



Empire State Association  
of Assisted Living  
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**Testimony of Lisa Newcomb, ESAAL Executive Director**  
**Joint Legislative Budget Hearing – Health**  
**February 8<sup>th</sup>, 2022**

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 2022-23 Executive Budget.

ESAAL is a not-for-profit organization representing more than 325 licensed adult care facilities, including adult homes, enriched housing programs and assisted living residences (collectively, hereinafter referred to as ACFs), which are home to more than 31,000 seniors. They include low-income residences in which members rely nearly entirely on a fixed Supplemental Security Income (“SSI”) subsidy and Medicaid Assisted Living Program residents, and also private pay facilities whose residents utilize their own funds, often their limited savings and retirement, to cover the services they need.

The assisted-living model combines independence, choice, and privacy with personalized supportive care in a congregate residential setting. Unlike nursing home residents, individuals residing in our facilities require only some assistance with daily activities and, with some exceptions, don’t need around the clock skilled nursing care.

ACFs provide a less costly alternative to care for vulnerable seniors than the more institutional nursing home setting, and this is something that should be recognized and supported. While the State has provided financial relief to offset pandemic costs and losses to the health care sector including private businesses, our members remain the one provider category that has received virtually no funding from the State. When support has been provided from the Federal government, it has been minimal and only a fraction of what has been provided to hospitals and nursing homes; it has not been sufficient to ensure that our members can continue operations. As a matter of fact, since the pandemic, 18 ACFs have been forced to close their doors. The State should support proactive, cost-effective investments to help adult care facilities continue to provide care for our loved ones, rather than the continued divestment our members have experienced.

Our members and residents desperately need your support. In a year when the State is in the best financial position it has been in decades with a budget surplus and higher than expected tax receipts, we ask that you recognize the essential services provided by our members through the following actions:



## Empire State Association of Assisted Living

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### Dedicated Funding for Adult Care Facilities:

*Pandemic Recovery Funding:* This year's Budget includes \$2 billion for pandemic recovery programs. This funding will be negotiated between the Governor and the Legislature, who will work to identify impactful uses, including for hard hit industries. Let me please stress this again: our facilities have been providing dedicated care to New York State seniors without one dollar in State pandemic support. The Legislature and the Governor need to recognize the essential role our facilities play and specifically set aside \$75 million for *all* ACFs to help preserve access to these critical services.

*Capital Dollars:* The Budget includes several funding streams to support capital improvements for health care facilities. ESAAL respectfully requests that funding be earmarked for our member facilities, as follows:

- The Budget sets aside \$50 million in Statewide Health Care Transformation Program IV (Statewide) funding for nursing homes and adult care facilities, to fund applications submitted as part of Statewide III. Our request is that, of that amount, \$20 million be expressly dedicated to fund ACF specific projects.
- Also as part of Statewide IV, \$750 million are earmarked for non-competitive grants to fund health care provider capital projects, including projects intended to ensure providers' financial sustainability. Again, we ask that a dedicated amount be earmarked specifically for adult care facilities.
- Similarly, there are up to \$50 million in Statewide IV non-competitive funding for residential and community-based alternatives to traditional nursing home care. This pool should recognize ACFs, all who must comply with the federal Home & Community Based Settings rule, as a viable alternative, and funding in an amount be expressly dedicated to our sector.

### Supplemental Security Income (SSI) Rate Increase:

Currently, ACFs serving indigent, frail seniors are paid a little over \$42/day to provide housing and a wide array of around the clock care and services to SSI recipients, including meals, housekeeping, activities, supervision, case management, medication assistance and hands-on personal care.

This level of reimbursement is unsustainable. The last time the State increased its share of the SSI rate was 15 years ago, in 2007, and the increase before that was in 1988. With one rate increase in 3 decades – and no State COLA – the SSI rate has fallen far behind the costs of providing care and services. Even prior to the pandemic, this funding was woefully inadequate as SSI ACFs were closing at an average rate of 12 facilities per year over the last several years.



## Empire State Association of Assisted Living

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Since the last SSI rate increase, facility costs have continued to climb every year, as have wage related costs, health insurance, workers compensation – and we can't forget pandemic related expenses. With these rising expenditures, it is becoming increasingly difficult for ACFs to meet minimum costs and deliver all the State-mandated care and services to SSI recipients. It must be noted that, when a displaced SSI resident ends up in a nursing home, the daily cost to the State increases dramatically from \$42/day, to amounts ranging between \$170/day - \$400/day, depending where in the State the skilled nursing facility is located.

As we have in years past, ESAAL is asking the Legislature to support an increase in the SSI rate of at least \$10-15 per day to help facilities stay afloat and support the quality care these residents need. This increase is long overdue and it would be unconscionable for the State to yet again ignore the needs of the poorest and most vulnerable of adult care facility residents.

### Assisted Living Program (ALP) Rates:

The Medicaid funded ALP serves individuals who are medically eligible for nursing home care in a less intensive, lower cost setting. Services include room and board, personal care, supervision, housekeeping, nursing, physical therapy, occupational therapy, speech therapy, adult day health care, among others.

