

No Visitors Allowed: Potential Legal Ramifications of Restricted Visitors Policies In the Midst of COVID-19

21 Apr 2020

The novel Coronavirus, COVID-19, has wreaked havoc on the nation and has had far-reaching effects across the globe. The trail of destruction left in its wake will no doubt have lasting implications on multiple industries for the foreseeable future and none has felt the impact more than the healthcare industry. Doctors, nurses, healthcare professionals, and non-medical related staff remain on the frontlines battling to contain the virus and treat sick patients, even when faced with challenges such as shortage of medical supplies, hospital beds, and protective gear.^[1] Hospitals find themselves in the unique position of having to maintain the status quo in light of the aforementioned challenges, while also taking action to protect their employees and comply with ever changing state and federal laws regarding COVID-19. A rather devastating but unavoidable reality borne of this is the implementation of strict visitors' policies.^[2] Operating under the guise of compliance and deterrence of the spread of COVID-19, many if not all hospitals have implemented no visitors' policies, with limited exceptions for certain critically ill patients (usually for those "actively dying," in hospice care, or "end of life"^[3]), hospitalized children, or women in labor^[4].

There is a level of frustration associated with the implementation of restricted visitors' policies, even when there is an appreciation and understanding of their necessity amid this pandemic. The frustration, confusion, and outrage has arisen as a result of the lack of a designated authority to explain the policy or the exceptions and, even then, there is often no contact information available for that authority. This situation makes it increasingly more difficult for potential visitors to determine whether a loved one falls within an exception to the often-newly implemented visitors' policies. Additional issues involve incorrect interpretation and application of the applicable authority regarding COVID-19, inconsistent communication of the policies by hospital staff, and a general lack of empathy regarding the effect of the policies.

PATIENTS RIGHT TO VISITATION

Although certainly justifiable amid a pandemic, the effects of restricted visitation policies on the families, friends, and loved ones of hospitalized patients' is no less devastating. The crippling pain associated with being unable to be with a loved one while they are hospitalized can be unbearable, particularly since visitation is a right mandated by law. Pursuant to the Code of Federal Regulations, visitation rights are guaranteed to hospital patients.^[5]

Additionally, both Maryland and Virginia have codified Patients' Bill of Rights for hospital patients.^[6] Maryland explicitly recognizes a patient's right to visitation, while Virginia does not. As such, denial of these rights can raise complicated legal questions for those affected.

CONTRACTUAL CLAIMS

Breach of contract claims in the District of Columbia, Maryland, and Virginia ("DMV") require 1) the existence of a contract between the parties, 2) an obligation or duty arising out of that contract, 3) breach of that duty or obligation, and 4) damages sustained by the non-breaching party.^[7]

Prior to and upon admission to a hospital, whether under emergency circumstances or otherwise, patients may be required to sign an admission agreement, which, among other things, may outline the patients' rights regarding treatment, financial obligations to the hospital, and any visitation policies. Claimants have filed suit based on hospital

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

admissions agreements to enforce financial obligations of a patient to the hospital^[8], arbitration provisions^[9], quality of care provisions^[10], and forum selection clauses.^[11] Consequently, a hospital admissions agreement could also potentially be used as a mechanism for enforcing patient visitation rights. To the extent a hospital admissions agreement contains clauses which allow for and/or guarantee patients' visitation rights, this may potentially be used as a basis for a breach of contract claim if those rights are refused or denied. By contrast however, the admissions agreement may also contain clauses which allow for the hospital to retain the right to prevent and/or restrict visitation in the event of an emergency or other medically necessary circumstances.

INJUNCTIVE RELIEF

Additionally, to enforce their mandated visitation rights, the affected person(s) may pursue certain types of injunctive relief remedies. One such remedy is a temporary injunction against the hospital to prevent the enforcement of the restricted visitation policies. The DMV Courts all employ a four factor test when assessing whether or not to grant a motion for a temporary injunction. This test includes: 1) likelihood of success on the merits, 2) irreparable harm in the absence of temporary relief, 3) balance of equities in the movant's favor, and 4) that the grant of the injunction will be in the public interest.^[12] Importantly, a temporary injunction is a drastic remedy, and will typically only be granted where there does not exist an adequate remedy at law to address the movant's injury. To compound the issue, many of the DMV Courts are temporarily closed as a result of the COVID-19 pandemic – which can make pursuing timely injunctive relief more difficult.

