

MEMORANDUM

TO: SC Coalition for the Seriously Ill, Members
FROM: **Cindy Cocker**
DATE: March 2, 2022
SUBJECT: Legislation Updates--- **Meeting on March 9, 2022**

Two bills have been filed dealing with who can have access to patients in facilities during a pandemic/health emergency. H5019 is the bill that I had mentioned earlier. Dr. Macie Smith is the driving force behind that one. H5018 is from another source and the only thing I know from the quick skim of the introductory paragraph is that H5018 has penalties for a violation and H5019 does not.

Please share the attached with your respective organizations.

Thank you,

CC/df

Enclosures

South Carolina General Assembly
124th Session, 2021-2022

H. 5018

STATUS INFORMATION

General Bill

Sponsors: Rep. D.C. Moss

Document Path: I:\council\bill\cc\16159vr22.docx

Introduced in the House on February 23, 2022

Currently residing in the House Committee on **Medical, Military, Public and Municipal Affairs**

Summary: Patient visitation rights

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
2/23/2022	House	Introduced and read first time (House Journal-page 57)
2/23/2022	House	Referred to Committee on Medical, Military, Public and Municipal Affairs (House Journal-page 57)

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[2/23/2022](#)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT “THE NO PATIENT LEFT ALONE ACT” BY ADDING SECTIONS 44-7-395 AND 44-71-120 SO AS TO SAFEGUARD PATIENT AND RESIDENT VISITATION RIGHTS IN CERTAIN HEALTH CARE FACILITIES DURING DECLARED DISASTERS AND EMERGENCIES, TO DIRECT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO IMPOSE A CIVIL PENALTY FOR ANY VIOLATION OF THOSE RIGHTS, AND FOR OTHER PURPOSES.

Whereas, the COVID-19 pandemic has caused great uncertainty and anxiety across our State and has significantly affected patients and residents in health care facilities; and

Whereas, health care facilities have made many efforts to keep patients or residents and employees in a safe environment and have endeavored to minimize, to the extent possible, the risk of spread of the coronavirus disease; and

Whereas, as a result of COVID-19 prevention measures, many unintended consequences have occurred to patients and residents of these facilities who were not diagnosed with COVID-19; and

Whereas, the General Assembly has become aware of numerous patients and residents of health care facilities across our State who were not diagnosed with COVID-19, but as a result of visitation policies have been prohibited from having any visitors, including a spouse, parent, close family member, guardian, health care agent, or caregiver; and

1 Whereas, many families have been unable to be physically present
2 with their loved ones while in a health care facility, and have been
3 limited to electronic video communications, if any, with the patient
4 or resident; and

5
6 Whereas, the patients and residents who have been affected in the
7 above-described manner have included adults, minors, and
8 individuals with intellectual or developmental disabilities; and

9
10 Whereas, the General Assembly finds that it is in the interest of the
11 State and its residents that these patients and residents of health care
12 facilities, in compliance with the rules, regulations, and guidelines
13 of the Centers for Medicare and Medicaid Services and federal law,
14 should not be denied visitation by visitors of their choosing
15 throughout the period of hospitalization or residential care or
16 treatment. Now, therefore,

17
18 Be it enacted by the General Assembly of the State of South
19 Carolina:

20
21 SECTION 1. This act shall be known as “The No Patient Left
22 Alone Act”.

23
24 SECTION 2. Article 3, Chapter 7, Title 44 of the 1976 Code is
25 amended by adding:

26
27 “Section 44-7-395. (A) Each hospital, nursing home,
28 rehabilitation facility, community residential care facility,
29 intermediate care facility for persons with intellectual disability,
30 residential treatment facility for children and adolescents, and
31 residential facility for chemically dependent or addicted persons
32 licensed pursuant to this article shall permit patients or residents to
33 receive visitors to the fullest extent permitted under any applicable
34 rules, regulations, or guidelines adopted by either the Centers for
35 Medicare and Medicaid Services or the Centers for Disease Control
36 and Prevention or any federal law.

