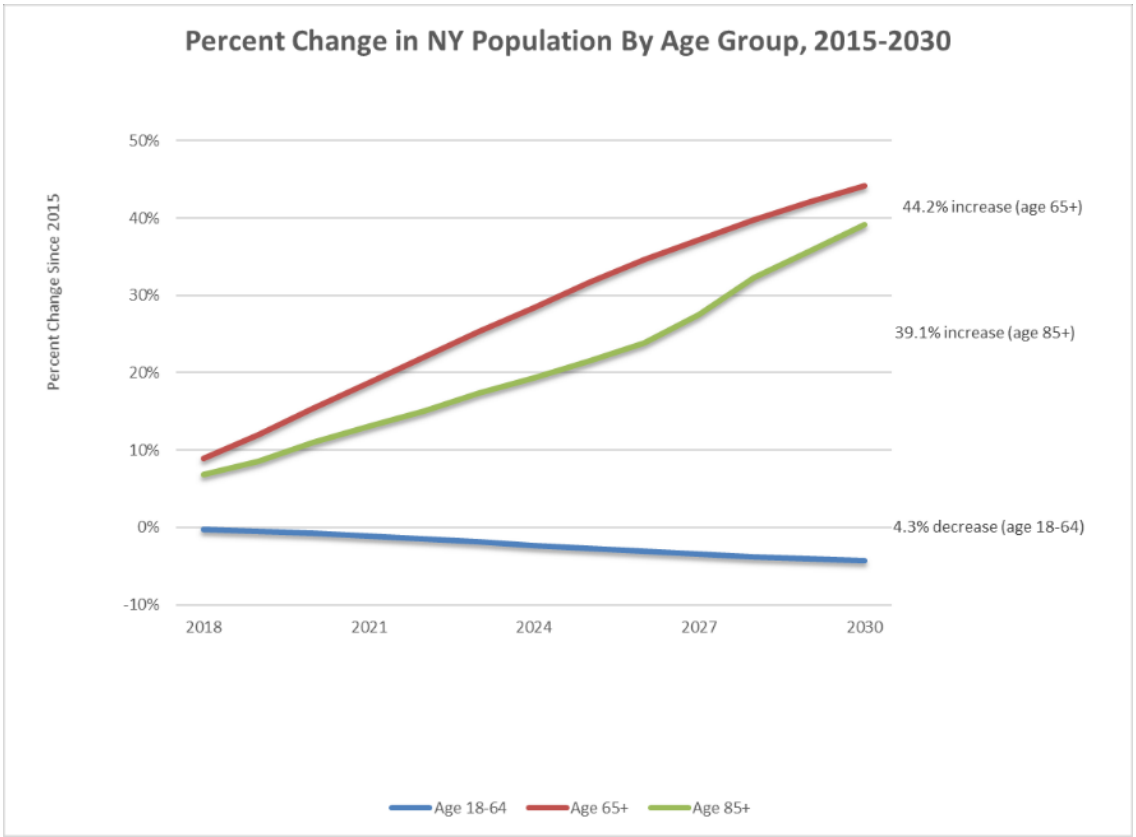
If New York State is committed to these goals, it must make a substantial and sustained investment in LTC. The workforce challenges we face will not be fixed with mandates or penalties. Instead of imposing new layers of costly administrative requirements that divert staff from caring for residents and patients, the State must dedicate additional resources to services for older adults and people with disabilities. Only through a comprehensive workforce development plan and a major commitment of resources will we be able to ensure that older adults and people with disabilities, at all income levels, have access to high-quality care and the opportunity to thrive.

[1] Musumeci, M. State Actions to Sustain Medicaid Long-Term Services and Supports During COVID-19. Aug. 26, 2020.

Who Will Take Care of Our Parents and Grandparents? Who Will Take Care of Us?

Our workforce challenge isn't just a complex policy issue or a provider problem; it is an issue that will touch nearly everyone. New York is approaching a demographic crisis. Approximately 3 million adults age 65 and older, representing 16 percent of our population, make New York their home. The oldest members of the Baby Boom generation are now in their 70s; in four years, they will hit their 80s, and their LTC needs will escalate. *Between 2015 and 2040, the number of adults age 65 and over will increase by 50 percent, and the number of adults over 85 will double.*[2] In another alarming trend, at the same time the percentage of our population over age 65 is growing, the percentage between 18 and 64 is shrinking. The number of people available to care for an expanding older adult population is declining.

