

HCA MEMORANDUM OF OPPOSITION WITH RECOMMENDATIONS



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HCA, New York State's premier home care association, represents more than 400 providers, individuals and associate members who collectively serve thousands of New Yorkers.

Home care encompasses a broad spectrum of services delivered at home to patients who are disabled, chronically ill, recovering from an illness, or have other health-related needs that can be met in the home setting.

*"Helping New Yorkers **Feel Right** at Home"*

TO: Members of the New York State Legislature

RE: A.11231 (Gottfried) and S.7844-A(C. Kruger) of 2010
Creates a rebuttable presumption of adult care facility licensure

Date: June 3, 2010

The Home Care Association of New York State (HCA) **opposes** the above-referenced legislation, A.11231/S.7844-A, which would interfere in a consumer's right to access home care services, stifle the development of housing options for seniors and persons with disabilities, and inappropriately burden New York's citizens by forcing them to submit affidavits and other documentation to the state demonstrating why their housing or home care arrangement does not require licensure.

While HCA commends Assemblyman Gottfried and Senator Kruger for their intention to ensure uniform regulation of entities providing adult facility care, we are constrained to oppose this legislation for these stated reasons. HCA respectfully requests that the legislation be reworked to address these concerns and offers to work with the sponsors toward this end.

The legislation creates a "rebuttable" presumption mechanism that forces persons who advertise, market and provide housing primarily to seniors to present documentary evidence to the State Department of Health that the housing does not cross into the regulated domain of an "adult care facility," which would require licensure in the state. HCA knows of no other provisions within the public health law that place such a rebuttable presumption requirement on citizens, requiring them to file documentation satisfactory to the state to demonstrate that they are "not" something that the state regulates. Under this bill, individuals who are offering legitimate housing to seniors must gather and provide documentation to the state demonstrating their "legitimacy," rather than the State Health Department exercising its own responsibility to address scofflaws.

In addition to problems with this basic concept, some of the terms and scenarios that would trigger the "rebuttable" presumption mechanism under this legislation are unclear, leaving to question, or to State Health Department interpretation, exactly what these provisions mean and how they would apply. This lack of clarity is problematic in terms of compliance with the bill, and further contributes to the problematic nature of the proposed "rebuttable presumption" mechanism.

The legislation also runs counter to the trend toward home and community based care, potentially discouraging the formulation of flexible housing options and arrangements for seniors. This legislation will limit scenarios where home care would be accessed by individuals in independent apartments, and potentially push such arrangements into the regulated, more regimented sphere of “adult care facilities.” In so doing, the approach in the bill also fails to accommodate senior choices in independent senior housing which could otherwise be exercised in a typical home or apartment.

This legislation would preclude consumers who reside in independent senior housing that owns or is owned by an entity that is a continuum of services from also accessing home care from a licensed or certified home health agency within this same continuum – unless the senior housing becomes an “adult care facility.” Why should seniors or adults with disabilities be forced to reside in a “facility” in order to access care from the home care agency of their choosing, or be forced to choose a home care agency from a disaffiliated source?

In addition, as options and sponsors of services (including housing) for persons with disabilities expand to ownership and operation by the consumer community itself, the legislation would restrict these consumers from accessing their own consumer-driven home care programs.

Current laws and regulations in the state already have a suppressive effect on the creation of housing options for seniors. For example, New York’s continuing care retirement community (CCRC) law and related regulations have created one of the most heavily regulated (and least accessible) systems in the nation. While the goal of consumer protection is well recognized in this regulatory framework, this web of regulation (which is prohibitive to operators) has largely forced New York’s seniors to relocate to other states to avail themselves of CCRC housing/service options. Similarly, the state’s Assisted Living Residence law and regulations create a heavy regulatory framework, leaving to question the rights of seniors in independent housing to access community services the same as they could if living in a self-contained home on a residential block. HCA and the New York Association of Homes and Services for the Aging have been jointly working and advocating in the Legislature to clarify these rights and opportunities. These clarifications could also serve as an important improvement to this bill.

HCA respectfully requests that this version of the bill be held for amendments to address these concerns, and we offer our support in this process. Absent significant changes in this bill, HCA is constrained to register its opposition.