



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB2160

Introduced 2/26/2021, by Sen. Jil Tracy

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Emergency Situation Essential Caregiver Act. Presents the findings of the General Assembly. Provides that during any emergency situation essential caregivers shall be allowed to visit residents in accordance with the Act. Provides that residents of a facility shall be allowed to designate up to 3 essential caregivers who will be allowed to visit and provide care in accordance with this Act in the event of an emergency. Provides that current residents of a facility must be allowed to designate up to 3 essential caregivers within 10 business days of the Act's effective date. Requires facilities to establish specified policies and procedures regarding the designation of essential caregivers, visitations by essential caregivers, and scheduling of such visits that will be in effect during the time of any emergency situation. Provides that residents who are unreasonably denied access to an essential caregiver are entitled to recover statutory damages from the facility of up to \$10,000 per day that access is unreasonably denied. Contains an immunity provision for facilities, facility employees, or facility contractors who act in good faith to implement the Act's requirements. Provides that the Act may not be suspended or modified by Executive Order. Contains other provisions. Effective immediately.

LRB102 09930 CPF 22224 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Emergency Situation Essential Caregiver Act.

6 Section 5. Findings. The General Assembly finds that it is  
7 crucial that individuals who are residing in any type of  
8 residential care arrangement continue to have access to family  
9 members or friends who provide emotional, mental, and  
10 caregiving support. However, certain emergency situations such  
11 as a public health emergency, a natural disaster, or other  
12 emergency circumstances may require that visitation with  
13 residents be restricted. The General Assembly recognizes that  
14 a resident having access to family members or friends who  
15 provide emotional, mental, and caregiving support is extremely  
16 important to the resident's physical, mental, and emotional  
17 well-being. Therefore, the General Assembly finds that if a  
18 public health emergency, a natural disaster, or other  
19 emergency circumstance causes a facility to restrict  
20 visitation, the provisions of this Act shall apply and allow  
21 for residents to have access to visitation by designated  
22 essential caregivers to ensure that the resident's needs are  
23 met.

1 Section 10. Definitions. In this Act:

2 "Emergency situation" means any time that there is a  
3 public health emergency, natural disaster, or other emergency  
4 that causes a facility to restrict visitation with a resident.  
5 An "emergency situation" may be statewide or location-based  
6 and may be pursuant to a disaster declaration by the Governor,  
7 a decision by local officials, or a decision by the facility.

8 "Essential caregiver" means an individual designated by a  
9 resident who regularly provides support in the form of  
10 companionship, emotional support, assistance in the activities  
11 of daily living such as feeding, mobility, personal hygiene,  
12 cognitive stimulation, communication, meaningful connection,  
13 relational continuity, or assistance in decision making,  
14 transportation to and from medical and personal care  
15 appointments. An "essential caregiver" may be a family member,  
16 a member of the resident's social network, or a volunteer. An  
17 "essential caregiver" may be paid or unpaid. A resident may  
18 designate any person as an essential caregiver. No special  
19 training is required to be an essential caregiver. "Essential  
20 caregiver" includes compassionate caregivers.

21 "Facility" means any of the following: a facility as  
22 defined in Section 10 of the Alzheimer's Disease and Related  
23 Dementias Special Care Disclosure Act; an assisted living  
24 establishment or shared housing establishment as defined in  
25 Section 10 of the Assisted Living and Shared Housing Act; a

1 Community Living Facility as defined in Section 3 of the  
2 Community Living Facilities Licensing Act; a facility as  
3 defined in Section 2 of the Life Care Facilities Act; a  
4 continuum of care facility as defined in Section 10 of the  
5 Continuum of Care Services for the Developmentally Disabled  
6 Act; a facility as defined in Section 1-113 of the Nursing Home  
7 Care Act; a MC/DD facility as defined in Section 1-113 of the  
8 MC/DD Act; an ID/DD facility as defined in Section 1-113 of the  
9 ID/DD Community Care Act; a hospice program as defined in  
10 Section 3 of the Hospice Program Licensing Act; a Supportive  
11 Residence as defined in Section 10 of the Supportive  
12 Residences Licensing Act; a community-integrated living  
13 arrangement as defined in Section 3 of the  
14 Community-Integrated Living Arrangements Licensure and  
15 Certification Act; a facility as defined in Section 1-102 of  
16 the Specialized Mental Health Rehabilitation Act of 2013; a  
17 home, institution, or other place operated by or under the  
18 authority of the Department of Veterans' Affairs; an  
19 Alzheimer's disease management center alternative health care  
20 model under the Alternative Health Care Delivery Act; and a  
21 home, institution, or other place that is a State-operated  
22 mental health or developmental disability center or facility.

