



2023 SENATE BILL 257

May 2, 2023 - Introduced by Senators JACQUE, CABRAL-GUEVARA and TOMCZYK, cosponsored by Representatives WICHGERS, MAXEY, BRANDTJEN, MURPHY, RETTINGER, MOSES and BEHNKE. Referred to Committee on Health.

1 **AN ACT** *to amend* 146.95 (2) (b) (intro.); and *to create* 146.955 of the statutes;
2 **relating to:** patients' and residents' rights to visitors in a health care facility,
3 restricting visitation, and liability for the actions of visitors.

Analysis by the Legislative Reference Bureau

Under current law, an inpatient health care facility must allow an adult patient to receive visitors during the facility's regular visiting hours, unless the patient expresses in writing that he or she no longer wishes to receive a particular visitor, or the facility determines that the patient cannot receive visitors or that the presence of the visitor would endanger the health or safety of the patient or interfere with the primary operations of the inpatient health care facility. This bill expands health care facilities' obligations to allow patients and residents to receive visitors, subject to COVID-19 infection protocols.

Under the bill, a health care facility must permit a patient with a disability to designate up to three support persons, defined as a family member, guardian, personal care assistant, or other paid or unpaid attendant designated by a patient to advocate or provide support for the patient. The health care facility must allow at least one support person to be physically present with the patient during the patient's stay, if necessary to facilitate the care of the patient. The bill prohibits a health care provider from requiring a patient to execute a declaration to physicians, consent to a do-not-resuscitate order, or execute a physician order for life-sustaining treatment as a condition of having a support person present.

The bill requires certain long-term care facilities to grant residents compassionate care visitation, defined as in-person visitation between a resident

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and any individual the resident requests as needed to alleviate the resident's physical or mental distress. Under the bill, if the COVID-19 infection rate is 20 percent or higher in the county in which a long-term care facility is located, the long-term care facility must continue to offer compassionate care visitation in a way that minimizes infection risk. If a long-term care facility has had no new onset of COVID-19 in the past 14 days and it is located in a county with a COVID-19 infection rate under 10 percent, the facility must permit indoor visitation in addition to compassionate care visitation.

The bill requires a hospital or primary care facility to allow a child patient to have daily, in-person visitation at reasonable times with a parent, individual standing in the place of a parent, or legal guardian. In addition, the bill requires a hospital or primary care facility to allow an adult patient to have daily, in-person visitation at reasonable times with a spouse, support person, or legal guardian. Under the bill, a hospital or primary care facility may restrict this visitation 1) at the request of the patient, law enforcement, or a court order; 2) if restricted access is necessary to prevent disruption to the care of the patient; 3) if the individual has signs and symptoms of a communicable infection, except that access must still be permitted through means that ensure patient safety; or 4) if the individual is determined to be dangerous or contrary to the welfare of the patient.

The bill requires a hospice to allow a patient to have in-person visitation at reasonable times with individuals designated by the patient or a guardian, spouse, or support person. In addition, the bill requires any health care facility to allow a clergy member or lay person to have in-person visitation with a patient to pray or offer spiritual support.

The bill permits a health care facility to establish a visitation policy which limits or restricts visitation when 1) the presence of visitors would be medically or therapeutically contraindicated; 2) the presence of visitors would interfere with the care of or rights of any patient or resident; 3) visitors are engaging in disruptive, threatening, or violent behavior toward any staff member, patient, or other visitor; or 4) visitors are noncompliant with the health care facility's policy.

The bill directs the Department of Health Services to develop informational material regarding health care facility visitation, to present the informational material to the appropriate legislative committees, and to update the informational material as needed to allow for the maximum visitation possible in health care facilities. Health care facilities must make the informational material available to patients and residents.

The bill provides that patients may file complaints with appropriate state agencies and licensing boards for a health care facility's violation of the provisions of this bill, and state agencies and licensing boards must investigate and penalize health care facilities for failure to comply with this bill. However, the bill prohibits

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a state agency from taking action against a health care facility for granting visitors access to the facility or for the actions and omissions of those visitors.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.95 (2) (b) (intro.) of the statutes is amended to read:

2 146.95 (2) (b) (intro.) Subject to s. 51.61 for a treatment facility, and except as
3 provided in s. 146.955, an inpatient health care facility may deny visitation with a
4 patient to any person if any of the following applies:

5 **SECTION 2.** 146.955 of the statutes is created to read:

6 **146.955 Patient visitation rights. (1) DEFINITIONS.** In this section:

7 (a) “Compassionate care visitation” means a visit with a resident that is
8 necessary to meet the physical or mental needs of the resident.

