

MEMORANDUM

A.4416-C (Gottfried)/S.3460-A (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 adult care facility (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. It also fails to recognize that we are operating in the midst of a pandemic. ACFs were already struggling under the weight of layers of regulations and requirements and are under resourced. COVID-19 has only introduced more challenges, risks, mandates, costs, *and* severe penalties. Our focus at this time should be on ensuring that ACFs and other long term and post-acute care providers have the resources necessary to ensure the safety of the people they serve and employ- not on new mandates and new costs.

LeadingAge New York opposes the proposed increase in potential penalties for ACF violations from up to \$1,000 per day to \$2,000 per violation per day—or \$3,000 per day for a repeat violation. For our not-for-profit, mission driven providers, such fines can have a devastating impact on an organization. Particularly during these challenging times, there are reasons why ACFs sometimes fail to meet requirements. For example, for months ACFs have been required to submit a daily COVID-19 report to the Department of Health (DOH). They receive a violation if it is submitted even a few minutes late; and yet, there are so many reasons why staff are being pulled in many different directions to take care of any myriad of issues in the context of a pandemic. One administrator spends two days testing her staff to meet the COVID weekly test mandate. It is quite possible that she will be late in submitting the report one day given the countless, ever emerging challenges and requirements related to COVID-19.

Under normal circumstances, 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 more than twice the SSI rate of just under \$42 per day. Since 2017, there have been 25 ACFs that have closed voluntarily, and there are others that are on the brink of closure. This bill would impose new requirements and penalties that not only threaten the viability of the facility itself but could truly threaten low income seniors' access to quality care.

Additionally, the proposed legislation limits the discretion of the Department to reduce or eliminate a 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. There may be circumstances beyond the operator's control that contribute to the situation resulting in a fine. The aforementioned administrator may, for various reasons, fail to submit a report on time. Under this legislation, filing a daily report just a few minutes late more than once will automatically result in an increase in fines without consideration of context. ACFs are highly regulated and the Department of Health has already been requiring facilities to pay significant fines for repeat violations. The concept of repeat violation is being applied so broadly that seemingly unrelated violations are now being viewed as "repeat" even if they are entirely different circumstances. While we agree that the safety of residents is paramount, we believe the Department should continue to have discretion regarding the imposition of fees for repeat violations, which should consider the unique circumstances and whether or not the violation reflects a systemic issue or not.

Furthermore, the requirement to post or share complaint reports with residents 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.

We will also note that, in the event a facility chooses to dispute a violation, the Department's dispute resolution process is not conducted by an independent third party. Thus, the review can sometimes feel subjective. 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-C (Gottfried)/S.3460-A (Rivera).**