



2023 South Dakota Legislature

House Bill 1216

Introduced by: **Representative** Overweg

1 **An Act to establish and revise requirements related to visitation policies and**
 2 **procedures for certain facilities.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 27B-8 be amended with a NEW SECTION:**

5 An intermediate care facility for individuals with intellectual disabilities shall
 6 establish policies and procedures that allow the visitation of residents to the fullest extent
 7 permitted under any applicable regulations or guidelines adopted by the Centers for
 8 Medicare and Medicaid Services or the Centers for Disease Control and Prevention, or any
 9 federal law. The policies and procedures must address:

- 10 (1) Infection control and education for visitors;
 11 (2) The use of screening and personal protective equipment by visitors;
 12 (3) Visiting hours and the duration of visits; and
 13 (4) The number of visitors.

14 The policies and procedures may not require a visitor to submit proof of vaccination
 15 or immunization as a condition of visitation.

16 A facility may suspend visitation privileges if the visitor violates the policies and
 17 procedures required by this section.

18 **Section 2. That chapter 27B-8 be amended with a NEW SECTION:**

19 The policies and procedures required by section 1 of this Act must, subject to a
 20 resident's right to deny or withdraw consent, permit compassionate care visits if:

- 21 (1) The resident was living with a family member before being admitted to the
 22 intermediate care facility for individuals with intellectual disabilities and is
 23 struggling with the change in environment and lack of physical family support, as
 24 verified by a physician;
 25 (2) The resident is incapable of making an informed medical decision;

- 1 (3) The resident is grieving a friend or family member who died within the last year,
2 as verified by a physician;
- 3 (4) The resident needs cueing and encouragement, which had previously been
4 provided by family or a caregiver, to eat or drink, and is experiencing weight loss
5 or dehydration, as verified by a physician;
- 6 (5) The resident is less interactive with others, as verified by a physician; or
7 (6) The resident is a minor.

8 **Section 3. That chapter 27B-8 be amended with a NEW SECTION:**

9 If, in accordance with a federal law, regulation, or guideline, an intermediate care
10 facility for individuals with intellectual disabilities must limit or restrict visitors, the facility
11 must develop alternative visitation policies and procedures that allow visitation to the
12 greatest extent safely possible. The facility shall inform each resident and designated
13 family members of the alternative visitation policies and procedures and shall provide
14 electronic, or, if requested, printed, notices regarding the:

- 15 (1) Limitations and restrictions;
16 (2) Reason and rationale for the limitations or restrictions; and
17 (3) Period of time that the limitations or restrictions are to remain in effect.

18 The facility shall post the alternative policies and procedures on its website, if one
19 exists.

20 Any limitations and restrictions instituted in accordance with this section must be
21 reviewed at least every thirty days. The facility shall provide notice of the review to
22 residents and designated family members, encourage the submission of written and oral
23 comments, and give due consideration to the submissions.

24 If, after the required review, the facility determines that the limitations or
25 restrictions are to be continued, the facility must post notice of the continuation on the
26 facility's website and in a conspicuous place within the facility. The notice must cite the
27 federal law, regulation, or guidance being implemented.

28 **Section 4. That chapter 27B-8 be amended with a NEW SECTION:**

29 An intermediate care facility for individuals with intellectual disabilities shall, prior
30 to the placement of a resident in the facility and at least annually thereafter, provide to
31 the resident and the resident's designated family members:

- 32 (1) An electronic copy of the visitation policies and procedures; and

- 1 (2) Contact information for the Department of Human Services and the facility's patient
2 representative.
3 The facility shall provide printed copies of the visitation policies and procedures
4 upon request.

5 **Section 5. That chapter 27B-8 be amended with a NEW SECTION:**

- 6 An intermediate care facility for individuals with intellectual disabilities shall file a
7 current copy of its visitation policies with the Department of Human Services.

8 **Section 6. That chapter 34-12 be amended with a NEW SECTION:**

- 9 A hospital licensed under this chapter shall establish policies and procedures that
10 allow the visitation of patients to the fullest extent permitted under any applicable
11 regulations or guidelines adopted by the Centers for Medicare and Medicaid Services or
12 the Centers for Disease Control and Prevention, or any federal law. The policies and
13 procedures must address:

- 14 (1) Infection control and education for visitors;
15 (2) The use of screening and personal protective equipment by visitors;
16 (3) Visiting hours and the duration of visits; and
17 (4) The number of visitors.

