

BILL ANALYSIS

Senate Research Center

S.B. 25
By: Kolkhorst et al.
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many nursing home and assisted living residents rely on family members, friends, or other caregivers to provide hands-on care and social and emotional support to supplement the care provided by staff. State policies enacted at the beginning of the COVID-19 public health emergency restricted long-term care residents' access to such essential caregivers. These restrictions had a significant impact on the physical and mental well-being of many residents, especially those with memory or cognitive challenges.

In September 2020, the Health and Human Services Commission updated the emergency rules to allow residents to designate up to two essential caregivers. These caregivers are provided with training to allow them to safely go inside a facility for scheduled visits to help ensure their loved one's physical, social, and emotional needs are being met. This bill and accompanying resolution codify the right of a long-term care resident, resident's guardian, or resident's legally authorized representative to designate an essential caregiver. The bill also directs the executive establishment of a visitation schedule of at least two hours each day, to allow physical contact with the resident, establish safety control measures not more stringent than safety protocols for the staff of the facility or residence, and creation of a signed acknowledgement that the caregiver abides by the rules. The guidelines developed by the executive commissioner will provide certainty and consistency for caregivers, residents, and long-term care providers.

The legislation clarifies that essential caregivers are not required to provide care and a facility or provider cannot require a caregiver to provide care. The legislation also allows for a limited seven-day suspension of caregiver visits if visitation poses a serious community health risk. This suspension can only be extended for additional periods of no more than seven days with the approval of HHSC.

(Original Author's/Sponsor's Statement of Intent)

S.B. 25 amends current law relating to the right of certain residents to designate an essential caregiver for in-person visitation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 260B.0002, Health and Safety Code) and SECTION 3 (Section 555.202, Health and Safety Code) of this bill.

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SECTION BY SECTION ANALYSIS

SECTION 1. Provides that it is the intent of the legislature to ensure that residents of long-term care facilities and other residences have a guaranteed right to visitation by family members, friends, caregivers, and other individuals. Provides that the legislature expects facilities and program providers to ensure that the guaranteed visitation rights are available to residents every day of each year, consistent with existing resident rights. Provides that the legislature intends for

facilities and program providers to temporarily limit a resident's guaranteed visitation rights to in-person visitation by essential caregivers only during a declared public health emergency.

SECTION 2. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 260B, as follows:

CHAPTER 260B. RIGHT TO ESSENTIAL CAREGIVER VISITS
FOR CERTAIN RESIDENTS

Sec. 260B.0001. DEFINITIONS. Defines "commission," "essential caregiver," "executive commissioner," "residence," and "resident." Defines "facility" as a nursing facility licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions), an assisted living facility licensed under Chapter 247 (Assisted Living Facilities), or an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252 (Intermediate Care Facilities For Individuals With an Intellectual Disability). Defines "program provider" as a person that provides services through the home and community-based services (HCS) waiver program in a residence.

Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) Provides that a resident, resident's guardian, or resident's legally authorized representative has the right to designate an essential caregiver whose in-person visitation the facility or program provider may not prohibit.

(b) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) by rule, notwithstanding Subsection (a), to develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures. Requires that the guidelines require the facilities and program providers to:

- (1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver in the same manner that a resident would designate a power of attorney;
- (2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;
- (3) establish procedures to enable physical contact between the resident and essential caregiver; and
- (4) obtain the signature of the essential caregiver certifying that the caregiver will follow the facility's or program provider's safety protocols and any other rules adopted under this section.

(c) Authorizes a facility or program provider to revoke an individual's designation as an essential caregiver if the caregiver violates the facility's or provider's safety protocols or rules adopted under this section. Provides that if a facility or program provider revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. Requires HHSC by rule to establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Prohibits safety protocols adopted by a facility or program provider for an essential caregiver under this section from being more stringent than safety protocols for the staff of the facility or residence.

(e) Authorizes a facility or program provider to petition HHSC to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. Authorizes HHSC to deny the

facility's or program provider's request to suspend in-person essential caregiver visitation if HHSC determines that in-person visitation does not pose a serious community health risk. Authorizes a facility or program provider to request an extension from HHSC to suspend in-person essential caregiver visitation for more than seven days. Prohibits HHSC from approving an extension under this subsection for a period that exceeds seven days, and requires a facility or program provider to separately request each extension. Prohibits a facility or program provider from suspending in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) Prohibits this section from being construed as requiring an essential caregiver to provide necessary care to a resident, and prohibits a facility or program provider from requiring an essential caregiver to provide necessary care.

SECTION 3. Amends Chapter 555, Health and Safety Code, by adding Subchapter F, as follows:

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

Sec. 555.201. DEFINITION. Defines "essential caregiver" in Chapter 555 (State Supported Living Centers).

Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) Provides that a resident of a state supported living center, the resident's guardian, or the resident's legally authorized representative has the right to designate an essential caregiver with whom the center may not prohibit in-person visitation.

(b) Requires the executive commissioner by rule, notwithstanding Subsection (a), to develop guidelines to assist state supported living centers in establishing essential caregiver visitation policies and procedures. Requires that the guidelines require the centers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the center's safety protocols and any other rules adopted under this section.

(c) Authorizes a state supported living center to revoke an individual's designation as an essential caregiver if the essential caregiver violates the center's safety protocols or rules adopted under this section. Provides that if a state supported living center revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. Requires HHSC by rule to establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Prohibits safety protocols adopted by a state supported living center for an essential caregiver under this section from being more stringent than safety protocols for the staff of the center.

(e) Authorizes a state supported living center to petition HHSC to suspend in-person essential caregiver visits for not more than seven days if in-person

visitation poses a serious community health risk. Authorizes HHSC to deny the state supported living center's request to suspend in-person essential caregiver visitation if HHSC determines that in-person visitation does not pose a serious community health risk. Authorizes a state supported living center to request an extension from HHSC to suspend in-person essential caregiver visitation for more than seven days. Prohibits HHSC from approving an extension under this subsection for a period that exceeds seven days, and requires a state supported living center to separately request each extension. Prohibits a state supported living center from suspending in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) Prohibits this section from being construed as requiring an essential caregiver to provide necessary care to a resident, and prohibits a state supported living center from requiring an essential caregiver to provide necessary care.

SECTION 4. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to prescribe the guidelines and adopt the rules required by Sections 260B.0002 and 555.202, Health and Safety Code, as added by this Act.

SECTION 5. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 6. Effective date: September 1, 2021.