

November 21, 2011

To: Members of the MRT Affordable Housing Work Group  
Mark Kissinger, Deputy Commissioner  
Office of Long Term Care, NYS Department of Health

From: Lois Wagh Aronstein, AARP New York State Director

Re: New York's Assisted Living Program and the Assisted Living Reform Act

AARP would like to take this opportunity to make recommendations regarding your work to examine the Assisted Living Program (ALP) in New York State.

By building a strong assisted living service delivery system, New York has the opportunity to provide consumers with the desired home-like setting in which to receive their long-term care. Such a model has the potential to delay many individuals from seeking more expensive nursing home care, which is largely funded by the Medicaid program.

ALP currently provides services to people (the majority of whom are Medicaid recipients) who are medically eligible for nursing home placement but serves them in a less medically intensive and less costly setting. ALP provides services such as personal care, room and board, housekeeping, supervision, home health aides, personal emergency response services, nursing, physical therapy, occupational therapy and speech therapy, as well as case management services. However, eligible ALP residents must not require continual nursing care nor should they be chronically bedfast or chairfast, require assistance in walking, or be unable to transfer.

AARP strongly believes that your subcommittee should recommend to the full MRT that the ALP fall under the Assisted Living Reform Act (ALRA) of 2004. Currently, the ALP program is exempt from following this consumer protection statute that only applies to a non-Medicaid, private pay population.

The ALRA is an unprecedented consumer protection law in New York that defines assisted living and establishes strong uniform consumer protections and disclosures and allows assisted living residents to age in place if the facility receives an Enhanced Assisted Living Residence certification from the New York State Department of Health as prescribed by the ALRA. This certification ensures that a person has the ability to age in place safely and can continue to live in the licensed assisted living facility even though he or she may require the assistance of another person to walk, transfer, climb or descend stairs, or operate medical equipment.

AARP maintains that a state law governing assisted living that promotes aging in place, personal dignity, and consumer protection should pertain to all New Yorkers, not just to those who have the ability to pay for assisted living services. In other words, the consumer protections provided by the ALRA should be available to *all* New Yorkers regardless of where they reside on an economic scale. As you know, New York does not have different standards and protections for

residents of skilled nursing facilities depending on payment source. Similarly, New York should not make such a distinction for assisted living services.

Unfortunately, in New York the ALP program is exempt from the ALRA thus creating a two-tiered assisted living system. Low-income people are governed by one set of rules that does not allow them to age in place, while non-Medicaid eligible assisted living residents benefit from the strong consumer protections and disclosures provided by the ALRA and have the opportunity to age in place.

New York State should have a uniform assisted living system for all New Yorkers. By bringing the ALP program under the ALRA, our state will have a system governed by one set rules and consumer protections which can be effectively promoted as an alternative for individuals seeking long-term care services. As previously mentioned, this will have the potential to slow the growth of expensive Medicaid-funded skilled nursing home care.

The ALRA was supported by both providers and consumers, passed unanimously by both houses of the Legislature, and signed into law by then-Governor George Pataki in a public ceremony. One of the hallmarks of this law is that it finally defined “assisted living” with proper state oversight to ensure quality service. By continuing to exempt the ALP beds that do not meet ALRA standards, New York is going back on this commitment as well as continuing the confusion among consumers about assisted living and what it provides.

For these reasons, AARP recommends that you eliminate the ALP exemption from the ALRA and ensure that any Medicaid investments we make in assisted living have consumer protections and uniform rules applicable to all New Yorkers.