STATE OF NEW YORK

4826

2021-2022 Regular Sessions

IN SENATE

February 12, 2021

Introduced by Sens. SERINO, AKSHAR, BORRELLO, BROOKS, JORDAN, ORTT -- 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:

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

ARTICLE 27-L

EMERGENCY PUBLIC HEALTH TRANSPARENCY AND ACCOUNTABILITY COUNCIL

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

§ 2799-v. Emergency public health transparency and accountability council. 1. There shall be established within the department an emergency public health transparency and accountability council to be composed of eleven members, including the state long-term care ombudsman pursuant to section two hundred eighteen of the elder law, ex officio, or a designee, and ten members who shall be appointed by the governor, with eight of these members appointed as follows:

(a) two members upon the recommendation of the temporary president of the senate;

(b) two members upon the recommendation of the minority leader of the senate;

(c) two members upon the recommendation of the speaker of the assembly; and

(d) two members upon the recommendation of the minority leader of the assembly.

Vacancies in the membership of such council shall be filled by the appropriate appointing authority. The governor shall select a chair-

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

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person from among the members of the council. The members of the council shall include retired health care providers with relevant experience, including but not limited to administrative experience in a nursing home or adult care facility, and who shall represent diverse geographic regions of the state.

2. For as long as the governor's declaration of a state disaster emergency, pursuant to executive order number two hundred two of two thousand twenty, remains in effect, the emergency public health transparency and accountability council shall submit daily reports pursuant to subdivision four of this section to the governor, the commissioner, the director of the office for the aging, and each member of the state legislature. Such reports may be in an electronic format.

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

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

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

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

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

(b) The council shall categorize allegations by, including but not limited to, allegations of insufficient personal protective equipment, allegations of insufficient COVID-19 testing for health care providers or residents, allegations of failure to adhere to appropriate care guidelines and allegations unrelated to the COVID-19 outbreak. After reviewing each new allegation, the council shall compose a report of

such allegations, broken down by category, along with recommendations for best practices and solutions to immediately address such violations. Provided, however, that reports submitted to members of the state legislature shall not include specific identifying information about the allegations.

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

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

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

§ 2. This act shall take effect immediately; provided that the provisions of this act shall expire and be deemed repealed on the day of the expiration of the declared state of emergency relating to the novel coronavirus (COVID-19); and provided, further, that the superintendent of financial services shall notify the legislative bill drafting commission upon the occurrence of the expiration of the state disaster emergency declared by executive order number 202 and any further amendments or modifications, and as may be further extended pursuant to section 28 of the executive law, in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.