Sept. 25, 2020

The Honorable James Frank, Chair
House Committee on Human Services
PO Box 2910
Austin, TX 78768

Submitted via email to Courtney DeBower, assistant committee clerk:
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Chairman Frank and Members of the Texas House Human Services Committee:

The Texas Medical Association, representing more than 53,000 Texas physicians and medical students, appreciates the opportunity to submit comments on the charge to this committee regarding the impacts of COVID-19 on long-term care facilities. As of the most recent data on Sept. 7, 2020, published by the Texas Health and Human Services Commission (HHSC),[1] more than 40,000 total cases of COVID-19 have been confirmed among residents and employees of nursing and assisted living facilities. Out of which, over 4,000 Texas residents in these facilities have lost their lives.

The novel coronavirus has swept through the state, threatening our most vulnerable populations, and long-term care facilities strictly closed their doors for visitors in order to lower the risk of exposure, prevent further spread of the virus, and ultimately protect the loved ones housed within. As the science has shown, the greater the level of community transmission, the more likely patients, visitors, health care workers, and others may contract and spread the disease in the facilities within that community. Physicians understand that limiting the number of visitors to only those who are considered essential for the patient's care not only protects the health care workers and patients in the facility, but also protects the visitors themselves from potentially being exposed to the virus during their visit.

However, outside of infection control, Texas physicians recognize the mental, emotional, spiritual, and other health needs of the patient that may be unmet with strict "no visitation" policies. Such emergency rules were published as the COVID-19 pandemic was escalating in Texas. But as we consider how to proceed with visitation in long-term care facilities throughout the duration of the pandemic and in future disasters, TMA worked with the Texas Hospital Association, Texas Health Care Association, Leading Age of Texas, and other stakeholder groups, to develop principles related to visitation for end-of-life and seriously ill patients. TMA ascribes to the following principles for care in our state as we continue to grapple with the reality of COVID-19.

Basic Principles Related to End-of-Life and Serious Illness Care Visitation

1. As the epidemic evolves, we need to retain flexibility as we balance the social, emotional, and spiritual needs of end-of-life, seriously ill, and chronically critically ill patients (and their family

[1] Texas Health and Human Services, https://hhs.texas.gov/services/health/coronavirus-covid-19

members) with well-functioning infection control of long-term care facilities. We recognize it can be difficult for facilities to adjust policies quickly or on an ongoing basis. We also recognize that the "new normal" we are currently living through may last years, meaning any set of rules may change as the disease and its treatment changes.

2. These principles must be balanced against the reality of having adequate personal protective equipment (PPE) and availability of rapid point-of-care testing for anyone entering a facility. Based upon facility access and circumstances, some facilities within the same community may or may not be able to accommodate visitation.

3. Any decision should have the support and clearance of facility infection control leadership and take into account applicable rules and regulations. Considerations may include interim visitation policies such as having external visits or meetings outside the facility to better accommodate physical distancing. As we open facilities for nonessential surgeries, we hope to improve public confidence in the safety of being present in a facility. The more treatment can be normalized at least for non-COVID-19 patients, including those at the end-of-life, the better.

4. For purposes of these recommendations, we adopt the following definitions:

   - **End-of-life in-person visitation** is understood to meet one or both of the following clinical criteria:

     - In-person visitation for the purpose of discussing or determining serious illness goals of care or advance care planning, in which decisions regarding the end of life may be made (including, but not limited to, decisions about maintenance or withdrawal of life-sustaining treatments, attempted cardiopulmonary resuscitation, or an advance directive under Chapter 166 of the Texas Health and Safety Code), and/or;

     - In-person visitation when death is expected in the near future by one or more responsible physicians or advance practice professionals during the facility stay with or without maintenance of life-sustaining treatments.

     In either of these situations, daily visitation should be considered only if other criteria can be met (such as availability of PPE).

   - **Serious illness** is an illness where the physician would not be surprised if the patient died within the next year. This is defined as "surprise question positive" and predicts about a 50% one-year mortality. This could be helpful for hospitalized patients with various end-stage organ failures and cancer leading to prolonged stays.

   - **Chronic critical illness** is a condition where a patient is expected to remain in the intensive care unit more than one week.

5. There should be a provision for visitation by children of seriously ill adults, in accordance with applicable requirements.

6. Other considerations regarding policies in long-term care facilities include:

- Visitors must comply with required policies related to PPE. If PPE is not available, or a visitor refuses compliance, then policies should prohibit the visit.
- Policy development should consider that nursing managers need flexibility to restrict visitation related to staffing. For example, assisting a visitor with donning and doffing full PPE is an extra time load on a nurse.
- Policies should consider registration of all visitors to COVID-19 patients and sharing registration records with local health departments in the event of disease spread.
- Facilities should have the option to require a signed waiver of liability by a visitor.
- For visits to COVID-19 patients longer than an hour, visitors should consider self-quarantining for 14 days from the date of their last visit.

7. Ethically, long-term acute care, skilled nursing facilities, assisted-living facilities, and other facilities housing older Texans all should treat the individuals in these various facilities similarly. Thus, as standards evolve for visiting patients in acute facilities, the same should occur in other facilities where those individuals reside.

As the House Human Services Committee deliberates on the best way to protect the comprehensive health of long-term care facility residents, TMA wants to highlight the delicate balance necessary to reduce risk to residents from the disease, but also to allow for compassionate and supportive visitation by their loved ones. TMA applauds both the Governor and the Texas Legislature for prioritizing the well being of our elderly and vulnerable long-term care residents.

Thank you for the continued opportunity for Texas physicians to advocate for our patients. Should you have any questions, please contact Troy Alexander, director, TMA Legislative Affairs, at troy.alexander@texmed.org; or Christina Ly, director, public health, at christina.ly@texmed.org. TMA's mailing address is 401 W. 15th St., Austin, TX 78701.

Sincerely,

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