

STATE OF NEW YORK

8394--A

IN SENATE

May 4, 2018

Introduced by Sen. HANNON -- (at request of the Department of Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to enhancing transparency and oversight of residential health care facilities (Part A); to amend the social services law, in relation to enhancing transparency and oversight of adult care facilities (Part B); and to amend the public health law, in relation to increasing monetary penalties for public health law violations (Part C)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law components of legislation which
2 are necessary to strengthen the department of health's ability to
3 promote quality in the provision of health care, particularly long-term
4 care. Each component is wholly contained within a Part identified as
5 Parts A through C. The effective date for each particular provision
6 contained within such Part is set forth in the last section of such
7 Part. Any provision in any section contained within a Part, including
8 the effective date of the Part, which makes a reference to a section "of
9 this act," when used in connection with that particular component, shall
10 be deemed to mean and refer to the corresponding section of the Part in
11 which it is found. Section three of this act sets forth the general
12 effective date of this act.

13 PART A

14 Section 1. Section 2803-d of the public health law, as amended by
15 chapter 340 of the laws of 1980, subdivision 1 as amended by chapter 230
16 of the laws of 2004, paragraph (c) of subdivision 6 as amended by chap-
17 ter 414 of the laws of 1986, paragraph (d) of subdivision 6 as amended
18 by chapter 622 of the laws of 1980 and paragraph (g) of subdivision 6 as
19 amended by chapter 717 of the laws of 1989, is amended to read as
20 follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD14506-04-8

1 § 2803-d. Reporting abuses of persons receiving care or services in
2 residential health care facilities. 1. The following persons are
3 required to report in accordance with this section when they have
4 reasonable cause to believe that a person receiving care or services in
5 a residential health care facility has been [~~physically~~] abused,
6 mistreated or neglected or subjected to the misappropriation of property
7 by other than a person receiving care or services in the facility: any
8 operator or employee of such facility, [~~any person who,~~] or employee of
9 any corporation, partnership, organization or other entity which, is
10 under contract to provide patient care services in such facility, and
11 any nursing home administrator, physician, medical examiner, coroner,
12 physician's associate, specialist's assistant, osteopath, chiropractor,
13 physical therapist, occupational therapist, registered professional
14 nurse, licensed practical nurse, dentist, podiatrist, optometrist, phar-
15 macist, psychologist, licensed master social worker, licensed clinical
16 social worker, speech pathologist and audiologist.

17 2. In addition to those persons required to report suspected [~~phys-~~
18 ~~ical~~] abuse, mistreatment or neglect or misappropriation of the property
19 of persons receiving care or services in residential health care facili-
20 ties, any other person may make such a report if he or she has reason-
21 able cause to believe that a person receiving care or services has been
22 [~~physically~~] abused, mistreated or neglected in the facility or
23 subjected to the misappropriation of property.

24 3. Reports of suspected [~~physical~~] abuse, mistreatment or neglect or
25 the misappropriation of resident property made pursuant to this section
26 shall be made immediately by telephone and in writing within forty-eight
27 hours to the department. Written reports shall be made on forms supplied
28 by the commissioner and shall include the following information: the
29 identity of the person making the report and where he can be found; the
30 name and address of the residential health care facility; the names of
31 the operator and administrator of the facility, if known; the name of
32 the subject of the alleged [~~physical~~] abuse, mistreatment or neglect or
33 misappropriation, if known; the nature and extent of the [~~physical~~]
34 abuse, mistreatment or neglect or misappropriation; the date, time and
35 specific location of the occurrence; the names of next of kin or spon-
36 sors of the subject of the alleged [~~physical~~] abuse, mistreatment or
37 neglect or misappropriation, if known; and any other information which
38 the person making the report believes would be helpful to further the
39 purposes of this section. Such written reports shall be admissible in
40 evidence, consistent with the provisions of paragraph (f) of subdivision
41 six of this section, in any actions or proceedings relating to [~~phys-~~
42 ~~ical~~] abuse, mistreatment or neglect or misappropriation of the property
43 of persons receiving care or services in residential health care facili-
44 ties. Written reports made other than on forms supplied by the commis-
45 sioner which contain the information required herein shall be treated as
46 if made on such forms.

