

# STATE OF NEW YORK

8264

## IN SENATE

May 1, 2020

Introduced by Sen. SERINO -- 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 Assembly, do enact as follows:

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

### ARTICLE 27-M

#### EMERGENCY PUBLIC HEALTH TRANSPARENCY AND ACCOUNTABILITY COUNCIL

#### Section 2799-v. Emergency public health transparency and accountability council.

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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-  
24 person from among the members of the council. The members of the council  
25 shall include retired health care providers with relevant experience,  
26 including but not limited to administrative experience in a nursing home

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

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1 or adult care facility, and who shall represent diverse geographic  
2 regions of the state.

3 2. For as long as the governor's declaration of a state disaster emer-  
4 gency, pursuant to executive order number 202 of 2020, remains in  
5 effect, the emergency public health transparency and accountability  
6 council shall submit daily reports pursuant to subdivision four of this  
7 section to the governor, the commissioner, the director of the office  
8 for the aging, and each member of the state legislature. Such reports  
9 may be in an electronic format.

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

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

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

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

38 4. (a) The emergency public health transparency and accountability  
39 council shall review reported allegations of violations and allegations  
40 of conditions or actions that put health care providers or residents of  
41 a nursing home or adult care facility at unnecessary risk which are  
42 received by the hotline pursuant to subdivision three of this section  
43 daily for as long as the governor's declaration of a state disaster  
44 emergency, pursuant to executive order number 202 of 2020, remains in  
45 effect. Provided, however, that the council shall not be required to  
46 meet in person and may utilize available audio-video technology.

47 (b) The council shall categorize allegations by, including but not  
48 limited to, allegations of insufficient personal protective equipment,  
49 allegations of insufficient COVID-19 testing for health care providers  
50 or residents, allegations of failure to adhere to appropriate care  
51 guidelines and allegations unrelated to the COVID-19 outbreak. After  
52 reviewing each new allegation, the council shall compose a report of  
53 such allegations, broken down by category, along with recommendations  
54 for best practices and solutions to immediately address such violations.  
55 Provided, however, that reports submitted to members of the state legis-

1 lature shall not include specific identifying information about the  
2 allegations.

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

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

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

22 § 2. This act shall take effect immediately and shall expire and be  
23 deemed repealed September 1, 2021.