

Assisted Living Brief for State Policy Makers

LTCCC has just released a major report, funded by the Robert Sterling Clark Foundation, on the state of assisted living care and oversight in New York State.

A few of the significant findings:

- Many adult homes, enriched housing and assisted living residences are violating the state's care rules and are either harming their residents or putting them at risk for harm and only a third have had an enforcement action taken.
- Of the 86 facilities found to have endangered their residents only 63 have been sanctioned; 20 cases are still pending, eight from three to five years ago.
- The three areas most cited by NY State have remained the same for nine years: resident care; medication and environmental issues.
- Medication issues are still rampant with almost a quarter of the medications citations repeats from previous years.
- Even after the investigations of the early 2000s and the succeeding state workgroups, the impacted homes (adult homes with 25 percent or more mentally disabled) still have many significant problems. DOH surveyors are now finding twice as many violations in the impacted homes as the non-impacted homes.

What Are Some Of The Reasons For Non-Compliance?

- Staff do not have a mandated training curriculum.
- Administrators are not licensed.
- Facilities are only required to give 3.75 hours of personal care per week to each resident. This is not enough time to care for all those residents on medications.

Why Are So Many Assisted Living Residents Under Protected?

- ***Some provisions in our social services law actually hinder enforcement.***
 - Many facilities violate basic standards repeatedly but are never even fined because the law does not permit the state to levy a fine if a facility fixes its problems within 30 days of their being identified (except for an endangerment violation).
 - In the (relatively) few cases where a fine is levied, state law permits only per day fines and only up to \$1000 a day fines for violations.
- ***The state fails to maintain sufficient legal staff to keep up with cases.*** It takes a great deal of time to adequately prepare for legal hearings when a facility fights an enforcement action. Yet the Department of Health has few attorneys dedicated to ensuring that enforcement of standards is upheld. As a result, a number of the cases in which violations are found by the Department languish.

What Needs To Be Done

To improve assisted living quality the Legislature should:

1. **Amend Section 461-a of the Social Services Law (Responsibility for Inspection and Supervision) to require an annual inspection of each facility.** Currently a facility receiving the "highest rating" may be inspected every 18 months rather than once a year. However, there is no definition of "highest rating." Furthermore, even facilities with few or no problems on one survey may deteriorate in a year and half. Given the vulnerability of the assisted living population and our increasing reliance on assisted living as a substitute for nursing home care, DOH should be furnished with sufficient inspectors and other resources to inspect annually.
2. **Amend Section 46-b of the Public Health Law (Assisted Living) to require better training of direct care staff in facilities, particularly for individuals dealing with medication, by mandating a specific curriculum.** Currently, the law only permits guidelines for a training program for direct care staff.
3. **Propose and pass legislation must be proposed and made into law to require licensure for administrators.** Running an adult home or assisted living residence, especially an impacted home or one that has special/enhanced needs certification, requires specific training and competencies.
4. **Propose and pass legislation must be proposed and made into law to require facilities to provide residents with additional hours of care per week for medication assistance in addition to the 3.75 now required.** Currently facilities are required to give all residents, whether on multiple medications or not, 3.75 hours of care per week. It is clear that more time is needed for help with medications, especially now that more and more residents are on medications.

To encourage strong, speedy enforcement the Legislature should:

1. **Amend Section 460-d of the Social Services Law (Enforcement Powers) in two ways similar to nursing home law:**
 - a. **Permit the levying of fines "per violation" in addition to the "per day" now permitted.** Currently fines can be levied only for each day a violation exists and has not been corrected. Facilities should be sanctioned for each violation they incur, not just the ones that are continuing. Even a one-time violation may cause harm to a resident.
 - b. **Remove the ability of a facility to escape a penalty for harming a resident or putting a resident at risk of harm by correcting within 30 days.** Currently a facility that has either corrected within 30 days of receipt of the citation or has put in place a correction plan may not be fined unless the citation is considered to have endangered a resident. This permits facilities to be out of compliance, correct and then be out of compliance again and again without being held accountable. This may account for the persistence of repeat violations.
2. **Amend Section 460-d of the Social Services Law (Enforcement Powers) to raise the amount a fine can be assessed.** \$1000 or less a day or even per violation (if number 2 above was adopted) may be too low a fine for some violations, especially for repeat violations.

3. **Allocate sufficient funds to ensure adequate inspection and enforcement in the DOH budget.** There are not enough inspectors to spend the time needed to interview the many residents they should be interviewing . There are insufficient staff attorneys to handle the large number of cases. As a result, serious problems continue. In addition to being directly deleterious to residents, inadequate funding of inspection and enforcement results is financially costly for the consumers and taxpayers who continue to pay for substandard services and its repercussions.

To improve assisted living quality the Department of Health should:

1. **Develop regulations to require better training of direct care staff in facilities, particularly for individuals dealing with medication, by mandating a specific curriculum.** Currently, the law only permits guidelines for a training program for direct care staff.
2. **Develop legislation to require licensure for administrators or the Department should require this through regulation.** Running an adult home or assisted living residence, especially an impacted home or one that has special/enhanced needs certification, requires specific training and competencies.
3. **Develop legislation to require facilities to provide residents with additional hours of care per week for medication assistance in addition to the 3.75 now required or the Department should do this through regulation.** Currently facilities are required to give all residents, whether on multiple medications or not, 3.75 hours of care per week. It is clear that more time is needed for help with medications, especially now that more and more residents are on medications

To encourage compliance the Department should:

Evaluate effectiveness of different approaches to encourage compliance. The Department has inserted a number of different provisions into facility stipulations to encourage compliance such as: suspending one-half the fine if the facility stays in compliance or adding an additional fine if the facility reoffends. DOH should evaluate whether these approaches have in fact led to better compliance.

To improve inspections the Department should:

1. **Require inspectors to speak with more residents.** Given that the purpose of the rules and regulations – to protect residents and ensure quality of services to them – resident input should be sought after and regarded as an essential component of the inspection process.
2. **Require investigations of complaints by residents to include interviews of large numbers of residents.** In order to encourage residents who are afraid of cooperating, inspectors should speak to a variety of residents when investigating a complaint.
3. **Train inspectors in how to interview residents and gain their trust.**
4. **Coordinate with both state and local ombudsmen.** Find out what types of complaints they are getting and focus surveys on those areas as well as resident services and environment (e.g. resident rights, discharge and personal funds and property).
5. **Evaluate consistency of survey process and outcomes and decisions to refer violations for legal action.**