

# STATE OF NEW YORK

8489

2021-2022 Regular Sessions

## IN ASSEMBLY

November 17, 2021

Introduced by M. of A. KIM -- read once and referred to the Committee on Judiciary

AN ACT to amend the public health law and the state finance law, in relation to enacting the Justice for Nursing Home Victims act; to amend the public health law and the civil practice law and rules, in relation to the responsibilities of nursing homes during pandemics; making an appropriation therefor; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Justice for Nursing Home Victims act".

3 § 2. The public health law is amended by adding a new section 2808-f  
4 to read as follows:

5 § 2808-f. Nursing home resident COVID-19 compensation program. 1.  
6 Definitions. The following terms as used in this section shall have the  
7 following meanings, unless the context otherwise requires:

8 (a) "claimant" means an individual filing a claim for compensation  
9 under this section and who is a statutory beneficiary of an eligible  
10 nursing home resident.

11 (b) "collateral source" means all collateral sources, including life  
12 insurance, pension funds, death benefit programs, and payments by feder-  
13 al, state, or local governments related to injury or death as a result  
14 of having COVID-19.

15 (c) "eligible nursing home resident" means a decedent who was a resi-  
16 dent of a nursing home located in the state and COVID-19 caused or  
17 contributed to such resident's death, as documented on such resident's  
18 death certificate, or as certified by a physician, nurse practitioner,  
19 or physician's assistant currently in good standing in any state or the  
20 District of Columbia, or a physician, nurse practitioner, or physician's  
21 assistant authorized to practice in New York by executive order during

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

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1 the declared COVID-19 state of emergency who determines with a reason-  
2 able degree of medical certainty that COVID-19 caused or contributed to  
3 the resident's death. Eligible nursing home resident shall include any  
4 temporary resident of a nursing home who is receiving subacute rehabil-  
5 itation care or temporary rehabilitation care.

6 (d) "the declared COVID-19 state of emergency" shall refer to the  
7 period of the state of emergency declared by executive order two hundred  
8 two on March seventh, two thousand twenty in response to the outbreak of  
9 the novel coronavirus.

10 2. Compensation program. The department shall establish and maintain a  
11 nursing home resident COVID-19 compensation program to provide full  
12 compensation to any eligible nursing home resident or their statutory  
13 beneficiary.

14 3. Administration. (a) The commissioner shall establish a committee to  
15 administer the nursing home resident COVID-19 compensation program. Such  
16 committee shall:

17 (i) administer the compensation program established pursuant to this  
18 section;

19 (ii) promulgate all procedural and substantive rules for the adminis-  
20 tration of this section; and

21 (iii) employ and supervise hearing officers and other administrative  
22 personnel to perform the duties established pursuant to this section.

23 (b) The commissioner shall appoint a chairperson and no more than two  
24 vice-chairpersons. The commissioner shall fix the annual salary of the  
25 chairperson and shall be reimbursed for all expenses actually and neces-  
26 sarily incurred by him or her in the performance of his or her duties  
27 hereunder, within the amount made available by appropriation therefor.  
28 The other members of the committee shall receive no compensation for  
29 their services but shall be reimbursed for all expenses actually and  
30 necessarily incurred by them in the performance of their duties here-  
31 under within the amount made available by appropriation therefor.

32 (c) The committee shall establish a subcommittee, to be known as the  
33 eligibility committee. The eligibility committee shall be composed of  
34 seven members. Five members shall be appointed jointly by the temporary  
35 president of the senate and the speaker of the assembly of which at  
36 least two shall be mental health professionals and at least one shall be  
37 an infectious disease clinician, and two members shall be appointed by  
38 the governor. The eligibility committee, in consultation with the chair-  
39 person, shall determine in accordance with subdivision four of this  
40 section, the requirements needing to be met to be eligible for compen-  
41 sation under this section and hear and decide appeals brought pursuant  
42 to subdivision four of this section.

43 4. Determination of eligibility for compensation. (a) A claimant shall  
44 file a claim for compensation under this section with the committee. The  
45 claim shall be on the form developed pursuant to paragraph (b) of this  
46 subdivision and shall state the factual basis for eligibility for  
47 compensation and the amount of compensation sought.

48 (b) The committee shall develop a claim form that claimants shall use  
49 when submitting claims under paragraph (a) of this subdivision. The  
50 chairperson shall ensure that such form can be filed electronically, if  
51 determined to be practicable. Such form developed shall request:

52 (i) information from the claimant confirming the eligible nursing home  
53 resident's death as a result of contracting COVID-19 in a nursing home;

54 (ii) information regarding collateral sources of compensation the  
55 claimant has received or is entitled to receive as a result of such  
56 eligible nursing home resident's death; and

1 (iii) information from the claimant confirming they are a statutory  
2 beneficiary of the deceased eligible nursing home resident.

3 (c) The committee shall review a claim submitted pursuant to this  
4 subdivision and, with respect to a resident of the nursing home deter-  
5 mined if such resident is an eligible individual, and the amount of  
6 compensation to which the claimant is entitled to under this section.

