

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2368

BY DELEGATES D. JEFFRIES, SUMMERS, TULLY, J. PACK,

ROHRBACH, ELLINGTON, STEELE, ESPINOSA, LINVILLE,

HOWELL AND L. PACK

[Originating in the Committee on the Judiciary;

reported March 18, 2021]

1 A BILL to repeal §16-39-2 of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §16-39-1 of the code; and to amend said code by adding thereto new sections, designated
3 §61-39-2 and §61-39-8, generally relating to visitation of a patient in a healthcare facility
4 during a declared public health state of emergency for contagious disease, to be known
5 as “Mylissa Smith’s Law”; establishing a short title; providing definitions; establishing that
6 visitation of a patient is allowed at any time if the patient’s death is imminent; further
7 providing that if death is not imminent visitation shall be allowed at any time and frequency;
8 requiring a visitor to comply with applicable facility procedures; and, establishing that the
9 health care entity is not liable for civil damages due to disease exposure to visitors or other
10 patients or residents during visitation unless the facility failed to substantially comply with
11 applicable procedures established by the health care entity.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 39. PATIENT SAFETY AND VISITATION ACT.

§16-39-1. Short title.

1 This article may be cited as the “Patient Safety Act of 2001.” The amendments made to
2 this article during the 2021 Regular Session of the Legislature shall be known as “Mylissa
3 Smith’s Law.”

§16-39-2. Legislative findings and purpose.

[Repealed]

§16-39-3. Definitions.

4 For purposes of this article:

5 (1) “Appropriate authority” means a federal, state, county or municipal government body,
6 agency or organization having jurisdiction over criminal law enforcement, regulatory violations,

7 professional conduct or ethics, or waste or any member, officer, agent, representative or
8 supervisory employee thereto;

9 (2) "Commissioner" means the commissioner of the division of health;

10 (3) "Direct patient care" means health care that provides for the physical, diagnostic, emotional
11 or rehabilitational needs of a patient or health care that involves examination, treatment or
12 preparation for diagnostic tests or procedures.

13 (4) "Discrimination or retaliation" includes any threat, intimidation, discharge or any adverse
14 change in a health care worker's position, location, compensation, benefits, privileges or terms
15 or conditions of employment that occurs as a result of a health care worker engaging in any
16 action protected by this article.

17 (5) "Good faith report" means a report of conduct defined in this article as wrongdoing or waste
18 that is made without malice or consideration of personal benefit and which the person making
19 the report has reasonable cause to believe is true.

20 (6) "Health care entity" includes a health care facility, such as a hospital, clinic, nursing facility or
21 other provider of health care services.

22 (7) "Health care worker" means a person who provides direct patient care to patients of a health
23 care entity and who is an employee of the health care entity, a subcontractor or independent
24 contractor for the health care entity, or an employee of such subcontractor or independent
25 contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician,
26 physician, intern, resident, physician assistant, physical therapist or other such person who
27 provides direct patient care.

28 (8) "Waste" means the conduct, act or omission by a health care entity that results in substantial
29 abuse, misuse, destruction or loss of funds, resources or property belonging to a patient, a
30 health care entity or any federal or state program.

31 (9) "Wrongdoing" means a violation of any law, rule, regulation or generally recognized
32 professional or clinical standard that relates to care, services or conditions and which potentially
33 endangers one or more patients or workers or the public.

34 (10) "Healthcare facility" means:

35 (A) A hospital licensed pursuant to §16-5B-1 et seq. of this code;

36 (B) A nursing home licensed pursuant to §16-5C-1 et seq. of this code;

37 (C) An assisted living residence licensed pursuant to §16-5D-1 et seq. of this code; and

38 (D) Hospice licensed pursuant to §16-5I-1 et seq. of this code.

39 (11) "Patient" means a person living or receiving services as an inpatient at a healthcare facility.

40 (12) "Public Health State of Emergency" means a federal or state declaration of a state of
41 emergency arising from or relating to a public health crisis.

42 (13) "Visitor" means any visitor from the patient's family, hospice and/or clergy visiting a patient
43 in a healthcare facility.

§16-39-8. Visitation of a patient in a health care entity.

1 (a) During a declared public health state of emergency for a contagious disease, a health
2 care entity shall permit visitation of a patient. If the patient's death is imminent, visitation shall be
3 allowed upon request at any time and frequency. In all other instances, visitation shall be allowed
4 not less than once every five days: *Provided*, That visitations permitted by any healthcare entity
5 may not be inconsistent with any applicable federal guidance then in effect for the same
6 emergency.

7 (b) A visitor shall comply with the applicable procedures established by the health care
8 facility.

9 (c) A healthcare facility is not liable to a person visiting another person, nor to any other
10 patient or resident of the healthcare facility, for any civil damages for injury or death resulting from
11 or related to actual or alleged exposure during the course of, or through the performance of, the
12 visitation in compliance with this section unless the healthcare facility failed to substantially

- 13 comply with the applicable procedures established by the healthcare facility, or the circumstances
14 of the injury or death.