Empire State Association of Assisted Living

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Testimony of Lisa Newcomb, ESAAL Executive Director

Joint Legislative Budget Hearing – Health
February 28th, 2023

Good morning, Chairs Krueger, Weinstein, Rivera and Paulin, 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 2023-24 Executive Budget.

ESAAL is a not-for-profit organization that has been dedicated to strengthening New York State's assisted living network and promoting the best interests of adult care facility (hereinafter referred to as ACFs) residents and our member providers since 1979. ESAAL is the only association that exclusively represents the assisted living provider network, serving 335 licensed not for profit and for profit Assisted Living Residences, Adult Homes and Enriched Housing Programs throughout New York State, which are home to more than 33,000 seniors. They include low-income residences in which members rely nearly entirely on a fixed Supplemental Security Income ("SSI") federal and state subsidy, as well as Medicaid Assisted Living Program ("ALP") residents, and private pay facilities, whose residents utilize their own funds, often their savings, to pay for the services provided.

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 assistance with Activities of Daily Living, 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. Instead, support for our industry has been minimal, including during the pandemic, and has not come close to compensating providers for the tremendous financial burden our member communities continue to endure, which has been compounded by inflation and the staffing crisis. Our members are struggling to continue operations and, since 2020, 27 ACFs have been forced to close their doors due to financial instability, with at least three having already closed in 2023. The number of closures each year has accelerated over the past decade and we cannot blame the pandemic alone: Since 2010, 76 ACFs have closed because of their precarious financial situation brought on by government's lack of support.

In addition, State supported rates for our providers have remained stagnant for decades. For instance, the last time the State increased its share of the SSI rate was 16 years ago, in 2007, and the last increase before that was in 1990. 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. Similarly, the rate of reimbursement for services provided through the Medicaid funded ALP has not been updated in

20 years, and while we are glad to see that the Executive budget includes a modest 5% increase to the rates, this increase will only provide relief to a portion of our members and does not go far enough to offset decades of historically low rates.

It is notable that over the past decades the State has invested heavily in home care and nursing homes while mostly leaving ACFs—the middle of the continuum---unsupported. That was and is penny wise and pound foolish as ACFs cost far less than nursing homes or even just a few hours of home care. And, while home care is right for some people, many seniors thrive when they move into assisted living because they are no longer socially isolated at home, especially when they don't have strong caregiver(s) presence at home. The State should support proactive, cost-effective investments to help adult care facilities continue to provide care for our loved ones. Our members and residents desperately need your support to ensure that this key sector of the long term care continuum remains sustainable.

We ask that you recognize the essential services provided by our members through the following actions:

Assisted Living Program (ALP) Reimbursement Reform:

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. The statutory base year for the ALP reimbursement rates is 1992, and while it was trended to 2002, it remains too low to support the services residents our members are required to provide. When initially enacted, the ALP rate was supposed to be calculated at 50% of the regional average of the nursing home rate; however, ALP rates have lagged far behind the nursing home rate and remain woefully inadequate.

Moreover, inflation has caused basic facility operational costs to climb steeply, as have wage related costs, health insurance, and workers compensation. Since virtually ALL operational costs have risen significantly it is becoming increasingly difficult to deliver all the State-mandated care while meeting cost demands. It must be noted that, if an ALP closes, residents frequently end up in a nursing home, whether needed or not, at a much higher cost to the State. And we have already seen one ALP close in 2023, displacing dozens of residents.

The ALP reimbursement methodology must be revised, including an update to the statutory base year from 1992 to 2022 as well as an increase to the base rate of 20%, rather than the proposed 5%, to ensure ALP reimbursement adequately reflects the cost of providing services and caring for these vulnerable senior residents.

Quality Measure Reporting Requirements and Accreditation:

The Executive budget includes a brand new proposal to require reporting by Assisted Living Residences (ALRs), Enhanced Assisted Living Residences (EALRs) and Special Needs Assisted Living Residences (SNALRs) of quality measures and other rate and fee information.

Specifically, facilities would be required to report annually on quality measures to be determined by the Department of Health ("DOH"), with the first report due by January 31st, 2024. These ALRs would also be required to post their monthly service rate, staffing complement, approved residency agreement, and a consumer-friendly summary of all service fees.

