

STATE OF NEW YORK

1640

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. TEDISCO, BORRELLO, GALLIVAN, HELMING, MATTERA, OBER-
ACKER, 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 appli-
cable 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 there-
of

The People of the State of New York, represented in Senate and Assem-
bly, 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

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

LBD05641-01-3

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

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

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

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

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

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

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

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

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

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

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

51 h. the impact the Advisory on Hospital Discharges and Admissions to
52 Nursing Homes issued by the New York state Department of Health on March
53 25, 2020 had on residents of nursing homes, adult care facilities, and
54 assisted living residences;

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

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

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

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

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

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

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

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