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Sokola, Wilson

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 242

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

1 WHEREAS, the COVID-19 pandemic caused uncertainty and anxiety across our state and significantly affected  
2 hospital patients; and

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

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

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

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

12 NOW, THEREFORE:

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

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

16 § 1014. Hospital visitation policy.

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

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

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

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

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

26 (3) Actions disruptive to hospital operations; ~~or~~

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

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

30 § 1014A. Hospital visitation policy Under a State of Emergency, Pandemic, or Infectious Disease Outbreak

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

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

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

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

38 (2) require a visitor to:

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

41 (B) wear personal protective equipment at all times while visiting patients at the hospital as  
42 stipulated by the hospital; and

43 (3) deny entry to, or remove from, the hospital's premises a visitor who:

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

45 (B) does not pass a health screening requirement; or

46 (C) tests positive for an infectious disease or has been exposed to an infectious disease; or

47 (D) fails to wear personal protective equipment as required by the hospital. Any personal  
48 protective equipment required by the hospital must be made available by the hospital for the visitor to  
49 purchase on-site, subject to the availability of a sufficient supply of personal protective equipment, as  
50 determined by the hospital.

51 (E) sign a statement indicating the visitor has been informed of the hospital's visitation policy,  
52 and that the visitor is assuming any risk directly associated with the primary cause for the State of  
53 Emergency, and/or the disease primarily associated with the pandemic or infectious disease outbreak.  
54 Under the specific circumstances defined by the statement, the hospital and its personnel will be held  
55 harmless for risk of contagion, illness, or death assumed by the visitor, except where intentional  
56 misconduct or gross negligence by the hospital or its staff can be demonstrated.

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

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

62 (1) hospital policy; and

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

65 (e) This section may not be construed as requiring a hospital to allow in-person visitation with patients receiving  
66 care or treatment at the hospital if an attending physician, advanced practice clinician, or chief medical officer determines  
67 that in-person visitation may be a danger to a patient or lead to the transmission of an infectious agent that poses a serious  
68 community health risk.

69 (f) A determination made by an attending physician, advanced practice clinician, or chief medical officer  
70 determines under Subsection (e) shall not be valid for more than seven days after the date the determination is made unless  
71 renewed by an attending physician, advanced practice clinician, or chief medical officer.

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

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

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

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

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

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

84 (h) Other than the potential restrictions stipulated in Subsection (c) and Subsection (e), a hospital may not prohibit  
85 in-person visitation by a religious counselor with patients who are receiving care or treatment at the hospital and who are  
86 seriously ill or dying.

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

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

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

93 (i) Other than the potential restrictions stipulated in Subsection (c) and Subsection (e), a hospital may not prohibit  
94 in-person visitation by a doula providing doula services as defined in § 6536A of Title 11 with a pregnant or postpartum  
95 person.

96 (1) any in-person visitation by a doula providing doula services shall not count against any daily visitor  
97 limitation imposed by the hospital under Subsection (c)(1).

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

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

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

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

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

108 (4) If the warning does not result in corrective action within 24 hours of the issuance of the written  
109 warning, the Department shall impose a civil penalty in an amount of not less than five hundred dollars (\$500) for

110 each instance on each day the facility was found to be in violation. This civil penalty shall be in addition to any  
111 corrective action determined appropriate by the Department under existing law and regulatory authority.  
112 Section 2. This act becomes effective 180 days after its enactment.

### SYNOPSIS

This legislation is an attempt to strike a balance between the need to protect hospital staff, hospital patients, and the public from harm during a State of Emergency, pandemic, or infectious disease outbreak with the expectation that patients should be able to receive support from their family and spiritual counselors during a time of personal crisis.

This act shall be known as "The No Patient Left Alone Act." Specifically, it migrates decision-making authority on visitation policies from elected and unelected state officials to the medical personnel operating Delaware's hospitals – the trained professionals best positioned to make these difficult decisions during an especially challenging time.

While it is the intention of this act to facilitate limited in-person patient visitation, it gives hospitals and designated medical professionals broad authority and discretion to safeguard the welfare of all involved parties. Hospitals would be able to: restrict the number of visitors patients could receive daily; require visitors to undergo and pass a specified health screening; and use personal protective equipment while visiting. Hospitals would be able to specify the required personal protective equipment, making it available for visitors to purchase on-site, subject to availability.

Entry could be denied to visitors that failed their health screenings; were found to have a communicable disease; were found to have been exposed to a communicable disease; or failed to sign a statement indicating that they understood the visitation policy, and held the hospital and its staff harmless for all assumed risk directly associated with the primary cause of the State of Emergency, pandemic, or infectious disease outbreak.

Attending physicians and other medical professionals designated in the bill 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 state agency regulation, federal order, federal law, or federal regulation required it.

If a prospective hospital visitor were denied in-person visitation with patients, 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 measure would become effective 180 days after its enactment.

This substitute bill differs from the bill it replaces in the following ways:

- It eliminates the liability provisions previously contained on lines 56 through 62, and line 103, replacing it with a new liability section - 1014A (c)(3)(E) - that is more refined and requires a signed acknowledgment by the visitor of the risk they are assuming. This acknowledgement does not allow the hospital or personnel to be held harmless for intentional misconduct or gross negligence.

- It adds the terms "advanced practice clinician, or chief medical officer" to the sections previously on lines 63 through 67 dealing with the healthcare professionals authorized to restrict visitation for justifiable medical or public health reasons.

- Adds the term “state agency regulation” to the section previously on lines 48 through 50 that specify the reasons a hospital may be compelled to deny visitation.
- Rewrites the section previously on lines 41 through 47 to improve the clarity of the list of conditions under which a hospital can deny entry to, or remove a visitor from, the hospital's premises.
- Corrects language previously on lines 39 through 40 to reflect an earlier change to the bill that deals with the requirement for visitors to wear personal protective equipment, as stipulated by the hospital, when visiting a hospital patient.
- Adds a new section - 1014A (i) - stipulating that other than the potential restrictions stipulated in Subsection (c) and Subsection (e) a hospital may not prohibit in-person visitation by a doula providing doula services as defined in § 6536A of Title 11 with a pregnant or postpartum person.