9 (b) “Health care facility” means a hospice, hospital, long-term care facility,
10 primary care facility, or any other system, care clinic, care provider, or entity whose
11 staff provides health care service to individuals in this state.

12 (c) “Hospice” has the meaning given in s. 50.90 (1) (c).

13 (d) “Hospital” has the meaning given in s. 50.33 (2).

14 (e) “Long-term care facility” includes any of the following:

15 1. A nursing home, as defined in s. 50.01 (3).

16 2. A community-based residential facility, as defined in s. 50.01 (1g).

17 3. A facility, as defined in s. 647.01 (4).

18 4. A swing bed in an acute care facility or extended care facility, as specified
19 under 42 USC 1395tt.

20 5. An adult family home, as defined in s. 50.01 (1).

21 6. A residential care apartment complex, as defined in s. 50.01 (6d).

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1 7. A brain injury rehabilitation facility, as defined in s. 46.278 (1m) (a).

2 (f) “Patient with a disability” means a patient who needs assistance to
3 effectively communicate with health care providers, make health care decisions, or
4 engage in activities of daily living due to a physical, intellectual, behavioral, or
5 cognitive disability, including deafness, being hard of hearing, communication
6 barriers, blindness, autism spectrum disorder, or dementia.

7 (g) “Personal contact” means an encounter in which 2 or more people are in
8 physical proximity to each other and may involve physical touching or oral
9 communication.

10 (h) “Primary care facility” means any building, structure, institution, or place
11 devoted primarily to the provision of outpatient, general health care services that is
12 a main source for regular health care services for patients.

13 (i) “Resident” means an individual cared for or treated in a long-term care
14 facility.

15 (j) “Support person” means a family member, guardian, personal care
16 assistant, or other paid or unpaid attendant designated by a patient to advocate or
17 provide support for the patient.

18 **(2) LONG-TERM CARE FACILITY VISITATION; COMPASSIONATE CARE VISITATION.** (a) 1.
19 A long-term care facility shall grant compassionate care visitation to residents.

20 2. A long-term care facility shall have in place a protocol for compassionate care
21 visitation which allows personal contact between residents and visitors that adheres
22 to infection prevention guidelines disseminated by the federal centers for disease
23 control and prevention or the federal centers for medicare and medicaid services.

24 (b) A resident may request any of the following individuals to visit for a
25 compassionate care visitation:

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- 1 1. A friend.
- 2 2. A family member.
- 3 3. A clergy member.
- 4 4. A lay person offering religious or spiritual support.
- 5 5. An individual providing a service to the resident.
- 6 (c) Any of the following is considered compassionate care visitation:
- 7 1. Support in end-of-life situations.
- 8 2. Adjustment support following a move to a new facility or environment.
- 9 3. Emotional support after the loss of a friend or family member.
- 10 4. Physical support after eating or drinking issues, including weight loss or
- 11 dehydration.
- 12 5. Social support for frequent crying, distress, or depression.
- 13 (d) A long-term care facility shall work with residents, families, caregivers,
- 14 resident representatives, and health care providers, and may include the
- 15 ombudsman program under s. 16.009 (4), to identify the need for compassionate care
- 16 visitation, using a person-centered approach that takes a resident's request into
- 17 account.
- 18 (e) A long-term care facility shall ensure that decisions regarding end-of-life
- 19 care are made by a resident with capacity or by the guardian or agent under an
- 20 activated power of attorney of a resident found to be incapacitated under s. 155.05
- 21 (2).
- 22 (f) Within the scope of visitation provided by this subsection, a long-term care
- 23 facility shall allow a resident making decisions regarding end-of-life care to be
- 24 accompanied by a family member, guardian, or support person designated by the
- 25 resident.

