S T A T E O F N E W Y O R K

10074

I N A S S E M B L Y

May 10, 2016

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

AN ACT to amend the public health law, in relation to visitation of residents in care facilities by family members

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F

VISITATION OF RESIDENTS IN NURSING HOMES, HOSPITALS AND RESIDENTIAL HEALTH CARE FACILITIES

SECTION 2900. DEFINITIONS.

2900-A. PETITION FOR VISITATION.

2900-B. RIGHT TO COMMUNICATION.

2900-C. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT RESIDENT'S HEALTH AND RESIDENCE.

S 2900. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE FOLLOWING MEANINGS:

1. "ADULT CHILD" MEANS AN INDIVIDUAL WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND WHO IS RELATED TO A RESIDENT BIOLOGICALLY, THROUGH ADOPTION, THROUGH THE MARRIAGE OR FORMER MARRIAGE OF A RESIDENT TO THE BIOLOGICAL PARENT OF THE ADULT CHILD, OR BY A JUDGMENT OF PARENTAGE ENTERED BY A COURT OF COMPETENT JURISDICTION.

2. "FAMILY MEMBER" MEANS ANY SPOUSE, DOMESTIC PARTNER, ADULT CHILD, ADULT GRANDCHILD, PARENT OR SIBLING OF A RESIDENT.

3. "RESIDENT" MEANS AN ADULT RESIDENT OF ANY OF THE FOLLOWING:

(A) A HOSPITAL, NURSING HOME OR RESIDENTIAL HEALTH CARE FACILITY PURSUANT TO SECTION TWO THOUSAND EIGHT HUNDRED ONE OF THIS CHAPTER;

(B) A LICENSED FACILITY PURSUANT TO ARTICLE SIXTEEN OF THE MENTAL HYGIENE LAW;

(C) ANY COMMUNITY RESIDENCE PURSUANT TO SECTION 1.03 OF THE MENTAL HYGIENE LAW; OR

(D) ANY HOME OR OTHER RESIDENTIAL DWELLING IN WHICH THE RESIDENT IS RECEIVING CARE AND SERVICES FROM ANY PERSON.

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

LBD15189-01-6

4. "VISITATION" MEANS AN IN-PERSON MEETING OR ANY TELEPHONIC, WRITTEN OR ELECTRONIC COMMUNICATION.

S 2900-A. PETITION FOR VISITATION. 1. ANY FAMILY MEMBER MAY PETITION A COURT TO COMPEL VISITATION WITH A RESIDENT.

2. IN RULING ON THE PETITION, THE COURT SHALL DETERMINE IF THE RESIDENT HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION. IF THE COURT DETERMINES THAT THE RESIDENT HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION, THE COURT SHALL GRANT REASONABLE VISITATION IF THE RESIDENT EXPRESSES A DESIRE FOR VISITATION.

3. NO COURT MAY ISSUE AN ORDER TO COMPEL VISITATION IF THE COURT FINDS ANY OF THE FOLLOWING:

(A) THE RESIDENT, WHILE HAVING THE CAPACITY TO EVALUATE AND COMMUNICATE DECISIONS REGARDING VISITATION, EXPRESSES A DESIRE TO NOT HAVE VISITATION WITH THAT FAMILY MEMBER;

(B) VISITATION BETWEEN THE PETITIONING FAMILY MEMBER AND THE RESIDENT IS NOT IN THE BEST INTEREST OF THE RESIDENT; OR

(C) THE RESIDENT LACKS THE CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION AND THE COURT DETERMINES THE RESIDENT WOULD NOT WANT VISITATION RIGHTS FOR THE FAMILY MEMBER BASED ON THE FOLLOWING FACTORS:

