

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 202

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AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 16-18-2-122, AS AMENDED BY P.L.86-2018, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 122. **(a) "Facility", for purposes of IC 16-28-2-12, has the meaning set forth in IC 16-28-2-12(a).**

**(b) "Facility", for purposes of IC 16-28-6.5, has the meaning set forth in IC 16-28-6.5-1.**

**(c) "Facility", for purposes of IC 16-41-11, has the meaning set forth in IC 16-41-11-2.**

SECTION 2. IC 16-18-2-317.7, AS AMENDED BY P.L.2-2019, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 317.7. "Residential care facility", for purposes of:

- (1) IC 16-28-2;
- (2) **IC 16-28-6.5**; and
- (3) IC 16-32-5;

means an entity licensed under IC 16-28 and registered as a housing with services establishment under IC 12-10-15.

SECTION 3. IC 16-21-2-15.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.7. (a) As used in this section, "facility" includes the following:**

- (1) **A hospital licensed under this article.**

SEA 202 — Concur



- (2) A freestanding rehabilitation hospital.**
- (3) A private psychiatric hospital licensed under IC 12-25.**
- (4) An ambulatory outpatient surgical center licensed under this article.**

**(b) Subject to subsections (c), (d), and (f), a facility shall allow visitation to a patient who has been admitted as a patient during a disaster emergency declared under IC 10-14-3-12, a public health emergency, or a similar crisis from one (1) or more of the following individuals:**

- (1) A patient's family member.**
- (2) A patient's legal representative.**
- (3) The patient's designee.**
- (4) A member of the clergy.**
- (5) An essential caregiver.**
- (6) Any other individual capable of meeting the patient's needs.**

**(c) Subject to subsection (d), a person described in subsection (b) shall be permitted to daily visit a person who is admitted as a patient without regard for any visitation restrictions imposed by the facility during a compassionate care situation that involves one (1) or more of the following scenarios:**

- (1) An end of life situation, including hospice.**
- (2) A patient who is experiencing weight loss or dehydration and is in need of cuing or encouragement for eating or drinking.**
- (3) A patient who is experiencing emotional distress, depression, or grief.**
- (4) A patient who is diagnosed with Alzheimer's disease, dementia, or a related cognitive disorder.**
- (5) The patient is experiencing an acute health situation that requires immediate attention.**
- (6) The patient is undergoing surgery with general anesthesia.**
- (7) The patient is experiencing a sudden deterioration in the patient's medical condition.**
- (8) The patient is unable to provide or does not know pertinent and critical medical information that would aid the health care professional in treating the patient.**
- (9) The patient is a minor.**

**(d) A person who is described in subsection (b) or who visits a patient admitted as a patient for a reason specified in subsection (c) must comply with the following:**

- (1) Applicable guidelines concerning disease control or**



prevention as determined by the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention.

- (2) Any facility requirements to undergo screening or to complete testing before visiting a patient admitted as a patient. If a screening protocol or test result prohibits a person from visiting the patient, another individual capable of successfully completing or passing the applicable screening protocol or test may be selected for visitation by the patient.
- (3) Limitations that an individual granted access under the protocols of this section may not access any area other than the patient's room or area designated or permitted by the facility.

(e) The facility may specify any requirement that the facility will implement for the individual who is granted access to the facility, including the following:

- (1) Screening.
- (2) Personal protective equipment requirements and instructions on the proper use of the equipment.
- (3) Restrictions when entering patient rooms.
- (4) Disclosure of any risks associated with the individual's entry onto the premises, including risks during an epidemic or when a communicable disease is involved.
- (5) Written acknowledgment from the individual entering the premises that the individual:
  - (A) will follow the established protocols;
  - (B) holds the facility, its employees, and health care providers harmless for exposure to a disease or other harmful agent specified during a disaster emergency declared under IC 10-14-3-12 while the individual is allowed to enter the facility; and
  - (C) received and acknowledges the disclosure of the risks described in subdivision (4).

(f) Nothing in this section may be construed to prevent a facility from limiting the number of designated individuals that a person admitted as a patient may see if the limitations are explicitly required under a disaster emergency or public health emergency declaration.

