STATE OF NEW YORK

9077

IN ASSEMBLY

January 31, 2022

Introduced by M. of A. KIM -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the responsibilities of nursing homes during pandemics; 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. 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 nurs-

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

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ing 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.

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 This act shall take effect immediately and shall expire and be deemed repealed January 1, 2035.