STATE OF NEW YORK

10139

IN ASSEMBLY

March 19, 2018

Introduced by M. of A. GOTTFRIED -- (at request of the Department of Health) -- read once and referred to the Committee on Health

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 public health law, in relation to requiring the registration of licensed home care services agencies (Part B); to amend the social services law, in relation to enhancing transparency and oversight of adult care facilities (Part C); and to amend the public health law, in relation to increasing monetary penalties for public health law violations (Part D)

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

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

PART A

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

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

LBD14506-01-8

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

2. In addition to those persons required to report suspected [~~physical~~] abuse, mistreatment or neglect **or misappropriation of the property** of persons receiving care or services in residential health care facilities, any other person may make such a report if he or she has reasonable cause to believe that a person receiving care or services has been [~~physically~~] abused, mistreated or neglected in the facility **or subjected to the misappropriation of property**.

3. Reports of suspected [~~physical~~] abuse, mistreatment or neglect **or the misappropriation of resident property** made pursuant to this section shall be made immediately by telephone and in writing within forty-eight hours to the department. Written reports shall be made on forms supplied by the commissioner and shall include the following information: the identity of the person making the report and where he can be found; the name and address of the residential health care facility; the names of the operator and administrator of the facility, if known; the name of the subject of the alleged [~~physical~~] abuse, mistreatment or neglect **or misappropriation**, if known; the nature and extent of the [~~physical~~] abuse, mistreatment or neglect **or misappropriation**; the date, time and specific location of the occurrence; the names of next of kin or sponsors of the subject of the alleged [~~physical~~] abuse, mistreatment or neglect **or misappropriation**, if known; and any other information which the person making the report believes would be helpful to further the purposes of this section. Such written reports shall be admissible in evidence, consistent with the provisions of paragraph (f) of subdivision six of this section, in any actions or proceedings relating to [~~physical~~] abuse, mistreatment or neglect **or misappropriation of the property** of persons receiving care or services in residential health care facilities. Written reports made other than on forms supplied by the commissioner which contain the information required herein shall be treated as if made on such forms.

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

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

person receiving care or services in a residential health care facility and any licensed person required by this section to report an instance of suspected [~~physical~~] abuse, mistreatment or neglect **or misappropriation of the property** of a person receiving care or services in a residential health care facility who fails to do so shall be guilty of unprofessional conduct in the practice of his or her profession.

6. (a) Upon receipt of a report made pursuant to this section, the commissioner shall cause an investigation to be made of the allegations contained in the report. Notification of the receipt of a report shall be made immediately by the department to the appropriate district attorney if a prior request in writing has been made to the department by the district attorney. Prior to the completion of the investigation by the department, every reasonable effort shall be made to notify, personally or by certified mail, any person under investigation for having committed an act of [~~physical~~] abuse, mistreatment or neglect **or misappropriation of property**. The commissioner shall make a written determination, based on the findings of the investigation, of whether or not sufficient credible evidence exists to sustain the allegations contained in the report or would support a conclusion that a person not named in such report has committed an act of [~~physical~~] abuse, neglect or mistreatment **or misappropriation of property**. A copy of such written determination, together with a notice of the right to a hearing as provided in this subdivision, shall be sent by registered or certified mail to each person who the commissioner has determined has committed an act of [~~physical~~] abuse, neglect or mistreatment **or misappropriation of property**. A letter shall be sent to any other person alleged in such report to have committed such an act stating that a determination has been made that there is not sufficient evidence to sustain the allegations relating to such person. A copy of each such determination and letter shall be sent to the facility in which the alleged incident occurred.

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

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

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

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

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

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

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

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

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

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

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

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

sor or employee has made, or is about to make, a report pursuant to this section, or has testified, or is about to testify, in any proceeding relating to [~~physical~~] abuse, mistreatment or neglect **or misappropriation of the property** of a person receiving care or services in a residential health care facility. The supreme court may grant injunctive relief to any person subject to such retaliation or discrimination. Any violation of this subdivision shall be punishable pursuant to section twelve of this chapter.

