

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
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) An assisted living residence as defined in section  
30 1001 of the act of June 13, 1967 (P.L.31, No.21), known as

1 the Human Services Code.

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

4 (5) An intermediate care facility for individuals with  
5 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 declared as a result  
23 of a communicable disease the secretary shall require a facility  
24 to designate at least one essential family caregiver per  
25 resident to provide companionship and assist with activities  
26 requiring one-on-one direction, including compassionate care  
27 situations. Only facilities that have the ability to follow  
28 necessary precautions outlined by the Federal and State  
29 Government may designate an essential family caregiver.

30 (b) Visitation.--Visitation by an essential family caregiver

1 may be conducted through different means based on a facility's  
2 structure and the needs of the residents, such as use of  
3 resident rooms, dedicated visitation spaces and the outdoors and  
4 visitation in circumstances beyond compassionate care  
5 situations. The following shall apply:

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

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

15 (ii) The facility's communicable disease status.

16 (iii) A resident's communicable disease status.

17 (iv) Visitor symptoms.

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

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

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

30 (2) A schedule and the amount of time allowed in a

1 facility by an essential family caregiver shall be agreed to  
2 prior to an essential family caregiver entering a facility  
3 and may not exceed more than two hours per day.

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

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

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

15 (i) Proper hand hygiene.

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

18 (iii) Physical distancing.

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

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

27 (8) Restriction or revocation of essential family  
28 caregiver status shall be at the sole discretion of the  
29 facility executive director or equivalent position or  
30 designee.

1 Section 4. Construction.

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

7 Section 5. Effective date.

8 This act shall take effect immediately.