

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

MEMO IN SUPPORT OF LEGISLATION TO PROTECT ADULT CARE FACILITY RESIDENTS

DATE: April 25, 2016

BILLS: A5820a – An act to amend the social services law and the mental hygiene law, in relation to violations of safety conditions in adult care facilities.

A02141/S01049 - An act to amend the public health law, in relation to requiring a registered nurse on staff at facilities certified for enhanced assisted living or special needs assisted living.

LTCCC is a non-profit organization dedicated to fostering good care and dignity for residents in long term care facilities. It has existed as a state-wide organization for close to thirty years. LTCCC comprises organizations representing seniors, disabled people and their families from across New York, joining together to protect frail elderly and disabled individuals in nursing homes and other residential care settings. We strongly support these two bills which would provide much needed updates and clarifications to laws passed to protect New York families.

Adult Care Facilities (ACFs, which include Assisted Living and Adult Homes) provide care for a population that is increasingly faced with the challenges of Alzheimer's Disease (and other dementia), as well as other significant frailties, which necessitate appropriate monitoring and care to ensure that these individuals are safe and protected.

In recent years the ACF industry has experienced tremendous growth in New York as it positions itself as an alternative to nursing homes to our seniors and their families. As a result, increasing amounts of public and private funds are going toward ACF care. Unfortunately, our laws have not kept up with that growth. The lack of sensible, up-to-date standards threatens the safety of vulnerable residents and the peace of mind of families across New York. Too often, families are promised significant dementia care by companies that refuse to have a professional nurse in their facilities. Too often, lifetime savings are spent on residential care that can be as institutional as a nursing home. At the same time, our enforcement system has become so outdated that fines for violations – even those that cause harm – have not increased in over a generation. The result, too often, is that residents are at risk while facilities that fail to keep their promises are able to continue operating – and taking in new residents – with impunity.

Simply put, we urge our Legislators and Governor Cuomo to act now to prevent the replication in assisted living of the scandals that plagued New York's nursing homes 20 years ago, our adult homes 10 years ago and, most recently, our social adult day care system. Together, the following bills will help to protect adult care facility residents and ensure that as the industry

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grows to meet the needs of our aging population it leaves behind the poor care and scandalous conditions that have plagued so many providers.

A5820a – Update Enforcement to Meet Current Needs

The fines for violations committed by ACFs have not increased in almost 40 years. As a result, their ability to serve as a deterrent to poor care has become negligible. Moreover, current law mandates that ACFs that commit violations be permitted 30 days to correct before incurring any fines, unless the violation is "endangering a resident" (which is narrowly defined). Thus, not only are fines virtually meaningless, a facility can avoid almost any fine, even when they have caused harm to a resident. In fact, under current law, facilities can do this repeatedly, by correcting and going out of compliance again and again. LTCCC's study on assisted living revealed that many facilities were, in fact, repeating resident care deficiencies year after year.

We must remove the ability of a facility to correct before a fine can be levied and raise fines so that they truly serve as a deterrent to violating minimum standards of care for elderly New Yorkers. Permitting residential care facilities to have a thirty day grace period to correct violations without fines essentially means they can repeatedly harm residents or put them at risk of harm without ever receiving a sanction.

This bill contains a number of critical, long-needed provisions. It provides for a moderate but meaningful increase in the maximum fine to \$5000. It is important to note that this is only half of the current maximum state fine for nursing home violations. A violation, especially one for harming a resident, is no less harmful to the resident in assisted living than to the resident in a nursing home.

The bill gives the NY Department of Health authority to determine whether violations that put residents at risk of harm merit a 30 day rectification. **We strongly believe that when a violation harms a resident – who is often quite frail – a facility should *not* be given the opportunity to avoid any penalty by “rectifying” after the person was harmed.** The bill also provides the Department authority to levy a fine for an incident of a violation in addition to a per day fine (currently, the law states that fines may only be levied for each day a violation exists). Needless to say, when a resident is harmed or suffers as a result of a failure to meet minimum standards, the number of days for which that failure existed is not relevant to the resident or her family.

A02141/S01049 - Nurse on Staff in “Enhanced” and “Special Needs” Assisted Living

Since 2004, New York State law provides several options for providers, depending upon what level of residential care they wish to provide. Facilities that wish to market themselves as “assisted living” can obtain a basic assisted living license. However, if a facility wishes to cater to people with serious impairments, and their families, the law requires certification as “Enhanced” or “Special Needs” assisted living. These individuals are inherently more fragile and more likely to be or become unstable and need significant assistance than residents in so-called “Basic” assisted living. **Reputable assisted living that are providing Enhanced or Special Needs care are already using RN staff.** This law is needed to ensure that every New Yorker who is promised significant dementia or other care by their assisted living community (which has voluntarily chosen these certifications) has access to staff with professional training and assessment skills.