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1 (g) 1. If the COVID-19 infection rate in the county in which the long-term care
2 facility is located is 20 percent or higher, a long-term care facility shall identify at
3 least one way to allow compassionate care visitation, including personal contact, that
4 minimizes the risk of infection to the resident and other residents.

5 2. In a long-term care facility with no new onset of COVID-19 in the past 14
6 days and in counties with COVID-19 positivity rates that are less than 10 percent,
7 a long-term care facility shall accommodate and support indoor visitation for
8 reasons beyond compassionate care visitation.

9 (h) A long-term care facility may do any of the following:

10 1. For a resident who shares a room with another resident, prohibit visitation
11 in the resident's room, unless the health status of the resident prevents him or her
12 from leaving the room.

13 2. Limit the number of visitors per resident at a given time based on the size
14 of the building and the physical space of the building.

15 3. Limit movement in the long-term care facility.

16 4. Require visitors to go directly to the resident's room or to a designated
17 visitation area.

18 (i) A long-term care facility shall grant entry to a health care provider who is
19 not an employee of the long-term care facility but who provides direct care to a
20 resident, provided that the health care provider follows proper infection control
21 protocols.

22 **(3) VISITATION AND SUPPORT FOR A PATIENT WITH A DISABILITY.** (a) Upon the request
23 of a patient with a disability, a health care facility shall allow a patient with a
24 disability to designate at least 3 support persons and shall allow at least one support
25 person to be physically present with the patient with a disability during the patient's

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1 stay in the health care facility if necessary to facilitate the care of a patient with a
2 disability, including if any of the following apply:

3 1. The patient with a disability has a cognitive or mental health disability and
4 requires the assistance of a support person to ensure effective communication with
5 health care providers.

6 2. The patient with a disability is deaf, hard of hearing, or has other
7 communication barriers and requires the assistance of a support person to ensure
8 effective communication with health care providers.

9 3. The patient with a disability is making a decision to consent to treatment or
10 to refuse treatment.

11 4. The patient with a disability needs assistance with activities of daily living
12 and the health care providers are unable to assist or are less effective than the
13 support person at providing the assistance.

14 5. The patient with a disability has behavioral health needs that the support
15 person can address more effectively than the health care providers.

16 (b) A health care facility may not require, as a condition of having a support
17 person present under this subsection, a patient with a disability to execute a
18 declaration to physicians under s. 154.03, consent to a do-not-resuscitate order
19 under subch. III of ch. 154, or execute a physician order for life-sustaining
20 treatment.

21 **(4) HOSPITAL OR PRIMARY CARE FACILITY VISITATION.** (a) Notwithstanding s. 146.95
22 (2) (b), a child has the right to have daily personal contact at reasonable times with
23 a parent, an individual standing in the place of a parent, or a legal guardian while
24 the child receives care in a hospital or primary care facility, subject to par. (d). A
25 hospital or primary care facility shall allow a parent, an individual standing in the

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1 place of a parent, or a legal guardian visiting a child under this paragraph to leave
2 and reenter the hospital or primary care facility while the child is receiving care.

3 (b) Notwithstanding s. 146.95 (2) (b), an adult has the right to have daily
4 personal contact at reasonable times with a spouse, support person, or legal guardian
5 while the adult receives care in a hospital or primary care facility, subject to par. (d).
6 A hospital or primary care facility shall allow a spouse, support person, or legal
7 guardian visiting an adult under this paragraph to leave and reenter the hospital or
8 primary care facility while the adult is receiving care.

9 (c) A hospital or primary care facility may not require a patient to waive the
10 rights specified in par. (a) or (b).

11 (d) A hospital or primary care facility may restrict access of any individual to
12 a patient if any of the following apply:

13 1. The patient has requested the individual's access to the patient be restricted.

14 2. A law enforcement agency has requested the individual's access to the
15 patient be restricted.

16 3. A court order requires the individual's access to the patient be restricted.

17 4. Restricted access is necessary to prevent disruption to the care of the patient.

18 5. The individual has signs and symptoms of a communicable infection, except
19 that hospital or primary care facility shall permit an individual under this
20 subdivision to have access to a patient through means that ensure the protection of
21 the patient, including allowing access to the patient through telecommunication
22 means or allowing personal contact if the individual follows infection prevention and
23 control practices.

