



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

KODY H. KINSLEY
SECRETARY

July 20, 2022

SENT VIA ELECTRONIC MAIL

The Honorable Donny Lambeth, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 620, Legislative Office Building
Raleigh, NC 27603

The Honorable Jim Burgin, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 308, Legislative Office Building
Raleigh, NC 27603

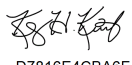
The Honorable Larry Potts, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 307B1, Legislative Office Building
Raleigh, NC 27603

Dear Chairmen:

Session Law 2021-145, Section 3.(b), requires the Department of Health and Human Services to implement the visitation protocols described in G.S. 131D-7.1 and to submit a report to the chairs of the Joint Legislative Oversight Committee on Health and Human Services at least 30 days prior to implementation of the visitation protocols. Pursuant to the provisions of law, the Department is pleased to submit the attached report.

Should you have any questions regarding this report, please contact John Furnari, Program/Policy Analyst, at John.Furnari@dhhs.nc.gov.

Sincerely,

DocuSigned by:

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Kody H. Kinsley
Secretary

cc: Mark Collins Joyce Jones Katherine Restrepo Lisa Wilks Amy Jo Johnson
Jessica Meed Theresa Matula Luke MacDonald Nathan Babcock

Implementation of Clifford's Law Visitation Protocols

Session Law 2021-145, Section 3.(b)



Report to the

**The Joint Legislative Oversight Committee on
Health and Human Services**

By

**North Carolina Department of
Health and Human Services**

July 20, 2022

Reporting Requirement

Session Law 2021-145 directs the Secretary of the Department of Health and Human Services to establish visitation protocols for residents of nursing homes, combination homes, and adult care homes, including family care homes, that will become effective during declared disasters and emergencies when a facility's normal visitation policies are suspended or curtailed. Section 3.(b) requires the Department of Health and Human Services to report on the implementation of visitation protocols.

Executive Summary

With input from stakeholders and other interested parties, the Secretary of the Department of Health and Human Services has developed ten (10) protocols consistent with the minimum number and frequency of visitors for residents of licensed nursing homes, combination homes, adult care homes, and family care homes pursuant to Clifford's Law. Residents will receive a copy of these protocols prior to admission to a facility. These protocols will be effective in the event of a disaster declaration or emergency that results in the suspension or curtailment of the normal visitation policy for these facilities for the duration of the disaster declaration or emergency. Please see Appendix A for the letter from the Secretary of the Department of Health and Human Services to Covered Facilities Announcing the Final Visitation Protocols.

In summary form, these protocols require the facility to:

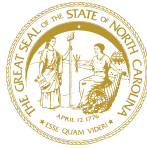
1. Determine if the disaster declaration or emergency meets the statutory definitions
2. Assess the impact the disaster or emergency may have on their normal visitation policy in consultation with appropriate state and/or local agencies
3. Implement Clifford's Law Visitation Protocols if normal visitation is impacted by disaster or emergency
4. Develop a visitation plan and procedures for implementing Clifford's Law Visitation Protocols, recognizing that such visitation is subject to directives of the Centers for Medicare and Medicaid Services; the visitation plan and procedures shall ensure that the principles of infection prevention will be followed and that a designated visitor who has a communicable condition that poses a risk to patients, residents, or staff, or is unable or unwilling to adhere to the principles of infection prevention, is excluded from visitation as determined by the facility in consultation with the local health department
5. Identify the strategy for implementation of the visitation plan and procedures
6. Train facility staff on their roles with the visitation plan and procedures
7. Prior to admission, provide patients and/or residents with written notification of the visitation plan and procedures, including how that plan and its procedures are aligned with Clifford's Law Visitation Protocols, and that includes contact information for the Regional Long Term Care Ombudsman
8. The Regional Long-Term Care Ombudsman will monitor and report on the activation of Clifford's Law Visitation Protocols
9. Correct any shortcomings and take prompt action to correct and prevent reoccurrence of shortcomings with the visitation plan and procedures
10. Terminate Clifford's Law Visitation Protocols and re-institute normal visitation policy when appropriate based on consultation with appropriate state and/or local agencies or no later than the end of the disaster declaration or emergency

