102ND GENERAL ASSEMBLY
State of Illinois
2021 and 2022
SB2160

Introduced 2/26/2021, by Sen. Jil Tracy

SYNOPSIS AS INTRODUCED:

New Act

Creates the Emergency Situation Essential Caregiver Act. Presents the findings of the General Assembly. Provides that during any emergency situation essential caregivers shall be allowed to visit residents in accordance with the Act. Provides that residents of a facility shall be allowed to designate up to 3 essential caregivers who will be allowed to visit and provide care in accordance with this Act in the event of an emergency. Provides that current residents of a facility must be allowed to designate up to 3 essential caregivers within 10 business days of the Act's effective date. Requires facilities to establish specified policies and procedures regarding the designation of essential caregivers, visitations by essential caregivers, and scheduling of such visits that will be in effect during the time of any emergency situation. Provides that residents who are unreasonably denied access to an essential caregiver are entitled to recover statutory damages from the facility of up to $10,000 per day that access is unreasonably denied. Contains an immunity provision for facilities, facility employees, or facility contractors who act in good faith to implement the Act's requirements. Provides that the Act may not be suspended or modified by Executive Order. Contains other provisions. Effective immediately.
AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Emergency Situation Essential Caregiver Act.

Section 5. Findings. The General Assembly finds that it is crucial that individuals who are residing in any type of residential care arrangement continue to have access to family members or friends who provide emotional, mental, and caregiving support. However, certain emergency situations such as a public health emergency, a natural disaster, or other emergency circumstances may require that visitation with residents be restricted. The General Assembly recognizes that a resident having access to family members or friends who provide emotional, mental, and caregiving support is extremely important to the resident's physical, mental, and emotional well-being. Therefore, the General Assembly finds that if a public health emergency, a natural disaster, or other emergency circumstance causes a facility to restrict visitation, the provisions of this Act shall apply and allow for residents to have access to visitation by designated essential caregivers to ensure that the resident's needs are met.
Section 10. Definitions. In this Act:

"Emergency situation" means any time that there is a public health emergency, natural disaster, or other emergency that causes a facility to restrict visitation with a resident. An "emergency situation" may be statewide or location-based and may be pursuant to a disaster declaration by the Governor, a decision by local officials, or a decision by the facility.

"Essential caregiver" means an individual designated by a resident who regularly provides support in the form of companionship, emotional support, assistance in the activities of daily living such as feeding, mobility, personal hygiene, cognitive stimulation, communication, meaningful connection, relational continuity, or assistance in decision making, transportation to and from medical and personal care appointments. An "essential caregiver" may be a family member, a member of the resident's social network, or a volunteer. An "essential caregiver" may be paid or unpaid. A resident may designate any person as an essential caregiver. No special training is required to be an essential caregiver. "Essential caregiver" includes compassionate caregivers.

"Facility" means any of the following: a facility as defined in Section 10 of the Alzheimer's Disease and Related Dementias Special Care Disclosure Act; an assisted living establishment or shared housing establishment as defined in Section 10 of the Assisted Living and Shared Housing Act; a
Community Living Facility as defined in Section 3 of the Community Living Facilities Licensing Act; a facility as defined in Section 2 of the Life Care Facilities Act; a continuum of care facility as defined in Section 10 of the Continuum of Care Services for the Developmentally Disabled Act; a facility as defined in Section 1-113 of the Nursing Home Care Act; a MC/DD facility as defined in Section 1-113 of the MC/DD Act; an ID/DD facility as defined in Section 1-113 of the ID/DD Community Care Act; a hospice program as defined in Section 3 of the Hospice Program Licensing Act; a Supportive Residence as defined in Section 10 of the Supportive Residences Licensing Act; a community-integrated living arrangement as defined in Section 3 of the Community-Integrated Living Arrangements Licensure and Certification Act; a facility as defined in Section 1-102 of the Specialized Mental Health Rehabilitation Act of 2013; a home, institution, or other place operated by or under the authority of the Department of Veterans' Affairs; an Alzheimer's disease management center alternative health care model under the Alternative Health Care Delivery Act; and a home, institution, or other place that is a State-operated mental health or developmental disability center or facility.

"Resident" means a person who is living in a facility or is seeking admission to a facility. "Resident" includes a guardian of the person or an agent for the person under a power of attorney.
Section 15. Use of essential caregivers. During any emergency situation an essential caregiver shall be allowed to visit a resident in accordance with this Act.

Section 20. Designation of essential caregivers.

(a) A resident of a facility shall be allowed to designate up to 3 essential caregivers who will be allowed to visit and provide care in accordance with this Act in the event of an emergency.

(b) Within 10 business days after the effective date of this Act or anytime thereafter, a current resident of a facility must be allowed to designate up to 3 essential caregivers. A new resident shall be allowed to designate up to 3 essential caregivers at the time of admission to the facility or at any time thereafter. A resident shall be allowed to modify an individual designated as an essential caregiver at anytime.

(c) A designation of an essential caregiver or a modification of the designation made by a guardian or an agent for the resident under a power of attorney must be in writing.

(d) In order to ensure that the needs of a resident are met during an emergency situation, facility staff should work cooperatively with the resident and his or her family to plan a schedule to accommodate the 3 essential caregivers and the resident's needs.
Section 25. Essential caregiver visitation.