47 4. Any person who in good faith makes a report pursuant to this
48 section shall have immunity from any liability, civil or criminal, for
49 having made such a report. For the purpose of any proceeding, civil or
50 criminal, the good faith of any person required to report instances of
51 [~~physical~~] abuse, mistreatment or neglect or misappropriation of the
52 property of persons receiving care or services in residential health
53 care facilities shall be presumed.

54 5. Notwithstanding the provisions of section two hundred thirty of
55 this chapter, any licensed person who commits an act of [~~physical~~]
56 abuse, mistreatment or neglect or misappropriation of the property of a

1 person receiving care or services in a residential health care facility
2 and any licensed person required by this section to report an instance
3 of suspected [~~physical~~] abuse, mistreatment or neglect or misappropri-
4 ation of the property of a person receiving care or services in a resi-
5 dential health care facility who fails to do so shall be guilty of
6 unprofessional conduct in the practice of his or her profession.

7 6. (a) Upon receipt of a report made pursuant to this section, the
8 commissioner shall cause an investigation to be made of the allegations
9 contained in the report. Notification of the receipt of a report shall
10 be made immediately by the department to the appropriate district attor-
11 ney if a prior request in writing has been made to the department by the
12 district attorney. Prior to the completion of the investigation by the
13 department, every reasonable effort shall be made to notify, personally
14 or by certified mail, any person under investigation for having commit-
15 ted an act of [~~physical~~] abuse, mistreatment or neglect or misappropri-
16 ation of property. The commissioner shall make a written determination,
17 based on the findings of the investigation, of whether or not sufficient
18 credible evidence exists to sustain the allegations contained in the
19 report or would support a conclusion that a person not named in such
20 report has committed an act of [~~physical~~] abuse, neglect or mistreatment
21 or misappropriation of property. A copy of such written determination,
22 together with a notice of the right to a hearing as provided in this
23 subdivision, shall be sent by registered or certified mail to each
24 person who the commissioner has determined has committed an act of
25 [~~physical~~] abuse, neglect or mistreatment or misappropriation of proper-
26 ty. A letter shall be sent to any other person alleged in such report to
27 have committed such an act stating that a determination has been made
28 that there is not sufficient evidence to sustain the allegations relat-
29 ing to such person. A copy of each such determination and letter shall
30 be sent to the facility in which the alleged incident occurred.

31 (b) The commissioner may make a written determination, based on the
32 findings of the investigation, that sufficient credible evidence exists
33 to support a conclusion that a person required by this section to report
34 suspected [~~physical~~] abuse, mistreatment or neglect or misappropriation
35 of property had reasonable cause to believe that such an incident
36 occurred and failed to report such incident. A copy of such written
37 determination, together with a notice of the right to a hearing as
38 provided in this subdivision, shall be sent by registered or certified
39 mail to each person who the commissioner has determined has failed to
40 report as required by this section.

41 (c) All information relating to any allegation which the commissioner
42 has determined would not be sustained shall be expunged one hundred
43 twenty days following notification of such determination to the person
44 who made the report pursuant to this section, unless a proceeding
45 pertaining to such allegation is pending pursuant to article seventy-
46 eight of the civil practice law and rules. Whenever information is
47 expunged, the commissioner shall notify any official notified pursuant
48 to paragraph (a) of this subdivision that the information has been
49 expunged.

50 (d) At any time within thirty days of the receipt of a copy of a
51 determination made pursuant to this section, a person named in such
52 determination as having committed an act of [~~physical~~] abuse, neglect or
53 mistreatment or misappropriation of resident property, or as having
54 failed to report such an incident, may request in writing that the
55 commissioner amend or expunge the record of such report, to the extent
56 such report applies to such person, or such written determination. If

1 the commissioner does not comply with such request within thirty days,
2 such person shall have the right to a fair hearing to determine whether
3 the record of the report or the written determination should be amended
4 or expunged on the grounds that the record is inaccurate or the determi-
5 nation is not supported by the evidence. The burden of proof in such
6 hearing shall be on the department. Whenever information is expunged,
7 the commissioner shall notify any official notified pursuant to para-
8 graph (a) of this subdivision that the information has been expunged.