Background

The development of these protocols included distribution to a wide range of stakeholders for consultation and feedback. Recipients were encouraged to share the protocols with as many interested persons as possible, including families of individuals who may have an interest in Clifford's Law. In addition to a wide range of Divisions within the Department of Health and Human Services, including the Division of Aging and Adult Services, Division of Health Benefits, Division of Health Service Regulation, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Division of Public Health, these protocols were shared in draft form with licensed operators of nursing homes, combination homes, adult care homes, and key stakeholders including but not limited to the following (in no particular order): American Association of Retired Persons NC, Disability Rights NC, Friends of Residents in Long Term Care, Governor's Advisory Council on Aging, NC Coalition on Aging, NC Council on Developmental Disabilities, NC Health Care Facilities Association, North Carolina Senior Living Association, University of North Carolina Statewide Program for Infection Control and Epidemiology. The feedback received from these stakeholders was reviewed and considered by DHHS before finalizing its protocols.

Implementation

These protocols will be implemented by facilities during any period of a declared disaster or emergency when a licensed nursing home, combination home, or adult care home has suspended or restricted its normal visitation policy. Consistent with Clifford's Law, visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy.



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

KODY KINSLEY
SECRETARY

June 27, 2022

VIA EMAIL

To All NC Nursing Homes, Combination Homes, and Adult and Family Care Homes:

Session Law 2021-145, commonly referred to as "Clifford's Law," directs your facilities to allow each patient or resident to have at least two visits per month by a designated or preapproved alternate visitor during any period of time when your normal visitation policy is suspended or curtailed for any reason during a declared disaster or emergency. The law also directs my staff to draft protocols specific to the law, to seek input from interested stakeholders on those protocols, and to finalize and issue those protocols.

As Secretary of the Department of Health and Human Services, I write to fulfill this statutory responsibility by sharing the final visitation protocols with you and announcing their implementation, effective immediately.

The "Clifford's Law Visitation Protocols" enclosed with this letter uphold the visitation requirements of Session Law 2021-145. The requirements were established by the General Assembly of North Carolina to constitute a minimum requirement for the number of visits and visitors available to patients and residents of the facilities that are subject to this law.

I use this opportunity to remind us that safe and consistent visitation is important for the well-being of patients, residents, families, friends, and guardians. Provided that such visitation is consistent with these protocols, facilities are permitted and encouraged to allow for greater than two visits per month and to allow for visits by those not identified as the designated or preapproved alternate visitor.

I appreciate the input DHHS received from stakeholders during the development of these protocols. Like you, we are committed to visitation that is both safe and available.

Sincerely,

DocuSigned by:
A handwritten signature in black ink, appearing to read "Kody Kinsley".
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Enclosure: DHHS Clifford's Law Visitation Protocols

cc: Deputy Secretary Mark Benton
Mark Payne
Susan Kansagra, MD
Will Ray
Julie Cronin

Chapter 131D.

Inspection and Licensing of Facilities.

Article 1.

Adult Care Homes.

Part 1. Licensing.

§ 131D-7.1. (Effective April 1, 2022) Secretary to establish visitation protocols during declared disasters and emergencies.

- (a) As used in this section and in G.S. 131D-7.2, the following terms have the following meanings:
- (1) Disaster declaration. – As defined in G.S. 166A-19.3(3).
 - (2) Emergency. – As defined in G.S. 166A-19.3(6).
 - (3) Facility. – An adult care home, including a family care home, licensed under this Article.
 - (4) Normal visitation policy. – The visitation policy that was in effect at a facility on January 1, 2020.