Figure 1



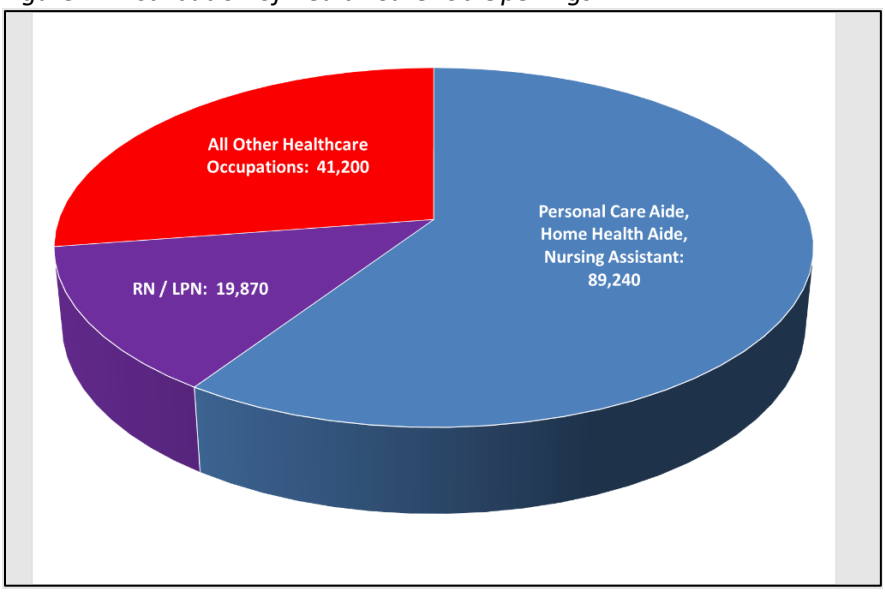
We are already feeling the effects of a shortage of working-age caregivers for our parents, grandparents, and neighbors. Today, there are only approximately four working-age adults for every adult over age 65 in New York and 29 working-age adults for every adult over age 85. By 2040, there will be approximately three working-age adults for every adult over age 65 and 15 for every adult over age 85.[3] As described in more detail below, both informal caregivers and direct care workers in the formal care delivery system are already in short supply, and the gap will only grow. Our members are experiencing unprecedented and extraordinary challenges throughout the state filling open positions in all levels of care.

[2] Cornell University Program on Applied Demographics New York State Population Projections; http://pad.human.cornell.edu/; accessed Jan. 4, 2019.
[3] *Ibid.*

Health care job growth in New York State exceeds job growth in every other sector, and most of those new jobs are in LTC. Of the 150,000 health care job openings anticipated annually, **89,000 (60 percent) are for personal care aides (PCAs), home health aides (HHAs), and nursing assistants.**[4] (See Figure 2). Unfortunately, the supply of workers is not keeping up with demand, and nursing homes, assisted living, home care agencies, and hospice programs are not able to fill existing job openings. For example, between 2016 and 2026, the average annual openings for HHAs and PCAs are projected to grow by 52 percent and 41 percent respectively, while openings for registered nurses (RNs) are projected to grow by 20 percent and for nurse aides by 16 percent.[5]

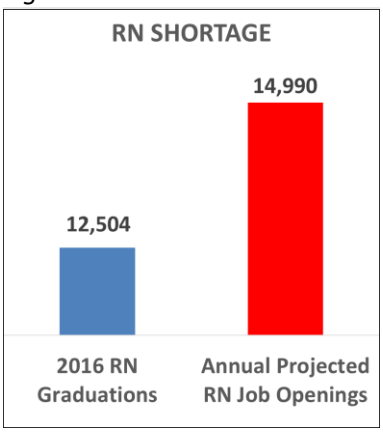
According to a 2017 study by the Center for Health Workforce Studies, 69 percent of nursing homes were already reporting difficulty hiring staff for evening, night, and weekend shifts.[6] Likewise, home care agencies reported difficulty both with recruitment and retention.[7] Workforce challenges have multiplied since 2017 and have been compounded by the pandemic. While these data were not collected for assisted living, these providers compete for the same workers and are plagued by the same difficulties.

