

STATE OF NEW YORK

3131--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. KIM, STECK, HEVESI, EPSTEIN, L. ROSENTHAL, NIOU, BICHOTTE HERMELYN, GLICK, THIELE, GRIFFIN, MONTESANO, JACOBSON, DICKENS, McMAHON, SEAWRIGHT, STERN, BARRON, ROZIC, BYRNES, GOTTFRIED, BARNWELL, SOLAGES, NORRIS, McDONOUGH, ZINERMAN, ABINANTI, SANTABARBARA, MITAYNES, LUPARDO, JACKSON, DeSTEFANO, LAWLER, HAWLEY, SALKA, BYRNE, ANDERSON, TAGUE, SIMPSON, KELLES, WALLACE, DINOWITZ, FORREST, BLANKENBUSH -- Multi-Sponsored by -- M. of A. SILLITTI -- 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 establishing requirements for residential health care facilities during a state disaster emergency involving a disease outbreak

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

Section 1. Section 2803 of the public health law is amended by adding two new subdivisions 13 and 14 to read as follows:

13. In the event of a state disaster emergency as defined under section twenty of the executive law that involves a disease outbreak, the department shall issue guidance to residential health care facilities regarding precautions and procedures to take to protect and maintain the health and safety of residents and staff during the course of an outbreak, and to prevent widespread transmission of a communicable disease. Such guidance shall include but not be limited to: restrictions on visitation and entry into the facility by non-essential personnel, staff education and training on symptoms and transmission, screening of all staff prior to the commencement of a work shift, daily inventory and reporting to the department of personal protective equipment and other supplies, hand hygiene and environmental disinfection, mask use and source control, resident education and monitoring, placement of residents with confirmed or suspected infections, notification

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

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1 to the lawful representatives of affected residents of a confirmed or
2 suspected infection, informing and educating the lawful representative
3 of the availability of alternative placement options, including but not
4 limited to home care services authorized under article thirty-six of
5 this chapter, and making available means of communication for residents
6 to communicate with the lawful representative at least once a day, or
7 otherwise as is practicable. Upon issuance of such guidance, the depart-
8 ment shall disseminate it to all administrators of residential
9 healthcare facilities and publish it on the department's website no less
10 than forty-eight hours after a state disaster emergency has been
11 declared.

12 14. In the event of a state disaster emergency as defined under
13 section twenty of the executive law that involves a disease outbreak,
14 the department may utilize public health emergency appropriations for
15 the purpose of securing alternative placement options, including but not
16 limited to home care services under article thirty-six of this chapter,
17 for residents of residential health care facilities for the duration of
18 the state disaster emergency.

19 § 2. The public health law is amended by adding a new section 2808-e
20 to read as follows:

21 § 2808-e. Residential health care facility reporting requirements. 1.
22 The commissioner of health shall, in the event of an outbreak of a
23 communicable disease or infection, order all residential health care
24 facilities to report the following information on a daily basis to the
25 department and the local health department in the county in which the
26 facility is based: the number of residents or staff with suspected or
27 confirmed infection of the disease; the number of residents with
28 suspected or confirmed infection resulting in hospitalization or death;
29 and the number of fatalities following hospitalization resulting from
30 suspected or confirmed infection of the disease. The department shall
31 aggregate and publish de-identified data, submitted by residential
32 health care facilities under this section on a weekly basis, in a manner
33 that is consistent with the federal Health Insurance Portability and
34 Accountability Act, as amended, and any regulations promulgated there-
35 under.

36 2. For any residential health care facility that experiences a fatali-
37 ty rate of at least five percent of the resident census as a result of a
38 state disaster emergency that involves a disease outbreak as well as
39 strong indications that the infection rate within the facility is
40 increasing exponentially, or otherwise attributable to a novel pathogen
41 or known pathogen with a high lethality rate, the commissioner shall
42 establish daily communications with such facility to determine and
43 provide, to the extent practicable, all necessary supplies, equipment,
44 personnel and personnel training to ensure the facility is adequately
45 prepared to ensure the health and safety of the residents. If, in the
46 event that the fatality and infection rate remains the same or increases
47 over a fifteen day period from the commissioner's initial contact, due
48 to negligent and willful actions of the established operator, which may
49 include, but not be limited to, a willful failure to comply with proce-
50 dures or utilization of supplies and equipment provided, the commission-
51 er shall appoint a temporary operator, subject to the provisions of
52 section twenty-eight hundred six-a of this article to assume sole
53 control and sole responsibility for the operations of the facility until
54 the residents of the facility (a) may be safely transferred to another
55 residential health care facility or (b) transferred to a community-based
56 setting where home care services are delivered under article thirty-six

1 of this chapter, provided that, such residents qualifying for medical
2 assistance shall be deemed eligible for immediate need under subdivision
3 twelve of section three hundred sixty-six-a of the social services law.
4 If the commissioner has a reasonable belief of imminent harm to the
5 public, the commissioner may initiate receivership subject to section
6 twenty-eight hundred ten of this article.

7 § 3. Paragraphs (b) and (c) of subdivision 1 of section 2806-a of the
8 public health law, as added by section 50 of part E of chapter 56 of the
9 laws of 2013, are amended to read as follows:

10 (b) "established operator" shall mean the operator of an adult care
11 facility, a general hospital ~~[or]~~, a diagnostic and treatment center
12 that has been established and issued an operating certificate as such
13 pursuant to this article, or a residential health care facility for the
14 purposes of section twenty-eight hundred eight-e of this article;

15 (c) "facility" shall mean (i) a general hospital or a diagnostic and
16 treatment center that has been issued an operating certificate as such
17 pursuant to this article; ~~[or]~~ (ii) an adult care facility; or (iii) a
18 residential health care facility for the purposes of section twenty-
19 eight hundred eight-e of this article;

20 § 4. This act shall take effect immediately; provided however that the
21 amendments made to section 2806-a of the public health law made by
22 section three of this act shall not affect the repeal of such section
23 and shall be deemed repealed therewith.