The ALP is a less expensive alternative to nursing home placement. ALP reimbursement is still based on 2002 rates which ignores the increases in costs and mandates resulting in a rate too low to support the services residents need.

When initially enacted, the ALP rate was supposed to be calculated at 50% of the regional average of the nursing home rate; however, current rates have lagged far behind the nursing home rate, and with facilities having to sustain pandemic related costs, ALP rates are currently inadequate to support these services.

The methodology for calculating the ALP rate should be revised and the rate should be increased so our facilities can meet costs and continue to care for vulnerable Medicaid residents who would otherwise be placed in a nursing home.

### Enhancing the Quality of Adult Living (EQUAL):

To further assist in the operations of those facilities serving primarily the SSI population, the Legislature created a program years ago to help ACFs make modest quality improvements each year. The program was originally called the Quality Incentive Payment Program, or QUIP. The program was later codified in Social Services Law as the Enhancing the Quality of Adult Living program, or EQUAL.



## Empire State Association of Assisted Living

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The EQUAL program provides critically important funding to ACFs to make real quality improvements that we would otherwise be unable to make for our residents. Although it has repeatedly been targeted for elimination or reduction in past Executive Budgets, we are grateful to the Legislature recognizes its value and has consistently restored it. However, it remains the only source of dedicated State funding for adult care facilities. As such, ESAAL is asking for your support in increasing the funding amount to at least \$7 million.

In addition, over the last few years the Department of Health has been exercising arbitrary discretion when distributing these funds, sometimes asking facilities to redirect funds for purposes other than what the residents' council had previously approved. This is contrary to how the program was designed: EQUAL funding should once again be distributed through an objective methodology to ensure funds are directed as the program intended, and the \$6.5 million in current funding should be increased to at least \$7 million.

### Staffing Issues:

Long term care providers, including ACFs, continue to face workforce and staffing challenges, which pre-date the pandemic but have been exacerbated by it. While we are glad to see that the State has recognized the need for investments and flexibilities in the healthcare workforce space through a number of proposals, yet again, several of these proposals fail to provide direct relief to ACFs.

As outlined in the Executive Budget, the workforce bonus provisions are structured around Medicaid, and as such, it would only partially help Assisted Living Program (ALPs). Only the Licensed Home Care Service Agency (LHCSA) staff working in the Assisted Living Program (ALP) would be able to benefit from the bonus, when there are other staff in ACFs serving the same SSI/Medicaid population. It would be disruptive and unfair for only aides and nurses to receive bonuses – therefore, we are requesting that the program be expanded so that all ALP staff can benefit from this program.

The Executive Budget also includes \$2.5 million for a new nurse loan repayment program, modeled after Doctors Across New York – the Nurses Across New York program. Through the proposal, licensed registered nurses who agree to practice for at least three years in hospitals or medical practices treating underserved populations will be eligible for loan forgiveness, not to exceed the total amount of their outstanding loans. This program should be expanded so that nurses providing care in other settings can also participate, including those caring for residents in EALRs and ALPs.



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### Special Needs Assisted Living Voucher Demonstration Program for Persons with Dementia:

To allow individuals suffering from Alzheimer's disease or dementia to age in place in the most integrated setting and prevent reliance on Medicaid, the FY 2018-2019 State budget authorized the Department of Health (DOH) to establish a voucher demonstration program for residents in Special Needs Assisted Living Residences (SNALRs).

Under the program, DOH issues 200 vouchers to facilities on behalf of eligible residents to cover no more than 75% of the average regional monthly cost of the SNALR. This program can effectively prevent premature reliance on Medicaid and costly, medically unnecessary nursing home admissions.

Funding for this important program should be lined out in the Budget and increased from the current levels to provide this benefit to as many eligible individuals as possible.

### Tax credits

Another avenue that could provide relief to our members would be the establishment of tax credits or other tax incentives for ACFs to support facility upgrades in order to improve the aging infrastructure of many of our member facilities.

ACFs could greatly benefit from tax credits similar to those provided through the Low-Income Housing Tax Credit ("LIHTC"), which provides reductions in a taxpayer's income tax liability in return for long-term investments in affordable rental housing. A similar program could be tailored to ACFs serving a high volume of SSI and Medicaid/ALP residents, to incentivize facility enhancements and to help mitigate the financial hardships these facilities are facing.

In closing, adult care facilities continue to struggle with issues we have highlighted for you in the past, including lingering pandemic impacts and historic underfunding. Some of our facilities are already on the brink of closure, and many have already closed, with the most common placement alternative for the residents being nursing homes – at a higher cost to the State. And yet, our members feel that they are still being ignored at a time when support for older adults in congregate settings remains more important than ever.

ESAAL remains committed to providing a safe environment for residents and staff and we ask that you provide your support for adult care facilities as they continue to care for vulnerable residents of the State.

Thank you for the opportunity to provide this information.