



LONG TERM CARE COMMUNITY COALITION
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Working to improve long term care through research, education & advocacy

MEMO IN SUPPORT OF LEGISLATION TO PROTECT ASSISTED LIVING RESIDENTS - APRIL 2013

The Long Term Care Community Coalition, a coalition of twenty-one civic, consumer and professional organizations from across New York State, strongly supports the following assisted living legislation. Assisted living is our fastest growing form of senior housing, caring for a population that is increasingly faced with the challenges of Alzheimer's Disease (and other dementia), as well as other significant frailties, that necessitate appropriate monitoring and care to ensure that these individuals are safe and protected.

In recent years the assisted living industry has experienced tremendous growth in New York. However, the lack of sensible standards threatens not only the safety of vulnerable residents but also the future viability of the industry, which increasingly seeks to position itself as the alternative to nursing homes for residential care that provides safety and peace of mind in a less institutional setting.

Though increasing amounts of public and private funds are going toward assisted living care, there is little accountability or even sensible minimum standards to ensure that living conditions are decent, that care is appropriate and that things like monitoring and medication management are conducted by staff who we can count on to have the necessary training and skills. The result: taxpayer funds and New Yorkers' lifetime savings going toward "Home & Community Based Care" that can be as institutional as a nursing home, families being promised significant dementia care by companies that refuse to have nurses in their facilities and an enforcement system so outdated that fines for violations – even those that cause harm – have not increased in over three decades.

Simply put, we urge our Legislators and Governor Cuomo to act now to prevent the replication in assisted living of the scandals that plagued New York's nursing homes 20 years ago, our adult homes 10 years ago and, most recently, our social adult day care system. Together, the following bills will help to protect assisted living residents and ensure that as the industry grows to meet the needs of our aging population it leaves behind the poor care and scandalous conditions that have plagued so many providers.

A05168/S01417 - Nurse on Staff in "Enhanced" and "Special Needs" Assisted Living

"Enhanced Assisted Living Residences" and "Special Needs Assisted Living Residences" are categories of assisted living certification catering to elderly people who are seriously impaired. These individuals are inherently more fragile and more likely to be or become unstable and need significant assistance than residents in so-called "Basic" assisted living. Reputable assisted living that are providing Enhanced or Special Needs care are already using RN staff. This law is

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needed to ensure that every New Yorker who is promised significant dementia or other care by their assisted living community (which has voluntarily chosen these certifications) has access to staff with professional training and assessment skills.

A05201/S01662 - Strengthen Enforcement When a Resident is Harmed or Endangered

The fines for violations committed by assisted living facilities have not increased in over 35 years. As a result, their ability to serve as a deterrent to poor care has become negligible. Moreover, current law mandates that assisted living facilities that commit violations be permitted 30 days to correct before incurring any fines, unless the violation is "endangering a resident" (which is narrowly defined). Thus, not only are fines virtually meaningless, a facility can avoid almost any fine, even when they have caused harm to a resident. In fact, under current law, facilities can do this repeatedly, by correcting and going out of compliance again and again. LTCCC's study on assisted living in New York revealed that many facilities were in fact repeating resident care deficiencies year after year.

We must remove the ability of a facility to correct before a fine can be levied and raise fines so that they truly serve as a deterrent to violating minimum standards of care for elderly New Yorkers. Permitting assisted living facilities to have a thirty day grace period to correct violations without fines essentially means they can repeatedly harm residents or put them at risk of harm without ever receiving a sanction. Minimal fines that have not been increased since 1977 do not even serve as a slap on the wrist.

This bill contains a number of critical, long-needed provisions. It sets a meaningful (but still moderate) increase in the maximum fine to \$5000. This is only half of the current maximum state fine for nursing home violations (itself an outdated amount). A violation, especially one for harming a resident, is no less harmful to the resident in assisted living than to the resident in a nursing home. The bill gives the NY Department of Health authority to determine whether violations that put residents at risk of harm merit a 30 day rectification. Violations that harm residents should incur fines without an opportunity to rectify. It also provides the Department authority to levy a fine for any one incident of a violation in addition to a per day fine (currently, the law states that fines may only be levied for each day a violation exists). Even a violation that lasts for a single day may be significant.

A4467/S1663 - Minimum Training Program for Direct Care Aides

Direct care aides provide virtually all of the care that residents receive. They help residents with basic activities such as bathing and eating. They often assist residents with their medications. They may help a resident with dressing or walking safely to the bathroom, so that they do not fall and hurt themselves. Despite this level of responsibility, there is no uniform course of training required for direct care staff in adult care facilities in New York, only guidelines. In addition, although these facilities do not provide 24/7 skilled nursing care, their residents often suffer from multiple health problems, take multiple medications, or in some other way depend on 24/7 monitoring. This bill, which calls for less than half the minimum training hours required for nursing home aides, is important to ensure that all staff who provide direct care and assistance to residents have received a basic level of training on the issues most critical to resident safety and dignity.