

2020 Second Extraordinary Session

HOUSE BILL NO. 43

BY REPRESENTATIVE BACALA

NURSING HOMES: Provides for rights of nursing home residents relative to visitation (Item #59)

1 AN ACT

2 To amend and reenact R.S. 40:2010.8(A)(2)(b)(vii) and (viii), (d), and (B) and to enact R.S.  
3 40:2166.11, relative to rights of nursing home residents and residents of adult  
4 residential care provider facilities; to provide relative to the right of such residents  
5 to have access to visitors; to provide relative to restrictions that nursing homes and  
6 adult residential care provider facilities may impose for the protection of residents;  
7 to provide for construction and applicability of laws; to prohibit any limitation of the  
8 right of nursing home residents and residents of adult residential care provider  
9 facilities to have access to visitors; to provide for exceptions to the prohibition on  
10 limiting nursing home visitation; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 40:2010.8(A)(2)(b)(vii) and (viii), (d), and (B) are hereby amended  
13 and reenacted and R.S. 40:2166.11 is hereby enacted to read as follows:

14 §2010.8. Residents' bill of rights

15 A. All nursing homes shall adopt and make public a statement of the rights  
16 and responsibilities of the residents residing therein and shall treat such residents in  
17 accordance with the provisions of the statement. The statement shall assure each  
18 resident the following:

19 \* \* \*

1 (2)

2 \* \* \*

3 (b) The right to be granted immediate access to the following:

4 \* \* \*

5 (vii) Immediate family members, other relatives of the resident, and the  
6 resident's clergy subject to the resident's right to deny or withdraw consent at any  
7 time. The facility shall allow in-person access to the resident by any person  
8 identified in this Item if the person or resident chooses to visit in person.

9 (viii) Others who are visiting with the consent of the resident, subject to  
10 reasonable restrictions and the resident's right to deny or withdraw consent at any  
11 time. The facility shall allow in-person access to the resident by any person  
12 identified in this Item if the person or resident chooses to visit in person.

13 \* \* \*

14 (d) Reasonable restrictions are those imposed by the facility that protect the  
15 security of all the facility's residents and may include, but shall not be limited to,  
16 infection control protocols. The facility may change the location of visits to assist  
17 ~~care giving~~ caregiving or protect the privacy of other residents.

18 \* \* \*

19 B.(1) A sponsor may act on a resident's behalf to assure that the nursing  
20 home does not deny the resident's rights under the provisions of R.S. 40:2010.6 et  
21 seq., and no right enumerated therein may be waived for any reason whatsoever.

22 (2)(a) During a state of public health emergency declared in accordance with  
23 R.S. 29:766 to address the infectious respiratory disease known as COVID-19, no  
24 provision of the Louisiana Homeland Security and Emergency Assistance and  
25 Disaster Act (R.S. 29:721 et seq.), the Louisiana Health Emergency Powers Act  
26 (R.S. 29:760), or any other state law or regulation shall be construed to limit a  
27 resident's right to have access to in-person visitation by an immediate family member  
28 of the resident, other relative of the resident, the resident's clergy, or any other person

1 visiting the resident with the resident's consent as established in Subparagraph  
2 (A)(2)(b) of this Section.

3 (b)(i) Notwithstanding the provisions of Subparagraph (a) of this Paragraph,  
4 a resident's right to visitation established in Subparagraph (A)(2)(b) of this Section  
5 shall be limited if one or more of the following conditions is met:

6 (aa) The limitation is required by rule, regulation, order, or official guidance  
7 of the Centers for Medicare and Medicaid Services of the United States Department  
8 of Health and Human Services or any other agency of the federal government.

9 (bb) The limitation is provided in an executive order or proclamation of the  
10 governor issued during a state of public health emergency declared in accordance  
11 with R.S. 29:766. However, if both the House Committee on Health and Welfare  
12 and the Senate Committee on Health and Welfare find the limitation unacceptable  
13 in accordance with a procedure provided in Item (ii) of this Subparagraph, then the  
14 limitation shall be null, void, and without effect.

15 (cc) The limitation is provided in an order of the state health officer issued  
16 during a state of public health emergency declared in accordance with R.S. 29:766.  
17 However, if both the House Committee on Health and Welfare and the Senate  
18 Committee on Health and Welfare find the limitation unacceptable in accordance  
19 with a procedure provided in Item (ii) of this Subparagraph, then the limitation shall  
20 be null, void, and without effect.

