

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 988

INTRODUCER: Health Policy Committee and Senator Garcia and others

SUBJECT: Patient Visitation Rights

DATE: February 25, 2022 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 988 creates section 408.823, Florida Statutes, to establish the “No Patient Left Alone Act.”

Specifically, the bill:

- Requires providers¹ to allow clients to receive visitors during their admission to, or residency at, the facility in accordance with the Agency for Health Care Administration’s (AHCA) adopted rules.
- Requires providers to develop alternate visitation protocols that allow visitation to the greatest extent possible if there is a health or safety concern.
- Provides for specified circumstances in which visitation must be allowed by providers that admit clients to, or serve residents at, their facilities.
- Authorizes providers to establish infection control protocols for visitors, to which a visitor must adhere or the provider is authorized to refuse the visitor access.
- Requires providers to annually submit their visitation policies to the AHCA by January 1 for approval.
- Requires the AHCA to dedicate a webpage to explaining visitation rights and to provide a method for individuals to report violations of these rights to the AHCA. Providers must also notify clients of their visitation rights and provide them with a link to the AHCA webpage.

¹ A “provider” is defined as any of the 25 activities, services, agencies, and facilities regulated by the Agency for Health Care Administration and listed in s. 408.802, F.S.

- Requires the AHCA to investigate a report of a violation within 30 days after receiving the report.
- Establishes violations and fines, specifying that violations of the section or adopted rules are Class III violations² and that each occurrence and each day of a continuing violation constitutes separate violations. The AHCA is required to impose a fine of at least \$500 per violation if a provider does not correct or repeats a violation.
- Requires the AHCA to adopt rules to implement the section.

The bill has a significant negative fiscal impact to the AHCA. The AHCA estimates a need for a total of 42 full-time equivalent (FTE) positions and funding to accomplish the provisions of this bill. The AHCA's estimated total fiscal impact for implementation of this bill is \$3,254,940 for year one and \$2,676,788 for each recurring year.³ See Section V of this analysis.

The bill takes effect on July 1, 2022.

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.⁴

Ten days prior, on March 1, 2020, Florida Surgeon General Scott Rivkees declared a public health emergency.⁵ The public health emergency was renewed multiple times and remained in effect until it was allowed to expire on June 26, 2021.⁶ Under the authority granted to the Governor, the AHCA, and the Department of Health (DOH), as well as other executive agencies,

² Class III violations are defined in s. 408.813, F.S., as those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. The agency shall impose an administrative fine as provided in this section for a cited class III violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, a fine may not be imposed.

³ Agency for Health Care Administration, *Senate Bill 988 Analysis* (Nov. 24, 2021) (on file with the Senate Committee on Health Policy).

⁴ 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).

⁵ 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).

⁶ 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).

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;
- 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 homes⁷ and hospitals,⁸ 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.⁹ 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:

The bill creates s. 408.823, F.S., entitled the "No Patient Left Alone Act" (Act). The bill:

- Provides Legislative findings and intent indicating that it is in the best interest of the state and its residents that the patients and residents of health care facilities be allowed visitation by visitors of their choosing during their hospitalization or residential treatment.

⁷ 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).

⁸ 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-omq3lxv6pvbufedbvkgckn6a4u-story.html> (last visited Jan. 10, 2022).

⁹ 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).

- Requires that a provider allow clients to receive visitors during their admission to, or residency at, the provider’s facility in accordance with the Agency for Health Care Administration’s (AHCA) rules.
 - Current law in s. 408.803, F.S., defines a “provider” as any activity, service, agency, or facility regulated by the AHCA and listed in s. 408.802, F.S. Of the listed providers, the AHCA indicates that 11 provider types accept inpatient or residential clients, and those providers make up approximately 4,831 of the licensed entities that would qualify as a provider under the bill.¹⁰ The provider types that the AHCA indicates would accept inpatient or residential clients include:
 - Crisis stabilization units, as provided under parts I and IV of ch. 394, F.S.
 - Short-term residential treatment facilities, as provided under parts I and IV of ch. 394, F.S.
 - Residential treatment facilities, as provided under part IV of ch. 394, F.S.
 - Residential treatment centers for children and adolescents, as provided under part IV of ch. 394, F.S.
 - Hospitals, as provided under part I of ch. 395, F.S.
 - Nursing homes, as provided under part II of ch. 400, F.S.
 - Assisted living facilities, as provided under part I of ch. 429, F.S.
 - Hospices, as provided under part IV of ch. 400, F.S.
 - Adult family-care homes, as provided under part II of ch. 429, F.S.
 - Homes for special services, as provided under part V of ch. 400, F.S.
 - Transitional living facilities, as provided under part XI of ch. 400, F.S.
 - Current law in s. 408.803, F.S., defines a “client” as any person receiving services from a provider.
- Specifies that if circumstances require a provider to restrict public access to its facility due to health or safety concerns, the provider must develop alternate visitation protocols that allow visitation to the greatest extent possible while maintaining client health and safety.
- Requires a provider that admits clients to its facility or serves clients who are residents in the provider’s facility to allow in-person visits under the following circumstances:
 - End-of-life situations.
 - A client who was living with his or her family before recently being admitted to the provider’s facility and is struggling with the change in environment and lack of physical family support.
 - A client is grieving the loss of a friend or family member who recently died.
 - A client needs cueing or encouragement to eat or drink which was previously provided by a family member or caregiver, and the client is experiencing weight loss or dehydration.
 - A client who used to talk and interact with others and is experiencing emotional distress, is seldom speaking, or is crying more frequently than he or she did previously.
 - Any other circumstance the AHCA deems appropriate.
- Allows a provider to implement infection control protocols, including health screenings and requiring that visitors wear personal protective equipment, and allows a provider to refuse visitation if a visitor fails the health screening or does not comply with these requirements.