- 18 The policies and procedures may not require a visitor to submit proof of vaccination
19 or immunization as a condition for visitation.

- 20 A hospital may suspend visitation privileges if the visitor violates the policies and
21 procedures required by this section.

22 **Section 7. That chapter 34-12 be amended with a NEW SECTION:**

- 23 The visitation policies and procedures required by section 6 of this Act must,
24 subject to a patient's right to deny or withdraw consent, permit compassionate care visits
25 if:

- 26 (1) The patient is in the end stages of life, as verified by a physician;
27 (2) The patient was living with a family member before being admitted to the hospital
28 and is struggling with the change in environment and lack of physical family
29 support, as verified by a physician;
30 (3) The patient is incapable of making an informed medical decision;

- 1 (4) The patient is grieving a friend or family member who died within the last year, as
2 verified by a physician;
- 3 (5) The patient needs cueing and encouragement, which had previously been provided
4 by family or a caregiver, to eat or drink, and is experiencing weight loss or
5 dehydration, as verified by a physician;
- 6 (6) The patient is less interactive with others, as verified by a physician;
- 7 (7) The patient is in labor or delivery; or
- 8 (8) The patient is a minor.

9 **Section 8. That chapter 34-12 be amended with a NEW SECTION:**

10 If, in accordance with a federal law, regulation, or guideline, a hospital must limit
11 or restrict visitors, the hospital must develop alternative visitation policies and procedures
12 that allow visitation to the greatest extent safely possible. The hospital shall inform each
13 patient and designated family members of the alternative visitation policies and
14 procedures and shall provide electronic or, if requested, printed notices regarding the:

- 15 (1) Limitations or restrictions;
- 16 (2) Reason and rationale for the limitations or restrictions; and
- 17 (3) Period of time that the limitations and restrictions are to remain in effect.

18 The hospital shall also post the alternative visitation policies and procedures on its
19 website.

20 Any limitations and restrictions instituted in accordance with this section must be
21 reviewed at least every thirty days. The hospital shall provide notice of the review to
22 patients and designated family members, encourage the submission of written and oral
23 comments, and give due consideration to the submissions.

24 If, after the required review, the hospital determines that the limitations or
25 restrictions are to be continued, the hospital must post notice of the continuation on the
26 hospital's website, and in a conspicuous place within the hospital. The notice must cite the
27 federal law, regulation, or guidance being implemented.

28 **Section 9. That chapter 34-12 be amended with a NEW SECTION:**

29 A hospital shall file a current copy of its visitation policies with the Department of
30 Health.

31 **Section 10. That chapter 34-12 be amended with a NEW SECTION:**

1 A hospital shall provide a copy of the visitation policies and procedures required by
2 this Act to each patient and, when possible, a family member. The hospital shall include
3 contact information for the Department of Health and for the hospital's patient
4 representative.

5 **Section 11. That chapter 34-12 be amended with a NEW SECTION:**

6 A nursing facility licensed under this chapter shall establish policies and procedures
7 that allow the visitation of residents to the fullest extent permitted under any applicable
8 regulations or guidelines adopted by the Centers for Medicare and Medicaid Services or
9 the Centers for Disease Control and Prevention, or any federal law. The policies and
10 procedures must address:

- 11 (1) Infection control and education for visitors;
12 (2) The use of screening and personal protective equipment by visitors;
13 (3) Visiting hours and the duration of visits; and
14 (4) The number of visitors.

15 The policies and procedures may not require a visitor to submit proof of vaccination
16 or immunization as a condition for visitation.

17 A nursing facility may suspend visitation privileges if the visitor violates the policies
18 and procedures required by this section.