EMOTIONAL DISTRESS TORTS

In the longer term, individuals impacted by visitation restrictions could potentially pursue claims of emotional distress, including, but not limited to, negligent infliction of emotional distress and intentional/reckless infliction of emotional distress. The DMV Courts vary in their recognition of emotional distress torts and the factors utilized to assess their viability.^[13] Generally, a claim for intentional infliction of emotional distress requires a showing of intentional or reckless conduct that is outrageous and results in severe emotional distress to the claimant.^[14] Given that these restricted visitors' policies have been implemented as a result of a pandemic, establishing a claim for intentional infliction of emotional distress may prove difficult in these circumstances. Notwithstanding this, individuals may also pursue a claim for negligent infliction of emotional distress, which requires a less heightened standard.^[15] It should be noted, however, that courts in Maryland and Virginia do not recognize negligent infliction of emotional distress as an independent cause of action absent some accompanying physical harm to a person or property.^[16]

VIABILITY OF CLAIMS

There are a litany of issues associated with an individual's pursuit of relief under any of the causes of action cited above.^[17] Certainly, with respect to the visitation rights set forth under federal and state regulations, it is unclear as to whether said regulations create a cause of action for private individuals against hospitals.^{[18][19]} Breach of contract claims may raise a number of concerns as well, especially regarding enforceability if the patient was admitted under emergency circumstances and was unable to sign the admissions agreement themselves. Furthermore, and as noted above, injunctive relief is a drastic remedy only awarded when there is no adequate remedy at law. Given the court closures implemented as a result of the pandemic, it may be difficult to obtain immediate injunctive relief even if a strong case can be made for an injunction. With respect to emotional distress torts, they are typically difficult to establish as stand-alone causes of action—indeed certain types are not recognized as independent claims by certain DMV courts. Impacted individuals would likely have to include some other cause of action to accompany any emotional distress-type claims. Lastly and perhaps most importantly, [states and the federal government have produced a wave of executive action and legislation](#), both proposed and enacted, to provide certain immunity protections for liability to healthcare professionals, facilities, and volunteers providing treatment to individuals in the midst of this pandemic.^[20]

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

Notwithstanding the above, it is important to be aware of the potential legal ramifications associated with restricted visitors' policies, the potential causes of action and legal actions that could be pursued by individuals impacted by such policies, and the proactive steps that could be taken to protect against liability.

[1] *Shortage of personal protective equipment health workers worldwide*, World Health Organization (March 3, 2020), <https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide>; *FAQs on Shortages of Surgical Masks and Gowns*, U.S. Food & Drug Administration (April 9, 2020), <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/faqs-shortages-surgical-masks-and-gowns>.

[2] Katie Hafner, 'A Heart-Wrenching Thing': Hospital Bans on Visits Devastate Families, *The New York Times* (March 29, 2020), <https://www.nytimes.com/2020/03/29/health/coronavirus-hospital-visit-ban.html>

[3] Restricted visitors' policies typically have remained silent with respect to defining these terms, making it frustrating and difficult for potential visitors to gain clarity regarding whether their loved one(s) would fall within an exception.

[4] Adrienne Dunn, *Fact check: Are coronavirus patients dying alone in hospitals?*, *USA Today* (April 9, 2020), <https://www.usatoday.com/story/news/factcheck/2020/04/09/fact-check-coronavirus-patients-dying-alone-hospitals/5114282002/>.

[5] 42 C.F.R. § 482.13(h).

[6] Md. Code Ann., Health-Gen. § 19-342; Va. Code Ann. § 37.2-400

[7] *Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015); *Kumar v. Dhanda*, 198 Md. App. 337, 345, 17 A.3d 744, 749 (2011), *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 363, 36 A.3d 399, 416 (2012) (noting that as a threshold matter, Maryland Courts determine whether a contractual relationship existed between the parties); *Navar, Inc. v. Fed. Bus. Council*, 291 Va. 338, 344, 784 S.E.2d 296, 299 (2016).

[8] *Coconino Cty. v. Fund Administrators Ass'n, Inc.*, 149 Ariz. 427, 430, 719 P.2d 693, 696 (Ct. App. 1986) (holding hospital admission form signed by patient's legal guardian established right of hospital to sue patient or legal guardian for services rendered).

