



**For Immediate Release:**

September 6, 2018

**LAWSUIT CLAIMS DISCRIMINATION BY GOVERNOR CUOMO AND  
AGENCY COMMISSIONERS ZUCKER AND ROBERTS**

**Cites Violations of U.S and New York Constitutions Regarding Care for Disabled**

More than 100 New York residents relying on state support for essential adult care /assisted living services have joined with providers and two statewide associations representing Adult Care Facilities (ACF) to sue Governor Andrew Cuomo, and several state commissioners claiming they are being denied their civil rights under the New York State and United States Constitutions stemming from a failure to provide basic needs for food, clothing and shelter.

The issue is focused on payments made by the state as part of Supplemental Security Income (SSI) benefits. Despite numerous legislative attempts to provide a remedy, New York's share of the combined federal-state payment has been frozen since 2007, leading dozens of ACFs to close over the last several years and many seniors being displaced.

[The lawsuit](#) additionally claims violations of the federal, state and city statutes including the: Americans with Disabilities Act, Rehabilitation Act of 1973, Fair Housing Act, and the New York State and City Human Rights Law.

"Less than a year ago, Governor Cuomo had the opportunity to remove uncertainty regarding the care of those low-income elderly or disabled New Yorkers by signing a measure into law, unanimously passed by the legislature that would incrementally adjust the state's reimbursement rate for ACFs, commonly referred to as assisted living facilities. However, he chose to reject it, and then, just a few months later rejected efforts advanced as part of the state budget process," said, James W. Clyne, president of LeadingAge New York, one of the trade associations representing not-for-profit long-term care providers.

"The irony," adds Lisa Newcomb, Executive Director of the Empire State Association of Assisted Living, "is that tens of thousands of seniors that have their own financial resources choose to pay for adult care/assisted living services every day. Unfortunately, those that rely on federal and state funding are being shut out despite their need for a 24-hour supportive setting that helps them to live as independently as possible while being safe and cared for."

The lawsuit, filed today, in State Supreme Court, Albany County, seeks to hold the governor and top agency officials accountable to meet their constitutional and statutory obligations by

requiring them to increase funding for the state supplement program to meet facilities' actual costs. It is estimated that the current level of reimbursement \$40 per day is approximately 50 percent of what is necessary to cover costs associated with room, board, meals, personal care services, medication assistance and case management services.

Among the issues identified in the lawsuit is an inconsistency of support provided by the state to similar county-run ACFs, offering similar services, and allowing for reimbursement to be paid based on their actual costs.

"It is discriminatory to provide virtually identical services to some counties while the vast majority are denied these essential benefits," said Clyne. "In the last 18 months alone, at least 15 ACFs have closed - forcing some into a higher level of care, in a more restrictive setting, such as a nursing home."

State records further reveal that over 30 ACFs have closed since 2013.

The plaintiffs are seeking the court to declare that Governor Cuomo, Commissioner Howard Zucker MD and Commissioner Samuel Roberts have violated the rights of residents, and facility operators under the New York and U.S. Constitutions; and additionally are seeking the courts to require the defendants to increase the State's share of SSI to cover the providers' actual and reasonable costs for caring for their residents.

The plaintiffs are being represented by attorneys David Luntz and David Morgen of the Hinman Straub P.C.

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**PLEASE NOTE:**

**Individual residential plaintiffs in the matter reside in the following counties:**

Dutchess;  
Monroe;  
New York;  
Orange;  
St. Lawrence;  
Steuben; and  
Suffolk.