¹⁰ Agency for Health Care Administration, *Senate Bill 988 Analysis* (Nov. 24, 2021) (on file with the Senate Committee on Health Policy).

- Requires each provider to submit its visitation policies to the AHCA by January 1 of each year for approval. If the AHCA finds that a provider's visitation policies are not in compliance with the requirements of the Act or with AHCA rules, the provider must submit an updated policy that conforms within 30 days after the AHCA's notice.
- Requires the AHCA to dedicate a webpage on its website to explain visitation rights authorized under the Act and provide for a method for individuals to report violations of the Act to the AHCA.
- Requires the AHCA to investigate all reports of violations within 30 days of receiving such report.
- Requires that providers notify clients and, if possible, their family members or caregivers of their visitation rights under the Act and provide them with the contact information for the AHCA and a link to the AHCA's dedicated webpage.
- Specifies that any violation of the Act or of the rules adopted pursuant to the Act is a class III violation, as specified in s. 408.813, F.S., and, if not corrected, the AHCA must impose a fine of at least \$500 per violation.
- Specifies that each day and occurrence of a violation constitutes a separate violation.
- Requires the AHCA to adopt rules to implement the Act.
- Provides an effective date of July 1, 2022.

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/SB 988 may have an indeterminate negative fiscal impact on providers that are required to establish new visitation protocols, potentially screen visitors or provide personal protective equipment to visitors, notify clients and their family members or caregivers of their visitation rights, or pay fines for noncompliance under the provisions of the bill or of the Agency for Health Care Administration's (AHCA) rules adopted pursuant to the bill.

C. Government Sector Impact:

The AHCA has indicated that the bill will have the following fiscal impact:

The AHCA would need a total of 42 full-time equivalent (FTE) positions and adequate funding to accomplish the provisions of this bill. Typically, state licensure programs for health facilities are funded by licensure fees.

It is estimated there will be approximately 16,816 licensed entities that serve clients as defined in s. 408.803(6), F.S. Each of those facilities would be required to develop alternative visitation policies and submit them annually by January 1 to the AHCA. Violations of the policies would be reported to the AHCA for investigation. Staff would be needed to review and approve the policies, inspect providers for violations and handle legal actions that result from violations.

Rules would need to be drafted to provide guidance on the alternative visitation policies and over 16,800 policies will need to be reviewed and approved. The AHCA anticipates that a dedicated unit would need to be created to handle the workload. The unit would consist of one Health Services & Facilities Consultant Supervisor - SES to serve as the manager, two Program Administrators to serve as supervisors, 14 Health Services & Facilities Consultants to conduct the review of the policies and process recommended sanctions for violations, and two Administrative Assistants to handle the administrative and clerical duties for the unit.

The AHCA's Office of the General Counsel currently issues between 1,300 and 1,500 administrative complaints each year. The potential additional legal cases surrounding visitation policies alone, assuming a 30 percent non-compliance rate across all provider types combined, would double the number of administrative complaints that would need to be issued. This would require six additional senior attorneys.

It is estimated there will be approximately 2,500 additional complaints a year related to this legislation, based on the number and types of facilities impacted, as well as consumer education via the AHCA website. If a single surveyor could do approximately 150 complaints a year, then 17 additional survey positions would be required. This takes into account time for staff training, travel to and from facilities for survey, report writing, and leave time. Based on the allocation of facilities throughout the state, 13 positions would be Registered Nurse Specialists and four would be Health Facility Evaluators.

The bill directs the AHCA to dedicate a webpage on its website to explain visitation rights and how to report any violations. It also directs providers to submit visitation procedures annually to the AHCA for review. These will need to be electronically stored. A system for submission, review, and tracking for revisions, and approval will need to be developed. It is estimated this new system will cost \$357,240 to develop and implement.

The AHCA's estimated total fiscal impact for implementation of this bill is \$3,254,940 for year one and \$2,676,788 for each recurring year.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 92-98 of CS/SB 988 allow providers to implement infection control protocols for visitors to ensure the health and safety of its clients, but the bill limits such protocols to passing a health screening and wearing personal protection equipment. It is possible that the allowable infection control protocols may not be sufficient in certain extreme situations. It may be advisable to allow for some flexibility in the types of infection control protocols that are allowable under the bill.

Lines 99-104 of CS/SB 988 require each provider to submit its visitation policies to the Agency for Health Care Administration (AHCA) for approval. Lines 70-74 of the bill refer to a provider developing "alternate visitation protocols" and lines 92-98 of the bill refer to a provider's "infection control protocols." As these protocols may be developed in emergency situations, it is unclear whether these protocols would be required to be submitted to, and approved by, the AHCA. It may be advisable to clarify what protocols and policies must be submitted for approval.

VIII. Statutes Affected:

This bill creates section 408.823 of the Florida Statutes.

IX. Additional Information:

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

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.

¹¹ Agency for Health Care Administration, *Senate Bill 988 Analysis* (Nov. 24, 2021) (on file with the Senate Committee on Health Policy).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
