Virginia Assisted Living Association

“Virginia’s Unified Voice for Assisted Living”

November 18, 2022

The Honorable Glenn Youngkin
Governor, Commonwealth of Virginia
P.O. Box 1475
Richmond, VA 23218

Re: Preservation and Prioritization of Assisted Living Facilities

Dear Governor Youngkin,

The Virginia Assisted Living Association (VALA) represents assisted living communities from across Virginia with varying resident capacities, organizational structures, and funding resources. With the continued need for assisted living as an option for long-term care housing option, we need help from Virginia’s policy makers to ensure that assisted living is an accessible and affordable option for Virginia’s seniors and disabled citizens.

VALA recently conducted a series of regional discussions with legislators, Administration officials, assisted living providers, residents, and stakeholders to discuss concerns and ideas for improvement. Some of the solutions discussed will require regulatory changes and/or legislative action to help assisted living communities better provide for the residents and better address the workforce development hurdles.

The included report highlights many of the problems and provides several opportunities for action. We encourage every policy maker to review these topics with an open mind on providing better support for Virginia’s assisted living industry. Below are some of the priorities expressed in the report.

- Assisted living communities need to be explicitly prioritized in terminology used for funding and relief programs.
- Losses in workforce due to the COVID pandemic exacerbated workforce shortages that existed previously. Workforce supports are needed to prevent closures of assisted living communities and loss of affordable housing options for seniors.
- Excessive regulations for credentialling created barriers to entry instead of a qualified workforce. Regulations need to be amended to welcome employees to Virginia and to provide quality and diversified training opportunities.
- Antiquated regulatory and oversight processes need to be updated to provide expedited services that will help to ensure safety and quality, such as timely processing of applications and usage of electronic background checks.
- Virginia’s assisted living communities need to be prioritized as an affordable, long-term care option by increasing the Auxiliary Grant rate to cover the cost of care and by considering other funding programs to help ensure assisted living is an available housing option in the continuum of care spectrum.
- Price gouging laws needs to be updated to include businesses as victims, as assisted living providers were among several industries that experienced over-inflated price hikes for supplies and services.

Overall, we ask assisted living to be prioritized 1) when funding proposals and other resources are allocated and 2) during review of regulations so as to eliminate unnecessary burdens to operation or employment. We thank you for considering these comments and welcome participation in any further discussions related to senior living in Virginia especially in support of improving the accessibility and affordability of assisted living care in Virginia.

Cordially,

Judy Hackler

Judy Hackler
Executive Director

Preservation and Prioritization of Assisted Living Facilities

Industry Priorities of Dilemmas and Opportunities for Consideration

November 2022

VALA

VIRGINIA ASSISTED LIVING ASSOCIATION

"VIRGINIA'S UNIFIED VOICE FOR ASSISTED LIVING"

ORIGINATION OF THIS REPORT

The Virginia Assisted Living Association (VALA) represents assisted living communities throughout Virginia with varying resident capacities, organizational structures, and funding resources. With the continued need to have assisted living as a long-term care housing option, we need help from Virginia's policy makers to make assisted living more accessible and affordable for Virginia's seniors and disabled citizens. In addition to serving Virginia's assisted living providers, VALA is also the Virginia state affiliate of Argentum, which is the leading national trade association serving senior living communities in the United States.

Throughout 2022, VALA conducted a series of regional discussions with legislators, Administration officials, assisted living providers, residents, and other stakeholders to discuss concerns regarding oversight, financial support, and workforce development with the goal of finding workable solutions. Some of solutions proposed to help assisted living communities better provide for their residents and staff will require regulatory changes and legislative action.

The pandemic wreaked havoc on assisted living facilities. It exacerbated workforce development issues that were already experiencing workforce shortages. Increased state and federal mandates with little to no funding caused some assisted living communities to close or limit new residents, resulting in the loss of housing and care options for families and decreased employment opportunities for those willing to work. ***The state can help assisted living communities rebound from the pandemic.*** By proactively working with the assisted living industry to update regulations, practices, programs, and funding models, the Commonwealth can elevate aging services.

