



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

JANE M. AZIA
BUREAU CHIEF
CONSUMER FRAUDS & PROTECTION BUREAU

Via EMAIL AND U.S. MAIL

February 1, 2021

Lisa Newcomb
Executive Director
Empire State Association of Assisted Living
646 Plank Road, Suite 207
Clifton Park, NY 12065
lnewcomb@esaal.org

**Re: NYAG Guidance on Unlawful Withholding of CARES Act Payments
in Adult Care Facilities**

Dear Ms. Newcomb:

We are reaching out to you in your role as Executive Director of the Empire State Association of Assisted Living, the state trade association for adult care facility operators. Our office has received complaints that some adult care facilities are retaining or withholding residents' Economic Impact Payments ("EIP"), the payments issued under the CARES Act and subsequent stimulus packages. While we will be following up with these facilities individually, we would appreciate it if you could reiterate to your membership that retaining or withholding EIPs without proper consent is illegal.

In April 2020, soon after the passage of the CARES Act, the New York Attorney General ("NYAG") issued guidance stating that EIPs cannot be retained or withheld by adult care facilities. The NYAG's guidance is publicly available at <https://ag.ny.gov/coronavirus#fedpayment> ("I'm on Medicaid and live in a nursing home or assisted living facility. Can they take my stimulus check? No! Even if a government program such as Medicaid covers part or all of your nursing home bills, your nursing home cannot take your stimulus payment."). To the extent that an adult home facility attempts to retain a residents' EIP, the NYAG will treat this as deceptive, unfair and abusive under state and federal law.

The NYAG's guidance is consistent with applicable law and guidance by federal regulators. By federal statute, Economic Impact Payments do not count as income for purposes of Social Security eligibility and thus cannot be withheld. *See* 26 U.S.C. § 6409; *see also* Lois Greisman,

Nursing homes and assisted living facilities: Hands off residents' stimulus checks, Federal Trade Commission (May 15, 2020), available at <https://www.ftc.gov/news-events/blogs/business-blog/2020/05/nursing-homes-assisted-living-facilities-hands-residents>. New York state regulations also forbid adult homes from using funds that do not count as income for purposes of Social Security to pay for services unless the resident explicitly consents to such an agreement, among other requirements. 18 N.Y. Admin. Code. § 485.12 (a)(4).

Furthermore, to the extent that adult care facilities are pressuring residents to sign agreements to use some or all of their EIP to pay alleged debts, such as “back rent,” this may also be deceptive, unfair and abuse under state and federal law. New York regulations require adult homes to engage in case management services that includes assisting residents in applying for income entitlements and public benefits, which should include assisting with applications for emergency rental assistance if it is necessary. 18 N.Y. Admin. Code §487.7 (g)(vii).

Given that there is a possibility of another round of EIPs in the near future, we would appreciate it if you could communicate this guidance to your membership as soon as possible. We are also happy to open a dialogue on this issue. Please feel free to contact Dami Obaro at dami.obaro@ag.ny.gov.

Sincerely,

/s/ Jane M. Azia

Jane M. Azia
Bureau Chief
Consumer Frauds & Protection Bureau