A 4757-A  Gottfried  Same as  S 5908  RIVERA
Public Health Law
TITLE....Relates to reporting abuses of persons receiving care or services in residential care facilities
02/05/19  referred to health
05/14/19  amend and recommit to health
05/14/19  print number 4757a
05/21/19  reported referred to codes
06/19/19  reported referred to rules
06/20/19  reported
06/20/19  rules report cal.681
06/20/19  substituted by s5908
S05908  RIVERA
05/16/19  REFERRED TO HEALTH
06/18/19  COMMITTEE DISCHARGED AND COMMITTED TO RULES
06/18/19  ORDERED TO THIRD READING  CAL.1672
06/18/19  PASSED SENATE
06/18/19  DELIVERED TO ASSEMBLY
06/19/19  referred to codes
06/20/19  substituted for a4757a
06/20/19  ordered to third reading rules cal.681
06/20/19  passed assembly
06/20/19  returned to senate

S5908  RIVERA  Same as  A 4757-A  Gottfried
ON FILE: 05/16/19 Public Health Law
TITLE....Relates to reporting abuses of persons receiving care or services in residential care facilities
05/16/19  REFERRED TO HEALTH
06/18/19  COMMITTEE DISCHARGED AND COMMITTED TO RULES
06/18/19  ORDERED TO THIRD READING  CAL.1672
06/18/19  PASSED SENATE
06/18/19  DELIVERED TO ASSEMBLY
06/19/19  referred to codes
06/20/19  substituted for a4757a
06/20/19  ordered to third reading rules cal.681
06/20/19  passed assembly
06/20/19  returned to senate
STATE OF NEW YORK

4757--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to enhancing transparency and oversight of residential health care facilities

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

Section 1. Section 2803-d of the public health law, as amended by chapter 340 of the laws of 1980, subdivision 1 as amended by chapter 230 of the laws of 2004, paragraph (c) of subdivision 6 as amended by chapter 414 of the laws of 1986, paragraph (d) of subdivision 6 as amended by chapter 622 of the laws of 1980 and paragraph (g) of subdivision 6 as amended by chapter 717 of the laws of 1989, is amended to read as follows:

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

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.
2. In addition to those persons required to report suspected physical abuse, mistreatment or misappropriation of the property of persons receiving care or services in residential health care facilities, any other person may make such a report if he or she has reasonable cause to believe that a person receiving care or services has been physically abused, mistreated or neglected or subjected to the misappropriation of property in the facility.

3. Reports of suspected physical abuse, mistreatment or the misappropriation of property made pursuant to this section shall be made immediately by telephone and in writing within forty-eight hours to the department. The department shall provide forms, which shall be available to be downloaded from the department's website, which may be, but are not required to be, used for making the written reports. Written reports shall include the following information: the identity of the person making the report and where he can be found; the name and address of the residential health care facility; the names of the operator and administrator of the facility, if known; the name of the subject of the alleged physical abuse, mistreatment or neglect or misappropriation of property, if known; the nature and extent of the physical abuse, mistreatment or neglect or misappropriation of property; the date, time and specific location of the occurrence; the names of next of kin or sponsors of the subject of the alleged physical abuse, mistreatment or neglect or misappropriation of property, if known; and any other information which the person making the report believes would be helpful to further the purposes of this section. Such written reports shall be admissible in evidence, consistent with the provisions of paragraph (f) of subdivision six of this section, in any actions or proceedings relating to physical abuse, mistreatment or neglect or misappropriation of property of persons receiving care or services in residential health care facilities. Written reports made other than on forms supplied by the commissioner which contain the information required herein shall be treated as if made on such forms.

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

5. Notwithstanding the provisions of section two hundred thirty of this chapter, any licensed person who commits an act of physical abuse, mistreatment or neglect or misappropriation of property of a person receiving care or services in a residential health care facility and any licensed person required by this section to report an instance of suspected physical abuse, mistreatment or neglect or misappropriation of property of a person receiving care or services in a residential health care facility who fails to do so shall be guilty of unprofessional conduct in the practice of his or her profession.

