

## PROTECTING SENIORS IN UNLICENSED “LOOKALIKE” SENIOR LIVING FACILITIES FACT V. FICTION

### [This legislation will not sweep currently exempt facilities into licensure](#)

**FICTION:** Entities that are explicitly exempted from adult care facility/assisted living licensure in the Assisted Living Reform Act will no longer be exempt under this legislation, and will be required to apply for licensure.

**FACT:** This legislation does not change the criteria for, or exemptions from, licensure. As specified in the Assisted Living Reform Act, Naturally Occurring Retirement Communities (NORCs), Continuing Care Retirement Communities (CCRCs), Housing & Urban Development (HUD) and Division of Housing and Community Renewal (DHCR) properties, and independent senior housing remain exempt from licensure under this proposal.

This legislation does not change the definitions/standards for licensure that are in current law and regulation. The bill creates a new tool for the Department of Health to undertake a closer examination of certain facilities to determine whether they should be subject to licensure based on the **existing standards for licensure**. Truly independent senior facilities—as well as all other facilities that are currently exempt from licensure - would continue to be exempt and have no reporting requirements under this legislation.

### [This legislation does not create an undue burden](#)

**FICTION:** This legislation would require an “undue burden” on all senior housing providers, and on the NYS Department of Health.

**FACT:** This legislation would create no burden at all on senior housing that does not meet the very high threshold of 50 percent or more residents receiving assistance from an outside agency or aide. For those that meet this high threshold, they would merely be required to submit additional information regarding their current services to help determine whether they require licensure under existing criteria.

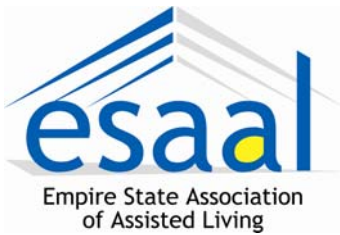
As for the burden on the Department of Health, this legislation will provide them with relief. The Department already devotes staff to investigate unlicensed “questionable operations” or “Q-Ops”. Unfortunately, under the current structure, Department staff is forced to spend substantial time and resources trying to collect the very same information that this legislation would require housing providers to give. This can save Department staff much time, and they can focus their efforts on the true “lookalike” settings, rather than wasting time chasing information based on a complaint from an entity that does not, and should not, fall under their jurisdiction. The elderly tenants living in these settings would benefit the most.

### [Developing more clear definitions in the future does not negate the need for this legislation now](#)

**FICTION:** Seniors living in senior housing settings will be better off if there is a brighter line established between housing and supportive services, and licensed models of care, and that is the only way to address the problem of unlicensed facilities.

**FACT:** While that is a goal we all aspire to and share, seniors living in “lookalike” facilities should not continue to go unprotected while these larger policy discussions ensue.

In areas such as fire safety, incident reporting, consumer disclosure, dietary supervision and infection control, the lack of basic protections in these settings is untenable and indefensible. Those settings that



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don't provide “lookalike” services will not be significantly affected. Those settings that do provide the services in question owe their tenants this important review and analysis.

### This legislation does not require the housing entity to request or obtain any information from its residents

**FICTION:** This legislation will force the housing entity to request information from tenants about the services they receive, and this violates their rights under Fair Housing Law and the Americans with Disabilities Act (ADA).

**FACT:** The bill explicitly states (lines 27-31) that the housing entity is responsible to report only “to the extent the facility is in possession of such information” and “...provided nothing herein shall require the resident, home care agency or private duty aide to disclose information to the facility not otherwise in its possession”. Privacy rights are preserved.

If the setting is truly independent senior housing, then it is possible and even likely that people will be accessing home care and health services without the housing provider's knowledge or involvement. Nothing in this bill prohibits that or requires the housing provider to proactively seek the information, or requires the tenant or its service providers to give it. Therefore, there are no privacy, Fair Housing, or ADA violations. Seniors can continue to procure on their own outside home care services under this legislation, with no harm to themselves or to the housing provider.

### The legislation does nothing to limit the development of senior housing models.

**FICTION:** The legislation would have a “chilling effect” on the development of “creative models of senior housing and supportive services” and would limit “affordable consumer options”.

**FACT:** The legislation would do nothing to stifle true independent housing, but would ensure important consumer protections in those settings where supervision and coordination services that trigger licensure, already defined in law, are being provided.

In situations where the housing provider is simply offering hotel and amenity-like services, their burden under this proposal is extremely limited, if not nonexistent. First, the threshold to have to report is high - 50 percent or more of the individuals living in the congregate setting receiving home care services, and only if the housing provider has knowledge of those services. It is very unlikely that these two conditions would be met in a truly independent senior housing setting. Therefore, few true independent housing settings would be captured or required to rebut under this legislation. Nothing under this proposed law would, or should, be a disincentive to continue to develop this important and needed senior housing option.

With regard to affordability, some senior housing providers may be telling their tenants that if they are forced to obtain licensure, then their monthly rents will have to increase. However, increasing rent does not necessarily have to be the case. In those settings where licensure is required, many will have the option to license as an Enriched Housing Program (EHP). In an EHP, not all units/apartments in the building would have to be licensed: There could remain independent housing slots within the building. So, for those individuals that are truly independent and do not require services that trigger licensure, there is no reason for their rent to be increased because of this law.

At the same time, many of the tenants that require services that necessitate the license are already paying for a home care aide or companion on an hourly basis. It could actually be less costly for them to pay the licensed housing entity rather than the outside provider. In addition, residents with long term care insurance coverage may receive higher payments under their policies if the facility is licensed, as most policies provide greater coverage when the subscriber is in a licensed facility.