This report highlights several of the key points discussed and provides several opportunities for action. We encourage every policy maker to review these topics with an open mind on providing better support for Virginia's assisted living industry.

PROFILE OF ASSISTED LIVING

Assisted living communities provide the freedom of choice, independence, dignity, and quality of life for seniors and disabled adults across the nation, especially in the Commonwealth of Virginia. In Virginia, there are nearly 570 licensed assisted living facilities (ALFs) with the capacity to serve more than 38,000 residents. ALFs are home and community based long-term care residential settings that provide or coordinate personal and health care services, 24-hour supervision, and assistance for adult residents. ALFs combine housing, supportive services, and health care as needed for residents. ALFs provide a plethora of social, physical, and mental support programs that are needed or desired to enhance the quality of life including dining, housekeeping, maintenance, health care oversight, and social and wellness activities.

ALFs are not nursing homes, but they do serve a very similar population to nursing homes with the average resident being over 85 years old and needing assistance with basic activities of daily living (ADLs). As with nursing homes, many of the residents need assistance with bathing, dressing, toileting, and managing medications. In Virginia, there are nearly double the number of assisted living communities (569) as there are nursing homes (284), and the assisted living communities also have the capacity to care for more residents (38,407) than nursing homes (32,429). Even though ALFs and nursing homes have some similarities, ALFs provide distinctly different services than nursing homes, which have the ability to provide continuous nursing care. Each industry is regulated, but they are regulated by different agencies. ALFs are regulated by the Virginia Department of Social Services (VDSS), and nursing homes are regulated by the Virginia Department of Health (VDH). Each industry also works with other agencies on specific areas of compliance and licensure.

It is estimated that nearly 42% of assisted living residents have dementia or a related disease, and many assisted living residents have other comorbidities such as hypertension, arthritis, heart disease, or diabetes. To properly care for the residents, ALFs employ a variety of direct care staff positions including personal care assistants (PCAs), certified nursing assistants (CNAs), registered medication aides (RMAs), and licensed practical nurses (LPNs). Some ALFs also employ a registered nurse (RN), but that is not very common within Virginia's assisted living industry. As per regulations, each ALF must provide regular health care oversight for every resident, but the licensed health care professional may be contracted to provide the services.

Virginia's assisted living providers support not only the housing and long-term care services for citizens but also the economic and operational components of the Commonwealth. It is estimated the assisted living industry has roughly $5.1 billion in economic impact in Virginia including the total value of direct spending as well as indirect and induced spending due to industry operations. It is further estimated the industry produces nearly $277 million in government revenue statewide.

INDUSTRY DILEMMAS: TERMINOLOGY FOR RELIEF PROGRAMS

Assisted living providers are often confused with other industries, especially the nursing home industry. However, when it comes to the implementation of programs, such as financial relief, workforce development, and infection prevention programs, terminology matters, and assisted living communities are often omitted from programs due to assumptions and incorrect terminology. Many policy makers thought assisted living communities would be able to participate in COVID relief programs, but due to the eligibility categories being limited to "health care providers," "home and community-based settings (HCBS),"or other criteria, ALFs in Virginia were not included in many of the opportunities. ALFs are not included in §8.01-581.1 under the definition of "health care provider," and Virginia does not consider ALFs eligible to be considered a HCBS setting for a Medicaid Waiver.

Due to the terminology that did not specifically state "assisted living facilities," ALFs were excluded from some of the state implementation of federal funding programs created to provide COVID relief specifically to assisted living facilities. During the COVID pandemic, Virginia announced allocation of $246 million in new funding to support long-term care facilities with $20 million allocated for assisted living. The actual allocation amounts varied, and in February 2021, the General Assembly reduced the available CARES Act funding for long-term care providers from $55.6 million to $10.3 million. According to reports provided by Virginia Department of Medical Assistance Services (DMAS), the actual amount of COVID relief provided to ALFs was only $3.5 million. The omissions of "assisted living" and the reduction of relief programs resulted in assisted living caregivers receiving less relief than any other frontline worker by a substantial margin.

