

The Governor released his [30-day Amendments](#) to the SFY 2021-22 Executive Budget today, Friday, Feb. 19, 2021. The amendments include a number of proposals intended to strengthen oversight of nursing homes and ACFs. The following is a high-level summary of amendments to the Governor's proposed budget that impact long-term care and senior services providers.

The amendments include proposals that would:

- Increase maximum penalties for violations of Public Health Law from \$2,000 to \$10,000 per violation, and from \$10,000 to \$25,000 if the violation directly results in serious physical harm to any patient. It would increase maximum penalty for repeat violations from \$5,000 to \$15,000. These fines apply to any person or provider who violates the Public Health Law. Fines between \$10,000 and \$15,000 would be dedicated to the patient safety center, while the proposal would allow DOH to use fines of \$15,000 or more from violations of Articles 28, 36 or 40 for initiatives to improve the quality of care or quality of life of patients or residents.
- Require that residential health care facility Certificate of Need applications include information pertaining to staffing, the source of staffing and staff skill mix.
- Mandate that a nursing home that receives more than one infection control deficiency in two consecutive inspections contract with a quality improvement organization or DOH-selected independent quality monitor to assess and resolve the facility's infection control deficiencies.
- Authorize DOH to appoint an emergency receiver of a nursing home with no less than 24 hours notice if the Commissioner determines that public health or safety is in imminent danger or that conditions or practices exist that pose imminent danger to residents or patients of the facility.
- Set nursing home management salaries based on nursing home bed capacity, but not to exceed \$250,000 per year, and cap expenses on executive and managerial salaries at 15 percent of total annual expenses.
- Require nursing homes to post annually updated maximum rates charged to non-governmental payers on their web site.
- Mandate that nursing homes post on their web site a list of owners of the facility, the name and business address of any landlord of the facility's premises, and information on any contracts for goods and services paid by Medicaid or Medicare funding or "other agreements entered in to by the facility". New and updated contract and ownership information must be posted within 30 days.
- Establish regulations requiring that at least 70 percent of nursing home revenue be spent on direct resident care and 40 percent be spent on resident-facing staff. Purchased and contracted services would be discounted by 15% percent when the calculation is performed. Facilities that fail to meet the spending thresholds in a given year would be required to spend the "excess revenue" by October of the following year on staffing or direct care or remit the funds to DOH. Facilities with margins that exceed 5 percent calculated using operating revenue and operating and non-operating expenses would be required to spend revenue exceeding 5 percent

on resident-facing staff or direct resident care or remit the excess to DOH. This proposal is similar but not identical to Senate bill S.4336-A which was the subject of a member action alert earlier today. Executive salaries would be capped at an amount to be determined by the Commissioner based on the number of beds, not to exceed \$250,000; and not to exceed 15% of expenses.

- Increase civil penalties for adult care facilities (ACFs) from up to \$1,000 per day to up to \$10,000 per day to be assessed for violations of:
 - regulations pertaining to the care of residents;
 - restricting or prohibit the access to the facility or interfering with the performance of the official duties, including confidential visits with residents, of duly designated persons participating in the long term care ombudsman program; and,
 - causing, engaging in or maintaining a condition or activity which constitutes a danger to the physical or mental health of the residents of a facility.

Regulations must specify the violations subject to penalty and the amount of the penalty to be assessed in connection with each such violation. Civil penalties of up to \$10,000 per day per violation shall be assessed against an ACF found responsible for an act of retaliation or reprisal against any resident, employee, or other person for having filed a complaint with or having provided information to any long-term care patient ombudsman.

- Eliminate the ability of ACFs to rectify a violation within thirty days and avoid a penalty for certain types of violations. Under *current* requirements, DOH is directed to consider promptness of rectification, among other issues, as mitigating factors, but may assess a penalty, even if the violation is rectified, under certain circumstances. This proposal would eliminate the ability to avoid a penalty by rectifying the violation.
- Increase the potential civil penalty for facilities operating as ACFs without a valid operating certificate from up to \$1,000 per day, to up to \$10,000 per day, and authorizes the issuance of an order requiring closure.
- Creates a COVID-19 Extraordinary Relief Fund. Expenditures from the fund shall, pursuant to a duly enacted appropriation, be made as loans or grants to school districts, local governments, for profit and not-for-profit corporate entities, and/or public benefit corporations to support the necessary and urgent expenses related to resolving extraordinary hardships of the COVID-19 public health emergency.

We will be continuing our advocacy for restoration of Medicaid cuts and pandemic relief funds, and in opposition to duplicative and counterproductive oversight measures. If you have any questions, please contact Sarah Daly at sdaly@leadingageny.org.