

STATE OF NEW YORK

8394

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

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:

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 D. 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

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

LBD14506-01-8

1 amended by chapter 717 of the laws of 1989, is amended to read as
2 follows:

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

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

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

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

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

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

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

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

53 (d) At any time within thirty days of the receipt of a copy of a
54 determination made pursuant to this section, a person named in such
55 determination as having committed an act of [~~physical~~] abuse, neglect or
56 mistreatment or misappropriation of resident property, or as having

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

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

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

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

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

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

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

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

55 8. No residential health care facility or officer or employee thereof
56 shall discharge or in any manner discriminate or retaliate against any

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

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

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

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

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

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

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

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

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

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

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

54 2. The operator of a residential health care facility shall, on an
55 annual basis, attest to the department, in a form determined by the
56 department, to the accuracy of the information on file with the depart-

1 ment regarding the ownership of the licensed corporation, real estate,
 2 and corporations providing services to the operator.

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

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

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

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

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

23 § 5. This act shall take effect immediately.

24 PART B

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

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

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

39 § 3605-b. Registration of licensed home care services agencies. 1.
 40 Notwithstanding any provision of law to the contrary, no licensed home
 41 care services agency (LHCSA) licensed pursuant to section thirty-six
 42 hundred five of this article shall be operated, provide nursing
 43 services, home health aide services, or personal care services, or
 44 receive reimbursement from any source for the provision of such services
 45 during any period of time on or after January first, two thousand nine-
 46 teen, unless it has registered with the commissioner in a manner
 47 prescribed by the department. The requirements of this section shall not
 48 apply to home care services agencies certified pursuant to section thir-
 49 ty-six hundred eight of this article.

50 2. A LHCSA that fails to submit a complete and accurate set of all
 51 required registration materials by the deadline established by the
 52 commissioner in regulation shall be required to pay a fee of five
 53 hundred dollars for each month or part thereof that the LHCSA is in
 54 default. A LHCSA that failed to register in the prior year by the dead-

1 line of the current year shall not be permitted to register for the
2 upcoming registration period unless it submits any unpaid late fees.

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

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

11 5. The department shall institute proceedings to revoke the license of
12 any LHCSA that fails to register for two annual registration periods,
13 whether or not such periods are consecutive. The department shall have
14 the discretion to pursue revocation of the license of a LHCSA on grounds
15 that it evinces a pattern of late registration over the course of multi-
16 ple years.

17 § 3. This act shall take effect immediately.

18 PART C

19 Section 1. Paragraphs (a) and (b) of subdivision 7 of section 460-d of
20 the social services law, paragraph (a) as amended by chapter 719 of the
21 laws of 1989, paragraph (b) as amended by chapter 524 of the laws of
22 1984 and subparagraph 2 of paragraph (b) as amended by chapter 733 of
23 the laws of 1994, are amended to read as follows:

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

43 (b) (1) In addition to any other civil or criminal penalty provided by
44 law, the department shall have the power to assess civil penalties in
45 accordance with its regulations adopted pursuant to paragraph (a) of
46 this subdivision, after a hearing conducted in accordance with the
47 procedures established by regulations of the department. Such procedures
48 shall require that notice of the time and place of the hearing, together
49 with a statement of charges of violations, shall be served in person or
50 by certified mail addressed to the facility at least thirty days prior
51 to the date of the hearing. The statement of charges of violations shall
52 set forth the existence of the violations[~~7~~] and the amount of penalty
53 for which it may become liable [~~and the steps which must be taken to~~
54 ~~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 hous-

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

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

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

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

49 2. (a) With respect to adult care facilities the department shall
50 conduct a minimum of one unannounced inspection of each such facility to
51 determine the adequacy of care being rendered, pursuant to the follow-
52 ing:

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

55 (2) All other such facilities shall be inspected on an unannounced
56 basis no less than annually. The commissioner may provide for more

1 frequent inspections of any such facilities. Such inspection shall not
2 be required with respect to any facility for which the commissioner has
3 delegated responsibility for inspection and supervision to a social
4 services official pursuant to section four hundred sixty-c of this chap-
5 ter. Any employee of the department or a social services district who
6 gives or causes to be given advance notice of such unannounced
7 inspections to any unauthorized persons shall, in addition to any other
8 penalty provided by law, be suspended by the department or the social
9 services district from all duties without pay for at least five days or
10 for such greater period of time as the department or social services
11 district shall determine. Any such suspension shall be made by the
12 department or social services district in accordance with all other
13 applicable provisions of law.

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

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

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

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

52 5. With respect to adult homes and enriched housing programs licensed
53 by the department of health, facilities other than those referenced in
54 subdivision one of this section and which have received the department
55 of health's highest rating may elect to obtain and maintain accredi-
56 tation in lieu of the unannounced inspection referenced in subdivision

1 two of this section. Such accreditation shall be by one or more nation-
 2 ally-recognized accrediting agencies as determined by the commissioner.
 3 The department of health shall require that such agencies report data
 4 and information pertaining to adult homes and enriched housing programs
 5 which are accredited by such agencies, which seek and do not receive
 6 such accreditation, and which attain but lose such accreditation, in a
 7 manner and form determined by the department. Adult homes and enriched
 8 housing programs which attain but lose accreditation shall report such
 9 loss to the department promptly in a manner and form determined by the
 10 department of health. Notwithstanding the provisions of subdivision two
 11 of this section, facilities receiving the department of health's highest
 12 rating that do not elect to attain and maintain accreditation shall be
 13 inspected at least once every twenty-four months.

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

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

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

22 3-a. Every adult home and enriched housing program shall:

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

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

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

34

PART D

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

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

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

52 (c) The penalty provided for in paragraph (a) of this subdivision may
 53 be increased to an amount not to exceed [~~ten~~] twenty thousand dollars if

1 the violation directly results in serious physical harm to any patient
2 or patients.

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

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

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

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

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

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

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