When the American Rescue Plan Act (ARPA) was issued with the directive provided by the U.S. Department of the Treasury to support "impacted industries, essential workers, and the communities hardest-hit by the crisis," we were optimistic Virginia would include ALFs in the financial relief programs. However, ***ALFs received $0 in support from the first allocations of ARPA funds by Virginia. Now is the time to resolve some of those oversights by prioritizing assisted living with remaining funds made available through the ARPA and other funding opportunities.*** As intended by the Coronavirus State and Local Fiscal Recovery Funds, this prioritization will support public health expenditures to allow for ALFs to fund "COVID-19 mitigation efforts, medical expenses," such as COVID-19 testing and treatments, and hiring, training, and retention of public health and safety personnel that is still on-going today.

During the COVID pandemic, the Commonwealth did not prioritize ALFs as they did with nursing homes and hospitals, even though they served one of the most vulnerable populations to COVID. A long-term care task force was created to keep direct communications between the Commonwealth and long-term care providers, such as hospitals, nursing homes, and assisted living facilities. The inclusion of ALFs in this task force was welcomed by providers and proved to be very effective in improving quality of care and resources. The task force often highlighted how the COVID pandemic's severe impact on Virginia's assisted living industry was similar to the impact on nursing homes. As part of the task force, some members questioned why the official Virginia Long-Term Care Mutual Aid Plan Memorandum of Understanding (MOU) does not include ALFs nor the VDSS. ***We recommend Virginia update the MOU to include assisted living facilities and VDSS.***

INDUSTRY DILEMMAS: WORKFORCE

In Virginia, it is estimated the senior living industry directly supports more than 22,700 jobs. In addition to direct care professionals, ALFs employ a variety of other professions including, but not limited to, dietary, housekeeping, activities, human resources, finance, marketing, information technology, secretarial, administrative, maintenance, and lawn care. Assisted living communities experienced workforce shortages in many of these professions prior to the COVID pandemic, and those shortages were exacerbated during the pandemic. Prior to COVID, it was estimated that the national senior living industry needed to attract 1.4 million workers by 2025, but due to COVID that number is even higher due to staff burnout, early retirements, and individuals leaving the caregiving profession. It is estimated that the senior living industry lost 104,000 jobs between February 2020 and October 2021. Those are critical losses that need to be filled immediately.

In addition to the decreases in the workforce within senior living communities, it is estimated that for the first time in U.S. history, that older adults are projected to outnumber children by 2023. With an increase in the number of older adults, the need for long-term care services will also increase. If the senior living industry does not have a reliable pipeline of staff, then the availability of rooms and support services within senior living communities will not meet the demands of our aging population, leaving many without safe and appropriate living options.

WORKFORCE DILEMMAS: TERMINOLOGY FOR WORKFORCE PROGRAMS

Many assisted living communities are not eligible for federal workforce development programs due to terminology. Policy makers can expand access for critical assisted living caregivers by including the Older Americans Act definition of a "long-term care facility" (42 USCS § 3002) as an eligible entity in programs at the state and federal levels including those listed below:

- Healthcare Apprenticeship Expansion Program
- Workforce Innovation & Opportunity Act
- Education & Training Relating to Geriatrics

WORKFORCE DILEMMAS: STAFFING AGENCIES

Assisted living is a 24/7 industry. Unlike many other businesses, ALFs did not have the ability to shut down for a couple of weeks at a time while COVID infection rates increased. Due to the COVID restrictions and precautions, assisted living providers had to increase their available workforce. The requirement to decrease the use of group settings, such as communal dining and entertainment, required an increase in the number of available staff to provide individualized care to residents. Also, the need to isolate and to cohort residents based on COVID positivity status to reduce cross-contamination of other staff and residents increased the need for more staff members.

ALFs located in more rural areas that already had limited access to employees due to lack of adequate public transportation programs and smaller populations were forced to rely more on contract staffing agencies. As a result of the workforce shortages, many ALFs were forced to use contract staffing agencies for the first time in their operational history, including those in suburban and urban areas. Unfortunately, the unavailability of qualified workers in the areas and the exorbitant prices of contract staffing forced ALFs to reduce and, in some cases, restrict, the number of resident admissions to maintain a lower number of residents to care for, and some ALFs were even forced to cease operations. The lack of adequate staff is also a severe concern for independently owned and operated ALFs, as these small businesses did not have the ability to transfer staff from other locations to fulfill shift vacancies.