6. (a) Upon receipt of a report made pursuant to this section, the commissioner shall cause an investigation to be made of the allegations contained in the report. Notification of the receipt of a report shall be made immediately by the department to the appropriate district attorney if a prior request in writing has been made to the department by the district attorney. At any time, if the department determines that there is a reasonable belief that a reported allegation may constitute a crime
A. 4757--A

under the laws of the state of New York or the United States, the department shall notify the appropriate law enforcement official or authority. Prior to the completion of the investigation by the department, [every] reasonable effort shall be made to notify, personally or by certified mail, any person under investigation for having committed an act of physical abuse, mistreatment [or], neglect or misappropriation of property. The commissioner shall make a written determination, based on the findings of the investigation, of whether or not sufficient credible evidence exists to sustain the allegations contained in the report or would support a conclusion that a person not named in such report has committed an act of physical abuse, neglect [or], mistreatment or misappropriation of property. A copy of such written determination, together with a notice of the right to a hearing as provided in this subdivision, shall be sent by registered or certified mail to each person who the commissioner has determined has committed an act of physical abuse, neglect [or], mistreatment or misappropriation of property. A letter shall be sent to any other person alleged in such report to have committed such an act stating that a determination has been made that there is not sufficient evidence to sustain the allegations relating to such person. A copy of each such determination and letter shall be sent to the facility in which the alleged incident occurred.

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

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

(d) At any time within thirty days of the receipt of a copy of a determination made pursuant to this section, a person named in such determination as having committed an act of physical abuse, neglect or misappropriation of property, or as having failed to report such an incident, may request in writing that the commissioner amend or expunge seal the record of such report, to the extent such report applies to such person, or such written determination. If the commissioner does not comply with such request within thirty days, such person shall have the right to a fair hearing to determine whether the record of the report or the written determination should be amended or expunged sealed on the grounds that the record is inaccurate or the determination is not supported by the evidence. The burden of proof in such hearing shall be on the department. Whenever information is expunged sealed, the commissioner shall notify any official notified
A. 4757--A

pursuant to paragraph (a) of this subdivision that the information has
been [expunged] sealed.

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

(f) Information relating to a report made pursuant to this section
shall be disclosed under any of the following conditions:
(i) pursuant to article six of the public officers law after [expunge-
ment] sealing or amendment, if any, is made in accordance with a hearing
conducted pursuant to this section, or at least forty-five days after a
written determination is made by the commissioner concerning such
report, whichever is later; provided, however, that the identity of the
person who made the report, the victim, or any other person named,
except a person who the commissioner has determined committed an act of
[physical] abuse, neglect [or], mistreatment or misappropriation of
property, shall not be disclosed unless such person authorizes such
disclosure;
(ii) as may be required by the penal law or any lawful order or
warrant issued pursuant to the criminal procedure law; or
(iii) to a person who has requested a hearing pursuant to this
section, information relating to the determination upon which the hear-
ing is to be conducted; provided, however, that the identity of the
person who made the report or any other person who provided information
in an investigation of the report shall not be disclosed unless such
person authorizes such disclosure.

(g) Where appropriate, the commissioner shall report instances of
physical] abuse, mistreatment [or], neglect or misappropriation of
property or the failure to report as required by this section, to the
appropriate committee on professional conduct for the professions
enumerated in subdivision one of this section when a determination has
been made after the commissioner has provided an opportunity to be
heard. The commissioner shall report instances of [physical] abuse,
mistreatment, neglect [or], misappropriation of [resident] property by a
nurse aide or other unlicensed individual and any brief statement by the
nurse aide or other unlicensed individual disputing the finding to the
nursing home nurse aide registry established pursuant to section twen-
ty-eight hundred three-j of this article when a determination has been
made after the commissioner has provided an opportunity to be heard.

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

8. No residential health care facility or officer or employee thereof
shall discharge or in any manner discriminate or retaliate against any
person in any residential health care facility, or any relative, or
sponsor thereof, or against any employee of the facility, or against any
other person because such person, relative, legal representative, spon-
or employee has made, or is about to make, a report pursuant to this
section, or has testified, or is about to testify, in any proceeding
relating to [physical] abuse, mistreatment [or], neglect or misappropri-
ation of property of a person receiving care or services in a residen-
tial health care facility. The supreme court may grant injunctive
relief to any person subject to such retaliation or discrimination. Any
violation of this subdivision shall be punishable pursuant to section twelve of this chapter.

