

MEMORANDUM OF OPPOSITION

A.5485 (Paulin) / S. 5472 (Rivera)

On Assembly Health Committee Agenda, 3/21/23

An Act to amend the social services law and the mental hygiene law, in relation to violations of safety conditions in adult care facilities

The New York State Health Facilities Association | New York State Center for Assisted Living (NYSHFA | NYSCAL), which represents more than 450 skilled nursing and assisted living facilities across New York State, **opposes** A.5485/S.5472 which would increase financial penalties against adult care facilities (ACFs) from \$1,000 to \$2,000 per day and \$3,000 per day if a repeat violation is issued. ACF operators continue to bear immense financial strain from an increasing number of regulatory compliance requirements placed on them from the Department of Health related to COVID-19 (i.e., testing, PPE, vaccinations, etc.), yet ACFs have received minimal and limited financial support from the federal government and no financial support from the State throughout the course of the COVID-19 pandemic.

While areas within ACFs may exist that are more prone to repeat violations that do not directly affect resident safety (i.e., maintenance), this bill would still penalize the ACF with a \$3,000 fine. This could create unintended consequences such as facility closures, especially those that serve the SSI population and whose residents would have no other long-term care option other than to enter a nursing home at a higher cost. The SSI rate is currently \$43 per day for all required room, board, all care, and other services and the State has not increased its share of SSI in over 15 years. Since 2011, 73 ACFs have closed due to insufficient funding.

For over a decade, ACFs have witnessed these onerous requirements firsthand in the name of resident care quality and safety. While this may be the intent it does not come without consequence. ACFs are still required to submit a Health Emergency Response Data System (HERDS) report daily and, if late, will be issued a violation. This stringent daily reporting deadline fails to promote quality and safety and detracts from resident care, adding to the time spent on administrative burden that operators and their staff could be spending directly on the residents themselves.

NYSHFA | NYSCAL supports legislative solutions that are in the best interest of residents and that pursue meaningful financial and regulatory reform. Continued ill-advised regulations and serious under investments in a long-term care model that can keep a resident out of a nursing home does not support quality of care in the ACF setting in New York State.

For these reasons, NYSHFA | NYSCAL opposes A.5485 (Paulin)/S.5472 (Rivera) and urges its rejection.

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Contact:

Kristin A. DeVries, MA, MPP
Director of Government Relations
NYSHFA | NYSCAL

33 ELK STREET - SUITE 300 | ALBANY, NEW YORK 12207 | PH: 518.462.4800 | FAX: 518.426.4051

www.nyshfa-nyscal.org