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:

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

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

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

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

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

(c) "eligible nursing home resident" means a decedent who was a resident of a nursing home located in the state and COVID-19 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

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

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the declared COVID-19 state of emergency who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the resident's death. Eligible nursing home resident shall include any temporary resident of a nursing home who is receiving subacute rehabilitation care or temporary rehabilitation care.

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

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

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

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

(ii) promulgate all procedural and substantive rules for the administration of this section; and

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

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

(c) The committee shall establish a subcommittee, to be known as the eligibility committee. The eligibility committee shall be composed of seven members. Five members shall be appointed jointly by the temporary president of the senate and the speaker of the assembly of which at least two shall be mental health professionals and at least one shall be an infectious disease clinician, and two members shall be appointed by the governor. The eligibility committee, in consultation with the chairperson, shall determine in accordance with subdivision four of this section, the requirements needing to be met to be eligible for compensation under this section and hear and decide appeals brought pursuant to subdivision four of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

5. Any agreement purporting to limit the liability of a nursing home for damages or purporting to limit the remedies of the resident or those seeking damages pursuant to this article is contrary to the public policy of this state and absolutely void.

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

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

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

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

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

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

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

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

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

(b) "Resident" means a decedent who was a resident of a nursing home located in the state and COVID-19 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 COVID-19 state of emergency who determines with a reasonable degree of medical certainty that COVID-19 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.

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

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

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

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