

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILLS NOS. 2116, 2097, 1690 & 2221
AN ACT

To amend chapters 191 and 630, RSMo, by adding thereto three new sections relating to the visitation rights of patients.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 191 and 630, RSMo, are amended by adding thereto three new sections, to be known as sections 191.1400, 191.2290, and 630.202, to read as follows:

191.1400. 1. This section shall be known and may be cited as the "Compassionate Care Visitation Act".

2. For purposes of this section, the following terms mean:

(1) "Compassionate care visitor", a patient's or resident's friend, family member, or other person requested by the patient or resident for the purpose of a compassionate care visit;

(2) "Compassionate care visit", a visit necessary to meet the physical or mental needs of the patient or resident, including, but not limited to:

(a) For end-of-life situations, including making decisions regarding end-of-life care during in-person contact or communication with the compassionate care visitor;

(b) For adjustment support or communication support, including, but not limited to, assistance with hearing and speaking;

18 (c) For emotional support;
19 (d) For physical support after eating or drinking
20 issues, including weight loss or dehydration; or
21 (e) For social support;
22 (3) "Health care facility", a hospital, as defined in
23 section 197.020, a long-term care facility licensed under
24 chapter 198, or a hospice facility certified under chapter
25 197.
26 3. A health care facility shall allow a patient or
27 resident, or his or her legal guardian, to permit at least
28 two compassionate care visitors simultaneously to have in-
29 person contact with the patient or resident during visiting
30 hours. Compassionate care visitation hours shall be no less
31 than six hours daily and shall include evenings, weekends,
32 and holidays. Health care facilities shall be permitted to
33 place additional restrictions on children under the age of
34 fourteen who are compassionate care visitors.
35 4. Health care facilities shall have a visitation
36 policy that allows, at a minimum:
37 (1) Twenty-four hour attendance by a compassionate
38 care visitor when reasonably appropriate;
39 (2) A compassionate care visitor to leave and return
40 within the hours of the visitation policy. A patient or
41 resident may receive multiple compassionate care visitors
42 during visitation hours, subject to the provisions of
43 subsection 3 of this section; and
44 (3) Parents with custody or unsupervised visitation
45 rights, legal guardians, and other persons standing in loco
46 parentis to be physically present with a minor child while
47 the child receives care in the facility.
48 5. This section shall not affect any obligation of a
49 health care facility to:

50 (1) Provide patients or residents with effective
51 communication supports or other reasonable accommodations in
52 accordance with federal and state laws to assist in remote
53 personal contact; and

54 (2) Comply with the provisions of the Americans with
55 Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.

56 6. A health care facility may limit:

57 (1) The number of visitors per patient or resident at
58 one time based on the size of the building and physical
59 space;

60 (2) Movement of visitors within the health care
61 facility, including restricting access to operating rooms,
62 isolation rooms or units, behavioral health units, or other
63 commonly restricted areas; and

64 (3) Access of any person to a patient:

65 (a) At the request of the patient or resident, or the
66 legal guardian of such;

67 (b) At the request of a law enforcement agency for a
68 person in custody;

69 (c) Due to a court order;

70 (d) To prevent substantial disruption to the care of a
71 patient or resident or the operation of the facility;

72 (e) During the administration of emergency care in
73 critical situations;

74 (f) If the person has measurable signs and symptoms of
75 a transmissible infection; except that, the health care
76 facility shall allow access through telephone or other means
77 of telecommunication that ensure the protection of the
78 patient or resident;

79 (g) If the health care facility has reasonable cause
80 to suspect the person of being a danger or otherwise
81 contrary to the health or welfare of the patient or
82 resident, other patients or residents, or facility staff; or

83 (h) If, in the clinical judgment of the patient's or
84 resident's attending physician, the presence of visitors
85 would be medically or therapeutically contraindicated to the
86 health or life of the patient or resident, and the attending
87 physician attests to such in the patient's or resident's
88 chart.