[9] *Estate of Bankston v. CLC of Biloxi, LLC*, 240 So. 3d 456, 457 (Miss. Ct. App. 2017) (holding arbitration provision in admission form unenforceable where patient's wife lacked authority to sign admission form on his behalf).

[10] *MacRae v. HCR Manor Care Servs.*, No. SACV140715DOCRNBX, 2014 WL 12588464, at *4 (C.D. Cal. Oct. 30, 2014) (holding provisions regarding adequate staffing and level of care in Resident Bill of Rights included in the Admission form was actionable representation).

[11] *Pub. Adm'r Bronx Cty. v. Montefiore Med. Ctr.*, 93 A.D.3d 620, 621, 941 N.Y.S.2d 104, 105 (1st Dep't. 2012) (holding choice of law provision in hospital admissions agreement enforceable).

[12] *In re Estate of Reilly*, 933 A.2d 830, 834-35 (D.C. 2007); *State v. Falcon*, 451 Md. 138, 157, 152 A.3d 687, 698 (2017); *Wings, L.L.C. v. Capitol Leather, LLC*, 88 Va. Cir. 83 (Fairfax Cnty. 2014).

[13] *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1260 (D.C. 2016), *as amended* (Dec. 13, 2018) (setting forth the elements for a claim of intentional infliction of emotional distress in the District of Columbia); *Sibley v. St. Albans Sch.*,

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

134 A.3d 789, 797 (D.C. App. 2016)(setting forth the elements for a claim of negligent infliction of emotional distress in the District of Columbia); *Lindenmuth v. McCreer*, 233 Md. App. 343, 368, 165 A.3d 544, 559 (2017) (setting forth the elements for a claim of intentional infliction of emotional distress in Maryland); *Supervalu, Inc. v. Johnson*, 276 Va. 356, 369, 666 S.E.2d 335, 343 (2008) (setting forth the elements for a claim of intentional infliction of emotional distress in Virginia).

[14] See *id.*

[15] See *Sibley*, 134 A.3d 789.

[16] *Awah v. Barwood, Inc.*, No. 1676, SEPT.TERM,2016, 2018 WL 4183451, at *4 (Md. Ct. Spec. App. Aug. 31, 2018); *Minga ex rel. Minga v. Phoenix-N-Peace Adult Care Residence, Inc.*, 85 Va. Cir. 219 (Sussex Cnty. 2012).

[17] The above-mentioned list is by no means exhaustive, but rather illustrative of potential causes of action that may be pursued.

[18] A recent decision in New Jersey suggests that federal regulations do not. See *Qualantone v. Newton Med. Ctr.-Atl. Health Sys., Inc.*, No. A-5005-14T3, 2016 WL 7176939, at *3 (N.J. Super. Ct. App. Div. Dec. 9, 2016). Similarly, Texas Courts appear to adhere to the same reasoning. See *Hinojosa v. Perez*, 214 F. Supp. 2d 703, 705 (S.D. Tex. 2002) (holding that Public Health federal regulation does not create a private right of action for violation of its terms). This issue has yet to be discussed/addressed by the DMV Courts.

[19] But see *Fager v. STRAIGHT Inc.*, 28 Va. Cir. 272 (Fairfax Cnty. 1992)(holding that facts demonstrating violation of patients' rights statute did support private cause of action but could support independent cause of action); *Hurley v. Allied Chem. Corp.*, 164 W. Va. 268, 281, 262 S.E.2d 757, 765 (1980)(holding violation of West Virginia patients' rights statute created private cause of action); *Mahoney v. Lensink*, 213 Conn. 548, 558, 569 A.2d 518, 524 (1990)(holding violation of patients' rights statute created direct cause of action).

