Empire State Association of Assisted Living
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Testimony of Chris Vitale, ESAAL Legislative Coordinator

Joint Legislative Budget Hearing – Health
January 23rd, 2024

Good morning, Chairs Krueger, Weinstein, Rivera and Paulin, and Members of the New York State Senate and Assembly. I am Chris Vitale, Legislative Coordinator for 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 347 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 some assistance with Activities of Daily Living and ongoing supervision, but don't need around the clock skilled nursing care.

ESAAL member facilities continue to shoulder the growing cost of providing services, inflation, staffing shortages and a never-ending list of government regulations and mandates. Yet, year after year, we remained ignored by the State and receive no support. This historic inaction, paired with punitive cuts, as proposed in the current Budget, continues to decimate our sector.

Our facilities are struggling to continue operations. In the last decade 82 ACFs serving 3,182 individuals have been forced to close their doors due to financial instability. In 2023, an additional 14 ACFs closed, representing 703 beds, some of which were licensed as Medicaid funded ALP beds. The number of closures each year continues to accelerate and we cannot blame the pandemic anymore: it is because of their precarious financial situation brought on by lack of support. In these instances, residents most often end up in nursing homes, at a much higher cost to the State.

ESAAL's facilities and the senior residents who call them home desperately need your help. We respectfully ask that you recognize the important services our members provide through the following actions:

1. Restore the EQUAL Program:

To assist in the operation of those facilities serving primarily the SSI and safety net population, the Legislature created a program years ago to help ACFs make modest quality improvements. 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, which remains the only source of State support for ACFs, provides essential support for ACFs serving low-income seniors to make quality improvements to the physical environment of facilities that would otherwise be unable to afford these enhancements for their residents. Through this program, approximately $6.5 million in annual grants are provided to support initiatives to improve the quality of life of residents.

EQUAL awards are 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 the use of these funds. This funding has helped secure facility improvements such as air conditioners, backup generators, computers, new furniture and amenities, wellness and nutrition programs, independent living skills training, and fall prevention programs.

This year's Executive Budget proposes to completely repeal the funding and the statutory authority for the EQUAL program. It is shocking that, once again the Executive is proposing the elimination of this critically important source of support. This drastic cut eliminated a critically necessary program that directly benefits residents, and has long delivered quality improvements to homes of low-income seniors and disabled individuals. I should note that this is not a new cut: the Department of Health has proposed this senseless elimination in the past, and the Legislature has historically restored the funding, something we are very grateful for.

The elimination of this program will have a direct, negative impact on our residents' quality of life and independence. For some of our facilities, which rely on an SSI subsidy of just over $44 per day to provide around the clock care, this is simply unsustainable.

We respectfully request that the Legislature reject the Governor's proposed elimination of the EQUAL program once again and support a full restoration of $6.5M for the coming fiscal year.

2. Reform Assisted Living Program (ALP) Reimbursement:

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.

When initially enacted, the Medicaid funded ALP rate was supposed to be calculated at 50% of the regional average Skilled Nursing Facility (SNF) reimbursement rate; however, since then, ALP rates have lagged far behind the nursing home rate and remain woefully inadequate.

Moreover, there is no area of ACF operations that hasn't been drastically impacted by historic inflation causing operational costs to skyrocket, including wage related costs, health insurance, and workers compensation. Given that practically all operational costs have risen significantly, it is becoming almost impossible to deliver all the State-mandated care while meeting cost demands, so programs are closing their doors. 3,182 low income ACF beds have closed in the last decade. And when an ALP closes, residents frequently end up in a nursing home – whether needed or not – at a much higher cost to the State. We've already seen two ALP closures in 2023 displacing dozens of residents, with several more slated to file a closure plan in 2024.

Last year's Budget included a modest rate increase for the ALP program, but since the statutory base year for the ALP rate is still 30 years old – 1992[1] – even though it was trended to 2002, it remains too low to support the program.

The ALP base year needs to be updated in law from 1992 to 2023 and an additional 13.5% increase to the rate should be provided to bridge facilities until rebasing takes effect to prevent additional facility closures.

3. Quality Measure Reporting Requirements and Accreditation:

This year's Executive Budget includes the same proposal that was advanced last year 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, 2025. 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 placed on an 18 month schedule now, so this new requirement would not bring any reward for good work that does not already exist).

[1] Public Health Law §3614(6)

While we support informing consumers, we are seriously concerned with the proposal giving 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 wherein 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.

In addition, the timeframe for facilities and DOH to report on quality measures is extremely tight, with first reports due by January of 2025. That timeline does not afford sufficient time for development of a thoughtful proposal that is workable for the industry. As such, we ask that the reporting requirements and effective report 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 ensures 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.

We respectfully ask the Legislature to support revisions to this proposal requiring DOH to work with industry representatives and other relevant stakeholders in the development of quality measures, reporting and scoring parameters and to provide additional time for the development of these requirements.

4. <u>ACF Caregiver Respite:</u>

The budget once again proposes to allocate $7.2 million in funding to provide relief to a limited number of high-need family caregivers by accessing respite care at adult care facilities. As we understand it, in 2023 this funding ended up being transferred to SOFA for other purposes to give DOH additional time to operationalize this program.

We remain supportive of this initiative and would ask that the funding remain with DOH. While it is unclear how the funding will be distributed, we would strongly recommend using a billable day formula, instead of a cap on cases, to maximize the number of families and residents who can benefit from this much needed relief. Given the average time need for respite is 2-3 weeks, we believe this funding could go a long way in benefiting many caregivers and their families.

5. <u>Special Needs Assisted Living Voucher Demonstration Program for Persons with Dementia</u>:

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 is authorized to issue up to 200 vouchers to facilities on behalf of eligible residents to cover up to 75% of the average regional monthly cost of the SNALR.

The Executive Budget proposes to transition the voucher initiative from a pilot phase to a permanent program, something which we fully support. Additionally, given the growing need for these services, we ask that consideration be given to lining out the funding in the budget (it remains embedded in a larger Medicaid appropriation) and that the funding be increased to expand eligibility to more residents suffering from these devastating conditions.

In closing, assisted living communities continue to be unfairly targeted at a time when support for older adults in congregate settings is more important than ever.

The actions proposed in the Executive Budget will devastate our facilities. In lieu of cuts, the State should support proactive, cost-effective investments to help adult care facilities continue to remain sustainable and care for our vulnerable seniors.

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.