9 (e) Except as hereinafter provided, any report, record of the investi-
10 gation of such report and all other information related to such report
11 shall be confidential and shall be exempt from disclosure under article
12 six of the public officers law.

13 (f) Information relating to a report made pursuant to this section
14 shall be disclosed under any of the following conditions:

15 (i) pursuant to article six of the public officers law after expunge-
16 ment or amendment, if any, is made in accordance with a hearing
17 conducted pursuant to this section, or at least forty-five days after a
18 written determination is made by the commissioner concerning such
19 report, whichever is later; provided, however, that the identity of the
20 person who made the report, the victim, or any other person named,
21 except a person who the commissioner has determined committed an act of
22 [~~physical~~] abuse, neglect or mistreatment or misappropriation of resi-
23 dent property, shall not be disclosed unless such person authorizes such
24 disclosure;

25 (ii) as may be required by the penal law or any lawful order or
26 warrant issued pursuant to the criminal procedure law; or

27 (iii) to a person who has requested a hearing pursuant to this
28 section, information relating to the determination upon which the hear-
29 ing is to be conducted; provided, however, that the identity of the
30 person who made the report or any other person who provided information
31 in an investigation of the report shall not be disclosed unless such
32 person authorizes such disclosure.

33 (g) Where appropriate, the commissioner shall report instances of
34 [~~physical~~] abuse, mistreatment or neglect or misappropriation of resi-
35 dent property or the failure to report as required by this section, to
36 the appropriate committee on professional conduct for the professions
37 enumerated in subdivision one of this section when a determination has
38 been made after the commissioner has provided an opportunity to be
39 heard. The commissioner shall report instances of [~~physical~~] abuse,
40 mistreatment, neglect or misappropriation of resident property by a
41 nurse aide or other unlicensed individual and any brief statement by the
42 nurse aide or other unlicensed individual disputing the finding to the
43 nursing home nurse aide registry established pursuant to section twen-
44 ty-eight hundred three-j of this article when a determination has been
45 made after the commissioner has provided an opportunity to be heard.

46 7. In addition to any other penalties prescribed by law, any person
47 who commits an act of [~~physical~~] abuse, neglect or mistreatment or
48 misappropriation of resident property, or who fails to report such an
49 act as provided in this section, shall be deemed to have violated this
50 section and shall be liable for a penalty pursuant to section twelve of
51 this chapter after an opportunity to be heard pursuant to this section.

52 8. No residential health care facility or officer or employee thereof
53 shall discharge or in any manner discriminate or retaliate against any
54 person in any residential health care facility, or any relative, or
55 sponsor thereof, or against any employee of the facility, or against any
56 other person because such person, relative, legal representative, spon-

1 sor or employee has made, or is about to make, a report pursuant to this
2 section, or has testified, or is about to testify, in any proceeding
3 relating to [~~physical~~] abuse, mistreatment or neglect or misappropri-
4 ation of the property of a person receiving care or services in a resi-
5 dential health care facility. The supreme court may grant injunctive
6 relief to any person subject to such retaliation or discrimination. Any
7 violation of this subdivision shall be punishable pursuant to section
8 twelve of this chapter.

9 9. No later than March fifteenth of every year the commissioner shall
10 prepare and transmit to the governor and the legislature a report on the
11 incidents of [~~physical~~] abuse, mistreatment and neglect or misappropri-
12 ation of the property of persons receiving care or services in residen-
13 tial health care facilities. No information concerning any individual or
14 facility shall be disclosed in a report made pursuant to this subdivi-
15 sion, or in any other report, except information which would be avail-
16 able pursuant to article six of the public officers law as provided in
17 this section. Nothing in this section shall be construed to prohibit the
18 maintenance or disclosure of, or require the expungement of, statistical
19 data which would not reveal the identity of any person or facility.

