

SUPPORT

A.196 – Gottfried

S.1576 – Rivera

AARP New York

ARISE (Onondaga, Oswego, Madison & Cayuga counties)

Bronx Independent Living Services

Brooklyn Center for Independence of the Disabled

CaringKind, The Heart of Alzheimer's Caregiving

Center for Elder Law and Justice (Western New York)

Center for Independence of the Disabled, NY

Coalition of Institutionalized Aged & Disabled

Disability Rights New York

Elder Justice Committee of Metro Justice of Rochester

Empire Justice Center

Family Service League (Long Island)

Gray Panthers NYC

Harlem Independent Living Center

Independent Living Center of the Hudson Valley, Inc.

Lifespan of Greater Rochester

Long Island Center for Independent Living

Long Term Care Community Coalition

Medicaid Matters New York

Mental Health Association of New York State

Mobilization for Justice, Inc. (NYC)

New York Association of Psychiatric Rehabilitation Services, Inc.

New York Association on Independent Living

New York Lawyers for the Public Interest

NY StateWide Senior Action Council

Schuyler Center for Analysis & Advocacy

Staten Island Center for Independent Living

50,000 seniors and people with disabilities live in New York's adult care facilities (ACFs). One in four of them receive SSI and/or the state supplement (SSP). These numbers are expected to grow as New York expands Medicaid-funded assisted living programs in new and existing ACFs. As more New Yorkers move into these facilities, it is important to improve the transparency and accountability these facilities are held to.

We support A.196 / S.1576 because it provides important consumer protections to residents and their families and because it deters the worst abuses in facilities that put residents' health and safety at risk.

Protecting Residents' Health and Safety

New York's seniors and people with disabilities deserve to live in home-like settings that treat them with dignity and protect them from physical or financial abuse. While many of New York's 500+ ACFs respect residents' rights and foster their health and safety, others have been allowed to consistently fall short. Too many homes—particularly “transitional adult homes” with large numbers of residents with mental health disabilities—have long histories of serious regulatory violations that undermine resident safety or substantially interfere with residents' quality of life. These chronic conditions continue even after being cited because there is no penalty for serious violations if a facility “rectifies” the violation within 30 days of a citation.

This bill adds four situations to the definitions of harm and endangerment in which the Department of Health can fine facilities for regulatory violations.

- If a facility's violation results in a resident's physical injury
- If a facility abuses a resident financially, such as preventing a resident from accessing her statutory Personal Needs Allowance
- If a facility operator, administrator, or other manager purposefully violates a resident's rights
- If a previously-cited violation is repeated within a 12-month period.

These changes are narrowly-tailored to improve conditions in the worst facilities to ensure seniors are not mistreated. A few examples show the need for these modest changes to ACF regulatory enforcement:

Financial abuse: ACF residents who receive SSI/state supplement program income are entitled to a monthly Personal Needs Allowance (PNA) that, by law, cannot be comingled with facility funds, withheld from residents, or used to pay the facility's monthly fee. Nevertheless, this has been a frequent practice by some adult homes. In a recent example, a facility in Brooklyn illegally collected funds from many residents' Personal Needs Allowance. Six months after a complaint, the DOH issued a citation and required the facility to refund the residents' money, without interest. Although this is not a problem in most homes, similar cases have been cited in homes from Long Island to the Adirondacks. A facility in Monroe County was cited for violations related to resident funds 15 times in four years. This bill would allow a fine in addition to a refund, to deter facilities' incentive to steal.

Manager's purposeful violation of resident rights: Quality of life is directly improved when residents' rights aren't purposefully violated. Managerial staff set a tone for all staff, so a purposeful violation of a resident's rights affects the culture of a home. Even sending and receiving mail can be a problem in some homes. In the summer of 2018, for example, ten facilities were cited when the administration intercepted federal court notices about residents' rights mailed by the DOH. This bill would protect residents from managers' unacceptable conduct.

Repeat violations: One of the core services provided by ACFs is administering medication to residents who cannot manage their own medication. A facility on Long Island was cited for failing to administer the proper dosage of medications to residents in October 2018. A plan of correction was approved by the Department of Health, but the facility violated the same regulation repeatedly over the next nine months. This bill would allow the Department to bring an enforcement proceeding to fine and deter continued non-compliance with critical medication management standards.

The bill also raises the maximum fine from \$1,000 (set in 1977) to \$2,000 per violation per day. This amount was proposed by the industry, and most violations are set at a fraction of the maximum. We agree with the industry that it's time to adjust the maximum fines.

Consumer Protections for Seniors, People with Disabilities, and Their Families

A.196 / S.1576 improves the information prospective residents and families have when deciding on a home, and shares critical information about facilities with residents and referral sources. Right now, the Department of Health's do-not-refer list isn't sent to hospitals and nursing homes, the main referral sources for ACFs. This bill would change that. It would also make DOH complaint investigation reports more accessible to residents and prospective residents and would allow prospective residents to read their admission agreement before signing. The bill also would require facilities to post their admission agreement on their website, to allow prospective residents and families to more easily compare homes.

These are common sense changes to make hard-to-access information more easily available to prospective consumers, current residents, and other facilities that help families choose a home.

We urge you to support A.196 / S.1576.

rev. April 29, 2021