Relying on temporary staffing agencies unfortunately results in higher costs to the ALF. The resources spent on temporary agencies would be better used for permanent staffing and resident care services. The price increases have been disproportionate to the level of care provided. Some rates were increased more than 100% for temporary staff from pre-COVID-19 rates, and some providers have reported rate increases of two to four times the normal rates. For example, one ALF shared that CNAs previously staffed at $17/hour were charged at $69/hour. To meet the needs of the residents, the ALFs were required to sign staffing agreements that inflated the cost of care by in some cases and added unreasonable costs in contract clauses for mileage, potential COVID exposure, and more that were inaccurately assigned.

Another concern impacting an employee's freedom to work is the use by contract staffing agencies of non-compete clauses. These contracts prohibit the ALF from hiring a contracted staff member for a specific period of time unless they buy-out their contract at an inflated rate. The ALF does not choose which contracted staff member will arrive at the ALF for each shift; therefore, they may receive a different staff member for each shift. The non-compete clause is enforced even if the staff member only works one shift at the ALF. This could exclude dozens of contracted staff members as eligible employees. In addition to the anti-competitive nature of this practice, these policies go against the temporary staff member's "right to work" to work for any employer of their choosing.

Alternating the assigned staff to a facility not only limits the available workforce for permanent employment, but it also creates an inconsistent care team for the residents. Data shows that residents with a consistent care team, especially those with dementia, thrive better and have a higher quality of life. Rotating staff members between communities also creates an additional infection control concern, as the individual may be contracted for several long-term care providers including assisted living facilities, nursing homes, or hospitals within a one-week period. The frequent assignment to multiple facilities increases the risk of exposure to infections for staff and residents/patients.

Many of these practices are extorting the assisted living facilities and other healthcare providers, because they know that ALFs, nursing homes, and hospitals must meet mandated specific staffing levels adequate to care for the residents/patients to continue operations to care for elderly and disabled residents/patients. This issue is not limited to Virginia and has also been presented to the White House in a bipartisan letter dated January 24, 2022 led by

Representative Morgan Griffith (VA) and Representative Peter Welch (VT). ***In line with the federal request, we request Virginia to investigate these practices to determine if they violate consumer protection laws or any other applicable law, if they create anticompetitive activity, or if they should be regulated in a different capacity by Virginia's agencies and departments.*** As with any industry, we know there are some staffing agencies in operation that have provided exemplary services, but the "bad apples" are significantly jeopardizing the continued operations of other businesses and industries, as well as employment opportunities.

We recommend Virginia to consider a prohibition on staffing agencies being able to restrict employers from hiring temporary staff members without contract buyouts, etc. Virginia may wish to review statutes from other states, such as Minnesota, that prohibit supplemental nursing services agencies from restricting in any manner the employment opportunities of its employees and may not "in any contract with any employee or health care facility, require the payment of liquidated damages, employment fees, or other compensation should the employee be hired as a permanent employee" of the facility. {https://www.revisor.mn.gov/statutes/cite/144A.72}

WORKFORCE DILEMMAS: ADMINISTRATOR SHORTAGES

VALA worked closely with the Virginia Department of Long-Term Care Administrators and served on the Regulatory Advisory Panel to put forward improved regulations for licensure as an assisted living administrator. We applaud the creation of an additional pathway to licensure for individuals that may not have attended college or received a nursing credential. Being able to train individuals passionate about senior living is crucial to workforce development. It is important to balance the need to ensure quality of service with the concerns of having unnecessary requirements in order to prevent significant barriers to entry for a profession.

