

CHAPTER 50-10.3 ACCESS TO LONG-TERM CARE FACILITIES

50-10.3-01. Definitions.

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

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

50-10.3-02. Scope.

This chapter does not supersede federal authority regarding long-term care facilities or prevent the department from taking necessary actions to render the state eligible for federal funds or reimbursement services provided in long-term care facilities.

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

1. The department, working jointly with the state long-term care ombudsman, residents and tenants, families of residents and tenants, and long-term care facility representatives, shall establish basic protocols to allow a resident of a long-term care facility or the resident's designated decisionmaker designate one or more individuals as the resident's essential caregivers, including during a declaration of disaster or emergency.
 - a. If a declaration of disaster or emergency results in restricted access to a long-term care facility, the department shall review and update the protocols every thirty days during the period of restriction, including an assessment of the need for continuation of the restriction.
 - b. An essential caregiver shall meet the necessary qualifications to enter the long-term care facility to provide in-person physical, spiritual, or emotional support to a resident of a long-term care facility in accordance with the protocols established under this section.
2. The protocols must include:
 - a. Safety measures for an essential caregiver which may include restrictions on travel, enhanced testing for communicable diseases, and the necessary safety equipment required to protect the health and safety of the residents of the long-term care facility; and
 - b. Procedures to replace an essential caregiver due to necessary circumstances, including illness or death of the essential caregiver.

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

A long-term care facility may establish additional safety requirements to protect the residents. The facility may require an essential caregiver to provide personal protective equipment for the essential caregiver and undergo any related training or assume the cost of the personal protective equipment and any related training provided by the facility to allow the essential caregiver to provide in-person physical, spiritual, or emotional support to a resident of the long-term care facility.

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

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

50-10.3-06. Liability.

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