

2020 Second Extraordinary Session

SENATE BILL NO. 12

BY SENATOR ROBERT MILLS AND REPRESENTATIVE EDMONDS

HEALTH CARE. Provides access for patients of hospitals and residents of nursing homes, assisted living facilities, and other adult residential care homes to members of the clergy who volunteer to minister and provide religious sacraments and services, counseling, and mental health support during COVID-19 and other public health emergencies. (gov sig) (Item #28)

1 AN ACT

2 To amend and reenact R.S. 29:770(B) and 771(B)(2)(c) and to enact R.S. 40:2005.1, relative

3 to a state of public health emergency; to require hospitals, nursing homes, and adult

4 residential care homes to provide patient or resident access to members of the clergy

5 during a state of public health emergency for COVID-19 or other contagious or

6 infectious diseases; to require the Department of Health to promulgate rules; to

7 provide for rules for members of the clergy who voluntarily enter inpatient health

8 care facilities to minister; to provide for definitions; to provide for licensed

9 professional counselors; to provide for emotional and spiritual support from clergy;

10 to provide for legislative purpose; to provide for restrictions; to provide for immunity

11 from liability for hospitals, nursing homes, and adult residential care homes; and to

12 provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 29:770(B) and 771(B)(2)(c) are hereby amended and reenacted to  
15 read as follows:

16 §770. Public information regarding a public health emergency; access to mental  
17 health support personnel; access to members of the clergy

\* \* \*

B. Access to mental health support personnel.

(1) During a declaration of a state of public health emergency, the secretary of the Louisiana Department of Health or his designee shall provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency. **The information provided may include the availability of no-cost or reduced-cost counseling or mental health support services from licensed mental health professionals offered by religious organizations or other nonprofit organizations. The information provided may also include no-cost emotional or spiritual support offered by clergy.**

(2) After a declaration of a state of public health emergency, the secretary of the Louisiana Department of Health or his designee shall provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency. **The information provided may include the availability of no-cost or reduced-cost counseling or mental health support services from licensed mental health professionals offered by religious organizations or other nonprofit organizations. The information provided may also include no-costs emotional or spiritual support offered by clergy.**

§771. Miscellaneous

\* \* \*

B. Liability.

\* \* \*

(2) Private liability.

\* \* \*

(c)(i) During a state of public health emergency, ~~any no health care providers~~ **provider** shall ~~not~~ be civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

**(ii) During a state of public health emergency, which is declared to**

1 combat COVID-19 or any other contagious disease or infectious disease, no  
 2 inpatient health care facility shall be liable to a member of the clergy for any  
 3 civil damages for injury or death resulting from or related to actual or alleged  
 4 exposure during the course of, or through the performance of, allowing access  
 5 to a member of the clergy in compliance with R.S. 40:2005.1 unless the inpatient  
 6 health care facility failed to substantially comply with the applicable procedures  
 7 established by the Department of Health that govern the inpatient health care  
 8 facility operations and the injury or death was caused by the inpatient health  
 9 care facility's gross negligence or wanton or reckless misconduct.

10 \* \* \*

11 Section 2. R.S. 40:2005.1 is hereby enacted to read as follows:

12 §2005.1. Visitation by members of clergy during a declared public health  
 13 emergency

14 A. The legislature declares that the purpose of this Section is to protect  
 15 the religious liberty of each patient or resident and to protect inpatient health  
 16 care facilities from costly lawsuits and administrative complaints on the basis  
 17 of religious discrimination by affording patient or resident access to members  
 18 of the clergy provided that those members of the clergy enter the inpatient  
 19 health care facility on a voluntary basis and comply with the safety  
 20 requirements of the facility in order to visit and minister to the patient or  
 21 resident.

22 B.(1) The Louisiana Department of Health shall promulgate rules,  
 23 pursuant to the Administrative Procedure Act, to require inpatient health care  
 24 facilities to allow members of the clergy to visit patients or residents during a  
 25 public health emergency whenever a patient or resident requests such a visit.  
 26 Special consideration shall be given to patients or residents receiving end-of-life  
 27 care.

28 (2)(a) The rules shall include but not be limited to definitions, minimum  
 29 requirements, and provisions to protect the health, safety, and welfare of the

1 patients or residents and the staff of the inpatient health care facility.

