

Sub. H.B. 33
As Passed by the Senate
DOHCD36

_____ moved to amend as follows:

In line 111 of the title, after "3721.026," insert "3721.13,
3721.16, 3721.161, 3721.162" 1
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In line 844, after "3721.026," insert "3721.13, 3721.16,
3721.161, 3721.162" 3
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After line 65546, insert: 5

"**Sec. 3721.13.** (A) The rights of residents of a home shall 6
include, but are not limited to, the following: 7

(1) The right to a safe and clean living environment pursuant 8
to the medicare and medicaid programs and applicable state laws 9
and rules adopted by the director of health; 10

(2) The right to be free from physical, verbal, mental, and 11
emotional abuse and to be treated at all times with courtesy, 12
respect, and full recognition of dignity and individuality; 13

(3) Upon admission and thereafter, the right to adequate and 14
appropriate medical treatment and nursing care and to other 15
ancillary services that comprise necessary and appropriate care 16
consistent with the program for which the resident contracted. 17
This care shall be provided without regard to considerations such 18
as race, color, religion, national origin, age, or source of 19

payment for care.	20
(4) The right to have all reasonable requests and inquiries responded to promptly;	21 22
(5) The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;	23 24
(6) The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care;	25 26 27
(7) The right, upon request, to be assigned, within the capacity of the home to make the assignment, to the staff physician of the resident's choice, and the right, in accordance with the rules and written policies and procedures of the home, to select as the attending physician a physician who is not on the staff of the home. If the cost of a physician's services is to be met under a federally supported program, the physician shall meet the federal laws and regulations governing such services.	28 29 30 31 32 33 34 35
(8) The right to participate in decisions that affect the resident's life, including the right to communicate with the physician and employees of the home in planning the resident's treatment or care and to obtain from the attending physician complete and current information concerning medical condition, prognosis, and treatment plan, in terms the resident can reasonably be expected to understand; the right of access to all information in the resident's medical record; and the right to give or withhold informed consent for treatment after the consequences of that choice have been carefully explained. When the attending physician finds that it is not medically advisable to give the information to the resident, the information shall be made available to the resident's sponsor on the resident's behalf, if the sponsor has a legal interest or is authorized by the	36 37 38 39 40 41 42 43 44 45 46 47 48 49

resident to receive the information. The home is not liable for a violation of this division if the violation is found to be the result of an act or omission on the part of a physician selected by the resident who is not otherwise affiliated with the home.

(9) The right to withhold payment for physician visitation if the physician did not visit the resident;

(10) The right to confidential treatment of personal and medical records, and the right to approve or refuse the release of these records to any individual outside the home, except in case of transfer to another home, hospital, or health care system, as required by law or rule, or as required by a third-party payment contract;

(11) The right to privacy during medical examination or treatment and in the care of personal or bodily needs;

(12) The right to refuse, without jeopardizing access to appropriate medical care, to serve as a medical research subject;

(13) The right to be free from physical or chemical restraints or prolonged isolation except to the minimum extent necessary to protect the resident from injury to self, others, or to property and except as authorized in writing by the attending physician for a specified and limited period of time and documented in the resident's medical record. Prior to authorizing the use of a physical or chemical restraint on any resident, the attending physician shall make a personal examination of the resident and an individualized determination of the need to use the restraint on that resident.

Physical or chemical restraints or isolation may be used in an emergency situation without authorization of the attending physician only to protect the resident from injury to self or

others. Use of the physical or chemical restraints or isolation 79
 shall not be continued for more than twelve hours after the onset 80
 of the emergency without personal examination and authorization by 81
 the attending physician. The attending physician or a staff 82
 physician may authorize continued use of physical or chemical 83
 restraints for a period not to exceed thirty days, and at the end 84
 of this period and any subsequent period may extend the 85
 authorization for an additional period of not more than thirty 86
 days. The use of physical or chemical restraints shall not be 87
 continued without a personal examination of the resident and the 88
 written authorization of the attending physician stating the 89
 reasons for continuing the restraint. 90

If physical or chemical restraints are used under this 91
 division, the home shall ensure that the restrained resident 92
 receives a proper diet. In no event shall physical or chemical 93
 restraints or isolation be used for punishment, incentive, or 94
 convenience. 95

