STATE OF NEW YORK

1640

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. TEDISCO, BORRELLO, GALLIVAN, HELMING, MATTERA, OBERACKER, O'MARA, ORTT, PALUMBO, STEC, WEIK -- 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:

Section 1. 1. As used in this act, the following terms shall be defined as follows:

a. "Department" shall mean the department of health of the state of New York;

b. "Commissioner" shall mean the commissioner of health of the state of New York;

c. "Nursing home" shall have the same meaning as such term is defined in subdivision 2 of section 2801 of the public health law;

d. "Adult care facility" shall have the same meaning as defined in subdivision 21 of section 2 of the social services law;

e. "Assisted living residence" shall have the same meaning as defined in subdivision 1 of section 4651 of the public health law, as added by chapter 2 of the laws of 2004;

f. "Step-down facility" shall refer to a COVID-19 only nursing home, adult care facility, or assisted living residence established by the department of health, consistent with executive order 202.81 of 2020 to receive medically stable, but persistently positive COVID-19 nursing home, adult care facility, or assisted living residence eligible patients transferred from an article 28 licensed facility until such

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

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time the patient tests negative for COVID-19, or is deemed medically safe for discharge by a qualified licensed health care professional under the education law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately and shall expire and be deemed repealed January 15, 2025.