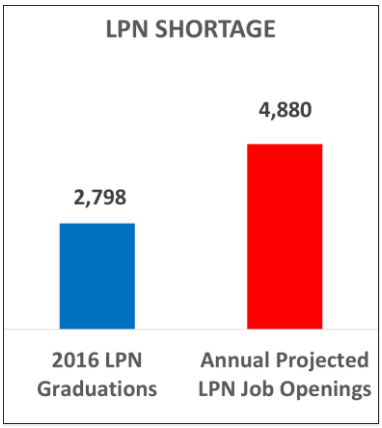
Figure 2: Distribution of Health Care Job Openings[8]



[4] New York State Department of Labor Employment Projections; https://www.labor.ny.gov/stats/lsproj.shtm; accessed Jan. 11, 2019.
[5] Stiegler K, Martiniano R, Moore J, et al. *The Health Care Workforce in New York State: Trends in the Supply of and Demand for Health Care Workers.* Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany; April 2020.
[6] Martiniano R, Krohmal R, Boyd L, Liu Y, Harun N, Harasta E, Wang S, Moore J. *The Health Care Workforce in New York: Trends in the Supply of and Demand for Health Workers*. Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany; March 2018.
[7] *Ibid.*
[8] *Ibid.*

Figure 3[9]





The Pandemic Has Intensified the Long-Term/Post-Acute Care Workforce Shortage

The challenges presented by demographic change have only intensified as a result of COVID-19. At the height of the pandemic, many staff left their jobs due to fear of contracting the virus or exposing their loved ones to it. Others struggled with child care or other family demands. Those who remained are the unsung heroes of the pandemic. Staff at all levels of our member organizations, from aides to CEOs, are working long hours to care for vulnerable residents and patients under stressful conditions. Our direct care workers and our executives have been traumatized by the suffering the virus has caused; the loneliness and distress of residents, patients, and families; the tragic losses of patients and residents, colleagues, and loved ones; and the ever-changing demands and threats of regulators. Despite their sacrifices, which are ongoing, these dedicated caregivers have barely been recognized for their dedication; instead, they are being blamed for circumstances beyond their control. It is not easy to recruit and retain in this environment.

While the existing workforce is depleted and weary, the pipeline for new certified nurse aides (CNAs), HHAs, and PCAs has been halted to a great extent. Training programs for aides have been closed, and the state contractor that proctors the testing and evaluation of CNAs for training programs suspended its activities until recently. Nursing homes have been permitted to hire non-certified aides under a temporary waiver, which has helped to mitigate aide shortages, but is far from a long-term or complete solution. The Department of Health (DOH) initiated a hybrid training model for home care aides to jumpstart training during the pandemic. However, few programs have been approved, and trainees are difficult to recruit. Our members report that licensed home care agencies serving Assisted Living Programs (ALPs) have resorted to hiring licensed practical nurses (LPNs) to perform HHA duties due to lack of aides and lack of reopened training programs.

Long-Term/Post-Acute Care Workforce Shortages Affect Everyone

The combination of demographic changes, pandemic conditions, and low wages has created dire workforce shortages in all settings and all regions of the state. The inability to hire aides and professionals is creating access barriers to LTC services and driving up overall health care costs. For

[9] Stiegler K, Martiniano R, Moore J, et al. *The Health Care Workforce in New York State: Trends in the Supply of and Demand for Health Care Workers.* Rensselaer, NY: Center for Health Workforce Studies, School of Public Health, SUNY Albany; April 2020.

example, the situation has resulted in long waiting lists for certain community-based services and the inability to fill authorized home care hours due to lack of aides and nurses. Home care agencies must turn away patients due to a lack of available RNs to assess and admit them and supervise their aides. Lack of access to home care, along with other factors, leads individuals to seek admission to higher levels of care. The shortages also limit the ability of nursing homes to admit new residents, especially those with complex medical conditions and/or high supervision needs. Our nursing home members are already reporting that they are closing units and turning away new admissions as a result of insufficient staff.

