

## **BILL ANALYSIS**

C.S.S.B. 25  
By: Kolkhorst  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Many of the state's long-term care residents rely on family members, friends, or other caregivers to provide hands-on care and social and emotional support to supplement the care provided by staff. State policies enacted at the beginning of the COVID-19 public health emergency restricted long-term care residents' access to such essential caregivers. These restrictions had a significant impact on the physical and mental well-being of many residents, especially those with memory or cognitive challenges. C.S.S.B. 25 seeks to ensure that the physical, social, and emotional needs of vulnerable long-term care residents are being met by requiring that a resident or their guardian or legal representative be allowed to designate one essential caregiver with whom in-person visitation may not be prohibited.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

C.S.S.B. 25 amends the Health and Safety Code to grant a resident of a nursing facility, assisted living facility, intermediate care facility for individuals with an intellectual disability, home and community-based services (HCS) program, or state supported living center, or the resident's guardian or legally authorized representative the right to designate an essential caregiver with whom the facility, center, or program provider may not prohibit in-person visitation. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to develop guidelines to assist the facilities, centers, and program providers in establishing essential caregiver visitation policies and procedures. Those guidelines must require facilities, centers, and program providers to allow a resident or the resident's guardian or legally authorized representative to designate for in-person visitation an essential caregiver and specifies that facilities and program providers must allow a resident or their guardian or representative to do so in the same manner that a resident would designate power of attorney. The bill sets out additional guideline requirements that provide for the following:

- the establishment of a visitation schedule and the minimum visit duration that must be allowed;
- physical contact between the resident and caregiver; and
- a signature of the caregiver certifying that the caregiver will follow applicable safety protocols and any other related rules.

C.S.S.B. 25 authorizes a facility, center, or program provider to revoke an individual's designation as an essential caregiver if the caregiver violates the facility's, center's, or provider's safety protocols or applicable visitation rules. If a facility, center, or program provider revokes an individual's designation as an essential caregiver, the resident or the resident's guardian or legally authorized representative has the right to immediately designate another individual as an essential caregiver. The bill prohibits the adopted safety protocols for an essential caregiver from being more stringent than safety protocols for staff.

C.S.S.B. 25 authorizes a facility, center, or program provider to petition HHSC to suspend in-person essential caregiver visits for up to seven days if in-person visitation poses a serious community health risk. The bill authorizes HHSC to deny the request if HHSC determines that in-person visitation does not pose such a risk. The bill requires a facility, center, or program provider to request an extension from HHSC in order to extend the suspension beyond seven days. HHSC may not approve an extension for a period that exceeds seven days and each extension must be separately requested. The bill caps the total number of days in-person visitation may be suspended in any given year at 14 days.

C.S.S.B. 25 specifies that an essential caregiver may be a family member, friend, guardian, or other individual. The bill prohibits its provisions from being construed as requiring an essential caregiver to provide necessary care to a resident and prohibits a facility, center, or program provider from requiring an essential caregiver to provide that care. The bill includes certain legislative intent.

#### **EFFECTIVE DATE**

September 1, 2021.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 25 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute revises the provisions in the engrossed establishing the right to essential caregiver visits to do the following:

- include the legally authorized representative of a resident of a state supported living center among the persons authorized to designate an essential caregiver for in-person visits, whereas the engrossed provided this authority only to the resident or their guardian;
- omit provisions included in the engrossed requiring the guidelines prescribed by HHSC to require facilities, centers, and program providers to establish a visitor's log;
- include a cap on the total number of days that a facility, center, or program provider may suspend in-person essential caregiver visitation in a given year, whereas the engrossed did not;
- omit provisions included in the engrossed establishing that the bill's provisions prevail over other law in the event of a conflict; and
- clarify the definition of "essential caregiver" to account for the ability of a guardian or legally authorized representative to select such a caregiver.