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Testimony to the New York State Legislature
Joint Hearing of the Senate Finance and Assembly
Ways and Means Committees

2021-2022 Executive Budget

Topic: Health/Medicaid

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The Center for Elder Law & Justice ("CELJ") has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, people with disabilities and low-income families. CELJ's primary goal is to use the legal system to assure that individuals may live independently and with dignity. One of CELJ's primary purposes is to provide services to older individuals. The agency also advocates for policy and systems change, particularly in the areas of elder abuse prevention, nursing home reform, consumer protection, and housing reform. Currently, CELJ provides full legal representation in the nine New York counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Steuben, and Wyoming. The agency's Free Senior Legal Advice Helpline is open to all of New York State. CELJ operates a main office in downtown Buffalo, with two additional offices in Niagara and Chautauqua counties.

While the Executive's proposed 2021-2022 budget (Executive Budget), does not include the deep cuts to Medicaid and eligibility that we have seen in prior years, the budget does nothing to invest in the Medicaid long-term care program and the people of New York. This is a major issue for New York State ("NYS") because as a result of these harmful cuts and policies, there is a preference to place older adults and younger adults with disabilities into nursing homes. This is a violation of federal law and the Olmstead integration mandate.[1]

[1] *See* Olmstead *v. L.C.,* 527 U.S.581,600 (1999):held that unjustified segregations of persons with disabilities is discrimination and violates title II of the Americans with Disabilities Act. Persons with older adults have a civil right to receive services in the appropriate integrated setting of their choosing. *See also* 28 C.F.R. 35.130(d): the Community Integration Mandate that requires state and local governments to "administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

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Nursing homes, as they currently stand, are institutions, and no different from the other institutions NYS has closed.[2] Conditions in many nursing homes were abhorrent prior to the COVID-19 pandemic, and during the pandemic were exacerbated. The message from the public is clear: people want to live in the community and do not want to be sent to suffer from abuse and neglect, only to die in an institution.[3]

We need a budget, and a State, that recognizes the harms of the current status of the nursing home institution, that the current 'model' of nursing home care has failed. We must implement policies and budgets that prioritize keeping older adults and persons with disabilities in the community. **Long-term care in NYS must be reformed and realigned such that nursing homes are the last option and not the first**. This reform and realignment cannot happen in silos. A joint effort across multiple fields: health, housing, benefits, aging services, is needed. Older adults and persons with disabilities deserve better. It is not only a moral obligation, but a legal requirement.

Now is the time for the Legislature to invest in the people of NYS and to ensure all individuals have the ability to age and live with independence and dignity. During this budget year, we urge the Legislature to:

- **Implement Policy that Eliminates Institutionalization Bias and Support Home & Community Based Services (HCBS).**
    - Pass the "Fair Pay for Home Care Act";
    - Repeal the harmful changes to the Medicaid program implemented under prior budgets;
    - Reject the Executive Budget's proposed reduction in workforce recruitment and retention funding; and
    - Support expanded Access to Home program.

- **Improve Nursing Home and Adult Care Facility Resident Quality Care and Life by Taking Targeted Intentional Actions.**
    - Implement policy that increases oversight of the business dealings and operations of nursing homes;
    - Establish minimum staffing standards;

[2] If it is inappropriate for people with development and intellectual disabilities to be in institutions, why is it ok for our older adults and other people with disabilities? *See* Timeline from the Museum of disability history https://www.museumofdisability.org/virtual-museum/new-york-wing/new-york-state-timeline-exhibit/ *see also* https://disabilityjustice.org/reform-and-closing-of-institutions/

[3] *See* CELJ's testimony before the Joint Legislative Committees on Aging, Health, and Investigations and Government Operations on New York Residential Health Care Facilities and COVID-19, August 10, 2020 https://elderjusticeny.org/testimony-to-the-nys-legislature/

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- Increase penalties of violation of Public Health Law and invest penalties in nursing home resident care;
- Increase funding to the NYS Long Term Care Ombudsman Program;
- Expand the Open Doors Transitional Support Program;
- Promote alternative models of long-term care;
- Reject the Executive Budget cuts to the EQUAL Program, Enriched Housing Program, and Adult Home Advocacy Program; and
- Increase Civil Penalties for adult care facility violations and invest in resident care.

- **Repeal the Global Cap.**

In order to be an age friendly state, and a leader in the nation, NYS must fully invest in long-term care and rebuild it such that community-based services are prioritized, and nursing homes, reimagined and redesigned, to actually meet resident care needs, are the last option and not the first.

I. Implement Policy that Eliminates Institutionalization Bias and Support Home & Community Based Services ("HCBS").

In order to reform long-term care in NYS, there must be investment in community-based long-term care services and supports. The Executive Budget continues to cut funding to these services in a time where NYS needs to be investing in these services and the workforce that provides these services. Four out of nine people with disabilities is a Medicaid consumer, over one-third of NYS population is enrolled in Medicaid, and three out of four adults age 50 and older want to remain in their homes in the community as they age.[4] Investment in HCBS and caregivers is essential.

NYS prides itself as being the first "age-friendly" state in the country.[5] However, it is not age-friendly to inappropriately institutionalize older adults and people with disabilities, instead of making the needed investment into HCBS and those who provide the services and supports. There must be investment in aging services and supports that delay consumer entry into Medicaid Long-Term Care, and there must also be investment in the Medicaid program.

[4] Binette, Joanne, Vasold, Kerri. "2018 Home and Community Preferences: A National Survey of Adults Ages 18-Plus." *AARP Research*, August 2018, Revised July 2019, https://www.aarp.org/research/topics/community/info-2018/2018-home-community-preference.html?CMP=RDRCT-PRI-OTHER-LIVABLECOMMUNITIES-032218

[5] *See* https://www.governor.ny.gov/news/no-190-incorporating-health-across-all-policies-state-agency-activities Exec. Order No 190, accessed https://www.governor.ny.gov/news/no-190-incorporating-health-across-all-policies-state-agency-activities

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In January 2021, CELJ, along with many other organizations, submitted a petition to shift NYS's long-term care system from institutional settings to community-based housing and supports.[6] This petition put forth policy changes that NYS must implement in order to end wrongful institutionalization of older adults and people with disabilities. While some of those changes are discussed below, we encourage the Legislature to review the petition and recommendations in its entirety and pass legislation to implement those recommendations.