20 10. An investigation shall be made of each incident reported pursuant
21 to this section, but only the provisions of paragraphs (e) and (f) of
22 subdivision six, and subdivisions two, four, eight and nine shall apply
23 to [~~physical~~] abuse or misappropriation of resident property by persons
24 receiving care or services in residential health care facilities.

25 11. The commissioner shall adopt rules and regulations necessary to
26 implement this section.

27 § 2. The public health law is amended by adding a new section 2803-v
28 to read as follows:

29 § 2803-v. Independent quality monitors for residential health care
30 facilities. The department may require a residential health care facili-
31 ty to contract with an independent quality monitor approved by the
32 department, pursuant to a selection process conducted notwithstanding
33 sections one hundred twelve or one hundred sixty-three of the state
34 finance law, for purposes of monitoring the operator's compliance with a
35 corrective plan and reporting to the department on the implementation of
36 such corrective action, when the department has determined in its
37 discretion that operational deficiencies exist at such facility that
38 show:

39 1. a condition or conditions in substantial violation of the standards
40 for health, safety, or resident care established in law or regulation
41 that constitute a danger to resident health or safety;

42 2. a pattern or practice of habitual violation of the standards of
43 health, safety, or resident care established in law or regulation; or

44 3. any other condition dangerous to resident life, health, or safety.

45 § 3. The public health law is amended by adding a new section 2803-w
46 to read as follows:

47 § 2803-w. Requirements related to residential health care facilities
48 and related assets. 1. The operator of a residential health care facili-
49 ty shall notify the commissioner of any common or familial ownership of
50 any corporation or individual providing services to the operator.

51 2. The operator of a residential health care facility shall, on an
52 annual basis, attest to the department, in a form determined by the
53 department, to the accuracy of the information on file with the depart-
54 ment regarding the ownership of the licensed corporation, real estate,
55 and corporations providing services to the operator.

1 3. The operator of a residential health care facility may not enter
 2 into any arrangement to guarantee the debt or other obligation of a
 3 party which has not received establishment approval.

4 4. The operator of a residential health care facility shall notify the
 5 department at least ninety days prior to executing a letter of intent or
 6 other contractual agreement related to the sale of the real property of
 7 the facility.

8 5. In any instance where a residential health care facility is sold or
 9 otherwise transferred and used for a purpose which is not a health care
 10 purpose, the operator shall remit to the department from the sale
 11 proceeds an amount equivalent to the undepreciated value of capital
 12 assets for which the provider has been reimbursed through Medicaid or
 13 otherwise funded with resources provided by the state.

14 § 4. The public health law is amended by adding a new section 2803-x
 15 to read as follows:

16 § 2803-x. Provision of residency agreement. The operator of a resi-
 17 dential health care facility shall provide to prospective residents who
 18 inquire about admission, and post on its website, a copy of the facili-
 19 ty's entire approved residency agreement, including the non-governmental
 20 rates charged to residents.

21 § 5. This act shall take effect immediately.

22 PART B

23 Section 1. Paragraphs (a) and (b) of subdivision 7 of section 460-d of
 24 the social services law, paragraph (a) as amended by chapter 719 of the
 25 laws of 1989, paragraph (b) as amended by chapter 524 of the laws of
 26 1984 and subparagraph 2 of paragraph (b) as amended by chapter 733 of
 27 the laws of 1994, are amended to read as follows:

