

# STATE OF NEW YORK

5472

2023-2024 Regular Sessions

## IN SENATE

March 6, 2023

Introduced by Sens. RIVERA, BAILEY, BROUK, CLEARE, COMRIE, GIANARIS, HOYLMAN-SIGAL, JACKSON, KRUEGER, MANNION, MAY, PERSAUD, RAMOS, SANDERS, SEPULVEDA, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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

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

1 Section 1. Paragraph (b) of subdivision 4 of section 460-d of the  
2 social services law, as amended by chapter 733 of the laws of 1994, is  
3 amended to read as follows:

4 (b) No operating certificate shall be revoked, suspended or limited  
5 without a hearing held in accordance with procedures established by  
6 department regulations, which procedures shall require that notice of  
7 the time and place of the hearing, and notice of the charges, shall be  
8 served in person or by certified mail addressed to the facility at least  
9 thirty days prior to the date of the hearing. A written answer to the  
10 charges may be filed with the department not less than ten business days  
11 prior to the date of the hearing. An operating certificate may, never-  
12 theless, be suspended or limited without a hearing for a period not in  
13 excess of sixty days, upon written notice to the facility following a  
14 finding by the department that the public health, or an individual's  
15 health, safety or welfare, are in imminent danger; provided, however,  
16 that if the department demonstrates reasonable efforts to commence a  
17 hearing within such sixty day period and to complete such hearing within  
18 a reasonable period of time, the hearing officer may authorize the  
19 department to extend the period of suspension or limitation for an  
20 appropriate period of time, but in no event beyond an additional thirty  
21 days.

22 § 2. Subdivision 7 of section 460-d of the social services law, as  
23 added by chapter 669 of the laws of 1977, paragraph (a) as amended by  
24 chapter 719 of the laws of 1989, paragraph (b) as amended by chapter 524  
25 of the laws of 1984, subparagraph 2 of paragraph (b) as amended by chap-  
26 ter 733 of the laws of 1994, is amended to read as follows:

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

LBD02412-02-3

1 7. (a) The department shall adopt regulations establishing civil  
2 penalties of up to one thousand dollars per day per violation, which  
3 shall be adjusted on an annual basis pursuant to modifications to the  
4 federal consumer price index as published by the United States depart-  
5 ment of labor, bureau of labor statistics for all changes since  
6 this paragraph was enacted and, for repeat violations, under subpara-  
7 graph two of paragraph (c) of this subdivision for which a prior penalty  
8 was assessed, an amount up to three times such penalty per day per  
9 violation to be assessed against all adult care facilities except facil-  
10 ities operated by a social services district for violations of (i) regu-  
11 lations of the department pertaining to the care of residents in such  
12 facilities, (ii) paragraph (a) of subdivision three of section four  
13 hundred sixty-one-a of this ~~chapter~~ article, or (iii) an order issued  
14 pursuant to subdivision eight of this section. The regulations shall  
15 specify the violations subject to penalty and the amount of the penalty  
16 to be assessed in connection with each such violation and shall specify  
17 that only civil penalties of up to one thousand dollars per day per  
18 violation, which shall be adjusted on an annual basis pursuant to  
19 modifications to the federal consumer price index as published by the  
20 United States department of labor, bureau of labor statistics  
21 for all changes since this paragraph was enacted, shall be assessed  
22 pursuant to this paragraph against an adult care facility found respon-  
23 sible for an act of retaliation or reprisal against any resident,  
24 employee, or other person for having filed a complaint with or having  
25 provided information to any long term care ~~patient~~ ombudsman function-  
26 ing in accordance with section ~~[five hundred forty four or five hundred~~  
27 ~~forty five]~~ two hundred eighteen of the ~~executive~~ elder law.

28 (b) ~~(1)~~ In addition to any other civil or criminal penalty provided  
29 by law, the department shall have the power to assess civil penalties in  
30 accordance with its regulations adopted pursuant to paragraph (a) of  
31 this subdivision, after a hearing conducted in accordance with the  
32 procedures established by regulations of the department. Such procedures  
33 shall require that notice of the time and place of the hearing, together  
34 with a statement of charges of violations, shall be served in person or  
35 by certified mail addressed to the facility at least thirty days prior  
36 to the date of the hearing. The statement of charges of violations shall  
37 set forth the existence of the violations, the amount of penalty for  
38 which it may become liable and the steps which must be taken to rectify  
39 the violation and, where applicable, a statement that the department  
40 contends that a penalty may be imposed under this paragraph regardless  
41 of rectification. An answer to the charges of violations, in writing,  
42 shall be filed with the department, not less than ten days prior to the  
43 date of hearing. The answer shall notify the department of the facili-  
44 ty's position with respect to each of the charges and shall include all  
45 matters which if not disclosed in the answer would be likely to take the  
46 department by surprise. The commissioner, or a member of his staff who  
47 is designated and authorized by him to hold such hearing, may in his  
48 discretion allow the facility to prove any matter not included in the  
49 answer.

