STATE OF NEW YORK

6203

2021-2022 Regular Sessions

IN SENATE

April 15, 2021

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law and the social services law, in relation to personal caregiving visitors for residents of nursing homes; and to amend a chapter of the laws of 2021 amending the public health law and the social services law relating to personal and compassionate caregiving visitors for residents of nursing homes, as proposed in legislative bills numbers S.614-B and A.1052-B, in relation to the effectiveness thereof

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

Section 1. Section 2801-h of the public health law, as added by a chapter of the laws of 2021 amending the public health law and the social services law relating to personal and compassionate caregiving visitors for residents of nursing homes, as proposed in legislative bills numbers S.614-B and A.1052-B, is amended to read as follows:

§ 2801-h. Personal caregiving [~~and compassionate caregiving~~] visitors [~~to~~] for nursing home residents during [~~declared local or state~~] public health emergencies. 1. As used in this section, the following terms have the following meanings:

(a) "personal caregiving visitor" means a family member, close friend, or legal guardian of a resident designated by [~~such~~] the resident or [~~such~~] the resident's lawful representative to [~~provide~~] assist with personal caregiving or compassionate caregiving for [~~such~~] the resident[~~, including a compassionate caregiving visitor~~];

(b) "personal caregiving" means care and support of a resident by a personal caregiving visitor that is provided to benefit such resident's mental, physical, or social well-being;

(c) [~~"compassionate caregiving visitor" means a personal caregiving visitor providing compassionate caregiving to a resident;~~

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

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[~~(d)~~] "compassionate caregiving" means personal caregiving that is provided in anticipation of the end of a resident's life or in the instance of significant mental**, physical,** or social decline or crisis of a resident;

[~~(c)~~] **(d)** "resident" means a resident of a nursing home; in relation to a personal caregiving visitor, "resident" means the resident to whom the personal caregiving visitor has been designated to [~~provide~~] **assist with** personal caregiving **or compassionate caregiving**; and

[~~(f)~~] **(e)** "visit" includes [~~providing~~] **assisting with** personal caregiving [~~to~~] **or compassionate caregiving for** a resident.

2. [~~Personal~~] **During a public health emergency declared under section twenty-four or section twenty-eight of the executive law personal** caregiving visitors may visit residents of nursing homes, [~~subject to~~] **in compliance with federal law and regulations and state regulations made under** this section**. Nursing homes shall admit any personal caregiving visitor who is in compliance with applicable requirements under this section**.

3. The commissioner shall make regulations under this section which shall:

(a) require nursing homes to allow personal caregiving visitors to visit residents subject to this section;

(b) set forth procedures for the designation of personal caregiving visitors by residents or resident's lawful representatives, which**: (i) shall include documentation of each designated personal caregiving visitor in the facility records; (ii) shall include procedures to ensure that the preferences of the resident regarding the designation of a personal caregiving visitor are respected; and (iii)** may include**,** in appropriate circumstances**,** requiring a [~~physical~~] **health** or mental health professional **licensed or certified under the education law** to state that the personal caregiving will substantially benefit the resident's mental, physical, or social well-being[~~; an~~]**. A** nursing home shall not require that the health professional [~~is~~] **be** affiliated with such nursing home;

(c) set forth procedures for changing a personal caregiving visitor designation;

(d) provide that a resident shall [~~not~~] be entitled to designate [~~more than~~] **at least** two personal caregiving visitors;

(e) provide that personal caregiving visitors shall be exempt from prohibitions on visiting residents at nursing homes, subject to the limitations and requirements [~~set forth by~~] **of** this [~~subdivision~~] **section**;

(f) set forth the circumstances under which visiting by personal caregiving visitors may be temporarily limited or suspended at a nursing home **to protect the health, safety and welfare of residents**, including, but not limited to, local infection rates, temporary inadequate staff capacity, or an acute emergency situation;

(g) require, at a minimum, that all personal caregiving visitors follow safety protocols [~~required for nursing home staff, including~~] **which may include**, but **need** not **be** limited to:

(i) testing for communicable diseases;

(ii) checking body temperature **upon entry into the nursing home**;

(iii) health screenings **upon entry into the nursing home**;

(iv) appropriate use of personal [~~protection~~] **protective** equipment;

(v) social distancing (except as necessary for personal caregiving by the personal caregiving visitor for the resident); and

(vi) any other requirement the department deems appropriate;

(h) set forth standards for frequency and duration of visits by personal caregiving visitors at nursing homes;

(i) set forth standards for limiting the total number of personal caregiving visitors **for a resident and/or limiting the total number of personal caregiving visitors** allowed to visit a nursing home at any one time **based on the circumstances of the residents and the nursing home**; [~~and~~]

(j) **require personal caregiving and compassionate caregiving to be documented in the resident's individualized comprehensive plan of care; and**

(k) make appropriate provisions for compassionate caregiving [~~and compassionate caregiving visitors~~].

4. The department shall post the requirements consistent with regulations, on its website, including any requirements as to time periods and region.

5. This section does not require the medical assistance program to cover personal caregiving or compassionate caregiving and such caregiving shall not be reimbursed under the medical assistance program.

6. This section does not relieve any nursing home, or nursing home operator or administrator, of any obligation or responsibility imposed by any other applicable law or regulation.

7. Nothing in this section shall be construed to limit access by any visitor to a facility that would otherwise be permitted under federal or state law or regulation.

