

## MEMORANDUM OF OPPOSITION

### A.1910-A (Paulin) / S.1858-A (Rivera)

#### ***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 New York State Health Facilities Association|New York State Center for Assisted Living (NYSHFA|NYSCAL), which represents more than 450 skilled nursing and assisted living facilities across New York State, **opposes** A.1910-A/S.1858-A which would increase financial penalties against adult care facilities (ACFs) from \$1,000 to \$2,000 per day and \$5,000 per day if a repeat violation is issued. ACF operators continue to bear immense financial strain from an increasing number of regulatory compliance requirements placed on them from the Department of Health related to COVID-19 (i.e., testing, PPE, vaccinations, etc.), yet ACFs have received minimal and limited financial support from the federal government and no financial support from the State throughout the course of the COVID-19 pandemic.

While areas within ACFs may exist that are more prone to repeat violations that do not directly affect resident safety (i.e., maintenance), this bill would still penalize the ACF with a \$5,000 fine. This could create unintended consequences such as facility closures, especially those that serve the SSI population and whose residents would have no other long-term care option other than to enter a nursing home at a higher cost. The SSI rate is approximately \$45 per day for all required room, board, all care, and other services and the State has not increased its share of SSI in over 15 years. Since 2011, 73 ACFs have closed due to insufficient funding.

In addition to increasing ACF fines, this bill amends the length of time for the commencement of a hearing to take place regarding operating certificate revocation, suspension, or limitation. Furthermore, if DOH determines that a facility does not hold a valid operating certificate yet activities within the ACF are placing residents in danger, DOH can commence an immediate inspection alongside local law enforcement, if applicable. The bill stipulates that ACFs cannot admit new residents until the conditions are rectified and for any prospective residents, operators must post their facility's approved residency agreement on their website.

For over a decade, ACFs have witnessed these onerous requirements firsthand in the name of resident care quality and safety. While this may be the intent it does not come without consequence. ACFs are still required to submit a Health Emergency Response Data System (HERDS) report daily and, if late, will issue a violation. This stringent daily reporting deadline fails to promote quality and safety and detracts from resident care, adding to the time spent on administrative burden that operators and their staff could be spending directly on the residents themselves.

NYSHFA|NYSCAL supports legislative solutions that are in the best interest of residents and that pursue meaningful financial and regulatory reform. ***For these reasons, NYSHFA|NYSCAL opposes A.1910-A (Paulin)/S.1858-A (Rivera) and urges its rejection.***

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