(b) The Secretary shall, in consultation with licensed operators of adult care homes, including family care homes, and any other stakeholders the Secretary deems relevant, establish visitation protocols for residents of these facilities that will become effective during a disaster declaration or emergency that results in the suspension or curtailment of a facility's normal visitation policy for any reason. The visitation protocols shall provide for at least the following:

- (1) Each resident shall have the right to designate one preapproved visitor and one preapproved alternate visitor. The preapproved visitor, or if the preapproved visitor is unavailable, the preapproved alternate visitor, shall be allowed to visit the resident at least twice per month during any period of time during which the facility's normal visitation policy is suspended or curtailed for any reason during the declared disaster or emergency.
- (2) Prior to admission, each facility shall explain and provide to each resident written notification of the visitation protocols established by the Secretary under this section.
- (3) Visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy. (2021-145, s. 3(a).)

Chapter 131E.

Health Care Facilities and Services.

Article 6.

Health Care Facility Licensure Act.

Part 1. Nursing Home Licensure Act.

§ 131E-112.5. (Effective April 1, 2022) Secretary to establish visitation protocols during declared disasters and emergencies.

- (a) As used in this section and G.S. 131E-112.6, the following terms have the following meanings:
- (1) Disaster declaration. – As defined in G.S. 166A-19.3(3).
 - (2) Emergency. – As defined in G.S. 166A-19.3(6).
 - (3) Facility. – A nursing home or combination home licensed under this Part.
 - (4) Normal visitation policy. – The visitation policy that was in effect at a facility on January 1, 2020.

(b) The Secretary shall, in consultation with licensed operators of nursing homes and combination homes, and any other stakeholders the Secretary deems relevant, establish visitation protocols for residents of these facilities that will become effective during a disaster declaration or emergency that results in the suspension or curtailment of a facility's normal visitation policy for any reason. The visitation protocols shall provide for at least the following:

- (1) Each resident shall have the right to designate one preapproved visitor and one preapproved alternate visitor. The preapproved visitor, or if the preapproved visitor is unavailable, the preapproved alternate visitor, shall be allowed to visit the resident at least twice per month during any period of time during which the facility's normal visitation policy is suspended or curtailed for any reason during the declared disaster or emergency.
- (2) Prior to admission, each facility shall explain and provide to each resident written notification of the visitation protocols established by the Secretary under this section.
- (3) Visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy. (2021-145, s. 2(a).)

§ 131D-7.2. (Effective April 1, 2022) Resident visitation rights for adult care homes, including family care homes, during a disaster declaration or emergency.

Notwithstanding any provision of this Part, Chapter 166A of the General Statutes, or any other provision of law to the contrary, the visitation protocols established by the Secretary under G.S. 131D-7.1 shall be in effect during any period of time when (i) there is a declared disaster or emergency and (ii) an adult care home, including a family care home, licensed under this Article suspends or restricts the normal visitation policy for any reason. (2021-145, s. 3(a).)



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
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KODY KINSLEY
SECRETARY

Clifford's Law **Visitation Protocols**
June 27, 2022
Effective immediately

These visitation protocols were developed and issued by the NC Department of Health and Human Services pursuant to Session Law 2021-145 ([HB 351](#)). This legislation, known as "Clifford's Law," is applicable to Nursing Homes, Combination Homes, and Adult and Family Care Homes, and they are triggered during a disaster declaration or emergency that results in the suspension or restriction of a facility's normal visitation policy.

Prior to their finalization, these visitation protocols were shared with advocacy, provider and other key stakeholder groups to obtain their input.

Protocol 1: Collect existing information about the disaster declaration or emergency and determine if the definition of disaster declaration or emergency is met:

(1) Disaster declaration. – As defined in G.S. 166A-19.3(3).

(2) Emergency. – As defined in G.S. 166A-19.3(6).

See N.C Gen. Stat. § 131D-7.1(a)(1)&(2) and §131E-112.5(a)(1)&(2).

Anytime there is a declared disaster or emergency pursuant to N.C. Gen. Stat. § 166A, the facility is required to provide, at a minimum, visitation pursuant to Clifford's Law Visitation Protocol. See N.C Gen. Stat. § 131D-7.2 and §131E-112.6. Specifically, the law requires that each facility resident be permitted to have a minimum of two visits per month by an individual they designate.