(a) During any emergency situation that affects a facility, a designated essential caregiver must be allowed to visit with a resident as specified in this Act. A facility may require compliance with safety protocols but shall not deny visitation by an essential caregiver in accordance with this Act so long as the essential caregiver follows the safety protocols. Required safety protocols may not be any more restrictive than the safety protocols required of staff in the facility.

(b) Within 30 days after the effective date of this Act, the facility must establish policies and procedures regarding the designation of essential caregivers, visitation by essential caregivers, and scheduling of such visits that will be in effect during the time of any emergency situation. The policies and procedures shall include, but shall not be limited to, the following:

(1) Designation of an entry point to the facility.

(2) Specification of any procedures that must be followed to sign in and out of the facility.

(3) Any safety protocols that must be followed by essential caregivers when entering the facility, while in the facility, while on the grounds of the facility, and while outside of the facility with the resident, including any transmission-based protocols that will be imposed upon
return to the facility after an absence of more than 24 hours. The facility shall not prevent an essential caregiver from walking in the halls with a resident or taking a resident outside on the grounds of the facility so long as the essential caregiver and resident follow proper safety protocols. The facility shall not prevent an essential caregiver from taking a resident into the community so long as safety protocols are followed by the essential caregiver and resident while in the community and upon return to the facility.

(4) Any requirements for wearing personal protective equipment and testing for COVID-19 or other diseases. Any required personal protective equipment and testing shall be provided by the facility at no cost to the resident or the essential caregiver. The facility shall train the essential caregiver on any safety protocols or procedures that need to be followed during the emergency situation. The facility shall not require an essential caregiver to wear more personal protective equipment than the facility’s staff is required to wear.

(c) The policies and procedures adopted by the facility shall be provided in writing to each resident and each designated essential caregiver. If the policies and procedures are amended, each resident and each designated essential caregiver shall be provided with a written copy of the amended policies and procedures within 7 business days after adoption.
of the amended policies and procedures.

(d) Each resident must be allowed a minimum of 3 2-hour essential caregiver visits per week. A facility shall allow additional essential caregiver visits as space allows. A visitation schedule shall allow for visits to be scheduled any day of the week and allow for daytime, nighttime, weekend, and holiday visitation.

(e) If a facility does not allow in-room visits due to a shared room, the facility must designate one room in a common area to be used for essential caregiver visitation. If visitation occurs outside of the resident's room, the essential caregiver must be given access to the resident's room at least once per month for a period of no less than 45 minutes to check on the resident's personal belongings.

(f) A facility may limit essential caregiver visits to one essential caregiver per resident at one time unless an essential caregiver has a disability and needs the assistance of a second person or the resident is at the end-of-life. All essential caregivers and any end-of-life visitors must comply with all safety protocols of the facility. A facility shall provide an essential caregiver and any end-of-life visitor with a written copy of the safety protocols that must be followed.

(g) If an essential caregiver has a disability and needs the assistance of a second person, a facility shall work with the essential caregiver to accommodate the disability.
(h) If a resident is deemed to be at the end-of-life, all visitor restrictions will be lifted for the resident and the resident's first contact person shall be notified as soon as possible, and no longer than 8 hours, after the resident is deemed to be at the end-of-life. If a resident is deemed to be at end-of-life, all family members, all designated essential caregivers, any clergy requested by the resident or the family, and any friends of the resident who are listed in the resident's care plan or individual service plan shall be given access to the resident at any time. If the resident is in a private room, end-of-life access by family, essential caregivers, and friends shall be unlimited so long as the visitors remain in the room and do not disturb other residents. If the resident who is at the end-of-life shares a room with another person who is not a family member, the facility must try to move the resident to a private room. If the facility does not have the ability to move the resident to a private room, the facility may limit the number of visitors to no less than 2 at a time and must allow for visitors to rotate in and out at least once per hour. A facility may ask that end-of-life visitors step out to a designated area for a time period not to exceed one hour in order to provide direct care to the resident.

Section 30. Notice of emergency situation.

(a) A facility shall notify residents and any designated
essential caregivers within 24 hours of a decision to restrict
visitation due an emergency situation.

(b) A facility shall inform an essential caregiver when
the essential caregiver will be allowed to access the
facility, which shall in no case be more than 7 days after an
emergency situation first occurs or begins.

Section 35. Restriction or revocation of essential
caregiver status. A facility may restrict or revoke essential
caregiver status if the essential caregiver fails to follow
any safety protocols, including, but not limited to, social
distancing, use of personal protective equipment, or other
disease-specific related rules of the facility. Before
restricting or revoking essential caregiver status, the
facility must provide notice to the resident and essential
caregiver and the facility, resident, and essential caregiver
should attempt to mediate the concerns.

Section 40. Remedies. A resident who is unreasonably
denied access to an essential caregiver is entitled to recover
statutory damages from the facility of up to $10,000 per day
that access is unreasonably denied.

Section 45. Immunity. Except as provided in Section 40, a
facility, facility employee, or facility contractor who, in
good faith, implements the requirements of this Act shall not
be held civilly liable for damages, including punitive
damages, for any act or omission related to the implementation
of this Act, except for willful or wanton misconduct.

Section 50. Suspension or modification. Notwithstanding
any other provision of law, this Act may not be suspended or
modified by Executive Order. However, in the event of a
disaster proclamation issued by the Governor pursuant to the
Emergency Management Agency Act, where the facility is located
in the designated disaster area, a facility may implement
emergency visitation procedures pursuant to this Act.

Section 99. Effective date. This Act takes effect upon
becoming law.