

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 988

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Garcia and others

SUBJECT: Patient Visitation Rights

DATE: March 2, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>McKnight</u>	<u>Money</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>McKnight</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 988 establishes the “No Patient Left Alone Act” (Act), creating sections 408.823 and 408.8235, Florida Statutes. Specifically, the bill:

- Requires long-term care providers<sup>1</sup>, hospitals, and hospice facilities to develop and establish visitation policies and procedures, make them easily accessible from the home page of their websites within a specified time, and submit them to the Agency for Health Care Administration (AHCA) when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Provides requirements for visitation policies and procedures.
- Authorizes long-term care providers to require visitors to sign and certify that they will follow the policies and procedures and to suspend in-person visitation of specific visitors, with exceptions, under certain circumstances.
- Requires the AHCA to dedicate a stand-alone page on its website to explain long-term care provider visitation rights authorized under this Act and provide a portal and phone number for individuals to report violations.
- Clarifies the Act prevails over any conflicting or inconsistent provisions of state law.

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<sup>1</sup> A “long-term care provider” is defined as an intermediate care facility for the developmentally disabled licensed and certified under part VIII of chapter 400, a developmental disabilities center as defined in s. 393.063, F.S., a nursing home facility licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.

The bill has no fiscal impact on state revenues or state expenditures.<sup>2</sup>

The bill takes effect upon becoming a law.

## II. Present Situation:

### General Timeline of the Emergence of the COVID-19 Pandemic

The first signs of COVID-19 appeared in December of 2019 in the city of Wuhan, China, as a pneumonia virus of unknown origin. By early January, 2020, Chinese authorities identified a novel coronavirus as the cause of the outbreak. Shortly thereafter, the first cases of COVID-19—officially named by the World Health Organization (WHO) on February 11, 2020—were detected in Japan and Thailand. On January 20, 2020, the U.S. Centers for Disease Control and Prevention confirmed the first case of COVID-19 in the United States appearing in Washington State. On January 31, 2020, the U.S. Secretary of Health and Human Services (HHS) declared COVID-19 a public health emergency and on March 11, 2020, the WHO declared COVID-19 a pandemic.<sup>3</sup>

Ten days prior, on March 1, 2020, Florida Surgeon General Scott Rivkees declared a public health emergency.<sup>4</sup> The public health emergency was renewed multiple times and remained in effect until it was allowed to expire on June 26, 2021.<sup>5</sup> Under the authority granted to the Governor, the AHCA, and the Department of Health (DOH), as well as other executive agencies, numerous emergency measures were put in place to slow the spread of COVID-19 and to protect the public health, including restricting visitation in certain health care and long term care facilities.

### Florida Visitation Restrictions during COVID-19

On March 15, 2020, the Florida Division of Emergency Management (DEM) issued emergency order (EO) 20-006 which required every facility, as defined in the EO, in Florida to prohibit the entry of any individual to the facility except in specified circumstances. For the purposes of the EO, the term “facility” included:

- Group Home Facilities;
- Developmental Disabilities Centers;
- Nursing Homes;
- Homes for Special Services;
- Long-Term Care Hospitals;
- Transitional Living Facilities;

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<sup>2</sup> Agency for Health Care Administration, *Fiscal Impact Statement for SB 988*, Feb. 25, 2022 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

<sup>3</sup> See COVID-19 Timeline, David J. Spencer CDC Museum: *In Association With the Smithsonian Institution*, last reviewed Jan. 5, 2022, available at <https://www.cdc.gov/museum/timeline/covid19.html> (last visited Jan. 7, 2022).

<sup>4</sup> See Florida Department of Health Declaration of Public Health Emergency, March 1, 2020, available at <https://floridahealthcovid19.gov/wp-content/uploads/2020/03/declaration-of-public-health-emergency-covid-19-3.1.20.pdf>, (last visited Jan. 10, 2022).

<sup>5</sup> The final renewal was issued on June 18, 2021, see Florida Department of Health Emergency Order (Extension), available at <https://floridahealthcovid19.gov/wp-content/uploads/2021/06/Filed-PHE-Extension-June-18-2021.pdf>, (last visited, Jan. 10, 2022).

- Intermediate Care Facilities for the Developmentally Disabled;
- Assisted Living Facilities (ALF);
- Adult Mental Health and Treatment Facilities;
- Adult Forensic Facilities;
- Civil Facilities; and
- Adult Family-Care Homes.

The EO provided exceptions for allowing entry in the following circumstances:

- Family members, friends, and visiting residents in end-of-life situations;
- Hospice or palliative care workers caring for residents in end-of-life situations;
- Any individuals providing necessary health care to a resident;
- Facility staff;
- Facility residents;
- Attorneys of record for a resident in an Adult Mental Health and Treatment Facility for court matters, if virtual or telephonic means were unavailable; and
- Representatives of the federal or state governments seeking entry as part of their official duties.