9. No later than March fifteenth of every year the commissioner shall prepare and transmit to the governor and the legislature a report on the incidents of [physical] abuse, mistreatment [and neglect] and misappropriation of property of persons receiving care or services in residential health care facilities. No individual identifying information concerning any individual [or facility] subjected to abuse, mistreatment, neglect or misappropriation of property shall be disclosed in a report made pursuant to this subdivision, or in any other report, except information which would be available pursuant to article six of the public officers law as provided in this section. Nothing in this section shall be construed to prohibit the maintenance or disclosure of, or require the [expungement] sealing of, statistical data which would not reveal the identity of any person [or facility].

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

11. The commissioner shall adopt [rules and] regulations necessary to implement this section.

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

§ 2803-w. Independent quality monitors for residential health care facilities. The department may require a residential health care facility to contract with an independent quality monitor selected, and on reasonable terms determined, by the department, pursuant to a selection process conducted notwithstanding sections one hundred twelve or one hundred sixty-three of the state finance law, for purposes of monitoring the operator's compliance with a written and mandatory corrective plan and reporting to the department on the implementation of such corrective action, when the department has determined in its discretion that operational deficiencies exist at such facility that show:

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

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

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

Such written mandatory corrective plans shall include caps on administrative and general costs that are unrelated to providing direct care (including providing at least minimum staffing levels as determined by the department) or care coordination.

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

§ 2803-x. Requirements related to residential health care facilities and related assets. 1. The operator of a residential health care facility shall notify the commissioner of any common or familial ownership of any corporation, other entity or individual providing services to the operator or the facility.

2. The operator of a residential health care facility shall, on an annual basis, attest to the department, in a form determined by the department, to the accuracy of the information provided to the department under this section.
3. The operator of a residential health care facility may not enter into any arrangement to guarantee the debt or other obligation of a party which has not received establishment approval.

4. The operator of a residential health care facility shall notify the department at least ninety days prior to executing a letter of intent or other contractual agreement related to the sale, mortgaging, encumbrance, or other disposition of the real property of the facility.

5. In any instance where a residential health care facility is sold or otherwise transferred and used for a purpose which is not a health care purpose, the operator shall remit to the department an amount equivalent to the undepreciated value of capital assets for which the provider has been funded or reimbursed through Medicaid rate adjustments or otherwise funded or reimbursed with resources provided by the state for the purpose of improvement or transformation.

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

§ 2803-y. Provision of residency agreement. The operator of a residential health care facility shall provide to prospective residents who inquire about admission, and post on its website, a copy of the facility’s entire approved residency agreement, including the non-governmental rates charged to residents.

§ 5. Severability clause. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 6. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the commissioner of health shall make regulations and take other actions necessary to implement this act on that date.
NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A4757A

SPONSOR: Gottfried

TITLE OF BILL: An act to amend the public health law, in relation to enhancing transparency and oversight of residential health care facilities

PURPOSE OR GENERAL IDEA OF BILL:
To strengthen obligations to report abuse of nursing home residents, establish independent quality monitoring of written corrective action plans, and improve transparency relating to facility assets, service contracts, debt obligations, sale and notification to prospective residents.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 amends Public Health Law § 2803-d to expand the duty to all facility employees and contractors to report to DOH abuse (not just physical abuse), add theft from residents to the report obligation, and require reports not sustained to be sealed rather than expunged.

Section 2 adds a new PHL § 2803-w to authorize appointment of independent quality monitors, chosen by DOH, to assure compliance with nursing home written corrective action plans.

Section 3 adds a new PHL § 2803-x to require disclosure to DOH of any co-owners or contractors with familial ties to the operator, limit debt obligation, and require 90 day notice to the Department of sale, mortgage or any encumbrance of facility property. This section would also recoup state funds for capital investment if a facility is sold and then used for a purpose other than providing health care.

Section 4 adds a new PHL § 2803-y to require notification to prospective residents of residency agreement terms including rates charged to residents.

JUSTIFICATION:
Nursing home facilities, services and populations have changed in recent decades, and while New York's limits on corporate ownership of health facilities has shielded our facilities from egregious abuses publicized in other states, New York persistently ranks poorly in quality of care, survey and enforcement.

This bill is drawn from an earlier DOH program bill aimed at modernization, with additional features intended to enhance transparency and accountability and enforcement efficacy. These reforms are overdue. Our older adults and incapacitated residents deserve these protections.

PRIOR LEGISLATIVE HISTORY:
New bill

**FISCAL IMPLICATIONS:**
None

**EFFECTIVE DATE:**
120 days after it becomes law.