I. THE HISTORY OF THE RELATIONSHIP BETWEEN RESIDENT AND FAMILY MEMBER;

II. ANY STATEMENTS MADE BY THE RESIDENT EXPRESSING HIS OR HER DESIRE TO DENY VISITATION RIGHTS TO THE FAMILY MEMBER; OR

III. ANY POWER OF ATTORNEY OR ESTATE PLANNING DOCUMENT THAT EXPRESSES AN OPINION ON VISITATION WITH THE FAMILY MEMBER.

4. THE COURT SHALL SCHEDULE A HEARING ON THE PETITION NO LATER THAN THE SIXTIETH DAY AFTER THE DATE THE PETITION IS FILED WITH THE COURT. IF THE RESIDENT'S HEALTH IS IN SIGNIFICANT DECLINE OR IF THE RESIDENT'S DEATH MAY BE IMMINENT, THE COURT SHALL CONDUCT AN EMERGENCY HEARING ON THE PETITION UNDER THIS SECTION AS SOON AS PRACTICABLE AND NO LATER THAN TEN DAYS AFTER THE DATE THE PETITION IS FILED WITH THE COURT.

5. UPON A MOTION OR ON THE COURT'S OWN MOTION, IF THE COURT FINDS DURING A HEARING ON A PETITION UNDER THIS SECTION THAT A PERSON IS KNOWINGLY ISOLATING A RESIDENT, THE COURT SHALL ORDER THE PERSON TO PAY COURT COSTS AND REASONABLE ATTORNEY FEES OF THE PETITIONER UNDER THIS SECTION AND MAY ORDER OTHER APPROPRIATE REMEDIES. NO COSTS, FEES, OR OTHER SANCTIONS MAY BE PAID FROM THE RESIDENT'S FINANCES OR ESTATE.

6. THE PETITION MAY BE FILED IN THE SUPREME COURT OF ANY OF THE FOLLOWING COUNTIES:

(A) THE COUNTY IN WHICH THE RESIDENT RESIDES; OR

(B) THE COUNTY IN WHICH THE RESIDENT IS TEMPORARILY LIVING.

7. THE PETITION SHALL STATE, OR SET FORTH BY A DECLARATION ATTACHED TO THE PETITION, ALL OF THE FOLLOWING KNOWN TO THE PETITIONER AT THE TIME THE PETITION IS FILED:

(A) THE CONDITION OF THE RESIDENT'S HEALTH, TO THE EXTENT KNOWN TO THE PETITIONER;

(B) THE PROPOSED VISITATION TO BE CONSIDERED;

(C) THE EFFORTS MADE TO OBTAIN VISITATION WITH THE RESIDENT;

(D) THE DEFICIT OR DEFICITS, IF ANY, IN THE RESIDENT'S MENTAL FUNCTIONS THAT ARE IMPAIRED AND AN IDENTIFICATION OF A LINK BETWEEN THE DEFICIT OR DEFICITS AND THE RESIDENT'S INABILITY TO RESPOND KNOWINGLY AND INTELLIGENTLY TO QUERIES ABOUT THE REQUESTED VISITATION; AND

(E) THE NAMES AND ADDRESSES, SO FAR AS THEY ARE KNOWN TO THE PETITIONER, OF A SPOUSE OR DOMESTIC PARTNER AND ALL RELATIVES WITHIN THE SECOND DEGREE OF THE RESIDENT.

8. UPON FILING OF THE PETITION, THE COURT SHALL DETERMINE IF THE RESIDENT HAS RETAINED AN ATTORNEY TO REPRESENT HIM OR HER IN THE PROCEEDING OR IF THE RESIDENT PLANS TO RETAIN AN ATTORNEY.

