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H.B. 770*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Aging and Long Term Care

Primary Sponsors: Reps. Richardson and Fraizer

Erika Kramer, Attorney

SUMMARY

Essential caregivers

- Permits essential caregivers to enter long-term care facilities to provide support to facility residents in compassionate care situations during the COVID-19 state of emergency.
- Permits long-term care facility residents to designate an essential caregiver and, at minimum, one alternative essential caregiver, and provides that the resident, or the resident's representative, has sole discretion to designate the caregiver or revoke the designation.
- Requires long-term care facilities to develop and implement an essential caregiver visitation policy within two weeks of the bill's effective date and requires the policy to meet enumerated criteria.
- Requires essential caregivers to undergo screening for COVID-19 symptoms and exposure before entering the facility.
- Provides that the screening requirements do not apply in exigent circumstances such as to emergency medical personnel, first responders, or other similarly situated individuals, responding to an emergency.
- Requires the essential caregiver visitation policy to be the least restrictive possible and provide maximum access to residents, unless certain circumstances exist.

* This analysis was prepared before the report of the House Aging and Long Term Care Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Requires long-term care facilities to educate essential caregivers about the proper use of personal protective equipment and reinforce safe practices.
- Requires long-term care facilities to permit health care and other specified individuals who are not employees of the facility to enter the facility to provide services to residents.
- Specifies that compassionate care visits and visits provided by health care workers and other specified individuals are exempt from COVID-19 severity restrictions, even if the positivity rate in the county is greater than 10%.

Application to H.B. 606

- Clarifies that the long-term care facilities enumerated in the bill, including assisted living facilities, are included in the temporary qualified civil immunities established in House Bill 606 of the 133rd General Assembly.

Effective period

- Provides that these provisions are effective until the sooner of December 31, 2021, or the termination of the COVID-19 state of emergency declared by the Governor.
- Declares an emergency.

DETAILED ANALYSIS

Essential caregivers permitted

The bill generally permits essential caregivers to enter long-term care facilities to provide in-person compassionate care visits to facility residents during the COVID-19 state of emergency. A long-term care facility is an institution, residence, or facility that provides, for a period of more than 24 hours, accommodations for three or more unrelated individuals who are dependent on the services of others, including a nursing home, residential care (“assisted living”) facility, home for the aging, a veterans’ home, or an intermediate care facility for individuals with intellectual disabilities (ICF/IID). A long-term care facility does not include any federal facility, including U.S. Department of Veterans Affairs’ facilities.¹

Essential caregivers must be at least age 18 and must provide support to the resident, including but not limited to meal set up and companionship.² The resident, or the resident’s attorney in fact, legal guardian, or other personal representative has sole discretion to designate, or remove the designation of, an essential caregiver. The resident or resident’s representative must, however, consult with facility staff when designating essential caregivers. The bill permits a resident to designate, at minimum, one alternate essential caregiver who will

¹ Section 1(A); R.C. 3721.01 and 5124.01, not in the bill.

² Section 1(C).

provide compassionate care visits in the event the essential caregiver is unable to visit. A resident may not change an essential caregiver designation more than once every 30 days.³

Compassionate care situations

Under the bill, compassionate care situations do not refer exclusively to end of life situations and include at least the following situations:

- The resident was recently admitted to the facility and is struggling with the change in environment and lack of physical family support.
- The resident is grieving after a friend or family member has recently passed away.
- The resident is experiencing weight loss or dehydration and needs cueing and encouragement when eating or drinking.
- The resident is experiencing emotional distress from isolation as demonstrated by behavioral changes such as rarely speaking or crying more frequently.⁴

The long-term care facility also shall permit essential caregiver visits when the resident displays a substantial change of condition indicating that end of life is approaching. Some indications that end of life is approaching may include:

- Loss of appetite;
- Increased sleeping;
- Delirium;
- Unexplained agitation;
- Mottling of skin;
- Significant decline in cognition; or
- An increase in depression accompanying other indications.

For end of life visits, the facility must permit at least two visitors per resident for a minimum of two hours, and the visitors must comply with the facility's screening requirements. Additional visitors or increased time may be permitted as appropriate if coordinated with the facility.⁵

Identifying residents in need of compassionate care visits

Long-term care facilities must use a person-centered approach in working with residents, family members, caregivers, personal representatives, and, as appropriate, the State

³ Section 1(E).

⁴ Section 1(B)(1).

⁵ Section 1(B)(2).

