

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1279 Session of 2020

INTRODUCED BY MENSCH, AUMENT, BROWNE, GORDNER, J. WARD, HUTCHINSON, MARTIN, MASTRIANO, PHILLIPS-HILL AND PITTMAN, SEPTEMBER 3, 2020

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 19, 2020

AN ACT

1 Providing for essential family caregivers in facilities during
2 disaster emergencies.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Essential
7 Family Caregiver Designation Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Communicable disease." As defined in section 2(c) of the
13 act of April 23, 1956 (1955 P.L.1510, No.500), known as the
14 Disease Prevention and Control Law of 1955.

15 "COMPASSIONATE CARE SITUATION." ANY OF THE FOLLOWING: <--

16 (1) AN END OF LIFE SITUATION.

17 (2) A RESIDENT STRUGGLING WITH THE CHANGE IN ENVIRONMENT

1 AND LACK OF PHYSICAL FAMILY SUPPORT WHO WAS LIVING WITH
2 FAMILY BEFORE BEING RECENTLY ADMITTED TO A FACILITY.

3 (3) A RESIDENT WHO IS GRIEVING AFTER A FRIEND OR FAMILY
4 MEMBER RECENTLY PASSED AWAY.

5 (4) A RESIDENT WHO IS EXPERIENCING WEIGHT LOSS OR
6 DEHYDRATION AND NEEDS CUEING AND ENCOURAGEMENT WITH EATING OR
7 DRINKING WHICH WAS PREVIOUSLY PROVIDED BY A FAMILY MEMBER OR
8 CAREGIVER.

9 (5) A RESIDENT WHO IS EXPERIENCING EMOTIONAL DISTRESS,
10 IS SELDOM SPEAKING OR CRYING MORE FREQUENTLY AND WHO USED TO
11 TALK AND INTERACT WITH OTHERS.

12 "Essential family caregiver." As follows:

13 (1) Any of the following individuals who are at least 18
14 years of age and who, prior to visitor restrictions, were
15 regularly engaged with a resident at least once per week:

16 (i) An immediate family member.

17 (ii) A caregiver of the resident who is not employed
18 by a facility.

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

22 "Facility." Any of the following:

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

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

29 ~~(3)~~ (1) An assisted living residence as defined in <--
30 section 1001 of the act of June 13, 1967 (P.L.31, No.21),

1 known as the Human Services Code.

2 ~~(4)~~ (2) A personal care home as defined in section 1001 <--
3 of the Human Services Code.

4 ~~(5)~~ (3) An intermediate care facility for individuals <--
5 with an intellectual disability.

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

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

15 "Secretary." The Secretary of ~~Health or the Secretary of~~ <--
16 Human Services of the Commonwealth.

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

20 Section 3. Essential family caregiver.

21 (a) Designation.--Notwithstanding any other provision of
22 law, during a state of disaster emergency the secretary shall
23 ~~allow~~ REQUIRE a facility to designate at least one essential <--
24 family caregiver per resident to provide companionship and
25 assist with activities requiring one-on-one direction, INCLUDING <--
26 COMPASSIONATE CARE SITUATIONS. Only facilities that have the
27 ability to follow necessary precautions outlined by the Federal
28 and State Government may designate an essential family
29 caregiver.

30 ~~(b) Individualization and integration. The decision to~~ <--

1 ~~designate an essential family caregiver may be individualized~~
2 ~~and integrated with resident centered care planning. The~~
3 ~~following shall apply:~~

4 ~~(1) Designation shall be at the sole discretion of the~~
5 ~~facility executive director or designee and only upon~~
6 ~~agreement by the resident and their representative.~~

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

11 ~~(3) An essential family caregiver shall provide care and~~
12 ~~support similar in nature as provided prior to the state of~~
13 ~~disaster emergency.~~

14 ~~(4) Physical distancing shall be maintained by an~~
15 ~~essential family caregiver with staff and other residents~~
16 ~~while in the facility.~~

17 ~~(5) An essential family caregiver shall adhere to any~~
18 ~~conditions specified by the facility.~~

19 ~~(6) Restriction or revocation of essential family~~
20 ~~caregiver status shall be at the sole discretion of the~~
21 ~~facility executive director or designee.~~

22 (B) VISITATION.--VISITATION BY AN ESSENTIAL FAMILY CAREGIVER <--
23 MAY BE CONDUCTED THROUGH DIFFERENT MEANS BASED ON A FACILITY'S
24 STRUCTURE AND THE NEEDS OF THE RESIDENTS, SUCH AS USE OF
25 RESIDENT ROOMS, DEDICATED VISITATION SPACES AND THE OUTDOORS AND
26 VISITATION IN CIRCUMSTANCES BEYOND COMPASSIONATE CARE
27 SITUATIONS. THE FOLLOWING SHALL APPLY:

28 (1) EXCEPT FOR ON-GOING USE OF VIRTUAL VISITS,
29 FACILITIES MAY STILL RESTRICT VISITATION BY AN ESSENTIAL
30 FAMILY CAREGIVER DUE TO ANY OF THE FOLLOWING:

1 (I) A COVID-19 COUNTY POSITIVITY RATE GREATER THAN
2 10% ACCORDING TO THE UNITED STATES DEPARTMENT OF HEALTH
3 AND HUMAN SERVICES CENTERS FOR MEDICARE AND MEDICAID
4 SERVICES.

