

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2368

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

ROHRBACH, ELLINGTON, STEELE, ESPINOSA, LINVILLE,

HOWELL AND L. PACK

[INTRODUCED FEBRUARY 13, 2021; REFERRED

TO THE COMMITTEE ON HEALTH AND HUMAN RESOURCES

THEN THE JUDICIARY]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-63-1, §16-63-2, §16-63-3 and §61-63-4, all relating to preserve the
 3 religious liberty and other rights during COVID-19 pandemic of patients to have visitation
 4 by clergy and family and to protect hospitals, residential and inpatient health care facilities
 5 from costly lawsuits and administrative complaints that could potentially arise by allowing
 6 patients such visitation.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 63. PATIENT BILL OF VISITATION RIGHTS.

§16-63-1. Purpose.

1 It is the policy of this state to promote and preserve the dignity of all its citizens in every
 2 stage of life, especially when they are afflicted by disease, injury, or disability. The state
 3 recognizes its responsibility to assist all of its citizens in the preservation of their rights, dignity
 4 and religious liberty when they are most vulnerable and the purpose of this article is to preserve
 5 the rights of patients during a pandemic to have visitation by family, hospice and clergy and to
 6 protect hospitals, residential and inpatient health care facilities from costly lawsuits and
 7 administrative complaints that could potentially arise by allowing patients such visitation. Nothing
 8 in this article shall be construed to create the presumption that the practice of isolation is standard
 9 for any future pandemic, but shall be subject to review on a case by case basis. The amendments
 10 made to this chapter by this article during the 2021 Regular Session of the Legislature shall be
 11 known as “Myliissa Smith’s Law.”

§16-63-2. Findings.

- 1 (a) The Legislature hereby finds and declares that:
 2 (1) Pandemics produce challenges to the health care systems in West Virginia;
 3 (2) Hospitals have made many efforts to keep patients and employees in a safe

4 environment and have endeavored to minimize, to the extent possible, the risk of spreading;

5 (3) As a result of measures to prevent spread of pandemic pathogens, hospitals have
6 instituted policies that limit patients' ability to be physically present with their loved ones and/or
7 clergy during their hospitalization and treatment;

8 (4) As a result of these restrictions, other patients will be alone during their treatment for
9 serious conditions, traumas, illnesses, heart attacks, and routine and emergency surgeries; some
10 have been forced to be alone for the entire course of their treatment, and, in some cases, patients
11 have died alone.

§16-63-3. Obligations of Hospital and Residential or Other Inpatient Facilities.

1 (a) In order to balance the need to reduce pathogenic transmission with the benefits of
2 having family members present during illness, especially during extended hospitalizations or
3 institutionalizations and at the end of life, hospitals are encouraged to follow infection prevention
4 protocols and identify ways to improve visitation policies while still following best practices.

5 (b) During a declared public health emergency for a contagious disease or infectious
6 disease, a hospital, residential, or inpatient health care facility shall allow patients to receive visits
7 from the patient's family, hospice and/or clergy when the patient has been confined within any of
8 the aforementioned facilities and/or diagnosed with a lack of physical or mental capacity, and/or
9 being provided acute care, and/or diagnosed with a terminal condition or illness and the patient's
10 death is expected to be imminent. A person visiting a patient pursuant to this subsection shall
11 comply with the applicable procedures established by the hospital, residential, or inpatient health
12 care facility. In instances of terminal condition, illness or imminent death, visitation shall be
13 allowed at any time and frequency, in all other instances visitation shall be allowed not less than
14 once every five days.

15 (c) A hospital, residential, or inpatient health care facility is not liable to a member of the
16 clergy or other person visiting another person under §16-63-3(b) of this code, nor to any other
17 patient or resident of the facility, for any civil damages for injury or death resulting from or related

18 to actual or alleged exposure during the course of, or through the performance of, allowing access
 19 to a member of the clergy or other person in compliance with this article unless the hospital,
 20 residential, or inpatient health care facility failed to substantially comply with the applicable
 21 procedures established by state health officer or local health department and the injury or death
 22 was caused by the hospital, residential, or inpatient health care facility's gross negligence or
 23 wanton or reckless misconduct.

§16-63-4. Definitions and Scope of Conditions Covered.

1 For purposes of this article, the following terms are defined:

2 (1) "Hospital, residential, or inpatient care facilities" means:

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

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

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

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

7 (2) "Patient or resident" means a person living or receiving services as an inpatient at a
 8 hospital, residential, or inpatient care facilities.

9 (3) "[P]erson in compliance with this article" means any visitor from the patient's family,
 10 hospice and/or clergy visiting a patient pursuant to §16-63-3(b) of this code.

NOTE: The purpose of this bill is to is to preserve the religious liberty and rights of patients during pandemic to visitation by family, hospice and/or clergy and to protect facilities from costly lawsuits and administrative complaints that could potentially arise by allowing patients such visitation.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.