

# SENATE BILL No. 229

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2; IC 16-28-2-12; IC 34-30-2-66.8.

**Synopsis:** Nursing home visitation. Establishes essential family caregiver status. Requires each health facility and residential care facility (facility) to permit visitation by an essential family caregiver (caregiver) despite restricted visitation during compassionate care situations. Specifies certain eligibility requirements for caregiver status. Allows the administrator of a facility or the administrator's designee, as applicable, to determine whether or not to award caregiver status to a selected individual. Requires consideration of specified conditions when a request for caregiver status is being evaluated. Requires a resident to request or approve of any awarded caregiver designation. Allows a resident to revoke caregiver status from an individual at any time. Requires particularized rules applicable to a caregiver to be communicated to the caregiver by the applicable facility. Requires certain policies concerning caregiver status to be memorialized in writing. Entitles each resident of a facility to at least one caregiver. Directs the state department of health (state department) to adopt rules concerning the enforcement of visitation by caregivers. Specifies that a facility has the burden of proof when justifying a denial of visitation to a caregiver. Provides that a facility is immune from civil liability for any act or omission related to the implementation of a procedure or policy concerning visitation by a caregiver in certain instances. Specifies an exception. Defines certain terms.

**Effective:** Upon passage.

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January 7, 2021, read first time and referred to Committee on Health and Provider Services.

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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 BILL No. 229

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

1 SECTION 1. IC 16-18-2-66.3 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: **Sec. 66.3. "Compassionate care**  
4 **situation", for purposes of IC 16-28-2-12, has the meaning set forth**  
5 **in IC 16-28-2-12(a).**

6 SECTION 2. IC 16-18-2-116.5 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE UPON PASSAGE]: **Sec. 116.5. "Essential family**  
9 **caregiver", for purposes of IC 16-28-2-12, has the meaning set**  
10 **forth in IC 16-28-2-12(b).**

11 SECTION 3. IC 16-28-2-12 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
13 UPON PASSAGE]: **Sec. 12. (a) As used in this section,**  
14 **"compassionate care situation" means any situation involving one**  
15 **(1) or more of the following scenarios:**

- 16 (1) **A resident who is nearing or experiencing end of life.**
- 17 (2) **A recently admitted resident who is struggling to adapt to**



- 1 the move and lack of family support.
- 2 (3) A resident who is grieving the recent death of a family
- 3 member or friend.
- 4 (4) A resident who is experiencing weight loss or dehydration
- 5 and is in need of cuing and encouragement for eating or
- 6 drinking that was previously provided to the resident by a
- 7 family member or caregiver.
- 8 (5) A resident who is experiencing emotional distress and is
- 9 not talking or interacting with others as the resident
- 10 previously had.
- 11 (b) As used in this section, "essential family caregiver" means
- 12 a person who meets the following criteria:
- 13 (1) Is at least eighteen (18) years of age.
- 14 (2) Before the declared emergency, public health emergency,
- 15 or similar crisis that resulted in the placement of any
- 16 applicable visitation restrictions, regularly engaged with the
- 17 resident prior to or after admission to a facility at least two
- 18 (2) times per week to provide care or support to the resident.
- 19 (3) Has taken and passed any screening test or other testing
- 20 required for the declared emergency, public health
- 21 emergency, or similar crisis, and agrees to continue to take
- 22 any required testing throughout the emergency or crisis when
- 23 requested.
- 24 (4) Agrees to take any precautionary measures, including
- 25 hand hygiene and the wearing of a mask or other personal
- 26 protective equipment required by the health facility or
- 27 residential care facility.
- 28 (5) Agrees to limit activity to the resident's room or
- 29 designated areas of the facility.
- 30 (c) As used in this section, "facility" means the following:
- 31 (1) A health facility licensed under this article.
- 32 (2) A residential care facility.
- 33 (d) During the declared emergency, public health emergency, or
- 34 similar crisis, a facility shall, in accordance with guidelines from
- 35 the Centers for Medicare and Medicaid Services, permit the
- 36 visitation of a resident by a resident's essential family caregiver
- 37 during a compassionate care situation.
- 38 (e) Visitation authorized under subsection (d) shall be permitted
- 39 notwithstanding:
- 40 (1) normal visitation policies or restrictions adopted by the
- 41 facility; or
- 42 (2) particularized visitation restrictions implemented by a