Long-Term Care Ombudsman Program to identify residents who are in need of essential caregiver visits for compassionate care situations.⁶

Screening and other procedures

The bill requires all essential caregivers, before entering a long-term care facility to:

1. Undergo screening to ascertain any exposure to COVID-19 and disclose any COVID-19 symptoms, including cough, shortness of breath, or a temperature above 100 degrees; and
2. Produce valid federal or state identification and log entry into the facility, limit movement within the facility, and provide and use all appropriate personal protective equipment.⁷

The screening requirements in (1) do not apply in exigent circumstances, such as to emergency medical personnel, first responders, or other similarly situated individuals, responding to an emergency.⁸

Essential caregiver visitation policy

The bill requires each long-term care facility to develop and implement an essential caregiver visitation policy within two weeks after the bill's effective date. The visitation policy must:

- Permit a resident to designate an essential caregiver to provide support to the resident;
- Permit the resident to designate additional essential caregivers as recommended by the Long-term Care Ombudsman, as appropriate;
- Require the facility to consult with a resident about the resident's wishes regarding who to designate as the resident's essential caregiver. The resident and facility can consider individuals who provided regular care and support to the resident before the COVID-19 outbreak, such as family members, legal guardians, friends, outside caregivers, and volunteers;
- Be the least restrictive possible and provide maximum access to the resident, subject to exceptions (see "**Least restrictive**" below);
- Designate a single point of entry where essential caregivers must sign in and be screened for COVID-19 symptoms before entering the facility, the same as facility staff;
- Permit evening and weekend visits to accommodate an essential caregiver's schedule;

⁶ Section 1(B)(3).

⁷ Section 1(D)(2).

⁸ Section 1(J).

- Require an essential caregiver to provide support to the resident in the resident’s room or designated visitor space and to limit movement through the facility;
- Reasonably provide hand sanitizing stations and alcohol-based hand sanitizer in accessible locations, in accordance with local health department guidelines;
- Require the facility to communicate to essential caregivers its COVID-19 testing policy for visitors; and
- Require essential caregivers to (1) sign in upon arrival to the facility’s single entry point and be screened for COVID-19 symptoms, (2) wear all necessary personal protective equipment when in the facility and perform frequent hand hygiene, (3) maintain social distancing of at least six feet with other residents and staff, (4) agree to limit contact with other individuals when outside the facility, and (5) inform the facility if the caregiver develops COVID-19 symptoms within 14 days of a visit with the resident (6) comply with the bill’s screening requirements (see “**Screening and other procedures**” above).⁹

Least restrictive

The long-term care facility’s essential caregiver visitation policy must be the least restrictive possible and provide maximum access to the resident. The facility can, however, implement more restrictive visitation measures if:

- There is a COVID-19 outbreak in the facility; or
- The essential caregiver has been directly exposed to an individual who tested positive for COVID-19.

The bill specifies that compassionate care visits and visits provided by health care workers and other professionals (see “**Health care workers and other professionals**” below) are exempt from COVID-19 severity restrictions, even if the positivity rate in the county is greater than 10%.¹⁰

Essential caregiver education

Long-term care facilities must educate essential caregivers about the proper use of personal protective equipment and reinforce safe practices. The facility can use posters that demonstrate key instructions for the use of the personal protective equipment. The facility also must educate essential caregivers, family members, and other interested persons about the right to contact the State Long-term Care Ombudsman with concerns about access to the facility and its residents, for facilities that are not ICFs/IID. The bill states that the Long-term Care Ombudsman does not have jurisdiction over long-term care facilities that are ICFs/IID.¹¹

⁹ Section 1(F).

¹⁰ Section 1(G).

¹¹ Section 1(H); R.C. 173.14(A)(2), not in the bill.

Access for health care workers and other specified individuals

Long-term care facilities must permit health care workers who are not employees of the facility to enter the facility to provide direct care to residents. These professionals include:

- Hospice care program workers;
- Emergency medical services personnel;
- Dialysis technicians;
- Clinical laboratory technicians;
- General x-ray machine operators, radiographers, radiation therapy technologists, or nuclear medicine technologists; and
- Other health professionals.

Facilities also must permit social workers and members of the clergy to provide services to residents in the facility. A facility may restrict access to such an individual, however, if the individual (1) is subject to a work exclusion due to direct exposure to COVID-19 or (2) shows symptoms of COVID-19 when being screened before entering the facility.¹²

Federal guidance

The bill requires essential caregivers to comply with the facility's visitor policy when visiting a resident in a long-term care facility. If the facility is governed by U.S. Centers for Medicare and Medicaid services regulations, the essential caregiver also must comply with all CMS regulations and guidance.¹³

The bill provides that it shall not be construed or implemented in such a way as to conflict with federal regulatory guidance regarding long-term care facility visitation during the COVID-19 outbreak, such as CMS or CDC guidance.¹⁴

Application to House Bill 606

The bill clarifies that a long-term care facility, including an assisted living facility, is a "facility" for purposes of the temporary qualified civil immunity granted under House Bill 606 of the 133rd General Assembly to health care providers (including long-term care and assisted living facilities) rendering health care or emergency medical services as a result of or in response to a disaster or emergency.

The bill also clarifies that a long-term care facility is a "person" for purposes of the temporary qualified civil immunity granted under H.B. 606 from suit against any person for

¹² Section 1(I).

¹³ Section 1(D)(1).

¹⁴ Section 1(K).

injury, death, or loss to person or property caused by exposure to, or transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2.¹⁵

Effective period

The bill is effective until the sooner of December 31, 2021, or the end of the COVID-19 state of emergency declared by the Governor.¹⁶

HISTORY

Action	Date
Introduced	09-30-20
Reported, H. Health	11-19-20
Reported, H. Aging & Long Term Care	---

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¹⁵ Section 2.

¹⁶ Section 3.