

Proponent Testimony for House Bill 770 (Richardson, Fraizer)

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December 3, 2020



OHIO COUNCIL
FOR HOME CARE & HOSPICE

Chairman Ginter, Vice Chair Swearingen, Ranking Member Howse, and Members of the House Aging and Long Term Care Committee, thank you for the opportunity to provide written testimony in support of HB 770 *Permitting Essential Caregivers to Enter Long-Term Care Facilities during COVID-19 (Richardson, Fraizer)*. My name is Joe Russell and I am the Executive Director of the Ohio Council for Home Care and Hospice (OCHCH). I apologize that I could not be in person for this important bill, but I have a Board meeting the same time as the hearing. Please excuse my absence.

OCHCH represents over 600 home care, hospice, and palliative care agencies across the State of Ohio. Our members care for a variety of individuals ranging from medically fragile children, those who wish to recover at home from elective surgeries, mental health and addiction services, older Ohioans that wish to age in place, and many more.

COVID-19 has presented an abundance of unforeseen circumstances that both home health and hospice agencies have had to navigate. While some issues have been successfully resolved, one issue that has yet to be resolved around the State of Ohio is access to patients that reside in a facility by health care providers who work outside the facility.

Almost from the very moment the Ohio Department of Health (ODH) issued directives restricting access to facilities, patients of skilled nursing facilities (SNF) and assisting living facilities (ALF) who received care through a home care agency or hospice program were prevented from using those providers. Every situation is different, but we know that some people died without getting an option for hospice care as required by federal law, while others were unable to receive their "last rights" before death.

OCHCH has heard stories from both providers and families alike such as:

"Employees will not be permitted to visit our patients unless (ALF/SNF) has a copy of the negative COVID testing. This testing has to be done weekly and they do not administer the COVID test to outside employees. We currently have 2 patients that we see there. One is seen monthly for medi-port flush. The other is one that was recently opened for nursing and PT (physical therapy)"

"(ALF) is not allowing hospice providers come into their facility. (ALF) will only allow telehealth visits even for the admission process"

"We have had a number of changes in designated hospices because they are only allowing "one hospice" in during COVID, even though the patients freely elected us. This is extremely frustrating. We had one facility tell the family they should use their hospice because their aides are allowed in the building and ours are not"

“Our speech therapist has had issues with staff not letting her in, even after management told us what door to use”

These are just a few experiences that we have heard as an association regarding the limitation and denied access to patients that reside in a facility. If the patient is not receiving their services from a home health and/or hospice provider, it begs the question who is providing those services? If the services are not being provided, is that patient going without care?

House Bill 770 is important because it establishes that patients have rights even during a pandemic. While the bill focuses on “caregivers” such as family members, we believe the bill should also include professional health care workers too. We understand the obligation that administrators have in protecting their patients, but that obligation cannot result in people dying alone without their loved one and without their last rights, etc. At the very least, these patients should have had the option to go home.

Nevertheless, despite clarifying guidance from the ODH, CMS, and various associations that essential workers *must* be allowed access to a facility to see their patients, this problem continues. While we recognize the importance of the risk of spread, especially in a facility based environment, it is important that these individuals continue to receive their care and their full hospice benefit.

The Centers for Medicare and Medicaid Services (CMS) has given the guidance that: *“current Health care workers who are not employees of the facility but provide direct care to the facility’s residents, such as hospice workers, Emergency Medical Services (EMS) personnel, dialysis technicians, laboratory technicians, radiology technicians, social workers, clergy etc., **must be permitted** to come into the facility as long as they are not subject to a work exclusion due to an exposure to COVID-19 or show signs or symptoms of COVID-19 after being screened.”*¹

Our agency members follow the proper protocols, and screening requirements before entering a facility. They also ensure to wear the proper personal protective equipment (PPE) to keep themselves, other staff, and patients safe. Some of our agencies are required to test their staff weekly to continue to care for their patients within a facility; however, those tests can be over \$100 per test. While we understand that testing is crucial, it has proved to be a struggle with the additional costs incurred.

CMS recently put out guidance further expanding and clarifying their previous guidance that, *““Facility staff” (for skilled nursing facilities) includes employees, consultants, **contractors**, volunteers, and caregivers who provide care and services to residents on behalf of the facility, and students in the facility’s nurse aide training programs or from affiliated academic institutions.”*² Clearly, the intent of state and federal directives is to allow caretakers and professional into the facilities to provide care, not further restrict.

¹ <https://www.cms.gov/files/document/qso-20-39-nh.pdf>

² <https://www.cms.gov/files/document/qso-20-38-nh.pdf>

The Ohio Council for Home Care and Hospice (OCHCH) supports HB770, which would permit essential caregivers to enter long-term care facilities to provide care and support to a resident in a facility, and would establish criteria for those visits during the COVID-19 state of emergency. However, we have the following suggested changes we believe would strengthen the bill:

1. *New Language in Section 1(A) to include a definition for “essential health care workers”*—a definition of “essential health care workers” should be included to specify that the bill covers health care workers who are not employees of the facility. This definition should include ORC definitions for home health and hospice workers.
2. *New Language in Section 1(H) to prohibit facilities from denying access to “essential health care workers”*—language should state “The long-term care facility shall not deny access of essential health care workers designated to serve a resident of the long-term care facility, so long as they pass the screening requirements in the same manner as facility staff.”
3. *New language in Section 1(I) to enforce language in Section 1(H)*—language should state “Any long-term care facility that prohibits entry of essential health care workers as specified in Section 1(H) of this bill may be reported to the Ohio Department of Health for investigation.”

The changes we’re asking to be included would NOT change existing policy from ODH or CMS on access to facilities. These changes would simply codify the state’s position to further push-back against the restriction practice.

We commend Representative Richardson and Representative Fraizer for introducing this important piece of legislation. By codifying these requirements it could allow for our agencies to be granted access to a facility where they can continue to care for their patients, and ensure that individuals are receiving their hospice benefit are given their last rights.

If you have any questions, please do not hesitate to contact me at joe@ochch.org.