7 (d) No later than one hundred twenty days after that date on which a  
8 claim is filed under paragraph (a) of this subdivision, the chairperson  
9 shall complete a review, make a determination, and provide written  
10 notice to the claimant, with respect to the matters that were the  
11 subject of the claim under review. Such a determination shall be final  
12 and not subject to judicial review, except that a claimant may appeal  
13 the chairperson's determination to the eligibility committee established  
14 under paragraph (c) of subdivision three of this section.

15 (e) The amount of the compensation awarded under this section in the  
16 case of a claimant shall be:

17 (i) a death benefit of two hundred fifty thousand dollars paid to the  
18 estate of the eligible nursing home resident; and

19 (ii) an additional death benefit of one hundred thousand dollars paid  
20 to the spouse and each dependent of the eligible nursing home resident.

21 (f) A claimant who files an appeal pursuant to paragraph (d) of this  
22 subdivision shall have the right to be represented by an attorney; the  
23 right to present evidence, including the presentation of witnesses and  
24 documents; and any other due process rights determined appropriate by  
25 the chairperson.

26 (g) The chairperson shall not include amounts for punitive damages in  
27 any compensation paid under a claim pursuant to this section.

28 (h) The chairperson shall, with respect to each claimant, award the  
29 full amount of the compensation determined pursuant to paragraph (e) of  
30 this subdivision and shall not impose a cap on the total amount of such  
31 compensation.

32 (i) A resident shall be determined to be an eligible nursing home  
33 resident for purposes of this section if the chairperson determines that  
34 such claimant, during the COVID-19 emergency period, was a resident of a  
35 New York state nursing home facility who died as a result of having  
36 COVID-19. A claimant shall be determined to be eligible to receive  
37 compensation under this program if they are a representative acting on  
38 behalf of a deceased eligible nursing home resident and are a statutory  
39 beneficiary of such resident.

40 (j) No more than one claim shall be submitted pursuant to this section  
41 with respect to compensation arising from the death of an eligible nurs-  
42 ing home resident.

43 5. Payments to eligible individuals. (a) No later than twenty days  
44 after the date on which a determination is made by the chairperson  
45 regarding the amount of compensation due to a claimant under this  
46 section, the commissioner of taxation and finance shall authorize  
47 payment to such claimant of the amount determined from the nursing home  
48 resident COVID-19 compensation fund established pursuant to section  
49 ninety-eight-d of the state finance law.

50 6. Regulations. No later than ninety days after the effective date of  
51 this section, the committee, in consultation with the commissioner,  
52 shall promulgate rules and regulations to carry out the provisions of  
53 this section, including rules and regulations with respect to:

54 (a) forms to be used in submitting claims under this section;

55 (b) the information to be included in such forms;

56 (c) procedures for hearing and the presentation of evidence;

(d) procedures to assist an individual in filing and pursuing claims under this section; and

(e) other matters determined appropriate by the commissioner.

7. Right of subrogation. The state shall have the right of subrogation with respect to any claim paid by the commissioner of taxation and finance pursuant to this section.

§ 3. Article 21 of the public health law is amended by adding a new title 9 to read as follows:

#### TITLE IX

#### RESPONSIBILITIES OF NURSING HOME DURING PANDEMICS

##### Section 2187. Definitions.

##### 2188. Responsibilities of nursing home during pandemics.

§ 2187. Definitions. The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

1. "Public health emergency" means any declared state of emergency made in response to an outbreak of an infectious disease and shall include the novel coronavirus outbreak, COVID-19.

2. "Nursing home" shall have the same meaning as defined in section twenty-eight hundred one of this chapter and shall include adult homes, enriched housing programs, assisted living residences and residential health care facilities as defined in such section.

3. "Resident" means a resident of a nursing home located in the state and an infectious disease caused or contributed to such resident's death, as documented on such resident's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant currently in good standing in any state or the District of Columbia, or a physician, nurse practitioner, or physician's assistant authorized to practice in New York by executive order during the declared public health emergency who determines with a reasonable degree of medical certainty that the infectious disease caused or contributed to the resident's death. Resident shall include any temporary resident of a nursing home who is receiving subacute rehabilitation care or temporary rehabilitation care.

4. "Domestic partner" shall have the same meaning as contained in section twenty-nine hundred sixty-one of this chapter.

§ 2188. Responsibilities of nursing home during pandemics. 1. Notwithstanding any law, rule, executive order, or regulation to the contrary, during a public health emergency every nursing home shall:

(a) comply with all state and federal statutes and regulations, executive orders and centers for disease control and prevention guidelines issued in response to such public health emergency; and

(b) follow all basic infection control protocols and guidelines relating to proper infection prevention and control.

2. In an action to recover damages from a nursing home for the wrongful death of a resident during a public health emergency, proof that a nursing home failed to comply with any of the following as they relate to the public health emergency shall be presumed to be negligence and the cause of the resident contracting the infectious disease:

(a) state or federal statutes or regulations;

(b) executive orders;

(c) centers for disease control and prevention guidelines; or

(d) basic infection control practices, relating to proper infection prevention and control practices.