(14) The right to the pharmacist of the resident's choice and 96
 the right to receive pharmaceutical supplies and services at 97
 reasonable prices not exceeding applicable and normally accepted 98
 prices for comparably packaged pharmaceutical supplies and 99
 services within the community; 100

(15) The right to exercise all civil rights, unless the 101
 resident has been adjudicated incompetent pursuant to Chapter 102
 2111. of the Revised Code and has not been restored to legal 103
 capacity, as well as the right to the cooperation of the home's 104
 administrator in making arrangements for the exercise of the right 105
 to vote; 106

(16) The right of access to opportunities that enable the 107
 resident, at the resident's own expense or at the expense of a 108

third-party payer, to achieve the resident's fullest potential, 109
including educational, vocational, social, recreational, and 110
habilitation programs; 111

(17) The right to consume a reasonable amount of alcoholic 112
beverages at the resident's own expense, unless not medically 113
advisable as documented in the resident's medical record by the 114
attending physician or unless contradictory to written admission 115
policies; 116

(18) The right to use tobacco at the resident's own expense 117
under the home's safety rules and under applicable laws and rules 118
of the state, unless not medically advisable as documented in the 119
resident's medical record by the attending physician or unless 120
contradictory to written admission policies; 121

(19) The right to retire and rise in accordance with the 122
resident's reasonable requests, if the resident does not disturb 123
others or the posted meal schedules and upon the home's request 124
remains in a supervised area, unless not medically advisable as 125
documented by the attending physician; 126

(20) The right to observe religious obligations and 127
participate in religious activities; the right to maintain 128
individual and cultural identity; and the right to meet with and 129
participate in activities of social and community groups at the 130
resident's or the group's initiative; 131

(21) The right upon reasonable request to private and 132
unrestricted communications with the resident's family, social 133
worker, and any other person, unless not medically advisable as 134
documented in the resident's medical record by the attending 135
physician, except that communications with public officials or 136
with the resident's attorney or physician shall not be restricted. 137
Private and unrestricted communications shall include, but are not 138

limited to, the right to:	139
(a) Receive, send, and mail sealed, unopened correspondence;	140
(b) Reasonable access to a telephone for private communications;	141 142
(c) Private visits at any reasonable hour.	143
(22) The right to assured privacy for visits by the spouse, or if both are residents of the same home, the right to share a room within the capacity of the home, unless not medically advisable as documented in the resident's medical record by the attending physician;	144 145 146 147 148
(23) The right upon reasonable request to have room doors closed and to have them not opened without knocking, except in the case of an emergency or unless not medically advisable as documented in the resident's medical record by the attending physician;	149 150 151 152 153
(24) The right to retain and use personal clothing and a reasonable amount of possessions, in a reasonably secure manner, unless to do so would infringe on the rights of other residents or would not be medically advisable as documented in the resident's medical record by the attending physician;	154 155 156 157 158
(25) The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the medicare or medicaid program. The basic rate shall not be changed unless thirty days' notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.	159 160 161 162 163 164 165 166
(26) The right of the resident and person paying for the care	167

to examine and receive a bill at least monthly for the resident's	168
care from the home that itemizes charges not included in the basic	169
rates;	170
(27)(a) The right to be free from financial exploitation;	171
(b) The right to manage the resident's own personal financial	172
affairs, or, if the resident has delegated this responsibility in	173
writing to the home, to receive upon written request at least a	174
quarterly accounting statement of financial transactions made on	175
the resident's behalf. The statement shall include:	176
(i) A complete record of all funds, personal property, or	177
possessions of a resident from any source whatsoever, that have	178
been deposited for safekeeping with the home for use by the	179
resident or the resident's sponsor;	180
(ii) A listing of all deposits and withdrawals transacted,	181
which shall be substantiated by receipts which shall be available	182
for inspection and copying by the resident or sponsor.	183
(28) The right of the resident to be allowed unrestricted	184
access to the resident's property on deposit at reasonable hours,	185
unless requests for access to property on deposit are so	186
persistent, continuous, and unreasonable that they constitute a	187
nuisance;	188
(29) The right to receive reasonable notice before the	189
resident's room or roommate is changed, including an explanation	190
of the reason for either change.	191
(30) The right not to be transferred or discharged from the	192
home unless the transfer is necessary because of one of the	193
following:	194
(a) The welfare and needs of the resident cannot be met in	195
the home.	196