Lack of access to long-term or post-acute care affects not only the older adult waiting to be discharged from the hospital or nursing home, but also family members who are faced with the prospect of caring for a loved one without professional support. Absent adequate access to post-acute services, hospital beds remain occupied by individuals waiting for discharge and are unavailable to others who need hospital care. Individuals who are living in the community without necessary home care may experience avoidable exacerbations of chronic conditions, functional decline, falls, hospitalizations, and ultimately premature nursing home admissions. Family caregiver stress increases, and their productivity at work diminishes. These outcomes add to the State's Medicaid spending and place a strain on the entire health system and our communities. Again, this issue has a ripple effect that can touch the lives of all New Yorkers.

Workforce shortages are also driving up the cost of care. Providers are forced to rely on overtime of existing staff and/or staffing agencies which are demanding extortionate rates. Ultimately, our not-for-profit members will not continue to operate if they cannot safely staff their facilities or properly serve home care patients, and they will close their doors or sell to for-profit operators. *Since the pandemic began*, we have lost one non-profit nursing home in Westchester, two upstate homes have announced fall closures, at least two are for sale in New York City, and several on Long Island have been sold or are in sale negotiations. An assisted living facility that served Medicaid beneficiaries closed in Western New York, and another is in the process. A number of other nursing homes and assisted living providers are evaluating long-term viability given the continuing financial impacts of COVID-19, lack of financial relief, and skyrocketing staffing costs.

The Relationship Between Reimbursement Rates, Wages, and Workforce Shortages

Generally, when labor is in short supply, employers can raise wages to compete for scarce personnel and charge higher prices for their goods or services. However, long-term/post-acute care providers cannot raise prices, and therefore cannot raise wages, because they are paid almost entirely through Medicaid and Medicare. At the same time, they must compete for employees with hospitals that are able to offer higher wages. However, unlike hospitals and physician practices, they do not have the ability to cost shift to private payers when government rates are cut or when the government imposes new and costly requirements without fully funding them. Nor can long-term/post-acute care providers compete with fast food or retail employers that are able to offer lower-stress jobs without specialized training at similar wages.

New York's LTC providers cannot raise wages to compete for workers because they are vastly underpaid by their predominant payer – Medicaid. They have not received a Medicaid rate increase since 2007, despite rising costs, and have experienced deeper cuts than any other health care sector year after year.

The $64 million included in the 2021-22 State Budget for nursing home staffing is barely a third of the $168 million in annual Medicaid cuts imposed on nursing homes in 2020.[10]

According to a report commissioned by the American Health Care Association, New York's nursing home Medicaid rate falls short of costs by $64 per resident, per day – the largest shortfall of all the states surveyed – suggesting that New York's nursing home Medicaid rate is among the worst in the country.[11] Similarly, rates paid to Medicaid ALPs and ACFs are well below the cost of care. ACFs that serve Supplemental Security Income (SSI) beneficiaries are reimbursed only slightly more than $42 per resident day to provide room, board, and a comprehensive array of services – less than half of the average cost per day. Both certified and licensed home care agencies, likewise, have been operating with negative margins for the last decade due to Medicaid, Medicare Advantage, and Medicaid managed care rates that do not cover costs. The financial stress on LTC providers has been further aggravated during the COVID-19 pandemic by falling census figures, extraordinary pandemic-related costs, and the additional Medicaid cuts enacted in 2020, at the height of the pandemic.

What Are We Doing to Prepare for Demographic Change?

Unfortunately, the State has not pursued comprehensive and proactive investments or regulatory reforms to address our aging population and their needs. Like many individuals who avoid planning for their future long-term needs, New York has no plan and has made no investment to address this crisis. Notwithstanding the demographic wave that is already driving up demand for LTC services and limiting the supply of workers, for the past several years the State has focused its health care investments on the acute care and primary care sectors and its budget cuts on the long-term/post-acute care sector. New York State needs to change course and implement a proactive plan to address demographic change *now*.

Despite the demographic imperative and existing shortages, the State's workforce development initiatives to date have focused on high-tech jobs and construction trades, not caregiving careers. Until this month, the only significant LTC workforce initiatives implemented in recent years – the MLTC workforce component of the State's 1115 Medicaid waiver and the nursing home Advanced Training Initiative – have focused on enhancing the training of the existing workforce. While this is clearly an important goal, we need resources to bring new workers into the field and to enhance their compensation. Further, the current status of the program is not clear. While the State received a temporary extension of its 1115 waiver through March 31, 2022, the extension application did not address this program.

