Empire State Association of Assisted Living

Care • Community • Connections • Every Day

August 3, 2020

To the honorable members of the Senate and Assembly Health, Aging and Investigations Committees and other interested legislators:

Thank you for the opportunity to testify on behalf of the over 300 adult care facilities ("ACFs") who are members of the Empire State Association of Assisted Living ("ESAAL"). ESAAL's mission is to advocate for the best interests of ACF providers and the more than 30,000 senior residents that they serve within our assisted living residences, assisted living programs, enriched housing programs and adult homes. Our members include both "private pay" residences, whose residents utilize their own funds to pay for the services provided and low-income residences, in which our members rely nearly entirely on a fixed Supplemental Security Income ("SSI") federal and state subsidy, which has largely been unchanged since 2007.

The assisted living model combines independence, choice and privacy with personalized, supportive care in a congregate residential setting. Assisted living residents require some assistance with daily activities and with limited exception, do not require the around the clock skilled nursing care provided in nursing homes. As a result, assisted living residents are generally healthier, more independent, active and mobile than the residents of a nursing home. The ACF is a less institutional setting, where residents reside more independently, and, in normal times, move freely throughout the inner and outer community.

Like every other stakeholder in the health care continuum, assisted living and other adult care facilities have faced unprecedented challenges during the COVID-19 health care crisis. Both providers and staff are truly unsung heroes in the fight to protect our residents. Unfortunately, as has been the case all too frequently in the past, the unique features of the population we serve and the reimbursement we receive has not been fully appreciated, and in many cases, has been ignored. More profoundly, during the COVID-19 crisis, in virtually every instance, the assisted living industry has been treated identical to the nursing home industry. As a result, in many respects, the crisis continues. As a primary lesson learned, New York should make ACF policy based on the unique needs of our residents and the unique features of the ACF provider community. - Moreover, the repeated linking of ACFs with nursing homes in both written directives and general policy has caused confusion for the public, the press, assisted living providers, residents and families.

The reality is that certain general similarities exist but the models are very different in how services are delivered, and the nursing home population is far more frail than the ACF population. In fact, the COVID-19 data, as reported on the state's public site related to COVID deaths, reflects that the virus has thus far had a substantially greater effect on the nursing home population than the assisted living population. There are far fewer COVID-19 cases, hospitalizations and deaths in licensed ACFs than in nursing homes. Specifically, based on State Health Department data thru July 28th, there have been a total of 6,403 nursing home deaths (confirmed and presumed) and 175 ACF resident deaths. Based on these statistics, the number of people who died in assisted living settings is less than 3% of the nursing home total.

For these reasons, it is important that state guidance is tailored specifically to ACFs, even if there are some parallels to the guidance issued to nursing homes. Due to the approach of combining guidance for these two settings, a number of the new COVID-related policies enforced upon ACF providers since March have resulted in significant consequences, some unintended, on them, their residents and their families, often because the policy does not factor in important ACF-specific facts.

No funding support for ACFs must be rectified – Though policies were often the same for nursing home and ACFs, unfortunately, ACFs were largely left out of the state and federal funding available to nursing home and other long-term care providers. In fact, 2/3 of the state's ACF providers have received NO funding from state and federal government to help offset the tremendous costs that COVID-19 has thrust upon them. Many SSI communities, who serve our most financially vulnerable seniors, operate on a budget limited by an SSI rate that has remained at $41/day for a decade. In that time, costs in every area of operation have increased exponentially, and in 2020, unforeseeable and significant costs associated with COVID threaten the existence of these providers. This is unconscionable.

Even providers and residents in private pay settings can absorb only so much additional and unanticipated costs before they find themselves in heightened financial distress that could ultimately put some out of business. **We ask for your support in securing funding for all ACF providers.**

Mandated employee and "other personnel" testing - Employee testing is a critical component of a multi-faceted approach to keep our residents and staff safe. The cost of initial twice weekly and now weekly testing has been astronomical: For example, the average cost of each test is $100, resulting in a cost of $20,000 per week for an ACF with 100 employees. In total, a 100-employee community would have spent $150,000 to date to test its employees under the executive order. While testing remains critical, now, due to demand across the nation, ACFs are experiencing delay in receiving test results, and many are receiving results 7-9 days after the test was taken; a delay which severely lessens the value of the information. To have to routinely incur such significant costs when it can be almost too late to effectively use the results to isolate the person is pointless, unjustified and unsustainable.

Due to the significantly lower incidence of COVID-19 cases and fatalities in the ACF setting, **ESAAL will recommend to the Administration that a percentage of staff be tested on a bi-weekly basis, while continuing all of other staff screening measures.** In addition, some of our members have reported that they have had NO employee positive cases since the beginning of this process. **Reducing the testing frequency for these facilities will conserve lab capacity and supplies and eliminate unnecessary expenditures.**

In addition, **ACF providers should only be required to test (and pay for) their own employees** and not those of vendors or other DOH licensed providers who deliver services in their building. Requiring ACF operators to bear the cost of testing employees of other unrelated entities or private providers unfairly shifts costs to a provider who has received the least amount of COVID related funding.

Distribution of medical supplies and PPE- ACFs have always maintained supplies of PPE, procured from private vendors. However, again due to the characteristics of our resident population the supplies typically needed and thus stocked, were nowhere near the magnitude that this unexpected event demanded. Private vendors quickly became unable to fill orders, prices rose dramatically, and because government first directed available PPE resources to hospitals, for a number of weeks our ACFs struggled to maintain infection control measures and did the best that they could with what they had. For those weeks ESAAL desperately appealed to government to provide PPE to ACFs statewide and once government made the supplies available in NYC, ESAAL actually took the responsibility of securing pick up sites and manning those sites so that NYC ACFs could pick up their supplies on a weekly basis. Of course, the supplies available were not always sufficient in quantity and certain items like gowns and hand sanitizer were widely unavailable all over the state.

Cost and continuing shortages will mean State and Federal support will likely be needed should COVID rates increase in New York. **We ask that New York place ACFs among the providers given first priority in access to critical PPE state stockpiles.**

Infection Control Surveys and Enforcement - As for the Department's surveillance of each provider's infection control program, it has been robust. All ACFs have been visited by Department surveyors, some more than once, and the Department conducts weekly follow up calls and makes suggestions for best practices above and beyond required measures.

Based on what we have learned over these past several months, **moving forward we hope to achieve Department infection control guidance that is clear and concise.** Things were changing rapidly and as a result there have been numerous advisories, some no longer in effect, making it particularly challenging to navigate for providers and even Department surveyors. For more effective infection control and general COVID prevention, **we suggest a directory on the DOH website that includes all ACF guidance that remains in effect and reissuance of guidance that is outdated to reflect current requirements.**

DOH approval of opening new ACFs – As we continue to work to protect today's ACF residents from COVID, we must continue to provide for tomorrow's residents. Currently, there are dozens of ACF licensure applicants for new communities that are ready or near ready to open, many with a significant number of seniors in great and urgent need to move-in. However, the Department's licensure staff has been redirected to COVID-related activities and these applicants who have worked hard for years to perfect their applications remain unapproved. **We request that you support these communities' efforts by encouraging the Department of Health to establish a clear path to approval that can be used while their staff continue to be relied upon for COVID related functions.**

Again, thank you for this opportunity to share our experiences during this tragic and difficult time. ESAAL and its members stand ready to do their part to keep residents and staff safe and we ask for your support as we do so.

Respectfully,

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