(b) The resident's health has improved sufficiently so that the resident no longer needs the services provided by the home.	197 198
(c) The safety of individuals in the home is endangered.	199
(d) The health of individuals in the home would otherwise be endangered.	200 201
(e) The resident has failed, after reasonable and appropriate notice, to pay or to have the medicare or medicaid program pay on the resident's behalf, for the care provided by the home. A resident shall not be considered to have failed to have the resident's care paid for if the resident has applied for medicaid, unless both of the following are the case:	202 203 204 205 206 207
(i) The resident's application, or a substantially similar previous application, has been denied.	208 209
(ii) If the resident appealed the denial, the denial was upheld.	210 211
(f) The home's license has been revoked, the home is being closed pursuant to section 3721.08, sections 5165.60 to 5165.89, or section 5155.31 of the Revised Code, or the home otherwise ceases to operate.	212 213 214 215
(g) The resident is a recipient of medicaid, and the home's participation in the medicaid program is involuntarily terminated or denied.	216 217 218
(h) The resident is a beneficiary under the medicare program, and the home's participation in the medicare program is involuntarily terminated or denied.	219 220 221
(31) <u>The right not to be transferred or discharged from the home to a location that is incapable of meeting the resident's health care and safety needs.</u>	222 223 224

(32) The right not to be transferred or discharged from the home without adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or discharge from the home, including proper arrangements for medication, equipment, health care services, and other necessary services. 225
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(33) All rights provided under 42 C.F.R. 483.15 and 483.21 and any other transfer or discharge rights provided under federal law. 230
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(34) The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents. 233
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~~(32)~~(35) The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours. 243
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~~(33)~~(36) The right, if the resident has requested the care and services of a hospice care program, to choose a hospice care program licensed under Chapter 3712. of the Revised Code that best meets the resident's needs. 248
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(B) A sponsor may act on a resident's behalf to assure that the home does not deny the residents' rights under sections 3721.10 to 3721.17 of the Revised Code. 252
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(C) Any attempted waiver of the rights listed in division (A) 255
of this section is void. 256

Sec. 3721.16. For each resident of a home, ~~notice of all of~~ 257
the following apply with respect to a proposed transfer or 258
discharge ~~shall be in accordance with this section.~~ from the home: 259

(A)(1) The administrator of a home shall notify a resident in 260
writing, and the resident's sponsor in writing by certified mail, 261
return receipt requested, in advance of any proposed transfer or 262
discharge from the home. The administrator shall send a copy of 263
the notice to the state department of health. The notice shall be 264
provided at least thirty days in advance of the proposed transfer 265
or discharge, unless any of the following applies: 266

(a) The resident's health has improved sufficiently to allow 267
a more immediate discharge or transfer to a less skilled level of 268
care; 269

(b) The resident has resided in the home less than thirty 270
days; 271

(c) An emergency arises in which the safety of individuals in 272
the home is endangered; 273

(d) An emergency arises in which the health of individuals in 274
the home would otherwise be endangered; 275

(e) An emergency arises in which the resident's urgent 276
medical needs necessitate a more immediate transfer or discharge. 277

In any of the circumstances described in divisions (A)(1)(a) 278
to (e) of this section, the notice shall be provided as many days 279
in advance of the proposed transfer or discharge as is 280
practicable. 281

(2) The notice required under division (A)(1) of this section 282

shall include all of the following:	283
(a) The reasons for the proposed transfer or discharge;	284
(b) The proposed date the resident is to be transferred or discharged;	285 286
(c) Subject to division (A)(3) of this section, a proposed location to which the resident may relocate and a notice that the resident and resident's sponsor may choose another location to which the resident will relocate;	287 288 289 290
(d) Notice of the right of the resident and the resident's sponsor to an impartial hearing at the home on the proposed transfer or discharge, and of the manner in which and the time within which the resident or sponsor may request a hearing pursuant to section 3721.161 of the Revised Code;	291 292 293 294 295
(e) A statement that the resident will not be transferred or discharged before the date specified in the notice unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date;	296 297 298 299 300
(f) The address of the legal services office of the department of health;	301 302
(g) The name, address, and telephone number of a representative of the state long-term care ombudsman program and, if the resident or patient has a developmental disability or mental illness, the name, address, and telephone number of the Ohio protection and advocacy system.	303 304 305 306 307
(3) The proposed location to which a resident may relocate as specified pursuant to division (A)(2)(c) of this section in the proposed transfer or discharge notice shall be capable of meeting the resident's health-care and safety needs. The proposed location	308 309 310 311

