



December 5, 2023

Mr. Mark Furnish
Director
Center for Long-Term Care Licensure, Planning & Finance
Office of Aging and Long-Term Care
NYS Department of Health
Albany, NY

sent via email

Re: ACF Financial Report Certification

Dear Mark:

On behalf of ESAAL's, LANY's and NYSCAL's licensed Adult Care Facility (ACF) provider members across New York State, we again request that the Department reconsider its decision to require audited, rather than reviewed, annual financial statements.

In 2019, these ACF associations and industry accountants worked with the Department to streamline the ACF Financial Report. It was a collaborative effort, resulting in a much-improved reporting form. Unlike the reporting form itself, the discussion about, and decision to change, the accountant's certification form did not include association representation or feedback. The changes made to the certification form now require ACFs to shoulder the burden of increased accounting costs because an accountant would only be willing and able to sign off on the report if the ACF commissioned a full audit.

In Heidi Hayes' December 3, 2019 letter, in response to ESAAL's November 22, 2019 letter to her about financial report-related topics, Heidi stated:

"Please understand that the Report was drafted with the assistance of CPA workgroup members and based on feedback from such CPAs who were substantially unable to provide the requisite opinion via the historically utilized PPHA-2, and often resorted to drafting an ad hoc letter relating such opinion. As was related to all workgroup participants, the modified Annual Financial Report, coupled with this improved standardized opinion statement, will result in a meaningful, streamlined financial report, thus fulfilling the charge of the workgroup."

We and our provider members understand the need for accountability and transparency within our industry. However, the transition from reviewed to audited financial statements imposes an undue and excessive financial burden on ACFs, approximately two-thirds of whom receive no government funding. Moreover, the Department does not use the data to set rates. Audited financial statements are one of the most expensive DOH-mandated requirements, and they unnecessarily divert funds away from facility enhancements and critical resident care. Since this change was made, 39 ACFs have closed -- nearly 7 percent of the licensed ACFs in just three years' time. Given the challenged financial condition of many ACFs, serious workforce shortages and the growing aging population, we must carefully weigh the impact of expensive new requirements with the benefit to those who need these services.



We do believe this change can be made without modification of statute or regulation. In fact, the regulation does not explicitly require an audit. Rather, it requires that the financial report:

“be accompanied by an opinion signed by an independent licensed accountant that such financial statement represents the financial operations and position of the facility.”

For many years the Department accepted opinions from independent licensed accountants without them having conducted a full audit. While we appreciate the Department’s concern about “*such CPAs who were substantially unable to provide the requisite opinion via the historically utilized PPHA-2, and often resorted to drafting an ad hoc letter relating such opinion*”, rather than resolving that concern by requiring a costly and unnecessary full audit, we urge the Department to work with us and industry accountants to develop an opinion or statement consistent with controlling statute and regulation that balances accountability with financial constraints, and that all parties are comfortable with, without requiring an audit. The Department could always maintain the right to require an audit of any ACF where there are concerns about resident care or other operations. In a time of high inflationary costs, staffing shortages, and an overall workforce crisis in long term care, we must work together to lessen the burden on an industry that is already doing all it can to care for residents in a challenging financial environment.

Thank you for your consideration.

Sincerely,

Lisa Newcomb
Executive Director
ESAAL

Diane Darbyshire
VP of Advocacy and Public Policy
LeadingAge New York

Christina Audi
Executive Director
NYSCAL

- cc. Adam Herbst
- Valerie Deetz
- Heidi Hayes
- KellyAnn Anderson
- Karen Walker