

MEMORANDUM

A.5485 (Paulin)/S.5472 (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. ACFs are 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 to recover from the impacts of COVID, rebuild their workforce and continue to ensure the safety of the people they serve and employ.

LeadingAge New York opposes the proposed increase in potential penalties for ACF violations from up to \$1,000 per day to \$2,000 per day, per violation—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, and not all violations have a direct impact on resident quality of care or quality of life. For example, for months ACFs have been required to submit a daily COVID-19 report to the Department of Health (DOH) since March of 2020. 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.

Prior to the pandemic, ACFs serving the Supplemental Security Income (SSI) population were struggling to survive—and now even more so. The average cost of care at an ACF serving an SSI population is more than twice the SSI rate of just over \$43 per day. Since 2017, there have been 35 ACFs that have closed voluntarily, and there are others that are on the brink of closure. If an ACF that serves low-income seniors gets a penalty that triggers the \$1,000 per day fine for a violation that could have extended over a two-week period, this amounts to the entirety of what the ACF is paid for *an entire year* of housing and services to an SSI recipient. 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.

There are often circumstances beyond the operator's control that contribute to a situation resulting in a fine, especially during a pandemic. 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, a repeat violation for a clerical error should not result in a \$3,000 fine. Particularly given that these facilities and their staff have withstood two-years of pandemic conditions and costs with *no financial relief* offered from the State. Additionally, many of the costs incurred by providers such as twice-weekly testing and personal protective equipment stockpiles, were at the direct order of the state. While plenty of other private industries received COVID-19 relief from the State's budget, adult care facilities serving some of our most vulnerable, and the staff that work there, have received no financial support or recognition.

Furthermore, the requirement in this legislation 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 individuals. However, the Department of Health already has significant authority to address poor performers, including the authority to increase fines without this legislation. If we truly want to address quality, ACF and assisted living providers need *support and investments*, particularly during these challenging times. 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.

For these reasons, LeadingAge NY opposes A.5485 (Paulin)/S.5472 (Rivera) and urges that it be rejected.

LeadingAge New York represents over 400 not-for-profit and public long term care providers, including nursing homes, adult care and assisted living facilities, senior housing, adult day care programs, certified home health agencies, and managed long term care plans.

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