The EO also specified that the allowed individuals would remain prohibited from entering if:

- They were infected with COVID-19 and had not had two consecutive negative tests separated by 24 hours;
- They were showing signs or symptoms of respiratory infection;
- They had been in contact with a person known to be infected with COVID-19 in the past 14 days and had not tested negative for COVID-19;
- They had traveled through any airport in the previous 14 days; or
- They had traveled on a cruise ship in the previous 14 days.

The order was extended by EO 20-007 on May 18, 2020. On September 1, 2020, the DEM issued EO 20-009 which extended and modified the provisions of the previous two EOs by allowing essential caregivers and compassionate care visitors under specified circumstances, and on October 22, 2020, the DEM issued EO 20-011, which extended and modified the previous EOs by adding general visitors under specified circumstances. Finally, on March 22, 2021, the DEM issued EO 21-001, which rescinded the previous EOs prohibiting visitation and instead required all affected facilities to maintain visitation and infection control policies in accordance with all state and federal laws.

### **Current Status of Visitation in Florida**

The availability and accessibility of visitation in Florida's health care facilities varies widely between facility type and from facility to facility, depending on each facility's visitation policies.

Certain types of facilities, such as nursing homes<sup>6</sup> and hospitals,<sup>7</sup> must adhere to federal guidelines for visitation, while other types, such as ALFs, are not federally regulated and operate solely under a license issued by the state.

Many factors affect how a facility may go about allowing or restricting visitation. At a minimum, a facility must follow the applicable laws and rules that govern its license type and, generally, a facility may exceed those minimum standards. However, when it comes to allowing or disallowing visitation, it is possible for a facility to become too restrictive. For example, the HHS Office for Civil Rights has investigated complaints stemming from hospitals in Connecticut and Massachusetts where disabled patients were denied the right to bring a caretaker with them into the hospital.<sup>8</sup> Overall, visitation policies will likely vary from facility to facility, and each facility will likely approach creating its visitation policies differently depending on what type of facility it is, the type of patients or residents the facility has, the laws and rules that affect that type of facility, the mindset of the individuals who create the policies for the facility, and many other factors.

### III. Effect of Proposed Changes:

**Section 1** establishes the bill as the “No Patient Left Alone Act” (Act).

**Section 2** creates s. 408.823, F.S., to:

- Define “long-term care provider” as an intermediate care facility for the developmentally disabled licensed and certified under part VIII of chapter 400, a developmental disabilities center as defined in s. 393.063, a nursing home facility licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.
- Require each long-term care provider, no later than 30 days after the effective date of this Act, to develop and establish visitation policies and procedures that, at a minimum, include:
  - Infection control and education policies for visitors;
  - Screening, personal protective equipment, and other infection control recommendations for visitors;
  - Recommendations on the length of visits or number of visitors allowed which must meet or exceed the standards specified in ss. 400.022(1)(b) and 429.28(1)(d); and
  - Designation of a person who is responsible for ongoing assurance that staff adhere to the policies and procedures.

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<sup>6</sup> Federal guidelines for nursing homes require that all facilities must allow indoor visitation and, although there is no limit on the number of visitors a resident can have, all visits should be conducted in a manner that adheres to core principles of COVID-19 infection prevention. See Centers for Medicare and Medicaid Services, *Nursing Home Visitation – COVID-19 (revised)*, first published Sep. 17, 2020, last revised Dec. 11, 2021, available at <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf> (last visited Jan. 10, 2022).

<sup>7</sup> Under the federal government’s phased approach to reopening (see <https://trumpwhitehouse.archives.gov/openingamerica/>, last visited Jan. 10, 2022), unrestricted hospital visitation has been available since entering phase 3. Additionally, except for Long-Term Care Hospitals, Florida has not restricted visitation in hospitals. Currently, although visitation is not restricted, many hospitals are using enhanced visitation protocols due to the recent spike in COVID-19 cases caused by the Omicron variant. See: Hospital visitation policies tightened in South Florida as COVID omicron variant spreads, South Florida Sun Sentinel, Mary Lou Cruz, Jan. 5, 2022, available at <https://www.sun-sentinel.com/coronavirus/fl-ne-coronavirus-hospital-rules-20210724-omq31xv6pvbufedbvkgckn6a4u-story.html> (last visited Jan. 10, 2022).

<sup>8</sup> Hospital Visitor Bans Under Scrutiny After Disability Groups Raise Concerns Over Care, Joseph Shapiro, May 17, 2020, available at <https://www.npr.org/2020/05/17/857531789/federal-government-asked-to-tell-hospitals-modify-visit-bans>, (last visited Jan. 10, 2022).