A. Pass the "Fair Pay for Home Care Act"

It is no secret there is a shortage of home care workers and that this is one of the main reasons older adults and people with disabilities are institutionalized. Low wages is one of the reasons for the shortage. The Fair Pay for Home Care Act would address this issue by ensuring home care workers are paid 150% of the regional minimum wage. Caregiving is strenuous work, both physically and mentally. Homecare workers deserve to be paid a living wage, and the Fair Pay for Home Care Act will accomplish this.

This increase in pay to homecare workers will cost money. However this increase is an investment not only in homecare workers, but in our community's older adults and people with disabilities. In addition, it makes economic sense to invest in this workforce as it will benefit local economies.[7]

Homecare workers are essential and it is time they were paid as such.

B. Repeal the harmful changes to the Medicaid program implemented under prior budgets.

The FY 2020-2021 Budget (FY 20-21 Budget), amended NYS Soc. Serv. Law and set new minimum requirements for eligibility for personal care services (PCS) and consumer directed personal assistance program (CDPAP) services for eligibility to enroll in a Medicaid Managed Long Term Care (MLTC) plan. Under the FY 20-21 Budget enactments, applicants have to require assistance with physical maneuvering for 3 ("more than two"), Activities of Daily Living ("ADLs"), except for applicants with dementia or Alzheimer's. For people with dementia or Alzheimer's, only supervision with more than one ADL is needed.

[6] The petition is accessible at: https://elderjusticeny.org/wp-content/uploads/2021/01/Petition-to-Reimagine-LTC.pdf

[7] *See* Jacobal-Carolus, Luce, Stephane, Milkman, Ruth. "The Case for Public Investment in Higher Pay for New York State Home Care Workers-Estimated Costs and Savings-Executive Summary., Accessed https://static1.squarespace.com/static/58fa6c032e69cfe88ec0e99f/t/6022ae8312cfd1015354dbee/1612885635936/Executive+Summary+CUNY+REPORT.pdf

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These amendments create irrational and discriminatory distinctions between Medicaid consumers with different types of disabilities. These irrational and discriminatory distinctions are arbitrary and violate federal regulation.[8] Furthermore, these amendments will force older adults and people with disabilities inappropriately into nursing homes. This outright violates the Americans with Disabilities Act and the Olmstead Integration Mandate.

Also included in the changes, was the removal of "Level 1" personal care "housekeeping" services. These types of services provide essential assistance to older adults and people with disabilities who, because of disability, need assistance with housekeeping, cleaning, and laundry, but do not need help with bathing or dressing. These tasks, housekeeping, laundry, etc., are Instrumental ADLs and are not included in eligibility for Medicaid home care services and thereby deny access to Medicaid home care service entirely. Prior to their removal, consumers could have up to eight hours a week for these services, which prevent accidents such as falls, that cause older adults and people with disabilities to enter a hospital, and then into a nursing home.

The Legislature must act to repeal these harmful changes and can start by passing A5367(Gottfried)/S5028(Rivera), that would repeal the restrictions on Medicaid home care eligibility enacted in the FY 20-21 budget. Those restrictions, violate federal law and since these harmful changes have not yet been implemented, the repeal will not unduly burden the administration of the Medicaid program, and, more importantly, will not cause burden on older adults and people with disabilities.

The FY 20-21 budget also implemented Medicaid cuts of access to home care services when it implemented a 30-month lookback. While it is our understanding that these changes were passed to prevent wealthy individuals from transferring assets in order to access Medicaid coverage for HCBS, the majority of individuals who need these services in their homes are of very low-income and have few other options for care. This new lookback will delay access to care and will lead to these older adults who need these services to suffer harm, neglect, and inappropriate institutionalization. CELJ supports the repeal of this 30-month lookback. However, if it is not repealed, the lookback must be designed to ensure there is no delay in access to care.[9] Otherwise, NYS is illegally pushing older adults and people with disabilities into nursing home institutions.

[8] 42 C.F.R. §440.230(c): The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service under §§440.210 and 440.220 to an otherwise eligible beneficiary solely because of the diagnosis, type of illness, or condition.

[9] For this reason, we support A.833(Gottfried)/S.2542(Rivera).

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C. Reject the Executive Budget's proposed reduction in workforce recruitment and retention funding.

In a time where NYS should be investing in the Medicaid program, older adults and people with disabilities, and caregivers, the Executive Budget cuts funding to the worker recruitment and retention funds by 50%. These funds enhance recruitment for personal care service workers, certified home health agencies, long-term home health care programs, AIDS home care programs, hospice programs, and managed long-term care plans. As discussed above, there must be a sufficient workforce to meet the care needs of older adults and people with disabilities. Without this, people are forced into institutions, which as they currently are structured, are not humane, violate a person's right to live in the least restrictive setting, and costs NYS more money. As an "age-friendly" state, we should not be forcing people into institutions and preventing current residents in these institutions from returning home, to the community.

Community-based services and supports must be promoted and this cannot be done without a workforce. The Legislature must restore this funding and consider increasing the funding.

In addition to restoring the proposed cuts under the Executive Budget, we urge the Legislature to take action in further development of the home care workforce.

- A139 (Gottfried), relates to establishing a program of health care quality innovation and improvement through home care. This bill, subject to appropriation, would authorize the Commissioner of Health to provide grants for the purposes of supporting a program of health care quality innovation and improvement through home care. This bill would help support growth and investment in home care community based services and supports.

- S4222 (May), establishes the home care jobs innovation program and fund. This bill, also subject to appropriation, would help to identify, develop, and support pilot projects to increase the number of people entering into the home care workforce and improving retention of the workforce.

Immediate investment in the homecare workforce is a major component to investing in a greater NYS that does not inappropriately institutionalize older adults and people with disabilities. Concurrent and proper investments into innovation programs to better meet peoples' needs, pilot programs, and funds for innovation in worker retention and recruitment, is another key component in this investment.

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D. Support expanded Access to Home program

The Access to Home program helps older adults and people with disabilities to remain in their homes by providing financial assistance to low to moderate income individuals thereby allowing them to continue to live safely in their homes. The funds from this program are used for various accessibility updates: wheelchair ramps and lifts, door widening, bathroom renovations, and more. Housing is the main barrier to older adults and people with disabilities remaining in the community. These modifications are essential in helping people remain in their homes so as not to prematurely enter nursing homes. No one should be forced into an institutionalized setting because they cannot access their bathroom.