In mid-July, DOH submitted to the Centers for Medicare and Medicaid Services (CMS) its plan for the enhanced federal Medicaid matching dollars (eFMAP) made available to support HCBS through the American Rescue Plan. We were delighted to see that most of these funds appear to be invested in workforce initiatives. The plan is a promising, short-term step forward in supporting the community-based LTC workforce. However, it is unclear whether the State intends to invest any of the funds in the Medicaid ALP, certified home health agency, or hospice workforce. Moreover, consistent with federal requirements, funds cannot be dedicated to nursing home workforce initiatives. Nor can the funds be

[10] These cuts include a 1.5 percent across-the-board cut to Medicaid payments as well as reductions to capital reimbursement.

[11] Hansen Hunter & Company, "Report on Shortfalls in Medicaid Funding for Nursing Center Care," Nov. 2018. New York's $64 per day shortfall represents the largest shortfall of the 28 states the report analyzes.

used to support the workforce delivering care in ACFs that are funded exclusively with the meager SSI rate of just over $42 per day. Finally, the eFMAP funds must be spent over a short timeframe and, in order to do so, cannot be invested in truly transformative initiatives that require a longer start-up phase.

The State Must Implement a Multi-Pronged Effort to Address the Needs of a Rising Number of Older Adults in the Context of a Shrinking Workforce

To address demographic change in New York State, we must build the LTC workforce and identify ways to use a shrinking pool of workers more efficiently and effectively. If New York is to ensure access to high-quality care for a growing number of older adults in our communities, we need to infuse resources into the LTC system and develop care models and worker titles that enable efficient deployment of a limited supply of workers. Accordingly, LeadingAge New York proposes a multi-pronged strategy to bring new workers into LTC and implement reforms that enable optimal use of a limited workforce.

LeadingAge New York proposes a multi-faceted workforce plan that includes both substantial investments and no-cost regulatory and statutory reforms to reduce barriers to the recruitment, retention, and efficient deployment of nursing home, assisted living, and home care staff. The plan addresses the barriers to building the workforce through three strategies: (i) Dedicating existing funding to expand access to aide training and nursing programs and to enhance wages; (ii) Reducing regulatory barriers to operating training programs and obtaining and retaining certifications; (iii) Optimizing the use of existing workers and improving retention through the development of career ladders and advanced aide titles and policies enabling professionals to practice at the top of their scope.

1. **Make LTC the top priority for the 2022-23 State Budget and the State's new 1115 waiver application.**

The Legislature must make LTC its top priority in the State Budget for State Fiscal Year 2022-23. It must also ensure that the State makes LTC a top priority in its anticipated Medicaid 1115 waiver application.

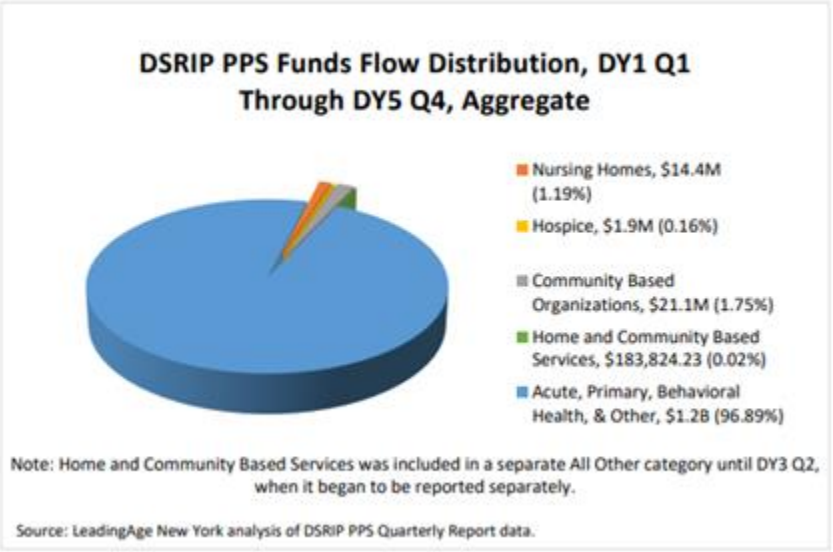
A substantial and meaningful investment of Medicaid and non-Medicaid dollars must be made in LTC that will enable material increases in wages and associated benefits. In addition, funds should be made available for other recruitment and retention initiatives, such as:

