

August 10, 2020

Dear Honorable Members of the Senate and Assembly Health, Aging and Investigations Committees and other interested legislators:

Thank you for the opportunity to testify at this critical hearing. I am Steve Lampa, Partner, Kensington Senior Living and Chair of the Argentum NY Advisory Board. It is my pleasure to speak with you today on behalf of Argentum NY, the senior living association representing professionally managed assisted living residences across the State of New York and the New York Chapter of Argentum, the nation's largest trade association serving companies that own, operate and support senior living management communities across the United States.

All Argentum NY members are Adult Care Facilities ("ACFs") licensed and regulated by the State of New York, Department of Health as either adult homes or enriched housing programs and as assisted living residences, many with enhanced and special needs certifications to provide additional care to certain populations.

Assisted living is a consumer driven, community-based senior living model that encourages independence, dignity, freedom of choice, and quality of life for New York's seniors. Residents and their family members pay for the cost of care and services and chose to live in our communities. Individuals who are at the greatest risk of complications from the disease include people aged over 65 years and those suffering from comorbidities. Within senior living communities, more than half of all residents are over the age of 85, and another 30% are between the ages of 75-84. They often cope with multiple chronic conditions and often require assistance with activities of daily living.

Our providers have been on the front line of this crisis from Day One, caring for some of the most vulnerable within our State. Before, during and after the pandemic, our residents are a part of our families. Our communities are their homes.

The COVID-19 pandemic presented our licensed provider members and their dedicated staff with innumerable challenges as they work around the clock to provide high quality care, supports and services to their residents while protecting them and the staff caring for them from COVID-19. The ACF and ALR front line workers have made incredible personal sacrifices to ensure the needs of their residents are met with compassion and respect. As communities shut down visitation and closed the doors to non-essential personnel, caregivers limited their interactions outside of communities and creatively engaged residents in meaningful alternative social interactions and activities to promote their mental and physical well-being. They developed creative means for residents to stay connected to family members and loved ones through the use of technology and various other methods of communication to keep their residents engaged.

I am here today to focus on the most critical lessons learned and recommendations from our shared experiences and to ask for your support as we all seek to learn and to inform future decision and policy making.

**1) Recognize adult care facilities and assisted living residences as distinct long-term care settings, separate from skilled nursing facilities.**

Argentum NY appreciates the role of the Department of Health and Executive Chamber as they grappled with the virus and sought to provide guidance to providers as new regulatory requirements were fast tracked to adapt to changing information and data to address a fast moving and fatal pandemic. While during the initial surge it may have seemed expeditious to issue directives and requirements for skilled nursing facilities and to also apply them to ACFs/ALRS, as we advance, it is important that each model's experience and forward policies are considered distinctly as they serve different populations and purposes and are authorized and regulated differently.

**2) Support and secure critical funding to offset ACF/ALR provider COVID – 19 related expenses.**

As the COVID-19 pandemic hit, providers immediately stepped up and met the challenge and have incurred millions in enhanced infection control, PPE, testing, and other COVID-19 related expenses.

Argentum NY supports testing of both staff and residents as a critical tool to contain COVID-19. Initial Executive Orders required ACF and ALR providers to test staff twice weekly. While we appreciate the necessity for such a directive, the announcement and roll-out happened very suddenly and left providers with little time to develop and implement protocols to meet the directive.

We have discussed the monumental expense of staff testing with the DOH and Executive Chamber staff and they have indicated support for seeking funding to offset provider testing costs, aware that employee health insurance will not cover the costs for the on-going tests, non-diagnostic testing as a condition of employment or as required by the E.O.

We ask for your support in securing funding for the testing mandate and other COVID-19 related expenses.

**3) Adjust testing requirements to reflect the extremely low infection rate in ACF/ALRs today and to better steward resources for surges and hot spots.**

At this point, the percentage of ACF/ALR staff testing positive for COVID-19 is incredibly low, less than 0.50%, which merits scaling back testing of employees in communities with no active cases. Many states have implemented policies to test a percentage of staff on a bi-weekly basis once communities are cleared of active cases. The waiting period for employee test results is increasing to as many as 7 days or more before results are available further detracting from the efficacy of weekly testing. When employee testing is required, it is imperative that ACF/ALR staff are among those prioritized for quick results.

Lab capacity is increasingly being strained in NYS and across the country with many labs no longer honoring initial agreements with NYS ACF/ALR providers to test their staff weekly. As the State has fully re-opened (Phase 4), many more entities and businesses are requiring testing which will further strain lab capacity. Given all these issues NY-Argentum has asked the Executive Chamber to modify the expiring Executive Order and require testing a percentage of staff on a bi-weekly basis once communities are cleared of active cases.

One more critical point on testing: CDC recommendations indicate that previously positive individuals should not be re-tested for at least three months as they continue to shed the virus for that period of time but are not contagious. The policy of re-testing employees within the 3 months, post initial on-set, is not based on the latest science and results in staff being unnecessarily furloughed for inordinately long periods of time, creating additional staffing challenges in many ACFs/ALRs. **We have asked the Executive to modify the requirement and no longer require re-testing until 3 months post initial onset.** Reducing the frequency of the staff testing requirement in ACFs/ALRs will help to alleviate the strain on the already over-burdened labs across the State.