9. No later than March fifteenth of every year the commissioner shall prepare and transmit to the governor and the legislature a report on the incidents of [~~physical~~] abuse, mistreatment and neglect **or misappropriation of the property** of persons receiving care or services in residential health care facilities. No information concerning any individual or facility shall be disclosed in a report made pursuant to this subdivision, or in any other report, except information which would be available pursuant to article six of the public officers law as provided in this section. Nothing in this section shall be construed to prohibit the maintenance or disclosure of, or require the expungement of, statistical data which would not reveal the identity of any person or facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5. This act shall take effect immediately.

PART B

Section 1. Subdivision 2 of section 3605-a of the public health law, as added by chapter 959 of the laws of 1984, is amended to read as follows:

2. No such license shall be revoked, suspended, limited, annulled or denied without a hearing. However, a license may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the agency following a finding by the department that the public health or safety is in imminent danger. Notwithstanding the provisions of this section, no licensed home care services agency shall be permitted to operate unless it has registered with the department pursuant to section thirty-six hundred five-b of this article.

§ 2. The public health law is amended by adding a new section 3605-b to read as follows:

§ 3605-b. Registration of licensed home care services agencies. 1. Notwithstanding any provision of law to the contrary, no licensed home care services agency (LHCSA) licensed pursuant to section thirty-six hundred five of this article shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January first, two thousand nineteen, unless it has registered with the commissioner in a manner prescribed by the department. The requirements of this section shall not apply to home care services agencies certified pursuant to section thirty-six hundred eight of this article.

2. A LHCSA that fails to submit a complete and accurate set of all required registration materials by the deadline established by the commissioner in regulation shall be required to pay a fee of five hundred dollars for each month or part thereof that the LHCSA is in default. A LHCSA that failed to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any unpaid late fees.

3. The department shall post on its public website a list of all LHCSAs, which shall indicate the current registration status of each LHCSA.

4. The commissioner shall promulgate such rules and regulations as are necessary to effectuate the provisions of this section including, but not limited to, prescribing the manner of submission of registration materials, setting an annual deadline for submission of registration materials, and establishing other reasonable requirements.

5. The department shall institute proceedings to revoke the license of any LHCSA that fails to register for two annual registration periods, whether or not such periods are consecutive. The department shall have the discretion to pursue revocation of the license of a LCHSA on grounds that it evinces a pattern of late registration over the course of multiple years.

§ 3. This act shall take effect immediately.

PART C

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

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

(b) (1) In addition to any other civil or criminal penalty provided by law, the department shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to paragraph (a) of this subdivision, after a hearing conducted in accordance with the procedures established by regulations of the department. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the facility at least thirty days prior to the date of the hearing. The statement of charges of violations shall set forth the existence of the violations[~~,~~] **and** the amount of penalty for which it may become liable [~~and the steps which must be taken to rectify the violation and, where applicable, a statement that the department contends that a penalty may be imposed under this paragraph regardless of rectification~~]. An answer to the charges of violations, in

writing, shall be filed with the department, not less than ten days prior to the date of hearing. The answer shall notify the department of the facility's position with respect to each of the charges and shall include all matters which if not disclosed in the answer would be likely to take the department by surprise. The commissioner, or a member of his staff who is designated and authorized by him to hold such hearing, may in his discretion allow the facility to prove any matter not included in the answer. [~~Where the facility satisfactorily demonstrates that it either had rectified the violations within thirty days of receiving written notification of the results of the inspection pursuant to section four hundred sixty-one-a of this chapter, or had submitted within thirty days an acceptable plan for rectification and was rectifying the violations in accordance with the steps and within the additional periods of time as accepted by the department in such plan, no penalty shall be imposed, except as provided in subparagraph two of this paragraph.~~]

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

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

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

(iii) the failure in systemic practices and procedures;

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

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

(vi) unreasonable threats of retaliation or taking reprisals, including but not limited to unreasonable threats of eviction or hospitalization against any resident, employee or other person who makes a complaint concerning the operation of an adult care facility, participates in the investigation of a complaint or is the subject of an action identified in a complaint.

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

(3) In assessing penalties pursuant to this paragraph, the department shall consider [~~promptness of rectification,~~] delay occasioned by the department[~~,~~] and the specific circumstances of the violations as mitigating factors.