for relocation need not have accepted the resident at the time the notice is issued to the resident and resident's sponsor. 312
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(B) No home shall transfer or discharge a resident before the date specified in the notice required by division (A) of this section unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree to an earlier date. 314
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(C) Transfer or discharge actions shall be documented in the resident's medical record by the home if there is a medical basis for the action. 319
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(D) A resident or resident's sponsor may challenge a transfer or discharge by requesting an impartial hearing pursuant to section 3721.161 of the Revised Code, unless the transfer or discharge is required because of one of the following reasons: 322
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(1) The home's license has been revoked under this chapter; 326

(2) The home is being closed pursuant to section 3721.08, sections 5165.60 to 5165.89, or section 5155.31 of the Revised Code; 327
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(3) The resident is a recipient of medicaid and the home's participation in the medicaid program has been involuntarily terminated or denied by the federal government; 330
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(4) The resident is a beneficiary under the medicare program and the home's certification under the medicare program has been involuntarily terminated or denied by the federal government. 333
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(E) If a resident is to be transferred or discharged pursuant to this section, the home ~~from which the resident is being transferred~~ proposing the transfer or discharged discharge shall provide the resident with adequate preparation prior to the transfer or discharge to ensure a safe and orderly transfer or 336
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discharge from the home, and the home or alternative setting to 341
 which the resident is to be transferred or discharged shall have 342
 accepted the resident for transfer or discharge. 343

(F) At the time of a transfer or discharge of a resident who 344
 is a recipient of medicaid from a home to a hospital or for 345
 therapeutic leave, the home shall provide notice in writing to the 346
 resident and in writing by certified mail, return receipt 347
 requested, to the resident's sponsor, specifying the number of 348
 days, if any, during which the resident will be permitted under 349
 the medicaid program to return and resume residence in the home 350
 and specifying the medicaid program's coverage of the days during 351
 which the resident is absent from the home. An individual who is 352
 absent from a home for more than the number of days specified in 353
 the notice and continues to require the services provided by the 354
 facility shall be given priority for the first available bed in a 355
 semi-private room. 356

Sec. 3721.161. (A) Not later than thirty days after the date 357
 a resident or the resident's sponsor receives under section 358
3721.16 of the Revised Code a notice of a proposed transfer or 359
 discharge, whichever date of receiving the notice is later, the 360
 resident or resident's sponsor may challenge the proposed transfer 361
 or discharge by submitting a written request for a hearing to the 362
 state department of health. On receiving the request, the 363
 department shall conduct a hearing in accordance with section 364
 3721.162 of the Revised Code to determine whether the proposed 365
 transfer or discharge complies with ~~division~~ divisions (A)(30) to 366
(33) of section 3721.13 and section 3721.16 of the Revised Code. 367

(B) Except in the circumstances described in divisions 368
 (A)(1)(a) to (e) of section 3721.16 of the Revised Code, if a 369
 resident or the resident's sponsor submits a written hearing 370

request not later than ten days after the date the resident or ~~the~~ 371
 resident's sponsor received notice of the proposed transfer or 372
 discharge, whichever date of receiving the notice is later, the 373
 home shall not transfer or discharge the resident unless the 374
 department determines after the hearing that the transfer or 375
 discharge complies with ~~division~~ divisions (A)(30) to (33) of 376
 section 3721.13 and section 3721.16 of the Revised Code or the 377
 department's determination to the contrary is reversed on appeal. 378

(C) If a resident or the resident's sponsor does not request 379
 a hearing pursuant to division (A) of this section, the home may 380
 transfer or discharge the resident on the date specified in the 381
 notice required by division (A) of section 3721.16 of the Revised 382
 Code or thereafter, unless the home and the resident or, if the 383
 resident is not competent to make a decision, the home and the 384
 resident's sponsor, agree to an earlier date. 385

(D) If ~~the~~ a resident or the resident's sponsor requests a 386
 hearing in writing pursuant to division (A) of this section and 387
 the home transfers or discharges the resident before the 388
 department issues a hearing decision, the home shall readmit the 389
 resident in the first available bed if the department determines 390
 after the hearing that the transfer or discharge does not comply 391
 with ~~division~~ divisions (A)(30) to (33) of section 3721.13 and 392
section 3721.16 of the Revised Code or the department's 393
 determination to the contrary is reversed on appeal. 394