Protocol 2: Assess the impact the disaster declaration or emergency may have on the normal visitation policy of the facility in consultation with appropriate state and/or local agencies (local emergency management agency, local health department, NC Department of Public Safety Emergency Management Division, NCDHHS Division of Public Health, and/or NCDHHS Division of Health Service Regulation).

Protocol 3: If the disaster declaration or emergency has an impact on a facility's normal visitation, identify measures to allow for, at a minimum, Clifford's Law Visitation Protocols:

Each resident shall have the right to designate one preapproved visitor and one preapproved alternate visitor. The preapproved visitor, or if the preapproved visitor is unavailable, the preapproved alternate visitor, shall be allowed to visit the resident at least twice per month during any period of time during which the facility's normal visitation policy is suspended or

curtailed for any reason during the declared disaster or emergency. See N.C Gen. Stat. § 131D-7.1(b)(1) and § 131E-112.5(b)(1).

Clifford's Law establishes the minimum requirement for visitation during a declared disaster or emergency where normal visitation is curtailed.

In the event that the resident lacks the capacity to make a designation as determined by his/her attending physician then the authority to designate a preapproved visitor, or preapproved alternative visitor, shall default to his/her legal guardian, power of attorney, or responsible party of record.

Protocol 4: Develop a visitation plan and procedures for implementing Clifford's Law Visitation Protocols during the disaster or emergency. Note:

Visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services' (CMS) directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy. See N.C Gen. Stat. § 131D-7.1(b)(3) and § 131E-112.5(b)(3).

The visitation plan and procedures for Clifford's Law Visitation Protocols shall include the following:

1. Facilities will assure that the principles of infection prevention will be followed including requirements for masking and other personal protective equipment during visitation. If an identified visitor refuses to follow requirements of infection prevention, the visitor will be excluded from visitation. The facility must maintain documentation of the individual who does not comply with policies.
2. If a visitor has signs or symptoms of a communicable condition that poses a risk to residents or staff, or is unable or unwilling to adhere to the principles of infection prevention, in consultation with the local health department as necessary, the visitor will be excluded from visitation.
3. Designation of an indoor and/or outdoor visitation area.

In addition, visitation during a declared disaster or emergency may be subject to additional guidance issued by Executive Order, Secretarial Order, or Centers for Medicare and Medicaid Services directives.

Protocol 5: Identify the strategy for implementation of the visitation plan and procedures for Clifford's Law Visitation Protocols.

Protocol 6: Train the facility staff on their roles with the visitation plan and procedures for Clifford's Law Visitation Protocols.

Protocol 7: Prior to admission, provide residents with written notification of the facility's specific visitation plan and procedures, including how that plan and its procedures are aligned with Clifford's Law Visitation Protocols, that includes contact information for the regional Long Term Care Ombudsman.¹

Protocol 8: It shall be the role of Regional Long-Term Care Ombudsman to monitor and report on the activation of Clifford's Law Visitation Protocols during an emergency declaration or other facility-based situation that adversely impacts normal visitation.

¹ Prior to admission, each facility shall explain and provide to each resident written notification of the visitation protocols established by the Secretary under this section. This is a requirement of Clifford's Law. See N.C Gen. Stat. § 131D-7.1(b)(2) and § 131E-112.5(b)(2).

Protocol 9: Correct any shortcomings and take prompt action to correct and prevent reoccurrence of shortcomings with the visitation plan and procedures for Clifford's Law Visitation Protocols.

Protocol 10: Terminate Clifford's Law Visitation Protocols and re-institute normal visitation policy when appropriate based on consultation with appropriate state and/or local agencies (i.e. local emergency management agency, local health department, NC Department of Public Safety Emergency Management Division, and/or NCDHHS Division of Public Health) as appropriate, or no later than the end of the disaster declaration or emergency.