According to the proposal, DOH would then score the results of the quality reporting and would grant top scoring facilities an "advanced standing" classification in their annual surveillance schedules. Top scoring facilities would be surveyed every 12 to 18 months, and all other facilities would be surveyed on an unannounced basis, no less than annually. (Notably, the 12 and 18 month distinction already exists in statute, with facilities doing well on their survey put on an 18 month schedule, so this new requirement would not bring any reward for good work that does not already exist.)

While we support informing consumers, we are seriously concerned with the fact that the proposal gives sole discretion to DOH in determining the quality measures to be reported and the scoring methodology. Our member communities don't all offer the same level of services to the same type of residents, or price their services in the same exact manner. Developing a reporting system where information can be aggregated and reported in a consumer friendly manner will be complicated and should be undertaken with input from the industry. Otherwise, a one-size-fits-all approach that does not take into account the diverse makeup of these facilities can and will result in consumer confusion, rather than transparency.

We ask the Legislature to support revisions to this proposal to require DOH to work with industry representatives and other relevant stakeholders in the development of the quality measures and reporting and scoring parameters. In addition, the timeframe for facilities and DOH to report on quality measures is extremely tight, with first reports due by January of 2024. That timeline does not afford sufficient time for the development a thoughtful proposal that is workable for the industry. As such, we ask that the reporting requirements and the effective date be delayed so our members don't face yet another well-intended but deeply flawed administrative burden that takes away from resident care, and so that consumers are clear about the information that is being reported.

This proposal also allows for voluntary accreditation by a nationally recognized organization in lieu of DOH surveys. ESAAL is supportive of this option.

Enhancing the Quality of Adult Living (EQUAL):

To further assist in the operations of those facilities serving primarily the Medicaid and 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, and was later codified in Social Services Law as the Enhancing the Quality of Adult Living program, or EQUAL. The EQUAL program provides essential financial support to ACFs to make real quality improvements that they would otherwise be unable to make for their residents.

EQUAL awards are generally based on the number of SSI and safety net residents in each facility. Importantly, these monies are only allocated with the approval of the ACFs resident council as required by statute – thus the residents themselves approve of the use of these funds.

In 2020, the program was split into two components (Aid to Localities/Capital), which has made grant distribution more complicated and has resulted in facilities not receiving funds for essential projects. While we appreciate that the program remains at level funding, over the last few years DOH has been using their 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.

We ask that this important program be consolidated again to ensure that it is distributed through an objective methodology, so funds can be directed as the program intended and so that use of EQUAL is expressly authorized for important projects such as facility maintenance and renovation.

ACF Caregiver Respite:

The budget proposes to allocate $7.2 million in funding to provide relief to high-need family caregivers by accessing respite care at adult care facilities for a limited number of families/seniors. We are very supportive of this proposal as respite is essential for caregivers of vulnerable adults. However, as we understand it, the program would be limited to 300 families who would be paid $200 per day for 120 days.

Given that the average length of time that families currently seek respite in ACFs is between 2-3 weeks per year – far less than the number of days the Executive is proposing – funding could be spread across more families by reducing the number of days that would be reimbursed per family/case. As such, we would recommend that DOH consider using a billable day formula instead of a cap on cases and increase the number of families and residents who can benefit from this much needed relief.

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

To allow individuals suffering from Alzheimer's disease and/or dementia to remain in the most integrated setting, the FY 2018-2019 State budget authorized DOH to establish a voucher demonstration program for residents in Special Needs Assisted Living Residences (SNALRs). This program subsidizes the cost of SNALR care for individuals suffering from these debilitating conditions and prevents premature reliance on Medicaid and costly nursing home admissions. Under the program, DOH issues up to 200 vouchers to facilities on behalf of eligible residents to cover no more than 75% of the average regional monthly cost of the SNALR.

As we explained last year, currently program funding is embedded within a broader Medicaid appropriation. Given its importance and the growing need for these services, we ask that consideration be given to lining out the funding in the budget and given the growing need for these services, current program funding of $7.75 million should be increased to at least $10 million to expand eligibility to more residents.

In closing, ESAAL remains committed to providing a safe and comfortable environment for ACF residents and staff and we ask that you provide your support for our members as they continue to care for vulnerable residents of the State.

Thank you for the opportunity to provide this information.