9. (A) NOT LESS THAN FIFTEEN DAYS BEFORE THE HEARING, NOTICE OF THE TIME AND PLACE OF THE HEARING AND A COPY OF THE PETITION SHALL BE PERSONALLY SERVED ON THE RESIDENT, AND THE RESIDENT'S ATTORNEY, IF ANY;

(B) NOT LESS THAN FIFTEEN DAYS BEFORE THE HEARING, NOTICE OF THE TIME AND PLACE OF THE HEARING AND A COPY OF THE PETITION SHALL BE MAILED TO THE FOLLOWING PERSONS:

I. THE RESIDENT'S SPOUSE OR DOMESTIC PARTNER, IF ANY, AT THE ADDRESS STATED IN THE PETITION; AND

II. THE RESIDENT'S RELATIVES NAMED IN THE PETITION AT EACH RELATIVE'S ADDRESS STATED IN THE PETITION.

10. PRIOR TO THE HEARING, THE COURT INVESTIGATOR SHALL DO ALL OF THE FOLLOWING:

(A) CONDUCT INTERVIEWS OF THE FOLLOWING INDIVIDUALS:

I. THE RESIDENT;

II. ALL PETITIONERS;

III. THE RESIDENT'S SPOUSE OR DOMESTIC PARTNER AND RELATIVES WITHIN THE FIRST DEGREE; AND

IV. TO THE EXTENT PRACTICABLE, NEIGHBORS, AND, IF KNOWN, CLOSE FRIENDS OF THE RESIDENT.

(B) INFORM THE RESIDENT OF THE CONTENTS OF THE PETITION;

(C) DETERMINE WHETHER THE RESIDENT HAS THE CAPACITY TO CONSENT TO THE REQUESTED VISITATION;

(D) DETERMINE WHETHER THE RESIDENT DESIRES THE PROPOSED VISITATION;

(E) REPORT TO THE COURT IN WRITING, AT LEAST FIVE DAYS BEFORE THE HEARING, CONCERNING THE INFORMATION FROM PARAGRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION;

(F) MAIL, AT LEAST FIVE DAYS BEFORE THE HEARING, A COPY OF THE REPORT REFERRED TO IN PARAGRAPH (E) OF THIS SUBDIVISION TO ALL OF THE FOLLOWING:

I. THE ATTORNEY, IF ANY, FOR THE PETITIONER. IF THE PETITIONER IS REPRESENTING HIMSELF OR HERSELF, THEN TO THE PETITIONER;

II. THE ATTORNEY, IF ANY, FOR THE RESIDENT. IF THE RESIDENT IS REPRESENTING HIMSELF OR HERSELF, THEN TO THE RESIDENT;

III. THE SPOUSE, DOMESTIC PARTNER, AND RELATIVES WITHIN THE FIRST DEGREE OF THE RESIDENT, UNLESS THE COURT DETERMINES THAT THE MAILING WILL RESULT IN HARM TO THE RESIDENT; AND

IV. ANY OTHER PERSONS THE COURT ORDERS.

(G) IF THE COURT INVESTIGATOR HAS PERFORMED AN INVESTIGATION WITHIN THE PRECEDING TWELVE MONTHS AND FURNISHED A REPORT THEREON TO THE COURT, THE COURT MAY ORDER, UPON GOOD CAUSE SHOWN, THAT ANOTHER INVESTIGATION IS NOT NECESSARY OR THAT A MORE LIMITED INVESTIGATION MAY BE PERFORMED.

11. THE COURT IN WHICH THE PETITION IS FILED HAS CONTINUING JURISDICTION TO REVOKE OR MODIFY AN ORDER MADE UNDER THIS SECTION UPON A PETITION FILED, NOTICED, AND HEARD IN THE SAME MANNER AS AN ORIGINAL PETITION FILED UNDER THIS SECTION.

12. EACH COURT SHALL ASSESS EACH FAMILY MEMBER WHO FILES A PETITION FOR VISITATION IN THE COUNTY FOR AN INVESTIGATION OR REVIEW CONDUCTED BY A COURT INVESTIGATOR WITH RESPECT TO THE RESIDENT. THE COURT MAY ORDER REIMBURSEMENT TO THE COURT FOR THE AMOUNT OF THE ASSESSMENT, UNLESS THE COURT FINDS THAT ALL OR ANY PART OF THE ASSESSMENT WOULD IMPOSE A HARDSHIP ON THE FAMILY MEMBER FILING A PETITION FOR VISITATION.

