

MEMORANDUM OF SUPPORT

A.4416 – Gottfried

S.3460 – 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

AARP New York
Bronx Independent Living Services
Brooklyn Center for Independence of the Disabled
Brooklyn-Wide Interagency Council of the Aging
Center for Disability Rights
Center for Elder Law & Justice
Center for Independence of the Disabled New York
Coalition of Institutionalized Aged & Disabled
Disability Rights New York
Empire Justice Center
Empire State Consumer Project
Family Services League of Suffolk County
Gray Panthers NYC
Harlem Independent Living Center
Last Stop Advocacy Project of Rochester
Long Term Care Community Coalition
Mental Health Association of New York State
Metro Justice of Rochester, Elder Law Committee
Mobilization for Justice, Inc.
National Alliance on Mental Illness – New York City Metro
New York Association on Independent Living
New York Association of Psychiatric Rehabilitation Services
New York Lawyers for the Public Interest
New York StateWide Senior Action Council
New Yorkers for Patient & Family Empowerment
Niagara Health Quality Coalition
Pulse Center for Patient Safety Education & Advocacy
Schuyler Center for Analysis & Advocacy

The laws and regulations governing adult care facilities (ACFs) are strong, but enforcement of those laws and regulations has been weak. This bill will change that, to protect the health and welfare of the 50,000 New Yorkers – including almost 13,000 SSI/SSP recipients – who live in 548 ACFs statewide.

Currently, SSL § 460-d(7) allows a facility to avoid any penalty for a violation – even a repeat violation – if it takes some corrective action within 30 days (or longer) of the DOH’s finding, which can be months after the violation began. As a result, the Department levies very few civil penalties, despite citing regulatory violations at many ACFs. In essence, the rectification provision offers a get-out-of-jail-free card to ACF operators that encourages noncompliance and puts residents with disabilities – including many seniors –harmed or at risk of harm. For example:

- ACF residents who receive SSP Congregate Care payments are entitled to a monthly Personal Needs Allowance (PNA) that, by law, cannot be withheld or used to pay the facility’s rate. Nevertheless, in a recent example of a common problem, a facility illegally collected funds from many residents’ Personal Needs Allowance. Months after the Department found the violation, and 6 months after the complaint was filed, the facility refunded the residents’ accounts. No penalty could be imposed, even though residents were deprived of their funds for months.
- A facility that was not providing heat to a resident was required by the DOH to provide heat. No penalty could be imposed, even though some residents had been without heat for days.

We support A. 4416 / S. 3460 because it would demand compliance with important regulations that facilities can now ignore with impunity. It would make per violation per day civil penalties mandatory for violations that endanger or harm residents or violations repeated within a 12-month period. For other violations, it would allow the DOH to reduce or waive the fine when warranted by the particular situation.

Residents are harmed when they are shivering in their rooms. They are harmed when a home withholds some of their already-too-small Personal Needs Allowance. And they are harmed when they’re insulted, bullied, or harassed by staff who lack the training or compassion to work with people with disabilities.

If A. 4416 / S. 3460 becomes law, residents will benefit because fewer violations will occur, and violations will be rectified faster.

A. 4416 / S. 3460 also increases the maximum fine from \$1,000 (set in 1977) to \$5,000, essentially adjusting for inflation.

We also support other, smaller changes in A. 4416 / S. 3460 that improve transparency. In particular, the legislation would:

- Require the DOH’s “do not refer” list of ACFs to be shared with hospitals and nursing homes, which are the main sources of referrals for ACFs.
- Make complaint reports more accessible to residents and prospective residents.
- Give prospective residents an opportunity to read their admission agreement when they first inquire about admission, and also require that the facility’s approved admission agreement be posted on the facility’s website. .

This bill is long overdue to provide hard-to-access information to prospective consumers and ensuring that residents living in the state’s adult care facilities are treated properly. We urge you to support it.