

# STATE OF NEW YORK

3879

2021-2022 Regular Sessions

## IN SENATE

February 1, 2021

Introduced by Sens. GRIFFO, BORRELLO -- 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 providing a  
patient of a residential health care facility essential caregiver  
visitation during the COVID-19 state disaster emergency

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

1 Section 1. The public health law is amended by adding a new section  
2 2801-h to read as follows:

3 § 2801-h. Essential caregiver visitation during COVID-19. 1. The  
4 following words or phrases, as used in this section, shall have the  
5 following meanings, unless the context otherwise requires:

6 (a) "Resident" shall mean a patient residing at a residential health  
7 care facility.

8 (b) "Essential caregiver" shall mean an individual or individuals  
9 designated by a resident as their primary caregiver to aid and provide  
10 care for such resident.

11 (c) "Primary caregiver" shall mean an individual or individuals who  
12 regularly visited, prior to COVID-19, a resident to aid and provide care  
13 to such resident.

14 (d) "Regularly visit" shall mean an individual or individuals who  
15 visits a resident of residential health care facility at least twice a  
16 week. If more than one individual is providing aid and care to a resi-  
17 dent, such visitation days may be split among the individuals.

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

22 (f) "Phase zero" shall mean a residential health care facility with a  
23 currently active outbreak of the novel coronavirus.

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

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1 (g) "Phase one" shall mean a residential health care facility who  
2 never had an outbreak of the novel coronavirus or who has concluded an  
3 outbreak of the novel coronavirus and fourteen days have passed since  
4 the region such facility is located has moved into phase one of reopen-  
5 ing pursuant to the New York forward initiative as a response to COVID-  
6 19.

7 (h) "Phase two" shall mean a residential health care facility who  
8 never had an outbreak of the novel coronavirus or who has concluded an  
9 outbreak of the novel coronavirus and fourteen days have passed since  
10 the region such facility is located has moved into phase two of reopen-  
11 ing pursuant to the New York forward initiative as a response to COVID-  
12 19.

13 (i) "Phase three" shall mean a residential health care facility who  
14 never had an outbreak of the novel coronavirus or who has concluded an  
15 outbreak of the novel coronavirus and fourteen days have passed since  
16 the region such facility is located has moved into phase three of  
17 reopening pursuant to the New York forward initiative as a response to  
18 COVID-19.

19 2. A resident may receive essential caregiver visitation during  
20 COVID-19, unless such resident:

21 (i) is in a fourteen-day quarantine period for testing positive for  
22 the novel coronavirus and has not yet met the criteria for the discon-  
23 tinuation of the isolation; or

24 (ii) the resident is symptomatic with symptoms related to the novel  
25 coronavirus.

26 3. Visitation by an essential caregiver during COVID-19 shall be  
27 utilized to provide a resident with care in the same manner as prior to  
28 COVID-19. Such care shall include, but not be limited to assisting a  
29 resident with feeding, hygiene, mobility, dressing, emotional support,  
30 medication, communicating with the residential health care facility  
31 staff regarding the needs of such resident, reporting any suspected  
32 abuse or neglect on behalf of such resident or requesting additional  
33 care or a change in the current care plan if necessary.

34 4. The residential health care facility's administrative director in  
35 consultation with the director of nursing, director of social services  
36 and any other necessary facility staff, shall develop policies and  
37 establish procedures for how to designate and utilize essential caregiv-  
38 ers during COVID-19.

39 5. A resident shall consult with the necessary residential health care  
40 facility staff to determine and designate a primary caregiver to be such  
41 resident's essential caregiver. Such determination shall take into  
42 consideration:

43 (a) who the resident desires as a primary caregiver;

44 (b) the resident's unique situation; and

45 (c) the past involvement of the potential primary caregiver with such  
46 resident.

47 6. The residential health care facility shall work with a designated  
48 essential caregiver to establish a schedule to accommodate the essential  
49 caregiver's schedule and meet the needs of the resident. Such schedule  
50 shall take into consideration the number of essential caregivers in the  
51 residential health care facility at the same time and which phase the  
52 residential health care facility has obtained. A residential health care  
53 facility in phase zero shall allow an essential caregiver to schedule  
54 one visit per week not to exceed a total of two hours per week. A resi-  
55 dential health care facility in phase one or phase two shall allow an  
56 essential caregiver to schedule up to two visits per week not to exceed

1 a total of four hours per week. A residential health care facility in  
2 phase three shall allow scheduling of an essential caregiver under such  
3 facilities regular procedures for visitation. Residential health care  
4 facility may establish time limits as needed to keep residents of such  
5 facility safe.

6 7. Residential health care facilities shall create and implement  
7 procedures to ensure essential caregiving visits are conducted as safely  
8 as possible and shall include but not be limited to infection control  
9 practices, hand washing procedures, and utilizing personal protective  
10 equipment.

11 8. A resident shall have the right to designate a secondary caregiver  
12 and an alternative caregiver. The secondary caregiver shall provide  
13 essential caregiving in the event the primary caregiver is unable to  
14 provide their services to such resident. The alternative caregiver shall  
15 be able to provide care to a resident if the primary caregiver and the  
16 secondary caregiver are unable to provide their services to such resi-  
17 dent. The primary caregiver shall provide notice to the residential  
18 health care facility either by telephone or in writing, when they are  
19 unable to attend a scheduled visit with a resident and will be designat-  
20 ing either the secondary caregiver or the alternative caregiver to  
21 provide care to such resident in their absence.

22 § 2. This act shall take effect immediately.