28 (a) The department shall adopt regulations establishing civil penal-
 29 ties of up to one thousand dollars per day to be assessed against all
 30 adult care facilities except facilities operated by a social services
 31 district for violations of (i) regulations of the department pertaining
 32 to the care of residents in such facilities, (ii) paragraph (a) of
 33 subdivision three of section four hundred sixty-one-a of this chapter,
 34 or (iii) an order issued pursuant to subdivision eight of this section;
 35 provided, however, that civil penalties of up to two thousand dollars
 36 per day may be assessed pursuant to subparagraph two of paragraph (b) of
 37 this subdivision. The regulations shall specify the violations subject
 38 to penalty and the amount of the penalty to be assessed in connection
 39 with each such violation and shall specify that only civil penalties of
 40 up to one thousand dollars per day per violation shall be assessed
 41 pursuant to this paragraph against an adult care facility found respon-
 42 sible for an act of retaliation or reprisal against any resident,
 43 employee, or other person for having filed a complaint with or having
 44 provided information to any long term care patient ombudsman functioning
 45 in accordance with section [~~five hundred forty-four or five hundred~~
 46 ~~forty-five~~] two hundred eighteen of the [~~executive~~] elder law.

47 (b) (1) In addition to any other civil or criminal penalty provided by
 48 law, the department shall have the power to assess civil penalties in
 49 accordance with its regulations adopted pursuant to paragraph (a) of
 50 this subdivision, after a hearing conducted in accordance with the
 51 procedures established by regulations of the department. Such procedures
 52 shall require that notice of the time and place of the hearing, together
 53 with a statement of charges of violations, shall be served in person or
 54 by certified mail addressed to the facility at least thirty days prior

1 to the date of the hearing. The statement of charges of violations shall
2 set forth the existence of the violations[7] and the amount of penalty
3 for which it may become liable [~~and the steps which must be taken to~~
4 ~~rectify the violation and, where applicable, a statement that the~~
5 ~~department contends that a penalty may be imposed under this paragraph~~
6 ~~regardless of rectification~~]. An answer to the charges of violations, in
7 writing, shall be filed with the department, not less than ten days
8 prior to the date of hearing. The answer shall notify the department of
9 the facility's position with respect to each of the charges and shall
10 include all matters which if not disclosed in the answer would be likely
11 to take the department by surprise. The commissioner, or a member of his
12 staff who is designated and authorized by him to hold such hearing, may
13 in his discretion allow the facility to prove any matter not included in
14 the answer. [~~Where the facility satisfactorily demonstrates that it~~
15 ~~either had rectified the violations within thirty days of receiving~~
16 ~~written notification of the results of the inspection pursuant to~~
17 ~~section four hundred sixty one a of this chapter, or had submitted with-~~
18 ~~in thirty days an acceptable plan for rectification and was rectifying~~
19 ~~the violations in accordance with the steps and within the additional~~
20 ~~periods of time as accepted by the department in such plan, no penalty~~
21 ~~shall be imposed, except as provided in subparagraph two of this para-~~
22 ~~graph.~~]

23 (2) [~~Rectification shall not preclude the assessment of a penalty~~]
24 Civil penalties of up to two thousand dollars per day may be assessed
25 against any adult care facility except those operated by a social
26 services district if the department establishes at a hearing that a
27 particular violation[7, ~~although corrected,~~] endangered or resulted in
28 harm to any resident as the result of:

29 (i) the total or substantial failure of the facility's fire detection
30 or prevention systems, or emergency evacuation procedures prescribed by
31 department safety standard regulations;

32 (ii) the retention of any resident who has been evaluated by the resi-
33 dent's physician as being medically or mentally unsuited for care in the
34 facility or as requiring placement in a hospital or residential health
35 care facility and for whom the operator is not making persistent efforts
36 to secure appropriate placement;

37 (iii) the failure in systemic practices and procedures;

38 (iv) the failure of the operator to take actions as required by
39 department regulations in the event of a resident's illness or accident;

40 (v) the failure of the operator to provide at all times supervision of
41 residents by numbers of staff at least equivalent to the night staffing
42 requirement set forth in department regulations; or

43 (vi) unreasonable threats of retaliation or taking reprisals, includ-
44 ing but not limited to unreasonable threats of eviction or hospitaliza-
45 tion against any resident, employee or other person who makes a
46 complaint concerning the operation of an adult care facility, partic-
47 ipates in the investigation of a complaint or is the subject of an
48 action identified in a complaint.

