



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
February 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Harrison  
Subject: Adopt a Resolution in Support of the California State Legislature Introducing and Passing a California Resident-Designated Support Person Act

RECOMMENDATION

Adopt a resolution in support of the California State Legislature introducing and passing a Resident-Designated Support Person Act.

Send copies of the resolution and letters to State Senator Skinner, Assemblymembers Wicks and Bonta.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The COVID-19 pandemic has had a devastating impact on residents of long-term care facilities. In addition to sickness and death from COVID-19 infections, residents suffered incalculable mental and physical health losses due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons, who often provide life-saving and other services to their loved ones.

It is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, medical, financial, social and physical support. Therefore, it is in the public interest for the California Legislature to immediately introduce legislation that allows residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity during health emergencies such as the COVID-19 pandemic.

This Resolution and the accompanying letters to members of the state legislature call for urgent introduction and passage of such legislation.

BACKGROUND

For the past two years of the COVID-19 pandemic, residents of long-term care facilities and their family members faced the unimaginable hardship and loss: the virus took the lives of over 13,000 nursing home and assisted living facility residents and staff in California. As stated by the California for Nursing Home Reform (CANHR) advocacy

organization, the virus was not the only threat to such residents: “[u]nable to visit residents, family members watched their loved ones deteriorate from isolation.”

Throughout the pandemic and especially during the various surges of the virus, public health officials ordered health emergency visitation restrictions without appropriately weighing the potential harm to residents from critical supportive services which may include, but are not limited to, emotional, mental, social and physical support that are often best provided by friends and family.

Support persons with access to in-person contact enjoy, among other things, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decision-making assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents. Recognition of the support role played by designated friends and family should not be seen as a substitute for consistent, ongoing care from facility staff, but rather part of the broader web of wholistic care.

Fortunately, the CANHR organization has drafted a “Resident-Designated Support Persons Act” that would allow long term care facility resident or resident representatives<sup>1</sup> to designate up to two individuals to provide in-person, on-site, support for a resident during state and local public health emergencies. Subject only to denial by the resident or their representative, the designated support person would have the right to enter the resident’s dwelling at any time and provide private support as needed in an unscheduled manner and without limits to the duration or frequency of their visits. Facilities would also allow individual residents to have at least one of their designated support persons physically present at any time.

A resident’s right to visitation with designated support persons would also include the right to leave the facility on outings, with or without accompaniment by the designated support persons, so long as reasonable infection control precautions are taken. Residents who exercise this right to outings may not be required to quarantine or isolate upon their return to the facility unless there is a known exposure to a contagious infection.

Critically, under the propose legislation, facilities may require designated support persons to adhere to the same, but not greater, infection control protocols required of care staff during a public health emergency, and facilities are required to provide personal protective equipment and any other mandated resources such as infection testing and relevant infection control training to designated support persons at no cost to the resident or designated support person.

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<sup>1</sup> An individual who has authority to act on behalf of the resident, including but not limited to, a conservator, guardian, person authorized as agent in the resident's advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident to act as a representative, or other surrogate decisionmaker designated consistent with statutory and case law.

The Act is written to take effect immediately.

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for the Clerk to send the letter to the specified elected officials.

ENVIRONMENTAL SUSTAINABILITY

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Resolution
2. Letters
3. Draft Legislation

RESOLUTION NO. ##,###-N.S.

RESOLUTION IN SUPPORT OF THE CALIFORNIA STATE LEGISLATURE  
INTRODUCING AND PASSING A CALIFORNIA RESIDENT-DESIGNATED SUPPORT  
PERSON ACT

Whereas, the COVID-19 pandemic has had a devastating impact on residents of long-term care facilities; and

Whereas, in addition to sickness and death from COVID-19 infections, residents suffered incalculable mental and physical health losses due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons, who often provide life-saving and other services to their loved ones; and

Whereas, it is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, medical, financial, social and physical support; and

Whereas, support persons with access to in-person contact bring residents, among other things, medical decision-making support, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decision-making assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents; and

Whereas, the California for Nursing Home Reform advocacy organization has drafted the Resident-Designated Support Persons Act, which would allow long term care facility resident or resident representatives to designate up to two individuals to provide in-person, on-site, support for a resident during state and local public health emergencies; and

Whereas, it is in the public interest for the California Legislature to immediately introduce and pass legislation that allows residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity during health emergencies such as the COVID-19 pandemic.

NOW, THEREFORE BE IT RESOLVED, the City Council of Berkeley expresses its support for the California Legislature immediately introducing and passing the Resident-Designated Support Persons Act.

