

STATE OF NEW YORK

8285

IN SENATE

February 9, 2022

Introduced by Sens. TEDISCO, SERINO, ORTT, AKSHAR, BORRELLO, JORDAN, OBERACKER, O'MARA, PALUMBO, RITCHIE, STEC -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT directing the commissioner of health to conduct an investigation of the department's performance, compliance and enforcement of applicable state laws, rules, regulations, and directives or executive orders, with respect to mitigating the impact of COVID-19 in nursing homes, adult care facilities, and assisted living residences; and providing for the repeal of such provisions upon the expiration thereof

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

1 Section 1. 1. As used in this act, the following terms shall be
2 defined as follows:
3 a. "Department" shall mean the department of health of the state of
4 New York;
5 b. "Commissioner" shall mean the commissioner of health of the state
6 of New York;
7 c. "Nursing home" shall have the same meaning as such term is defined
8 in subdivision 2 of section 2801 of the public health law;
9 d. "Adult care facility" shall have the same meaning as defined in
10 subdivision 21 of section 2 of the social services law;
11 e. "Assisted living residence" shall have the same meaning as defined
12 in subdivision 1 of section 4651 of the public health law, as added by
13 chapter 2 of the laws of 2004;
14 f. "Step-down facility" shall refer to a COVID-19 only nursing home,
15 adult care facility, or assisted living residence established by the
16 department of health, consistent with executive order 202.81 of 2020 to
17 receive medically stable, but persistently positive COVID-19 nursing
18 home, adult care facility, or assisted living residence eligible
19 patients transferred from an article 28 licensed facility until such
20 time the patient tests negative for COVID-19, or is deemed medically
21 safe for discharge by a qualified licensed health care professional
22 under the education law;

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

LBD14625-03-2

1 g. "Direct care worker" shall mean any employee of a nursing home,
2 adult care facility, or assisted living residence who is responsible for
3 patient handling or patient assessment as a regular or incidental part
4 of his or her employment, including any licensed or unlicensed health
5 care worker; and

6 h. "Hospital" shall have the same meaning as defined by section 2801
7 of the public health law, and shall include any temporary health care
8 facility in New York state established by the state or federal govern-
9 ment in response to the COVID-19 pandemic or any other pandemic-related
10 response.

11 2. The commissioner shall conduct an investigation of the department
12 with respect to such agency's performance, as well as compliance and
13 enforcement of applicable state laws, rules, regulations, and directives
14 or executive orders issued by the governor pursuant to section 29-a of
15 the executive law, including any guidance or advisory issued by the
16 department with respect to its compliance with United States centers for
17 Medicaid and Medicare services and centers for disease control and
18 prevention guidance and recommendations, with respect to mitigating the
19 impact of COVID-19 in nursing homes, adult care facilities, and assisted
20 living residences during the time period beginning March 1, 2020, and
21 ending August 24, 2021. Such investigation shall include, but not be
22 limited to, a review of:

23 a. state funding for nursing homes, adult care facilities, and
24 assisted living residences including, but not limited to, the adequacy
25 of state Medicaid rates and additional state payments for supplemental
26 security income benefits, as well as a regional analysis of its distrib-
27 ution;

28 b. requirements and enforcement of infection prevention and control
29 policies, including those implemented in response to the COVID-19 state
30 disaster emergency;

31 c. a regional analysis of the availability of qualified staff, with a
32 focus on identifying geographical areas with shortages and how the state
33 can increase the number of qualified direct care workers;

34 d. patient care and health outcomes in state run nursing homes, adult
35 care facilities, and assisted living residences;

36 e. an accounting of resources following the outbreak of COVID-19,
37 including, but not limited to, staff, personal protective equipment,
38 testing capabilities and COVID-19 vaccines, as well as a regional analy-
39 sis of their distribution;

40 f. the efficacy of step-down facilities, including the number of resi-
41 dents treated at such facilities, the locations of such facilities,
42 where residents were transferred from prior to entering such facility
43 and discharged to upon leaving such facility, and the potential for
44 growth;

45 g. the physical and mental health impact on residents of nursing
46 homes, adult care facilities, and assisted living residences due to
47 isolation and lack of visitation;

48 h. the impact the Advisory on Hospital Discharges and Admissions to
49 Nursing Homes issued by the New York state Department of Health on March
50 25, 2020 had on residents of nursing homes, adult care facilities, and
51 assisted living residences;

52 i. compliance with the provisions of article 6 of the public officers
53 law;

54 j. a new audit of COVID-19 cases in nursing homes, adult care facili-
55 ties, and assisted living residences, including, but not limited to:

1 (i) the total number of confirmed cases of COVID-19 and deaths result-
2 ing from COVID-19 in nursing homes, adult care facilities, and assisted
3 living residences;

4 (ii) the total number of residents with a confirmed case of COVID-19
5 transferred from a nursing home, adult care facility, or assisted living
6 residence to a hospital in New York state;

7 (iii) the total number of confirmed deaths of residents transferred
8 from a nursing home, adult care facility, or assisted living residence
9 to a hospital resulting from a confirmed case of COVID-19; and

10 (iv) the total number of residents with a confirmed case of COVID-19
11 discharged from a hospital to a nursing home, adult care facility, or
12 assisted living residence.

13 3. Within ninety days of the effective date of this act, the commis-
14 sioner shall publish the results of such investigation publicly on the
15 department's website, along with a brief description of the results
16 thereof, as well as recommendations on areas to improve state pandemic
17 preparedness, response and reporting with regards to nursing homes,
18 adult care facilities, and assisted living residences, and a pandemic
19 response action plan for future disease outbreaks, including any statu-
20 tory changes and budgetary allocations necessary for the implementation
21 of such plan, and shall submit a copy to the chairs and ranking minority
22 members of the senate finance and health committees and the assembly
23 ways and means and health committees.

24 § 2. This act shall take effect immediately and shall expire and be
25 deemed repealed January 15, 2024.