23 "Resident" means a person who is living in a facility or is  
24 seeking admission to a facility. "Resident" includes a  
25 guardian of the person or an agent for the person under a power  
26 of attorney.

1           Section 15. Use of essential caregivers. During any  
2 emergency situation an essential caregiver shall be allowed to  
3 visit a resident in accordance with this Act.

4           Section 20. Designation of essential caregivers.

5           (a) A resident of a facility shall be allowed to designate  
6 up to 3 essential caregivers who will be allowed to visit and  
7 provide care in accordance with this Act in the event of an  
8 emergency.

9           (b) Within 10 business days after the effective date of  
10 this Act or anytime thereafter, a current resident of a  
11 facility must be allowed to designate up to 3 essential  
12 caregivers. A new resident shall be allowed to designate up to  
13 3 essential caregivers at the time of admission to the  
14 facility or at any time thereafter. A resident shall be  
15 allowed to modify an individual designated as an essential  
16 caregiver at anytime.

17           (c) A designation of an essential caregiver or a  
18 modification of the designation made by a guardian or an agent  
19 for the resident under a power of attorney must be in writing.

20           (d) In order to ensure that the needs of a resident are met  
21 during an emergency situation, facility staff should work  
22 cooperatively with the resident and his or her family to plan a  
23 schedule to accommodate the 3 essential caregivers and the  
24 resident's needs.

1 Section 25. Essential caregiver visitation.

2 (a) During any emergency situation that affects a  
3 facility, a designated essential caregiver must be allowed to  
4 visit with a resident as specified in this Act. A facility may  
5 require compliance with safety protocols but shall not deny  
6 visitation by an essential caregiver in accordance with this  
7 Act so long as the essential caregiver follows the safety  
8 protocols. Required safety protocols may not be any more  
9 restrictive than the safety protocols required of staff in the  
10 facility.

11 (b) Within 30 days after the effective date of this Act,  
12 the facility must establish policies and procedures regarding  
13 the designation of essential caregivers, visitation by  
14 essential caregivers, and scheduling of such visits that will  
15 be in effect during the time of any emergency situation. The  
16 policies and procedures shall include, but shall not be  
17 limited to, the following:

18 (1) Designation of an entry point to the facility.

19 (2) Specification of any procedures that must be  
20 followed to sign in and out of the facility.

21 (3) Any safety protocols that must be followed by  
22 essential caregivers when entering the facility, while in  
23 the facility, while on the grounds of the facility, and  
24 while outside of the facility with the resident, including  
25 any transmission-based protocols that will be imposed upon

1 return to the facility after an absence of more than 24  
2 hours. The facility shall not prevent an essential  
3 caregiver from walking in the halls with a resident or  
4 taking a resident outside on the grounds of the facility  
5 so long as the essential caregiver and resident follow  
6 proper safety protocols. The facility shall not prevent an  
7 essential caregiver from taking a resident into the  
8 community so long as safety protocols are followed by the  
9 essential caregiver and resident while in the community  
10 and upon return to the facility.

11 (4) Any requirements for wearing personal protective  
12 equipment and testing for COVID 19 or other diseases. Any  
13 required personal protective equipment and testing shall  
14 be provided by the facility at no cost to the resident or  
15 the essential caregiver. The facility shall train the  
16 essential caregiver on any safety protocols or procedures  
17 that need to be followed during the emergency situation.  
18 The facility shall not require an essential caregiver to  
19 wear more personal protective equipment than the  
20 facility's staff is required to wear.

21 (c) The policies and procedures adopted by the facility  
22 shall be provided in writing to each resident and each  
23 designated essential caregiver. If the policies and procedures  
24 are amended, each resident and each designated essential  
25 caregiver shall be provided with a written copy of the amended  
26 policies and procedures within 7 business days after adoption

1 of the amended policies and procedures.