50 (c) (1) Where the facility satisfactorily demonstrates that it either  
51 had rectified the violations within thirty days of receiving written  
52 notification of the results of the inspection pursuant to section four  
53 hundred sixty-one-a of this ~~chapter~~ article, or had submitted within  
54 thirty days an acceptable plan for rectification and was rectifying the  
55 violations in accordance with the steps and within the additional peri-

ods 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 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) endangered any resident. Endangerment is defined as:

(A) 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)~~ (B) 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)~~ (C) the failure in systemic practices and procedures which shall be defined as widespread or chronic, and material, noncompliance with statutory or regulatory requirements, including but not limited to the rights of residents under section four hundred sixty-one-d of this article;

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

~~(v)~~ (E) 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)~~ (F) ~~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.~~

~~(e)~~; or

(ii) resulted in harm to any resident, including but not limited to:

(A) physical harm;

(B) loss or denial of access to money or other personal property, including but not limited to a violation of section one hundred thirty-one-o of this chapter; or

(C) being subjected to (I) conduct by an operator, administrator, case manager, or other employee in a supervisory position that violates the rights of a resident under section four hundred sixty-one-d of this article, or (II) an egregious failure by an operator, administrator, case manager, or other employee in a supervisory position to ensure the rights of a resident under section four hundred sixty-one-d of this article.

(d) 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.

(e) Upon the request of the department, the attorney general may commence an action in any court of competent jurisdiction against any

1 facility subject to the provisions of this section, and against any  
2 person or corporation operating such facility, for the recovery of any  
3 penalty assessed by the department in accordance with the provisions of  
4 this subdivision.

5 [~~(d)~~] (f) Any such penalty assessed by the department may be released  
6 or compromised by the department, subject to and consistent with para-  
7 graph (c) of this subdivision, before the matter has been referred to  
8 the attorney general, and where such matter has been referred to the  
9 attorney general, any such penalty may be released or compromised and  
10 any action commenced to recover the same may be settled and discontinued  
11 by the attorney general, after considering paragraph (c) of this subdi-  
12 vision and with the consent of the department.

13 § 3. Paragraphs (a) and (b) of subdivision 9 of section 460-d of the  
14 social services law, paragraph (a) as amended by chapter 558 of the laws  
15 of 1999 and paragraph (b) as added by chapter 848 of the laws of 1992,  
16 are amended to read as follows:

17 (a) The department shall have authority to impose a civil penalty [~~not~~  
18 ~~exceeding one thousand dollars per day~~] consistent with section twelve  
19 of the public health law against, and to issue an order requiring the  
20 closing of, after notice and opportunity to be heard, any facility which  
21 does not possess a valid operating certificate issued by the department  
22 and is an adult care facility subject to the provisions of this article  
23 and the regulations of the department. A hearing shall be conducted in  
24 accordance with procedures established by department regulations which  
25 procedures shall require that notice of the determination that the  
26 facility is an adult care facility and the reasons for such determi-  
27 nation and notice of the time and place of the hearing be served in  
28 person on the operator, owner or prime lessor, if any, or by certified  
29 mail, return receipt requested, addressed to such person and received at  
30 least twenty days prior to the date of the hearing. If such operator,  
31 owner or prime lessor, if any, is not known to the department, then  
32 service may be made by posting a copy thereof in a conspicuous place  
33 within the facility or by sending a copy thereof by certified mail,  
34 return receipt requested, addressed to the facility. A written answer to  
35 the notice of violation may be filed with the department not less than  
36 five days prior to the date of the hearing. Demonstration by the facil-  
37 ity that it possessed an operating certificate issued pursuant to this  
38 article, article twenty-eight of the public health law or article  
39 sixteen, [~~twenty-three,~~] thirty-one or thirty-two of the mental hygiene  
40 law at the time the hearing was commenced shall constitute a complete  
41 defense to any charges made pursuant to this subdivision.

