
DIGEST

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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.