

**SUBJECT:** Designating essential caregiver for in-person visitation at certain facilities

**COMMITTEE:** Human Services — committee substitute recommended

**VOTE:** 8 ayes — Frank, Hinojosa, Klick, Meza, Neave, Noble, Rose, Shaheen

0 nays

1 absent — Hull

**SENATE VOTE:** On final passage, March 17 — 29-0

**WITNESSES:** None.

**DIGEST:** CSSB 25 would grant residents of certain long-term care facilities, or the resident's guardian or legally authorized representative, the right to designate an essential caregiver with whom a facility could not prohibit in-person visitation and establish related guidelines. The bill would define "essential caregiver" as a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

The bill would apply to residents in a nursing facility, assisted living facility, intermediate care facility for individuals with an intellectual disability, residence providing home and community-based services, or state supported living center.

**Guidelines.** As soon as practicable after the bill's effective date, the executive commissioner of the Health and Human Services Commission (HHSC) by rule would have to develop guidelines to assist facilities in establishing essential caregiver visitation policies and procedures. The guidelines would have to require facilities to:

- allow a resident, resident's guardian, or resident's legally authorized representative to designate an essential caregiver for in-person visitation;

- establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;
- establish procedures to enable physical contact between the resident and essential caregiver; and
- obtain the essential caregiver's signature certifying they would follow the facility, program provider, or center's safety protocols and any applicable rules.

Except for residents in state supported living centers, the guidelines would require facilities to allow the designation of an essential caregiver in the same manner that a resident would designate a power of attorney.

Safety protocols adopted by a facility for an essential caregiver could not be more stringent than protocols for the staff of the facility or residence.

**Revocation of essential caregiver designation.** The bill would allow a facility to revoke an individual's designation as an essential caregiver if the caregiver violated the facility's safety protocols or rules. If an individual's designation as an essential caregiver was revoked, the resident, resident's guardian, or resident's legally authorized representative would have the right to immediately designate another individual as the resident's essential caregiver.

**Suspension of essential caregiver visitation.** Under the bill, a facility could petition HHSC to suspend in-person essential caregiver visits for up to seven days if in-person visitation posed a serious community health risk. HHSC could deny such a request if it determined that in-person visitation did not pose a serious community health risk.

The bill would require a facility to request an extension from HHSC to suspend in-person essential caregiver visitation for more than seven days. HHSC could not approve an extension for a period longer than seven days, and a facility would have to separately request each extension. The bill would prohibit a facility from suspending in-person essential caregiver visitation for more than 14 days in any year.

**Other provisions.** The bill could not be construed as requiring an essential caregiver to provide necessary care to a resident, and a facility could not require an essential caregiver to provide necessary care.

The bill would take effect September 1, 2021.

**SUPPORTERS  
SAY:**

CSSB 25 would grant residents of long-term care facilities the right to designate an essential caregiver for in-person visitation, ensuring that residents had access to an essential caregiver at all times, with limited exceptions. Essential caregivers are vital in providing hands-on care and social and emotional support to residents that supplements care provided by facility staff.

During the COVID-19 pandemic, visitation restrictions were difficult for residents and their families as well as for facility staff. Many residents were isolated and lacked connection and physical touch from loved ones for several months, and as a result of these restrictions, some patients died alone. By allowing residents to designate an essential caregiver, the bill and its joint resolution would ensure vulnerable Texans had access to loved ones, which could improve residents' physical and mental health.

The bill would allow long-term care facilities to request a suspension of essential caregiver visitation for seven days if in-person visitation posed a serious community health risk, with possible extensions in seven-day increments. This would create flexibility for facilities in responding to future public health emergencies while limiting disruption to an essential caregiver's access to a resident. The 14-day cap is necessary to ensure residents do not experience prolonged periods of isolation as they did during the pandemic.

The bill would allow a resident to immediately designate another individual as an essential caregiver if the initial essential caregiver's designation was revoked. Designating only one essential caregiver at a time is an appropriate balance between ensuring residents receive visits from a loved one and providing flexibility for facilities to respond to a future disease outbreak.

CRITICS  
SAY:

While it is important for long-term care residents to have access to essential caregivers, CSSB 25 would not provide sufficient flexibility for facilities to respond to future public health emergencies. Limiting suspension of essential caregiver in-person visitation to 14 days per year may not provide enough time for facilities to contain a future disease outbreak. Requiring facilities to provide a minimum two-hour period for essential caregivers to visit residents could strain staff resources, especially for facilities that already struggle to maintain adequate staffing to meet residents' needs.

The bill would not provide sufficient protection for essential caregivers that unintentionally violated a facility's safety protocols, potentially subjecting a caregiver's designation to revocation. To avoid unnecessary revocation, the bill should ensure revocations apply only if an essential caregiver intentionally violated a safety protocol and the action created a health and safety risk for one or more residents.

The bill should enable a resident to refuse a person designated as an essential caregiver by the resident's guardian or legally authorized representative if the resident did not agree with the designation. It also should allow a facility to remove the essential caregiver's designation if the caregiver became predatory.

OTHER  
CRITICS  
SAY:

CSSB 25 should allow a long-term care facility resident or the resident's guardian or representative to designate more than one person at a time as an essential caregiver for in-person visitation. Limiting the essential caregiver designation to only one person could prevent other family members and friends from seeing a loved one before they passed away.

NOTES:

The House companion bill, HB 892 by Frank, was considered by the House Human Services Committee in a public hearing on March 9 and left pending.