49 The department shall specify in its regulations those regulations to
50 which this subparagraph two shall apply.

51 (3) In assessing penalties pursuant to this paragraph, the department
52 shall consider [~~promptness of rectification,~~] delay occasioned by the
53 department[7] and the specific circumstances of the violations as miti-
54 gating factors.

1 § 2. Paragraph (c) of subdivision 9 of section 460-d of the social
2 services law is amended by adding a new subparagraph (iv) to read as
3 follows:

4 (iv) If the department of health determines, based on a complaint or
5 other facts known to the department, that there is reason to believe
6 that an individual or entity is operating an adult home, enriched hous-
7 ing program, or residence for adults which does not possess a valid
8 operating certificate issued by the department, and that one or more
9 conditions or activities at such facility constitute or are likely to
10 give rise to an immediate danger to the health of the residents, and
11 awaiting a court order pursuant to subparagraph (iii) of this paragraph
12 would be seriously detrimental to the health of such residents, the
13 department of health may, notwithstanding an objection by the operator,
14 administrator or other person in charge, inspect the entire premises,
15 which shall include access to all dwellings on the said property which
16 house tenants/occupants as well as access to such tenants/occupants, for
17 the purpose of ascertaining whether such danger exists or is likely to
18 arise on an immediate basis. The department of health may request the
19 assistance of local law enforcement for purposes of carrying out such
20 inspection and may take any appropriate action if it determines that
21 such danger exists or is likely to arise, including issuing a written
22 notice directing the operator, administrator or other person in charge
23 of such facility to cease or correct the condition or activity at issue.
24 As promptly as possible thereafter, within a period not to exceed
25 fifteen days, the commissioner shall provide the operator an opportunity
26 to be heard and to present any proof that such condition or activity
27 does not constitute a danger to the health of the residents of such
28 facility. The attorney general, upon request of the department of
29 health, shall be authorized to apply to the supreme court in the county
30 in which the facility is located for an order for any appropriate addi-
31 tional relief.

32 § 3. Section 460-d of the social services law is amended by adding a
33 new subdivision 17 to read as follows:

34 17. The department of health may require the operator of an adult home
35 or an enriched housing program to contract with an independent quality
36 monitor approved by the department, pursuant to a selection process
37 conducted notwithstanding sections one hundred twelve or one hundred
38 sixty-three of the state finance law, for purposes of monitoring the
39 operator's compliance with a corrective plan and reporting to the
40 department on the implementation of such corrective action, where the
41 department has determined in its discretion that operational deficien-
42 cies exist at such facility that show: (a) a condition or conditions in
43 substantial violation of the standards for health, safety, or resident
44 care established in law or regulation that constitute a danger to resi-
45 dent health or safety; (b) a pattern or practice of habitual violation
46 of the standards of health, safety, or resident care established in law
47 or regulation; or (c) any other condition dangerous to resident life,
48 health, or safety.

49 § 4. Subdivision 2 of section 461-a of the social services law, as
50 amended by chapter 601 of the laws of 1981, paragraphs (a) and (c) as
51 amended and paragraph (d) as added by chapter 735 of the laws of 1994,
52 and paragraph (e) as added by chapter 601 of the laws of 1981 and as
53 relettered by chapter 735 of the laws of 1994, is amended and a new
54 subdivision 5 is added to read as follows:

55 2. (a) With respect to adult care facilities the department shall
56 conduct a minimum of one unannounced inspection of each such facility to

1 determine the adequacy of care being rendered, pursuant to the follow-
2 ing:

3 (1) Such facilities receiving the department's highest rating shall be
4 inspected at least once every eighteen months on an unannounced basis.

5 (2) All other such facilities shall be inspected on an unannounced
6 basis no less than annually. The commissioner may provide for more
7 frequent inspections of any such facilities. Such inspection shall not
8 be required with respect to any facility for which the commissioner has
9 delegated responsibility for inspection and supervision to a social
10 services official pursuant to section four hundred sixty-c of this chap-
11 ter. Any employee of the department or a social services district who
12 gives or causes to be given advance notice of such unannounced
13 inspections to any unauthorized persons shall, in addition to any other
14 penalty provided by law, be suspended by the department or the social
15 services district from all duties without pay for at least five days or
16 for such greater period of time as the department or social services
17 district shall determine. Any such suspension shall be made by the
18 department or social services district in accordance with all other
19 applicable provisions of law.