19 **Section 12. That chapter 34-12 be amended with a NEW SECTION:**

20 The visitation policies and procedures required by section 11 of this Act must,
21 subject to a resident's right to deny or withdraw consent, permit compassionate care visits
22 if:

- 23 (1) The resident is in the end stages of life, as verified by a physician;
24 (2) The resident was living with a family member before being admitted to the nursing
25 facility and is struggling with the change in environment and lack of physical family
26 support, as verified by a physician;
27 (3) The resident is incapable of making an informed medical decision;
28 (4) The resident is grieving a friend or family member who died within the last year,
29 as verified by a physician;
30 (5) The resident needs cueing and encouragement, which had previously been
31 provided by family or a caregiver, to eat or drink, and is experiencing weight loss
32 or dehydration, as verified by a physician; or
33 (6) The resident is less interactive with others, as verified by a physician.

1 **Section 13. That chapter 34-12 be amended with a NEW SECTION:**

2 If, in accordance with a federal law, regulation, or guideline, a nursing facility must
3 limit or restrict visitors, the nursing facility must develop alternative visitation procedures
4 that allow visitation to the greatest extent safely possible. The nursing facility shall inform
5 each resident and designated family members of the alternative visitation policies and
6 procedures and shall provide electronic or, if requested, printed notices regarding the:

7 (1) Limitations and restrictions;

8 (2) Reason and rationale for the limitations or restrictions; and

9 (3) Period of time that the limitations and restrictions are to remain in effect.

10 The nursing facility shall post the alternative visitation policies and procedures on
11 its website, if one exists.

12 Any limitations or restrictions instituted in accordance with this section must be
13 reviewed at least every thirty days. The nursing facility shall provide notice of the review
14 to residents and designated family members, encourage the submission of written and
15 oral comments, and give due consideration to the submissions.

16 If, after the required review, the nursing facility determines that the limitations or
17 restrictions are to be continued, the nursing facility must post notice of the continuation
18 on the facility's website, and in a conspicuous place within the facility. The notice must
19 cite the federal law, regulation, or guidance being implemented.

20 **Section 14. That chapter 34-12 be amended with a NEW SECTION:**

21 A nursing facility shall file a current copy of its visitation policies with the
22 Department of Health.

23 **Section 15. That chapter 34-12 be amended with a NEW SECTION:**

24 A nursing facility shall, prior to the signing of an occupancy contract with a resident
25 and at least annually thereafter, provide to the resident and the resident's designated
26 family members:

27 (1) An electronic copy of the visitation policies and procedures; and

28 (2) Contact information for the Department of Health and the nursing facility's patient
29 representative.

30 The nursing facility shall provide printed copies of the visitation policies and
31 procedures upon request.

1 **Section 16. That chapter 34-12 be amended with a NEW SECTION:**

2 A residential or inpatient hospice facility licensed under this chapter shall establish
3 policies and procedures that allow the visitation of patients to the fullest extent permitted
4 under any applicable regulations or guidelines adopted by the Centers for Medicare and
5 Medicaid Services or the Centers for Disease Control and Prevention, or any federal law.

6 The policies and procedures must address:

- 7 (1) Infection control and education for visitors;
8 (2) The use of screening and personal protective equipment by visitors;
9 (3) Visiting hours and the duration of visits; and
10 (4) The number of visitors.

11 The policies and procedures may not require a visitor to submit proof of vaccination
12 or immunization as a condition for visitation.

13 A residential or inpatient hospice facility may suspend visitation privileges if the
14 visitor violates the policies and procedures required by this section.

15 **Section 17. That chapter 34-12 be amended with a NEW SECTION:**

16 The visitation policies and procedures required by section 16 of this Act must,
17 subject to a resident's right to deny or withdraw consent, permit compassionate care visits
18 if:

- 19 (1) The patient is in the end stages of life, as verified by a health care professional;
20 (2) The resident was living with a family member before being admitted to the
21 residential or inpatient hospice facility and is struggling with the change in
22 environment and lack of physical family support, as verified by a health care
23 professional;
24 (3) The resident is incapable of making an informed medical decision;
25 (4) The resident is grieving a friend or family member who died within the last year,
26 as verified by a health care professional;
27 (5) The resident needs cueing and encouragement, which had previously been
28 provided by family or a caregiver, to eat and drink, and is experiencing weight loss
29 or dehydration, as verified by a health care professional; or
30 (6) The resident is less interactive with others, as verified by a health care professional.