§ 2. Section 461-u of the social services law, as added by a chapter of the laws of 2021 amending the public health law and the social services law relating to personal and compassionate caregiving visitors for residents of nursing homes, as proposed in legislative bills numbers S.614-B and A.1052-B, is amended to read as follows:

§ 461-u. Personal caregiving [~~and compassionate caregiving~~] visitors for residents of adult care facilities during [~~declared local or state~~] **public** health emergencies. 1. As used in this section, the following terms have the following meanings:

(a) "personal caregiving visitor" means a family member, close friend, or legal guardian of a resident designated by [~~such~~] **the** resident or [~~such~~] **the** resident's lawful representative to [~~provide~~] **assist with** personal caregiving **or compassionate caregiving** for [~~such~~] **the** resident[~~, including a compassionate caregiving visitor~~];

(b) "personal caregiving" means care and support of a resident by a personal caregiving visitor that is provided to benefit such resident's mental, physical, or social well-being.

(c) [~~"compassionate caregiving visitor" means a personal caregiving visitor providing compassionate caregiving to a resident;~~

~~(d)~~] "compassionate caregiving" means personal caregiving that is provided in anticipation of the end of a resident's life or in the instance of significant mental**, physical,** or social decline or crisis of a resident;

[~~(e)~~] **(d)** "resident" means a resident of an adult care facility; in relation to a personal caregiving visitor, "resident" means the resident to whom a personal caregiving visitor has been designated to [~~provide~~] **assist with** personal caregiving **or compassionate caregiving**; and

[~~(f)~~] **(e)** "visit" includes [~~providing~~] **assisting with** personal caregiving [~~to~~] **or compassionate caregiving for** a resident.

2. [~~Personal~~] **During a public health emergency declared under section twenty-four or section twenty-eight of the executive law personal** caregiving visitors may visit residents of adult care facilities, [~~subject~~

~~to~~] in compliance with federal law and regulations and state regulations made under this section. Adult care facilities shall admit any personal caregiving visitor who is in compliance with applicable requirements under this section.

3. The commissioner of the department responsible for the licensure or certification for each type of adult care facility shall make regulations for such type under this section which shall:

(a) require adult care facilities to allow personal caregiving visitors to visit residents subject to this section;

(b) set forth procedures for the designation of personal caregiving visitors by residents or resident's lawful representatives, which: (i) shall include documentation of each designated personal caregiving visitor in the facility records; (ii) shall include procedures to ensure that the preferences of the resident regarding the designation of a personal caregiving visitor are respected; and (iii) may include, in appropriate circumstances, requiring a [~~physical~~] health or mental health professional licensed or certified under the education law to state that the personal caregiving will substantially benefit the resident's mental, physical, or social well-being[~~; an~~]. An adult care facility shall not require that a health or mental health professional [~~is~~] be affiliated with such adult care facility;

(c) set forth procedures for changing a personal caregiving visitor designation;

(d) provide that a resident shall [~~not~~] be entitled to designate [~~more than~~] at least two personal caregiving visitors;

(e) provide that personal caregiving visitors shall be exempt from prohibitions on visiting residents at adult care facilities, subject to the limitations and requirements [~~in~~] of this [~~subdivision~~] section;

(f) set forth the circumstances under which visiting by personal caregiving visitors may be temporarily limited or suspended at an adult care facility to protect the health, safety and welfare of residents, including, but not limited to, local infection rates, temporary inadequate staff capacity, or an acute emergency situation;

(g) require, at a minimum, that all personal caregiving visitors follow safety protocols [~~required for adult care facility staff, including~~] which may include, but need not be limited to:

(i) testing for communicable diseases;

(ii) checking body temperature upon entry into the adult care facility;

(iii) health screenings upon entry into the adult care facility;

(iv) appropriate use of personal [~~protection~~] protective equipment;

(v) social distancing (except as necessary for personal caregiving by the personal caregiving visitor for a resident); and

(vi) any other requirement the [~~office of temporary and disability assistance~~] respective commissioner deems appropriate;

(h) set forth standards for frequency and duration of visits by personal caregiving visitors at adult care facilities;

(i) set forth standards for limiting the total number of personal caregiving visitors for a resident and/or limiting the total number of personal caregiving visitors allowed to visit an adult care facility at any one time based on the circumstances of the residents and the adult care facility; [~~and~~]

(j) require personal caregiving and compassionate caregiving to be documented in the resident's case management notes; and

(k) make appropriate provisions for compassionate caregiving [~~and compassionate caregiving visitors~~].

4. The respective commissioners shall post the requirements consistent with regulations, on their website, including any requirements as to time periods and region.

5. This section does not require the medical assistance program to cover personal caregiving or compassionate caregiving and such caregiving shall not be reimbursed under the medical assistance program.

6. This section does not relieve any facility licensed under this article, or any facility operator, of any obligation or responsibility imposed by any other applicable law or regulation.

7. Nothing in this section shall be construed to limit access by any visitor to a facility that would otherwise be permitted under federal or state law or regulation.

§ 3. Section 3 of a chapter of the laws of 2021 amending the public health law and the social services law relating to personal and compassionate caregiving visitors for residents of nursing homes, as proposed in legislative bills numbers S.614-B and A.1052-B, is amended to read as follows:

§ 3. This act shall take effect [~~on the forty-fifth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date~~] immediately and regulations shall be made, which may include emergency regulations, within forty-five days after such date; provided however, nothing herein shall impact the effectiveness of current department of health guidance pertaining to nursing home and adult care facility visitation.

§ 4. This act shall take effect immediately; provided however, that sections one and two of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public health law and the social services law relating to personal and compassionate caregiving visitors for residents of nursing homes, as proposed in legislative bills numbers S.614-B and A.1052-B, takes effect.