20 (b) The department or a social services district, where appropriate,
21 shall each year conduct a minimum of one full inspection of each adult
22 care facility. Such inspection shall include, but shall not be limited
23 to, examination of the medical, dietary and social services records of
24 the facility as well as the minimum standards of construction, life
25 safety standards, quality and adequacy of care, rights of residents,
26 payments and all other areas of operation. The purpose of any inspection
27 shall be to determine compliance with requirements of applicable
28 provisions of law and regulations of the department.

29 (c) An inspection report shall be made of each inspection which shall
30 clearly identify and indicate in detail each area of operation, includ-
31 ing, but not limited to, the premises, equipment, personnel, resident
32 care and services, and whether each such area of operation or any of its
33 component parts is or is not in compliance with the regulations of the
34 department and all other applicable requirements. It also shall identify
35 those areas of operation or any of its component parts found not in
36 compliance as a result of failure in systemic practices and procedures.
37 The operator shall be notified of the results of the inspection in a
38 manner to be determined by regulations of the department. [~~Such notifi-
39 cation shall contain directions as may be appropriate as to the manner
40 and time in which compliance with applicable requirements of law or
41 regulations of the department shall be effected.~~] The department shall
42 also require the operator of an adult home or residence for adults to
43 develop, biannually update and implement plans for quality assurance
44 activities for each area of operation. Quality assurance activities
45 include but are not limited to, development and maintenance of perform-
46 ance standards, measurement of adherence to such standards and to appli-
47 cable state and local laws and regulations, identification of perform-
48 ance failures, design, and implementation of corrective action.

49 (d) Systemic practices or procedures are those activities related to
50 each area of operation which indicate a pattern or an inability to bring
51 the operation of the facility into compliance with applicable provisions
52 of laws and regulations.

53 (e) Nothing contained in this subdivision shall limit or restrict the
54 ability of the department or social services district, where appropri-
55 ate, to conduct more than one inspection of an adult care facility, for

1 whatever purpose, as is deemed necessary for ensuring compliance with
2 applicable provisions of law and regulations of the department.

3 5. With respect to adult homes and enriched housing programs licensed
4 by the department of health, facilities other than those referenced in
5 subdivision one of this section and which have received the department
6 of health's highest rating may elect to obtain and maintain accredi-
7 tation in lieu of the unannounced inspection referenced in subdivision
8 two of this section. Such accreditation shall be by one or more nation-
9 ally-recognized accrediting agencies as determined by the commissioner.
10 The department of health shall require that such agencies report data
11 and information pertaining to adult homes and enriched housing programs
12 which are accredited by such agencies, which seek and do not receive
13 such accreditation, and which attain but lose such accreditation, in a
14 manner and form determined by the department. Adult homes and enriched
15 housing programs which attain but lose accreditation shall report such
16 loss to the department promptly in a manner and form determined by the
17 department of health. Notwithstanding the provisions of subdivision two
18 of this section, facilities receiving the department of health's highest
19 rating that do not elect to attain and maintain accreditation shall be
20 inspected at least once every twenty-four months.

21 § 5. Section 461-c of the social services law is amended by adding a
22 new subdivision 10 to read as follows:

23 10. The operator of an adult home or an enriched housing program shall
24 provide to prospective residents who inquire about admission, and shall
25 post on its website, a copy of the facility's approved
26 admission/residency agreement, including the rates charged to residents.

27 § 6. Section 461-e of the social services law is amended by adding a
28 new subdivision 3-a to read as follows:

29 3-a. Every adult home and enriched housing program shall:

30 (a) Post in a prominent position in the facility so as to be accessi-
31 ble to all residents and to the general public, a summary of any report
32 of inspection based on a complaint issued by the department of health to
33 the facility within the previous year.

