

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,

1 resident's guardian, or resident's legally authorized  
2 representative for in-person visits.

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

5 (4) "Facility" means:

6 (A) a nursing facility licensed under Chapter  
7 242;

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

10 (C) an intermediate care facility for  
11 individuals with an intellectual disability licensed under Chapter  
12 252.

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

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

21 (7) "Resident" means:

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

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

27 Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER

1 VISITS. (a) A resident, resident's guardian, or resident's legally  
2 authorized representative has the right to designate an essential  
3 caregiver with whom the facility or program provider may not  
4 prohibit in-person visitation.

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

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

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

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

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

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. The commission by rule shall establish an appeals  
5 process to evaluate the revocation of an individual's designation  
6 as an essential caregiver under this subsection.

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

11 (e) A facility or program provider may petition the  
12 commission to suspend in-person essential caregiver visits for not  
13 more than seven days if in-person visitation poses a serious  
14 community health risk. The commission may deny the facility's or  
15 program provider's request to suspend in-person essential  
16 caregiver visitation if the commission determines that in-person  
17 visitation does not pose a serious community health risk. A  
18 facility or program provider may request an extension from the  
19 commission to suspend in-person essential caregiver visitation for  
20 more than seven days. The commission may not approve an extension  
21 under this subsection for a period that exceeds seven days, and a  
22 facility or program provider must separately request each  
23 extension. A facility or program provider may not suspend  
24 in-person essential caregiver visitation in any year for a number  
25 of days that exceeds 14 consecutive days or a total of 45 days.

26 (f) This section may not be construed as requiring an  
27 essential caregiver to provide necessary care to a resident, and a

1 facility or program provider may not require an essential caregiver  
2 to provide necessary care.

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

5 SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

6 Sec. 555.201. DEFINITION. In this chapter, "essential  
7 caregiver" means a family member, friend, guardian, or other  
8 individual selected by a resident, resident's guardian, or  
9 resident's legally authorized representative for in-person visits.

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

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

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

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

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

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

4           (c) A state supported living center may revoke an  
5 individual's designation as an essential caregiver if the essential  
6 caregiver violates the center's safety protocols or rules adopted  
7 under this section. If a state supported living center revokes an  
8 individual's designation as an essential caregiver under this  
9 subsection, the resident, resident's guardian, or resident's  
10 legally authorized representative has the right to immediately  
11 designate another individual as the resident's essential  
12 caregiver. The commission by rule shall establish an appeals  
13 process to evaluate the revocation of an individual's designation  
14 as an essential caregiver under this subsection.

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

18           (e) A state supported living center may petition the  
19 commission to suspend in-person essential caregiver visits for not  
20 more than seven days if in-person visitation poses a serious  
21 community health risk. The commission may deny the state supported  
22 living center's request to suspend in-person essential caregiver  
23 visitation if the commission determines that in-person visitation  
24 does not pose a serious community health risk. A state supported  
25 living center may request an extension from the commission to  
26 suspend in-person essential caregiver visitation for more than  
27 seven days. The commission may not approve an extension under this

1 subsection for a period that exceeds seven days, and a state  
2 supported living center must separately request each extension. A  
3 state supported living center may not suspend in-person essential  
4 caregiver visitation in any year for a number of days that exceeds  
5 14 consecutive days or a total of 45 days.

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

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

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

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

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 25 passed the Senate on March 17, 2021, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendments on May 28, 2021, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 25 passed the House, with amendments, on May 24, 2021, by the following vote: Yeas 144, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor