

Legislative Analysis



PATIENT VISITATION DURING AN EPIDEMIC UNDER AN EMERGENCY ORDER

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Senate Bill 450 (S-3) as reported from House committee
Sponsor: Sen. Jim Stamas
House Committee: Health Policy
Senate Committee: Health Policy and Human Services
Complete to 12-7-22

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 274 of 2022)

SUMMARY:

Senate Bill 450 would amend the Public Health Code to provide that an emergency order issued during an epidemic by the director of the Department of Health and Human Services (DHHS) or a local health officer may prohibit or limit visits to a patient or resident of certain health care facilities for up to 30 days after the declaration that control of the epidemic is necessary to protect the public health. After that time, an emergency order could not prohibit or limit visits by a patient representative to a patient or resident in a health facility who has a cognitive impairment, except as provided in the bill.

Currently, if the director of DHHS determines that control of an epidemic is necessary to protect the public health, the director may by emergency order prohibit the gathering of people for any purpose and establish procedures to be followed during the epidemic to ensure continuation of essential public health services and enforcement of health laws. Emergency procedures are not limited to the Public Health Code. This authority is also extended to local health officers.

Under the bill, beginning June 1, 2023, an emergency order could prohibit or otherwise limit any visitation of a patient or resident in a *qualified health care facility* for a period of up to 30 days after the declaration by the DHHS director or local health officer that control of the epidemic is necessary to protect the public health.

Qualified health care facility would mean a health facility or agency as defined in section 20106,¹ an *assisted living facility*, or a physician's private practice office.

Assisted living facility would mean an unlicensed entity offering community-based residential care for at least three unrelated adults who are at least 65 years of age or who need assistance with activities of daily living that [is] available 24 hours a day. This would include, but not be limited to, personal, supportive, or intermittent health-related services.

In addition, beginning June 1, 2023, because loved individuals need dedicated attention (LINDA), all of the following would apply 30 days after the director or a local health officer

¹ Section 20106 defines "health facility or agency," except as otherwise provided in the code, as a county medical care facility, freestanding surgical outpatient facility, health maintenance organization, home for the aged, hospital, nursing home, hospice, hospice residence, or certain facilities or agencies located in a university, college, or other educational institution.

first declared in an emergency order that control of an epidemic was necessary to protect the public health:

- The emergency order *could not* prohibit or otherwise limit a ***patient representative*** from visiting a patient or resident with a ***cognitive impairment*** in a qualified health care facility.
- The emergency order *could* do either of the following:
 - Implement reasonable safety measures before or during a patient representative's visit to a patient or resident with a cognitive impairment in the qualified health care facility, including, but not limited to, prescreening or testing a patient representative, imposing a visit duration, restricting the number of visitors at one time, and requiring visits to be prescheduled.
 - Establish procedures for visiting a patient or resident with a cognitive impairment in a qualified health facility, if the director determines that the procedures are vital to maintaining a safe health care infrastructure in the state or a local health officer determines that the procedures are vital to maintaining a safe health care environment. The director or local health officer would have to consult with qualified health care facilities before establishing the procedures.

Patient representative would mean a ***family member***, a patient advocate as defined in section 1106 of the Estates and Protected Individuals Code, or an individual named as the attorney-in-fact under a durable or nondurable power of attorney for the patient or resident.

Family member would mean an individual related to a patient or resident by blood, marriage, or adoption who is within the fifth degree of kinship to the patient or resident.

Cognitive impairment would mean a deficiency in the patient's or resident's mental capability or loss of intellectual ability, either of which affects the patient's or resident's comprehension, decision-making, reasoning, adaptive functioning, judgment, learning, or memory and that materially affects the patient's or resident's ability to function and would include a temporary, medically induced, or long-term ongoing change in cognition.

MCL 333.2253 and 333.2453

BRIEF DISCUSSION:

Senate Bill 450 would cap, at 30 days, the time period during which an emergency order issued by the director of MDHHS or a local health officer could prohibit or limit visitation by a patient representative to patients or residents of many health care settings. After that initial 30-day time period, even if an emergency order were extended due to health and safety concerns, the order could not limit, restrict, or prohibit visits (for example, a family member or other personal representative accompanying a person to a doctor's appointment). The bill also would provide that any extended emergency order could not prohibit or limit a patient representative from visits with a patient or resident with a cognitive impairment, although a facility could implement reasonable safety measures, which could include testing for a communicable disease such as COVID-19 prior to a visit or limiting the number of visitors at one time. In

addition, procedures for visits by other visitors could be established if doing so was considered vital to maintaining a safe health care infrastructure across the state (for a MDDHS-issued emergency order) or a safe health care environment (for an order issued by a local health officer). These provisions address concerns raised in the early period of the COVID-19 pandemic regarding restricted access to patients in hospitals, nursing homes, and other care facilities by family members who couldn't visit relatives or friends in comas or close to death, and those who, due to dementia, traumatic brain injuries, developmental disabilities, or other diseases or illnesses, had a greater need for support by family and friends to understand and navigate the challenges of accessing health care during an emergency.

However, some may feel that allowing restrictions on access to patients or residents in a broad range of health care settings for 30 days only is a one-size-fits-all approach that might not work in all cases, for example if an emergency is limited to a specific area or facility but has such a severe impact that a longer period of restricted visitation is necessary to maintain safety.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government. The bill would, however, permit an emergency order to require the prescreening or testing of individuals allowed to visit a qualified health facility. It is not specified who would be required to pay for any prescreening or testing during the duration of the emergency order.

POSITIONS:

A representative of the Health Care Association of Michigan (HCAM) testified in support of the bill. (9-22-22)

The following entities indicated a neutral position on the bill (9-22-22):

- Michigan Health and Hospital Association (MHA)
- McLaren Health Care
- Trinity Health Michigan

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.