

By: Kolkhorst, et al.

S.B. No. 25

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain residents to designate an essential caregiver for in-person visitation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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. 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. 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. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 260B to read as follows:

CHAPTER 260B. RIGHT TO ESSENTIAL CAREGIVER VISITS

FOR CERTAIN RESIDENTS

Sec. 260B.0001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Essential caregiver" means a family member, friend, guardian, or other individual selected by a resident for

1 in-person visits.

2 (3) "Executive commissioner" means the executive  
3 commissioner of the Health and Human Services Commission.

4 (4) "Facility" means:

5 (A) a nursing facility licensed under Chapter  
6 242;

7 (B) an assisted living facility licensed under  
8 Chapter 247; or

9 (C) an intermediate care facility for  
10 individuals with an intellectual disability licensed under Chapter  
11 252.

12 (5) "Program provider" means a person that provides  
13 services through the home and community-based services (HCS) waiver  
14 program in a residence.

15 (6) "Residence" means a three-person or four-person  
16 residence, as defined by the home and community-based services  
17 (HCS) waiver program billing guidelines, that is leased or owned by  
18 a program provider. The term does not include a host home or  
19 companion care.

20 (7) "Resident" means:

21 (A) an individual, including a patient, who  
22 resides in a facility; or

23 (B) an individual enrolled in the home and  
24 community-based services (HCS) waiver program who resides in a  
25 residence.

26 Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER  
27 VISITS. (a) A resident, resident's guardian, or resident's legally

1 authorized representative has the right to designate an essential  
2 caregiver with whom the facility or program provider may not  
3 prohibit in-person visitation.

4 (b) Notwithstanding Subsection (a), the executive  
5 commissioner by rule shall develop guidelines to assist facilities  
6 and program providers in establishing essential caregiver  
7 visitation policies and procedures. The guidelines must require  
8 the facilities and program providers to:

9 (1) allow a resident, resident's guardian, or  
10 resident's legally authorized representative to designate for  
11 in-person visitation an essential caregiver in the same manner that  
12 a resident would designate a power of attorney;

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

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

18 (4) obtain the signature of the essential caregiver  
19 certifying that the caregiver will follow the facility's or program  
20 provider's safety protocols and any other rules adopted under this  
21 section; and

22 (5) establish a visitor's log.

23 (c) A facility or program provider may revoke an  
24 individual's designation as an essential caregiver if the caregiver  
25 violates the facility's or provider's safety protocols or rules  
26 adopted under this section. If a facility or program provider  
27 revokes an individual's designation as an essential caregiver under

1 this subsection, the resident, resident's guardian, or resident's  
2 legally authorized representative has the right to immediately  
3 designate another individual as the resident's essential  
4 caregiver.

5 (d) Safety protocols adopted by a facility or program  
6 provider for an essential caregiver under this section may not be  
7 more stringent than safety protocols for the staff of the facility  
8 or residence.

9 (e) A facility or program provider may petition the  
10 commission to suspend essential caregiver visits for not more than  
11 seven days if in-person visitation poses a serious community health  
12 risk. The commission may deny the facility's or program provider's  
13 request to suspend in-person essential caregiver visitation if the  
14 commission determines that in-person visitation does not pose a  
15 serious community health risk. A facility or program provider  
16 shall request an extension from the commission to suspend in-person  
17 essential caregiver visitation for more than seven days. The  
18 commission may not approve an extension under this subsection for a  
19 period that exceeds seven days, and a facility or program provider  
20 must separately request each extension.

21 (f) This section may not be construed as requiring an  
22 essential caregiver to provide necessary care to a resident, and a  
23 facility or program provider may not require an essential caregiver  
24 to provide necessary care.

25 (g) In the event of a conflict between this section and any  
26 other law, this section prevails.

27 SECTION 3. Chapter 555, Health and Safety Code, is amended

1 by adding Subchapter F to read as follows:

2 SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

3 Sec. 555.201. DEFINITION. In this chapter, "essential  
4 caregiver" means a family member, friend, guardian, or other  
5 individual selected by a resident for in-person visits.

6 Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER  
7 VISITS. (a) A resident of a state supported living center or the  
8 resident's guardian has the right to designate an essential  
9 caregiver with whom the center may not prohibit in-person  
10 visitation.

11 (b) Notwithstanding Subsection (a), the executive  
12 commissioner by rule shall develop guidelines to assist state  
13 supported living centers in establishing essential caregiver  
14 visitation policies and procedures. The guidelines must require  
15 the centers to:

16 (1) allow a resident or guardian of a resident to  
17 designate for in-person visitation an essential caregiver;

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

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

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

26 (5) establish a visitor's log.

27 (c) A state supported living center may revoke an

1 individual's designation as an essential caregiver if the essential  
2 caregiver violates the center's safety protocols or rules adopted  
3 under this section. If a state supported living center revokes an  
4 individual's designation as an essential caregiver under this  
5 subsection, the resident or resident's guardian has the right to  
6 immediately designate another individual as the resident's  
7 essential caregiver.

8 (d) Safety protocols adopted by a state supported living  
9 center for an essential caregiver under this section may not be more  
10 stringent than safety protocols for center staff.

11 (e) A state supported living center may petition the  
12 commission to suspend essential caregiver visits for not more than  
13 seven days if in-person visitation poses a serious community health  
14 risk. The commission may deny the state supported living center's  
15 request to suspend in-person essential caregiver visitation if the  
16 commission determines that in-person visitation does not pose a  
17 serious community health risk. A state supported living center  
18 shall request an extension from the commission to suspend in-person  
19 essential caregiver visitation for more than seven days. The  
20 commission may not approve an extension under this subsection for a  
21 period that exceeds seven days, and a state supported living center  
22 must separately request each extension.

23 (f) This section may not be construed as requiring an  
24 essential caregiver to provide necessary care to a resident, and a  
25 state supported living center may not require an essential  
26 caregiver to provide necessary care.

27 (g) In the event of a conflict between this section and any

1 other law, this section prevails.

2           SECTION 4. As soon as practicable after the effective date  
3 of this Act, the executive commissioner of the Health and Human  
4 Services Commission shall prescribe the guidelines required by  
5 Sections 260B.0002 and 555.202, Health and Safety Code, as added by  
6 this Act.

7           SECTION 5. If before implementing any provision of this Act  
8 a state agency determines that a waiver or authorization from a  
9 federal agency is necessary for implementation of that provision,  
10 the agency affected by the provision shall request the waiver or  
11 authorization and may delay implementing that provision until the  
12 waiver or authorization is granted.

13           SECTION 6. This Act takes effect September 1, 2021.