**4) The State should continue to support access to PPE on a priority basis for ACFs/ ALRs to ensure adherence to conventional use of PPE in infection control systems.**

Initially, members reported that PPE supplies were extremely difficult to secure and they were challenged to meet the requirements and recommendations put forth by the Department related to PPE utilization. Our members worked tirelessly and creatively to secure sources for PPE outside of their conventional supply chains, especially in hotspots throughout the State, and paying excessive premiums for these essential infection control supplies out of their own pocket.

DOH also rallied on this issue and responded with a dedicated effort to survey communities daily on their supply of PPE, their burn rate and immediate need. PPE was secured and distributed by the State, as needed, to providers including assisted living residences, including setting up distribution sites in NYC, one of the hardest hit areas.

Argentum NY would like to stress that utilizing a crisis strategy for PPE, while initially necessary, is not appropriate for long term management of the virus. When supplies were low, alternative strategies were being recommended to prolong the life of PPE that are inherently risky and do not necessarily mitigate the risk of spreading COVID-19.

**Maintaining conventional infection control procedures with respect to PPE should be our collective goal. The utilization of the State's tremendous buying power is key to ensuring a sustainable stockpile of PPE for all long-term care providers in the State.**

### **5) Improved Pandemic Visitation Protocols should be considered in the best interest of residents.**

As the virus continued to spread across the State it was prudent and appropriate to close all ACFs/ALRs to visitors and require residents to isolate from each other in their rooms.

However, four months of isolation and no in-person contact with loved ones took a devastating toll on residents. Many residents experienced decreased physical conditioning, increased falls, increased depression over the loss of freedom and lack of socialization, increased instances of decubitus, and increased hospitalizations. Many families took their loved ones out of the community against advice in order to spend time with them, to take them to the beauty parlor, and to offer them some semblance of normal socialization, which placed all residents and staff in danger and potentially subjected them to the virus.

At this time, ACFs/ALRs in regions that are in at least Phase 3 of re-opening may resume visitation if they have submitted a NY Forward Safety Plan to the Department, have had no new COVID positive cases in the community for 28 days, and are compliant with all requirements and directives.

The 28 day COVID-free requirement is problematic. If a staff member or resident tests positive, they are required to quarantine for 14 days, effectively removing them from the community. To re-set the “clock” each time there is a positive test will create confusion for residents and families and remove all certainty of social interactions.

As we plan for the future, we must consider the negative effects of isolation and strict visitation policies. **We recommend the 28 day COVID-free requirement be reduced to 14 days.**

Additionally, in the pre-pandemic world, socialization and communication with other residents and family members was a foundational concept of assisted living. Post-pandemic, our members went above and beyond in communicating with residents and their families and loved ones through multiple means of communication including emails, newsletters, social media, zoom meetings, Facetime and videos. However, the alternative means of communication cannot take the place of in person interaction.

**It is critical that strategies for in-person visitation during a pandemic be developed to prevent negative outcomes such as those listed above. As New York opens up it is important that ACFs be allowed to provide an environment that allows residents to thrive without leaving the community so they can remain in an environment that is mindful of infection control. If residents can't engage within the community (e.g., enjoy meals, engage in activities and visit with family) then they will seek those opportunities outside the community as New York has opened up. The likelihood that COVID-19 will come back into the community then increases as residents leave, socially interact in a less controlled environment and return.**

**6) Provide Priority Vaccine Access ACF/ ALR Residents and Employees.**

Once a vaccine is developed, it is **imperative that all long- term care communities have priority access for both residents and staff.** It is clearly the only path to a return to the pre-pandemic environment for assisted living residents.

**7) Establish a Balanced and Reasonable Reporting System.**

Providers are required to report numerous data COVID related on the daily HERDS Surveys, including residents and staff testing positive, residents sent to the hospital, resident deaths, community census numbers, and PPE needs and burn rate. Additionally, there is a weekly staff testing survey that must be completed.

While we appreciate the need for reporting, as it informs policies going forward, the required daily reporting is a heavy burden for providers. Often a staff member is dedicated to just calculating the data and preparing the reports. This is difficult for providers who need all staff on deck to care for their residents.

**We respectfully request that the HERDS Survey requirement be reduced to weekly in order to allow our providers to do what they do best – care for their residents.**

Once again, thank you for the opportunity to provide testimony at this hearing and share our expertise and experiences as we navigate this unprecedented crisis. Argentum NY and its members are committed to providing the highest quality care and services and are dedicated to working with you, the Department of Health and the Executive Chamber to ensure the health and safety of our residents. Please feel free to direct any questions, comments or feed back to Ginger Lynch Landy, Executive Director, Argentum NY at [glandy@hodeslandy.com](mailto:glandy@hodeslandy.com).

Sincerely,



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