

MEMORANDUM

A.5485-A (Paulin)/S.5472-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 the highest quality of care and quality of life for residents of an adult care facility (ACF) is integral to their missions. However, the increased penalties proposed in this bill go too far and could result in a crippling magnitude of fines. The imposition of up to \$2,000, per violation, *per day*—or \$5,000 per day for a repeat violation is excessive. Public Health Law §12 authorizes DOH to impose a maximum civil penalty of \$2,000 **per violation** for any violation of the Public Health Law. As drafted, this bill authorizes DOH to impose the maximum civil penalty for *every day* that it determines the ACF is in violation of a statutory or regulatory provision, which is not consistent with penalties for other providers.

It should be noted that not all violations have a direct impact on residents' quality of care or quality of life. For example, ACFs have been required to submit a daily COVID-19 "HERDS survey" report to the Department of Health (DOH) since March of 2020. Despite the fact that nearly all pandemic-related requirements have been peeled away, this daily requirement continues. ACFs receive a violation if it is submitted even a few minutes late. Meanwhile, workforce shortages continue to plague the field and staff time is needed to care for residents and support staff, now more than ever. The obligation to fulfill this daily report alone could easily result in costly penalties—and yet the imposition of the penalty will do nothing to improve the quality of care in ACFs. In fact, it will only deprive the facility of precious resources.

Additionally, in the event a facility chooses to dispute a violation, DOH'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.

It should also be noted that addressing the chronic underfunding of ACFs that serve the low-income population is also a critical way in which the State can help ensure quality of care and quality of life. LeadingAge New York's analysis of 2019 pre-pandemic ACF Financial Report data demonstrated that it costs ACFs twice the daily reimbursement per resident to provide their services – and the gap between costs and reimbursement has grown significantly since then. Since 2017, there have been 59 ACFs that have closed voluntarily, and there are others that are on the brink of closure. The state has not increased the State portion of the SSI benefit, the Supplemental Security Program (SSP), since 2007. ACFs serving an SSI population are paid \$45.50 per day to provide all the services required in regulation, which is woefully inadequate. For these providers, financial viability can be fundamentally threatened by costly fines proposed in this bill, which in turn can jeopardize access to this level of care for low-income older adults.

Again, LeadingAge New York supports efforts to ensure the quality care of New York's older adults and disabled individuals. However, DOH 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 providers need *support and investments*, particularly during these challenging times. We should peel away requirements such as the daily HERDS survey that divert resources away from attending to residents and staff. Our focus at this time should be on ensuring that ACFs have the resources to rebuild their workforce and continue to ensure a high quality of life for the people they serve.

**For these reasons, LeadingAge NY opposes A.5485-A (Paulin)/S.5472-A(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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