(g) A hospital, its employees, and contractors are immune from civil liability for an injury or harm caused by or resulting from:

- (1) the exposure of a contagious disease or other harmful agent that is specified during a disaster emergency declared



under IC 10-14-3-12; or

(2) acts or omissions by visitors who are present in the hospital;

as a result of the implementation of the protocols under this chapter. The immunity described in this section does not apply to any act or omission that constitutes gross negligence or willful or wanton misconduct.

SECTION 4. IC 16-28-2-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. (a) As used in this section, "facility" includes the following:**

(1) A health facility licensed under this article.

(2) A residential care facility.

(b) During a declared emergency, public health emergency, or similar crisis, a facility shall allow, in accordance with guidelines from the Centers for Medicare and Medicaid Services, visitation of a resident by the resident's family member, legal representative, clergy, or essential family caregiver (as determined in IC 16-28-6.5), or an individual who can meet the resident's needs, regardless of visitation restrictions implemented by the facility, in compassionate care situations, including the following:

(1) End of life situations.

(2) A recently admitted resident who is struggling to adapt to the facility and the lack of family support.

(3) A resident who is grieving the recent death of a family member or friend.

(4) A resident who is experiencing weight loss or dehydration and is in need of cuing and encouragement for eating or drinking that was previously provided to the resident by a family member or caregiver.

(5) A resident who is experiencing emotional distress and is not talking or interacting with others as the resident previously had.

(6) A resident who is diagnosed with Alzheimer's disease, dementia, or a related cognitive disorder, and is experiencing distress due to a lack of visitation.

(7) A resident who is failing to thrive.

(c) A facility has the burden of proof in justifying the facility's decision to deny visitation for a resident's family member, legal representative, or essential family caregiver in a compassionate care situation under this section.

SECTION 5. IC 16-28-6.5 IS ADDED TO THE INDIANA CODE



AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 6.5. Essential Family Caregiver Program**

**Sec. 1. As used in this chapter, "facility" includes the following:**

- (1) A health facility licensed under this article.**
- (2) A residential care facility.**

**Sec. 2. The state department shall adopt standards and guidelines concerning the essential family caregiver program to be implemented during a declared emergency or a public health emergency for the purpose of establishing protocols for a facility to designate a person chosen by a resident or a resident's designated representative to assist the facility in providing care to the resident that was previously provided by the person before restrictions were placed on visitation due to a declared emergency or a public health emergency when visitation is limited or restricted. Either:**

- (1) the resident; or**
- (2) if the individual has been deemed to be incapacitated or is a resident of a memory care unit, the resident's designated representative;**

**shall make the determination. The facility shall allow at least two (2) individuals per resident to be designated, and the resident or the resident's designated representative shall determine the identity of the primary essential family caregiver to serve as the resident's main point of contact for communication and care coordination.**

**Sec. 3. (a) A facility shall participate in the essential family caregiver program established and maintained by the state department under section 2 of this chapter.**

**(b) A facility shall inform residents of the facility and a resident's designated representative of the essential family caregiver program and the process for being designated as a resident's essential family caregiver. The facility's requirements concerning participation in the program and applying for the designation must be in writing.**

**(c) The administrator of a facility, or the administrator's designee, shall have the discretion to determine whether to designate a person to be an essential family caregiver for a resident. The facility has the burden of proof in justifying the facility's decision to deny the designation for a person that applies to be an essential family caregiver for a resident under this chapter. If a health facility denies the designation of a person as an**



essential family caregiver, the health facility must provide the denial to the person in writing with an explanation of the reason for the denial.

(d) The administrator of a facility or the administrator's designee shall:

- (1) factor in the current status of the facility concerning the declared emergency or public health emergency in determining whether to designate an individual as an essential family caregiver for a resident; and
- (2) determine, not later than seven (7) days after receipt of the application, and in consultation with staff of the facility who provide care to the resident, each designation on a case by case basis and as part of an individualized care plan for a resident.

(e) If an applicant is denied designation as an essential family caregiver by the administrator, the applicant may request in writing that the administrator reconsider designating the applicant as an essential family caregiver. An individual whose application is still denied after reconsideration may report the denial in writing to the state department or the long term care ombudsman if the individual believes that the denial is in violation of this chapter.

