

MEMORANDUM

A.5372 (Paulin)/S.6071 (Cleare)

An act to amend the public health law, in relation to increasing monetary penalties for public health law violations and providing support for the nursing home quality improvement demonstration program

LeadingAge New York opposes this bill which would raise the maximum penalties for violations of the Public Health Law. These enhanced penalties would apply to any individual or organization that violates the Public Health Law. This memorandum, however, focuses on the impact of the bill on long-term/post-acute care (LTPAC) providers. While we appreciate the bill's goal of improving compliance with Public Health Law requirements, for our not-for-profit, mission driven providers, the negative impact of heavy fines outweighs the bill's likely impact on compliance.

LTPAC providers are already struggling under the weight of layers of rigorous regulations and requirements, skyrocketing costs, and insufficient reimbursement. There continues to be a workforce shortage, as evidenced by the Governor's continued renewal of the healthcare workforce emergency Executive Order. These challenges existed prior to the COVID-19 pandemic and have only grown during the public health emergency. The cost of even minor violations is great, and the State has been unforgiving in its response to even the most inconsequential infractions— for example, being minutes late in submission of a complex daily survey that providers have completed since March 2020 triggers a violation notice and a fine.

It is also important to note that nursing homes, certified home health agencies, and hospice programs are subject to federal fines, in addition to state fines. Most state nursing home requirements duplicate federal requirements, and state fines are imposed in addition to federal civil money penalties. Federal penalties may be imposed on a per day or per instance basis, as well as on a per violation basis, and range from \$50 to \$10,000 per day depending on the scope and severity of the violation. Additionally, a per instance fine, which ranges from \$1,000 to \$10,000, may be imposed based on the number of residents affected. For example, a deficiency that affects five residents could result in a fine of five times the penalty, making these violations quite costly.

Finally, the bill would authorize amounts collected from nursing homes in excess of \$10,000 per violation to be deposited in the nursing home quality improvement demonstration program. While we support the reinvestment of funds in high-quality facilities, the section of law cited, 2808-d (6) has not been in operation since 2007 and may require amendment in order for such funds to be distributed appropriately.

Before imposing this increase in fines, policymakers should consider the broader health care context and whether the increase will contribute to improved compliance or will merely divert resources from direct care. We maintain that the negative impact of heavy fines on providers and those under their care outweighs their likely impact on compliance.

For these reasons, LeadingAge New York urges the legislature to reject A.5372 (Paulin)/S.6071 (Cleare).

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