Virginia requires the passage of a national exam administered by the National Association of Long-Term Care Administrator Boards (NAB) to be licensed as an assisted living administrator. The exam does not consider Virginia regulations, and, in several instances, the exam questions contradict Virginia regulations. In 2019, only 8 states required the NAB national exam. Several states chose to have their own state specific exams instead of the NAB exam. Additionally, concerns have also been raised that some of the questions are more applicable to nursing home administrator candidates instead of assisted living administrator candidates.

There is currently a limit on the number of times a candidate may take the NAB exam, creating an additional barrier on the licensure of administrators. When a candidate fails one or both exam modules, the candidate is required to reapply for eligibility to retake the exam. Delays in processing of applications and limited availability of test dates are compounded when a candidate must reapply to take the same exam. Candidates may not take the primary component of the exam more than four times in a 12-month period, and they are limited to no more than three times in a 12-month period for the Residential Care/Assisted Living Line of Service component. For individuals with extreme test anxiety, this creates a significant barrier to passage. Overall, Virginia's testing requirement is best described as archaic as it has a direct adverse impact on both the business climate of the state as well as an individual's ability to improve their professional career by becoming a licensed administrator.

In Virginia, all candidates for licensure as an assisted living administrator that are not previously licensed in another state in a similar profession must complete the Administrator-In-Training (AIT) program with a licensed Preceptor. The number of hours required under this program range from 320 hours to 640 hours. Senior living operators in other states have often expressed concerns over the significant number of hours required to complete the AIT program in Virginia compared to other jurisdictions. The excessive number of required hours often serves as an impediment to building the amount of qualified and quality licensed administrators in Virginia.

In addition to the concern over the required number of hours for the AIT program, AIT candidates have considerable difficulties in obtaining a licensed preceptor to oversee their AIT program. According to the Virginia Department of Health Professions (DHP) website, there are currently 473 licensed Assisted Living Facility Preceptors. As of 4/28/2022, only 59 of those licensed preceptors have authorized DHP to share their contact information publicly allowing AIT candidates the ability to contact them to check availability, costs, and requirements to oversee their AIT hours. AIT candidates often call nearly everyone on the public listing only to discover them unavailable due to the regulatory restriction that preceptors may not precept more than two (2) AITs at one time, due to company restrictions that preceptors may only precept employees of their employer, or due to financial restrictions where the preceptors have stated a rate of thousands of dollars including up to $10,000 to precept an AIT candidate. ***A consideration of an alternative option to overseeing AITs is requested to maintain a continuous line of succession for administrators.***

In the Virginia Department of Health Professions Biennial Report 2022, it was reported that access restrictions imposed on non-employees during the COVID-19 public health emergency resulted in some AITs losing access to either training facilities or their preceptors. This restriction resulted in the interruption of multiple AIT programs which has further delayed the training and licensure of assisted living administrators.

Presently, VDSS regulations allow an “acting administrator” to oversee the operations of an ALF for a finite period of time. Due to other workforce burdens such as a shortage of licensed administrators, the lengthy AIT requirements, and the shortage of available preceptors, ALFs are struggling to hire qualified administrators. Hastily hiring an individual to fill a position due to time restraints in a regulation can have a negative impact on resident care by not being able to fully vet or by hiring someone that does not possess the normal traits, skills, and abilities preferred by the employer. The current time restrictions for an acting administrator also increase the financial burdens on operators to continuously employ additional administrative staff that may be able to serve should an unexpectant vacancy occur, which unfortunately is often within this industry.

Virginia’s assisted living providers welcome the opportunity of partnering with educational institutions to help train administrators, but additional financial and regulatory support is needed from Virginia to optimize this opportunity. ***We encourage Virginia’s policy makers to prioritize the assisted living industry in workforce grants, incentives, initiatives, marketing campaigns, and other programs to help build up the available workforce that is required to care for Virginia’s elderly and disabled residents.***