Sec. 3721.162. (A) On receiving a request pursuant to section 395
 3721.161 of the Revised Code, the department of health shall 396
 conduct hearings under this section in accordance with 42 C.F.R. 397
 431, subpart E, to determine whether the proposed transfer or 398
 discharge of the resident from the home complies with ~~division~~ 399
divisions (A)(30) to (33) of section 3721.13 and section 3721.16 400

of the Revised Code. 401

(B) The department shall employ or contract with an attorney 402
to serve as hearing officer. The hearing officer shall conduct a 403
hearing in the home not later than ten days after the date the 404
department receives a request pursuant to section 3721.161 of the 405
Revised Code, unless the resident and the home or, if the resident 406
is not competent to make a decision, the resident's sponsor and 407
the home, agree otherwise. The hearing shall be recorded on 408
audiotape, but neither the recording nor a transcript of the 409
recording shall be part of the official record of the hearing. A 410
hearing conducted under this section is not subject to section 411
121.22 of the Revised Code. 412

(C) Unless the parties otherwise agree, the hearing officer 413
shall issue a decision within five days of the date the hearing 414
concludes. In all cases, a decision shall be issued not later than 415
thirty days after the department receives a request pursuant to 416
section 3721.161 of the Revised Code. The hearing officer's 417
decision shall be served on the resident or resident's sponsor and 418
the home by certified mail. The hearing officer's decision shall 419
be considered the final decision of the department. 420

(D) A resident, resident's sponsor, or home may appeal the 421
decision of the department to the court of common pleas pursuant 422
to section 119.12 of the Revised Code. The appeal shall be 423
governed by section 119.12 of the Revised Code, except for all of 424
the following: 425

(1) The resident, resident's sponsor, or home shall file the 426
appeal in the court of common pleas of the county in which the 427
home is located. 428

(2) The resident or resident's sponsor may apply to the court 429
for designation as an indigent and, if the court grants the 430

application, the resident or resident's sponsor shall not be 431
required to furnish the costs of the appeal. 432

(3) The appeal shall be filed with the department and the 433
court within thirty days after the hearing officer's decision is 434
served. The appealing party shall serve the opposing party a copy 435
of the notice of appeal by hand-delivery or certified mail, return 436
receipt requested. If the home is the appealing party, it shall 437
provide a copy of the notice of appeal to both the resident and 438
the resident's sponsor or attorney, if known. 439

(4) The department shall not file a transcript of the hearing 440
with the court unless the court orders it to do so. The court 441
shall issue such an order only if it finds that the parties are 442
unable to stipulate to the facts of the case and that the 443
transcript is essential to the determination of the appeal. If the 444
court orders the department to file the transcript, the department 445
shall do so not later than thirty days after the day the court 446
issues the order. 447

(E) The court shall not require an appellant to pay a bond as 448
a condition of issuing a stay pending its decision. 449

(F) The resident, resident's sponsor, home, or department may 450
commence a civil action in the court of common pleas of the county 451
in which the home is located to enforce the decision of the 452
department or the court. If the court finds that the resident or 453
home has not complied with the decision, it shall enjoin the 454
violation and order other appropriate relief, including attorney's 455
fees." 456

In line 124668, after "3721.026," insert "3721.13, 3721.16, 457
3721.161, 3721.162" 458

The motion was _____ agreed to.

SYNOPSIS

Long-term care facility discharges and transfers	459
R.C. 3721.13, 3721.16. 3721.161, and 3721.162	460
Restores House-added provisions removed by the Senate that:	461
Add to the Nursing Home Patients Bill of Rights the	462
following:	463
-The right not to be transferred or discharged to a location	464
that cannot meet the health or safety needs of the resident.	465
-The right not to be transferred or discharged without	466
adequate preparation in order to conduct a safe and orderly	467
transfer or discharge.	468
-All other rights regarding transfers or discharges provided	469
under federal law.	470
Require ODH in hearings regarding a notice of transfer or	471
discharge to determine if the proposed transfer or discharge	472
complies with the rights listed above and notification	473
requirements in existing law.	474