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Testimony before the Senate Committee on Health

Senator André Jacque
October 4, 2023

Madam Chair and Colleagues, thank you for the opportunity to testify as the author of Senate Bill 257, the *No Patient Left Alone Act*, which would protect patients' and residents' rights to visitors in a health care facility.

Scientific papers have shown that, despite the availability of virtual visits, restricting in-person visitors during the pandemic resulted in many negative impacts for patient health outcomes, including more pain and suffering and poor nutrition. In addition, patients suffered loneliness, depression, and anxiety. These same mental health issues also burdened family members unable to be with their loved ones. That separation bred uncertainty, causing health care providers to field more questions from families about the condition of their patients and left providers with a difficult dilemma of having to keep them apart.[i]

This bill addresses these problems by creating language specifically allowing patients in health care facilities to receive visitors, subject to COVID-19 infections protocols, and to have compassionate care visitation. Compassionate care is defined as in-person visitation between a resident and any individual the resident requests to relieve physical or mental distress.

This would include circumstances such as end-of-life situations, a struggle to adjust to a change in environment, making major medical decisions, grief support, assistance with eating and drinking, depression, labor and delivery, and pediatric patients.

The bill permits a health care facility to establish visitation policies to limit or restrict visitation under certain circumstances, directs the Department of Health Services to develop information material regarding health care facility visitation, and provides that patients may file complaints with appropriate state agencies and licensing boards for violation of the provisions of the bill.

Thank you for your consideration of Senate Bill 257. I'd be happy to answer any questions you may have.

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[i] Consequences of visiting restrictions during the COVID-19 pandemic: An integrative review; International Journal of Nursing Studies, Volume 121, September 2021, 104000

State of Wisconsin
Department of Health Services
Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Senate Committee on Health

FROM: HJ Waukau, Legislative Director

DATE: October 4, 2023

RE: Senate Bill 257 relating to: patients' and residents' rights to visitors in a health care facility, restricting visitation, and liability for the actions of visitors

The Wisconsin Department of Health Services (DHS) would like to thank the Committee for the opportunity to submit written testimony for information only on Senate Bill 257 (SB 257), which would make changes to how health care facilities allow patients to receive visitors subject to COVID-19 protocols, the number and types of people to be allowed to provide support for a patient and prohibiting a provider from requiring a support person to be present in order to execute specified health care orders. SB 257 would also specify that long-term care facilities grant residents compassionate care visits to alleviate a resident's physical or mental stress, subject to COVID-19 infection rates. Hospitals and hospices would also be required to allow patients to have daily in-person visitations, including clergy, at reasonable times. Regarding DHS, SB 257 requires that DHS develop informational materials regarding health care facility visitation to be presented to appropriate legislative committees. However, DHS would be prohibited from taking action against a health care facility for granting visitors access to the facility, or for the actions and omissions of those visitors. Complaints regarding the violation of the visitation provisions of SB 257 would however be able to be filed with DHS, and other specified boards for further investigation.

The patient visitation parameters put forth by SB 257 may yield some positive benefits for patients. Specifically, SB 257 may improve patient autonomy and support, improve emotional well-being, provide local and contextual flexibility, and ensure equal access to care, particularly for those with disabilities and in long-term care settings. As was witnessed during the pandemic, patients and residents in long-term care settings experienced an increased sense of isolation, anxiety, and depression. Not having normal access to the requisite social supports or interactions had a negative impact on many long-term care residents and their families. Many of these concerns were relayed to DHS during the COVID-19 pandemic by people with disabilities, older adults, and their families who were concerned that health care and long-term care facilities may have inhibited access to support individuals. As DHS continues to learn lessons from the COVID-19 pandemic, managing how to balance the needs of patients and residents against those of infection control, prevention, and safety will be an area of continued examination.

Aside from the potential patient benefits DHS has some significant concerns with SB 257. First, there are concerns about infection control and risk, especially during an event like a COVID-19 outbreak as characterized by SB 257. Allowing an increased number of visitors carries with it an increased level of risk for not only patients and residents, but staff and families as well. Second, SB 257 creates significant legal and liability concerns. As drafted, SB 257 creates a conflict between state law and federal

regulations against which health care facilities (hospitals, clinics, and long-term care residences) must adhere to as conditions of licensure and reimbursement. The bill also creates confusion regarding patient law and regulations, could promote litigation, needlessly exacerbate tensions, creates new avenues for conflict in already-stressful caregiving contexts, and limits provider accountability by prohibiting state agencies from taking action against facilities for visitor-related issues. Third, SB 257 may increase staff burden in facilities by requiring them to administer new visitation guidelines which may require additional staffing, resources, and training to ensure compliance—a situation which is already difficult enough to manage with current workforce shortages. Fourth, SB 257 creates the possibility for inconsistent and incomplete policies between health care facilities. The potential for providers to create unique visitation policies could lead to disparities in patient experiences and care quality thereby creating confusion and frustration for patients and families. Fifth, SB 257 provides unclear guidance to DHS regarding its enforcement role.

At the time of this written testimony there is also a proposed substitute amendment for consideration by the Committee. The substitute amendment makes several changes including permitting long-term care facilities and hospitals to comply with potentially more restrictive requirements from the Centers for Disease Control and Prevention, and Centers for Medicare and Medicaid Services (CMS), if applicable. Similar to the analysis above this creates confusion and conflict between state and federal rules and regulations, as many of the health care facilities in the state are required to follow federal regulations as a condition of licensure. The language as proposed in the substitute amendment would also create confusion for nursing home and assisted living providers, residents, their representatives, and families. Additionally, assisted living facilities are not under the jurisdiction of CMS making it difficult for assisted living facilities to fully understand CMS guidance and directives. Nursing homes and hospitals also already have many of the mentioned provisions in place due to existing federal requirements and conditions of participation. Further, the applicability parameters for the substitute amendment are broad and could be applied to a myriad of conditions such as Legionnaires disease, pneumonia, or sexually transmitted infections. Both health care facilities and the state have protocols in place for dealing with these types of outbreaks and new laws may be duplicative and unnecessary. Lastly, it is unclear if the list of conditions for when an essential visitor would be required to be allowed is exhaustive or permissive in its intent.