34 (b) Provide to any resident and each applicant for admission an oppor-
35 tunity to review any report of inspection based on a complaint issued by
36 the department of health to the facility within the previous year.

37 § 7. This act shall take effect immediately; provided that any penal-
38 ties assessed solely as a result of the amendments to section 460-d of
39 the social services law made by section one of this act shall apply only
40 to violations that occur on and after such date.

41 PART C

42 Section 1. Subdivision 1 of section 12 of the public health law, as
43 amended by section 16 of part A of chapter 58 of the laws of 2008, is
44 amended to read as follows:

45 1. (a) Except as provided in paragraphs (b) and (c) of this subdivi-
46 sion, any person who violates, disobeys or disregards any term or
47 provision of this chapter or of any lawful notice, order or regulation
48 pursuant thereto for which a civil penalty is not otherwise expressly
49 prescribed by law, shall be liable to the people of the state for a
50 civil penalty of not to exceed [~~two~~] five thousand dollars for every
51 such violation.

52 (b) The penalty provided for in paragraph (a) of this subdivision may
53 be increased to an amount not to exceed [~~five~~] ten thousand dollars for
54 a subsequent violation if the person committed the same violation, with

1 respect to the same or any other person or persons, within twelve months
2 of the initial violation for which a penalty was assessed pursuant to
3 paragraph (a) of this subdivision and said violations were a serious
4 threat to the health and safety of an individual or individuals.

5 (c) The penalty provided for in paragraph (a) of this subdivision may
6 be increased to an amount not to exceed [~~ten~~] twenty thousand dollars if
7 the violation directly results in serious physical harm to any patient
8 or patients.

9 (d) Effective on and after April first, two thousand eight the comp-
10 troller is hereby authorized and directed to deposit amounts collected
11 in excess of two thousand dollars but less than ten thousand dollars per
12 violation to the patient safety center account to be used for purposes
13 of the patient safety center created by title two of article twenty-
14 nine-D of this chapter.

15 (e) Effective on and after April first, two thousand eighteen, amounts
16 collected from providers licensed under article twenty-eight, thirty-
17 six, or forty of this chapter in excess of ten thousand dollars per
18 violation may be used by the commissioner, notwithstanding sections one
19 hundred twelve or one hundred sixty-three of the state finance law, for
20 initiatives that, in the discretion of the commissioner, are likely to
21 improve the quality of care or quality of life of patients or residents
22 served by such providers; provided that amounts collected from providers
23 pursuant to this paragraph may be used for improvement activities to
24 benefit service delivery within the same licensure category. Such
25 purposes may include, but are not limited to, activities designed to
26 improve the quality, performance and compliance of poorly performing
27 providers; training and educating provider staff; sharing best prac-
28 tices; and improving patient, resident and consumer involvement in
29 ensuring and improving quality of care or quality of life at facilities.

30 § 2. This act shall take effect immediately; provided that:

31 (a) any penalties available solely as a result of the amendments to
32 subdivision 1 of section 12 of the public health law, made by section
33 one of this act shall apply only to violations that occur on and after
34 such date; and

35 (b) the amendments to subdivision 1 of section 12 of the public health
36 law made by section one of this act shall not affect the expiration of
37 such subdivision and shall be deemed to expire therewith.

38 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
39 sion, section or part of this act shall be adjudged by any court of
40 competent jurisdiction to be invalid, such judgment shall not affect,
41 impair, or invalidate the remainder thereof, but shall be confined in
42 its operation to the clause, sentence, paragraph, subdivision, section
43 or part thereof directly involved in the controversy in which such judg-
44 ment shall have been rendered. It is hereby declared to be the intent of
45 the legislature that this act would have been enacted even if such
46 invalid provisions had not been included herein.

47 § 3. This act shall take effect immediately, provided, however, that
48 the applicable effective date of Parts A through C of this act shall be
49 as specifically set forth in the last section of such Parts.