[20] Christopher P. Ferragamo and Annette P. Rolain, *National Survey of COVID-19 Medical Malpractice Immunity Legislation (as of April 15, 2020)*, JacksCamp Blog (April 16, 2020), <https://www.jackscamp.com/national-survey-of-covid-19-medical-malpractice-immunity-legislation-as-of-april-15-2020/>

No Visitors Allowed: Potential Legal Ramifications of Restricted Visitors Policies In the Midst of COVID-19

21 Apr 2020

The novel Coronavirus, COVID-19, has wreaked havoc on the nation and has had far-reaching effects across the globe. The trail of destruction left in its wake will no doubt have lasting implications on multiple industries for the foreseeable future and none has felt the impact more than the healthcare industry. Doctors, nurses, healthcare professionals, and non-medical related staff remain on the frontlines battling to contain the virus and treat sick patients, even when faced

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

with challenges such as shortage of medical supplies, hospital beds, and protective gear.^[1] Hospitals find themselves in the unique position of having to maintain the status quo in light of the aforementioned challenges, while also taking action to protect their employees and comply with ever changing state and federal laws regarding COVID-19. A rather devastating but unavoidable reality borne of this is the implementation of strict visitors' policies.^[2] Operating under the guise of compliance and deterrence of the spread of COVID-19, many if not all hospitals have implemented no visitors' policies, with limited exceptions for certain critically ill patients (usually for those "actively dying," in hospice care, or "end of life"^[3]), hospitalized children, or women in labor^[4].

There is a level of frustration associated with the implementation of restricted visitors' policies, even when there is an appreciation and understanding of their necessity amid this pandemic. The frustration, confusion, and outrage has arisen as a result of the lack of a designated authority to explain the policy or the exceptions and, even then, there is often no contact information available for that authority. This situation makes it increasingly more difficult for potential visitors to determine whether a loved one falls within an exception to the often-newly implemented visitors' policies. Additional issues involve incorrect interpretation and application of the applicable authority regarding COVID-19, inconsistent communication of the policies by hospital staff, and a general lack of empathy regarding the effect of the policies.

PATIENTS RIGHT TO VISITATION

Although certainly justifiable amid a pandemic, the effects of restricted visitation policies on the families, friends, and loved ones of hospitalized patients' is no less devastating. The crippling pain associated with being unable to be with a loved one while they are hospitalized can be unbearable, particularly since visitation is a right mandated by law. Pursuant to the Code of Federal Regulations, visitation rights are guaranteed to hospital patients.^[5]

Additionally, both Maryland and Virginia have codified Patients' Bill of Rights for hospital patients.^[6] Maryland explicitly recognizes a patient's right to visitation, while Virginia does not. As such, denial of these rights can raise complicated legal questions for those affected.

CONTRACTUAL CLAIMS

Breach of contract claims in the District of Columbia, Maryland, and Virginia ("DMV") require 1) the existence of a contract between the parties, 2) an obligation or duty arising out of that contract, 3) breach of that duty or obligation, and 4) damages sustained by the non-breaching party.^[7]

Prior to and upon admission to a hospital, whether under emergency circumstances or otherwise, patients may be required to sign an admission agreement, which, among other things, may outline the patients' rights regarding treatment, financial obligations to the hospital, and any visitation policies. Claimants have filed suit based on hospital admissions agreements to enforce financial obligations of a patient to the hospital^[8], arbitration provisions^[9], quality of care provisions^[10], and forum selection clauses.^[11] Consequently, a hospital admissions agreement could also potentially be used as a mechanism for enforcing patient visitation rights. To the extent a hospital admissions agreement contains clauses which allow for and/or guarantee patients' visitation rights, this may potentially be used as a basis for a breach of contract claim if those rights are refused or denied. By contrast however, the admissions agreement may also contain clauses which allow for the hospital to retain the right to prevent and/or restrict visitation in the event of an emergency or other medically necessary circumstances.

INJUNCTIVE RELIEF

Additionally, to enforce their mandated visitation rights, the affected person(s) may pursue certain types of injunctive

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

relief remedies. One such remedy is a temporary injunction against the hospital to prevent the enforcement of the restricted visitation policies. The DMV Courts all employ a four factor test when assessing whether or not to grant a motion for a temporary injunction. This test includes: 1) likelihood of success on the merits, 2) irreparable harm in the absence of temporary relief, 3) balance of equities in the movant's favor, and 4) that the grant of the injunction will be in the public interest.^[12] Importantly, a temporary injunction is a drastic remedy, and will typically only be granted where there does not exist an adequate remedy at law to address the movant's injury. To compound the issue, many of the DMV Courts are temporarily closed as a result of the COVID-19 pandemic – which can make pursuing timely injunctive relief more difficult.

