



May 12, 2020

Hon. Andrew Cuomo
Governor of the State of New York
Executive Chamber
State Capitol
Albany NY 12224

Re: Executive Order 202.30- May 10, 2020

Dear Governor Cuomo:

We, the undersigned, are the CEOs of the five major trade associations in New York that represent nursing homes, adult care facilities (ACF), and assisted living facilities. We write to convey the urgent concerns of our member facilities with respect to certain aspects of the above referenced order which we will elaborate on later. Before doing so, however, we wish to preface this letter with an expression of thanks, admiration and appreciation for the herculean efforts of you personally, your staff, the Department of Health and all other State personnel in managing a public health crisis of unprecedented proportions that has no easy solutions and forces you to make some extremely difficult choices which cannot possibly please everyone. We are sensitive to the fact that you will inevitably be second-guessed and criticized no matter what you do. We know, however, that despite the inevitable criticism from some quarters, you have not backed away from making those difficult decisions and have confronted the challenge head-on.

With that in mind, please consider the following in the spirit it is offered. The May 10th Executive Order issued this past Sunday requires nursing homes and ACFs to submit a plan to the Department of Health by 5:00 pm Wednesday May 13th setting forth how they will test or arrange for the twice weekly testing for COVID-19 of all their employees, contract staff, medical staff, operators and administrators. Further, on May 15th, they must certify that they are in compliance with the testing mandate and all other Executive Orders and DOH directives. Our member facilities are fearful that unless there is a realistic deadline for compliance with the testing requirements set forth in the order, they will be unable to comply despite their best good faith efforts. This concern is magnified by the harsh penalties that could result from non-compliance, including the ultimate sanction of licensure revocation and criminal penalties for false certifications pursuant to Penal Law 210.45. Despite the short three-day notice, we have urged our members to submit a plan by that deadline. The order did not, thankfully, impose a deadline by which all individuals must be

tested, and before your office does so, we urge that you or your staff and representatives from the Department of Health meet with us to discuss this critical issue.

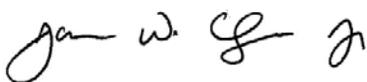
There are some very practical concerns about the ability of our members to access the necessary testing supplies, and it is very important to keep in mind that across the State there are currently approximately 140,000 staff employed in over 600 nursing homes and another 45,000 in ACF and assisted living facilities such that for these people alone approximately 370,000 tests will have to be administered weekly. We have heard from members around the State that there are not sufficient testing supplies to accommodate this new demand. In some case there will be some genuine geographical impediments as well. Simply put, the State must take “ownership” of ensuring that sufficient testing materials will be made available to all facilities to enable them to meet any deadline.

We are also concerned that some staff will refuse testing and, of course, the likelihood that some will test positive and the ensuing work exclusion period will exacerbate the already critical staffing shortage for the long-term care industry that antedated the COVID-19 pandemic. Notably, the State’s testing and work exclusion requirements exceed the Centers for Disease Control and Prevention recommendations for nursing homes.

In addition, we understand the costs of testing staff twice weekly will be prohibitive and we question whether an individual’s insurance coverage will cover testing twice weekly for work clearance purposes, as opposed to diagnostic purposes. We have heard quotes that the cost will be \$150/test. In short, there are a myriad of practical problems that will make it impossible to comply, especially with an unrealistically short deadline. Accordingly, our members have bluntly informed us that under the current conditions they simply cannot sign a certification that they are in compliance with a requirement which, if not met, will subject them to criminal penalties.

For all the foregoing reasons and others too numerous to mention, we would very much appreciate having the opportunity to discuss this requirement prior to its implementation. Needless to say, we want to help you in every way we can to get through this crisis, and at the same time we ask that you be aware of some of the legitimate concerns we have raised and which we wish to discuss. Thank you for your attention.

Very truly yours,



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cc: Hon. Howard Zucker, M.D.
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