

Introduced by

Senators K. Roers, Mathern, Patten

Representatives Keiser, Rohr, Westlind

1 A BILL for an Act to create and enact chapter 50-10.3 of the North Dakota Century Code,
2 relating to access to long-term care facilities; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 50-10.3 of the North Dakota Century Code is created and enacted as
5 follows:

6 **50-10.3-01. Definitions.**

7 As used in this chapter, unless the context clearly indicates otherwise:

- 8 1. "Declaration of disaster or emergency" means a disaster or emergency declared by
9 the governor under chapter 37-17.1.
- 10 2. "Department" means the department of human services.
- 11 3. "Essential caregiver" means an individual identified by a resident of a long-term care
12 facility or by the resident's designated decisionmaker to provide in-person physical,
13 spiritual, or emotional support to the resident.
- 14 4. "Long-term care facility" means a skilled nursing facility, basic care facility, ~~assisted~~
15 living facility, or swing-bed hospital approved to furnish long-term services.

16 **50-10.3-02. Scope - Limitation.**

- 17 1. This chapter does not supersede federal authority regarding long-term care facilities or
18 prevent the department or state department of health from taking necessary actions to
19 render the state eligible for federal funds or reimbursement services provided in long-
20 term care facilities.
- 21 2. Notwithstanding contrary law, including chapter 37-17.1, section 23-01-05, and
22 chapter 23-07.6, the state may not impose visitation restrictions on residents of an
23 assisted living facility.

1 **50-10.3-03. Access to long-term care facilities for essential caregivers.**

2 1. The department, working jointly with the state department of health, the state long-
3 term care ombudsman, residents and tenants, families of residents and tenants, and
4 long-term care facility representatives, shall establish basic protocols to allow a
5 resident of a long-term care facility or the resident's designated decisionmaker
6 designate one or more individuals as the resident's essential caregivers, including
7 during a declaration of disaster or emergency.

8 a. If a declaration of disaster or emergency results in restricted access to a
9 long-term care facility, the department shall review and update the protocols
10 every thirty days during the period of restriction, including an assessment of the
11 need for continuation of the restriction.

12 b. An essential caregiver shall meet the necessary qualifications to enter the long-
13 term care facility to provide in-person physical, spiritual, or emotional support to a
14 resident of a long-term care facility in accordance with the protocols established
15 under this section.

16 2. The protocols must include:

17 a. Safety measures for an essential caregiver which may include restrictions on
18 travel, enhanced testing for communicable diseases, and the necessary safety
19 equipment required to protect the health and safety of the residents of the long-
20 term care facility; and

21 b. Procedures to replace an essential caregiver due to necessary circumstances,
22 including illness or death of the essential caregiver; and

23 ~~c. A duration, not to exceed thirty days, during which a long-term care facility may~~
24 ~~enter a lockdown phase for the purpose of establishing safety measures for~~
25 ~~residents of the long-term care facility and essential caregivers.~~

26 **50-10.3-04. Additional safety requirements for residents of long-term care facilities.**

27 A long-term care facility may establish additional safety requirements to protect the
28 ~~residents of the long-term care facility if the requirements and cost are not so burdensome or~~
29 ~~onerous as to substantially prevent an essential caregiver from being able to provide in-person~~
30 ~~physical, spiritual, or emotional support to a resident of the long-term care facility. The facility~~
31 may require an essential caregiver to provide personal protective equipment for the essential

1 caregiver and undergo any related training or assume the cost of the personal protective
2 equipment and any related training provided by the facility to allow the essential caregiver to
3 provide in-person physical, spiritual, or emotional support to a resident of the long-term care
4 facility.

5 **50-10.3-05. Suspension of access for essential caregivers.**

6 If a long-term care facility suspends access to the long-term care facility for an essential
7 caregiver who violates the protocols established under section 50-10.3-03, the long-term care
8 facility shall allow the resident, or the resident's designated decisionmaker, to immediately
9 designate a replacement essential caregiver.

10 **50-10.3-06. Liability.**

11 A long-term care facility, facility employee, or facility contractor that, in good faith,
12 implements or complies with this chapter may not be held civilly liable for damages, including
13 punitive damages, for any act or omission related to the implementation of this chapter. This
14 section does not apply to any act or omission that constitutes gross negligence or willful or
15 wanton misconduct.

16 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

