

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2368

BY DELEGATES D. JEFFRIES, SUMMERS, TULLY, J. PACK,
ROHRBACH, ELLINGTON, STEELE, ESPINOSA, LINVILLE,
HOWELL AND L. PACK

[Passed April 10, 2021; in effect from passage.]

1 AN ACT to repeal §16-39-2 of the Code of West Virginia, 1931, as amended, and to amend and
2 reenact §16-39-1 and §16-39-3, and to amend said code by adding thereto a new section
3 designated §16-39-8 of the code, all relating to the short title; defining terms; and,
4 providing for visitation of a patient in a health care facility during a declared state of
5 emergency.

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 Smith’s
3 Law.”

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

1 [Repealed.]

§16-39-3. Definitions.

1 For purposes of this article, the following words and phrases have the following meanings:

2 “Appropriate authority” means a federal, state, county, or municipal government body,
3 agency or organization having jurisdiction over criminal law enforcement, regulatory violations,
4 professional conduct or ethics, or waste or any member, officer, agent, representative, or
5 supervisory employee thereof;

6 “Commissioner” means the commissioner of the division of health;

7 “Direct patient care” means health care that provides for the physical, diagnostic,
8 emotional, or rehabilitational needs of a patient or health care that involves examination,
9 treatment, or preparation for diagnostic tests or procedures.

10 “Discrimination or retaliation” includes any threat, intimidation, discharge, or any adverse
11 change in a health care worker’s position, location, compensation, benefits, privileges, or terms
12 or conditions of employment that occurs as a result of a health care worker engaging in any action
13 protected by this article.

14 “Good faith report” means a report of conduct defined in this article as wrongdoing or
15 waste that is made without malice or consideration of personal benefit and which the person
16 making the report has reasonable cause to believe is true.

17 “Health care entity” includes a health care facility, such as a hospital, clinic, nursing facility,
18 or other provider of health care services.

19 “Health care facility” means:

- 20 (1) A hospital licensed pursuant to §16-5B-1 *et seq.* of this code;
- 21 (2) A nursing home licensed pursuant to §16-5C-1 *et seq.* of this code;
- 22 (3) An assisted living residence licensed pursuant to §16-5D-1 *et seq.* of this code; and
- 23 (4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

24 “Health care worker” means a person who provides direct patient care to patients of a
25 health care entity and who is an employee of the health care entity, a subcontractor, or
26 independent contractor for the health care entity, or an employee of the subcontractor or
27 independent contractor. The term includes, but is not limited to, a nurse, nurse’s aide, laboratory
28 technician, physician, intern, resident, physician assistant, physical therapist, or any other person
29 who provides direct patient care.

30 “Patient” means a person living or receiving services as an inpatient at a healthcare
31 facility.

32 “Public Health State of Emergency” means a federal or state declaration of a state of
33 emergency arising from or relating to a public health crisis.

34 “Visitor” means any visitor from the patient’s family, hospice or clergy visiting a patient in
35 a healthcare facility.

36 “Waste” means the conduct, act, or omission by a health care entity that results in
37 substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a
38 patient, a health care entity, or any federal or state program.

39 “Wrongdoing” means a violation of any law, rule, regulation, or generally recognized
40 professional or clinical standard that relates to care, services, or conditions and which potentially
41 endangers one or more patients or workers or the public.

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

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

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

9 (c) The health care facility may deny a visitor entry to the health care facility, may subject
10 a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who
11 does not comply with the applicable procedures established by the health care facility.

12 (d) A healthcare facility is not liable to a person visiting another person, nor to any other
13 patient or resident of the health care facility, for any civil damages for injury or death resulting
14 from or related to actual or alleged exposure during, or through the performance of, the visitation
15 in compliance with this section, unless the health care facility failed to substantially comply with
16 the applicable health and safety procedures established by the health care facility.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor