

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **Senate Bill 614**

BY SENATORS RUCKER, BOLEY, CLEMENTS, GRADY,  
KARNES, MAYNARD, PHILLIPS, ROBERTS, SMITH, STOVER,  
SYPOLT, TAKUBO, TARR, WELD, WOODRUM, LINDSAY,  
BALDWIN, ROMANO, MARTIN, AND MARONEY

[Introduced February 10, 2022; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-39-3 and §16-39-8 of the Code of West Virginia, 1931, as  
 2 amended, all relating to Mylissa Smith’s Law; defining terms; and requiring health care  
 3 facilities to ensure patients have adequate, lawful access to clergy.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 39. PATIENT SAFETY ACT.**

**§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 “Clergy” means an ordained clergy, such as a rabbi, priest, Islamic cleric, associate pastor,  
 7 licensed minister, or lay minister serving under the direction of the congregation such as the  
 8 Roman Catholic Eucharistic ministers;

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

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

13 “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 action  
 16 protected by this article.

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

20 “Health care entity” includes a health care facility, such as a hospital, clinic, nursing facility,

21 or other provider of health care services.

22 “Health care facility” means:

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

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

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

26 (4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

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

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

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

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

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

41 “Wrongdoing” means a violation of any law, rule, regulation, or generally recognized  
42 professional or clinical standard that relates to care, services, or conditions and which potentially  
43 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.

17 (e) Health care facilities shall ensure patients have adequate and lawful access to clergy  
18 so that patients will be able to practice their religion by receiving clergy visitation at any reasonable  
19 time, as long as the visit does not disrupt clinical care.

20 (f) Clergy shall comply with the applicable procedures established by the health care  
21 facility.

NOTE: The purpose of this bill is to require health care facilities to ensure patients have adequate access to clergy by receiving visitation at any reasonable time as long as the visit does not disrupt clinical care.

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