DHS thanks the Committee for the opportunity to provide written testimony for information only and offers itself as a resource for the Committee.

WALA
WISCONSIN ASSISTED LIVING ASSOCIATION

To: Senator Rachael Cabral-Guevara, Chair
Members of the Senate Committee on Health

From: Michael Pochowski, President & CEO

Date: Wednesday, October 4, 2023

Re: Senate Bill 257

On behalf of the Wisconsin Assisted Living Association (WALA) we are asking for a simple amendment to Senate Bill 257, legislation relating to visitation of a long-term care facility resident or hospital patient by an essential visitor or member of the clergy. Namely, that the federal Centers for Disease Control and Prevention (CDC) be included as an exception along with the federal Centers for Medicare and Medicaid Services (CMS) for long-term care facilities, as assisted living facilities are required to follow CDC guidance and not CMS guidance.

Please know we are asking for this amendment as it was not included in the Substitute Amendment filed on October 2, 2023 even though it was listed in the bill filed on May 2, 2023.

WALA supports the position that residents be able to designate an essential visitor to visit and provide support for a resident. Further, we appreciate that an exception is provided in SB 257 when the federal Centers for Medicare and Medicaid Services (CMS), a division of the U.S. Department of Health and Human Services (DHHS) issues more restrictive guidance, likely to occur in times of crisis.

However, CMS does not have regulatory authority over assisted living facilities. In fact, unlike other provider types identified in SB 257, assisted living facilities are not Medicaid or Medicare certified. Medicaid coverage of assisted living varies by state. Further, Medicare does not cover the cost of assisted living facilities or any other long-term residential care.

Federal guidance for assisted living facilities on infection control of communicable diseases (such as influenza, COVID-19, Viral Hepatitis, Tuberculosis, etc.), including visitations, traditionally comes from DHHS-CDC (not DHHS-CMS).

Therefore, WALA is asking that an additional division of DHHS be identified specifically for assisted living facilities - the federal Centers for Disease Control and Prevention (CDC) - as this agency division has and is more likely to provide such guidance for assisted living facilities.

Thank you for your consideration in this matter. If you have any questions, please feel free to contact me or our lobbyist, Forbes McIntosh.

The Wisconsin Assisted Living Association is a statewide association for Wisconsin's assisted living industry. WALA represents over 1,500 Wisconsin's assisted living facilities and their residents. WALA promotes standards of quality care and provides valuable member services to organizations providing assisted living services. WALA leads the profession with advocacy, educational programs, professional products and tools, and other member quality resources.

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WHCA / WiCAL

Wisconsin Health Care Association Wisconsin Center for Assisted Living

October 4, 2023

Senate Bill 257: Informational Testimony

On behalf of the more than 400 member providers of the Wisconsin Health Care Association/Wisconsin Center for Assisted Living (WHCA/WiCAL), including skilled nursing facilities and assisted living centers across the state, we would like to thank Chairwoman Cabral-Guevara and members of the Senate Committee on Health for the opportunity to submit testimony on SB 257, legislation related to creating a framework to allow essential visitors in health care facilities during an outbreak of a communicable disease in which the facility limits visitation.

The COVID-19 pandemic presented new challenges to long-term care providers who were learning new information and receiving new directives from local, state, and federal governments on nearly a daily basis. The top priority for providers during this time was to take every necessary step, with the information that was available at the time, to protect the health and wellbeing of their frail and elderly residents who were particularly vulnerable to serious health risks related to COVID-19.

While the focus of providers was keeping the virus out of their buildings and away from staff and residents as much as possible, providers were also cognizant of the potential for negative health outcomes for residents if their psychosocial needs were not met. Providers got creative and embraced technology and other useful alternatives to in-person indoor visitation. Specific to COVID-19, knowing what providers know now, providers are eager to maintain open visitation whenever possible. When outbreaks do occur, providers seek the least restrictive means to limit visitation to ensure residents are able to see who they wish to see, both to promote residents' rights and to benefit residents' mental and emotional wellbeing.

The substitute amendment to SB 257 goes a long way to addressing providers' concerns with the bill. Importantly, the substitute amendment allows for providers to follow federal guidance if that guidance and the statutory language in this bill conflict. This is important so that providers are not subject to unnecessary penalties or fines if there were to be conflicting state and federal guidelines for visitation.

Specific to the section related to Assisted Living Facility and Nursing Home Visitation, our organization seeks additional clarity with this bill. We would like to clarify current ambiguity in the administration of the essential visitor requirement. We also believe that several sections in the LTC portion of the bill could benefit from adopting language found in the hospital portion of the bill, including considerations for when it might be medically necessary to deny entry to contagious visitors, as well as additional language regarding when facilities can make appropriate compliance decisions if state and federal visitation requirements are in conflict. We also believe the current list of reasons for compassionate care visits will be difficult to navigate due to subjective standards, and we would like to see more objective criteria. Finally, we believe the bill would benefit by ensuring protections for providers who comply with the essential visitor requirement.

WHCA/WiCAL looks forward to working with the bill author to address remaining questions and concerns.

For more information, contact:

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