

# 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:

1 Section 1. The public health law is amended by adding a new section  
2 2831 to read as follows:

3 § 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.

8 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:

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

14 (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.

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

17 (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

21 (b) amend such designation at any time.

22 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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1 5. During a period in which regular visitation is restricted by order  
2 of a federal, state, or local authority or by other operation of law, a  
3 nursing home shall:

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

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

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

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

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

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

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

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

34 (b) The department shall:

35 (i) receive appeals from residents and essential caregivers challeng-  
36 ing a decision by a nursing home to deny access under subdivision six of  
37 this section; and

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

39 (c) Upon appeal of a denial of access, the nursing home shall have the  
40 burden of establishing that the essential caregiver violated any proto-  
41 cols applicable to an essential caregiver.

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

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

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

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

56 § 2. This act shall take effect immediately.