31 **Section 18. That chapter 34-12 be amended with a NEW SECTION:**

1 If, in accordance with a federal law, regulation, or guideline, a residential or
2 inpatient hospice facility must limit or restrict visitors, the facility must develop alternative
3 visitation policy and procedures that allow visitation to the greatest extent safely possible.
4 The residential or inpatient hospice facility shall inform each resident and designated
5 family members of the alternative visitation policies and procedures and shall provide
6 electronic or, if requested, printed notices regarding the:

7 (1) Limitations and restrictions;

8 (2) Reason and rationale for the limitations or restrictions; and

9 (3) Period of time that the limitations and restrictions are to remain in effect.

10 The residential or inpatient hospice facility shall post the alternative visitation
11 policies and procedures on its website, if one exists.

12 Any limitations and restrictions instituted in accordance with this section must be
13 reviewed at least every thirty days. The residential or inpatient hospice facility shall
14 provide notice of the review to residents and designated family members, encourage the
15 submission of written and oral comments, and give due consideration to the submissions.

16 If, after the required review, the residential or inpatient hospice facility determines
17 that the limitations or restrictions are to be continued, the facility must post notice of the
18 continuation on the facility's website, and in a conspicuous place within the facility. The
19 notice must cite the federal law, regulation, or guidance being implemented.

20 **Section 19. That chapter 34-12 be amended with a NEW SECTION:**

21 A residential or inpatient hospice facility shall file a current copy of its visitation
22 policies with the Department of Health.

23 **Section 20. That chapter 34-12 be amended with a NEW SECTION:**

24 A residential or inpatient hospice facility shall provide to the resident and the
25 resident's designated family members:

26 (1) An electronic copy of the visitation policies and procedures; and

27 (2) Contact information for the Department of Health and the facility's patient
28 representative.

29 A residential or inpatient hospice facility shall provide printed copies of the
30 visitation policies and procedures upon request.

31 **Section 21. That chapter 34-12 be amended with a NEW SECTION:**

1 An assisted living facility licensed under this chapter shall establish policies and
2 procedures that allow the visitation of residents to the fullest extent permitted under any
3 applicable regulations or guidelines adopted by the Centers for Medicare and Medicaid
4 Services or the Centers for Disease Control and Prevention, or any federal law. The policies
5 and procedures must address:

- 6 (1) Infection control and education policies for visitors;
7 (2) The use of screening and personal protective equipment by visitors;
8 (3) Visiting hours and the duration of visits; and
9 (4) The number of visitors.

10 The policies and procedures may not require a visitor to submit proof of vaccination
11 or immunization as a condition for visitation.

12 An assisted living facility may suspend visitation privileges if the visitor violates the
13 policies and procedures required by this section.

14 **Section 22. That chapter 34-12 be amended with a NEW SECTION:**

15 The visitation policies and procedures required by section 21 of this Act must,
16 subject to a resident's right to deny or withdraw consent, permit compassionate care visits
17 if:

- 18 (1) The resident was living with a family member before being admitted to the assisted
19 living facility and is struggling with the change in environment and lack of physical
20 family support, as verified by a health care professional;
21 (2) The resident is incapable of making an informed medical decision;
22 (3) The resident is grieving a friend or family member who died within the last year,
23 as verified by a health care professional;
24 (4) The resident needs cueing and encouragement, which had previously been
25 provided by family or a caregiver, to eat and drink, and is experiencing weight loss
26 or dehydration, as verified by a health care professional; or
27 (5) The resident is less interactive with others, as verified by a health care professional.

28 **Section 23. That chapter 34-12 be amended with a NEW SECTION:**

29 If, in accordance with a federal law, regulation, or guideline, an assisted living
30 center must limit or restrict visitors, the facility must develop alternative visitation policies
31 and procedures that allow visitation to the greatest extent safely possible. The facility shall
32 inform each resident and designated family members of the alternative visitation policies
33 and procedures and shall provide electronic or, if requested, printed notices regarding the:

- 1 (1) Limitations and restrictions;
- 2 (2) Reason and rationale for the limitations or restrictions; and
- 3 (3) Period of time that the limitations or restrictions are to remain in effect.

4 The assisted living facility shall post the alternative visitation policies and
5 procedures on its website, if one exists.