WORKFORCE DILEMMAS: DIRECT CARE STAFF TRAINING

ALFs employ many RMAs to provide medication administration to residents; however, the current training requirements place unnecessary financial and workforce burdens on the development of successful RMAs. There are high costs associated with providing multiple weeks of classroom training, and testing requires for the contracting of outside trainers or the utilization of in-house trainers limiting their availability for additional services during the required timeframe. Another constant concern shared with us by providers occurs when an individual applies for registration, as the current process is often taking 60-90 days from the date of hire to the ability to pass medications. This creates another financial strain on the ALF to find alternative employment responsibilities for the individual during the application review process or creates an additional employment shortage where the individual seeks employment elsewhere instead of providing the alternative employment duties. The requirements of filing and receiving paper applications and supporting documents add to the delay of registration. ***We encourage Virginia to utilize more electronic processing options for the processing of applications and issuance of registration/certification/licensure decisions.***

Outdated regulations create additional conflicts and confusion for staff training that sometimes conflict with evidence-based best practices. For example, 22VAC40-73-200.C.5 requires completion of a personal care aide (PCA) training program approved by DMAS. According to DMAS, DMAS has not approved PCA training for over 10 years. With specific reference to the PCA training, other states have authorized having the ability to accept a PCA certificate from other entities to increase eligible workers. In recent years, multiple states initiated stop-gap efforts to increase available staff by lowering entry-level training requirements. Some of the PCA programs allowed the long-term care provider to create their own 8-hour training programs with specific curriculum requirements.

During the early months of the pandemic, senior living providers appreciated the Commonwealth creating a waiver removing the restriction that all but five (5) of the required clinical hours training for CNAs be done within a "geriatric long-term care facility." This waiver allowed for the hours to be completed within an ALF, which allowed for ALFs to train additional CNAs to help with providing continued resident care. Having spoken with numerous assisted living providers and with staff from several of Virginia's regulatory agencies, ***we request Virginia to make this waiver a permanent option and to make sure that ALFs are included in the terminology of allowable training facilities.***

In considering the long-term resolutions to the workforce challenges, and in reviewing the language that currently exists in the Regulations for Nurse Aide Education Programs, the Virginia Administrative Code, and the Code of Virginia, we do not see a definition for "geriatric long-term care facility." So, it begs the question - why cannot ALFs be a primary training facility as well as the nursing facilities, as ALFs are also geriatric long-term care facilities in the scope of services provided. When consulting with the Older Americans Act, "the term 'long-term care facility' means… any other adult care home, including an assisted living facility."

Virginia is often viewed as an over-regulated state by multi-state operators. ***We welcome the reduction of unnecessary regulations, especially those that create additional barriers to employment or that create unnecessary time-consuming tasks for staff that take away from the direct care services.*** Some individuals have also found it is simpler to get trained and licensed in neighboring states then apply for endorsement in Virginia than to go through the initial licensing processes in Virginia. Here is one example of recently updated VDSS and DHP guidance which immediately create a new workforce and health care services burden to ALFs:

- Only physicians, physician assistants (PAs), nurse practitioners (NPs), and RNs will be authorized to complete Tuberculosis (TB) assessment forms as of December 5, 2022. Citations will be issued for LPNs completing the TB assessment forms, as this is now considered outside the scope of practice for LPNs. – Previously LPNs were allowed to complete the TB assessment forms. Many ALFs do not employ RNs or NPs, so this would create an additional contractual burden on the ALFs to not be able to utilize their in-house LPNs for the screening, which may prevent or delay resident admissions and employment opportunities.

WORKFORCE DILEMMAS: BACKGROUND CHECKS

In Virginia, assisted living employees are required to obtain a criminal history record from the Central Criminal Records Exchange of the Virginia State Police (VSP). No employee is permitted to work in a position involving direct contact with a resident until a background check has been received unless under the supervision of another employee that has already had a completed background check. The processing methods and timeframes for submitting and receiving background checks has been a barrier for employment for many years.

The staff member of the ALF submitting the background check much be registered with VSP, but VSP is slow to set up new accounts with timeframes of 3-4 weeks. ***An alternative onboarding method to allow for a more expedited process to have access to request background checks is needed.*** Receiving background check information in a timely manner will help ALFs hire and retain a sufficient number of staff while eliminating the possibility of supervising an employee with a potential barrier crime.

