



February 5, 2021

SENATE BILL No. 202

DIGEST OF SB 202 (Updated February 3, 2021 1:22 pm - DI 104)

Citations Affected: IC 16-18; IC 16-28; IC 34-30.

Synopsis: Health facility visitation. Requires health facilities and residential care facilities (facilities) to allow visitation of a resident in a compassionate care situation. Requires the state department of health to adopt standards and guidelines concerning the essential family caregiver program during a declared emergency, a public health emergency, or similar crisis, and requires facilities to participate in the program. Allows for the designation of an essential family caregiver for a resident of a facility and allows for visitation during restricted visitation at the facility. Specifies requirements for an individual to be designated as an essential family caregiver and allows for the reconsideration and reporting of a denial of a request for designation. Allows the state department of health to adopt certain rules concerning the program. Allows for immunity of a facility participating in the program unless there is gross negligence or willful or wanton misconduct.

Effective: Upon passage.

**Rogers, Charbonneau, Leising,
Doriot, Zay, Niemeyer, Becker,
Donato, Mishler, Grooms, Yoder**

January 7, 2021, read first time and referred to Committee on Health and Provider Services.
February 4, 2021, amended, reported favorably — Do Pass.

SB 202—LS 6939/DI 104



February 5, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 202

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-122, AS AMENDED BY P.L.86-2018,
2 SECTION 167, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: Sec. 122. (a) **"Facility", for**
4 **purposes of IC 16-28-2-12, has the meaning set forth in**
5 **IC 16-28-2-12(a).**

6 (b) **"Facility", for purposes of IC 16-28-6.5, has the meaning set**
7 **forth in IC 16-28-6.5-1.**

8 (c) "Facility", for purposes of IC 16-41-11, has the meaning set forth
9 in IC 16-41-11-2.

10 SECTION 2. IC 16-18-2-317.7, AS AMENDED BY P.L.2-2019,
11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]: Sec. 317.7. "Residential care facility", for purposes
13 of:

14 (1) IC 16-28-2;

15 (2) **IC 16-28-6.5**; and

16 (3) IC 16-32-5;

17 means an entity licensed under IC 16-28 and registered as a housing

SB 202—LS 6939/DI 104



1 with services establishment under IC 12-10-15.

2 SECTION 3. IC 16-28-2-12 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: **Sec. 12. (a) As used in this section, "facility"**
5 **includes the following:**

6 (1) A health facility licensed under this article.

7 (2) A residential care facility.

8 (b) During a declared emergency, public health emergency, or
9 similar crisis, a facility shall allow, in accordance with guidelines
10 from the Centers for Medicare and Medicaid Services, visitation of
11 a resident by the resident's family member, legal representative,
12 clergy, or essential family caregiver (as determined in
13 IC 16-28-6.5), or an individual who can meet the resident's needs,
14 regardless of visitation restrictions implemented by the facility, in
15 compassionate care situations, including the following:

16 (1) End of life situations.

17 (2) A recently admitted resident who is struggling to adapt to
18 the facility and the lack of family support.

19 (3) A resident who is grieving the recent death of a family
20 member or friend.

21 (4) A resident who is experiencing weight loss or dehydration
22 and is in need of cuing and encouragement for eating or
23 drinking that was previously provided to the resident by a
24 family member or caregiver.

25 (5) A resident who is experiencing emotional distress and is
26 not talking or interacting with others as the resident
27 previously had.

28 (6) A resident who is diagnosed with Alzheimer's disease,
29 dementia, or a related cognitive disorder, and is experiencing
30 distress due to a lack of visitation.

31 (7) A resident who is failing to thrive.

32 (c) A facility has the burden of proof in justifying the facility's
33 decision to deny visitation for a resident's family member, legal
34 representative, or essential family caregiver in a compassionate
35 care situation under this section.

36 SECTION 4. IC 16-28-6.5 IS ADDED TO THE INDIANA CODE
37 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
38 UPON PASSAGE]:

39 **Chapter 6.5. Essential Family Caregiver Program**

40 **Sec. 1. As used in this chapter, "facility" includes the following:**

41 (1) A health facility licensed under this article.

42 (2) A residential care facility.