II. Improve Nursing Home and Adult Care Facilities by Taking Targeted Actions.

As detailed in prior CELJ testimony and comment, the issues surrounding the substandard care in our nursing homes that were brought to the public's attention during COVID-19 such as lax infection control practices, abuse, neglect, insufficient staffing and other ills, existed for years before the pandemic.[10]

Most recently, the NYS Attorney General's preliminary report, Nursing Home Response to COVID-19 Pandemic, detailed some of the many long-standing issues in nursing homes which caused resident harm and death, including: lax compliance with infection control protocols and insufficient staffing.[11] The Attorney General's preliminary report should not have come as a surprise. It is simply the most recent in a long line of government reports detailing the failures of the current nursing home industry structure.

Nursing home owners have had decades to implement creative ideas to better meet the needs of the residents. While some have, such as the Greenhouse model, too many have not. The nursing home industry has cried out for years that they need more money. Yet, nursing homes continue to admit residents whose care needs they fail to meet. The nursing home industry overall has failed older adults and people with disabilities.

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[10] For example, *see Harrington*, Charlene, and Toby S Edelman. "Failure to Meet Nurse Staffing Standards: A Litigation Case Study of a Large US Nursing Home Chain." *Inquiry: a journal of medical care organization, provision and financing* vol. 55 (2018): 46958018788686. doi:10.1177/0046958018788686https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6055099/; *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries.* OIG-06-11-00370. February 2014., accessed at https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf

[11] New York State Attorney General. *Nursing Home Response to COVID-19 Pandemic*. Preliminary report, revised January 30, 2021, https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf

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The nursing home industry is not voluntarily changing. Throwing more money into the current failed nursing home model of care is not the answer. The residents of NYS demand change. It is up to the NYS Legislature to facilitate change and this must be done through targeted legislation and budget policy.

A. Implement policy that increases oversight of the business dealings and operations of nursing homes.

Representatives of nursing homes often claim higher reimbursement from Medicaid and other payer sources is needed to meet resident care needs and services. While this may be true for standalone not-for-profit operators, absent public accountability and transparency on how funds are spent, we remain skeptical. As we have testified previously, if an operator needs more funds- prove it: demonstrate what it takes to meet resident care. Demonstrate that the business 'goes into the red' while at the same time meeting each and every individual resident's care needs.

The nursing home industry is becoming increasingly corporatized and sophisticated about diverting funds meant to support resident care to related parties. There is even a law journal article that provides a roadmap for such transactions.[12] Related party transactions, while legal, in our opinion, adversely impact quality of care. These transactions enable a nursing home operator to claim they are losing money in the nursing home and therefore cannot devote resources to resident care (such as proper staffing levels and trained staff). In our opinion, that is a false narrative, and related party transactions enable nursing home operators to siphon funds to subsidiaries and other related parties.[13] The NYS Attorney General, in her preliminary report, Appendix B, provides a clear example of fund diversions.[14]

In New York, nursing homes cannot be publically traded companies. As an effort to minimize risk, owners/operators (investors) will create single-purpose ownership entities and single-purpose operating entities.[15] Investors will create "operating LLC" and "real estate LLC."[16] This business

[12] Casson, Joseph, McMIllen, Julia. Protecting Nursing Home Companies: Limiting Liability through Corporate Restructuring. 36 Journal of Health Law 577 (Fall, 2003).
[13] *See* Jordan Rau, "Care Suffers as More Nursing Homes Feed Money Into Corporate Webs", The New York Times, Jan. 2, 2018, last accessed Oct. 11, 2019. https://khn.org/news/care-suffers-as-more-nursing-homes-feed-money-into-corporate-webs/vhttps://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html
[14] New York State Attorney General. *Nursing Home Response to COVID-19 Pandemic*. Preliminary report, revised January 30, 2021, https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf
[15] Minimizing risk is nothing new, *see* Casson JE and McMillen J., "Protecting Nursing Home Companies: Limiting Liability through Corporate Restructuring", *Journal of Health Law* Fall (2003); 36(4): 577-613.
[16] *See* Lindsay Heckler and Tony Szczygiel," Emerald South: Profile of a Nursing Home," July 13, 2018, accessed at: https://elderjusticeny.org/emerald-south-profile-of-a-nursing-home/.

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practice enables nursing home owners to place all (or most) of the assets in the real estate and not the operating entity. For example, in 2018 investors paid $16,000,000 for a nursing home in Gowanda, New York. $0 of the sale was allocated to the operations.[17] The assets are in the property but the operations generate the income.

In other words, nursing homes already receive money to meet resident care needs. However, there is little accountability or oversight as to how operators choose to spend the money. Ownership matters and is directly connected to resident care and safety.[18]

While we are against further cuts to long-term care providers, including the 1% across the board cut to Medicaid providers, including nursing homes, any increases in the Medicaid budget to nursing homes must be closely tied to quality care and safe staffing standards.

As such, we encourage the Legislature to do the following:

1. *Pass Medical Loss Ratio (MLR) and Rebate Legislation*

MLRs are a way to ensure there is accountability on how nursing homes spend taxpayer (Medicaid and Medicare) funds by ensuring a large percentage of funds received are spent on actual resident care and services; not management contracts nor related party transactions. New Jersey, in 2020, implemented MLR legislation that requires at least 90% of revenues received must be expended on the direct care of residents.[19]

Senate bill S4336-A(Rivera) would direct the commissioner of health to establish a direct patient care ratio reporting and rebate requirement for nursing homes by July 1, 2021. This bill, would require nursing homes spend 70% (or higher as the commissioner of health may establish) of the facility's aggregate revenue on the direct care of residents and of that amount, at least 40% on staff wages, benefits, and contracted staffing services. Under this bill, if a nursing home fails to meet this threshold, the nursing home shall issue a pro rata dividend (or credit) to all individuals

[17] See NYS Department of Health Certificate of Need Project #171175-E. Accessible at: https://www.health.ny.gov/facilities/cons/nysecon/ and https://www.health.ny.gov/facilities/public_health_and_health_planning_council/

[18] For example, a new working paper published by the National Bureau of Economic Research found that total private equity investment in nursing homes went from $5 billion in 2000 to over $100 billion in 2018. The research found that private equity acquisitions lead to cuts in the numbers of hours front-line nurses spend per day with residents. Gupta, Atul, Howell, Sabrina, Yannelis, Constantine, Gupta, Abhinav. "Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes." Working paper, National Bureau of Economic Research, https://www.nber.org/system/files/working_papers/w28474/w28474.pdf

[19] See https://nj.gov/governor/news/news/562020/approved/20200916b.shtml

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and entities making payments to the nursing homes for resident services. The 30-day Executive Budget amendment, Part GG ("HMH New Part GG"), also includes an MLR that seeks to achieve operator accountability. The Executive's proposal is similar S4336-A.

