

MEMORANDUM

A.1910A (Paulin)/S.1858A (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. We also appreciate the recent amendment to this bill, which eliminated the most concerning aspect of the bill, which imposed significantly higher penalties on ACFs. However, there remain outstanding concerns regarding the bill.

This bill modifies the existing “rectification” process, which allows providers to rectify minor, isolated or less serious violations without a concurrent fine, except in those instances where there are systemic violations or it is determined that endangerment or harm was caused. The bill changes the definitions of endangerment and harm in ways that are written broadly to encompass nearly every circumstance in which rectification would be permissible. We believe the intent of this passage as an effort to address providers who are chronically failing to meet the standards or causing harm to residents, however as written the standards are too ambiguous and can lead to overbroad interpretation.

We also urge amendments to the bill to allow the Department of Health (DOH) to take into consideration the overall history of the provider, the timeframe between surveys, and the overall financial condition of the facility when assessing penalties. We urge this discretion given the current survey environment. We are concerned about the broad way in which violations are issued resulting in penalties for repeat deficiencies for issues that are not the same. LeadingAge NY is actively working with DOH to try to achieve common understanding of standards and address some concerning trends.

It is important to consider any changes in the context of this current environment of workforce challenges, inadequate reimbursement and administrative challenges. Providers that serve the low-income population are struggling to keep their doors open, and we have seen an alarming number of closures over recent years, including the closure of assisted living programs (ALPs). Since 2010, there have been *nearly 100 ACFs that have closed* in New York, resulting in a loss of 4,000 beds. More closures are currently underway.

We also urge the rejection of the significant increase in penalties to entities that may be operating without a valid ACF license. We believe that the current penalties and authority given to DOH to address any such operator is significant and will deter entities from willingly breaking the law. The Department’s efforts at the identification of any such operator should focus on ensuring the safety of the people being served, and swiftly moving the operator towards compliance, modification of offerings and structure, or closure.

LeadingAge NY appreciates the important role that the DOH has in ensuring compliance with standards in caring for vulnerable populations. Our suggestions are an effort to preserve fairness and reasonableness to these processes, however. To that end, we also urge the addition of statutory language regarding and Independent Dispute Resolution process to ensure that facilities have their rights protected with a clearly articulated fair process.

LeadingAge New York supports efforts to ensure the quality care of New York's older adults and disabled individuals. We believe this bill is improved by recent amendments, but there remain outstanding concerns regarding the bill that we urge the Legislature to work with the ACF provider community to resolve.

For these reasons, LeadingAge NY opposes A.1910 (Paulin)/S.1858 (Rivera) and urges that it be rejected.

LeadingAge New York represents over 350 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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