

MEMORANDUM

A.3350-A (Bronson)/S.9224-A (Gouardes)

AN ACT to amend the public health law, in relation to educating nursing home residents about the role of legal counsel in applying for Medicaid and Medicare benefits

LeadingAge New York opposes this legislation, which would add to the statement of nursing home resident rights the “right to seek legal assistance when applying for Medicaid and/or Medicare.” This language is likely to confuse consumers by implying that they have a right to counsel provided at the expense of the government or the facility. At the same time, this provision would expose nursing homes to complaints and frivolous lawsuits.

The resident rights and responsibilities enumerated in Public Health Law §2803-c seek to protect the dignity and autonomy of residents and their civil and religious liberties. They include the rights to make personal decisions, engage in private communications, manage financial affairs, receive appropriate medical treatment and refuse it, receive respectful care, be free from abuse and restraints, and have access to the ombudsman.

The existing resident rights relate to the core elements of care and daily living in nursing homes, not to optional services that a resident may “seek” and purchase at their own expense. By contrast, the new right proposed by this bill is merely a “right” to hire an attorney that the resident or their family must pay for out of their own pockets, unless they can find an attorney who is able to take their case free of charge. It is not really a right at all.

The inclusion of this language in the statement of resident rights and responsibilities would be misleading to consumers. There is no guaranty of a right to counsel for purposes of applying for Medicaid or Medicare, as there is for purposes of defending against criminal charges. Neither the nursing home nor the government is required to retain counsel for residents, and there is no source of funding to secure legal assistance with applications for all nursing home residents who seek it. Highlighting a resident’s “right” to seek legal assistance in the context of the fundamental rights that must be provided to all residents implies that the nursing home will also provide legal assistance upon request. The misunderstandings that will inevitably arise from the addition of this “right” would, at a minimum, undermine the trust of residents and their families in the nursing home, and at worst expose nursing homes to litigation, threatening their finances and reputation.

Moreover, inclusion of this provision in the statement of resident rights and responsibilities comes with stringent requirements. The nursing home must provide the statement of resident rights and responsibilities to each resident or prospective resident, or their representative, upon admission and to each member of the staff. The statement must be posted conspicuously in a public area of each facility and made available in hard copy upon request. The Department of Health must translate statement of rights and responsibilities into the ten most common non-English languages spoken in New York, and the addition of this right will require a new translation *at State expense*. It will also require the printing and distribution of new signage, hand-outs, and admission packets. A nursing home’s inadvertent



OPPOSE

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omission of this right from a sign or paperwork would be a violation of the Public Health Law and subject to penalties.

Further, infringement of any of the resident rights enumerated in section 2803-c subjects the nursing home to enhanced liability exposure. Any violation of these rights gives rise to a private right of action under PHL section 2801-d, which triggers not just damages commensurate with any harm to the resident caused by the deprivation of the right, but an award of no less than 25 percent of the Medicaid daily rate for each day that the harm exists.

Nursing home residents should have access to comprehensive, accurate information about navigating government-sponsored programs and services like Medicaid and Medicare. However, this bill will only add to consumer confusion. Instead of expanding the already lengthy statement of resident rights and the voluminous admission materials that must be provided to nursing home residents, we recommend that the State explore other ways of informing older adults about applying for Medicaid and Medicare.

For these reasons, LeadingAge NY opposes A.3350-A (Bronson)/S.9224-A (Gounardes) and urges that it be rejected.

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