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Health and Human Services Subcommittee
House Bill 110
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Good afternoon, Chair Roemer, Ranking Member West, and members of the subcommittee. I am Pete Van Runkle from the Ohio Health Care Association. OHCA represents providers of assisted living, home care, hospice, intellectual and developmental disabilities, and skilled nursing services. We appreciate the opportunity to provide written testimony on one specific issue relating to the Department of Health's language proposals in House Bill 110 that is very concerning to our skilled nursing and assisted living members.

The Executive Budget contains a new, non-fiscal provision that greatly expands the authority of the Director of Health to issue orders against licensed skilled nursing facilities and residential care facilities (assisted living). Under current law, the main authority for Director's orders is to revoke the license to operate the facility, obviously a very stringent penalty. For SNFs, most other enforcement actions are under the aegis of the Centers for Medicare and Medicaid Services (CMS), which include terminating payment to the facility, fining the facility, cutting off new admissions, appointing temporary management, and other sanctions.

In addition, current Ohio law (ORC 3721.08) allows the Director of Health to go to court to take action against a SNF or assisted living community where dangerous conditions exist:

> [I]f, in the judgment of the director of health, real and present danger exists at any home, the director may petition the court of common pleas of the county in which the home is located for such injunctive relief as is necessary to close the home, transfer one or more occupants to other homes or other appropriate care settings, or otherwise eliminate the real and present danger. The court shall have the jurisdiction to grant such injunctive relief upon a showing that there is real and present danger.

This authority is very broad – closing the facility, moving out residents, or taking any other action to eliminate the danger – but it includes the check and balance of judicial involvement.

In HB 110, the Health Department seeks to expand upon this existing law by adding a new section 3721.081 that would authorize the Director of Health to do everything the existing

judicial remedy statute allows, but doing it through a Director's order without any checks or balances.

The proposed statute would make the order effective immediately, without prior notice or opportunity to be heard and without any advance third-party review. If the facility failed to comply with the order, it would be subject to a mandatory fine of up to $250,000. The only appeal from the order would be after the fact, and the statute explicitly prohibits a reviewing court from lifting the order pending review.

This is classic overreach. We understand that the Administration is concerned about a couple of situations in which they felt that despite the impressive array of sanctions and penalties – including license revocation and judicial intervention – they could not act effectively to address the problems they perceived. OHCA is certainly willing to work with the Administration to determine if there is a solution that is narrowly tailored to their concerns without trampling on due process and opening providers to potential arbitrary and capricious governmental action with severe negative consequences.

We would respectfully suggest that proposed section 3721.081 is not that solution and should be removed from the bill.

Thank you, and I would be happy to address any questions you may have about this issue.