

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2861 Session of 2020

INTRODUCED BY RAPP, KAUFFMAN, SAYLOR, TOEPEL, CAUSER, DRISCOLL, COX, TOOHIL, PICKETT, MILLARD, GLEIM, KLUNK, GAYDOS, ZIMMERMAN AND STRUZZI, SEPTEMBER 14, 2020

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 19, 2020

AN ACT

1 ~~Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An~~ <--
2 ~~act relating to health care; prescribing the powers and~~
3 ~~duties of the Department of Health; establishing and~~
4 ~~providing the powers and duties of the State Health~~
5 ~~Coordinating Council, health systems agencies and Health Care~~
6 ~~Policy Board in the Department of Health, and State Health~~
7 ~~Facility Hearing Board in the Department of Justice;~~
8 ~~providing for certification of need of health care providers~~
9 ~~and prescribing penalties," in licensing of health care~~
10 ~~facilities, providing for access to long term care facilities~~
11 ~~for essential caregivers.~~

12 PROVIDING FOR ACCESS TO LONG-TERM CARE FACILITIES FOR ESSENTIAL <--
13 CAREGIVERS, FOR ADDITIONAL SAFETY REQUIREMENTS FOR RESIDENTS
14 OF LONG-TERM CARE FACILITIES, FOR SUSPENSION OF ACCESS FOR
15 ESSENTIAL CAREGIVERS AND FOR PERSONAL PROTECTIVE EQUIPMENT
16 FOR ESSENTIAL CAREGIVERS.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 ~~Section 1. The act of July 19, 1979 (P.L.130, No.48), known~~ <--
20 ~~as the Health Care Facilities Act, is amended by adding a~~
21 ~~section to read:~~

22 ~~Section 822. Access to long term care facilities for essential~~
23 ~~caregivers.~~

24 ~~(a) Protocols. The department, in consultation with the~~

1 ~~Department of Human Services, shall establish protocols to allow~~
2 ~~a resident of a long term care facility or an individual with~~
3 ~~decision making authority for the resident to designate an~~
4 ~~individual as the resident's essential caregiver during a~~
5 ~~declaration of disaster emergency. An essential caregiver shall~~
6 ~~meet the necessary qualifications to enter the long term care~~
7 ~~facility to provide in person physical or emotional support to a~~
8 ~~resident of a long term care facility in accordance with the~~
9 ~~protocols established under this section. The protocols shall~~
10 ~~include all of the following:~~

11 ~~(1) Safety measures for an essential caregiver,~~
12 ~~including, but not limited to, restrictions on travel,~~
13 ~~enhanced testing for communicable diseases and the necessary~~
14 ~~safety equipment required to protect the health and safety of~~
15 ~~the residents of the long term care facility.~~

16 ~~(2) Procedures to replace an essential caregiver due to~~
17 ~~necessary circumstances, including illness or death of the~~
18 ~~essential caregiver.~~

19 ~~(3) A duration, not to exceed 30 days, when a long term~~
20 ~~care facility may enter a lock down phase for the purpose of~~
21 ~~establishing safety measures for residents of the long term~~
22 ~~care facility and essential caregivers.~~

23 ~~(b) Additional safety requirements.~~

24 ~~(1) A long term care facility may establish additional~~
25 ~~safety requirements to protect the residents of the long term~~
26 ~~care facility if the requirements meet all of the following~~
27 ~~criteria:~~

28 ~~(i) The requirements are directly linked to a~~
29 ~~declaration of disaster emergency.~~

30 ~~(ii) The requirements are not so burdensome and~~

~~onerous as to substantially prevent an essential caregiver from being able to physically or emotionally support a resident of the long term care facility in person.~~

~~(2) A long term care facility may suspend access to the long term care facility for an essential caregiver who violates the protocols established under subsection (a), and the long term care facility shall allow the resident, or an individual with decision making authority for the resident, to immediately designate a replacement essential caregiver.~~

~~(c) Personal protective equipment. A long term care facility may require an essential caregiver to provide personal protective equipment for himself or herself or assume the cost of the personal protective equipment provided by the facility to allow the essential caregiver to provide in person physical or emotional support.~~

~~(d) Applicability. This section shall apply for the period commencing 15 days after a declaration of disaster emergency and 60 days after the termination or expiration of the declaration of disaster emergency by executive order, proclamation or operation of law.~~

