

Memorandum in Support

ELDER LAW AND SPECIAL NEEDS SECTION

ELDER #5

March 23, 2021

S. 1576
A. 196

By: Senator Rivera
By: M. of A. Gottfried

Senate Committee: Health

Assembly Committee: Codes

Effective Date: 90th day after it shall have become a law.

AN ACT to amend the social services law and the mental hygiene law, in relation to violations of safety conditions in adult care facilities.

LAW & SECTION REFERRED TO: Section 460-d of the social services law.

THE ELDER LAW AND SPECIAL NEEDS SECTION SUPPORTS THIS LEGISLATION

The Elder Law & Special Needs Section's Task Force on Long Term Care Reform recommends that NYSBA **SUPPORT A.196 (Gottfried)/S.1576 (Rivera) Relates to Violations of Safety Conditions in Adult Care Facilities**. Our section represents clients who are elderly, have mental illness and/or cognitive disabilities. We support this legislation aimed at protecting the 50,000 seniors and people with disabilities who live in New York's 500+ adult care facilities (ACFs). It offers critical safety and economic protections to adult home residents. One in four of adult home residents are dependent on SSI, and these numbers are expected to grow as New York expands Medicaid-funded assisted living programs in the ACFs. New York needs to improve the transparency and accountability in these facilities.

We support A.196/S.1576 because it provides important consumer protections to residents and their families, and it deters the worst abuses in facilities that put residents' health and safety at risk. While many ACFs comply with DOH regulations concerning facility safety, management, and residents' rights, others have been allowed to consistently fall short, exposing residents to abuse and neglect. In particular, "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. Such homes chronically fail to comply with DOH minimum standards, violate statutory requirements for residents to access their personal needs allowance, neglect to distribute medications correctly, or interfere with residents' access to mail and private communications. This bill would improve the enforcement mechanisms available to the DOH to correct and deter such violations as well as many others.

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. However, even when the DOH has cited a home for a violation, harmful conditions continue because the DOH issues no penalty for serious violations if a facility rectifies the violation within 30 days of a citation. This allows serious violations to go unpunished and fails to deter abuses. This bill would improve deterrence by adding to the categories of violations that would warrant a fine even the ACF rectifies the violation:

- A violation results in a resident's physical injury;
- Financial abuse, such as preventing a resident from accessing her statutory Personal Needs Allowance;
- Intentional violation of a resident's rights by a facility operator, administrator, case manager, or other supervisory employee;
- If a previously-cited violation is repeated within a 12-month period.

The bill also raises the maximum fine from \$1,000 (set in 1977) to \$2,000 per violation per day, with \$3,000 for repeat violations where a prior penalty was assessed.

The bill would also ensure that when the DOH receives a complaint or learns that an ACF's actions are likely to immediately endanger residents, and the ACF is found to lack a valid operating certificate, the DOH may inspect the premises of an ACF over the operator's objection and have access to residents, and may request assistance from law enforcement to do so, prior to a court order. The DOH may take any appropriate action if it determines that such danger exists or is likely to immediately arise.

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

A.196/S.1576 would improve the information available to prospective residents and families when deciding on a home, and require the DOH to share critical information about facilities with residents and referral sources. Right now, the DOH does not send its "do-not-refer" list of ACF's hospitals and nursing homes, the main referral sources for ACFs, or to other ACFs. This bill would require the DOH to send the list to those facilities, and also to directly prohibit admissions when there is an imminent risk to the health, safety, or welfare of any resident.

The bill would also make DOH's complaint investigation reports more accessible to residents and prospective residents. Under the bill, ACFs would be required to prominently post summaries of the reports and the residents' right to review the reports. In addition, prospective residents must be provided the opportunity to review reports dating back one year.

The bill would also improve the prospective resident's access to the ACF's admission agreement: the ACF would be required to provide an admission/resident agreement to the prospective resident when the individual asks about admission, and must also post the agreement on its website. These steps will allow prospective residents and families to more easily compare ACFs.

For all the foregoing reasons, the Section on Elder Law & Special Needs' Task Force on Long Term Care reform, recommends that NYSBA **SUPPORT A.196** (Gottfried)/S.1576 (Rivera) Relates to Violations of Safety Conditions in Adult Care Facilities.