1 **Sec. 2. The state department shall adopt standards and**
 2 **guidelines concerning the essential family caregiver program to be**
 3 **implemented during a declared emergency, a public health**
 4 **emergency, or similar crisis for the purpose of establishing**
 5 **protocols for a facility to designate a person chosen by a resident**
 6 **or a resident's designated representative to assist the facility in**
 7 **providing care to the resident that was previously provided by the**
 8 **person before restrictions were placed on visitation due to a**
 9 **declared emergency, a public health emergency, or similar crisis**
 10 **when visitation is limited or restricted. Either:**

11 **(1) the resident; or**

12 **(2) if the individual has been deemed to be incapacitated or is**
 13 **a resident of a memory care unit, the resident's designated**
 14 **representative;**

15 **shall make the determination. The facility shall allow at least two**
 16 **(2) individuals per resident to be designated, and the resident or**
 17 **the resident's designated representative shall determine the**
 18 **identity of the primary essential family caregiver to serve as the**
 19 **resident's main point of contact for communication and care**
 20 **coordination.**

21 **Sec. 3. (a) A facility shall participate in the essential family**
 22 **caregiver program established and maintained by the state**
 23 **department under section 2 of this chapter.**

24 **(b) A facility shall inform residents of the facility and a**
 25 **resident's designated representative of the essential family**
 26 **caregiver program and the process for being designated as a**
 27 **resident's essential family caregiver. The facility's requirements**
 28 **concerning participation in the program and applying for the**
 29 **designation must be in writing.**

30 **(c) The administrator of a facility, or the administrator's**
 31 **designee, shall have the discretion to determine whether to**
 32 **designate a person to be an essential family caregiver for a**
 33 **resident. The facility has the burden of proof in justifying the**
 34 **facility's decision to deny the designation for a person that applies**
 35 **to be an essential family caregiver for a resident under this**
 36 **chapter. If a health facility denies the designation of a person as an**
 37 **essential family caregiver, the health facility must provide the**
 38 **denial to the person in writing with an explanation of the reason**
 39 **for the denial.**

40 **(d) The administrator of a facility or the administrator's**
 41 **designee shall:**

42 **(1) factor in the current status of the facility concerning the**



1 declared emergency, public health emergency, or similar
 2 crisis in determining whether to designate an individual as an
 3 essential family caregiver for a resident; and

4 (2) determine, not later than seven (7) days after receipt of the
 5 application, and in consultation with staff of the facility who
 6 provide care to the resident, each designation on a case by
 7 case basis and as part of an individualized care plan for a
 8 resident.

9 (e) If an applicant is denied designation as an essential family
 10 caregiver by the administrator, the applicant may request in
 11 writing that the administrator reconsider designating the applicant
 12 as an essential family caregiver. An individual whose application
 13 is still denied after reconsideration may report the denial in writing
 14 to the state department or the long term care ombudsman if the
 15 individual believes that the denial is in violation of this chapter.

16 Sec. 4. To be designated as an essential family caregiver of a
 17 resident, an individual must at least meet the following:

18 (1) Is at least eighteen (18) years of age.

19 (2) Either:

20 (A) before the declared emergency, public health
 21 emergency, or similar crisis that resulted in the placement
 22 of visitation restrictions, regularly engaged with the
 23 resident on average at least two (2) times per week to
 24 provide care or support to the resident, including help with
 25 meal set up, grooming, and companionship; or

26 (B) if the resident is a new resident to the facility during a
 27 declared emergency, public health emergency, or similar
 28 crisis, previously provided care to the resident.

29 (3) Has taken and passed any screening test or other testing
 30 required for the declared emergency, public health
 31 emergency, or similar crisis, and agrees to continue to take
 32 any required testing throughout the emergency or crisis when
 33 requested.

34 (4) Agrees to take any precautionary measures, including
 35 hand hygiene and the wearing of a mask or other personal
 36 protective equipment required by the facility.

37 (5) Agrees to only enter the resident's room and designated
 38 areas of the facility.

39 Sec. 5. A resident or a resident's designated representative must
 40 agree to a designation of an individual as the resident's essential
 41 family caregiver before the designation may occur. The resident or
 42 resident's designated representative may revoke the agreement



1 concerning a designated essential family caregiver at any time.

2 **Sec. 6. (a) If a facility designates an individual as an essential**
 3 **family caregiver for a resident, the following must occur:**

4 (1) The facility must set forth in writing the hours of visitation
 5 and the length of time of the visitation.

6 (2) The facility shall provide a written list of the rules that the
 7 designee must follow, and the designee shall attest to the
 8 receipt of and agreement to the rules.