- Specify that policies and procedures may not be more stringent than safety protocols established for the provider's staff and may not require visitors to submit proof of any vaccination or immunization. They must also allow visitors to physically touch the resident or client, unless the resident or client objects.
- Authorize long-term care providers to require visitors to sign and certify that the visitors agree to follow visitation policies and procedures.
- Require long-term care providers to submit their visitation policies and procedures to the Agency for Health Care Administration (AHCA) when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Authorize a long-term care provider to suspend in-person visits if the visitor violates policies and procedures. A long-term care provider's policies and procedures must allow for in-person visitation in all of the following circumstances, regardless of a suspension of visitation rights based on violations of the provider's infection control policies and procedures, unless the resident or client objects:
  - End-of-life situations.
  - A resident or client who was living with his or her family before recently being admitted to the provider's care and is struggling with the change in environment and lack of in-person family support.
  - Making major medical decisions regarding the resident or client.
  - A resident or client is grieving the loss of a friend or family member who recently died.
  - A resident or client needs cueing or encouragement to eat or drink which a family member or caregiver previously provided.
  - A resident or client who used to talk and interact with others and is experiencing emotional distress, seldom speaking, or crying more frequently than he or she did previously.
- Require long-term care providers, within 24 hours after establishing policies and procedures, to make this information easily accessible from the homepage of their websites.
- Require the AHCA to dedicate a stand-alone page on its website to explain long-term care provider visitation rights authorized under this Act and to provide a portal and phone number for individuals to report violations.
- Clarify this section prevails over any conflicting or inconsistent provisions of state law.

**Section 3** creates s. 408.8235, F.S., to:

- Require each hospital licensed under chapter 395, and hospice facility licensed under part IV of chapter 400, no later than 30 days after the effective date of this Act, to develop and establish visitation policies and procedures that, at a minimum, include:
  - Infection control and education policies for visitors;
  - Screening, personal protective equipment, and other infection control recommendations for visitors;
  - Recommendations on the length of visits or number of visitors; and
  - Designation of a person in the hospital or hospice facility who is responsible for ongoing assurance that staff adhere to the policies and procedures.
- Specify that policies and procedures may not require visitors to submit proof of any vaccination or immunization and must allow visitors to physically touch the patient, unless the patient objects.

- Require visitation policies and procedures to allow for in-person visitation in all of the following circumstances, unless the patient objects:
  - End-of-life situations.
  - For hospitals, childbirth, including labor and delivery. The policies and procedures must allow visitation for at least one companion.
  - Making major medical decisions regarding the patient.
  - Pediatric patients.
- Require hospitals and hospice facilities to submit their visitation policies and procedures to the AHCA when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time; and within 24 hours after establishing policies and procedures, make this information easily accessible from the homepage of their websites.
- Clarify this section prevails over any conflicting or inconsistent provisions of state law.

**Sections 4** directs the Division of Law Revision to replace the phrase “30 days after the effective date of this act” wherever it occurs in this Act with the date 30 days after this Act becomes a law.

**Section 5** provides the Act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

CS/CS/SB 988 may have an indeterminate fiscal impact on long-term care providers, hospitals, and hospice facilities that are required to establish new visitation policies and procedures.

**C. Government Sector Impact:**

The bill has no fiscal impact on state revenues or state expenditures.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 408.823 and 408.8235.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on February 28, 2022:**

The committee substitute:

- Establishes requirements for visitation policies and procedures and revises requirements for visitation protocols.
- Removes the approval of visitation policies by the Agency for Health Care Administration (AHCA) and the requirements for the AHCA to investigate a report of a violation, impose fines for violations, and adopt rules.
- Clarifies the bill applies to long-term care providers, including ICF/DDs, developmental disability centers, nursing home facilities, and assisted living facilities, as well as hospitals and hospice facilities.
- Requires long-term care providers, hospitals, and hospice facilities to develop visitation policies and procedures and make them easily accessible from the home page of their respective websites, as well as to submit them to the AHCA when applying for initial licensure, licensure renewal, or change of ownership, and make them available for review upon request at any time.
- Authorizes long-term care providers to require visitors to sign and certify that they will follow the policies and procedures and suspend in-person visitation of specific visitors, with exceptions, under certain circumstances.

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<sup>9</sup> Agency for Health Care Administration, *Fiscal Impact Statement for SB 988*, Feb. 25, 2022 (on file with the Senate Appropriations Subcommittee on Health and Human Services).

- Requires the AHCA to dedicate a stand-alone page on its website to explain the long-term care provider visitation rights authorized under this Act and to provide a portal and phone number for individuals to report violations.
- Clarifies the Act prevails over any conflicting or inconsistent provisions of state law.
- Directs the Division of Law Revision to replace the phrase “30 days after the effective date of this act” wherever it occurs with the date 30 days after the bill becomes a law.
- Changes the effective date from July 1, 2022, to upon becoming a law.

**CS by Health Policy on January 13, 2022:**

The CS clarifies that only providers that admit clients to their facilities or that serve clients as residents in their facilities are required to allow visitation.

**B. Amendments:**

None.