89 7. Nothing in this section shall limit a health care
90 facility from limiting or redirecting visitors of a patient
91 or resident in a shared room to ensure the health and safety
92 of the patients or residents in the shared room. Nothing in
93 this section shall be construed to prohibit health care
94 facilities from adopting reasonable safety or security
95 restrictions or other requirements for visitors.

96 8. Nothing in this section shall be construed to waive
97 or change long-term care facility residents' rights under
98 sections 198.088 and 198.090.

99 9. No later than January 1, 2023, the department of
100 health and senior services shall develop informational
101 materials for patients, residents, and their legal
102 guardians, regarding the provisions of this section. A
103 health care facility shall make these informational
104 materials accessible upon admission or registration and on
105 the primary website of the health care facility.

106 10. A compassionate care visitor of a patient or
107 resident of a health care facility may report any violation
108 of the provisions of this section by a health care facility
109 to the department of health and senior services. The
110 department shall begin investigating any such complaint
111 filed under this subsection within thirty-six hours of
112 receipt of the complaint. The purpose of such investigation
113 shall be to ensure compliance with the provisions of this
114 section and any such investigation shall otherwise comply
115 with the complaint processes established by section 197.080

116 for a hospital, section 197.268 for a hospice facility, and
117 section 198.532 for a long-term care facility.

118 11. No health care facility shall be held liable for
119 damages in an action involving a liability claim against the
120 facility arising from the compliance with the provisions of
121 this section. The immunity described in this subsection
122 shall not apply to any act or omission by a facility, its
123 employees, or its contractors that constitutes recklessness
124 or willful misconduct and shall be provided in addition to,
125 and shall in no way limit, any other immunity protections
126 that may apply in state or federal law.

127 12. The provisions of this section shall not be
128 terminated, suspended, or waived except by a declaration of
129 emergency under chapter 44, during which time the provisions
130 of sections 191.2290 and 630.202 shall apply.

191.2290. 1. The provisions of this section and
2 section 630.202 shall be known and may be cited as the
3 "Essential Caregiver Program Act".

4 2. As used in this section, the following terms mean:

5 (1) "Department", the department of health and senior
6 services;

7 (2) "Essential caregiver", a family member, friend,
8 guardian, or other individual selected by a facility
9 resident or patient who has not been adjudged incapacitated
10 under chapter 475, or the guardian or legal representative
11 of the resident or patient;

12 (3) "Facility", a hospital licensed under chapter 197
13 or a facility licensed under chapter 198.

14 3. During a state of emergency declared pursuant to
15 chapter 44 relating to infectious, contagious, communicable,
16 or dangerous diseases, a facility shall allow a resident or
17 patient who has not been adjudged incapacitated under
18 chapter 475, a resident's or patient's guardian, or a

19 resident's or patient's legally authorized representative to
20 designate an essential caregiver for in-person contact with
21 the resident or patient in accordance with the standards and
22 guidelines developed by the department under this section.
23 Essential caregivers shall be considered as part of the
24 resident's or patient's care team, along with the resident's
25 or patient's health care providers and facility staff.

26 4. The facility shall inform, in writing, residents
27 and patients who have not been adjudged incapacitated under
28 chapter 475, or guardians or legal representatives of
29 residents or patients, of the "Essential Caregiver Program"
30 and the process for designating an essential caregiver.

31 5. The department shall develop standards and
32 guidelines concerning the essential caregiver program,
33 including, but not limited to, the following:

34 (1) The facility shall allow at least two individuals
35 per resident or patient to be designated as essential
36 caregivers, although the facility may limit the in-person
37 contact to one caregiver at a time. The caregiver shall not
38 be required to have previously served in a caregiver
39 capacity prior to the declared state of emergency;

40 (2) The facility shall establish a reasonable in-
41 person contact schedule to allow the essential caregiver to
42 provide care to the resident or patient for at least four
43 hours each day, including evenings, weekends, and holidays,
44 but shall allow for twenty-four-hour in-person care as
45 necessary and appropriate for the well-being of the resident
46 or patient. The essential caregiver shall be permitted to
47 leave and return during the scheduled hours or be replaced
48 by another essential caregiver;