6 Any limitations and restrictions instituted in accordance with this section must be
7 reviewed at least every thirty days. The assisted living facility shall provide notice of the
8 review to residents and designated family members, encourage the submission of written
9 and oral comments, and give due consideration to the submissions.

10 If, after the required review, the assisted living facility determines that the
11 limitations or restrictions are to be continued, the facility must post notice of the
12 continuation on the facility's website, and in a conspicuous place within the facility. The
13 notice must cite the federal law, regulation, or guidance being implemented.

14 **Section 24. That chapter 34-12 be amended with a NEW SECTION:**

15 An assisted living facility shall file a current copy of its visitation policies with the
16 Department of Health.

17 **Section 25. That chapter 34-12 be amended with a NEW SECTION:**

18 An assisted living facility shall, prior to the signing of an occupancy contract with a
19 resident and at least annually thereafter, provide to the resident and the resident's
20 designated family members:

- 21 (1) An electronic copy of the visitation policies and procedures; and
- 22 (2) Contact information for the Department of Health and the assisted living facility's
23 patient representative.

24 The assisted living facility shall provide printed copies of the visitation policies and
25 procedures upon request.

26 **Section 26. That § 34-12-67 be REPEALED:**

27 ~~Each resident of an assisted living facility has a right to receive visitors of the~~
28 ~~resident's own choosing, at the time of the resident's own choosing, provided the visitation~~
29 ~~does not impose upon the rights of another resident.~~

30 ~~In addition to those persons granted access to a resident in accordance with their~~
31 ~~official capacities, a facility must provide access to any resident by:~~

- 1 ~~(1) — A member of the resident's immediate family and other relatives of the resident,~~
 2 ~~subject to reasonable clinical and safety restrictions and the resident's right to deny~~
 3 ~~or withdraw consent;~~
- 4 ~~(2) — Any other person visiting with the consent of the resident, subject to reasonable~~
 5 ~~clinical and safety restrictions and the resident's right to deny or withdraw consent;~~
 6 ~~and~~
- 7 ~~(3) — Any person providing health, social, legal, or other services to the resident, subject~~
 8 ~~to reasonable clinical and safety restrictions and the resident's right to deny or~~
 9 ~~withdraw consent.~~

10 **Section 27. That § 34-12-68 be REPEALED:**

11 ~~An assisted living facility shall post on its website, if one exists, and in a~~
 12 ~~conspicuous place within the facility, all policies and procedures pertaining to the visitation~~
 13 ~~rights set forth in § 34-12-67. The facility shall, prior to the signing of an occupancy~~
 14 ~~contract with a resident and at least annually thereafter, provide electronic copies of the~~
 15 ~~visitation policies and procedures to the resident and the resident's designated family~~
 16 ~~members and shall provide printed copies upon request.~~

17 ~~If in accordance with federal or state laws, or if in accordance with best clinical~~
 18 ~~practices during a health emergency, the visitation policies and procedures must be limited~~
 19 ~~or restricted, the facility shall inform each resident and designated family members and~~
 20 ~~shall provide electronic or, if requested, printed notices regarding the limitations and~~
 21 ~~restrictions, the reason and rationale for such, and the period of time that the limitations~~
 22 ~~and restrictions are to remain in effect. The facility shall also post such information on its~~
 23 ~~website, if one exists.~~

24 ~~Any limitations and restrictions instituted in accordance with this section must be~~
 25 ~~reviewed at least every thirty days. The facility shall provide notice of the review to~~
 26 ~~residents and designated family members, encourage the submission of written and oral~~
 27 ~~comments, and give due consideration to the submissions.~~

28 ~~If after the required review the facility determines that the limitations or~~
 29 ~~restrictions are to be continued, the facility shall post notice of the continuation on the~~
 30 ~~facility's website, if one exists, and in a conspicuous place within the facility. The notice~~
 31 ~~must include:~~

- 32 ~~(1) — The citation of the federal or state law being implemented; or~~
- 33 ~~(2) — A link to evidence-based research indicating that the continuation is clinically~~
 34 ~~necessary for the health and safety of the residents.~~

1 ~~A printed copy of the applicable laws or evidence-based research must be provided~~
2 ~~upon request.~~