~~(e) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"Declaration of disaster emergency." A disaster emergency declared by the Governor under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).~~

~~"Essential caregiver." An individual, whether a family member or friend of a resident of a long term care facility, who is designated by the resident or appointed by an individual with~~

1 ~~decision making authority for the resident to provide physical~~
2 ~~or emotional support to the resident during a declaration of~~
3 ~~disaster emergency.~~

4 ~~"Long term care facility." A facility licensed by the~~
5 ~~department or the Department of Human Services, including a~~
6 ~~long term care nursing facility, a skilled nursing facility, an~~
7 ~~assisted living facility, a personal care home or an older adult~~
8 ~~daily living center.~~

9 ~~Section 2. This act shall take effect in 60 days.~~

10 SECTION 1. SHORT TITLE.

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11 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE ACCESS TO
12 LONG-TERM CARE FACILITIES ACT.

13 SECTION 2. DEFINITIONS.

14 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
15 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
16 CONTEXT CLEARLY INDICATES OTHERWISE:

17 "DECLARATION OF DISASTER EMERGENCY." A DISASTER EMERGENCY
18 DECLARED BY THE GOVERNOR UNDER 35 PA.C.S. § 7301(C) (RELATING TO
19 GENERAL AUTHORITY OF GOVERNOR).

20 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

21 "ESSENTIAL CAREGIVER." AN INDIVIDUAL, WHETHER A FAMILY
22 MEMBER OR FRIEND OF A RESIDENT OF A LONG-TERM CARE FACILITY, WHO
23 IS DESIGNATED BY THE RESIDENT OR APPOINTED BY AN INDIVIDUAL WITH
24 DECISION-MAKING AUTHORITY FOR THE RESIDENT TO PROVIDE PHYSICAL
25 OR EMOTIONAL SUPPORT TO THE RESIDENT DURING A DECLARATION OF
26 DISASTER EMERGENCY.

27 "LONG-TERM CARE FACILITY." A FACILITY LICENSED BY THE
28 DEPARTMENT OR THE DEPARTMENT OF HUMAN SERVICES, INCLUDING, BUT
29 NOT LIMITED TO, A LONG-TERM CARE NURSING FACILITY, A SKILLED
30 NURSING FACILITY, AN ASSISTED LIVING FACILITY, A PERSONAL CARE

1 HOME, AN OLDER ADULT DAILY LIVING CENTER, AN INDEPENDENT LONG-
2 TERM CARE FACILITY OR AN INTERMEDIATE CARE FACILITY FOR
3 INDIVIDUALS WITH INTELLECTUAL DISABILITIES.

4 SECTION 3. ACCESS TO LONG-TERM CARE FACILITIES FOR ESSENTIAL
5 CAREGIVERS.

6 THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HUMAN
7 SERVICES, SHALL ESTABLISH PROTOCOLS TO ALLOW A RESIDENT OF A
8 LONG-TERM CARE FACILITY OR AN INDIVIDUAL WITH DECISION-MAKING
9 AUTHORITY FOR THE RESIDENT TO DESIGNATE AN INDIVIDUAL AS THE
10 RESIDENT'S ESSENTIAL CAREGIVER DURING A DECLARATION OF DISASTER
11 EMERGENCY. AN ESSENTIAL CAREGIVER SHALL MEET THE NECESSARY
12 QUALIFICATIONS TO ENTER THE LONG-TERM CARE FACILITY TO PROVIDE
13 IN-PERSON PHYSICAL OR EMOTIONAL SUPPORT TO A RESIDENT OF A LONG-
14 TERM CARE FACILITY IN ACCORDANCE WITH THE PROTOCOLS ESTABLISHED
15 UNDER THIS SECTION. THE PROTOCOLS SHALL INCLUDE ALL OF THE
16 FOLLOWING:

17 (1) SAFETY MEASURES FOR AN ESSENTIAL CAREGIVER,
18 INCLUDING, BUT NOT LIMITED TO, RESTRICTIONS ON TRAVEL,
19 ENHANCED TESTING FOR COMMUNICABLE DISEASES AND THE NECESSARY
20 SAFETY EQUIPMENT REQUIRED TO PROTECT THE HEALTH AND SAFETY OF
21 THE RESIDENTS OF THE LONG-TERM CARE FACILITY.