BE IT FURTHER RESOLVED that copies of this Resolution and letters will be sent to State Senator Skinner and Assemblymembers Wicks and Bonta.

The Honorable State Senator Nancy Skinner  
Capitol Office, 1021 O Street, Suite 8630  
Sacramento, CA 95814

**Re: In Support of the California State Legislature Introducing and Passing a California Resident-Designated Support Person Act**

Dear Senator Skinner:

The Berkeley City Council conveys its urgent support for the California State Legislature introducing and passing a California Resident-Designated Support Person Act.

The COVID-19 pandemic has had a devastating impact on residents of long-term care facilities. In addition to sickness and death from COVID-19 infections, residents suffered incalculable loss due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons, who often provide life-saving and other services to their loved ones.

It is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, social and physical support.

Support persons with access to in-person contact bring residents, among other things, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decision-making assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents. Recognition of the support role played by designated friends and family should not be seen as a substitute for consistent, ongoing care from facility staff, but rather part of the broader web of wholistic care.

Therefore, it is in the public interest for the California Legislature to immediately introduce and pass legislation that allows residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity during health emergencies such as the COVID-19 pandemic.

For these reasons, we urge your support such for such legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Assemblymember Buffy Wicks  
Capitol Office, 1021 O Street, Suite 4240  
P.O. Box 942849, Sacramento, CA 94249-0015

**Re: In Support of the California State Legislature Introducing and Passing a California Resident-Designated Support Person Act**

Dear Honorable Assemblymember Wicks:

The Berkeley City Council conveys its urgent support for the California State Legislature introducing and passing a California Resident-Designated Support Person Act.

The COVID-19 pandemic has had a devastating impact on residents of long-term care facilities. In addition to sickness and death from COVID-19 infections, residents suffered incalculable loss due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons, who often provide life-saving and other services to their loved ones.

It is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, social and physical support.

Support persons with access to in-person contact bring residents, among other things, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decision-making assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents. Recognition of the support role played by designated friends and family should not be seen as a substitute for consistent, ongoing care from facility staff, but rather part of the broader web of wholistic care.

Therefore, it is in the public interest for the California Legislature to immediately introduce and pass legislation that allows residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity during health emergencies such as the COVID-19 pandemic.

For these reasons, we urge your support such for such legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Assemblymember Mia Bonta  
Capitol Office, 1021 O Street, Suite 5620  
P.O. Box 942849, Sacramento, CA 94249-0018

**Re: In Support of the California State Legislature Introducing and Passing a California Resident-Designated Support Person Act**

Dear Honorable Assemblymember Bonta:

The Berkeley City Council conveys its urgent support for the California State Legislature introducing and passing a California Resident-Designated Support Person Act.

The COVID-19 pandemic has had a devastating impact on residents of long-term care facilities. In addition to sickness and death from COVID-19 infections, residents suffered incalculable loss due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons, who often provide life-saving and other services to their loved ones.

It is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, social and physical support.

Support persons with access to in-person contact bring residents, among other things, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decision-making assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents. Recognition of the support role played by designated friends and family should not be seen as a substitute for consistent, ongoing care from facility staff, but rather part of the broader web of wholistic care.

Therefore, it is in the public interest for the California Legislature to immediately introduce and pass legislation that allows residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity during health emergencies such as the COVID-19 pandemic.

For these reasons, we urge your support such for such legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

SECTION 1. The Legislature finds and declares all of the following:

(a) The COVID-19 pandemic has had a devastating impact on residents of long term care facilities. In addition to sickness and death due to COVID-19 infections, residents suffered incalculable loss due to draconian visitation restrictions that separated residents from their families, friends, and essential support persons.

(b) It is essential, at all times, for individuals residing in long-term care facilities to have access to family members and friends who provide critical supportive services which may include, but are not limited to, emotional, mental, social and physical support. The Legislature affirms that a resident having physical access to family members or friends who provide support is necessary to mitigating a decline in the resident's physical, mental, and emotional wellbeing. Therefore, when a public health emergency precipitates government-ordered visitation restrictions, we deem it necessary to allow residents to have immediate and unscheduled physical access to designated support persons without restriction on time, frequency, physical contact, or proximity.

(c) Support persons with access to in-person contact provide, among other things, companionship, psycho-social support, cognitive stimulation, communication assistance, assistance with daily living tasks such as eating, dressing and hygiene support, meaningful connection, relational continuity, decisionmaking assistance, transportation, physical activities, and fulfill other personal needs for long term care facility residents.

