

SUBJECT: Prohibiting hospitals from restricting patient visitation in certain disasters

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton,
Oliverson, Price, Smith

1 nay — Zwiener

WITNESSES: For — Sheila Hemphill, Texas Right To Know; (*Registered, but did not testify*: Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — None

On — Lee Spiller, Citizens Commission on Human Rights; Cesar Lopez, Texas Hospital Association; Troy Alexander, Texas Medical Association; (*Registered, but did not testify*: Kristi Jordan, HHSC)

DIGEST: CSHB 2211 would prohibit a hospital from restricting in-person visitation during a qualifying period of disaster unless federal law or a federal agency required the hospital to prohibit in-person visitation during that period.

"Qualifying period of disaster" would be defined as the period of time the area in which a hospital was located was declared a disaster area by a qualifying official disaster order. "Qualifying official disaster order" would mean an order, proclamation, or other instrument issued by the governor, another official of the state, or the governing body or an official of a political subdivision declaring a disaster due to an infectious disease.

During a qualifying period of disaster, the bill would allow a hospital to:

- restrict the number of visitors a patient could receive to not fewer than one;
- require a visitor to complete a health screening before entering the hospital and to wear personal protective equipment at all times

- while visiting a patient; and
- deny entry to or remove from the premises a visitor who failed or refused to meet the health screening or specified personal protective equipment requirements.

A health screening administered by a hospital would have to at a minimum comply with hospital policy and, if applicable, guidance or directives issued by the Health and Human Services Commission, the Centers for Medicare and Medicaid Services, or another agency with regulatory authority over the hospital.

The bill could not be construed as requiring a hospital to:

- provide a specific type of personal protective equipment to a visitor; or
- allow in-person visitation with a patient if an attending physician determined that in-person visitation with that patient could lead to the transmission of an infectious agent that posed a serious community health risk.

A determination made by an attending physician would be valid for a maximum of five days after the determination was made unless it was renewed. If a visitor was denied in-person visitation with a patient because an attending physician determined a visit posed a serious community health risk, the hospital would have to provide a daily written or oral update to the visitor on the patient's condition if the visitor:

- was authorized by the patient to receive relevant health information about the patient;
- had authority to receive the patient's health information under an advance directive or medical power of attorney; or
- was otherwise the patient's surrogate decision-maker on the patient's health care needs under hospital policy or other applicable law.

The hospital also would have to notify the person who received the daily

update of the estimated date and time at which the patient would be discharged.

Neither a hospital nor a physician providing health care services on the hospital's premises would be subject to civil or criminal liability or an administrative penalty if a visitor:

- contracted an infectious disease while on the premises during a qualifying period of disaster; or
- in connection with a visit to the hospital, spread an infectious disease to any other individual, except where intentional misconduct or gross negligence by the hospital or the physician was shown.

A physician who in good faith took, or failed to take, an action under the bill would not be subject to civil or criminal liability or disciplinary action for the physician's action or failure to act.

In the event of a conflict between the bill's provisions and any provision of a qualifying official disaster order, the bill would prevail.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 2211 would ensure that hospital patients were allowed at least one visitor during a declared public health disaster. The bill also would provide hospitals sufficient authority to deny a visitor entry if the person did not abide by health screening or protective personal equipment requirements or if an attending physician was concerned about the spread of an infectious disease.

During the COVID-19 pandemic, visitation restrictions were incredibly difficult for patients and their families as well as hospital staff. Many patients lacked connection and physical touch from loved ones for several months, resulting in some patients dying alone. By permitting in-person visitation during a public health disaster, CSHB 2211 would help maintain

important connections between patients and families, which could improve patients' physical and mental health and lead to better health outcomes.

The bill also would specify that a federal law or agency could require hospitals to prohibit in-person visitation during a qualifying period of disaster, which could remove the possibility of hospitals being forced into adopting certain protocols set by the bill.

CRITICS
SAY:

CSHB 2211 could force hospitals to adopt protocols that may not be appropriate during future public health disasters. During the COVID-19 pandemic, there were several unknown factors to consider as hospitals worked to ensure the safety of patients and staff. The bill should provide more flexibility to hospitals so that they can effectively respond to future disasters involving the spread of an infectious disease.

OTHER
CRITICS
SAY:

CSHB 2211 should apply the in-person visitation requirements to psychiatric hospitals in Texas. Like other hospital patients, patients with serious mental health needs deserve to have at least one visitor during a public health disaster.