

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 25
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Health & Human Services
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Committee Report (Substituted)

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 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.

C.S.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 1 (Section 260B.0002, Health and Safety Code) and SECTION 2 (Section 555.202, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. 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," "facility," "program provider," "residence," and "resident."

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) 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;

(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; and

(5) establish a visitor's log.

(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 program provider's safety protocols adopted under this section.

(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 suspend essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. Requires a facility or program provider to request an extension from the Health and Human Services Commission (HHSC) to suspend in-person 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.

(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.

(g) Provides that in the event of a conflict between this section and any other law, this section prevails.

SECTION 2. 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 in Chapter 555 (State Supported Living Center) "essential caregiver."

Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) Provides that a resident of a state supported living center (center) or the resident's guardian 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 centers in establishing essential caregiver visitation policies and procedures. Requires that the guidelines require the centers to:

(1) allow a resident or a guardian of a resident 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;

(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; and

(5) establish a visitor's log.

(c) Authorizes a center to revoke an individual's designation as an essential caregiver if the caregiver violates the center's safety protocols or rules adopted under this section.

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

(e) Authorizes a center to suspend essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. Requires a center to request an extension from HHSC to suspend in-person 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 center to separately request each extension.

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

(g) Provides that in the event of a conflict between this section and any other law, this section prevails.

SECTION 3. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to prescribe the guidelines required by Sections 260B.0002 and 555.202, Health and Safety Code, as added by this Act.

SECTION 4. Effective date: September 1, 2021.