(d) While designated support persons provide essential support to long term care residents, their access should not be seen as a substitute for consistent, ongoing care from facility staff.

SECTION 2. Chapter 2.47 (commencing with Section 1439.70) is added to Division 2 of the Health and Safety Code, to read:

#### CHAPTER 2.47. Resident-Designated Support Persons Act

1439.70. For the purposes of this chapter, the following definitions shall apply:

(a) "Designated Support Persons" are individuals designated by a resident or resident representative to provide in-person, on-site, support for a resident.

(b) "Long-term care facility" or "facility" means facilities listed in Section 1418 of this code and subdivision (b) of Section 9701 of the Welfare and Institutions Code.

(c) "Long-term care facility staff" or "facility staff" means all individuals employed by or contracted directly with the facility who provide care to residents.

(d) "Public health emergency" - A public health emergency is a natural disaster, an outbreak of an infectious disease, bioterrorist attack, or other significant or catastrophic event that triggers a state or local government order to restrict residents' visitation rights in a long-term care home.

(e) "Resident" means a resident or patient of a long-term care facility.



(f) "Resident representative" means an individual who has authority to act on behalf of the resident, including but not limited to, a conservator, guardian, person authorized as agent in the resident's advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident to act as a representative, or other surrogate decisionmaker designated consistent with statutory and case law.

1439.71.

(a) Each long-term care resident shall have the right to in-person, on-site access to a minimum of up to two (2) designated support persons during any public health emergency in which residents' visitation rights are curtailed by a state or local order. Subject only to denial by the resident or their representative, the designated support person shall have the right to enter the resident's dwelling at any time and provide private support as needed in an unscheduled manner and without limits to the duration or frequency of their visits. Facilities shall allow individual residents to have at least one (1) of their designated support persons physically present at any time.

(b) A resident's right to visitation with designated support persons includes the right to leave the facility on outings, with or without accompaniment by the designated support persons, so long as reasonable infection control precautions are taken. Residents who exercise this right to outings may not be required to quarantine or isolate upon their return to the facility unless there is a known exposure to a contagious infection. Residents returning from an outing may not be required to practice stricter infection control precautions than those required of staff when they enter the facility.

(c) Residents or their representatives have the right to designate support persons immediately upon admission to a facility and anytime thereafter. Residents or their representatives shall have the right to modify their designations at any time.

(d) Selecting or modifying designated support persons shall in no way limit a resident's right to other types of visitation accommodations available during a public health emergency. This may include, but are not limited to, expansive end-of-life or compassionate care visits, socially-distanced visits, virtual visits, or telephonic visits.

1439.72.

(a) Facilities may require designated support persons to adhere to the same, but not greater, infection control protocols required of care staff during a public health emergency. Facilities are required to provide personal protective equipment and any other mandated resources such as infection testing and relevant infection control training to designated support persons at no cost to the resident or designated support person.

(b) Facilities must provide infection control protocols required of care staff, designated support persons, and other visitors to the residents, resident representatives, and their designated support persons in writing and in their primary language.

(c) Any changes in infection control protocols shall be communicated, reasonably in advance, to the residents, resident representatives, and their designated support persons in writing and in their primary language.

(d) Facilities may not require designated support persons to adhere to infection control protocols that have not been communicated as set forth in sections (b) and (c).

1439.73. Any waiver of the rights specified in this Act shall be deemed contrary to public policy and shall be void and unenforceable.

1439.74. This Chapter may not be suspended, overridden, or modified by an Executive Order, Public Health Emergency, Department of Public Health order, county or city rules, or local public health order.

1439.75. A violation of this Chapter shall be treated as a violation under Chapter 2 (commencing with Section 1250), Chapter 2.4 (commencing with Section 1417), or Chapter 3.2 (commencing with Section 1569). A violation shall constitute a class B violation, as defined in subdivision (e) of Section 1424, for long-term care health facilities, or grounds for a civil penalty as defined in subdivision (a) of Section 1569.49, for residential care facilities for the elderly.

SECTION 3. Section 1569.318 is added to the Health and Safety Code, to read:

1569.319. Every residential care facility for the elderly shall abide by the provisions of the Resident-Designated Support Persons Act (Chapter 2.47 (commencing with Section 1439.70)).

SECTION 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect the visitation rights of residents of long term care facilities and their ability to receive essential support from designated support persons during the COVID-19 state of emergency, it is necessary for this act to take effect immediately.