37 (B) In the event the Centers for Medicare and Medicaid Services,
38 the Centers for Disease Control and Prevention, or any other federal
39 agency finds a hospital, nursing home, rehabilitation facility,
40 community residential care facility, intermediate care facility for
41 persons with intellectual disability, residential treatment facility for
42 children and adolescents, or residential facility for chemically
43 dependent or addicted persons has violated any rule, regulation,

1 guidance, or federal law relating to a patient's or resident's visitation
2 rights, the department may issue a warning to the health care facility
3 about the violation and give the health care facility not more than
4 twenty-four hours to allow visitation. If visitation is not allowed
5 after the twenty-four-hour warning period, the department shall
6 impose a civil penalty in an amount not less than five hundred
7 dollars for each instance on each day the health care facility was
8 found to have a violation. This civil penalty shall be in addition to
9 any fine or civil penalty that the Centers for Medicare and Medicaid
10 Services or other federal agency may choose to impose.

11 (C) Notwithstanding the provisions of subsection (B), in the
12 event that circumstances require the complete closure of a hospital,
13 nursing home, rehabilitation facility, community residential care
14 facility, intermediate care facility for persons with intellectual
15 disability, residential treatment facility for children and adolescents,
16 or residential facility for chemically dependent or addicted persons
17 to visitors, the health care facility shall use its best efforts to develop
18 alternate visitation protocols that would allow visitation to the
19 greatest extent safely possible. If those alternate protocols are found
20 by the Centers for Medicare and Medicaid Services, the Centers for
21 Disease Control and Prevention, or any other federal agency to
22 violate any rule, regulation, guidance, or federal law relating to a
23 patient's or resident's visitation rights, the department may impose
24 a civil penalty in an amount not less than five hundred dollars for
25 each instance on each day the health care facility was found to have
26 a violation. This civil penalty shall be in addition to any fine or civil
27 penalty that the Centers for Medicare and Medicaid Services or
28 other federal agency may choose to impose.

29 (D) Each hospital, nursing home, rehabilitation facility,
30 community residential care facility, intermediate care facility for
31 persons with intellectual disability, residential treatment facility for
32 children and adolescents, and residential facility for chemically
33 dependent or addicted persons shall provide notice of the patient or
34 resident visitation rights of this section to patients or residents and,
35 when possible, family members of patients or residents. The
36 required notice also must include the contact information for the
37 agency or individuals tasked with investigating violations of the
38 health care facility's patient or resident visitation.

39 (E) Each hospital, nursing home, rehabilitation facility,
40 community residential care facility, intermediate care facility for
41 persons with intellectual disability, residential treatment facility for
42 children and adolescents, and residential facility for chemically
43 dependent or addicted persons shall allow compassionate care visits.

1 A health care facility may require compassionate care visitors to
2 submit to health screenings necessary to prevent the spread of
3 infectious diseases, and, notwithstanding anything to the contrary in
4 this section, a health care facility may restrict a compassionate care
5 visitor who does not pass a health-screening requirement or who has
6 tested positive for an infectious disease. A health care facility may
7 require compassionate care visitors to adhere to infection control
8 procedures, including wearing personal protective equipment.
9 Compassionate care situations that require visits include, but are not
10 limited to, the following:

11 (1) End-of-life situations.

12 (2) A patient or resident who was living with his or her family
13 before recently being admitted to the facility is struggling with the
14 change in environment and lack of physical family support.

15 (3) A patient or resident who is grieving after a friend or
16 family member recently passed away.

17 (4) A patient or resident who needs cueing and
18 encouragement with eating or drinking, previously provided by
19 family or caregivers, is experiencing weight loss or dehydration.

20 (5) A patient or resident, who used to talk and interact with
21 others, is experiencing emotional distress, seldom speaking, or
22 crying more frequently when the patient or resident had rarely cried
23 in the past.

24 (F) The department shall promulgate regulations necessary to
25 require each hospital, nursing home, rehabilitation facility,
26 community residential care facility, intermediate care facility for
27 persons with intellectual disability, residential treatment facility for
28 children and adolescents, and residential facility for chemically
29 dependent or addicted persons to have written policies and
30 procedures for visitation.

