

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 260B. RIGHT TO ESSENTIAL CAREGIVER VISITS

FOR CERTAIN RESIDENTS

Sec. 260B.0001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Essential caregiver" means a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) an assisted living facility licensed under Chapter 247; or

(C) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252.

(5) "Program provider" means a person that provides services through the home and community-based services (HCS) waiver program in a residence.

(6) "Residence" means a three-person or four-person residence, as defined by the home and community-based services (HCS) waiver program billing guidelines, that is leased or owned by a program provider. The term does not include a host home or companion care.

(7) "Resident" means:

(A) an individual, including a patient, who resides in a facility; or

(B) an individual enrolled in the home and community-based services (HCS) waiver program who resides in a residence.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.

Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident, resident's guardian, or resident's legally authorized representative has the right to designate an essential caregiver with whom the facility or program provider may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist facilities and program providers in establishing essential caregiver visitation policies and procedures. The guidelines must require the facilities and program providers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver in the same manner that a resident would designate a power of attorney;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the facility's or program provider's safety protocols and any other rules adopted under this section.

(c) A facility or program provider may revoke an individual's designation as an essential caregiver if the caregiver violates the facility's or provider's safety protocols or rules adopted under this section. If a facility or program provider revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a facility or program provider for an essential caregiver under this section may not be more stringent than safety protocols for the staff of the facility or residence.

(e) A facility or program provider may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the facility's or program provider's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A facility or program provider may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a period that exceeds seven days, and a facility or program provider must separately request each extension. A facility or program provider may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a facility or program provider may not require an essential caregiver to provide necessary care.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.