CELJ supports the implementation of an MLR and rebate, and the intent behind S4336-A and the Executive's proposal. However, **70% is too low, and the starting threshold should be 90%**. We also have concerns that there is not enough incentive to deter nursing homes from using contracted staffing agencies and that operators will still have ways to siphon funds away from resident care.

HMH New Part GG also seeks to limit excess revenues for executive and managerial positions that do not involve direct resident care. Such limitation would be based on the number of beds for resident care, which shall not exceed $250,000 annually, and would be capped at 15% of total annual expenses. We support the intent of this proposal overall, we have a few concerns. We caution against placing too great of weight on using bed count for the limit as this would further encourage the continuation and development of large 100+ bed facilities, instead of advancing reform to smaller and more humane settings. More information as to how the $250,000 limit and cap at 15% were determined.

We further offer the following suggestion to the Legislature: implement legislation that would direct the DOH to investigate all facilities which do not meet the MLR for resident quality care, life, and staffing issues. When operators do not invest in resident care needs and staffing, residents suffer.[20]

2. *Tie Medicaid funding (and any increase in funds) directly to resident care.*

The Governor, in his FY 2022 Executive Budget Briefing Book, states that the Executive Budget "advances a series of actions that advance the goal of ensuring nursing homes spend an appropriate level of their resources on resident care." However the Executive Budget does not clearly delineate all proposed actions, but only three (with the exception of new Part GG):

(1) NYS DOH will increase the existing Nursing Home Quality Pool (NHQP) with an emphasis on rewarding quality based on staffing practices;

[20] Friedman L, Avila S, Friedman D, Meltzer W. Association between type of residence and clinical signs of neglect in older adults. [Published online October 9, 2018]. *Gerontology*. doi: 10.1159/000492029; Rau, Jordan. "Care Suffers as More Nursing Homes Feed Money Into Corporate Webs." *The New York Times*, Jan. 2, 2018https://www.nytimes.com/2018/01/02/business/nursing-homes-care-corporate.html.

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CELJ supports placing emphasis on rewarding quality based upon staffing practices. Staffing is key to resident quality care and life in a nursing home. However, we encourage greater oversight of nursing homes that do poorly on this proposed quality measure. Residents who are in underperforming nursing homes must not be subject to further neglect and subpar living conditions because the owner of the nursing home is unable to meet resident care needs due to inability to attract staff. Nursing home staff retention improves quality of care.[21]

(2) NYS DOH will promulgate regulations governing the review and approval of any contracted staffing arrangements between nursing homes and staffing agencies that provide or arrange for direct care staff;

While regulatory oversight can be beneficial, and we welcome oversight on contracted staffing arrangements, we question nursing home operator usage of staffing agencies. If staffing agencies are able to secure staff to fill contracts, why are nursing home operators unable to do so? Nursing home operators need to be innovative in their recruitment and retention efforts. If there is a nursing home that routinely uses staffing agencies to meet (or attempt to meet) resident staffing needs, NYS and DOH need to ask the follow-up question of "why."

(3) Medicaid reimbursement rates will include only staffing costs related to staffing contract arrangements that comply with regulatory requirements and only to the extent that such costs are determined by the NYS DOH to be consistent with the rates paid for comparable employed clinical staff and/or consistent with fair market value and commercial reasonableness.

CELJ supports this proposal with the aforementioned concern on utilization of contract staffing agencies.

3. *Pass Legislation that Increases Oversight on Nursing Home Contracts and Ownership Changes/Sales*

As discussed above, the nursing home industry is becoming increasingly corporatized and sophisticated at the expense of residents. Now is the time to pass legislation that places greater transparency, oversight, and accountability on these contracts and sales of nursing homes. CELJ supports bill S4893(Rivera) that would require the Public Health and Health Planning Council

[21] Castle, Nicholas. "Measuring Caregiver Retention in Nursing Homes." *The Gerontologist*. Feb. 1, 2021, accessed https://academic.oup.com/gerontologist/advance-article-abstract/doi/10.1093/geront/gnab012/6125669 :, longer retention of nurse aides and registered nurses is linked to highest care quality. See also https://arena.io/research-shows-turnover-impacts-quality-of-care/ , summarizing additional research.

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("PHHPC") to provide notice to the public and other stakeholders of any proposed certificates of need or applications on DOH's website within 30 days of receipt and ensure there is a mechanism for public comment. Public comment will be open for 30 days. The bill also ensures that nursing home owners who come before the Public Health and Health Planning Council for change or ownership/operations are reviewed on statutorily set quality metrics. The bill also increases transparency regarding familial ownership relationships and other contractual arrangements.

HMH New Part GG also proposes amendments pertaining to nursing home ownership changes and sales, and transparency. The Executive proposes to amend section 2801-a of the Public Health Law that nursing home certificate of need applications including information pertaining to staffing, the source of staffing, and skill mix. This proposal does not go far enough. We agree that this information is important, however this proposal can be strengthened by requiring the applicant also submit this information for every other facility in which the applicant has ownership interest. Otherwise, PHHPC is not being provided with the complete picture.

For example, an applicant owns a facility in one area of the state that is rural, like Genesee County, and is applying to own a facility in another rural location, such as Chautauqua County. Applicant has a high utilization of contract staffing agencies in its facility in Genesee County. PHHPC needs to know this because if the owner/operator of the facility in Genesee County cannot figure out a way to recruit, retain, and train enough staff to meet resident care needs in its Genesee County facility, how can the operator meet resident care needs in Chautauqua County? Staffing numbers matter but what also matters is the use of well trained and consistent staff.

HMH New Part GG proposes to address transparency concerns by requiring nursing homes to post on their web site a list of owners of the facility, including the name and business address of any landlord of the facility's premises, and information on any contracts for goods and services paid by Medicaid or Medicare funding or "other agreements entered into by the facility." In addition, new and updated contract and ownership information must be posted within 30 days. CELJ welcomes this additional transparency proposal, but suggests the Executive and the Legislature work together on this issue.