31 (G) For purposes of this section, 'health care facility' means a
32 hospital, nursing home, rehabilitation facility, community
33 residential care facility, intermediate care facility for persons with
34 intellectual disability, residential treatment facility for children and
35 adolescents, or residential facility for chemically dependent or
36 addicted persons licensed pursuant to Article 3, Chapter 7, Title 44."

37

38 SECTION 3. Chapter 71, Title 44 of the 1976 Code is amended by
39 adding:

40

41 "Section 44-71-120. (A) Each hospice facility licensed
42 pursuant to this chapter shall permit patients to receive visitors to
43 the fullest extent permitted under any applicable rules, regulations,

1 or guidelines adopted by either the Centers for Medicare and
2 Medicaid Services or the Centers for Disease Control and
3 Prevention or any federal law.

4 (B) In the event the Centers for Medicare and Medicaid Services,
5 the Centers for Disease Control and Prevention, or any other federal
6 agency finds a hospice facility has violated any rule, regulation,
7 guidance, or federal law relating to a patient's visitation rights, the
8 department may issue a warning to the hospice facility about the
9 violation and give the hospice facility not more than twenty-four
10 hours to allow visitation. If visitation is not allowed after the
11 twenty-four hour warning period, the department shall impose a
12 civil penalty in an amount not less than five hundred dollars for each
13 instance on each day the hospice facility was found to have a
14 violation. This civil penalty shall be in addition to any fine or civil
15 penalty that the Centers for Medicare and Medicaid Services or
16 other federal agency may choose to impose.

17 (C) Notwithstanding the provisions of subsection (B), in the
18 event that circumstances require the complete closure of a hospice
19 facility to visitors, the hospice facility shall use its best efforts to
20 develop alternate visitation protocols that would allow visitation to
21 the greatest extent safely possible. If those alternate protocols are
22 found by the Centers for Medicare and Medicaid Services, the
23 Centers for Disease Control and Prevention, or any other federal
24 agency to violate any rule, regulation, guidance, or federal law
25 relating to a patient's visitation rights, the department may impose
26 a civil penalty in an amount not less than five hundred dollars for
27 each instance on each day the hospice facility was found to have a
28 violation. This civil penalty shall be in addition to any fine or civil
29 penalty that the Centers for Medicare and Medicaid Services or
30 other federal agency may choose to impose.

31 (D) Each hospice facility shall provide notice of the patient
32 visitation rights in this section to patients and, when possible, family
33 members of patients. The required notice also must include the
34 contact information for the agency or individuals tasked with
35 investigating patient visitation violations for hospice facilities.

36 (E) Each hospice facility shall allow compassionate care visits.
37 A hospice facility may require compassionate care visitors to submit
38 to health screenings necessary to prevent the spread of infectious
39 diseases, and, notwithstanding anything to the contrary in this
40 section, may restrict a compassionate care visitor who does not pass
41 a health-screening requirement or who has tested positive for an
42 infectious disease. A hospice facility may require compassionate
43 care visitors to adhere to infection control procedures, including

1 wearing personal protective equipment. Compassionate care
2 situations that require visits include, but are not limited to, the
3 following:

4 (1) End-of-life situations.

5 (2) A patient who was living with his or her family before
6 recently being admitted to the facility is struggling with the change
7 in environment and lack of physical family support.

8 (3) A patient who is grieving after a friend or family member
9 recently passed away.

10 (4) A patient who needs cueing and encouragement with
11 eating or drinking, previously provided by family or caregivers, is
12 experiencing weight loss or dehydration.

13 (5) A patient, who used to talk and interact with others, is
14 experiencing emotional distress, seldom speaking, or crying more
15 frequently when the patient had rarely cried in the past.”

16

17 SECTION 7. If any section, subsection, paragraph, subparagraph,
18 sentence, clause, phrase, or word of this act is for any reason held to
19 be unconstitutional or invalid, such holding shall not affect the
20 constitutionality or validity of the remaining portions of this act, the
21 General Assembly hereby declaring that it would have passed this
22 act, and each and every section, subsection, paragraph,
23 subparagraph, sentence, clause, phrase, and word thereof,
24 irrespective of the fact that any one or more other sections,
25 subsections, paragraphs, subparagraphs, sentences, clauses, phrases,
26 or words hereof may be declared to be unconstitutional, invalid, or
27 otherwise ineffective.

