

By Senator Harrell

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1 A bill to be entitled
2 An act relating to the designation of essential
3 caregivers for in-person visitations; creating s.
4 408.823, F.S.; defining terms; authorizing residents
5 to designate essential caregivers with whom facilities
6 or program providers may not prohibit in-person
7 visitation; requiring the Agency for Health Care
8 Administration to adopt guidelines for visitation
9 which meet certain requirements; authorizing a
10 facility or provider to revoke an essential
11 caregiver's designation for certain violations;
12 authorizing the designation of a new essential
13 caregiver if the original caregiver's designation is
14 revoked; requiring the agency to establish an appeals
15 process; prohibiting any adopted safety protocols from
16 being more stringent than certain standards; providing
17 construction; requiring the agency to seek any
18 necessary federal waivers or authorizations; providing
19 an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 408.823, Florida Statutes, is created to
24 read:

25 408.823 Resident's right to essential caregiver visits.—

26 (1) As used in this section, the term:

27 (a) "Essential caregiver" means a relative, friend,
28 guardian, or other individual selected by a resident, resident's
29 guardian, or resident's legally authorized representative for

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30 in-person visits.

31 (b) "Facility" includes all of the following:

32 1. A nursing home licensed under part II of chapter 400.

33 2. An assisted living facility licensed under part I of
34 chapter 429.

35 3. An intermediate care facility for the developmentally
36 disabled, licensed under part VIII of chapter 400.

37 4. Any other state-supported residential facility.

38 (c) "Program provider" means a person that provides
39 services through the home and community-based services waiver
40 program in a residence.

41 (d) "Residence" means a three-person or four-person
42 residence, as defined by the home and community-based services
43 waiver program billing guidelines, which is leased or owned by a
44 program provider. The term does not include a host home or
45 companion care.

46 (e) "Resident" means:

47 1. An individual, including a patient, who resides in a
48 facility; or

49 2. An individual enrolled in the home and community-based
50 services waiver program who resides in a residence.

51 (2) A resident, resident's guardian, or resident's legally
52 authorized representative may designate an essential caregiver
53 with whom the facility or program provider may not prohibit in-
54 person visitation.

55 (3) Notwithstanding subsection (2), the agency shall
56 develop by rule guidelines to assist facilities and program
57 providers in establishing essential caregiver visitation
58 policies and procedures. The guidelines must require that the

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59 facilities and program providers do all of the following:

60 (a) Allow a resident, resident's guardian, or resident's
61 legally authorized representative to designate for in-person
62 visitation an essential caregiver in the same manner that a
63 resident would designate a power of attorney.

64 (b) Establish a visitation schedule allowing the essential
65 caregiver to visit the resident for at least 2 hours each day.

66 (c) Establish procedures to enable physical contact between
67 the resident and the essential caregiver.

68 (d) Obtain the signature of the essential caregiver
69 certifying that he or she will follow the facility's or program
70 provider's safety protocols and any other rules adopted under
71 this section.

72 (4) A facility or program provider may revoke an
73 individual's designation as an essential caregiver if he or she
74 violates the facility's or program provider's safety protocols
75 or rules adopted under this section. If a facility or program
76 provider revokes an individual's designation as an essential
77 caregiver under this subsection, the resident, resident's
78 guardian, or resident's legally authorized representative may
79 immediately designate another individual as the resident's
80 essential caregiver. The agency shall establish by rule an
81 appeals process to evaluate the revocation of an individual's
82 designation as an essential caregiver under this subsection.

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

87 (6) This section may not be construed as requiring an

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88 essential caregiver to provide necessary care to a resident, and
89 a facility or program provider may not require an essential
90 caregiver to provide necessary care.

91 (7) If, before implementing this act, the agency determines
92 that a waiver or authorization from a federal agency is
93 necessary to implement any provision of this section, the agency
94 must request the waiver or authorization and may delay
95 implementing that provision until the waiver or authorization is
96 granted.

97 Section 2. This act shall take effect July 1, 2022.