

MEMORANDUM

A.5616 (Weinstein)/S.4486 (Carlucci)

AN ACT to amend the social services law and the public health law, in relation to granting residents of adult care facilities a cause of action to seek the appointment of temporary operators of such facilities

LeadingAge New York acknowledges that, historically, a number of poor operators took advantage of vulnerable Adult Care Facility (ACF) residents. New York has been working to protect ACF residents since those horrific stories came to light many years ago. It is essential to note, however, that these stories represented a small aspect of provider community and is not representative of the overwhelming majority of providers statewide—such as LeadingAge NY members—who serve the frail elderly population with extraordinary care, dignity and respect.

LeadingAge NY respectfully submits that identifying and directing the correction of poor conditions in ACFs is the responsibility of the New York State Department of Health (DOH) and is totally within their current scope and authority. ACF providers are held to a wealth of regulations, which are overseen through the surveillance process. There currently exist mechanisms by which residents can make complaints and request the assistance of DOH and the State Long Term Care Ombudsmen. The Justice Center for the Protection of People with Special Needs provides additional oversight in certain circumstances. The Commissioner of DOH has the authority to impose monetary penalties, suspend referrals and, when necessary, decertify facilities and find receivers to operate the facility. DOH is far better equipped to conduct these activities than the court system.

This bill goes too far by making the ACF subject to both the authority of the department and, on the accusation of any resident, the courts. It has the potential to create two separate systems of oversight with different standards, which are somewhat subjective. This would further confuse an already complex regulatory structure. Rather, we urge that the existing systems of protection and oversight be utilized when resident concerns exist.

For these reasons, LeadingAge NY opposes A.5616 (Weinstein)/S.4486 (Carlucci) and urges that it be rejected.

LeadingAge New York represents nearly 500 not-for-profit and public long-term care providers, including nursing homes, home care agencies, senior housing, retirement communities, assisted living, adult care facilities, adult day health care and managed long term care.