28

29 SECTION 8. The repeal or amendment by this act of any law,
30 whether temporary or permanent or civil or criminal, does not affect
31 pending actions, rights, duties, or liabilities founded thereon, or
32 alter, discharge, release or extinguish any penalty, forfeiture, or
33 liability incurred under the repealed or amended law, unless the
34 repealed or amended provision shall so expressly provide. After the
35 effective date of this act, all laws repealed or amended by this act
36 must be taken and treated as remaining in full force and effect for
37 the purpose of sustaining any pending or vested right, civil action,
38 special proceeding, criminal prosecution, or appeal existing as of the
39 effective date of this act, and for the enforcement of rights, duties,
40 penalties, forfeitures, and liabilities as they stood under the repealed
41 or amended laws.

42

43 SECTION 9. This act takes effect upon approval by the Governor.

1
2

---XX---

[5018]

7

South Carolina General Assembly
124th Session, 2021-2022

H. 5019

STATUS INFORMATION

General Bill

Sponsors: Rep. Howard

Document Path: I:\council\bill\cc\16084vr22.docx

Introduced in the House on February 23, 2022

Currently residing in the House Committee on **Medical, Military, Public and Municipal Affairs**

Summary: Essential caregivers program

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
2/23/2022	House	Introduced and read first time (House Journal-page 57)
2/23/2022	House	Referred to Committee on Medical, Military, Public and Municipal Affairs (House Journal-page 57)

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[2/23/2022](#)

1
2
3
4
5
6
7
8
9

A BILL

10
11
12
13
14
15
16

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
1976, TO ENACT THE “ESSENTIAL CAREGIVERS ACT OF
2022” BY ADDING SECTION 44-7-400 SO AS TO REQUIRE
CERTAIN HEALTH CARE FACILITIES TO PERMIT
ESSENTIAL CAREGIVERS ACCESS TO RESIDENTS DURING
A PUBLIC HEALTH EMERGENCY.

17
18
19

Be it enacted by the General Assembly of the State of South
Carolina:

20
21
22

SECTION 1. This act may be known and cited as the “Essential
Caregivers Act of 2022.”

23
24
25

SECTION 2. Article 3, Chapter 7, Title 44 of the 1976 Code is
amended by adding:

26
27
28
29
30
31
32
33
34
35
36
37

“Section 44-7-400. (A) During a public health emergency
declared by the Secretary of Health and Human Services pursuant
to Section 319 of the Public Health Service Act or by the Governor
pursuant to Section 25-1-440(a)(2), a resident of a nursing home,
inpatient rehabilitation facility, intermediate care facility for persons
with intellectual disability, or community residential care facility
has the right to designate two essential caregivers to have access and
provide assistance and support to the resident at any time,
notwithstanding any waiver or suspension or regulations made
pursuant to Section 1135 of the Social Security Act or Section
25-1-440(a)(3), respectively.

38
39
40
41
42

(B) In accordance with subsection (A), during a public health
emergency declared by the Secretary of Health and Human Services
pursuant to Section 319 of the Public Health Service Act or by the
Governor pursuant to Section 25-1-440(a)(2), any nursing home,
inpatient rehabilitation facility, intermediate care facility for persons

1 with intellectual disability, or community residential care facility
2 whose facility is located within the affected area of the declared
3 public health emergency shall implement and maintain, during the
4 public health emergency and notwithstanding any waiver or
5 suspension or regulations made pursuant to Section 1135 of the
6 Social Security Act or Section 25-1-440(a)(3), the essential
7 caregivers program described in subsection (C).

