THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 190  Session of 2021

INTRODUCED BY MENSCH, J. WARD, AUMENT, BAKER, BROOKS, MARTIN, MASTRIANO, PHILLIPS-HILL, PITTMAN, STEFANO, YAW AND HUTCHINSON, FEBRUARY 10, 2021

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, APRIL 19, 2021

AN ACT

1 Providing for essential family caregivers in facilities during disaster emergencies.
2 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:
3  Section 1.  Short title.
4  This act shall be known and may be cited as the Essential Family Caregiver Designation Act.
5  Section 2.  Definitions.
6  The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:
7  "Communicable disease."  As defined in section 2(c) of the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955.
8  "Compassionate care situation."  Any of the following:
9    (1)  An end of life situation.
10    (2)  A resident struggling with the change in environment
and lack of physical family support who was living with family before being recently admitted to a facility.

(3) A resident who is grieving after a friend or family member recently passed away.

(4) A resident who is experiencing weight loss or dehydration and needs cueing and encouragement with eating or drinking which was previously provided by a family member or caregiver.

(5) A resident who is experiencing emotional distress, is seldom speaking or crying more frequently and who used to talk and interact with others.

"Essential family caregiver." As follows:

(1) Any of the following individuals who are at least 18 years of age and who, prior to visitor restrictions, were regularly engaged with a resident at least once per week:
   (i) An immediate family member.
   (ii) A caregiver of the resident who is not employed by a facility.

(2) The term does not include an employee of a regulatory agency unless the employee is an immediate family member of the resident.

"Facility." Any of the following:

(1) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(2) A hospice as defined in section 802.1 of the Health Care Facilities Act, if the hospice renders care in an inpatient setting.

(3) An assisted living residence as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
A personal care home as defined in section 1001 of the Human Services Code.

An intermediate care facility for individuals with an intellectual disability.

"Immediate family member." A spouse, child, stepchild, parent, stepparent, grandparent, grandchild, brother, stepbrother, sister, stepsister or like relative-in-law.

"Intermediate care facility for individuals with an intellectual disability." The term shall have the same meaning as the term "intermediate care facility for the mentally retarded" in section 1905(d) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396d(d)) on the effective date of this definition.

"Secretary." The Secretary of Health or the Secretary of Human Services of the Commonwealth.

"State of disaster emergency." A state of disaster emergency declared under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor) that is due to a communicable disease.

Section 3. Essential family caregiver.

(a) Designation.--Notwithstanding any other provision of law, during a state of disaster emergency declared as a result of a communicable disease the secretary shall require a facility to designate at least one essential family caregiver per resident to provide companionship and assist with activities requiring one-on-one direction, including compassionate care situations. Only facilities that have the ability to follow necessary precautions outlined by the Federal and State Government may designate an essential family caregiver.

(b) Visitation.--Visitation by an essential family caregiver
may be conducted through different means based on a facility's structure and the needs of the residents, such as use of resident rooms, dedicated visitation spaces and the outdoors and visitation in circumstances beyond compassionate care situations. The following shall apply:

(1) Except for on-going use of virtual visits, facilities may still restrict visitation by an essential family caregiver due to any of the following:

(i) A communicable disease county positivity rate greater than the recommended threshold for visitation according to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services or other similar measure for reporting the spread of a communicable disease.

(ii) The facility's communicable disease status.

(iii) A resident's communicable disease status.

(iv) Visitor symptoms.

(2) Except as provided under paragraph (1), a facility may not restrict visitation by an essential family caregiver without a reasonable clinical or safety cause.

(c) Essential family caregiver requirements.--The decision to designate an essential family caregiver may be individualized and integrated with resident-centered care planning. A visit shall be held outdoors whenever practicable. For inside visits, the following shall apply:

(1) Designation shall be by the facility executive director or equivalent position or designee, in consultation with the resident and the resident's representative, and only upon agreement by the resident and their representative.

(2) A schedule and the amount of time allowed in a
facility by an essential family caregiver shall be agreed to
prior to an essential family caregiver entering a facility
and may not exceed more than two hours per day.

(3) Notwithstanding any other provision of law, 
visitation shall be contingent upon the facility having no 
ew communicable disease cases in the last 14 days. No 
facility may conduct visitation during the time period the 
facility is conducting outbreak testing.

(4) All who enter the facility must be screened for 
signs and symptoms of the communicable disease and the denial 
of entry of those with signs or symptoms must occur.

(5) Compliance with any necessary Federal or State 
Government precautions designed to reduce the spread of a 
communicable disease, including:

(i) Proper hand hygiene.

(ii) The wearing of a face covering or mask covering 
both the mouth and nose.

(iii) Physical distancing.

(6) An essential family caregiver shall provide care and 
support similar in nature as provided prior to the A <---
proclamation of disaster emergency issued by the Governor en- <---
March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), 
and any renewal of the state of disaster emergency, AS A <---
RESULT OF A COMMUNICABLE DISEASE.

(7) An essential family caregiver shall adhere to any 
conditions specified by the facility.

(8) Restriction or revocation of essential family 
caregiver status shall be at the sole discretion of the 
facility executive director or equivalent position or 
designee.
Section 4. Construction.

Nothing in this act shall be construed to supersede Federal authority or guidance regarding long-term care facilities or to prevent the secretary from taking necessary actions to render the Commonwealth eligible for Federal funds or reimbursement services provided in long-term care facilities.

Section 5. Effective date.

This act shall take effect immediately.