3. The presumption established by this article shall only be rebutted by credible and reliable evidence which establishes that the resident's

1 own conduct was the sole proximate cause of the resident contracting  
2 such disease.

3 4. In addition to any other lawful element of damages that may be  
4 recoverable by reason of the death of the resident, the resident's  
5 surviving grandparents, parents, siblings, spouse, domestic partner,  
6 children and grandchildren shall be entitled to recover damages for  
7 their respective non-pecuniary injuries, including: grief or anguish  
8 caused by the resident's death, and for any disorder caused by such  
9 grief or anguish, loss of love, society, protection, comfort, companion-  
10 ship, and consortium resulting from the resident's death; and loss of  
11 nurture, guidance, counsel, advice, training, and education resulting  
12 from the resident's death. Any such claim for non-pecuniary injuries  
13 shall be brought by the residents' personal representative.

14 5. Any agreement purporting to limit the liability of a nursing home  
15 for damages or purporting to limit the remedies of the resident or those  
16 seeking damages pursuant to this article is contrary to the public poli-  
17 cy of this state and absolutely void.

18 6. Notwithstanding any provision of law to the contrary, all civil  
19 claims or causes of action brought by any person for damages against a  
20 nursing home for personal injuries or the death of a resident during the  
21 novel coronavirus outbreak, COVID-19, including an action pursuant to  
22 section twenty-eight hundred one-d of this chapter, may be commenced  
23 within two years after the effective date of this title.

24 § 4. The state finance law is amended by adding a new section 98-d to  
25 read as follows:

26 § 98-d. Nursing home resident COVID-19 compensation fund. 1. There is  
27 hereby established in the joint custody of the commissioner of taxation  
28 and finance and the comptroller a fund to be known as the "nursing home  
29 resident COVID-19 compensation fund".

30 2. The sources of funds shall consist of all moneys collected there-  
31 for, or moneys credited, appropriated or transferred thereto from the  
32 general fund, any other fund or source pursuant to law or any other  
33 moneys made available for the purposes of the fund. Nothing contained in  
34 this section shall prevent the state from receiving grants, gifts or  
35 bequests for the purposes of the fund as defined in this section and  
36 depositing them into the fund according to law.

37 3. Moneys within the nursing home resident COVID-19 compensation fund  
38 shall be made available to the commissioner of public health for the  
39 administration of the nursing home resident COVID-19 compensation  
40 program pursuant to section twenty-eight hundred eight-f of the public  
41 health law.

42 4. Moneys shall be payable from the fund on the audit and warrant of  
43 the comptroller on vouchers approved and certified by the commissioner  
44 of public health.

45 § 5. The civil practice law and rules is amended by adding a new  
46 section 217-b to read as follows:

47 § 217-b. Action to recover damages for personal injury or death of a  
48 resident at a nursing home during the COVID-19 state of emergency. 1.  
49 The following words and phrases when used in this section shall have,  
50 unless the context clearly indicates otherwise, the meanings given to  
51 them in this section:

52 (a) "Nursing home" shall have the same meaning as defined in section  
53 twenty-eight hundred one of the public health law and shall include  
54 adult homes, enriched housing programs, assisted living residences and  
55 residential health care facilities as defined in such section.

1 (b) "Resident" means a decedent who was a resident of a nursing home  
2 located in the state and COVID-19 caused or contributed to such resi-  
3 dent's death, as documented on such resident's death certificate, or as  
4 certified by a physician, nurse practitioner, or physician's assistant  
5 currently in good standing in any state or the District of Columbia, or  
6 a physician, nurse practitioner, or physician's assistant authorized to  
7 practice in New York by executive order during the declared COVID-19  
8 state of emergency who determines with a reasonable degree of medical  
9 certainty that COVID-19 caused or contributed to the resident's death.

10 Resident shall include any temporary resident of a nursing home who is  
11 receiving subacute rehabilitation care or temporary rehabilitation care.

12 (c) "The novel coronavirus pandemic (COVID-19)" shall refer to the  
13 period of the state of emergency declared by executive order two hundred  
14 two on March seventh, two thousand twenty in response to the outbreak of  
15 the novel coronavirus.

16 2. Notwithstanding any provision of law to the contrary, all civil  
17 claims or causes of action brought by any person for damages against a  
18 nursing home for personal injuries or the death of a resident during  
19 COVID-19, including an action pursuant to section twenty-eight hundred  
20 one-d of the public health law, may be commenced within two years after  
21 the effective date of this section.

22 § 6. The sum of four billion dollars (\$4,000,000,000) is hereby appro-  
23 priated to the nursing home resident COVID-19 compensation fund out of  
24 any moneys in the state treasury in the general fund to the credit of  
25 the state purposes account, not otherwise appropriated, and made imme-  
26 diately available, for the purpose of carrying out the provisions of  
27 this act. Such moneys shall be payable on the audit and warrant of the  
28 comptroller on vouchers certified or approved by the commissioner of  
29 health in the manner prescribed by law.

30 § 7. This act shall take effect immediately and shall expire and be  
31 deemed repealed January 1, 2035.