21 (ii) The action by a legislative committee to find unacceptable a limitation  
22 on visitation of nursing home residents, as authorized in this Subparagraph, may be  
23 by favorable vote, *viva voce*, of a simple majority of the committee's membership at  
24 a meeting of the committee; or by favorable vote of a simple majority of the  
25 committee's membership submitted by mail ballot.

26 \* \* \*

27 §2166.11. Residents of adult residential care provider facilities; right to visitation

28 A. Each resident of any facility licensed pursuant to this Part shall have the  
29 right to be granted immediate access to all of the following persons:

1           (1) Immediate family members, other relatives of the resident, and the  
2           resident's clergy subject to the resident's right to deny or withdraw consent at any  
3           time. The facility shall allow in-person access to the resident by any person  
4           identified in this Paragraph if the person or resident chooses to visit in person.

5           (2) Others who are visiting with the consent of the resident, subject to  
6           reasonable restrictions and the resident's right to deny or withdraw consent at any  
7           time. The facility shall allow in-person access to the resident by any person  
8           identified in this Paragraph if the person or resident chooses to visit in person.

9           B.(1) For purposes of this Section, "in-person access" means the right of a  
10          resident to receive visitors in person at the facility, either in the resident's room or  
11          in another location on the facility campus designated by the facility. The facility  
12          may change the location of visits to assist caregiving or protect the privacy or health  
13          of other residents. Visitation may be subject to reasonable restrictions imposed by  
14          the facility.

15          (2) For purposes of this Section, "reasonable restrictions" means restrictions  
16          imposed by the facility that protect the security of residents and staff of the facility.  
17          Such restrictions may include, but shall not be limited to, infection control protocols.

18          C. The adult residential care provider may ask any visitor who does not  
19          comply with reasonable restrictions, or who otherwise endangers the health, safety,  
20          or well-being of any resident or staff member, to leave the facility, and may prohibit  
21          that person from future visitation.

22          D. A sponsor may act on a resident's behalf to assure that the adult  
23          residential care provider does not deny the resident's rights and no right recognized  
24          in regulations adopted in accordance with this Part may be waived for any reason.

25          E. No provision of the Louisiana Homeland Security and Emergency  
26          Assistance and Disaster Act (R.S. 29:721 et seq.), the Louisiana Health Emergency  
27          Powers Act (R.S. 29:760), or any other law or regulation shall be construed to limit  
28          a resident's right to have access to in-person visitation by an immediate family  
29          member of the resident, other relative of the resident, the resident's clergy, or any

1        other person visiting the resident with the resident's consent as established in  
2        Subsection A of this Section.

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

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 43 Engrossed

2020 Second Extraordinary Session

Bacala

**Abstract:** Provides for rights of nursing home residents and residents of adult residential care provider facilities relative to visitation.

Present law provides for enumerated rights of nursing home residents. Requires that nursing homes assure each resident the right to be granted immediate access to the following persons:

- (1) Immediate family members, other relatives of the resident, and the resident's clergy subject to the resident's right to deny or withdraw consent at any time.
- (2) Others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

Proposed law retains present law and adds thereto requirements that nursing homes allow in-person access to a resident by any person identified in the items above if the person or resident chooses to visit in person.

Present law provides that "reasonable restrictions" are those imposed by the facility that protect the security of all the facility's residents. Proposed law retains present law and stipulates that such restrictions may include, but shall not be limited to, infection control protocols.

Proposed law provides that during a state of public health emergency declared to address COVID-19, no provision of present law or present administrative code shall be construed to limit a nursing home resident's right to have access to in-person visitation by an immediate family member, other relative, the resident's clergy, or any other person visiting the resident with the resident's consent as established in present law.

Proposed law provides that notwithstanding its protections of the rights of nursing home residents to have in-person visitation, a resident's right to visitation shall be limited if one or more of the following conditions is met:

- (1) The limitation is required by rule, regulation, order, or official guidance of the Centers for Medicare and Medicaid Services or any other agency of the federal government.

- (2) The limitation is provided in an executive order or proclamation of the governor issued during a declared state of public health emergency; except that if both the House and Senate committees on health and welfare find the limitation unacceptable, then the limitation shall be null, void, and without effect.
- (3) The limitation is provided in an order of the state health officer issued during a declared state of public health emergency; except that if both the House and Senate committees on health and welfare find the limitation unacceptable, then the limitation shall be null, void, and without effect.

