

2020 Second Extraordinary Session

HOUSE BILL NO. 98 (Substitute for House Bill No. 33 by Representative Edmonds)

BY REPRESENTATIVE EDMONDS

HEALTH CARE/FACILITIES: Provides relative to visitation by members of the clergy of patients and residents at certain licensed health facilities during public health emergencies (Items #28 and 59)

1 AN ACT

2 To amend and reenact R.S. 29:771(B)(2)(c) and (e) and R.S. 40:2005 and to enact R.S.  
3 29:771(B)(2)(f) and R.S. 40:2005.1, relative to visitation of patients and residents of  
4 certain healthcare facilities; to provide for visitation by clergy members of patients  
5 and residents of licensed hospitals, nursing homes, and adult residential care homes  
6 during public health emergencies; to require such healthcare facilities to adopt  
7 policies to allow for members of the clergy to visit patients or residents during a state  
8 of public health emergency; to provide for a limitation of civil liability in certain  
9 circumstances; to provide for effectiveness; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 29:771(B)(2)(c) and (e) are hereby amended and reenacted and R.S.  
12 29:771(B)(2)(f) is hereby enacted to read as follows:

13 §771. Miscellaneous

14 \* \* \*

15 B. Liability.

16 \* \* \*

17 (2) Private liability.

18 \* \* \*

1 (c) During a state of public health emergency, ~~any health care providers~~ no  
2 healthcare provider shall ~~not~~ be civilly liable for causing the death of, or, injury to,  
3 any person or damage to any property except in the event of gross negligence or  
4 willful misconduct.

5 \* \* \*

6 (e) During a state of public health emergency declared in response to any  
7 contagious or infectious disease, no inpatient healthcare facility shall be liable to a  
8 member of the clergy for any civil damages for injury or death resulting from or  
9 related to actual or alleged exposure during the course of, or through the performance  
10 of, allowing access to a member of the clergy in compliance with R.S. 40:2009.31  
11 unless the inpatient healthcare facility failed to substantially comply with applicable  
12 laws and regulations that govern its operations and the injury or death was caused by  
13 the facility's gross negligence or wanton or reckless misconduct.

14 (f) The immunities provided in this Subsection shall not apply to any private  
15 person, firm, or corporation or employees and agents of such person, firm, or  
16 corporation whose act or omission caused in whole or in part the public health  
17 emergency and who would otherwise be liable therefor.

18 \* \* \*

19 Section 2. R.S. 40:2005 is hereby amended and reenacted and R.S. 40:2005.1 is  
20 hereby enacted to read as follows:

21 §2005. ~~Hospital~~ Hospitals, nursing homes, and other healthcare facilities; visitation

22 A. Any person eighteen years or older may designate those individuals who  
23 will not be denied access to visit him during any stay in any hospital, nursing home,  
24 or other ~~health care~~ healthcare facility within the state of Louisiana.

25 B. Nothing ~~contained herein~~ in this Section shall prohibit hospitals, nursing  
26 homes, or other ~~health care~~ healthcare facilities from restricting visits to standard  
27 designated hours, from restricting visits as the patient's medical condition may  
28 require, from imposing reasonable restrictions on visitation as authorized by R.S.

1        40:2005.1(C)(2), or from enforcing an injunction barring an individual from entering  
2        the premises.

3        §2005.1. Visitation by members of clergy during public health emergencies

4                A. For purposes of this Section, "inpatient healthcare facility" shall mean all  
5        of the following:

6                (1) Any hospital, except a hospital designated as a forensic facility, licensed  
7        pursuant to the Hospital Licensing Law, R.S. 40:2100 et seq.

8                (2) Any nursing home as defined in R.S. 40:2009.2.

9                (3) Any adult residential care home as defined in R.S. 40:2166.3, including  
10        but not limited to assisted living facilities.

11                B. The legislature hereby declares that the purpose of this Section is to  
12        protect the religious liberty of all patients and residents of inpatient healthcare  
13        facilities and to protect inpatient healthcare facilities from costly lawsuits and  
14        administrative complaints on the basis of religious discrimination by affording  
15        access by patients and residents to members of the clergy during a state of public  
16        health emergency declared in accordance with R.S. 29:766, so long as those  
17        members of the clergy do all of the following:

18                (1) Enter the inpatient healthcare facility on a voluntary basis.