24 6. The individual is determined to be a danger to the patient or to be contrary
25 to the welfare of the patient.

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1 7. Restricted access is permissible under sub. (7).

2 **(5) HOSPICE VISITATION.** A patient who is receiving hospice care or the guardian,
3 spouse, or support person of a patient who is receiving hospice care may designate
4 additional family members and friends who may have personal contact with the
5 patient at reasonable times.

6 **(6) CLERGY MEMBER OR LAY PERSON OFFERING RELIGIOUS OR SPIRITUAL SUPPORT**
7 **VISITATION.** A health care facility must permit a clergy member or lay person offering
8 religious or spiritual support to have personal contact with a patient to pray with or
9 offer spiritual support for the patient while the patient receives care from the health
10 care facility.

11 **(7) VISITATION LIMITS OR RESTRICTIONS.** A health care facility may establish
12 visitation policies that limit or restrict visitation when any of the following is true:

13 (a) The presence of visitors would be medically or therapeutically
14 contraindicated.

15 (b) The presence of visitors would interfere with the care of or rights of any
16 patient or resident.

17 (c) Visitors are engaging in disruptive, threatening, or violent behavior toward
18 a staff member, patient, or other visitor.

19 (d) Visitors are noncompliant with a policy of the health care facility.

20 **(8) INFORMATIONAL MATERIALS.** (a) Within 30 days after the effective date of this
21 paragraph [LRB inserts date], the department shall develop informational
22 materials on patient visitation under this section.

23 (b) The department shall submit a report regarding patient visitation under
24 this section to the appropriate standing committees of the legislature under s. 13.172
25 (3).

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1 (c) A health care facility shall make the informational materials under par. (a)
2 accessible to patients and residents upon admission or registration and shall post the
3 informational materials on its website.

4 (d) Every 60 days or upon the release of applicable federal guidelines, the
5 department, with input from the long-term care industry and the hospital industry,
6 shall reevaluate and update the informational materials under par. (a) as needed to
7 allow for the maximum possible visitation in a health care facility under applicable
8 federal guidelines.

9 (e) The informational materials under par. (a) shall take into consideration and
10 include the highest amount of privacy and dignity for interaction between patients
11 and visitors.

12 **(9) COMPLAINTS AND INVESTIGATION.** (a) An individual may file with the
13 appropriate state agency or licensing board, including the department, a complaint
14 against a health care provider or a health care facility for failing to comply with this
15 section. That state agency or licensing board shall investigate the complaint and
16 may penalize a health care provider or health care facility for failure to comply with
17 this section.

18 **(10) LIMITED LIABILITY OF HEALTH CARE FACILITIES.** A state agency may not take
19 any action against a health care facility for any of the following:

20 (a) Giving a visitor or other individual access to a health care facility.

21 (b) Failing to protect or otherwise ensure the safety or comfort of a visitor or
22 other individual given access to a health care facility.

23 (c) Failing to follow the federal centers for disease control and prevention or the
24 federal centers for medicare and medicaid services guidelines or other national

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1 guidelines that require or recommend restricting visitor access to a health care
2 facility.

3 (d) The acts or omissions of any visitor or other individual who is given access
4 to a health care facility.

5 **(11) CONSTRUCTION.** (a) This section does not apply to any of the following:

6 1. A minor who is in the custody of a county department, as defined under s.
7 48.02 (2g), a licensed child welfare agency, or the department of children and
8 families.

9 2. A minor who is a suspected victim in a pending abuse investigation under
10 s. 48.981 (3).

11 3. An individual who is in the custody of the department of corrections.

12 4. An individual who is attending a preventive health care office visit during
13 which evidence-based guidelines for preventive care recommend a confidential visit
14 component for youth, as mutually agreed to by the patient and his or her physician.

15 (b) The rights specified in this section may not be terminated, suspended, or
16 waived by any of the following:

17 1. A health care facility.

18 2. The department.

19 3. A state or local board of health.

20 4. The governor upon declaring of a state of emergency under s. 323.10 or
21 ordering the department to take action.

22 **(END)**