

Texas HB 2211 In-Person Visitation with Patients During Certain Disasters

The Texas Hospital Association offers guidance on [HB 2211](#) and potential implications for hospital policies and procedures related to in-person visitation during a declared disaster (which includes the current COVID-19 pandemic).

1. What does HB 2211 require?

As of September 1, 2021, a hospital is prohibited from, during a “qualifying period of disaster,” restricting in-person visitation with a patient receiving care or treatment at the hospital unless federal law or a federal agency requires the hospital to prohibit in-person visitation during that period or other limitations apply as listed below.

2. What is a “qualifying period of disaster?”

A “qualifying period of disaster” (QPD) is the period of time the area in which a hospital is located is declared to be a disaster based on an infectious disease. The declaration can be made by the governor, other state official, or a political subdivision of the state.

3. What is permissible under HB 2211?

During a QPD, a hospital may:

- Restrict the number of visitors for a patient to one visitor (at least one visitor must be allowed per patient during the QPD);
- Require a visitor to:
 - a. Complete a health screening before entering the hospital; and,
 - b. Wear PPE at all times while visiting the hospital;
- Deny entry to – or remove from – the hospital’s premises a visitor who fails or refuses to:
 - a. Submit to or meet the requirements of the hospital’s health screening; or
 - b. Wear PPE that meets the hospital’s infection control and safety requirements, as prescribed by the hospital.

4. Does HB 2211 impose any compliance standards for a hospital’s health screening procedures?

Yes. A health screening administered by a hospital must be conducted in a manner that, at a minimum, complies with the hospital’s policy and (if applicable) guidance or directives issued by HHSC, the Centers for Medicare and Medicaid Services or another agency with regulatory authority over the hospital.

THA believes that hospitals may add to these minimum requirements, as may be appropriate. Accordingly, hospitals may:

- Include additional, reasonable health questionnaire items in its health screening;
- Update hospital entry requirements, for example by:

- Requiring visitors to wear certain types of PPE (such as an N95 mask);
- Requiring visitors to attest to no contact with a COVID+ person within a certain number of days;
- Requiring visitors to visit during clearly posted visiting hours; or
- To avoid overcrowding, asking a visitor to wait outside the hospital's normal lobby or waiting areas (which may include asking the visitor to wait in their personal vehicle or otherwise outside) until the patient is able to receive visitors.

5. Does HB 2211 require a hospital to provide PPE to a visitor?

No. A hospital is not required to provide a specific type of PPE to a visitor.

6. When may a hospital impose limitations on in-person visitation?

A hospital is not required to allow in-person visitation if an attending physician determines that in-person visitation with that patient may lead to the transmission of an infectious agent that poses a serious community health risk.

Any such determination by an attending physician is valid for up to five days, and it may be renewed by an attending physician.

7. What does HB 2211 require when a hospital denies in-person visitation?

If a visitor is denied in-person visitation because of a determination made by an attending physician, the hospital must:

- For each day that visitation is denied, provide a written or oral update of the patient's condition to the visitor, if the visitor:
 - a. Is authorized by the patient to receive the patient's health information;
 - b. Has authority to receive the patient's health information under an advance directive or medical power of attorney; or,
 - c. Is otherwise the patient's surrogate decision-maker regarding the patient's health care needs under hospital policy and other applicable law.
- Notify the person who receives the daily update of the estimated date and time at which the patient will be discharged from the hospital, when known.

7. Who qualifies an "attending physician?"

HB 2211 does not define "attending physician."

THA believes hospitals could consider:

- Identifying a physician (i.e., ICU Medical Director) who has authority within its institution to make decisions about in-person visitation, and potentially for several patients, within reasonable limits dependent on the hospital's size and patient census (e.g., one physician may have authority to limit visitation for multiple patients across a small/rural facility, but one physician may not have the same authority over a large number of patients at a larger facility);

- Determining if a decision to restrict in-person visitation is applicable to all patients or limited to infectious patients;
- Clearly defining “attending physician” within its policies and procedures; or
- Clarifying procedures for renewal of a decision to deny in-person visitation.

8. When may a hospital deny in-person visitation by a religious counselor?

Under HB 2211 and [SB 572](#), a patient or, if the patient is incapacitated, a patient’s family member may request an in-person visit with a religious counselor during a public health emergency (which include the ongoing COVID-19 pandemic). A hospital cannot deny in-person visitation by a religious counselor for a patient who is receiving care or treatment at the hospital and who is seriously ill or dying for any reason other than the religious counselor’s failure to comply with institutional policies and procedures or if such visitation is barred by federal law or agency.

A religious counselor is defined as an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

9. Is a hospital or physician liable if a visitor contracts an infectious disease while on the hospital’s premises?

No. A hospital or physician is not subject to civil or criminal liability, or administrative penalty, if a visitor contracts an infectious disease while on the premises during a QPD or, in connection with a visit to the hospital, spreads an infectious disease to any other individual – except where intentional misconduct or gross negligence by the hospital or physician is established.

Similarly, a physician who in good faith, takes, or fails to take, an action is not subject to civil or criminal liability or disciplinary action for the physician’s action or failure to act.

Contact THA’s associate general counsel, Cesar Lopez, with any questions.