19                (2) Agree to comply with the safety requirements provided for in the policies  
20        of the inpatient healthcare facility.

21                (3) Accept the risks associated with entry into the inpatient healthcare  
22        facility for purposes of visiting and ministering to the patient or resident.

23                C.(1) Each inpatient healthcare facility shall adopt policies to allow for  
24        members of the clergy to visit patients or residents, including, but not limited to,  
25        those patients receiving end-of-life care, during a state of public health emergency  
26        declared in accordance with R.S. 29:766. Such policies may allow for visitation by  
27        clergy of a patient or resident who is incapacitated upon request of a family member  
28        or legal representative of the patient or resident.

1           (2) The policies adopted by a healthcare facility in accordance with this  
 2           Subsection may include reasonable restrictions for the time, place, and manner of  
 3           patient or resident visitation for the purpose of mitigating the possibility of  
 4           transmission of any infectious agent or disease or addressing the medical condition  
 5           or clinical considerations of individual patients.

6           (3) The policies adopted by a healthcare facility in accordance with this  
 7           Subsection shall be preempted by any federal statute, federal regulation, or official  
 8           guidance from an agency of the federal government that requires an inpatient  
 9           healthcare facility to restrict patient visitation in a manner that is more restrictive  
 10          than the facility's policies for visitation.

11          Section 3. This Act shall become effective upon signature by the governor or, if not  
 12 signed by the governor, upon expiration of the time for bills to become law without signature  
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 15 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 98 Engrossed

2020 Second Extraordinary Session

Edmonds

**Abstract:** Provides relative to visitation by members of the clergy of patients and residents at hospitals, nursing homes, and adult residential care homes (assisted living facilities) during a state of public health emergency.

Proposed law provides that, for purposes of proposed law, "inpatient healthcare facility" shall mean all of the following:

- (1) Any hospital, except a hospital designated as a forensic facility, licensed pursuant to present law.
- (2) Any nursing home as defined in present law.
- (3) Any adult residential care home as defined in present law, including but not limited to assisted living facilities.

Proposed law declares that its purpose is to protect the religious liberty of all patients and residents of inpatient healthcare facilities and to protect inpatient healthcare facilities from costly lawsuits and administrative complaints on the basis of religious discrimination by affording access by patients and residents to members of the clergy during a state of public

health emergency declared in accordance with present law, so long as those members of the clergy do all of the following:

- (1) Enter the inpatient healthcare facility on a voluntary basis.
- (2) Agree to comply with the safety requirements provided for in the policies of the inpatient healthcare facility.
- (3) Accept the risks associated with entry into the inpatient healthcare facility for purposes of visiting and ministering to the patient or resident.

Proposed law requires inpatient healthcare facilities to adopt policies to allow for members of the clergy to visit patients or residents, including, but not limited to, those patients receiving end-of-life care, during a state of public health emergency declared in accordance with present law. Provides that such policies may allow for visitation by clergy of a patient or resident who is incapacitated upon request of a family member or legal representative of the patient or resident.

Proposed law provides that the policies adopted by a healthcare facility in accordance with proposed law may include reasonable restrictions for the time, place, and manner of patient or resident visitation for the purpose of mitigating the possibility of transmission of any infectious agent or disease or addressing the medical condition or clinical considerations of individual patients.

Proposed law stipulates that the policies adopted by a healthcare facility in accordance with proposed law shall be preempted by any federal statute, federal regulation, or official guidance from an agency of the federal government that requires a facility to restrict patient visitation in a manner that is more restrictive than the facility's policies for visitation.

Present law provides for protections from civil liability for certain actions during a state of public health emergency declared in accordance with the Louisiana Health Emergency Powers Act (present law, R.S. 29:760 et seq.).

Proposed law retains present law and adds thereto the following liability protection: during a state of public health emergency declared in response to any contagious or infectious disease, no inpatient healthcare facility shall be liable to a member of the clergy for any civil damages for injury or death resulting from or related to actual or alleged exposure during the course of, or through the performance of, allowing access to a member of the clergy in compliance with proposed law unless the inpatient healthcare facility failed to substantially comply with applicable laws and regulations that govern its operations and the injury or death was caused by the facility's gross negligence or wanton or reckless misconduct.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 29:771(B)(2)(c) and (e) and R.S. 40:2005; Adds R.S. 29:771(B)(2)(f) and R.S. 40:2005.1)