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Yearick; Sens. Hoffner, Pettyjohn, Richardson, Sokola,
Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 242

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO HOSPITAL VISITATION POLICY.

1 WHEREAS, hospitals undertook good faith efforts to keep their patients and staff safe and minimize the spread of
2 the coronavirus; and

3 WHEREAS, the members of the Delaware General Assembly were made aware of numerous hospital patients who
4 were not diagnosed with COVID-19, but were still denied visitation by spouses, parents, family members, guardians,
5 caregivers, and religious counselors; and

6 WHEREAS, the patients impacted by lack of visitation included adults, minors, and individuals with intellectual
7 or developmental disabilities; and

8 WHEREAS, denial of visitation often produced unintended negative consequences that harmed the physical and
9 mental well-being of patients and their families; and

10 NOW, THEREFORE:

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

12 Section 1. Amend Chapter 10, Title 16 of the Delaware Code by making deletions as shown by strike through and
13 insertions as shown by underline as follows:

14 § 1014. Hospital visitation policy.

15 (a) Each hospital shall include in its visitation policy a provision allowing each competent adult patient to receive
16 visits from any individual from whom a patient desires to receive visits, subject to restrictions contained in the visitation
17 policy related to a patient's medical condition, the number of visitors simultaneously permitted in a patient's room, and the
18 hospital's visitation hours, as well as protective orders issued by a court.

19 (b) The duties and rights conferred by this section are in addition to, and not in derogation of, duties and rights
20 otherwise conferred by law, including §§ 2508 and 5161 of this title.

21 (c) Nothing in this chapter shall preclude a hospital from restricting visitations due to:

22 (1) Attempts to interfere with patient care; or

23 (2) The presentation of a threat to staff, patients or hospital personnel; or

(3) Actions disruptive to hospital operations; or

~~(4) Pandemic or infectious disease outbreak.~~

(d) Except as provided in subsection (c) of this section, nothing in this section shall be read to overrule any decision of the Delaware Department of Correction.

§ 1014A. Hospital visitation policy Under a State of Emergency, Pandemic, or Infectious Disease Outbreak

(a) This act shall be known as "The No Patient Left Alone Act."

(b) During a State of Emergency, pandemic, or infectious disease outbreak, no hospital in Delaware shall prohibit in-person visitation with a patient receiving care or treatment at the facility, except as provided in this section.

(c) Notwithstanding Subsection (b), a hospital may during a State of Emergency, pandemic, or infectious disease outbreak:

(1) restrict the number of visitors a patient receiving care or treatment at the hospital may receive, but not to fewer than one visitor per day;

(2) require a visitor to:

(A) complete and pass a health screening before entering the hospital, sharing the results with the hospital's staff if the screening was not done onsite; and

(B) wear personal protective equipment at all times while visiting a patient at the hospital, as supplied by the hospital; and

(3) Deny entry to or remove from the hospital's premises a visitor who fails or refuses to:

(A) meet the health screening requirements as established by the hospital; or

(B) pass a health screening requirement; or

(C) tests positive for an infectious disease; or

(D) wear personal protective equipment as required by the hospital. Any personal protective equipment required by the hospital must be made available by the hospital for the visitor for purchase on site.

(4) A hospital may deny entry to a visitor if a federal executive order, regulation, law, or order by a federal agency requires the hospital to prohibit in-person visitation during a State of Emergency, pandemic, or infectious disease outbreak.

(d) A health screening administered by a hospital under this section must be conducted in a manner that, at a minimum, complies with:

(1) hospital policy; and

(2) if applicable, guidance or directives issued by the Delaware Division of Public Health or the U.S. Centers for Disease Control, or another agency with regulatory authority over the hospital.

(e) Notwithstanding any other law, neither a hospital nor a physician providing health care services on the hospital's premises is subject to civil or criminal liability or an administrative penalty if a visitor contracts an infectious disease while on the hospital's premises during a State of Emergency, pandemic, or infectious disease outbreak or, in connection with a visit to the hospital, spreads an infectious disease to any other individual, except where intentional misconduct or gross negligence by the hospital or the physician is shown. A physician who in good faith takes, or fails to take, an action pursuant to this section is not subject to civil or criminal liability or disciplinary action from any state agency for the physician's action or failure to act under this section.

