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NURSING HOME COMMUNITY FILES LAW SUIT CLAIMING ILLEGAL \$352 MILLION CUT BY STATE HEALTH OFFICIALS
Illegal Actions Threaten Patient Care for Thousands and Viability of Hundreds of Facilities Across New York State

A coalition representing statewide and regional nursing home and continuing care providers have filed a law suit in State Supreme Court (Albany County) charging New York Health officials and its Health Department have violated federal and state law; and various regulations stemming from actions taken in July that reduce Medicaid funding by more than \$352 million.

The case is focused on adjustments to the case mix index (CMI), a measure of need and service determining reimbursement rates for those requiring advanced- and rehabilitative-care in nursing home and continuing care environments. These cuts went into effect on July 1, 2019 and according to the care community, when fully annualized, will impose a \$352 million cut to nursing homes across the state.

The suit more specifically challenges the legality of the state's actions, alleging Commissioner of Health Howard A. Zucker, M.D. and the New York State Department of Health, are:

- Targeting reimbursement reductions that unfairly harm New York's nursing homes making them vulnerable to closure;
- Jeopardizing the quality of care and staffing levels; and
- Ignoring statutorily framed requirements, outlined by the legislature designed to ensure a fair and transparent assessment of needs and adequate rates to ensure quality nursing home services.

The coalition of plaintiffs includes:

- LeadingAge NY
- Healthcare Association of New York State (HANYS)
- New York State Health Facilities Association (NYSHFA)
- Southern New York Association (SNYA)
- Greater New York Health Care Facilities Association (GNYHCFA)
- Continuing Care Leadership Coalition (CCLC)

Additionally, it identifies more than 100 nursing homes injured by the administrative actions outlined in the suit.

James W. Clyne, Jr., President of LeadingAge NY, an association representing more than 500 not-for-profit nursing homes and providers serving more than 500,000 New Yorkers said: "With the stroke of a pen, the state has unilaterally ignored the needs of thousands of vulnerable New Yorkers and imposed an annualized cut of \$352 million on its nursing home rates to providers. A cut of this magnitude will directly jeopardize access to quality resident care."

Stephen Hanse, President and CEO of New York State Health Facilities Association said: "All nursing homes throughout New York share a collective mission to provide essential care to the State's most fragile and vulnerable individuals. This mission is driven in partnership with the State of New York. However, in slashing Medicaid reimbursement to nursing homes by over \$350 million dollars, New York is violating this partnership and turning its back on nursing home residents and the working men and women who provide vital care 24-hours a day, 365 days a year. It is my sincere hope that the Court in this matter will put a stop to the State's devastating cuts and protect nursing home residents, providers and their staff throughout New York."

Bea Grause, R.N., J.D., President of Healthcare Association of New York State, said: "New York's non-profit nursing homes face many fiscal and operational challenges yet always strive to provide the highest quality care. A funding cut of this magnitude will demoralize providers and make it more difficult to protect and care for the most vulnerable New Yorkers."

Neil Heyman, President of Southern New York Association, said: "Nursing facilities are a vital part of the healthcare system on which large numbers of vulnerable New Yorkers depend, as well as a source of employment for their many dedicated and hardworking employees. The case mix cuts, made unilaterally by the Department of Health in the face of contrary recommendations by the joint work group specifically mandated by the legislature to consider this issue, jeopardize the facilities' operational viability and risk lowering the quality of care that these facilities strive to provide to their residents."

Michael Balboni, Executive Director of Greater New York Health Care Facilities Association, said: "These cuts come at a time of extreme difficulty for the Long-Term sector. The inability to find staff, the recent regulatory changes at the Federal Level and the pressure to add staff place many homes in an untenable position. This cut, especially the retroactive component, is going to negatively impact patient care."

Scott Amrhein, President of Continuing Care Leadership Coalition said: "Many of the facilities on which this cut will fall especially hard are 4 and 5-star facilities. We desperately need to sustain high-quality nursing homes and their dedicated workers so that those who have given so much to make this great State all that it is can have confidence that their long-term care needs will be met with compassion and dignity. Instead of cutting services for our most vulnerable citizens, we should be investing to ensure them the care they deserve."

The case, which impacts virtually every nursing home in the state and more than 100,000 residents, is focused on the manner in which nursing homes are reimbursed for services provided, based on patient need. According to providers, 41 percent of all nursing homes in the state operate at a loss, and if the proposed cuts are implemented that number will grow to 56 percent.

Actions imposed by the state early this year use information and statistics that date to 2007 to determine reimbursement rates, which when combined with federal payments result in a reduction of \$352 million to nursing homes.