

SUPPORT

A.196 (Gottfried) / S.1576 (Rivera)

Improving Quality Care and Oversight in our Adult Care Facility (ACF) Industry for Residents and Families

Proposed Penalties are narrowly targeted to improve chronically troubled facilities and will have no impact on the vast majority of Adult Care Facilities

- 1) The ACF Industry claims this bill would create an unfair and unique per-day penalty system. But it's already the law in ACFs and nursing homes, to encourage prompt rectification.***

The Department of Health (DOH) already sets ACF penalties for individual violations on a per-day basis. See 18 NYCRR §§ 486.5(a)(1) (“Civil penalties of up to \$1,000 per day, as specified in section 486.7 of this Part, may be assessed against adult care facilities.”), 486.7 (penalty schedule setting the per-day fine specific to each ACF regulatory provision). This isn’t unique to ACFs. The DOH also has authority to charge nursing home penalties on a per day basis. See 42 CFR §§ 488.430, 488.438 (permitting the state to collect fines up to \$10,000 per day).

- 2) The ACF Industry claims the bill would fine facilities for minor violations, but it only allows fines for the most serious violations.***

Under existing law—unchanged by this bill—in almost all situations, a facility *cannot* be fined for a violation if it rectifies the violation within 30 days of receiving a citation, or longer, if its plan of correction seeking a longer period to rectify is approved by the DOH. Existing law has narrow exceptions to this rectification rule that allows (but does not require) the DOH to seek a fine if the violation constituted narrowly defined “endangerment” or “harm.” Late paperwork and missing ceiling tiles would not be fined.

This bill allows for fines when a facility operator financially exploits a resident, intentionally violates a resident’s statutory rights, when a violation physically injures a resident, or when compliance is so short-lived a facility commits the identical violation twice in a twelve-month period. These situations do not happen in most ACFs.

While most ACFs comply with regulations, some facilities have chronically failed to comply with DOH minimum standards: violating statutory protections for residents to access their monthly personal needs allowance, chronically distributing incorrect medications or neglecting to provide prescribed medications, interfering with residents’ access to mail and private communications. These violations

directly and substantially affect residents' quality of life but chronically recur in some facilities due in part to limits on enforcement mechanisms available to the DOH for these types of violations. This bill is narrowly tailored and needed to protect the state's most vulnerable ACF residents.

3) *The ACF Industry claims the bill would fine facilities in between violations. But it only permits a fine for a second violation within 12 months, not the time in between violations.*

The only way a facility could be fined for 180 days (*as the ACF Industry claims*) is if the facility failed to rectify a violation for 180 days. That is as true under existing law as it would be if this bill became law. Under existing law—unchanged by this bill—a violation ends when it is rectified. If the same provision is cited again, within 12 months of when the earlier, already-corrected violation, it is that second citation that could incur a fine under this bill.

To illustrate: If a facility receives a citation on February 1, 2022, for a violation that did not cause harm or endangerment and corrects it within 30 days, it cannot be fined under this bill. If the DOH investigates a new complaint six months later, cites the identical regulatory violation, and the facility receives a citation on September 1, 2022, then the facility could be fined for the period from September 1, 2022, to when the violation is rectified.

A “follow-up inspection” to confirm rectification ends a first investigation – it has nothing to do with a repeat violation described in this bill. If the follow-up inspection by DOH is delayed, as the ACF industry suggests, the current statute—unchanged by this bill—directs DOH to reduce a fine or not seek a fine. SSL § 460-d(7)(b)(3).

4) *The ACF Industry Claims this bill would unreasonably increase fines. But this bill's modest increase is overdue.*

The \$1,000 maximum fine hasn't increased since it was originally set in 1977. Adjusted for inflation, that would be more than \$4,000 today. The maximum fine increase in this bill is a fraction of inflation. Very few regulatory violations receive the maximum fines under current law, and this bill wouldn't change that. The DOH's fine schedule sets all other fines between 1/10 and 1/100 of the maximum. 18 NYCRR § 486.7. A \$10/day violation could become a \$20/day violation.

Mobilization for Justice, Inc., and the Coalition of Institutionalized Aged & Disabled urge you to support A.196 / S.1576 to improve the lives of New Yorkers living in Adult Care Facilities. We represent residents of adult homes in New York City who have endured unsafe and abusive conditions that have persisted for decades. The pandemic has only made conditions in these facilities more perilous. For more information, please contact:

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