49 (3) The facility shall establish procedures to enable
50 physical contact between the resident or patient and the
51 essential caregiver. The facility may not require the

52 essential caregiver to undergo more stringent screening,
53 testing, hygiene, personal protective equipment, and other
54 infection control and prevention protocols than required of
55 facility employees;

56 (4) The facility shall specify in its protocols the
57 criteria that the facility will use if it determines that in-
58 person contact by a particular essential caregiver is
59 inconsistent with the resident's or patient's therapeutic
60 care and treatment or is a safety risk to other residents,
61 patients, or staff at the facility. Any limitations placed
62 upon a particular essential caregiver shall be reviewed and
63 documented every seven days to determine if the limitations
64 remain appropriate; and

65 (5) The facility may restrict or revoke in-person
66 contact by an essential caregiver who fails to follow
67 required protocols and procedures established under this
68 subsection.

69 6. (1) A facility may request from the department a
70 suspension of in-person contact by essential caregivers for
71 a period not to exceed seven days. The department may deny
72 the facility's request to suspend in-person contact with
73 essential caregivers if the department determines that such
74 in-person contact does not pose a serious community health
75 risk. A facility may request from the department an
76 extension of a suspension for more than seven days;
77 provided, that the department shall not approve an extension
78 period for longer than seven days at a time. A facility
79 shall not suspend in-person caregiver contact for more than
80 fourteen consecutive days in a twelve-month period or for
81 more than forty-five total days in a twelve-month period.

82 (2) The department shall suspend in-person contact by
83 essential caregivers under this section if it determines
84 that doing so is required under federal law, including a

85 determination that federal law requires a suspension of in-
86 person contact by members of the resident's or patient's
87 care team.

88 (3) The attorney general shall institute all suits
89 necessary on behalf of the state to defend the right of the
90 state to implement the provisions of this section to ensure
91 access by residents and patients to essential caregivers as
92 part of their care team.

93 7. The provisions of this section shall not be
94 construed to require an essential caregiver to provide
95 necessary care to a resident or patient and a facility shall
96 not require an essential caregiver to provide necessary care.

97 8. The provisions of this section shall not apply to
98 those residents or patients whose particular plan of
99 therapeutic care and treatment necessitates restricted or
100 otherwise limited visitation for reasons unrelated to the
101 stated reasons for the declared state emergency.

102 9. A facility, its employees, and its contractors
103 shall be immune from civil liability for an injury or harm
104 caused by or resulting from:

105 (1) Exposure to a contagious disease or other harmful
106 agent that is specified during the state of emergency
107 declared pursuant to chapter 44; or

108 (2) Acts or omissions by essential caregivers who are
109 present in the facility;

110 as a result of the implementation of the essential caregiver
111 program under this section. The immunity described in this
112 subsection shall not apply to any act or omission by a
113 facility, its employees, or its contractors that constitutes
114 recklessness or willful misconduct.

630.202. 1. As used in this section, the following
2 terms mean:

3 (1) "Department", the department of mental health;

4 (2) "Essential caregiver", a family member, friend,
5 guardian, or other individual selected by a facility
6 resident or client who has not been adjudged incapacitated
7 under chapter 475, or the guardian or legal representative
8 of the resident or client;

9 (3) "Facility", a facility operated, licensed, or
10 certified by the department.

11 2. During a state of emergency declared pursuant to
12 chapter 44 relating to infectious, contagious, communicable,
13 or dangerous diseases, a facility shall allow a resident or
14 client who has not been adjudged incapacitated under chapter
15 475, a resident's or client's guardian, or a resident's or
16 client's legally authorized representative to designate an
17 essential caregiver for in-person contact with the resident
18 or client in accordance with the standards and guidelines
19 developed by the department under this section. Essential
20 caregivers shall be considered a part of the resident's or
21 client's care team, along with the resident's or client's
22 health care providers and facility staff.