Proposed law provides that action by a legislative committee to find unacceptable a limitation on visitation of nursing home residents may be by favorable vote, *viva voce*, of a simple majority of the committee's membership at a meeting of the committee; or by favorable vote of a simple majority of the committee's membership submitted by mail ballot.

Proposed law provides that residents of adult residential care provider facilities (known commonly as "assisted living facilities" and referred to hereafter as "ARCP facilities") shall have the right to be granted immediate access to all of the following persons:

- (1) Immediate family members, other relatives, and their clergy subject to the ARCP facility resident's right to deny or withdraw consent at any time.
- (2) Others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

Proposed law requires ARCP facilities to allow in-person access to the resident by any authorized person if the person or resident chooses to visit in person. Defines "in-person access" as the right of a resident to receive visitors in person at the ARCP facility, either in the resident's room or in another location on the facility campus designated by the facility. Provides that the facility may change the location of visits to assist caregiving or protect the privacy or health of other residents. Stipulates that visitation may be subject to reasonable restrictions imposed by the facility.

Proposed law defines "reasonable restrictions" as restrictions imposed by the ARCP facility that protect the security of residents and staff of the facility. Provides that such restrictions may include, but shall not be limited to, infection control protocols.

Proposed law authorizes ARCP facilities to ask any visitor who does not comply with reasonable restrictions, or who otherwise endangers the health, safety, or well-being of any resident or staff member, to leave the facility and to prohibit that visitor from future visitation.

Proposed law provides that a sponsor may act on an ARCP facility resident's behalf to assure that the ARCP does not deny the resident's rights. Provides that no right recognized in regulations adopted in accordance with proposed law may be waived for any reason.

Proposed law stipulates that no provision of present law or present administrative code shall be construed to limit an ARCP resident's right to have access to in-person visitation by an immediate family member, other relative, clergy, or any other authorized person visiting the resident with the resident's consent.

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

(Amends R.S. 40:2010.8(A)(2)(b)(vii) and (viii), (d), and (B); Adds R.S. 40:2166.11)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Stipulate that proposed law relative to the rights of nursing home residents to have in-person visitation shall apply only during a state of public health emergency declared to address COVID-19.
2. Provide that notwithstanding proposed law protecting rights of nursing home residents to have in-person visitation, a resident's right to visitation shall be limited if one or more of the following conditions is met:
  - (a) The limitation is required by rule, regulation, order, or official guidance of the Centers for Medicare and Medicaid Services or any other agency of the federal government.
  - (b) The limitation is provided in an executive order or proclamation of the governor issued during a declared state of public health emergency; except that if both the House and Senate committees on health and welfare find the limitation unacceptable, then the limitation shall be null, void, and without effect.
  - (c) The limitation is provided in an order of the state health officer issued during a declared state of public health emergency; except that if both the House and Senate committees on health and welfare find the limitation unacceptable, then the limitation shall be null, void, and without effect.
3. Provide for procedures by which a legislative committee may find a limitation on visitation of nursing home residents unacceptable.
4. Provide that residents of adult residential care provider facilities (known commonly as "assisted living facilities" and referred to hereafter as "ARCP facilities") shall have the right to be granted immediate access to all of the following persons:
  - (a) Immediate family members, other relatives, and their clergy subject to the resident's right to deny or withdraw consent at any time.
  - (b) Others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.
5. Provide that ARCP facilities shall allow in-person access to the resident by any authorized person if the person or resident chooses to visit in person.
6. Define "in-person access" and "reasonable restrictions" for purposes of proposed law relative to visitation of ARCP facility residents.
7. Authorize ARCP facilities to ask any visitor who does not comply with reasonable restrictions, or who otherwise endangers the health, safety, or well-being of any resident or staff member, to leave the facility and to prohibit that visitor from future visitation.
8. Provide that a sponsor may act on a resident's behalf to assure that the ARCP does not deny the resident's rights. Provide that no right recognized in regulations adopted in accordance with proposed law relative to ARCP facilities may be waived for any reason.

9. Stipulate that no provision of present law or present administrative code shall be construed to limit an ARCP resident's right to have access to in-person visitation by an immediate family member, other relative, clergy, or any other authorized person visiting the resident with the resident's consent.