The process for an ALF to receive a completed VSP background check is outdated and involves mailing records with convictions via the US Postal Service. Records without convictions are usually returned electronically in a timely manner. In assisted living, there are specific barrier crimes, meaning that not all convictions are non-hirable. Having to wait on the US Postal Service to return some background checks delays the employability of the individual and sometimes results in the individual seeking employment elsewhere. During the COVID pandemic, VDSS used electronic processing of background checks, and ***we recommend that all background checks for assisted living be provided electronically if desired by the ALF.***

Some ALFs have chosen to do national background checks for employees, which is allowed, in addition to the VSP background checks. It is unfortunate to learn that some VSP checks take longer than the national checks. ***We recommend the consideration of allowing ALFs to have a choice in providers of background checks instead of limiting them to the VSP.***

WORKFORCE DILEMMAS: IMMIGRATION

Assisted living providers serve a diverse population with varying backgrounds, ethnicities, and races and can utilize a diverse workforce. Some barriers to employment occur when immigrants or refugees seek employment but do not have the required documentation per regulations, such as a high school diploma, for registration, certification, or licensure. ***Accessible processes for considering these individuals eligible for employment and credentialing needs to be updated and created, if non-existent.***

INDUSTRY DILEMMAS: AFFORDABILITY

The Joint Commission on Health Care (JCHC) recently issued a report on the *Affordability of Assisted Living Facilities* to the Governor and the General Assembly of Virginia. The first statement of the 'Findings in Brief' in the report is very accurate and clearly identifies the ultimate problem in stating, **"The Auxiliary Grant rate is insufficient to cover the cost of assisted living in Virginia, resulting in limited access."** We have echoed this statement for many years as have previous reports, studies, analyses, and citizens of the Commonwealth. In reviewing the JCHC report, we would like to provide additional comments on some of the recommendations.

VALA has seen a significant decrease in the number of ALFs that accept residents eligible to receive the Auxiliary Grant (AG) resulting in the significant reduction of housing options for low-income seniors and disabled individuals across the Commonwealth. The ALFs that do accept the AG rate are not located in every locality forcing some individuals to relocate multiple localities away from family and friends to secure affordable housing. ALFs that discontinued acceptance of the AG rate did so, because the low reimbursement rate was the primary reason as it did not cover the community's cost to care for the individual.

In addition to the initial AG rate being insufficiently low, the calculation of the supplementation is also deceiving to individuals as it only supplements to a specific rate instead of providing that full rate on top of the individual's SSI. The AG rate is currently approved at $1,609 for most districts, but when a further analysis of the actual AG rate is made, the average distribution payment actually made for an individual was $669. This discrepancy in actual payment versus the approved amount is calculated by the formula that the AG rate is a supplement to the individual's other funding sources, such as SSI or pension, to equate to the approved amount. (Reference JCHC's Affordability of Assisted Living Facilities Report page 4) ***We recommend everyone approved for the Auxiliary Grant receive the full approved amount to truly supplement their other financial sources in order to increase the affordability of housing options instead of decreasing the disbursed AG rate to be the difference of a total.***

Each year, we are often disappointed to see the General Assembly transfer funds from the AG fund line due to non-usage. This non-usage is not due to people not wanting to participate in the program, but rather it is due to the rate not being affordable to use. According to the 2021 Genworth Care Cost Survey, the average cost of care in an assisted living facility in Virginia is $5,250. The AG rate of $1,609 equates to only about 30% of that cost of care.

Many individuals that are unable to find an ALF that accepts the AG rate must decide whether to remain in their private residence, relocate to a loved one's residence, or move into a nursing facility if they are medically eligible to do so. Residing in a private residence could result in a drastic deterioration of physical, mental, and social abilities due to not being equipped nor staffed 24/7 to care for the individual's specific needs. Some individuals are dually eligible to reside in an assisted living facility as well as a nursing home, but their needs may be adequately tended to in an assisted living facility, which is a significantly less restrictive environment and costs substantially less. According to the 2021 Genworth Care Cost Survey, the average cost of care in a nursing home in Virginia is $8,213 for a semi-private room. An individual that relocates to a nursing facility prematurely creates an increase in the financial responsibility of the State that could have been provided at a more affordable, lower rate to the Commonwealth in an assisted living community. Assisted living has been shown to be the most affordable choice of senior care with the appropriate level of care options needed for 2 million individuals. ***We encourage Virginia to increase the Auxiliary Grant to cover the cost of care.***