- 1 facility in response to a declared emergency, public health  
 2 emergency, or similar crisis.
- 3 (f) All facilities shall inform residents and residents' designated  
 4 representatives of the availability of essential family caregiver  
 5 status and the process for being designated an essential family  
 6 caregiver. A facility's requirements concerning the designation of  
 7 essential family caregiver status must:
- 8 (1) comply with this section; and
  - 9 (2) be in writing.
- 10 (g) The administrator of a facility, or the administrator's  
 11 designee, as applicable, shall have the discretion to determine  
 12 whether or not to designate an individual as an essential family  
 13 caregiver for a resident upon request by a resident.
- 14 (h) When making an essential family caregiver determination  
 15 under subsection (g), the administrator or the administrator's  
 16 designee, as applicable, shall:
- 17 (1) factor in the current status of the facility concerning any  
 18 declared emergency, public health emergency, or similar  
 19 crisis when determining whether to designate an individual as  
 20 an essential family caregiver for a resident; and
  - 21 (2) determine each essential family caregiver designation on  
 22 a case by case basis and as part of an individualized care plan  
 23 for each resident.
- 24 (i) Subject to subsections (d) and (g), each resident shall be  
 25 entitled to one (1) essential family caregiver at a time. However, a  
 26 resident may elect to decline his or her right to an essential family  
 27 caregiver under this subsection.
- 28 (j) A resident must agree to the designation of an individual as  
 29 the resident's essential family caregiver before the designation may  
 30 occur. The resident may revoke essential family caregiver status  
 31 from a designee at any time.
- 32 (k) If a facility designates an individual as an essential family  
 33 caregiver for a resident, the following must occur:
- 34 (1) The facility must set forth in writing the hours of visitation  
 35 and the length of time the visitation is to occur.
  - 36 (2) The facility must provide a written list of the rules  
 37 applicable to the essential family caregiver and the list must  
 38 be provided to the essential family caregiver by the facility. A  
 39 designee's acceptance of essential family caregiver status must  
 40 include an attestation by the designee that includes a receipt  
 41 of all applicable rules and an agreement to abide by all  
 42 applicable rules.



1           **(3) An individualized plan for the resident must be developed**  
 2           **by the facility, the resident, and each designee for each**  
 3           **essential caregiver designation that:**

4           **(A) specifies the responsibilities of all parties;**

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

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

8           **(D) is developed for both in person outdoor and indoor**  
 9           **visitation as well as virtual visits; and**

10           **(E) to the extent practicable, reflects the preferences of the**  
 11           **resident and the essential family caregiver while adhering**  
 12           **to all state and federal guidelines concerning visitation.**

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

17           **(m) Upon request of the resident or the resident's designated**  
 18           **representative, the facility shall provide a copy of the**  
 19           **individualized plan described in subsection (k)(3) to the long term**  
 20           **care ombudsman.**

21           **(n) A facility may restrict an established plan visitation by an**  
 22           **essential family caregiver for any of the following reasons:**

23           **(1) The essential family caregiver violates any rule set forth in**  
 24           **the individualized plan established under subsection (k).**

25           **(2) The essential family caregiver receives a positive or failed**  
 26           **screening test for a contagious or communicable disease that**  
 27           **is the subject of an ongoing declared emergency, public health**  
 28           **emergency, or similar crisis. Unless otherwise provided under**  
 29           **applicable federal or state guidelines, a disqualification under**  
 30           **this subdivision:**

31           **(A) may not last for a period longer than ninety (90) days;**  
 32           **and**

33           **(B) must comply with any applicable federal or state**  
 34           **guidelines.**

35           **(o) A facility has the burden of proof when justifying any**  
 36           **decision to deny visitation to a resident's essential family caregiver**  
 37           **during a compassionate care situation.**

38           **(p) If a facility is unable to comply with this section, the facility**  
 39           **shall notify the state department of the reason for the facility's**  
 40           **inability to comply with this section and shall specify what the**  
 41           **facility needs in order to implement or resume compliance, as**  
 42           **applicable.**



1           **(q) The state department may take an enforcement action**  
 2 **against a facility that fails or refuses to comply, as applicable, with**  
 3 **this section. An enforcement action taken by the state department**  
 4 **under this subsection shall be governed by the rules under**  
 5 **subsection (r).**

6           **(r) The state department shall adopt rules under IC 4-22-2,**  
 7 **including emergency rules under IC 4-22-2-37.1, to enforce this**  
 8 **section and to require the writing and implementation of plans of**  
 9 **correction. An emergency rule adopted by the state department**  
 10 **under this section expires on the earlier of the following dates:**

11           **(1) The expiration date stated in the emergency rule.**

12           **(2) The date the emergency rule is amended or repealed by a**  
 13 **later rule adopted under IC 4-22-2-24 through IC 4-22-2-36**  
 14 **or under IC 4-22-2-37.1.**

15 **The state department shall adopt rules under IC 4-22-2 not later**  
 16 **than July 1, 2022.**

17           **(s) Subject to subsection (t), a facility, facility employee, or**  
 18 **facility contractor that, in good faith, implements or complies with**  
 19 **this section may not be held civilly liable for damages, including**  
 20 **punitive damages, for any act or omission related to the**  
 21 **implementation of this section.**

22           **(t) The immunity described in subsection (s) does not apply to**  
 23 **any act or omission that constitutes gross negligence or willful or**  
 24 **wanton misconduct.**

25           **SECTION 4. IC 34-30-2-66.8 IS ADDED TO THE INDIANA**  
 26 **CODE AS A NEW SECTION TO READ AS FOLLOWS**  
 27 **[EFFECTIVE UPON PASSAGE]: Sec. 66.8. IC 16-28-2-12**  
 28 **(Concerning health facility and residential care facility protocols**  
 29 **on admittance of essential family caregivers into the facility).**

30           **SECTION 5. An emergency is declared for this act.**

