

MEMORANDUM

A.4416 (Gottfried)/S.3460 (Rivera)

AN ACT to amend the social services law and the mental hygiene law, in relation to violations of safety conditions in adult care facilities

LeadingAge New York members appreciate the spirit of this legislation; striving for excellent quality of care and quality of life for residents of an ACF is integral to their missions. However, the bill fails to recognize the many burdens and regulations already imposed on ACFs that are trying to provide good care. We believe this legislation offers a false solution to the problems that exist in some ACFs.

LeadingAge New York opposes the proposed increase in potential penalties for ACF violations from \$1,000 per day to \$5,000 per violation per day. While the highest fine is targeted to serious incidents, the overall increase and the potential per day fine is exorbitant. The bill memo references nursing home violations, which are higher, and suggests that ACFs have come to accept these fines as the “cost of doing business”. For our not-for-profit, mission driven providers, this is not at all the case. When fines are imposed, it is extremely painful for the organization and can often be the final breaking point that causes providers to close.

ACFs serving the Supplemental Security Income (SSI) population are struggling to survive. The average cost of care at an ACF serving an SSI population is twice the SSI rate of \$41.46. As a result, the state has seen 32 ACF closures in the past five years, 15 of which occurred in the past 18 months. Every year, new laws, regulations and requirements are imposed on these facilities that drive up the cost of care and make operating these facilities increasingly challenging. This bill would not only impose new requirements, but substantially increase fines to the degree that one violation could close a facility.

Additionally, the proposed legislation limits the discretion of the Department to reduce or eliminate fine if the ACF had a repeat violation of any kind, regardless of the circumstances or the nature of the violation and whether it had any direct impact on a resident. This bill would also limit the discretion of the Department to reduce or eliminate a fine if the ACF has retained a resident who exceeds the retention standards; and yet laws and regulations also put the operator in the untenable situation of having to retain and care for someone who exceeds their ability to care for them if the resident objects to a termination notice.

There may be circumstances beyond the operator’s control that contribute to the situation resulting in a fine. While we agree that the safety of residents is paramount, we believe the Department should continue to have discretion regarding the imposition of fees. ACFs are highly regulated and the Department of Health has already been requiring facilities to pay significant fines for repeat violations. That concept is being applied so broadly, that seemingly unrelated violations are now being viewed as “repeat” even if they are entirely different circumstances. Unfortunately, violations happen sometimes—even to the best of providers—because it involves humans taking care of other humans.

Furthermore, ACFs have a small window of time to submit a “plan for rectification” for a reduction in fines to be considered, reduced from 30 to 14 days. Again, the safety and welfare of the residents is paramount and should always be addressed immediately, however a plan to rectify any sort of issue may require investigation and

careful thought to ensure success. As previously noted, repeat violations are already heavily punished, so plans to rectify violations should not be unnecessarily rushed.

Additional concerns regarding A.4416 (Gottfried)/S.3460 (Rivera) are:

- A new requirement to publicly post complaint violations is concerning because sometimes the complaints are not founded or are inaccurate. One provider received a complaint, for example, which was submitted by the consumer regarding a nearby nursing home, not the ACF.
- The Department's dispute resolution process is not conducted by an independent third party. Thus, the review can sometimes feel subjective, making the final disposition of some reviews seemingly invalid. With so much at stake in this proposed legislation, this is a critical consideration.

Again, LeadingAge New York supports efforts to ensure quality care of New York's senior and disabled population. However, the Department of Health already has significant authority to address poor performers. Increasing requirements and penalties puts the state at risk of losing providers that are trying to do the right thing and provide the best quality of care. **We urge you to reject A.4416 (Gottfried)/S.3460 (Rivera).**