8 (C)(1) The essential caregivers program referenced in subsection
9 (B) is a program implemented by a nursing home, inpatient
10 rehabilitation facility, intermediate care facility for persons with
11 intellectual disability, or community residential care facility under
12 which the facility:

13 (a) allows each resident the unqualified ability to elect not
14 more than two essential caregivers to have access to, and provide
15 assistance to, the resident at the facility, and allows the resident the
16 right to amend the election at any time; provided, the resident must
17 furnish the names and contact information of any essential caregiver
18 to the facility in writing, and the facility must maintain this
19 information in the resident's record;

20 (b) permits each essential caregiver to provide assistance to
21 the resident at the facility for up to twelve hours every day or, in the
22 case of end-of-life care, for an unlimited number of hours every day;
23 and

24 (c) enforces the agreement which sets forth the facility's
25 established safety protocol with which the essential caregiver agrees
26 to comply.

27 (2) In the case of a resident who is unable, due to a physical
28 or mental disability or illness, to make an election described in item
29 (1)(a), the legal guardian or health care proxy of the resident is
30 permitted to make the election for the resident.

31 (3) For purposes of this section:

32 (a) 'Community residential care facility' has the same
33 meaning as defined in Section 44-7-130.

34 (b) 'Essential caregiver' means, with respect to a resident
35 of a nursing home, inpatient rehabilitation facility, intermediate care
36 facility for persons with intellectual disability, or community
37 residential care facility, an individual who:

38 (i) provides assistance consisting of activities of daily
39 living, emotional support, or companionship to the resident; and

40 (ii) agrees to follow all safety protocol established by the
41 facility, which must be clearly specified in writing and be the same
42 as such protocols applicable to staff of the facility.

1 (c) 'Inpatient rehabilitation facility' means a free-standing
2 rehabilitation hospital or rehabilitation unit in an acute care hospital
3 or nursing home certified by Medicaid or Medicare that provides an
4 intensive rehabilitation program for patients able to tolerate three
5 hours of intense rehabilitation services per day.

6 (d) 'Intermediate care facility for persons with intellectual
7 disability' has the same meaning as defined in Section 44-7-130.

8 (e) 'Nursing home' has the same meaning as defined in
9 Section 44-7-130.

10 (D)(1) No caregiver who meets the definition of an essential
11 caregiver and who upholds the agreement that sets forth the
12 facility's established safety protocol with which the caregiver must
13 comply may be denied access to the facility where the resident
14 resides.

15 (2) If the essential caregiver fails to comply with any
16 provision of subsection (C)(3)(a), the facility must first provide a
17 warning to the essential caregiver and resident in writing citing the
18 specific issues of noncompliance and providing clear guidance for
19 corrective measures.

20 (3) If the essential caregiver or resident fails to take corrective
21 action, the facility may deny future access of the essential caregiver
22 to the resident. In such cases, the facility must notify the essential
23 caregiver and resident, or the legal guardian or health care proxy for
24 the resident, in writing of the reason for the denial of access and the
25 right to appeal the decision in accordance with subsection (E).

26 (E) During any period in which a nursing home, inpatient
27 rehabilitation facility, intermediate care facility for persons with
28 intellectual disability, or community residential care facility is
29 required to establish and maintain the essential caregivers program
30 pursuant to subsection (B), the Department of Health and
31 Environmental Control shall within fifteen days establish and
32 maintain a process to:

33 (1) receive appeals from residents and caregivers challenging
34 a decision to deny access; and

35 (2) investigate all appeals within forty-eight hours of receipt.

36 (F) With respect to appeals received pursuant to subsection (E),
37 the Department of Health and Environmental Control, within seven
38 business days of commencing its investigation, shall make a
39 determination as to whether a facility violated a requirement or
40 prohibition of this section. If the department determines that a
41 facility has violated a requirement or prohibition of this section, the
42 department shall:

1 (1) require the facility to establish a corrective action plan to
2 prevent the recurrence of such violation within a seven-day period
3 of receiving notice from the department; and

4 (2) impose a civil money penalty in an amount to be
5 determined by the department if the facility fails to implement the
6 corrective action plan in accordance with item (1).

7 (G) The department may promulgate regulations necessary to
8 implement the provisions of this section.”

9

10 SECTION 3. This act takes effect upon approval by the Governor.

11

----XX----

12