

134th General Assembly

Regular Session

2021-2022

S.B. No. 58

Senators Antonio, Brenner

Cosponsors: Senators Craig, Fedor, Maharath, Schaffer, Sykes, Thomas, Williams, Yuko

Written Testimony: As an Interested Party regarding S.B. 58 “Esther’s Law”

Submitted by: Samuel McCoy, Regional Long-term Care Ombudsman Program Director- (13 Ohio Counties)

The Regional Long-term Care Ombudsman Program serving Summit, Portage, Stark and Wayne counties as well as much of Southeastern Ohio, favors the passage of S.B. 58 believing that the presence of an electronic monitoring device in a resident room can have several positive outcomes.

In our experience as advocates, it is true that interactions between residents and caregivers can become strained. The pressures upon stressed caregivers to complete care-giving tasks can erupt into both verbal and physical encounters. When a monitoring device is installed, an undeniable account of the interaction exists. Arguably this is an extreme example, as thousands of residents receive care and have positive relationships with caregivers, nurses and others throughout the state each day.

Monitoring devices can promote improvements in care in circumstances where a resident in distress or in need of immediate intervention may be observed visually or audibly and help summoned. Just such a scenario is possible when the resident has a dementing illness and is incapable of using the facility’s call system. In short, we see benefits to openly permit the installation of these devices.

Our overall support comes tempered with a few concerns which may lead to rights-related improvements to the bill.

Sec.3721.61 (A) Subject to section 3721.62 of the Revised Code, a resident **OR** (my emphasis) the resident’s GUARDIAN may authorize the installation and use of an electronic monitoring device in the resident’s room in a long-term care facility.

The Regional Ombudsman Program recommends that the use of the term “Guardian” in the amended version be replaced with the original language using the term “Sponsor”. The term “guardian” used throughout this section is too limiting in that few residents have a court appointed guardian, but many have a recognized decision-maker such as a power of attorney, sponsor or other who have a recognized authority to make such decisions.

Furthermore, the Regional Ombudsman Program recommends that the following statement be included: “No person may authorize the installation of a monitoring device against the wishes of a resident with decision-making capacity.”

Supporting Rationale:

Any resident with capacity retains the right to make independent decisions which may be inconsistent with family members or others. This right to self determination includes the right to decide if a monitoring device is installed, or not. Adding this statement supports and recognized that basic right.

ORC 3721.13 (A)(8)

The rights of residents of a home shall include, but not limited to the following:

(8) The right to participate in decisions that affect the resident’s life, including the right to communicate with physician and employees of the home in planning the resident’s treatment and 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.

Regarding Prohibitions and Penalties:

R.C.3721.61, 3721.68 and 3721.99 (As Revised)

Prohibits the installation of a hidden electronic monitoring device in a resident’s room and imposes a \$100 fine for the first offense, and a \$500 fine for each subsequent offense.

The Regional Long term Care Ombudsman Program recommends that the prohibitions and penalties above be eliminated from the bill.

Regarding Access to audio or video recordings:

(B) No person other than the following shall intentionally view or listen to the images displayed or sounds recorded by an electronic monitoring device installed in a resident’s room:

- (1) the resident;
- (2) the resident’s ~~guardian~~ sponsor
- (3) Law enforcement personnel.”

The Regional Ombudsman Program recommends two changes: add (4) the Ohio Department of Health and (5) the Long-term Care Ombudsman Program and others with the approval of the resident or sponsor.

Section 3721.63 (E) A section stating that the facility is released from liability in any civil criminal action of administrative proceeding for a violation of the resident's right to privacy in connection with using the device.

The Regional Long-term Care Ombudsman Program recommends that the blanket release of a facility's liability in connection to the utilization of a recording device be removed from the bill.

Supporting Rationale:

The rights of any long-term care resident established by state or federal law can not be waived. The facility should remain responsible for ensuring that recorded information pertaining to residents remains secure.

**Federal Code of Regulations 42 CFR 483.10 Resident Rights
Privacy and confidentiality.**

and:

ORC 3721.13 (A) (21) the right for private and unrestricted communications

and:

ORC 3721.13 (A)(33)(C)

(33)(C) Any attempted waiver of the rights listed in division (A) of this section is void.

Thank you for your interest in this important issue and the consideration given my suggestions.

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