- *Access to transportation*
- *Job-related social supports for trainees and workers*
- *Expansion of aide training programs*
- *Tuition support for adult learning/certification and nursing programs at community colleges and BOCES and enhanced financial aid for nursing degree programs*
- *Supports and stipends for students in aide and nursing programs*
- *High school pre-apprenticeship programs and apprenticeship programs*
- *Peer mentoring*

The State's new 1115 waiver application should allocate a substantial portion of the associated funding to LTC initiatives, including innovative models of care, workforce development and compensation, capital investments to support infection prevention, home-like environments, environments that support people with dementia, and expansion of Medicaid assisted living capacity. The State should not

once again allocate only a minuscule sliver of its federal waiver funding to the LTC needs of older adults and people with disabilities (see Figure 4).

Figure 4



In addition to investing funds through the budget process and the 1115 waiver, the State should ensure all available sources of funding are tapped to address all LTC settings. Specifically, it should ensure that the new eFMAP funds are used to support the workforce in ALPs, certified home health agencies, and hospice programs. Likewise, the nursing home civil money penalty (CMP) collections maintained by DOH should be fully spent to the extent permitted by federal law and reinvested in workforce development, recruitment, and retention projects.[12]

Some stakeholders have proposed a new minimum wage increase for home care workers. While LeadingAge New York believes that wage increases must be part of the workforce solution, a wage mandate for home care workers or other LTC providers, without sufficient funding that addresses costs incurred for not only services reimbursed by Medicaid, but also services reimbursed by Medicare and other payers, and wage compression expenses, will threaten the stability of this sector and the elderly and chronically ill individuals who rely on long-term/post-acute care. Unreimbursed wage and benefit expenses, together with the significant expenses they are already incurring for COVID-19-related costs, personal protective equipment (PPE), testing, and regulatory and administrative activities, will further destabilize providers. Our experience with the most recent minimum wage increase (which we supported) raises concerns that the State will not properly fund the expenses associated with a new LTC-focused increase.

2. Reduce regulatory barriers to certification, licensure, and recruitment.

New York maintains a complex array of certification, licensing, and clearance requirements for the professionals and paraprofessionals who work in LTC. It is often difficult to get approval to establish certificate training programs and to maintain them, especially in rural areas. In many cases, New York's certification requirements exceed federal requirements, and our licensure processes set up unnecessary

[12] 42 CFR §488.433.

delays and barriers. For example, nursing graduates and out-of-state nurses experience prolonged delays in the processing of their licensure applications by our State Education Department. New York is one of just eight states that has not taken action to join the Nurse Licensure Compact. This would allow nurses licensed in other states to practice here and expand our ability to attract nurses to practice in New York. Addressing these issues would help to mitigate workforce challenges. In addition, LeadingAge New York proposes the following reforms to expand access to training programs, streamline training programs, and facilitate multi-discipline certification:

- *Enable aides to obtain and retain multiple certifications by aligning credentialing with experience and competencies and eliminating duplicative training requirements for CNAs, HHAs, and PCAs. Encourage training programs to offer multi-certification training (CNA/HHA/PCA) or "universal worker" certifications to allow flexibility for both employers and workers.*
- *Clarify that CNAs who work in nursing homes, like CNAs in hospitals, are eligible to complete a competency evaluation to be certified as HHAs, in lieu of the standard training.*
- *Streamline the HHA and PCA traditional and hybrid training program application processes and requirements to make it easier for more agencies to provide aide training. Update Home Health Aide Training Program (HHATP) requirements to allow flexibility in rural areas and reflect the current state of the workforce. Some of those requirements are serving as a barrier to getting aides trained, which is threatening the overall viability of these services. The HHATP should also align with federal requirements by allowing LPNs to conduct training under the general supervision of an RN. Expand the availability and frequency of BOCES and community college aide training programs to strengthen the pipeline of aides.*
- *Reduce duplicative home care aide in-service training requirements by including completion of in-service training hours on the aide registry.*
- *Align state requirements with federal regulations for nursing home feeding assistants training.*
- *Expand access points for criminal history record checks and expedite the clearance process. In difficult-to-serve areas, utilize current technologies to enable fingerprinting onsite or at mobile locations, thereby eliminating the need for a prospective employee to travel up to an hour to get fingerprinted.*

3. Optimize the use of existing workers and improve retention by enabling professionals to practice at the top of their scope, supporting career ladders, and authorizing advanced aide titles.