2 (d) Each resident must be allowed a minimum of 3 2-hour  
3 essential caregiver visits per week. A facility shall allow  
4 additional essential caregiver visits as space allows. A  
5 visitation schedule shall allow for visits to be scheduled any  
6 day of the week and allow for daytime, nighttime, weekend, and  
7 holiday visitation.

8 (e) If a facility does not allow in-room visits due to a  
9 shared room, the facility must designate one room in a common  
10 area to be used for essential caregiver visitation. If  
11 visitation occurs outside of the resident's room, the  
12 essential caregiver must be given access to the resident's  
13 room at least once per month for a period of no less than 45  
14 minutes to check on the resident's personal belongings.

15 (f) A facility may limit essential caregiver visits to one  
16 essential caregiver per resident at one time unless an  
17 essential caregiver has a disability and needs the assistance  
18 of a second person or the resident is at the end-of-life. All  
19 essential caregivers and any end-of-life visitors must comply  
20 with all safety protocols of the facility. A facility shall  
21 provide an essential caregiver and any end-of-life visitor  
22 with a written copy of the safety protocols that must be  
23 followed.

24 (g) If an essential caregiver has a disability and needs  
25 the assistance of a second person, a facility shall work with  
26 the essential caregiver to accommodate the disability.



1 (h) If a resident is deemed to be at the end-of-life, all  
2 visitor restrictions will be lifted for the resident and the  
3 resident's first contact person shall be notified as soon as  
4 possible, and no longer than 8 hours, after the resident is  
5 deemed to be at the end-of-life. If a resident is deemed to be  
6 at end-of-life, all family members, all designated essential  
7 caregivers, any clergy requested by the resident or the  
8 family, and any friends of the resident who are listed in the  
9 resident's care plan or individual service plan shall be given  
10 access to the resident at any time. If the resident is in a  
11 private room, end-of-life access by family, essential  
12 caregivers, and friends shall be unlimited so long as the  
13 visitors remain in the room and do not disturb other  
14 residents. If the resident who is at the end-of-life shares a  
15 room with another person who is not a family member, the  
16 facility must try to move the resident to a private room. If  
17 the facility does not have the ability to move the resident to  
18 a private room, the facility may limit the number of visitors  
19 to no less than 2 at a time and must allow for visitors to  
20 rotate in and out at least once per hour. A facility may ask  
21 that end-of-life visitors step out to a designated area for a  
22 time period not to exceed one hour in order to provide direct  
23 care to the resident.

24 Section 30. Notice of emergency situation.

25 (a) A facility shall notify residents and any designated

1 essential caregivers within 24 hours of a decision to restrict  
2 visitation due an emergency situation.

3 (b) A facility shall inform an essential caregiver when  
4 the essential caregiver will be allowed to access the  
5 facility, which shall in no case be more than 7 days after an  
6 emergency situation first occurs or begins.

7 Section 35. Restriction or revocation of essential  
8 caregiver status. A facility may restrict or revoke essential  
9 caregiver status if the essential caregiver fails to follow  
10 any safety protocols, including, but not limited to, social  
11 distancing, use of personal protective equipment, or other  
12 disease-specific related rules of the facility. Before  
13 restricting or revoking essential caregiver status, the  
14 facility must provide notice to the resident and essential  
15 caregiver and the facility, resident, and essential caregiver  
16 should attempt to mediate the concerns.

17 Section 40. Remedies. A resident who is unreasonably  
18 denied access to an essential caregiver is entitled to recover  
19 statutory damages from the facility of up to \$10,000 per day  
20 that access is unreasonably denied.

21 Section 45. Immunity. Except as provided in Section 40, a  
22 facility, facility employee, or facility contractor who, in  
23 good faith, implements the requirements of this Act shall not

1 be held civilly liable for damages, including punitive  
2 damages, for any act or omission related to the implementation  
3 of this Act, except for willful or wanton misconduct.

4 Section 50. Suspension or modification. Notwithstanding  
5 any other provision of law, this Act may not be suspended or  
6 modified by Executive Order. However, in the event of a  
7 disaster proclamation issued by the Governor pursuant to the  
8 Emergency Management Agency Act, where the facility is located  
9 in the designated disaster area, a facility may implement  
10 emergency visitation procedures pursuant to this Act.

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.