

SB 239

This bill addresses residents of residential care facilities and of adult foster homes. The bill defines "Individually based limitation" to include "a limitation on the resident's right to . . . (B) Access food, freely and with support, at any time" and "(C) Have visitors of the resident's choosing at any time" (p. 3, ll. 35, 38-39; p. 6, ll. 15, 18-19). The bulk of the bill involves authorizing third parties to consent to such an "individually based limitation," i.e., to refuse (among other things) food and visitors to the resident, when the resident is personally incapable of giving or refusing consent. The only limitation on such third party's decision is that party's "good faith understanding of the resident's best interest and of what the resident would have wanted if the resident were capable of making the determination" (p. 1, ll. 24-25; p. 4, ll. 20-21). The bill also would broadly immunize any such third party (p. 3, ll. 4-6; p. 5, ll. 29-31):

(8)(a) A legal representative is not subject to civil or criminal liability or in violation of any professional oath, affirmation or standard of care for any determination the legal representative made in good faith under subsection (2) of this section.

Hence, liability would only attach if it could be proven that the third party acted in bad faith. This, in turn, could only happen if someone raised an objection, pursued it with the relevant authorities, and found someone willing to follow up with the matter.

Finally, it bears mention that the third party decisionmaker need not be a spouse or family member or even someone designated by a spouse or family member. If no such person is "available or can reasonably be located" (p. 1, ll. 26-27; p. 4, ll. 22-23), the facility can create a committee to make the decision.

I hope these analyses are helpful to you.

For life, in Christ,



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Enclosure