42 (b) [~~The penalty authorized by this section shall begin to run thirty~~  
43 ~~days after the department provides the operator, in writing, with a~~  
44 ~~summary of the inspection of the facility by which the department deter-~~  
45 ~~mined that he or she is operating an uncertified adult care facility.]  
46 The submission of an application by the operator for an operating  
47 certificate for the facility shall not act as a bar to the imposition of  
48 a penalty against the operator of an unlicensed adult care facility.~~

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

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

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

24 § 5. Subdivision 11 of section 460-d of the social services law, as  
25 amended by section 154 of subpart B of part C of chapter 62 of the laws  
26 of 2011, is amended to read as follows:

27 11. On or before issuance by the department to an adult care facility  
28 operator of official written notice of: the proposed revocation, suspen-  
29 sion or denial of the operator's operating certificate; the limitation  
30 of the operating certificate with respect to new admissions; the issu-  
31 ance of a department order or commissioner's order; the seeking of equi-  
32 table relief pursuant to this section; the [~~proposed~~] assessment of  
33 civil penalties for violations of the provisions of [~~subparagraph two~~  
34 ~~of~~] paragraph [~~(b)~~] (c) of subdivision seven of this section or place-  
35 ment on the "do not refer list" pursuant to subdivision fifteen of this  
36 section, written notice also shall be given to the appropriate office of  
37 the department of mental hygiene, department of corrections and communi-  
38 ty supervision and local social services districts, and provided further  
39 that the department of health shall notify hospitals, residential health  
40 care facilities and adult care facilities in the locality in which such  
41 facility is located that such notice has been issued. Upon resolution of  
42 such enforcement action the department shall within ten days notify the  
43 appropriate office of the department of mental hygiene, department of  
44 corrections and community supervision, local social services districts  
45 [~~and~~], hospitals, residential health care facilities and adult care  
46 facilities.

47 § 6. Subdivision 12 of section 460-d of the social services law, as  
48 amended by section 42 of part B of chapter 58 of the laws of 2004, is  
49 amended to read as follows:

50 12. [~~Social~~] Hospitals, residential health care facilities, adult care  
51 facilities, social services districts and other local government enti-  
52 ties established pursuant to this chapter shall be prohibited from  
53 making referrals for admissions to adult care facilities that have  
54 received official written notice regarding: the proposed revocation,  
55 suspension or denial of the operator's operating certificate; the limi-  
56 tation of the operating certificate with respect to new admissions; the

1 issuance of department order or commissioner's orders; the seeking of  
2 equitable relief pursuant to this section[~~, the proposed assessment of~~  
3 ~~civil penalties for violations of the provisions of subparagraph two of~~  
4 ~~paragraph (b) of subdivision seven of this section~~]; or the facility's  
5 placement on the "do not refer list" pursuant to subdivision fifteen of  
6 this section.

7 § 7. Section 460-d of the social services law is amended by adding a  
8 new subdivision 18 to read as follows:

9 18. When the department of health issues official written notice to an  
10 operator of a proposed action specified in subdivision eleven of this  
11 section, and the department determines that there is a condition which  
12 constitutes an imminent danger to the health, safety or welfare of any  
13 resident, the department may prohibit that operator from admitting any  
14 new resident to the facility until the department determines that there  
15 is no longer an imminent danger to the health, safety or welfare of any  
16 resident.

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

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

23 § 9. The closing paragraph of subdivision 3 of section 461-d of the  
24 social services law, as added by chapter 601 of the laws of 1981, is  
25 amended to read as follows:

26 Waiver of any provision [~~contained within~~] of this subdivision by a  
27 resident of an adult care facility or by the resident's legal represen-  
28 tative or resident representative, with respect to a resident of an  
29 adult home, residence for adults or enriched housing program, shall be  
30 void.

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

33 3-a. Every adult home and enriched housing program shall:  
34 (a) Post in a prominent position in the facility so as to be accessi-  
35 ble to all residents and to the general public:  
36 (i) a summary of any report of inspection based on a complaint issued  
37 by the department of health to the facility within the previous year  
38 which resulted in the payment of a fine or penalty by the facility; and  
39 (ii) notice of residents' right to review reports under paragraph (b)  
40 of this subdivision.  
41 (b) Provide to any resident and each applicant for admission an oppor-  
42 tunity to review any report of inspection based on a complaint issued by  
43 the department of health to the facility within the previous year.  
44 (c) Provide to the resident council a summary of any report of  
45 inspection based on a complaint issued by the department of health with-  
46 in fourteen days of receipt by the facility.

47 § 11. Paragraphs (a), (b) and (c) of subdivision 2 of section 461-a of  
48 the social services law, paragraph (a) as amended by chapter 735 of the  
49 laws of 1994, paragraph (b) as amended by chapter 601 of the laws of  
50 1981 and paragraph (c) as amended by chapter 769 of the laws of 2021,  
51 are amended to read as follows:

52 (a) With respect to adult care facilities the department shall conduct  
53 a minimum of one unannounced inspection of each such facility to deter-  
54 mine the adequacy of care being rendered, pursuant to the following:

55 (1) Such facilities [~~receiving the department's highest rating~~] deter-  
56 mined by the department to be in compliance or substantial compliance

1 with applicable statutes and regulations, based on the facility's most  
2 recent inspection, shall be inspected at least once every eighteen  
3 months on an unannounced basis.