**Sec. 4. To be designated as an essential family caregiver of a resident, an individual must at least meet the following:**

- (1) Is at least eighteen (18) years of age.
- (2) Either:
  - (A) before the declared emergency or public health emergency that resulted in the placement of visitation restrictions, regularly engaged with the resident on average at least two (2) times per week to provide care or support to the resident, including help with meal set up, grooming, and companionship; or
  - (B) if the resident is a new resident to the facility during a declared emergency or public health emergency, previously provided care to the resident.
- (3) Has taken and passed any screening test or other testing required for the declared emergency or public health emergency, and agrees to continue to take any required testing throughout the emergency when requested.
- (4) Agrees to take any precautionary measures, including hand hygiene and the wearing of a mask or other personal protective equipment required by the facility.
- (5) Agrees to only enter the resident's room and designated



areas of the facility.

**Sec. 5.** A resident or a resident's designated representative must agree to a designation of an individual as the resident's essential family caregiver before the designation may occur. The resident or resident's designated representative may revoke the agreement concerning a designated essential family caregiver at any time.

**Sec. 6. (a)** If a facility designates an individual as an essential family caregiver for a resident, the following must occur:

(1) The facility must set forth in writing the hours of visitation and the length of time of the visitation.

(2) The facility shall provide a written list of the rules that the designee must follow, and the designee shall attest to the receipt of and agreement to the rules.

(3) An individualized plan shall be developed by the facility, resident, resident's designated representative, and each designee for each designation that:

(A) specifies the responsibilities of all parties;

(B) is maintained in the resident's file;

(C) is provided to both the resident and the designated essential family caregiver;

(D) is developed for both in-person outdoor and indoor visitation, and virtual visits when the essential caregiver is unable or prohibited from entry due to illness; and

(E) reflects the preferences of the resident and the essential family caregiver while adhering to all state and federal guidelines concerning visitation.

(b) A facility and essential family caregiver shall work together to ensure reasonable visitation times are set in a manner that provides an essential family caregiver the ability to visit the resident.

(c) Upon request of the resident, the resident's designated representative, the resident's family, or the resident's legal representative, the facility shall provide a copy of the individual's plan described in this section to the long term care ombudsman.

**Sec. 7.** A facility may restrict an established plan of visitation by an essential family caregiver for any of the following:

(1) The essential family caregiver's violation of the rules set forth in the individualized plan established under section 6 of this chapter.

(2) The essential family caregiver's positive screening test for a length of time, as established by federal or state guidelines.

**Sec. 8. (a)** If a facility is unable to comply with this chapter or



any requirements for the program established by the state department, the facility shall notify the state department of the reason the facility may not comply with the program and what the facility needs in order to comply with the program.

(b) The state department may take enforcement action against a facility as determined by rules adopted under section 9 of this chapter.

**Sec. 9.** The state department may adopt rules under IC 4-22-2 concerning the essential family caregiver program, including:

- (1) the oversight and enforcement of the essential family caregiver program;
- (2) the establishment of requirements for plans for correction for a violation by a facility under this chapter; and
- (3) reporting of the participation in the essential family caregiver program, compassionate care program, and general visitation.

**Sec. 10. (a)** A facility, its employees, and contractors are immune from civil liability for an injury or harm caused by or resulting from:

- (1) the exposure of a contagious disease or other harmful agent that is specified during a disaster emergency declared under IC 10-14-3-12; or
- (2) acts or omissions by visitors who are present in the facility;

as a result of the implementation of the protocols under this chapter.

(b) The immunity described in subsection (a) does not apply to any act or omission that constitutes gross negligence or willful or wanton misconduct.

SECTION 6. IC 34-30-2-66.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 66.1. IC 16-21-2-15.7 (Concerning facility protocols on admittance of visitors into the facility).**

SECTION 7. IC 34-30-2-66.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 66.8. IC 16-28-6.5-10 (Concerning implementation of or compliance with the essential family caregiver program).**

SECTION 8. An emergency is declared for this act.





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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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