Given population trends and workforce shortages, we must allow professionals and paraprofessionals to practice at the top of their scope. In addition, we must make long-term/post-acute care jobs more attractive through more effective career ladders. The following actions would enable a more efficient use of our professional workforce and expand the career ladder opportunities:

- *Expand the use of patient care technicians in nursing homes and authorize the use of medication technicians.*
- *Authorize nurses to practice nursing in assisted living facilities [S.1593 (Rivera)] and authorize them to provide influenza, pneumococcal, and, if able to store appropriately, COVID-19 immunizations to residents and staff.*
- *Clarify that nurse practitioners (NPs) and physician assistants (PAs) are permitted to conduct the initial health history and physical and to sign nursing home admission orders for new nursing home residents initiating Medicaid stays.*

- *Permit NPs and PAs to conduct medical evaluations for ALP residents.*
- *Allow nursing home medical directors to issue orders for continued services in their affiliated adult day health care program, in lieu of a community physician.*
- *Support utilization of advanced home health aides (AHHAs), including reimbursement of AHHA care and required nursing supervision.*
- *Provide training opportunities for enhanced specialties for aides to allow enhanced pay opportunities.*
- *Incentivize aides to engage in value-based care delivery to give them a stake in improving the health of their patients.*
- *Engage aides in utilization of technology and telehealth in the home to allow for collaboration and quality improvement.*

4. **Maximize the use of telehealth and technology.**

Home care providers and other community-based services providers have a long history of engaging in telehealth and remote patient monitoring and expanded these activities when COVID-19 surfaced. Many agencies and facilities made significant investments in hardware and software to engage in this care. Providers appreciate the extension of the many telehealth flexibilities provided during COVID-19 after the rescission of the state public health emergency.

While many providers have returned to standard in-person care and services, continuing this flexibility, when appropriate, is helpful for facilities and agencies to monitor patients and expand access to other health care providers. As hands-on providers, long-term/post-acute care providers know that nothing can substitute for in-person care and interaction with a patient. However, when used appropriately and as a supplement to in-person visits, telehealth offers great potential for significant care improvement in all settings. Improved and more frequent technology-based communication between home care aides, nurses, physicians, and MLTC plans; supplemental remote monitoring of patients; and aide-assisted telehealth visits with providers should become standard models of care.

5. **Implement a workforce impact analysis for any new legislation and regulation to ensure the careful consideration of the impact of any new requirement for nursing homes, assisted living, and home care providers.**

While well-intentioned, some of the legislation introduced and passed by the Legislature this session, as well as regulations and requirements adopted by DOH, divert precious staffing resources away from the provision of resident and patient care. Many of these new requrements are similar, but not identical, to existing federal requirements and thereby require duplicative effort without any additional benefit for residents and patients. Others impose new and frequent data collection and reporting requirements without any apparent justification. Legislative and regulatory initiatives that divert staff from resident and patient care undermine our mutual goals of optimizing the quality of care and quality of life experienced by consumers of LTC. Thus, the benefits and burdens of each new proposed requirement should be evaluated carefully through that lens before it is adopted.

CONCLUSION

LeadingAge New York's not-for-profit members are committed to providing high-quality care to their patients and residents. They are also committed to their direct care staff, who are among the heroes of

the pandemic and deserve the public appreciation that workers in other sectors have received. With a depleted, underappreciated workforce and insufficient government support, it is critical that New York develop a comprehensive plan to allocate resources and attention to the LTC workforce. New York is falling behind in responding to the demographic change already underway, and we are failing New York's older adults and other vulnerable populations. We must implement strategies immediately to build the LTC workforce to ensure that high-quality, mission-driven nursing homes, assisted living, and home care agencies are available as the Baby Boom generation ages.

Founded in 1961, LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing care, including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs, and Managed Long Term Care plans. LeadingAge New York's 400-plus members serve an estimated 500,000 New Yorkers of all ages annually.