2 (b) The rules shall allow inpatient health care facilities to adopt  
3 reasonable time, place, and manner restrictions on patient or resident visitation  
4 that are implemented for the purpose of mitigating the possibility of  
5 transmission of any infectious agent or disease or to address the medical  
6 condition or clinical considerations of an individual patient.

7 (3) The rules promulgated pursuant to this Section shall be preempted  
8 by any federal statute, federal regulation, or guidance from a federal  
9 government agency that requires an inpatient health care facility to restrict  
10 patient visitation in a manner that is more restrictive than the rules adopted by  
11 the department pursuant to this Section.

12 C. For purposes of this Section, the following definitions shall apply:

13 (a) "Inpatient health care facilities" means all of the following:

14 (i) A hospital licensed pursuant to Part II of Chapter 11 of Title 40 of the  
15 Louisiana Revised Statutes of 1950 but shall not include a licensed hospital that  
16 is designated as a forensic facility.

17 (ii) A nursing home, as defined in R.S. 40:2009.2.

18 (iii) An adult residential care home, as defined in R.S. 40:2166.3,  
19 including but not limited to assisted living facilities.

20 (b) "Patient or resident" means the patient or resident of the inpatient  
21 health care facility or the legal or designated representative of the patient or  
22 resident.

23 (c) "Public health emergency" means a state of public health emergency  
24 that is declared pursuant to the Louisiana Health Emergency Powers Act, R.S.  
25 29:760 et seq.

26 Section 3. Nothing in this Act shall be interpreted to prohibit or restrict any inpatient  
27 health care facility from allowing clergy to visit or minister to patients or residents in a  
28 manner deemed appropriate by the inpatient health care facility prior to the effective date  
29 of the rules which are to be implemented by the Louisiana Department of Health pursuant

1 to this Act.

2 Section 4. This Act shall become effective upon signature by the governor or, if not  
3 signed by the governor, upon expiration of the time for bills to become law without signature  
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
6 effective on the day following such approval.

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The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Brandi Cannon.

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#### DIGEST

SB 12 Reengrossed

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Robert Mills

Present law (R.S. 29:760-772) provides for the La. Health Emergency Powers Act, which allows the governor to issue an executive order or proclamation declaring a public health emergency, following consultation with the La. Dept. of Health (LDH), if he finds a public health emergency has occurred or the threat thereof is imminent.

Present law provides that, during and after a declaration of a state of public health emergency, the LDH secretary or his designee will provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency.

Proposed law retains present law and further provides that LDH may include the availability of no-cost or reduced-cost counseling or mental health support services from licensed mental health professionals offered by religious organizations or other nonprofit organizations and no-cost emotional or spiritual support offered by clergy.

Present law provides that, during a state of public health emergency, a health care provider shall not be civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

Proposed law retains present law and provides that, during a state of public health emergency which is declared to combat COVID-19 or any other contagious or infectious disease, no inpatient health care facility will be liable to a member of the clergy who visits the inpatient health care facility for any civil damages for injury or death resulting from an actual or alleged exposure to COVID-19 or any other contagious or infectious disease. Further provides that this limitation on liability will not apply to a facility that fails to substantially comply with the applicable procedures established by LDH that governs the health care facility operations and the injury or death was caused by the health care facility's gross negligence or wanton or reckless misconduct.

Proposed law provides that LDH shall promulgate rules to require inpatient health care facilities to allow members of the clergy to visit patients or residents during a public health emergency whenever a patient or resident requests such a visit. The rules must include definitions, minimum requirements, and provisions to protect the health, safety, and welfare of the patients or residents and the staff of the inpatient health care facility. Further provides that the rules shall be preempted by any federal statute, federal regulation, or guidance from a federal government agency that requires an inpatient health care facility to restrict patient visitation in a manner that is more restrictive.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 29:770(B) and 771(B)(2)(c); adds R.S. 40:2005.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Deletes proposed law requiring physical access for clergy pursuant to the Louisiana Health Emergency Powers Act.
2. Requires rulemaking by LDH to provide for physical access for clergy during a public health emergency.

Senate Floor Amendments to engrossed bill

1. Make technical changes.