

**Testimony Before Senate Health Committee
House Bill 236**

December 3, 2024

Good morning, Chair Huffman, Vice-Chair Johnson, Ranking Member Antonio, and members of the committee. My name is Pete Van Runkle, and I am with the Ohio Health Care Association. Our organization represents more than 1,200 long-term services and supports providers, including licensed skilled nursing facilities, residential care facilities, and residential facilities for people with intellectual and developmental disabilities. All of these members are affected by House Bill 236.

We are not appearing as opponents to HB 236, but rather as interested parties offering suggested amendments that would make the legislation palatable to our members.

As you know from reviewing the bill and previous testimony, the primary intent of HB 236 is to ensure individuals in various health care settings can have someone with them at the time they pass away. The bill accomplishes this result – and more - by creating a new role in health care, the “advocate,” and by imbuing the advocate with rights to visit the individual, receive communications, and be involved in their health care that go far beyond the immediate end-of-life scenario. The advocate, with their various rights, could be present and involved from admission on.

In the world of our members who provide long-term services and supports, visitation, access, and involvement with patients and residents is nothing new. Those rights have been enshrined in the Ohio Revised Code for decades and to the extent that the facility is federally regulated, also in the Code of Federal Regulations. During the public health emergency, which became the springboard for HB 236, federal requirements for a period of time limited visitation in an effort to reduce transmission of COVID-19 to extremely vulnerable populations. Those restrictions went away long ago, leaving in place the individuals’ pre-existing statutory and regulatory rights.

In keeping with these facts, we are suggesting two amendments:

1. Clarify that when a person has a legally-authorized representative, such as a guardian, attorney in fact under a durable power of attorney for health care, or parent of a minor child, that representative is automatically the advocate. A health care facility cannot be placed in the position of having to mediate between two different people, both claiming

that they have the authority to make health care decisions for a patient or resident. This amendment would in no way alter the individual's pre-existing right to have other visitors or communicate with other people.

2. Clarify that for licensed skilled nursing facilities, residential care facilities, and residential facilities, the rights to visitation, communication, and health care decision-making and to receive notice of those rights upon admission are governed by the pre-existing statutes on point, specifically sections 3721.13 and 5123.62 of the Revised Code instead of HB 236. There is no gap for HB 236 to fill for these regulated facilities. Layering on an additional set of requirements will cause confusion and conflict as these providers attempt to deliver care and services.

A draft version of our suggested amendments is attached for the committee's review.

We appreciate the committee's attention to our concerns and welcome any follow-up questions at pvanrunkle@ohca.org or 614-361-5169.

**HB 236 Amendments
(As Passed by the House)**

In line 12, delete "An" and insert "The"; after "advocate" insert "shall be"

In line 13, delete "may include but is not limited to any of"

Delete lines 14 and 15

In line 16, delete "(b)" and insert "(a)"

In line 12, delete "(c)" and insert "(b)"

In line 21, delete "(d)" and insert "(c)"

Between lines 23 and 24, insert "(d) If a patient or resident does not have an advocate identified in division (A)(1)(a), (b), or (c) of this section, an individual designated in writing by the patient or resident. A patient or resident is not required to designate an advocate.

(e) If a patient or resident does not have an advocate identified in division (A)(1)(a), (b), or (c) of this section and cannot designate an advocate under division (A)(1)(d) of this section, the relative, friend, or other individual who is most actively involved in the resident's life at the congregate care setting."

In line 70, delete "of a patient's or resident's"; after "admission" insert "of a patient or resident described in division (A)(1)(d) of this section"

In line 81, after "(1)" insert "(a),"; delete "(d)" and insert "(e)"

In line 97, after "resident" insert "who has designated an advocate under division (A)(1)(d) of this section"

In line 106, delete "After an advocate has been designated, the" and insert "An"

In line 120, delete "After an advocate has been designated, all" and insert "All"

In line 122, delete "The" and insert "In the case of an advocate designated under division (A)(1)(d) of this section, the"

In line 124, delete ", except that," and insert ".""

Delete lines 125 through 130.

In line 151, after the period insert “In the case of a patient or resident of a congregate care setting described in division (A)(2)(a) or (f) of this section, access and communication shall be governed by section 3721.13 of the Revised Code. In the case of a patient or resident of a congregate care setting described in division (A)(2)(g) of this section, access and communication shall be governed by section 5123.62 of the Revised Code.”

In line 172, delete the first “the” and insert “an”; after “advocate” insert “appointed under division (A)(1)(d) of this section”

In line 281, after the period insert “A congregate care setting described in division (A)(2)(a) or (f) of this section may comply with division (B) of this section by providing notice of the rights established by section 3721.13 of the Revised Code. A congregate care setting described in division (A)(2)(g) of this section may comply with division (B) of this section by providing notice of the rights established by section 5123.62 of the Revised Code.”

Summary

1. Ensures that if a patient or resident has a guardian or durable power of attorney for health care, that person is automatically their advocate. This prevents conflicts between someone with legal authority and another person who is designated as the advocate. A person who does not have a guardian or DPOA could designate someone else as their advocate.
2. Specifies that for skilled nursing facilities, residential care facilities (assisted living), and IDD residential facilities, existing statutes creating residents’ rights, including rights to visitation and communication/advocacy, apply, along with provisions on notification of rights.