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
in-person visits.

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

(4) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

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

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

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

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

(7) "Resident" means:

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

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

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

(b) Notwithstanding Subsection (a), the executive
commissioner by rule shall develop guidelines to assist facilities
and program providers in establishing essential caregiver
visitation policies and procedures. The guidelines must 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) A facility or program provider may 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. If a facility or program provider
revokes an individual's designation as an essential caregiver under

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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.  

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

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

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

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

SECTION 3. Chapter 555, Health and Safety Code, is amended
by adding Subchapter F to read as follows:

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

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

Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident of a state supported living 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) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist state supported living centers in establishing essential caregiver visitation policies and procedures. The guidelines must require the centers to:

(1) allow a resident or 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) A state supported living center may 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. If a state supported living center revokes an
individual's designation as an essential caregiver under this
subsection, the resident or resident's guardian has the right to
immediately designate another individual as the resident's
essential caregiver.

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

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

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

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

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

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

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