B. Establish Minimum Staffing Standards

As detailed in prior testimony, the problem of insufficient staffing and the harm that results from it is nothing new and existed long before the COVID-19 pandemic. This longstanding problem was a major factor to the COVID-19 infection and death rates in nursing homes. This was confirmed

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most recently in the Attorney General's report.[22] Safe, direct care nurse staffing, saves lives and there is an increasing body of evidence that clearly shows staffing is one of the most important factors in quality care. Nursing homes in NYS have been required, and paid, to have safe "sufficient" staffing for more than twenty years.

Every resident who lives in a nursing home, regardless whether it is for short-term rehabilitation services or long-term care, expects to receive safe, quality care. This is not happening, and NYS has allowed nursing home operators to follow the ineffective "sufficient" staffing standard, causing harm to residents and staff.[23]

The Safe Staffing for Quality Care Act A108-A(Gunther)/S1168(Rivera) in conjunction with increasing staff wages, would remedy that and will save lives. The Safe Staffing for Quality Care Act sets minimum care hours per resident per day (hprd) in residential health care facilities: Registered Nurses (RNs): 0.75 hprd; Licensed Practical Nurses (LPNs): 1.3 hprd; and Certified Nurse Aides (CNAs): 2.8 hprd. These minimum standards are those that a 2001 comprehensive congressionally mandated study found that are critical staffing thresholds necessary to maximize quality outcomes.

Once passed, nursing homes will, within two years, be required to do what they legally promised but have yet done: recruit and retain enough staff to ensure each resident receives the services and care needed to attain or maintain their highest practicable physical, mental, and psychosocial well-being.

The Legislature must act now and pass the Safe Staffing for Quality Care Act. Lives are depending on it.

[22] New York State Attorney General. *Nursing Home Response to COVID-19 Pandemic*. Preliminary report, revised January 30, 2021, https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf

[23] Safire Rehabilitation of Southtowns, LLC, was at 1.8 total staffing hours per resident per day, in 2019. CMS payroll based journal data for 2020 Quarter 3 shows staffing has not improved at only 2.1 total nurse staffing hours. We question how resident care needs are being met. *See* https://elderjusticeny.org/ny-state-nursing-homes-staffing-study/ and https://nursinghome411.org/staffing-q3-2020/

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C. Increase penalties for violations of Public Health Law and invest in nursing home resident care

As CELJ previously testified, in our opinion, the NYS DOH does not do a good job at properly identifying resident harm and basic violations of resident rights regulations and protections.[24] Whether a nursing home is fined is dependent on NYS DOH's ability to identify and properly cite the deficiency (violation). The current penalties under NYS Public Health Law are nothing more than the cost of doing business. NYS must act now to increase penalties under Public Health Law. (NYS must also act to ensure NYS DOH is doing its job properly and ensure NYS DOH has needed resources to do so.)

HMH New Part GG would increase maximum penalties for violations of Public Health Law from $2,000 to $10,000 per violation, and from $10,000 to $25,000 if the violation directly results in serious physical harm to any resident. It would also increase the maximum penalty for repeat violations from $5,000 to $15,000. Fines that are issued between $10,000 and $15,000 would be directed to the patient safety center, and fines of $15,000 or more from violations would be used for initiatives to improve the quality of care or quality of life of residents or patients. The Assembly has a similar bill, A232-A(Gottfried) that would also increase fines for violations of NYS Public Health Law and would send penalties collected to the nursing home quality improvement demonstration program.

CELJ supports the increase of fines for violations of NYS Public Health Law (although we would like to see the larger fines). We do recommend that residents and their family, through resident and family councils, and the NYS Long Term Care Ombudsman Program ("LTCOP"), be directly involved in how funds directed to the nursing home quality improvement demonstration program are used, and that grant awards go to the benefit of residents.

Fines must be reinvested to meet resident needs at the direction of the residents. We support increase in fines and the reinvestment of these funds, however residents, their families, and the NYS LTCOP must be involved.

HMH New Part GG would also mandate that when a nursing home receives more than one infection control deficiency in two consecutive inspections, that they contract with a quality improvement organization or a DOH selected independent quality to monitor to assess and

[24] *See* CELJ's testimony before the Joint Legislative Committees on Aging, Health, and Investigations and Government Operations on New York Residential Health Care Facilities and COVID-19, August 10, 2020 https://elderjusticeny.org/testimony-to-the-nys-legislature/

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resolve the facility's infection control deficiencies. CELJ recommends that resident and family councils, and LTCOP, are involved in the selection of the independent quality monitor.

It is essential that the resident voice is heard during these improvement methods and that both quality improvement organizations and/or independent quality monitor are required to meet with resident and family councils, and LTCOP in the ongoing resolution and monitoring of the facility. Not only for infection control issues, but also quality of care issues.

HMH New Part GG would also authorize DOH to appoint an emergency receiver of a nursing home with no less than 24 hours' notice, if the Commissioner determines that the public health or safety is in imminent danger or that conditions or practices exist that pose imminent danger to residents of the facility. While CELJ supports this amendment addition to Public Health Law 2810, we again request that resident and family council and LTCOP are involved in this process and that the appointed emergency receiver is required to be in constant communication with resident and family councils and LTCOP. For example in WNY, during the Emerald South closure, we witnessed residents and families become shut out of the receivership and then closure process. **Residents deserve to have a voice in their care and lives.**

D. <u>Increase funding to the NYS Long Term Care Ombudsman Program (LTCOP).</u>

LTCOP is an advocate and resource of information for people who live in nursing homes and adult care facilities. LTCOP's primary function is to identify, investigate, and resolve complaints made by or on behalf of residents in long-term care settings.

Ombudsmen are a key piece in the fight against resident abuse, neglect, and exploitation. Frequent facility visits by an Ombudsman establishes resident trust and rapport so that residents feel comfortable sharing their concerns. These visits also provide another 'pair of eyes' to monitor residents for quality of care and life concerns, speaking for those who cannot. Nursing homes that have an ombudsman present for deficiency evaluations tend to have more deficiency citations.[25] This is because ombudsmen can bring unresolved issues to the attention of state surveyors.