(f) This section may not be construed as requiring a hospital to allow in-person visitation with a patient receiving care or treatment at the hospital if an attending physician determines that in-person visitation may be a danger to the patient or lead to the transmission of an infectious agent that poses a serious community health risk.

(g) A determination made by an attending physician under Subsection (f) shall not be valid for more than seven days after the date the determination is made unless renewed by an attending physician.

(h) If a prospective visitor to a hospital is denied in-person visitation with a patient receiving care or treatment at a hospital, the hospital shall:

(1) use its best efforts to develop alternate visitation protocols that would allow visitation to the greatest extent safely possible, including, but not limited to, streaming audio and video. Such visitation is subject to the consent of the patient or the patient's surrogate decision-maker; and

(2) provide a written or oral update of the patient's condition to the prospective visitor providing this person is:

(A) authorized by the patient to receive relevant health information regarding the patient;

(B) has the authority to receive the patient's health information under an advance directive or medical power of attorney; or

(C) is otherwise the patient's surrogate decision-maker regarding the patient's health care needs under hospital policy and other applicable law; and

(i) Other than the potential restrictions stipulated in Subsection (c) and Subsection (f), a hospital may not prohibit in-person visitation by a religious counselor with a patient who is receiving care or treatment at the hospital and who is seriously ill or dying.

(1) for the purposes of this section, "Religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(2) any in-person visitation by a religious counselor shall not count against any daily visitor limitation imposed by the hospital under Subsection (c)(1).

(3) Any visitation by a religious counselor shall be subject to the consent of the patient or the patient's surrogate decision-maker; and

(j) In the event of a conflict between this section and any provision of a qualifying official State of Emergency declaration, this section prevails.

(k) The secretary of the Department of Health and Social Services shall designate the agency section responsible for overseeing the implementation, operation, and enforcement of the No Patient Left Alone Act.

(1) The Department of Health and Social Services shall maintain an email address for the purpose of receiving complaints from the public regarding possible violations of this act.

(2) The Department shall, within 48 hours of receiving a written report of a possible violation of this act, investigate the report.

(3) If the Department determines the hospital in question has violated this act, it shall issue a written warning transmitted via email to an address specified by the hospital.

(4) If the warning does not result in corrective action within 24 hours of the issuance of the written warning, the Department shall impose a civil penalty in an amount of not less than five hundred dollars (\$500) for each instance on each day the facility was found to be in violation. This civil penalty shall be in addition to any corrective action determined appropriate by the Department under existing law and regulatory authority.

(m) This section does not create a cause of action against a hospital or physician.

Section 2. This act becomes effective 180 days after its enactment.

SYNOPSIS

This act shall be known as "The No Patient Left Alone Act." It is intended to mitigate unintended negative impacts on patients and their families during a State of Emergency, pandemic, or infectious disease outbreak. This act would require hospitals to allow limited in-person visitation with patients, within designated parameters and limitations in the act.

Hospitals would be able to: restrict the number of visitors a patient could receive daily; require visitors to undergo and pass a specified health screening; and use personal protective equipment while visiting. Hospitals must make personal protective equipment required available for visitors for purchase. Entry could be denied to visitors not complying with the requirements, that failed their health screenings, or who were found to have a communicable disease.

Attending physicians would retain the authority to deny in-person visitation if they deemed their patients would be at risk for contracting an infectious disease or if they believed visitation posed a serious community health risk. Such determinations would be valid for up to seven days and subject to renewal.

Hospitals could deny visitation if a federal order, law, or regulation required it.

If a prospective hospital visitor were denied in-person visitation with a patient, the hospital would be required, to its best efforts, to develop alternate visitation protocols that would allow visitation to the greatest extent safely possible. This could include, but not be limited to, streaming audio and video.

Hospitals could not prohibit in-person visitation by a religious counselor to a seriously ill or dying patient, providing that the counselor complied with all visitation mandates established pursuant to this act. A visit by a religious counselor would not be counted against any daily visitation limit set by the hospital.

The Department of Health and Social Services would be responsible for overseeing the implementation, operation, and enforcement of this act.

Hospitals could be subject to fines for violating the terms of this act, providing the violations continue after the hospitals have been informed of the need to take corrective action.

This section does not create a civil cause of action against a hospital or physician.

This measure would become effective 180 days after its enactment.