22 (2) PROCEDURES TO REPLACE AN ESSENTIAL CAREGIVER DUE TO
23 NECESSARY CIRCUMSTANCES, INCLUDING ILLNESS OR DEATH OF THE
24 ESSENTIAL CAREGIVER.

25 (3) A DURATION, NOT TO EXCEED 30 DAYS, WHEN A LONG-TERM
26 CARE FACILITY MAY ENTER A LOCK-DOWN PHASE FOR THE PURPOSE OF
27 ESTABLISHING SAFETY MEASURES FOR RESIDENTS OF THE LONG-TERM
28 CARE FACILITY AND ESSENTIAL CAREGIVERS.

29 SECTION 4. ADDITIONAL SAFETY REQUIREMENTS FOR RESIDENTS OF
30 LONG-TERM CARE FACILITIES.

1 A LONG-TERM CARE FACILITY MAY ESTABLISH ADDITIONAL SAFETY
2 REQUIREMENTS TO PROTECT THE RESIDENTS OF THE LONG-TERM CARE
3 FACILITY IF THE REQUIREMENTS MEET ALL OF THE FOLLOWING CRITERIA:

4 (1) THE REQUIREMENTS ARE DIRECTLY LINKED TO A
5 DECLARATION OF DISASTER EMERGENCY.

6 (2) THE REQUIREMENTS ARE NOT SO BURDENSOME AND ONEROUS
7 AS TO SUBSTANTIALLY PREVENT AN ESSENTIAL CAREGIVER FROM BEING
8 ABLE TO PHYSICALLY OR EMOTIONALLY SUPPORT A RESIDENT OF THE
9 LONG-TERM CARE FACILITY IN PERSON.

10 SECTION 5. SUSPENSION OF ACCESS FOR ESSENTIAL CAREGIVERS.

11 A LONG-TERM CARE FACILITY MAY SUSPEND ACCESS TO THE LONG-TERM
12 CARE FACILITY FOR AN ESSENTIAL CAREGIVER WHO VIOLATES THE
13 PROTOCOLS ESTABLISHED UNDER SECTION 3, AND THE LONG-TERM CARE
14 FACILITY SHALL ALLOW THE RESIDENT, OR AN INDIVIDUAL WITH
15 DECISION-MAKING AUTHORITY FOR THE RESIDENT, TO IMMEDIATELY
16 DESIGNATE A REPLACEMENT ESSENTIAL CAREGIVER.

17 SECTION 6. PERSONAL PROTECTIVE EQUIPMENT FOR ESSENTIAL
18 CAREGIVERS.

19 A LONG-TERM CARE FACILITY MAY REQUIRE AN ESSENTIAL CAREGIVER
20 TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT FOR HIMSELF OR HERSELF
21 OR ASSUME THE COST OF THE PERSONAL PROTECTIVE EQUIPMENT PROVIDED
22 BY THE FACILITY TO ALLOW THE ESSENTIAL CAREGIVER TO PROVIDE IN-
23 PERSON PHYSICAL OR EMOTIONAL SUPPORT.

24 SECTION 7. APPLICABILITY.

25 THIS ACT SHALL APPLY FOR THE PERIOD COMMENCING 15 DAYS AFTER
26 A DECLARATION OF DISASTER EMERGENCY AND 60 DAYS AFTER THE
27 TERMINATION OR EXPIRATION OF THE DECLARATION OF DISASTER
28 EMERGENCY BY EXECUTIVE ORDER, PROCLAMATION OR OPERATION OF LAW.

29 SECTION 8. CONSTRUCTION.

30 NOTHING IN THIS ACT SHALL BE CONSTRUED TO SUPERSEDE FEDERAL

1 AUTHORITY REGARDING LONG-TERM CARE FACILITIES OR TO PREVENT THE
2 DEPARTMENT OR DEPARTMENT OF HUMAN SERVICES FROM TAKING NECESSARY
3 ACTIONS TO RENDER THE COMMONWEALTH ELIGIBLE FOR FEDERAL FUNDS OR
4 REIMBURSEMENT SERVICES PROVIDED IN LONG-TERM CARE FACILITIES.

5 SECTION 9. EFFECTIVE DATE.

6 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.