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2023-2024 Officers

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Via Electronic Delivery

The Honorable Kathy C. Hochul
Governor of the State of New York
Executive Chamber
State Capitol Building
Albany, New York 12224

RE: SUPPORT for A.9718B/S.9067A: An Act to amend the public health law, in relation to requiring hospitals and residential health care facilities to implement a pressure ulcer prevention program

Dear Governor Hochul,

The Elder Law and Special Needs Section of the New York State Bar Association (ELSN) respectfully requests you approve bill number A.9718B (Paulin) / S.9067A (Krueger). This bill, in part would require hospitals and residential health care facilities to implement a pressure ulcer prevention program and establish a pressure ulcer prevention center of excellence (Center of Excellence) within the New York State Department of Health. This bill, in conjunction with full enforcement of the federal and state nursing home laws and regulations by the Department of Health, would directly improve resident quality of care and life.

As elder law attorneys we often represent individuals who have suffered from bed sores, also known as pressure ulcers, while residing in nursing homes and other long term care facilities. These injuries are typically the result of negligence or inadequate care, such as failing to reposition immobile patients or ignoring proper hygiene and skin care. Bed sores can lead to serious infections, pain and even death, particularly for elderly residents with compromised immune systems. Pressure ulcers, which are largely preventable and treatable, serve as a direct indicator of the quality of care in a nursing home. As attorneys we advocate for our clients to hold nursing homes accountable for failing to meet the standard of care required under existing state and federal laws, such as the New York Public Health Law and the Nursing Home Reform Act.

While a Center of Excellence within the New York State Department of Health can serve as a resource for nursing homes and other providers, it is essential to remember that nursing homes are currently required to prevent pressure ulcers. Additionally, if a resident does have a pressure ulcer, nursing homes are required to provide the necessary treatment and services to promote healing, prevent infection, and prevent new pressure ulcers from developing.

Opinions expressed are those of the Section/Committee preparing this letter and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

Specifically, nursing homes are required to ensure, based on the comprehensive assessment of a resident, that:

- (1) the resident receives care, consistent with the professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable¹; and
- (2) a resident with pressure ulcers receives necessary treatment and services consistent with professional standards of practice to promote healing, prevent infection and prevent new ulcers from developing.²

Accordingly, nursing homes are required to have policies and practices in place to prevent and address pressure ulcers. While codifying this requirement into the New York State Public Health Law will strengthen the requirement, success of the legislative intent to prevent pressure ulcers is directly dependent on the provider. Nursing home operators have a legal responsibility to ensure they can meet the needs of residents they admit into their facilities and that the nursing home has the staff and the functioning equipment to meet those needs. This means, for example, meeting and exceeding the minimum nurse staffing standards,³ having well-trained staff, ensuring residents have proper nutrition, and conducting and implementing person centered assessment and care plans to prevent pressure ulcers. However, despite these existing legal requirements, nursing home operators are not meeting their obligations.

A.9718B/S.9067A would also require the Commissioner of Health to evaluate current reimbursement policies regarding pressure ulcer prevention programs, including durable medical equipment and education and training, and report on the current reimbursement options available to reduce the incidence of pressure ulcers across all settings. It is imperative, however, that such report is not used to erroneously increase payments to providers, particularly nursing home operators, to pay for services and staff they are already paid to provide to meet resident needs. Any report on reimbursement policies and payments must be directly tied to accountability and enforcement.

For these reasons, ELSN urges you to support A.9718B/S.9067A in conjunction with the Department of Health thoroughly utilizing its enforcement powers to hold nursing home operators accountable. A Center of Excellence that offers resources on best practices to prevent pressure ulcers will be useful to providers and nursing homes should utilize this resource in the development and implementation of their pressure ulcer prevention program. However, the prevention and treatment of pressure ulcers is directly

¹ Unavoidable” is defined by CMS as: the resident developed a pressure ulcer/injury even though the facility had evaluated the resident’s clinical condition and risk factors; defined and implemented interventions that are consistent with resident needs, goals, and professional standards of practice; monitored and evaluated the impact of the interventions; and revised the approaches as appropriate.” See The CMS State Operations Manual, Appendix PP, Baltimore, MD (rev 225; issued 08-08-2024), F686, <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>

² 42 C.F.R § 483.25(b); See also 42 U.S.C. §§1395i-3 (Requirements for, and assuring quality of care in, skilled nursing facilities) and 1396r (Requirements for nursing facilities).

³ NYS PHL § 2895-b

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dependent on the nursing home operator complying with current federal and state laws and regulations and our government agencies' proper and vigorous enforcement of the same.

For further discussion, please do not hesitate to contact NYSBA's General Counsel, David Miranda, who can be reached at dmiranda@nysba.org, 518-487-5524.

Sincerely,

Britt N. Burner, Chair

The New York State Bar Association Elder Law and Special Needs Section

cc: Brian K. Mahanna, Counsel to the Governor
Denise Gagnon, Director of Legislative Services/ Legislative Secretary to the Governor