9 (3) An individualized plan shall be developed by the facility,
 10 resident, resident's designated representative, and each
 11 designee for each designation that:

12 (A) specifies the responsibilities of all parties;

13 (B) is maintained in the resident's file;

14 (C) is provided to both the resident and the designated
 15 essential family caregiver;

16 (D) is developed for both in-person outdoor and indoor
 17 visitation, and virtual visits when the essential caregiver is
 18 unable or prohibited from entry due to illness; and

19 (E) reflects the preferences of the resident and the essential
 20 family caregiver while adhering to all state and federal
 21 guidelines concerning visitation.

22 (b) A facility and essential family caregiver shall work together
 23 to ensure reasonable visitation times are set in a manner that
 24 provides an essential family caregiver the ability to visit the
 25 resident.

26 (c) Upon request of the resident, the resident's designated
 27 representative, the resident's family, or the resident's legal
 28 representative, the facility shall provide a copy of the individual's
 29 plan described in this section to the long term care ombudsman.

30 **Sec. 7. A facility may restrict an established plan of visitation by**
 31 **an essential family caregiver for any of the following:**

32 (1) The essential family caregiver's violation of the rules set
 33 forth in the individualized plan established under section 6 of
 34 this chapter.

35 (2) The essential family caregiver's positive screening test for
 36 a length of time, as established by federal or state guidelines.

37 **Sec. 8. (a) If a facility is unable to comply with this chapter or**
 38 **any requirements for the program established by the state**
 39 **department, the facility shall notify the state department of the**
 40 **reason the facility may not comply with the program and what the**
 41 **facility needs in order to comply with the program.**

42 (b) The state department may take enforcement action against



1 a facility as determined by rules adopted under section 9 of this
2 chapter.

3 **Sec. 9. The state department may adopt rules under IC 4-22-2**
4 **concerning the essential family caregiver program, including:**

5 (1) the oversight and enforcement of the essential family
6 caregiver program;

7 (2) the establishment of requirements for plans for correction
8 for a violation by a facility under this chapter; and

9 (3) reporting of the participation in the essential family care
10 giver program, compassionate care program, and general
11 visitation.

12 **Sec. 10. (a) Subject to subsection (b), a facility, facility employee,**
13 **or facility contractor that, in good faith, implements or complies**
14 **with this chapter may not be held civilly liable for damages,**
15 **including punitive damages, for any act or omission related to the**
16 **implementation of this chapter.**

17 **(b) The immunity described in subsection (a) does not apply to**
18 **any act or omission that constitutes gross negligence or willful or**
19 **wanton misconduct.**

20 SECTION 5. IC 34-30-2-66.8 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE UPON PASSAGE]: **Sec. 66.8. IC 16-28-6.5-10**
23 **(Concerning implementation of or compliance with the essential**
24 **family caregiver program).**

25 SECTION 6. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 202, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 11, after "representative," insert "**clergy**,".

Page 2, line 12, delete "caregiver," and insert "**caregiver (as determined in IC 16-28-6.5), or an individual who can meet the resident's needs**,".

Page 2, between lines 26 and 27, begin a new line block indented and insert:

"(6) A resident who is diagnosed with Alzheimer's disease, dementia, or a related cognitive disorder, and is experiencing distress due to a lack of visitation.

(7) A resident who is failing to thrive."

Page 2, line 38, delete "administer" and insert "**adopt standards and guidelines concerning**".

Page 3, line 13, delete "." and insert "**to serve as the resident's main point of contact for communication and care coordination**".

Page 3, line 29, after "chapter." insert "**If a health facility denies the designation of a person as an essential family caregiver, the health facility must provide the denial to the person in writing with an explanation of the reason for the denial**".

Page 3, line 36, after "determine" insert "**, not later than seven (7) days after receipt of the application, and in consultation with staff of the facility who provide care to the resident**".

Page 3, between lines 37 and 38, begin a new paragraph and insert:

"(e) If an applicant is denied designation as an essential family caregiver by the administrator, the applicant may request in writing that the administrator reconsider designating the applicant as an essential family caregiver. An individual whose application is still denied after reconsideration may report the denial in writing to the state department or the long term care ombudsman if the individual believes that the denial is in violation of this chapter."

Page 3, line 41, delete "Before" and insert "**Either**:"

(A) before".

Page 4, line 1, after "resident" insert "**on average**".

Page 4, line 4, delete "." and insert "**;** or

(B) if the resident is a new resident to the facility during a declared emergency, public health emergency, or similar



crisis, previously provided care to the resident."

Page 5, line 6, after "restrict" insert "**an**".

Page 5, line 6, after "plan" insert "**of**".

and when so amended that said bill do pass.

(Reference is to SB 202 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 12, Nays 0.