Not only do ombudsmen help residents to (and advocate for) assert and realize their right to quality care and services, ombudsmen are instrumental in helping residents who want to return to a lower level of care and/or the community. Ombudsmen help facilitate proper discharge

[25] The Impact of Long-Term Care Ombudsman Presence on Nursing Home Survey Deficiencies
Berish, Diane E. et al. Journal of the American Medical Directors Association, Volume 20, Issue 10, 1325 - 1330

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planning and connect residents to available resources in the community, such as the Open Doors Program.

Despite playing a vital role in solidifying residents' rights, LTCOP has been chronically underfunded.[26] This routine lack of adequate funding plays out directly in the lives of NYS's most vulnerable long-term care residents. While the Executive Budget maintains level funding of LTCOP, **in order to achieve complete investment in NYS LTC structure and most importantly older adults and people with disabilities, funding must be increased to allow for LTCOP to hire additional staff ombudsmen.**

E. Expand the Open Doors Transitional Support Program

The Open Doors Transitional Support Program (Money Follows the Person) is complementary to the principles of *Olmstead* as it helps nursing home residents return to the community. This program gets older adults and people with disabilities out of nursing homes and other institutional settings by linking residents with services that would meet their needs for them to be independent in the community of their choice. In addition, the program helps residents in finding housing by filling out apartment applications and following up on the status of waiting lists. The program also provides Peer Support, matching residents with individuals who have successfully transitioned to the community.

This program is essential in getting older adults and people with disabilities out of nursing homes and into the community. This program also saves NYS money.[27] Total health expenditures for individuals in the Open Doors Program decline when they transition to the community, and, the expenditures continue to decline. The Open Doors Program works, and NYS (and the federal government) must invest in the program to ensure older adults and people with disabilities live in the least restrictive setting.

F. Promote Alternative Models of Long-Term Care

The current nursing home 'model' is broken. Nursing homes, in design (and practice) are no different than the psychiatric and other institutions NYS closed and continues to work on closing. In our opinion, current nursing home design has little person-centered care, and residents are not receiving the needed services and care attain or maintain their highest practicable physical,

[26] *See* Office of the New York State Comptroller. *Office for the Aging Long-Term Care Ombudsman Program.* No. 2018-S-48, 2018, https://www.osc.state.ny.us/sites/default/files/state-audits/documents/pdf/2019-10/sga-2020-18s48.pdf.

[27] https://ilny.us/images/Documents/OpenDoors/mfp_at_a_glance_2018.05.24.pdf

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mental, and psychosocial well-being. The time is now to explore alternative models and nursing home design for long-term care facilities, including the principles found in the Green House model.

The Green House Model is intentionally designed to promote person centered care, the values of real home, meaningful life, and empowered staff through small, residential style houses located in community neighborhoods also reflect similar goals. The Green House Model has houses containing 10–12 residents within the building. The residents all have a private room, attached bath and shared communal spaces such as the kitchen, dining, and living areas with access to outdoor space. Universal caregivers are also responsible for a range of activities and are assigned to specific resident's care with a nurse available 24 hours a day, further promoting a resident focused form of care.[28]

NYS needs to be the leader and must promote alternative models. It has the opportunity to do so in WNY, where there are reports that RCA Healthcare Management is planning to close their newly acquired Absolut Westfield (120-beds) and replace it with a new 120-bed facility in Lakeview, NY.[29] The public and NYS must be involved in the design of this new facility to ensure that it is intentionally designed to promote person individuality, an actual homelike environment, ensures resident safety, and access to/integration with the community. We cannot allow for another building to be built that has double resident rooms, shared bathrooms, and a lack of homelike environment. This new build is an opportunity to be innovative.

There are many ideas and innovations pertaining to how NYS offers long-term care services outside of the principles of the Green House model. We must not view long-term care in silos: community based vs facility based. If NYS fully invests in home and community based services (both via Medicaid and aging services), then we will see a decline in nursing home beds. If done properly and with intentionality, this is not a problem as nursing homes will need to change the way they operate in order to provide a human alternative to individuals. It is time we 'think outside the box' and considering funding pilot programs that promote the receipt of long-term care services and supports in the community.

[28] Cohen, Lauren W., et al. "The Green House Model of Nursing Home Care in Design and Implementation." *Health Services Research*, vol. 51, 2015, pp. 352–377., doi:10.1111/1475-6773.12418.
[29] https://www.bizjournals.com/buffalo/news/2021/02/10/absolut-westfield-and-jamestown.html?s=print

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G. Reject the Executive Budget cuts to the EQUAL Program, the Enriched Housing Program, and Adult Home Advocacy Program.

The Executive Budget would discontinue the Enhanced Quality of Adult Living (EQUAL) Program and the Enriched Housing Operating Assistance Program to align "available resources with core mission programs."[30] The Executive Budget would also eliminate the requirement of the Justice Center for the Protection of People with Special Needs (Justice Center) to administer the Adult Home Advocacy and Adult Home Resident Council Programs.[31] **We urge the Legislature reject these proposed cuts and restore funding to these essential programs that help to protect and provide additional supports/services to older adults and people with disabilities living in Adult Care Facilities (ACFs).**

The EQUAL program is a way to improve the quality of life for ACF residents who are in the greatest need as directed by those residents. Specifically, the EQUAL program is a grant that is available to ACFs who provide housing and services to residents receiving Supplemental Security Income (SSI). Residents in these ACFs, do not have access to the same quality services, food, activities, and environment, when compared to primarily private pay ACFs. The EQUAL program helps residents live with dignity and right to quality life.

Under this program, it is the residents who decide what funding should be used for including, but not limited to: air conditioning in resident rooms, furniture, televisions, computers, transportation for resident services, and other activities/equipment the residents determine as through the resident council.

While there have been ACF operators who did not properly utilize the EQUAL program funds, residents should not be penalized for operator transgressions. Instead of removing this essential resident improvement benefit, that helps residents maintain independence and quality of life and services, while living in an ACF, the Legislature must restore this funding and concurrently pass legislation that imposes stringent penalties against operators who misuse/mishandle the EQUAL program process and funds. It is our recommendation that funds received from such penalties be redirected to the residents and that the LTCOP be involved to ensure the funds go to cover residents' benefits.

