STATE OF NEW YORK

9874

IN SENATE

July 15, 2024

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

AN ACT to amend the public health law, in relation to requiring nursing homes to permit essential caregivers access during any period in which regular visitation is restricted

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

Section 1. The public health law is amended by adding a new section 2831 to read as follows:

§ 2831. Essential caregivers act. 1. Within ninety days of the effective date of this section, every nursing home shall provide access to essential caregivers during periods when visitation is otherwise restricted by order of a federal, state, or local authority or by other operation of law.

2. For the purposes of this subdivision, the term "essential caregiver" shall mean, with respect to a resident of a nursing home, an individual who:

(a) is designated by or on behalf of the resident pursuant to subdivisions three or four of this section; and

(b) will provide assistance to such resident, which may include assistance with activities of daily living or providing emotional support or companionship to such resident.

3. Every nursing home shall allow each resident of such facility to:

(a) designate and have access to essential caregivers for such resident at all times, including during any period in which regular visitation is restricted by order of a federal, state, or local authority or by other operation of law; and

(b) amend such designation at any time.

4. Where a resident is unable, by reason of physical or mental disability, to make an election described in subdivision two of this section, the resident representative for such resident shall be permitted to make such designation for such resident.

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

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5. During a period in which regular visitation is restricted by order of a federal, state, or local authority or by other operation of law, a nursing home shall:

(a) not deny in-person access to a resident by an essential caregiver except as provided in this section;

(b) allow at least one essential caregiver to have access to and provide assistance to such resident at such facility every day and at any time; and

(c) enforce all safety protocols with respect to essential caregivers.

6. (a) No essential caregiver who complies with all safety protocols and other safety rules with respect to essential caregivers shall be denied access to the nursing home of the resident involved.

(b) An essential caregiver shall agree to comply with all safety protocols and other rules established by such facility, which shall be clearly specified in writing and may be more restrictive than the safety protocols (including safety standards and entry requirement) applicable to staff of such facility.

(c) If an essential caregiver fails to comply with any safety protocols of a facility, such facility must first provide a warning to the essential caregiver and the resident, in writing, citing specific issues of non-compliance and providing clear guidance for corrective measures.

(d) If an essential caregiver or resident, after receiving a notification of non-compliance described in paragraph (c) of this subdivision, fails to take corrective action, the essential caregiver may subsequently be denied access to the resident. In such cases, the facility shall provide to such caregiver and such resident (or health care proxy of such resident), not later than twenty-four hours after such denial of access occurs, a written explanation as to why such caregiver was denied access to such resident. Such explanation must include the resident's and caregiver's options for appeal under the processes established under subdivision seven of this section.

7. (a) The commissioner shall establish a process for residents and caregivers to appeal denials of access.

(b) The department shall:

(i) receive appeals from residents and essential caregivers challenging a decision by a nursing home to deny access under subdivision six of this section; and

(ii) investigate all such appeals within forty-eight hours of receipt.

(c) Upon appeal of a denial of access, the nursing home shall have the burden of establishing that the essential caregiver violated any protocols applicable to an essential caregiver.

(d) The department shall make a determination as to whether a nursing home violated a requirement or prohibition of this subdivision within forty-eight hours of commencing its investigation. If the agency determines that a facility has violated the provisions of this section, the department shall:

(i) require the facility to allow immediate access to the essential caregiver in question;

(ii) require the facility to establish a corrective action plan to prevent the recurrence of such violation within a seven-day period of receiving notice from the agency; and

(iii) impose a civil monetary penalty in an amount to be determined by the agency (not to exceed five thousand dollars) if such facility fails to implement the corrective action plan within the seven-day period specified in subparagraph (ii) of this paragraph.

§ 2. This act shall take effect immediately.