In addition to looking at the AG rate as an affordable solution for assisted living care, we would like to recognize that Virginia no longer has a Medicaid waiver for assisted living. As referenced in the JCHC report, many states do successfully utilize Medicaid funds to cover assisted living services. Also, as mentioned in the report, Virginia used to have a limited Medicaid waiver to support individuals with Alzheimer's residing in an assisted living facility. When CMS changed the home and community-based settings definitions and requirements, Virginia concluded ALFs were no longer an eligible HCBS setting. Virginia was the only state to come to this conclusion, as many states do have a Medicaid waiver for assisted living. The assisted living providers we have spoken with are not opposed to having a Medicaid waiver for assisted living services. ***VALA welcomes the opportunity to be a part of any discussion on the consideration of expanding Virginia's Medicaid programs to include assisted living.***

A recent report to the Congress on Long-Term Care Projections made by the Department of Veterans Affairs (VA) highlighted several of the benefits of assisted living to include, "Providing a less-costly alternative to nursing home care for veterans who do not have family or other forms of support to remain safe at home." The VA stated in the report that their coverage within ALFs would only occur in the 30 states that provide regulatory oversight through Medicaid programs. Since Virginia does not have a Medicaid Waiver for assisted living, this would potentially exclude Virginia's veterans from participating in the program referenced in the VA's report to Congress.

INDUSTRY DILEMMAS: AFFORDABILITY – ALTERNATIVE FUNDS

In addition to state supplement programs such as the Auxiliary Grant in Virginia and Medicaid in other states, other funding sources need to be evaluated to help support the aging population. Some industry stakeholders and policy makers are considering options to expand the affordability and availability of long-term care insurance to help defray the cost of senior living to include assisted living. Some have commented the desire to have more options for VRS eligible employees to have the option to specifically allocate funds to long-term care insurance options or to allow for the creation of other health programs that would be able to fund long-term care services.

INDUSTRY DILEMMAS: PRICE GOUGING

Unfortunately, Virginia's price gouging laws and regulations do not expressly provide protection for businesses. ***We recommend Virginia takes action to support businesses, their employees, and their customers (residents) from the 'price gouging' that has been implemented by staffing agencies and other entities.*** Some potential next steps for resolutions are listed below:

- Amend the definition of "consumer transaction" in § 59.1-198 Definitions to specifically include businesses as an eligible consumer.
- In looking at § 59.1-198 Definitions, under the definition of "services," there is a reference to "consumer or purchaser," but there is not a specific definition of "purchaser." We recommend the inclusion of "businesses" in the application of "purchaser" to have coverage for these concerns.
- Amend the Virginia Post-Disaster Anti-Price Gouging Act to reflect a more accurate "time of disaster" to include the federal state of emergency that lasted longer than Virginia's state of emergency.
    - "Time of disaster" means the ~~shorter~~ longer of (i) the period of time when a state of emergency declared by the Governor or the President of the United States as the result of a disaster, emergency, or major disaster, as those terms are used and defined in § 44-146.16, is in effect or (ii) 30 days after the occurrence of the disaster, emergency, or major disaster that resulted in the declaration of the state of emergency; however, if the state of emergency is extended or renewed within 30 days after such an occurrence, then such period shall be extended to include the 30 days following the date the state of emergency was extended or renewed.

OPPORTUNITY: PRESERVATION AND PRIORITIZATION OF ASSISTED LIVING FACILITIES

Overall, we ask that assisted living be prioritized for 1) funding proposals and in the allocation of resources to help with care services and workforce and for 2) eliminating regulations that create unnecessary burdens to operation or employment. We thank you for considering these comments and welcome participation in any further discussions regarding these topics or other matters related to senior living in Virginia especially in support of improving the accessibility and affordability of assisted living care in Virginia.

VALA

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