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**Testimony of Dennis Hetzel, President & Executive Director  
Ohio News Media Association  
House Bill 8 – Records Exemption | October 24<sup>th</sup>, 2017**

Chairman Uecker, Vice Chair Wilson, Ranking Minority Member Thomas and other members, thank you for this opportunity to speak again to the committee about our concerns with House Bill 8. I again am speaking on behalf of the Ohio Association of Broadcasters as well as the Ohio News Media Association. My earlier testimony went into considerable detail on why our organizations believe this bill is not good public policy, so I will not restate that here other than to say the need for HB8 is unsupported by factual evidence or even anecdotal concerns sufficient to overcome the strong presumption of openness in our public records law. It also will set a distressing precedent that undermines settled law that initial police incident reports, such as reports of traffic accidents, should be open.

Also since we testified, an amendment that we believe is confusing, unnecessary and overly broad has been added regarding concerns about the privacy of medical claims information. There are no examples of the perceived problem being an issue, and our legal analysis is that existing protections of confidential medical information are more than adequate. However, we respect that the bill may go forward. The parental concerns are understandable related to the release of information about their children. We also understand the concerns of the interested parties on the HIPAA matter and have had positive dialogue in that area. Today we are sharing the amendment suggestions that we have offered. I will not read the detail but just highlight our proposals in my comments. We urge the Committee to delay consideration of House Bill 8 to give consideration to these amendments, which we believe are constructive and responsive.

**A. Redaction of names in school-bus accident reports**

Current language:

<u>(ff) The name, address, contact information, or other</u>	135
<u>personal information of an individual who is less than eighteen</u>	136
<u>years of age that is included in any record related to a traffic</u>	137
<u>accident involving a school vehicle in which the individual was</u>	138
<u>an occupant at the time of the accident.</u>	139

**Option 1 – Redact accident reports place on the Internet**

Under our proposed change, the only way to gain access to the minors’ names would be to physically view the report. This would remove any realistic concern that a pedophile would gain access – and we note there are no documented instances of a pedophile ever doing this even though this information is available. It also would make obtaining this information for purposes of solicitation of legal or medical services far more difficult. Media inquiries also would be limited to only those most-serious incidents.

*Proposed Amendment:*

Insert the phrase “Internet posting of a” between “any” and “record” in Line 137. *(This section now reads: “... that is included in any Internet posting of any record related to ...”)*

## Option 2 – Provide a journalist exception

The ONMA’s testimony documents in detail why access to this information has an important and legitimate newsgathering purpose. Note that the definition of journalist in current law is an excellent definition that will not allow random people to claim access as journalists. This type of exemption is allowed in other parts of the Revised Code.

### Proposed Amendment:

Insert this sentence after “accident” on Line 139: This exemption does not apply to a journalist as defined in 149.43(B)(9)(c) of the Revised Code.\*

## B. “HIPAA” exemption language

If the Committee believes an amendment is necessary, a far-better place for such an amendment is in the existing exemption for medical records – the very first exemption in our open records law – than to add yet-another exemption to our open records law.

### Current definition of medical record in 149.43:

(3) "Medical record" means any document or combination of	158
documents, except births, deaths, and the fact of admission to	159
or discharge from a hospital, that pertains to the medical	160
history, diagnosis, prognosis, or medical condition of a patient	161
and that is generated and maintained in the process of medical	162
treatment.	163

### Proposed amendment

1. Completely delete the new “hh” exemption in the sub-bill (this follows Line 139 in the House-passed version.)
2. Amend the medical records definition at 149.43(A)(3) as follows by insertion of the phrase “specific personal identifying information in medical claims records” after “prognosis” and before “or” at Line 161 above. (The definition is at Lines 158-163 in the House-passed version.)

An alternative amendment also has been proposed by proponents that refines the new exemption “gg” in the sub bill. We believe our suggestion accomplishes the same result in a much-cleaner manner in the appropriate section. However, we agree that this language is an improvement over the current language in the sub bill, particularly because it clarifies intent and eliminates some of the sweeping language in the sub bill.

2 (gg) Protected health information, as defined in 45 C.F.R.  
3 160.103, that is in a claim for payment for a health care  
4 product, service, or procedure, as well as any ~~other~~ health  
5 ~~care claims data in another document that identifies, or could~~  
6 ~~be used to identify, reveals the identity of an individual who~~  
7 ~~is the subject of the claim data or could be used to reveal~~  
8 ~~that determine an individual's identity"~~

Thank you for your consideration. Again we urge you to delay a final vote so that you may consider these proposals. I would be happy to answer any questions that committee members may have.

\* (c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.