



Empire State Association of Assisted Living

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Good morning Chairs Krueger, Weinstein, Rivera and Gottfried, and Members of the New York State Senate and Assembly. I am Lisa Newcomb, the Executive Director of the Empire State Association of Assisted Living, or ESAAL. Thank you for the opportunity to present testimony on the Fiscal Year 2021-22 Executive Budget.

ESAAL represents over 300 adult care facilities (ACFs), including adult homes, assisted living residences, assisted living programs and enriched housing programs, which serve more than 30,000 older adults throughout the State.

ACFs provide residents with independence, choice and privacy while offering personalized, supportive care in a congregate residential setting. Our residents require only some assistance with daily activities and, with some exceptions, don't need around the clock skilled nursing care. Individuals who reside in ACFs are generally healthier, more active and more independent than individuals living in a nursing home. ACFs provide a less expensive care alternative to the more institutional nursing home setting.

Our members include both private pay facilities, whose residents utilize their own funds to pay for the services provided, and low-income residences, in which members rely nearly entirely on a fixed Supplemental Security Income ("SSI") federal and state subsidy.

During the COVID-19 pandemic, ACFs have worked tirelessly to comply with all state and federal mandates to maintain a safe environment for residents and staff, going above and beyond to deliver essential services and keep residents healthy, happy and engaged.

The financial challenges ACFs have historically faced have been greatly exacerbated by pandemic related costs, which facilities are covering without support from the State. These costs include mandatory weekly staff testing – at an average of \$100 per test – staff overtime pay, and purchase of personal protective equipment (PPE) for residents and staff.

And now, in a year when ACFs are still reeling from the impact of the pandemic, our providers find themselves targeted in the Executive Budget through punitive penalty increases and elimination of badly needed funding. That is not only bad policy: It is morally wrong.

The Executive Budget 30 Day Amendments propose a tenfold increase in penalties for adult care facilities, from the existing \$1,000, to \$10,000, per day. It is important to mention that penalties for violations of Department of Health law or regulations for other facilities and providers, including nursing homes and hospitals, are assessed per violation – not on a daily basis. This distinction is important because the daily fines continue until the Department of Health is able to return to the facility and determine the violation has been rectified. This means that potentially ACFs, the long term care industry sector that receives the least support from government, is



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subject to penalties that are higher than the richly-government-funded nursing homes and hospitals for the same infraction, which can be, and often is, harmless.

In addition to the steep increase in penalties, the Budget repeals the 30-day window that operators have to correct a violation before the imposition of a penalty, severely limiting recourse. To give you an example of what our facilities are already facing, we have seen penalties assessed by the Department of Health for submitting daily COVID information one minute past the deadline, and this just once, having submitted on time all of the other 325+ days that this has been mandated. Under this proposal, ACFs could be fined up to \$10,000 a day for these types of administrative issues.

Moreover, the Executive Budget completely repeals the funding and statutory authority for EQUAL program, which is the only source of State funding that ACFs currently receive. EQUAL, which stands for “Enhancing the Quality of Adult Living,” provides approximately \$6.5 million in annual grants to facilities to support initiatives that improve the quality of life of SSI residents. Initiatives funded through EQUAL range from physical environment improvements – new roof, new carpet – to furnishings, equipment, technology, and resident activities. Current statute requires that residents, through their resident council, vet and approve proposed expenditures for these grants. The elimination of this program will negatively impact our residents’ quality of life and independence.

For many of our facilities, which rely on an SSI subsidy of just over \$40 per day to cover residents’ care, including housing, meals, case management and medication assistance – a subsidy that has been increased once in 30 years, last in 2007 – these budget actions are simply unsustainable.

Assisted living facilities are being unfairly targeted at a time when support for older adults in congregate settings is more important than ever. This is the time when all sources of long term care funding should be maintained and expanded to ensure residents’ quality of care and to mitigate the impact of the COVID-19 crisis.

The actions proposed in the Executive Budget will devastate our sector. Many of our facilities are already on the brink of closure, and some have already closed, with the most common placement alternative for the residents being nursing homes – at a higher cost to the State. We ask for your support in restoring the EQUAL program and rejecting the unfair penalty increases included in this year’s Budget.

ESAAL remains committed to providing a safe environment for ACF residents and staff and we ask that you reject these funding reductions for our members as they continue to care for vulnerable residents of the State during these very challenging times.

Thank you for the opportunity to provide this information.