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

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

29 (c) (i) An inspection report shall be made of each inspection which  
30 shall clearly identify and indicate in detail each area of operation,  
31 including, but not limited to, the premises, equipment, personnel, resi-  
32 dent care and services, and whether [~~each~~] any such area of operation or  
33 any of its component parts is [~~or is~~] not in compliance with the regu-  
34 lations of the department and all other applicable requirements. It also  
35 shall identify those areas of operation or any of its component parts  
36 found not in compliance as a result of failure in systemic practices and  
37 procedures. The operator shall be notified of the results of the  
38 inspection in a manner to be determined by regulations of the department  
39 and shall submit a written plan of correction to the department within  
40 thirty calendar days from the date the inspection report is received.  
41 The department shall notify the operator of the acceptability of the  
42 plan of correction within thirty calendar days of the department's  
43 receipt of such plan. Such notification shall contain directions as may  
44 be appropriate as to the manner and time in which compliance with appli-  
45 cable requirements of law or regulations of the department shall be  
46 effected.

47 (ii) The department shall also require the operator of an adult home,  
48 enriched housing program or residence for adults to develop, biannually  
49 update and implement plans for quality assurance activities for each  
50 area of operation. Quality assurance activities include but are not  
51 limited to, development and maintenance of performance standards includ-  
52 ing infection control, measurement of adherence to such standards and to  
53 applicable state and local laws and regulations, identification of  
54 performance failures, design, and implementation of corrective action.  
55 Each plan must also include the creation of a quality improvement  
56 committee that is charged with meeting periodically, at least once every

1 six months, to review summary findings from monitoring implementation of  
2 the facility's plan, evaluating the effectiveness of corrective action  
3 policies, and identifying trends and improvement activities. While  
4 reviewing facility performance, the committee shall not examine  
5 personally identifiable resident incidents. Such committee shall include  
6 the administrator or operator of the facility, the resident council  
7 president or other resident representative, and representatives from  
8 frontline employees from each area of operation.

9 § 12. Subparagraphs (I) and (II) of paragraph 2 of subdivision (i) of  
10 section 29.15 of the mental hygiene law, as amended by chapter 168 of  
11 the laws of 2010, are amended to read as follows:

12 (I) A patient about to be discharged or conditionally released from a  
13 department facility licensed or operated by the office for people with  
14 developmental disabilities or from an inpatient facility operated or  
15 licensed by the office of [~~alcoholism and substance abuse~~] addiction  
16 services and supports or the office of mental health to an adult home,  
17 enriched housing program or residence for adults, as defined in section  
18 two of the social services law, shall be referred only to such home or  
19 residence that is consistent with that patient's needs and that operates  
20 pursuant to section four hundred sixty of the social services law,  
21 provided further that: (A) for a department facility licensed or oper-  
22 ated by the office for people with developmental disabilities or for an  
23 inpatient facility operated by the office of [~~alcoholism and substance~~  
24 ~~abuse~~] addiction services and supports or the office of mental health,  
25 the facility director retains authority to determine whether the home,  
26 program or residence is consistent with that patient's needs and (B)  
27 such referral shall be made to the patient's home county whenever possi-  
28 ble or appropriate.

29 (II) No patient about to be discharged or conditionally released from  
30 a department facility licensed or operated by the office for people with  
31 developmental disabilities or from an inpatient facility operated or  
32 licensed by the office of [~~alcoholism and substance abuse~~] addiction  
33 services and supports or the office of mental health shall be referred  
34 to any adult home, enriched housing program or residence for adults, as  
35 defined in section two of the social services law, which has received an  
36 official written notice from the department of health of: (A) the  
37 proposed revocation, suspension or denial of its operating certificate;  
38 (B) the limitation of its operating certificate with respect to new  
39 admissions; (C) the issuance of a department of health order or commis-  
40 sioner of health's order or the seeking of equitable relief pursuant to  
41 section four hundred sixty-d of the social services law; (D) the  
42 proposed assessment of civil penalties for violations of the provisions  
43 of [~~subparagraph two of~~] paragraph [~~(b)~~] (c) of subdivision seven of  
44 section four hundred sixty-d of the social services law; or placement on  
45 the "do not refer list" pursuant to subdivision fifteen of section four  
46 hundred sixty-d of the social services law. Referrals may resume when  
47 such enforcement actions are resolved.

48 § 13. Severability clause. If any provision of this act, or any appli-  
49 cation of any provision of this act, is held to be invalid, or to  
50 violate or be inconsistent with any federal law or regulation, that  
51 shall not affect the validity or effectiveness of any other provision of  
52 this act, which can be given effect without that provision or applica-  
53 tion; and to that end, the provisions and applications of this act are  
54 severable.

55 § 14. This act shall take effect on the ninetieth day after it shall  
56 have become a law.