

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.

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*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, including, but not limited to, any of the following:

(a) A clergy member;

(b) A lay person offering religious or spiritual support;

(c) A person providing a service requested by the patient or resident, such as a hairdresser or barber; or

(d) Any 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;

(c) For emotional support;

(d) For physical support after eating or drinking issues, including weight loss or dehydration; or

(e) For social support;

(3) "Health care facility", a hospital, as defined in section 197.020, a long-term care facility licensed under chapter 198, or a hospice facility certified under chapter 197.

3. A health care facility shall allow a patient or resident, or his or her legal guardian, to permit at least two compassionate care visitors simultaneously to have in-person contact with the patient or resident during visiting hours. Compassionate care visitation hours shall be no less than six hours daily and shall include evenings, weekends, and holidays. Health care facilities shall be permitted to place restrictions on minor children who are compassionate care visitors.

4. Health care facilities shall have a visitation policy that allows, at a minimum:

(1) Twenty-four hour attendance by a compassionate care visitor when appropriate;

(2) A compassionate care visitor to leave and return within the hours of the visitation policy. A patient or resident may receive multiple compassionate care visitors during visitation hours, subject to the provisions of subsection 3 of this section; and

(3) Parents with custody or unsupervised visitation rights, legal guardians, and other persons standing in loco parentis to be physically present with a minor child while the child receives care in the facility.

5. This section shall not affect any obligation of a health care facility to:

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

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

6. A health care facility may limit:

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

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

(3) Access of any person to a patient:

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

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

(c) Due to a court order;

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

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

(f) If the person has measurable signs and symptoms of a transmissible infection; except that, the health care facility shall allow access through telephone or other means

of telecommunication that ensure the protection of the patient or resident;

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

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

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

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

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

10. No health care facility shall be held liable for damages in an action involving a liability claim against the facility arising from the compliance with the provisions of this section. The immunity described in this subsection shall not apply to any act or omission by a facility, its

employees, or its contractors that constitutes recklessness or willful misconduct and shall be provided in addition to, and shall in no way limit, any other immunity protections that may apply in state or federal law.

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

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

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

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

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

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

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

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

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

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

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

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

(4) The facility shall specify in its protocols the criteria that the facility will use if it determines that in-person contact by a particular essential caregiver is

inconsistent with the resident's or patient's therapeutic care and treatment or is a safety risk to other residents, patients, or staff at the facility. Any limitations placed upon a particular essential caregiver shall be reviewed and documented every seven days to determine if the limitations remain appropriate; and

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

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

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

(3) The attorney general shall institute all suits necessary on behalf of the state to defend the right of the state to implement the provisions of this section to ensure

access by residents and patients to essential caregivers as part of their care team.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(2) The facility shall establish a reasonable in-person contact schedule to allow the essential caregiver to provide care to the resident or client for at least four hours each day, including evenings, weekends, and holidays, but shall allow for twenty-four-hour in-person care as

necessary and appropriate for the well-being of the resident or client. The essential caregiver shall be permitted to leave and return during the scheduled hours or be replaced by another essential caregiver;

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

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

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

5. (1) A facility may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven days. The department may deny the facility's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health risk. A facility may request from the department an extension of a suspension for more than seven days; provided, that the department shall not approve an extension

period for longer than seven days at a time. A facility shall not suspend in-person caregiver visitation for more than fourteen consecutive days in a twelve-month period or for more than forty-five total days in a twelve-month period.

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

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

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

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

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

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

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

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