EMOTIONAL DISTRESS TORTS

In the longer term, individuals impacted by visitation restrictions could potentially pursue claims of emotional distress, including, but not limited to, negligent infliction of emotional distress and intentional/reckless infliction of emotional distress. The DMV Courts vary in their recognition of emotional distress torts and the factors utilized to assess their viability.^[13] Generally, a claim for intentional infliction of emotional distress requires a showing of intentional or reckless conduct that is outrageous and results in severe emotional distress to the claimant.^[14] Given that these restricted visitors' policies have been implemented as a result of a pandemic, establishing a claim for intentional infliction of emotional distress may prove difficult in these circumstances. Notwithstanding this, individuals may also pursue a claim for negligent infliction of emotional distress, which requires a less heightened standard.^[15] It should be noted, however, that courts in Maryland and Virginia do not recognize negligent infliction of emotional distress as an independent cause of action absent some accompanying physical harm to a person or property.^[16]

VIABILITY OF CLAIMS

There are a litany of issues associated with an individual's pursuit of relief under any of the causes of action cited above.^[17] Certainly, with respect to the visitation rights set forth under federal and state regulations, it is unclear as to whether said regulations create a cause of action for private individuals against hospitals.^{[18][19]} Breach of contract claims may raise a number of concerns as well, especially regarding enforceability if the patient was admitted under emergency circumstances and was unable to sign the admissions agreement themselves. Furthermore, and as noted above, injunctive relief is a drastic remedy only awarded when there is no adequate remedy at law. Given the court closures implemented as a result of the pandemic, it may be difficult to obtain immediate injunctive relief even if a strong case can be made for an injunction. With respect to emotional distress torts, they are typically difficult to establish as stand-alone causes of action—indeed certain types are not recognized as independent claims by certain DMV courts. Impacted individuals would likely have to include some other cause of action to accompany any emotional distress-type claims. Lastly and perhaps most importantly, [states and the federal government have produced a wave of executive action and legislation](#), both proposed and enacted, to provide certain immunity protections for liability to healthcare professionals, facilities, and volunteers providing treatment to individuals in the midst of this pandemic.^[20] Notwithstanding the above, it is important to be aware of the potential legal ramifications associated with restricted visitors' policies, the potential causes of action and legal actions that could be pursued by individuals impacted by such policies, and the proactive steps that could be taken to protect against liability.

^[1] *Shortage of personal protective equipment health workers worldwide*, World Health Organization (March 3, 2020), <https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide>; *FAQs on Shortages of Surgical Masks and Gowns*, U.S. Food & Drug Administration (April 9, 2020), <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/faqs-shortages-surgical-masks-and-gowns>.

^[2] Katie Hafner, 'A Heart-Wrenching Thing': Hospital Bans on Visits Devastate Families, *The New York Times* (March

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

29, 2020), <https://www.nytimes.com/2020/03/29/health/coronavirus-hospital-visit-ban.html>

[3] Restricted visitors' policies typically have remained silent with respect to defining these terms, making it frustrating and difficult for potential visitors to gain clarity regarding whether their loved one(s) would fall within an exception.

[4] Adrienne Dunn, *Fact check: Are coronavirus patients dying alone in hospitals?*, USA Today (April 9, 2020), <https://www.usatoday.com/story/news/factcheck/2020/04/09/fact-check-coronavirus-patients-dying-alone-hospitals/5114282002/>.

[5] 42 C.F.R. § 482.13(h).

[6] Md. Code Ann., Health-Gen. § 19-342; Va. Code Ann. § 37.2-400

[7] *Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015); *Kumar v. Dhanda*, 198 Md. App. 337, 345, 17 A.3d 744, 749 (2011), *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 363, 36 A.3d 399, 416 (2012) (noting that as a threshold matter, Maryland Courts determine whether a contractual relationship existed between the parties); *Navar, Inc. v. Fed. Bus. Council*, 291 Va. 338, 344, 784 S.E.2d 296, 299 (2016).

[8] *Coconino Cty. v. Fund Administrators Ass'n, Inc.*, 149 Ariz. 427, 430, 719 P.2d 693, 696 (Ct. App. 1986) (holding hospital admission form signed by patient's legal guardian established right of hospital to sue patient or legal guardian for services rendered).

