

STATE OF NEW YORK

4826

2021-2022 Regular Sessions

IN SENATE

February 12, 2021

Introduced by Sens. SERINO, AKSHAR, BORRELLO, BROOKS, JORDAN, ORTT --
read twice and ordered printed, and when printed to be committed to
the Committee on Health

AN ACT to amend the public health law, in relation to establishing an
emergency public health transparency and accountability council, and
providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The public health law is amended by adding a new article
2 27-L to read as follows:

ARTICLE 27-L

EMERGENCY PUBLIC HEALTH TRANSPARENCY AND ACCOUNTABILITY COUNCIL

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4
5 Section 2799-v. Emergency public health transparency and accountability
6 council.

7 § 2799-v. Emergency public health transparency and accountability
8 council. 1. There shall be established within the department an emergen-
9 cy public health transparency and accountability council to be composed
10 of eleven members, including the state long-term care ombudsman pursuant
11 to section two hundred eighteen of the elder law, ex officio, or a
12 designee, and ten members who shall be appointed by the governor, with
13 eight of these members appointed as follows:

14 (a) two members upon the recommendation of the temporary president of
15 the senate;

16 (b) two members upon the recommendation of the minority leader of the
17 senate;

18 (c) two members upon the recommendation of the speaker of the assem-
19 bly; and

20 (d) two members upon the recommendation of the minority leader of the
21 assembly.

22 Vacancies in the membership of such council shall be filled by the
23 appropriate appointing authority. The governor shall select a chair-

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

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1 person from among the members of the council. The members of the council
2 shall include retired health care providers with relevant experience,
3 including but not limited to administrative experience in a nursing home
4 or adult care facility, and who shall represent diverse geographic
5 regions of the state.

6 2. For as long as the governor's declaration of a state disaster emer-
7 gency, pursuant to executive order number two hundred two of two thou-
8 sand twenty, remains in effect, the emergency public health transparency
9 and accountability council shall submit daily reports pursuant to subdivi-
10 sion four of this section to the governor, the commissioner, the
11 director of the office for the aging, and each member of the state
12 legislature. Such reports may be in an electronic format.

13 3. (a) Within amounts appropriated therefor, the department shall
14 establish a statewide toll-free telephone number (a "hotline") to
15 receive reports of allegations of violations of any law, regulation or
16 executive order related to the COVID-19 outbreak, in nursing homes and
17 adult care facilities, or any conditions or actions that otherwise put
18 any health care provider or resident of a nursing home or adult care
19 facility at unnecessary risk. The hotline shall receive such allegations
20 twenty-four hours per day, seven days a week. The hotline shall accept
21 anonymous calls.

22 (b) When any allegation that could reasonably constitute a violation
23 of any law, regulation or executive order related to the COVID-19
24 outbreak in a nursing home or adult care facility, or any conditions or
25 actions that otherwise put any health care provider or resident of a
26 nursing home or adult care facility at unnecessary risk, is received by
27 the hotline, the hotline shall accept and immediately transmit notice of
28 the report to the emergency public health transparency and accountabil-
29 ity council.

30 (c) The commissioner is authorized to promulgate rules and regulations
31 to facilitate the implementation and operation of the hotline, including
32 but not limited to, procedures for timely and accurate referrals to the
33 council, as well as procedures for ensuring compliance with appropriate
34 confidentiality requirements.

35 (d) Allegations of violations received by the department pursuant to
36 subdivision two of this section, other than those categorized as unre-
37 lated to the COVID-19 outbreak, shall automatically be deemed a high
38 priority by the department for investigation, and the department shall
39 direct the commencement of an investigation by the appropriate agency,
40 board or officer of such allegation within twenty-four hours.

41 4. (a) The emergency public health transparency and accountability
42 council shall review reported allegations of violations and allegations
43 of conditions or actions that put health care providers or residents of
44 a nursing home or adult care facility at unnecessary risk which are
45 received by the hotline pursuant to subdivision three of this section
46 daily for as long as the governor's declaration of a state disaster
47 emergency, pursuant to executive order number two hundred two of two
48 thousand twenty, remains in effect. Provided, however, that the council
49 shall not be required to meet in person and may utilize available audi-
50 o-video technology.

51 (b) The council shall categorize allegations by, including but not
52 limited to, allegations of insufficient personal protective equipment,
53 allegations of insufficient COVID-19 testing for health care providers
54 or residents, allegations of failure to adhere to appropriate care
55 guidelines and allegations unrelated to the COVID-19 outbreak. After
56 reviewing each new allegation, the council shall compose a report of

1 such allegations, broken down by category, along with recommendations
2 for best practices and solutions to immediately address such violations.
3 Provided, however, that reports submitted to members of the state legis-
4 lature shall not include specific identifying information about the
5 allegations.

6 5. The members of the emergency public health transparency and
7 accountability council shall receive no compensation for their services,
8 but shall be allowed their actual and necessary expenses incurred in the
9 performance of their duties hereunder.

10 6. (a) Any person who in good faith makes a report of allegations of
11 violations of any law, regulation or executive order related to the
12 COVID-19 outbreak in nursing homes and adult care facilities, or any
13 conditions or actions that otherwise put any health care provider or
14 resident of a nursing home or adult care facility at unnecessary risk
15 pursuant to this section, including those who in good faith make a
16 report to the wrong recipient, shall have immunity from criminal liabil-
17 ity which might otherwise result by reason of such actions.

18 (b) Any person who reasonably and in good faith makes a report of
19 allegations of violations of any law, regulation or executive order
20 related to the COVID-19 outbreak in nursing homes and adult care facili-
21 ties, or any conditions or actions that otherwise put any health care
22 provider or resident of a nursing home or adult care facility at unnec-
23 essary risk pursuant to this section, shall have immunity from civil
24 liability which might otherwise result by reason of such actions.

25 § 2. This act shall take effect immediately; provided that the
26 provisions of this act shall expire and be deemed repealed on the day of
27 the expiration of the declared state of emergency relating to the novel
28 coronavirus (COVID-19); and provided, further, that the superintendent
29 of financial services shall notify the legislative bill drafting commis-
30 sion upon the occurrence of the expiration of the state disaster emer-
31 gency declared by executive order number 202 and any further amendments
32 or modifications, and as may be further extended pursuant to section 28
33 of the executive law, in order that the commission may maintain an accu-
34 rate and timely effective data base of the official text of the laws of
35 the state of New York in furtherance of effectuating the provisions of
36 section 44 of the legislative law and section 70-b of the public offi-
37 cers law.