



Legislation Text

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Res. No. 1226-A

Resolution calling upon the New York State Legislature to pass and the Governor to sign A.2743, in relation to violations of safety conditions in adult care facilities

By Council Members Chin and Palma

Whereas, The long-term residential care industry in New York State has had a long history of poor care, and numerous studies have shown that the same problems identified over the last few decades are still causing harm to residents in adult care facilities today, such as inadequate care and monitoring, inappropriate medication management, and neglect; and

Whereas, Adult care facilities, such as adult homes, enriched housing and assisted living programs, provide temporary or long-term, non-medical residential care services to adults who are substantially unable to live independently but who do not require a nursing home; and

Whereas, According to the New York State Department of Health (“DOH”), nearly 50 percent of all licensed adult care facilities in New York State (250 of 531) are located within New York City; and

Whereas, An investigative series by The New York Times in 2002 uncovered widespread abuse, inhumane conditions and suspicious deaths in adult homes in New York City; and

Whereas, The New York Times series detailed numerous instances of squalid and vermin-ridden rooms, assault of residents by workers, suicides of mentally ill residents due to lack of supervision and treatment, forcible treatment and surgical operations for Medicare and Medicaid fees and misappropriation of residents’ funds; and

Whereas, The New York State Office of the Attorney General filed a lawsuit in 2002 against the former

operators of a Brooklyn adult home for failing to provide for the health, safety and welfare of the residents, while forcing residents to live in deplorable conditions; and

Whereas, The lawsuit detailed numerous occasions where common areas and residents' rooms were infested with mice, cockroaches and flies and showed how operators diverted payments made by residents for room and board to entities the operators owned, while neglecting to pay for utilities and upkeep of the adult home; and

Whereas, A class action was brought in 2013 against New York State on behalf of individuals with serious mental illness residing in 23 adult homes in New York City for failure to provide services to residents in the most integrated setting appropriate to their needs; and

Whereas, Title 1 of Article 7 of the Social Services Law ("SSL") provides DOH with oversight and enforcement authority over adult care facilities in New York State; and

Whereas, According to a 2011 study of DOH inspection reports by the Long Term Care Community Coalition ("LTCCC"), although DOH identified regulatory violations in more than 5,000 inspections of adult care facilities between 2002 and 2010, only eight percent of those inspections led to enforcement actions; and

Whereas, Title 1 of Article 7 of the SSL permits DOH to assess civil penalties of up to \$1,000 per day, but not per violation, for regulatory violations that adult care facilities commit; and

Whereas, Under this penalty scheme, a facility with one violation and a facility with many violations are subject to the same penalty cap of \$1,000 per day; and

Whereas, The maximum penalty per day has not been raised since the law's inception in 1977; and

Whereas, Pursuant to Title 1 of Article 7 of the SSL, DOH is prohibited from imposing penalties if a facility either has corrected a violation within 30 days of receiving notice of the violation or is acting in accordance with a plan to correct the violation, unless the violation endangered or resulted in harm to residents;

and

Whereas, According to MFY Legal Services, the current framework provides no incentive for facilities to comply with DOH regulations and instead allows facilities to repeatedly violate the regulations with impunity; and

Whereas, According to the 2011 LTCCC study, even in the case of endangerment violations, only 74 percent of such violations led to the imposition of penalties by DOH between 2006 and 2010; and

Whereas, A.2743 introduced by Assembly Member Richard N. Gottfried and currently pending in the New York State Assembly, seeks to amend the SSL by strengthening DOH enforcement of applicable standards governing adult care facilities; and

Whereas, The bill permits DOH to assess penalties per violation, in addition to the existing daily penalties; and

Whereas, The bill increases the maximum penalty for a violation from \$1,000 to \$5,000; and

Whereas, The bill grants DOH discretion to issue a reduced penalty for a violation if a facility either corrects the violation within 30 days or is acting in accordance with a plan to correct the violation; and

Whereas, The bill also provides that rectifying a violation does not preclude the assessment of a penalty if the violation, although corrected, was a violation in the same category as a violation that DOH cited at the previous facility inspection; and

Whereas, The bill prohibits hospitals, residential health care facilities and other adult care facilities from making referrals for admissions to any adult care facility that currently has its operating certificate revoked, suspended or denied by DOH, has been placed on DOH's "Do Not Refer" list, or is subject to civil penalties for violating DOH regulations; and

Whereas, The bill prohibits any new admissions to an adult care facility facing an enforcement action if

DOH finds that a condition exists that is dangerous to the health, safety or welfare of any resident; and

Whereas, The bill eliminates an SSL provision that permits facilities receiving DOH's highest rating to undergo inspections only once every 18 months instead of annually, reserving the 18-month inspection schedule for facilities that DOH finds in compliance with applicable statutes and regulations in the most recent inspection; and

Whereas, The bill provides a strong incentive for adult care facilities to comply with DOH regulations and correct violations promptly; and

Whereas, The bill would help to protect the health, safety and quality of life of the large number of vulnerable residents in adult care facilities in New York City; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to sign A.2743, in relation to violations of safety conditions in adult care facilities.

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05/06/2016
MHL