**A** **BILL**

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.

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

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

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

“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.

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

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

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

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

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

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

(3) For purposes of this section:

(a) ‘Community residential care facility’ has the same meaning as defined in Section 44‑7‑130.

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

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

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

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

(d) ‘Intermediate care facility for persons with intellectual disability’ has the same meaning as defined in Section 44‑7‑130.

(e) ‘Nursing home’ has the same meaning as defined in Section 44‑7‑130.

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

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

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

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

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

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

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

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

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

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

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

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