23 3. The facility shall inform, in writing, residents
24 and clients who have not been adjudged incapacitated under
25 chapter 475, or guardians or legal representatives of
26 residents or clients, of the "Essential Caregiver Program"
27 and the process for designating an essential caregiver.

28 4. The department shall develop standards and
29 guidelines concerning the essential caregiver program,
30 including, but not limited to, the following:

31 (1) The facility shall allow at least two individuals
32 per resident or client to be designated as essential
33 caregivers, although the facility may limit the in-person
34 contact to one caregiver at a time. The caregiver shall not
35 be required to have previously served in a caregiver
36 capacity prior to the declared state of emergency;

37 (2) The facility shall establish a reasonable in-
38 person contact schedule to allow the essential caregiver to
39 provide care to the resident or client for at least four
40 hours each day, including evenings, weekends, and holidays,
41 but shall allow for twenty-four-hour in-person care as
42 necessary and appropriate for the well-being of the resident
43 or client and consistent with the safety and security of the
44 facility's staff and other residents or clients. The
45 essential caregiver shall be permitted to leave and return
46 during the scheduled hours or be replaced by another
47 essential caregiver;

48 (3) The facility shall establish procedures to enable
49 physical contact between the resident or client and the
50 essential caregiver. The facility may not require the
51 essential caregiver to undergo more stringent screening,
52 testing, hygiene, personal protective equipment, and other
53 infection control and prevention protocols than required of
54 facility employees;

55 (4) The facility shall specify in its protocols the
56 criteria that the facility will use if it determines that in-
57 person contact by a particular essential caregiver is
58 inconsistent with the resident's or client's therapeutic
59 care and treatment or is a safety risk to other residents,
60 clients, or staff at the facility. Any limitations placed
61 upon a particular essential caregiver shall be reviewed and
62 documented every seven days to determine if the limitations
63 remain appropriate; and

64 (5) The facility may restrict or revoke in-person
65 contact by an essential caregiver who fails to follow
66 required protocols and procedures established under this
67 subsection.

68 5. (1) A facility may request from the department a
69 suspension of in-person contact by essential caregivers for

70 a period not to exceed seven days. The department may deny
71 the facility's request to suspend in-person contact with
72 essential caregivers if the department determines that such
73 in-person contact does not pose a serious community health
74 risk. A facility may request from the department an
75 extension of a suspension for more than seven days;
76 provided, that the department shall not approve an extension
77 period for longer than seven days at a time. A facility
78 shall not suspend in-person caregiver visitation for more
79 than fourteen consecutive days in a twelve-month period or
80 for more than forty-five total days in a twelve-month period.

81 (2) The department shall suspend in-person contact by
82 essential caregivers under this section if it determines
83 that doing so is required under federal law, including a
84 determination that federal law requires a suspension of in-
85 person contact by members of the resident's or client's care
86 team.

87 (3) The attorney general shall institute all suits
88 necessary on behalf of the state to defend the right of the
89 state to implement the provisions of this section to ensure
90 access by residents and clients to essential caregivers as
91 part of their care team.

92 6. The provisions of this section shall not be
93 construed to require an essential caregiver to provide
94 necessary care to a resident or client and a facility shall
95 not require an essential caregiver to provide necessary care.

96 7. The provisions of this section shall not apply to
97 those residents or clients whose particular plan of
98 therapeutic care and treatment necessitates restricted or
99 otherwise limited visitation for reasons unrelated to the
100 stated reason for the declared state of emergency.

101 8. A facility, its employees, and its contractors
102 shall be immune from civil liability for an injury or harm
103 caused by or resulting from:

104 (1) Exposure to a contagious disease or other harmful
105 agent that is specified during the state of emergency
106 declared pursuant to chapter 44; or

107 (2) Acts or omissions by essential caregivers who are
108 present in the facility;

109 as a result of the implementation of the essential caregiver
110 program under this section. The immunity described in this
111 subsection shall not apply to any act or omission by a
112 facility, its employees, or its contractors that constitutes
113 recklessness or willful misconduct.