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

(iv) If the department of health determines, based on a complaint or other facts known to the department, that there is reason to believe that an individual or entity is operating an adult home, enriched housing program, or residence for adults which does not possess a valid operating certificate issued by the department, and that one or more

conditions or activities at such facility constitute or are likely to give rise to an immediate danger to the health of the residents, and awaiting a court order pursuant to subparagraph (iii) of this paragraph would be seriously detrimental to the health of such residents, the department of health may, notwithstanding an objection by the operator, administrator or other person in charge, inspect the entire premises, which shall include access to all dwellings on the said property which house tenants/occupants as well as access to such tenants/occupants, for the purpose of ascertaining whether such danger exists or is likely to arise on an immediate basis. The department of health may request the assistance of local law enforcement for purposes of carrying out such inspection and may take any appropriate action if it determines that such danger exists or is likely to arise, including issuing a written notice directing the operator, administrator or other person in charge of such facility to cease or correct the condition or activity at issue. As promptly as possible thereafter, within a period not to exceed fifteen days, the commissioner shall provide the operator an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the residents of such facility. The attorney general, upon request of the department of health, shall be authorized to apply to the supreme court in the county in which the facility is located for an order for any appropriate additional relief.

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

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

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

2. (a) With respect to adult care facilities the department shall conduct a minimum of one unannounced inspection of each such facility to determine the adequacy of care being rendered, pursuant to the following:

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

(2) All other such facilities shall be inspected on an unannounced basis no less than annually. The commissioner may provide for more frequent inspections of any such facilities. Such inspection shall not be required with respect to any facility for which the commissioner has

delegated responsibility for inspection and supervision to a social services official pursuant to section four hundred sixty-c of this chapter. Any employee of the department or a social services district who gives or causes to be given advance notice of such unannounced inspections to any unauthorized persons shall, in addition to any other penalty provided by law, be suspended by the department or the social services district from all duties without pay for at least five days or for such greater period of time as the department or social services district shall determine. Any such suspension shall be made by the department or social services district in accordance with all other applicable provisions of law.

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

(c) An inspection report shall be made of each inspection which shall clearly identify and indicate in detail each area of operation, including, but not limited to, the premises, equipment, personnel, resident care and services, and whether each such area of operation or any of its component parts is or is not in compliance with the regulations of the department and all other applicable requirements. It also shall identify those areas of operation or any of its component parts found not in compliance as a result of failure in systemic practices and procedures. The operator shall be notified of the results of the inspection in a manner to be determined by regulations of the department. [~~Such notification shall contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected.~~] The department shall also require the operator of an adult home or residence for adults to develop, biannually update and implement plans for quality assurance activities for each area of operation. Quality assurance activities include but are not limited to, development and maintenance of performance standards, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design, and implementation of corrective action.

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

(e) Nothing contained in this subdivision shall limit or restrict the ability of the department or social services district, where appropriate, to conduct more than one inspection of an adult care facility, for whatever purpose, as is deemed necessary for ensuring compliance with applicable provisions of law and regulations of the department.

5. With respect to adult homes and enriched housing programs licensed by the department of health, facilities other than those referenced in subdivision one of this section and which have received the department of health's highest rating may elect to obtain and maintain accreditation in lieu of the unannounced inspection referenced in subdivision two of this section. Such accreditation shall be by one or more nationally-recognized accrediting agencies as determined by the commissioner.

The department of health shall require that such agencies report data and information pertaining to adult homes and enriched housing programs which are accredited by such agencies, which seek and do not receive such accreditation, and which attain but lose such accreditation, in a manner and form determined by the department. Adult homes and enriched housing programs which attain but lose accreditation shall report such loss to the department promptly in a manner and form determined by the department of health. Notwithstanding the provisions of subdivision two of this section, facilities receiving the department of health's highest rating that do not elect to attain and maintain accreditation shall be inspected at least once every twenty-four months.

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

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

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

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

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

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

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

PART D

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

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

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed [~~five~~] ten thousand dollars for a subsequent violation if the person committed the same violation, with respect to the same or any other person or persons, within twelve months of the initial violation for which a penalty was assessed pursuant to paragraph (a) of this subdivision and said violations were a serious threat to the health and safety of an individual or individuals.

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

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

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

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

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

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

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

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