



SUPPORT

A. 5201 (Gottfried)

S. 01662 (Grisanti)

Increasing Penalties for Violations by Adult Care Facilities and Amending Provisions Relating to Determination of Violations

May 16, 2013

MFY Legal Services, Inc. envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. MFY's Disability and Aging Rights Project focuses on protecting the rights of people who live in institutions, including adult care facilities.

This bill amends the Social Services law (SSL) to increase penalties for regulatory violations by adult care facilities. It also addresses the long-standing problem of systemic and chronic regulatory violations by closing several loopholes to enforcement. Adult care facilities provide temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care, are unable or substantially unable to live independently without support.

The New York State Department of Health (the Department) regulates adult care facilities. The Department can issue civil monetary penalties for regulatory violations. However, the SSL's current framework for assessing civil penalties provides only a limited incentive for a facility to correct multiple violations. The current law also allows facilities to escape enforcement entirely, even for repeated violations.

Currently, the SSL permits the Department to assess civil monetary penalties of up to \$1,000 for every day that at least one violation exists and has not been corrected. The Department may not impose this penalty for each violation; it may only impose a penalty for each day at least one violation exists. Furthermore, the SSL prohibits the Department from imposing penalties when the facility: (a) has corrected a violation within 30 days of receiving notice of the violation from the Department, or (b) is acting in accordance with a plan to correct the violation within 30 days. The only exception is if the Department finds that a violation endangers residents of the facility.

MFY SUPPORTS THIS BILL FOR THE FOLLOWING REASONS:

✓ Permits the Department to Assess Penalties Per Violation, Per Day

Currently, a facility with one violation and a facility with many violations are subject to the exact same penalty cap – \$1,000 per day. By permitting the Department to assess penalties per violation, as well as per day, the proposed amendments correct this imbalance and provide a strong incentive for facilities to correct violations promptly and without delay.

✓ Permits the Department to Issue Increased Monetary Penalties for Violations

The proposed amendments increase the maximum penalty for violations from \$1,000 to \$5,000. The maximum penalty per day has not been raised since the law's inception in 1977. This amendment would provide the Department with a greater ability to incentivize facilities to correct regulatory violations.

✓ Prevents Facilities from Evading Enforcement for Chronic and Repeated Violations

The current framework, which permits facilities to avoid penalties by correcting violations within 30 days or simply by submitting a plan for correction and taking action on that plan, provides no incentive for facilities to comply with Department regulations and, instead, allows facilities to chronically violate Department regulations with impunity.

We commonly receive reports of the same violations in the same facilities – bed bugs, broken elevators, spoiled food, misappropriation of resident funds, and many others – that are constantly “corrected,” only to become problems again within weeks. This bill would close this loophole and permit the Department to penalize facilities with chronic violations. It would also grant the Department discretion to issue a reduced penalty if a facility corrects a violation or is acting in accordance with a plan to correct within 30 days.

✓ Permits the Department to Impose Penalties for Chronic and Repeated Violations and Violations that Harm Residents

Currently, a facility is subject to civil penalties for violations that endanger residents, even if the facility corrects the violation. This bill gives discretion to the Department to extend the types of violations subject to penalties, even if corrected. These include violations that harm residents or put residents at risk of harm, violations not corrected promptly, or historical and chronic violations. This important provision provides the Department with additional tools for enforcement.

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