S 2900-B. RIGHT TO COMMUNICATION. A RESIDENT HAS THE RIGHT TO RECEIVE AND TO REFUSE PRIVATE AND UNRESTRICTED COMMUNICATION INCLUDING THE RIGHT

TO RECEIVE AND TO REFUSE TO RECEIVE PERSONAL MAIL AND ELECTRONIC COMMUNICATIONS FROM ANY PERSON AND TO HAVE REASONABLE ACCESS TO A TELEPHONE FOR RECEIVING PRIVATE COMMUNICATIONS FROM ANY PERSON.

S 2900-C. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT RESIDENT'S HEALTH AND RESIDENCE. 1. THE GUARDIAN OF A RESIDENT SHALL AS SOON AS PRACTICABLE INFORM FAMILY MEMBERS IF:

(A) THE RESIDENT DIES;

(B) THE RESIDENT IS ADMITTED TO A MEDICAL FACILITY FOR ACUTE CARE FOR A PERIOD OF THREE DAYS OR MORE;

(C) THE RESIDENT'S RESIDENCE HAS CHANGED; OR

(D) THE RESIDENT IS STAYING AT A LOCATION OTHER THAN THE RESIDENT'S RESIDENCE FOR A PERIOD THAT EXCEEDS ONE CALENDAR WEEK.

2. THE GUARDIAN MUST MAKE A REASONABLE EFFORT TO NOTIFY EACH FAMILY MEMBER BY MAILING A COPY OF THE NOTICE TO EACH FAMILY MEMBER'S LAST KNOWN RESIDENCE. THE COURT SHALL RELIEVE THE GUARDIAN OF THE DUTY TO PROVIDE NOTICE ABOUT A RESIDENT TO A FAMILY MEMBER UNDER THIS SECTION IF THE COURT FINDS:

I. THE MOTION INCLUDES A WRITTEN REQUEST FROM A FAMILY MEMBER ELECTING TO NOT RECEIVE THE NOTICE;

II. THE GUARDIAN WAS UNABLE TO LOCATE THE FAMILY MEMBER AFTER MAKING REASONABLE EFFORTS TO DISCOVER AND LOCATE THE FAMILY MEMBER;

III. THE GUARDIAN WAS ABLE TO LOCATE THE FAMILY MEMBER, BUT WAS UNABLE TO ESTABLISH COMMUNICATION WITH THE FAMILY MEMBER AFTER MAKING REASONABLE EFFORTS TO ESTABLISH COMMUNICATION;

IV. A PROTECTIVE ORDER WAS ISSUED AGAINST THE FAMILY MEMBER TO PROTECT THE RESIDENT;

V. A COURT OR OTHER STATE AGENCY HAS FOUND THAT THE FAMILY MEMBER ABUSED, NEGLECTED, OR EXPLOITED THE RESIDENT; OR

VI. NOTICE IS NOT IN THE BEST INTEREST OF THE RESIDENT.

3. IN THE CASE OF THE RESIDENT'S DEATH, THE GUARDIAN SHALL INFORM FAMILY MEMBERS OF ANY FUNERAL ARRANGEMENTS AND THE LOCATION OF THE RESIDENT'S FINAL RESTING PLACE.

4. A FAMILY MEMBER ENTITLED TO NOTICE UNDER THIS SECTION MAY ELECT TO NOT RECEIVE THE NOTICE BY PROVIDING A WRITTEN REQUEST TO THAT EFFECT TO THE GUARDIAN. A GUARDIAN SHALL FILE ANY WRITTEN REQUEST RECEIVED BY THE GUARDIAN UNDER THIS SUBDIVISION WITH THE COURT.

S 2. This act shall take effect immediately.