§ 2801-h. Personal caregiving visitors for nursing home residents during 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 the resident or the resident's lawful representative to assist with personal caregiving or compassionate caregiving for the resident;

(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" 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;

(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 assist with personal caregiving or compassionate caregiving; and

(e) "visit" includes assisting with personal caregiving or compassionate caregiving for a resident.

2. 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, 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 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. A nursing home shall not require that the health professional be affiliated with such nursing home;

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

(d) provide that a resident shall be entitled to designate 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 of this 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 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 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;

(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.

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.