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Why Are New York State's Assisted Living Communities Being Punished?

Clifton Park, NY, February 22, 2021 – Last week Governor Cuomo issued amendments to his fiscal year 2021-2022 state budget including unnecessary and punitive measures impacting all NYS Department of Health licensed Adult Care Facilities and Assisted Living Residences.

“It was shocking to see this scourging punishment at a time when assisted living providers and staff have fought valiantly and tirelessly to protect their residents during this pandemic nightmare at great peril to their emotional, mental and financial wellbeing,” comments Lisa Newcomb, Empire State Association of Assisted Living’s (ESAAL’s) Executive Director. “Instead of the praise and honor that our provider members and their staff so clearly deserve, the Governor is inflicting upon them harsh punishment. Why are we being attacked?”

Specifically, the Budget amendments multiply daily penalties tenfold, from \$1,000 per day to \$10,000 per day. In addition, the amendments eliminate the assisted living provider’s ability to rectify minor, less serious violations without a concurrent fine, meaning that something as minor as submitting one daily survey to the Department one minute late automatically subjects a provider to a potential fine of \$10,000.

The Department of Health already has broad fining authority in the Public Health Law and a review of the history of fines shows that the state agency has exercised that authority with zeal, both before and during the pandemic. These proposed increased financial penalties coupled with an inability to correct minor infractions without penalty have many assisted living providers concerned about their continued ability to keep their doors open.

Newcomb concedes that while the numbers of positive cases and resident deaths are not nearly as high as those in nursing homes, assisted living communities have not escaped unscathed: After all, assisted living residents are still frail seniors in a congregate living arrangement and that is where COVID preys.

“But why the attack? Have there been many allegations of wrongdoing by assisted living providers during the pandemic?” Newcomb asks. “None were mentioned in the Attorney General’s report, despite the fact that she has conducted investigations in some facilities.



Likewise, there has been barely a mention in the press about the challenges faced by this industry. On the contrary, despite the Department having imposed virtually all the same mandates on assisted living communities as it has on nursing homes, with virtually no funding assistance, assisted living providers have fought valiantly to protect both their residents and staff. Why, then, the assault on these providers, many of whom are family-owned businesses that struggled to make ends meet even before COVID? We can only surmise that, to use the Governor's own words, it is just politics. This action is not only bad public policy, it is disheartening in that it fundamentally fails to appreciate all this industry has been through. "

In addition to this action, the Governor also proposes elimination of the only source of modest state funding the state makes available to adult care facilities that serve indigent seniors to make improvements to their buildings and create resident programming. The EQUAL program has been a model where providers and residents work collaboratively to use funds for enhancing the quality of care and services at adult care facilities.

On behalf of its 300+ provider members, ESAAL calls on the New York State Legislature to reject these amendments and to restore the modest funding that is intended to enhance quality in those residences that serve the poor frail elderly.

About Empire State Association of Assisted Living

Empire State Association of Assisted Living is a not-for-profit organization dedicated to strengthening New York State's assisted living sector and promoting the best interests of providers and residents. Founded in 1979, ESAAL is the only association that exclusively represents the assisted living industry, serving 300 Assisted Living Residences, Adult Homes, Enriched Housing Programs and Assisted Living Programs throughout New York State. These member residences are home to more than 30,000 seniors.

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