[9] *Estate of Bankston v. CLC of Biloxi, LLC*, 240 So. 3d 456, 457 (Miss. Ct. App. 2017) (holding arbitration provision in admission form unenforceable where patient's wife lacked authority to sign admission form on his behalf).

[10] *MacRae v. HCR Manor Care Servs.*, No. SACV140715DOCRNBX, 2014 WL 12588464, at *4 (C.D. Cal. Oct. 30, 2014) (holding provisions regarding adequate staffing and level of care in Resident Bill of Rights included in the Admission form was actionable representation).

[11] *Pub. Adm'r Bronx Cty. v. Montefiore Med. Ctr.*, 93 A.D.3d 620, 621, 941 N.Y.S.2d 104, 105 (1st Dep't. 2012) (holding choice of law provision in hospital admissions agreement enforceable).

[12] *In re Estate of Reilly*, 933 A.2d 830, 834-35 (D.C. 2007); *State v. Falcon*, 451 Md. 138, 157, 152 A.3d 687, 698 (2017); *Wings, L.L.C. v. Capitol Leather, LLC*, 88 Va. Cir. 83 (Fairfax Cnty. 2014).

[13] *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1260 (D.C. 2016), *as amended* (Dec. 13, 2018) (setting forth the elements for a claim of intentional infliction of emotional distress in the District of Columbia); *Sibley v. St. Albans Sch.*, 134 A.3d 789, 797 (D.C. App. 2016) (setting forth the elements for a claim of negligent infliction of emotional distress in the District of Columbia); *Lindenmuth v. McCreer*, 233 Md. App. 343, 368, 165 A.3d 544, 559 (2017) (setting forth the elements for a claim of intentional infliction of emotional distress in Maryland); *Supervalu, Inc. v. Johnson*, 276 Va. 356, 369, 666 S.E.2d 335, 343 (2008) (setting forth the elements for a claim of intentional infliction of emotional distress in Virginia).

[14] *See id.*

[15] *See Sibley*, 134 A.3d 789.

[16] *Awah v. Barwood, Inc.*, No. 1676, SEPT.TERM,2016, 2018 WL 4183451, at *4 (Md. Ct. Spec. App. Aug. 31, 2018);

(CONTINUED)

NO VISITORS ALLOWED: POTENTIAL LEGAL RAMIFICATIONS OF RESTRICTED VISITORS POLICIES IN THE MIDST OF COVID-19

Minga ex rel. Minga v. Phoenix-N-Peace Adult Care Residence, Inc., 85 Va. Cir. 219 (Sussex Cnty. 2012).

[17] The above-mentioned list is by no means exhaustive, but rather illustrative of potential causes of action that may be pursued.

[18] A recent decision in New Jersey suggests that federal regulations do not. See *Qualantone v. Newton Med. Ctr.-Atl. Health Sys., Inc.*, No. A-5005-14T3, 2016 WL 7176939, at *3 (N.J. Super. Ct. App. Div. Dec. 9, 2016). Similarly, Texas Courts appear to adhere to the same reasoning. See *Hinojosa v. Perez*, 214 F. Supp. 2d 703, 705 (S.D. Tex. 2002) (holding that Public Health federal regulation does not create a private right of action for violation of its terms). This issue has yet to be discussed/addressed by the DMV Courts.

[19] But see *Fager v. STRAIGHT Inc.*, 28 Va. Cir. 272 (Fairfax Cnty. 1992)(holding that facts demonstrating violation of patients' rights statute did support private cause of action but could support independent cause of action); *Hurley v. Allied Chem. Corp.*, 164 W. Va. 268, 281, 262 S.E.2d 757, 765 (1980)(holding violation of West Virginia patients' rights statute created private cause of action); *Mahoney v. Lensink*, 213 Conn. 548, 558, 569 A.2d 518, 524 (1990)(holding violation of patients' rights statute created direct cause of action).

[20] Christopher P. Ferragamo and Annette P. Rolain, *National Survey of COVID-19 Medical Malpractice Immunity Legislation (as of April 15, 2020)*, JacksCamp Blog (April 16, 2020), <https://www.jackscamp.com/national-survey-of-covid-19-medical-malpractice-immunity-legislation-as-of-april-15-2020/>

TAGGED: Injunctive Relief, COVID-19, restricted visitors policies, Emotional Distress, Right to Visitation