

BILL ANALYSIS

C.S.H.B. 2211
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Hospitals have restricted visitation to patients during the COVID-19 pandemic regardless of whether the patients have COVID-19. There have been calls to provide hospitals the flexibility to protect their employees and patients from infectious disease while also ensuring that patients receiving care in the hospital may receive a visitor who can advocate for them and help them better communicate their wishes to health care professionals. C.S.H.B. 2211 seeks to address this issue by prohibiting a hospital from denying in-person visitation unless federal law or a federal agency requires the hospital to do so or an attending physician determines visitation should be denied in a specific case. The bill gives hospitals the authority to deny entry to or remove a visitor who refuses to meet health screening and PPE requirements, provides for updates to an appropriate person regarding a patient who cannot receive visitors, and provides related liability protections for hospitals and attending physicians.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2211 amends the Health and Safety Code to prohibit a hospital, during a qualifying period of disaster, from prohibiting in-person visitation with a patient receiving care or treatment at the hospital unless federal law or a federal agency requires the hospital to prohibit visitation during that period. The bill authorizes a hospital to do the following during that period:

- restrict the number of visitors a patient may receive to as few as one;
- require a visitor to complete a health screening before entering the hospital and wear personal protective equipment (PPE) at all times while visiting a patient; and
- deny entry to or remove from the hospital's premises a visitor who fails or refuses to submit to or meet the requirements of a health screening administered by the hospital or to wear PPE as required by the hospital.

A health screening must be conducted in a manner that, at a minimum, complies with hospital policy and, if applicable, with guidance or directives issued by the Health and Human Services Commission, the Centers for Medicare and Medicaid Services, or another agency with regulatory authority over the hospital.

C.S.H.B. 2211 provides the following:

- the bill's provisions prevail in the event of a conflict between those provisions and any provision of a qualifying official disaster order;

- a hospital or a physician providing health care services on the hospital's premises is exempt from civil or criminal liability or an administrative penalty if a visitor contracts or spreads an infectious disease to any other individual while on the hospital's premises during a qualifying period of disaster or in connection with a visit to the hospital, except where intentional misconduct or gross negligence by the hospital or physician is shown;
- a physician is exempt from civil or criminal liability or disciplinary action for a good faith action or failure to act in connection with in-person visitation during a qualifying period of disaster; and
- the bill's provisions may not be construed to require a hospital to provide a specific type of PPE to a visitor to the hospital or to allow in-person visitation if an attending physician determines that visitation with a given patient may lead to the transmission of an infectious agent that poses a serious community health risk.

With respect to such a determination by an attending physician:

- the determination is valid for not more than five days after the date it is made, unless renewed by the physician; and
- if a visitor is denied in-person visitation due to such a determination, the hospital must do the following:
 - provide a daily written or oral update of the patient's condition to the visitor if the visitor is authorized by the patient to receive relevant health information regarding the patient, has authority to receive that information under an advance directive or medical power of attorney, or is otherwise the patient's surrogate decision-maker under hospital policies or other applicable laws; and
 - notify the person who receives the daily update of the estimated date and time at which the patient will be discharged from the hospital.

C.S.H.B. 2211 defines "qualifying official disaster order" as an order, proclamation, or other instrument issued by the governor, another state official, or the governing body or an official of a political subdivision declaring a disaster that has infectious disease as the basis for the declared disaster. The bill defines "qualifying period of disaster" as the period of time the area in which a hospital is located is declared to be a disaster area by a qualifying official disaster order.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2211 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes an authorization for a hospital to remove from the hospital's premises a visitor who does not comply with PPE and health screening requirements.

The substitute makes the following changes regarding liability:

- includes language applying the bill's liability protections to a physician providing health care services on the hospital's premises;
- includes a specification that liability protections for a hospital or physician apply if a visitor spreads an infectious disease in connection with a visit to the hospital; and
- includes a provision exempting a physician from civil or criminal liability or disciplinary action for a good faith action or omission.

The substitute authorizes a determination denying visitation to a patient to be made by any attending physician and does not specify the patient's attending physician.

The substitute revises certain details regarding the daily updates and notice of the patient's expected discharge required to be provided to certain visitors, including qualifications for a recipient of that information.