5 (II) THE FACILITY'S COVID-19 STATUS.

6 (III) A RESIDENT'S COVID-19 STATUS.

7 (IV) VISITOR SYMPTOMS.

8 (2) EXCEPT AS PROVIDED UNDER PARAGRAPH (1), A FACILITY
9 MAY NOT RESTRICT VISITATION BY AN ESSENTIAL FAMILY CAREGIVER
10 WITHOUT A REASONABLE CLINICAL OR SAFETY CAUSE.

11 (C) ESSENTIAL FAMILY CAREGIVER REQUIREMENTS.--THE DECISION
12 TO DESIGNATE AN ESSENTIAL FAMILY CAREGIVER MAY BE INDIVIDUALIZED
13 AND INTEGRATED WITH RESIDENT-CENTERED CARE PLANNING. A VISIT
14 SHALL BE HELD OUTDOORS WHENEVER PRACTICABLE. FOR INSIDE VISITS,
15 THE FOLLOWING SHALL APPLY:

16 (1) DESIGNATION SHALL BE BY THE FACILITY EXECUTIVE
17 DIRECTOR OR EQUIVALENT POSITION OR DESIGNEE, IN CONSULTATION
18 WITH THE RESIDENT AND THE RESIDENT'S REPRESENTATIVE, AND ONLY
19 UPON AGREEMENT BY THE RESIDENT AND THEIR REPRESENTATIVE.

20 (2) A SCHEDULE AND THE AMOUNT OF TIME ALLOWED IN A
21 FACILITY BY AN ESSENTIAL FAMILY CAREGIVER SHALL BE AGREED TO
22 PRIOR TO AN ESSENTIAL FAMILY CAREGIVER ENTERING A FACILITY
23 AND MAY NOT EXCEED MORE THAN TWO HOURS PER DAY.

24 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
25 VISITATION SHALL BE CONTINGENT UPON THE FACILITY HAVING NO
26 NEW COVID-19 CASES IN THE LAST 14 DAYS. NO FACILITY MAY
27 CONDUCT VISITATION DURING THE TIME PERIOD THE FACILITY IS
28 CONDUCTING OUTBREAK TESTING.

29 (4) ALL WHO ENTER THE FACILITY MUST BE SCREENED FOR
30 SIGNS AND SYMPTOMS OF COVID-19 AND THE DENIAL OF ENTRY OF

1 THOSE WITH SIGNS OR SYMPTOMS MUST OCCUR.

2 (5) PROPER HAND HYGIENE MUST BE IMPLEMENTED.

3 (6) THE WEARING OF A FACE COVERING OR MASK COVERING BOTH
4 THE MOUTH AND NOSE MUST BE ENFORCED.

5 (7) PHYSICAL DISTANCING AT LEAST SIX FEET BETWEEN
6 INDIVIDUALS SHALL BE MAINTAINED BY AN ESSENTIAL FAMILY
7 CAREGIVER WITH STAFF AND OTHER RESIDENTS WHILE IN THE
8 FACILITY.

9 (8) AN ESSENTIAL FAMILY CAREGIVER SHALL PROVIDE CARE AND
10 SUPPORT SIMILAR IN NATURE AS PROVIDED PRIOR TO THE
11 PROCLAMATION OF DISASTER EMERGENCY ISSUED BY THE GOVERNOR ON
12 MARCH 6, 2020, PUBLISHED AT 50 PA.B. 1644 (MARCH 21, 2020),
13 AND ANY RENEWAL OF THE STATE OF DISASTER EMERGENCY.

14 (9) AN ESSENTIAL FAMILY CAREGIVER SHALL ADHERE TO ANY
15 CONDITIONS SPECIFIED BY THE FACILITY.

16 (10) RESTRICTION OR REVOCATION OF ESSENTIAL FAMILY
17 CAREGIVER STATUS SHALL BE AT THE SOLE DISCRETION OF THE
18 FACILITY EXECUTIVE DIRECTOR OR EQUIVALENT POSITION OR
19 DESIGNEE.

20 Section 4. Effective date.

21 This act shall take effect immediately.