CELJ urges the Legislature to reject the Executive Budget's repeal of operating subsidies to Enriched Housing Program facilities. These funds go to not-for-profit operators of Enriched Housing Programs who provide services to individuals receiving SSI benefits. The purpose of this

[30] HMH Part O
[31] HMH part EE

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program is to enhance the quality of care to improve service delivery to eligible residents and assist in meeting resident needs. While we always call for transparency and accountability for how such funds are spent (i.e. to the benefit of the residents and not the operator), these funds are necessary such that resident needs are met.[32]

We further request that the Legislature reject the Executive Budget's proposal to eliminate the $230,000 funding through the Justice Center to administer the Adult Home Advocacy and Adult Home Resident Council Programs.[33] We disagree that such funding is not aligned with the mission of the Justice Center. In order for residents and their families to file complaints and speak up about living conditions and substandard services, residents and their families need to be informed about their rights and empowered to assert their rights. Furthermore, this funding is key to ensuring residents facing illegal eviction are represented by counsel. This funding goes to community based organizations who are dedicated to advocating for residents in Adult Homes, and in pursing civil legal remedies for those residents. It must be restored.

H. Increase civil penalties for adult care facility (ACF) violations and Invest in ACF residents

Older adults and people with disabilities deserve to live in home-like settings that treat them with dignity and protection them from physical or financial abuse. Like nursing homes, there are ACFs that do comply with regulations concerning facility safety, management, and residents' rights. However, many ACFs have been allowed to consistently fall short, exposing residents to abuse and neglect.

HMH New Part GG, proposes to make the following changes:

- Increase civil penalties for ACFs from up to $1,000 per day to up to $10,000 per day for violations of regulations pertaining to the care of residents, when an ACF restricts or prohibits access to LTCOP, and when the ACF is causing, engaging in or maintaining a condition or activity that constitutes a danger to the physical or mental health of residents of a facility.

- Eliminates the ability of ACFs to rectify a violation within thirty days and avoid a penalty under certain violations.

[32] Some ACFs (Enriched Housing Programs) are at risk of closure, or closure due to the low SSI payment rates. Not every facility is private pay. *See* *https://www.wgrz.com/article/news/local/bristol-home-nonprofit-assisted-living-facility-in-buffalo-to-close/71-3f69e8aa-6b34-4647-9eab-4dc5194bcd40*

[33] HMH Part EE

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- DOH to promulgate regulations to specify the violations subject to penalty and the amount of penalty to be assessed with each violation.

- Implement civil penalties of up to $10,000 per day per violation against an ACF that is found responsible for an act of retaliation against any resident, employee or person for having filed a complaint with, or having provided to, LTCOP.

- Increase the potential civil penalty for facilities operating as ACFs without a valid operating certificate from up to $1,000 per day to $10,000, and authorizes the issuance of an order requiring closure.

We support the increase of civil penalties for ACFs. There is a bill in the Legislature, A198(Gottfried)/S1576(Rivera) that would also increase civil penalties, although not up to the $10,000 amount (which was due to industry pushback). This bill goes farther than the provisions in HMH New Part GG and would:

- Mandates increased fines for when: the violation results in a resident's physical injury; financial abuse (such as preventing a resident from accessing their PNA); a facility operator, administrator, or other manager purposely violates a resident's rights; and if a previously cited violation is repeated within a 12-month period.

- Afford consumer protections for residents by: requiring DOH's do not refer list be sent to hospitals and nursing homes; requires facilities make DOH complaint investigation reports more accessible; and requires ACFs to post their admissions agreement on their website.

We would encourage the Executive and the Legislature to work together on enacting legislation that increases the civil penalties and also the important provisions from A198/S1576. We also encourage the Legislature to pass legislation that would mandate ACFs to post the DOH investigation reports on their website, or at the minimum require DOH to do so within a period of time.

III. Repeal the Global Cap

The Executive Budget again proposes to continue the global cap for an additional two years.[34] The global cap is outdated, arbitrary, and is no different than the discriminatory federal block grants the state and advocates have fought against.[35] Furthermore, the global cap directly

[34] HMH Part A
[35] For example, the American Medical Association,

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inhibits NYS' ability to fully invest in its people through the Medicaid program. As a result, people do not have access to quality care in the community and are unjustly institutionalized in nursing homes, where they are likely to suffer harm.[36]

The discriminatory care rationing and effects of the cap in its impact on older adults and people with disabilities and the fact that the cap does not enable Medicaid to grow makes the cap worth eliminating. Since the pandemic's full effects on a global scale began twelve months ago, more people have enrolled in Medicaid, with current enrollment as of January 2021 being 5,060,499, an increase of nearly one million from last March.[37] Between March and September 2020, New York's MCO enrollment alone increased by 13.4% meanwhile between March 2019 and March 2020, enrollment decreased by 3.1%.[38] These increased numbers put further pressure on the future budget and those it affects should the cap not be repealed. The vast majority of those with Medicaid use it for long-term care, but this artificial spending limit calculation has not been updated properly to reflect inflation and higher costs of living and care in the ten years since its implementation in the budget.

COVID-19 disproportionately harms older adults and people with disabilities, who are more likely to use Medicaid, be it on a state or national level.[39] When budgets are slashed, or capped, older adults and people with disabilities relying on Medicaid are robbed of agency and flexibility in what services they can obtain and afford with the program. The global cap reinforces the State's institutionalization bias, and forces older adults inappropriately into nursing homes.

Now is the time to eliminate the global cap and to adopt a Medicaid budget that is realistic, does not discriminate, and ensures older adults and people with disabilities receive the care, services, and supports needed to remain in the community. We need a budget that invests in the people of NYS and their long-term care needs. **We support the passage of A226(Gottfried).**

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[36] Cite to HHS study where 1/3 Medicare beneficiaries were harmed. Discuss

[37] New York State Department of Health, *Recipients Enrolled in Mainstream Medicaid Managed Care Table* (Jan. 2021), https://www.health.ny.gov/health_care/managed_care/reports/enrollment/monthly/2021/docs/en01_21.pdf.

[38] Stolyar, Lina et al., *Growth in Medicaid MCO Enrollment during the COVID-19 Pandemic*, Kaiser Family Foundation (Dec. 1, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/growth-in-medicaid-mco-enrollment-during-the-covid-19-pandemic/. https://medicaidmattersny.org/wp-content/uploads/2021/02/2020-enrollment-one-pager-MMNY-2.16.21.pdf

[39] Musumeci, MaryBeth and Priya Chidambaram, *COVID-19 Issues and Medicaid Policy Options for People Who Need Long-Term Services and Supports* (April 16, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-issues-and-medicaid-policy-options-for-people-who-need-long-term-services-and-supports/.

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IV. Other Comments Specific to Executive Budget

A. HMH Part G: Medical Respite Program

Patients who are homeless are more likely to be readmitted to a hospital compared to individuals who have housing.[40] Individuals who are homeless face many barriers in accessing follow-up care, which leads to their readmission to hospitals.

CELJ supports the intent behind the Executive Budget's proposed Medical Respite Program.[41] While we have questions as to the program's implementation, this program appears to be a step in the right direction in ensuring individuals who are homeless do not suffer from further harm by being discharged to a shelter or hotel, only to be readmitted to the hospital.

We encourage the Legislature to consider expanding eligibility for this program to include individuals who are being discharged from a nursing home because they do not require nursing home level of care but do not have a home in the community.[42] There is a problem of residents being inappropriately sent to hotels, shelters, and other unsafe locations.[43] While there is legislation that seeks to address this problem, some residents who enter a nursing home "homeless" or lose their community home during their stay, are no longer appropriate for nursing home level of care, but there is no safe location for discharge.

A medical respite program for these individuals may be beneficial, and would help to end the vicious cycle of an individual who is homeless, enter the hospital, to be then discharged to a nursing home for short-term rehabilitation services, only to be sent to a shelter/hotel, then back to a hospital. NYS must and can do better.

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[40] https://www.pennmedicine.org/news/news-releases/2020/june/homeless-patients-are-more-likely-to-be-readmitted-to-a-hospital-within--30-days-of-discharge ; https://link.springer.com/epdf/10.1007/s11606-020-05946-4?sharing_token=dEX_5rPNSxq_L5BAbSNkf_e4RwlQNchNByi7wbcMAY6ji5FivKI8GD3hGlJpLOJFzLANEaq7IZg5JHg0Awc2sGiOomeosYSc0-gfzjyuvc_OwFeWSO3PeCXpbhO_qxT8Djo0o8hn6XFGjoaJmS7MB5sEfyo62nNuGidOMdfakRo%3D

[41] HMH Part G

[42] Not every individual who enters a nursing home for short term rehabilitative services is able to maintain their home in the community. This is for a variety of reasons and is an issue the Legislature should consider in the future.

[43] Silver-Greenberg, Jessica, and Harris, Amy Julia. 'They Just Dumped Him Like Trash': Nursing Homes Evict Vulnerable Residents." *The New York Times,* June 21, 2020, https://www.nytimes.com/2020/06/21/business/nursing-homes-evictions-discharges-coronavirus.html.

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B. Support: Elimination of Barriers for Gender Designation on Identify Documents and Name Changes for Transgender and Gender Non-conforming New Yorkers.

While not specific to long-term care, CELJ supports HMH Part R, as it is important for transgender and gender non-conforming New Yorker's health. All transgender individuals, regardless of age or circumstance, must be given the opportunity and freedom to live the best version of their lives. One crucial piece to this endeavor involves providing transgender people with the means to embrace their gender identity and expression, regardless of their biological sex or sex assigned at birth. A vital legal tool in helping transgender and gender non-conforming people to realize their gender identity and expression is the legal name and gender designation change.

The use of legal name changes remains elusive for many transgender individuals. According to a 2015 survey conducted by the National Center for Transgender Equality, only around 11% of the 27,000 respondents reported that all of their identification documents had the name and gender they preferred.[44] When asked to provide a reason for not having gone through a legal name change, 40% of respondents stated that they were not ready to pursue name change, while 24% stated that they were worried that changing their name would "out them."[45] This reluctance to pursue a legal name change is not overly surprising, considering the fact that transgender individuals have historically been subject to higher levels of violence and discrimination. Despite this hesitancy, and accompanying risks, the benefits of name and gender marker changes for transgender people are well documented.[46]

The process of changing one's name is a deeply personal and private endeavor, especially for those transgender and gender non-conforming people who may fear threats of violence or the possibility of discrimination. Therefore, the proposed removal of the requirement found in New York Civil Rights Law § 64-a, which requires publication of a name change in a newspaper, stands to benefit those with these well-founded fears. However, there is yet another concern for privacy for transgender individuals that is not addressed in the proposed changes, and that is the caption of the proceedings. While the record in a name change petition can be sealed by the court, and notwithstanding the elimination of the publication requirement in the proposed amendment, there is no provision in the law that expressly allows for an anonymous, initials only, caption. As many, if not all, of the name change proceedings are electronically filed on the New York State Courts Electronic Filing (NYSCEF) system, they remain readily accessible to the public.

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[44] *The Report of the 2015 U.S. Transgender Survey*, NATIONAL CENTER FOR TRANSGENDER EQUALITY 1, 9, https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf (2015).
[45] *Id.* at 83.
[46] Arjee Restar et al., *Legal Gender Marker and Name Change is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Populations*, S.S.M. – POPULATION HEALTH 1, 6, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7229467/pdf/main.pdf (2020).

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Recently, one client at CELJ expressed concerns that third parties could easily trace his name change, including identifying his new legal name, from the mere caption on the NYSCEF system. This was alarming to him, as potential bad actors could then easily identify his new legal name, by merely inputting his "dead" name into the NYSCEF system, revealing clearly his new legal name. Thus, despite the fact that the publication requirement had been waived and the court file was sealed, this client still had concerns for his physical and mental wellbeing. Though courts may be willing to order an anonymous caption, codifying such a right within the statute would help further the goal of these amendments to address risks of violence and discrimination. Therefore, including language to allow for anonymous, initials only, captions would help complete the privacy concerns that underlie the recent amendments.

Nevertheless, the proposed changes stand to benefit transgender and gender non-conforming individuals who are seeking a legal name change. In addition, the incorporation of the proceeding to petition the court to change sex and gender designations streamlines the process and likewise benefits transgender and gender non-conforming individuals. For these reasons, CELJ supports said amendments to the Civil Rights Law, while respectfully requesting the consideration of the changes above, to expressly provide for the possibility of anonymous, initials only, captions.[47]

We again thank you for the opportunity to provide testimony.

[47] In further recognition of CELJ's fervent commitment to serving its LGBTQ+ clients, CELJ also supports the Equal Rights Amendment Concurrent Resolution in the FY 2022 Executive Budget, which among other things, amends the equal protection clause of the State Constitution (section 11 of Article 1) to add sexual orientation and gender identity or expression as protected classes.