

**Testimony Before the Senate Judiciary Committee
Senate Bill 308**

May 13, 2020

Good morning, Chair Eklund, Ranking Member Thomas, and members of the committee. My name is Pete Van Runkle. I am Executive Director of the Ohio Health Care Association (OHCA). OHCA is the state's largest organization representing long-term services and supports providers. We count in our membership more than 1,100 assisted living communities, providers serving people with intellectual and developmental disabilities, home care and hospice agencies, and skilled nursing centers.

OHCA is a strong proponent of Senate Bill 308. We wish to thank Senator Matt Huffman for his work on this important legislation that would protect our members, other health care providers, and other Ohio businesses from liability for actions they take in response to the unprecedented crisis of COVID-19.

OHCA members provide essential services that were not suspended during COVID-19. Their patients and residents and the people they serve in their homes did not go away when the virus struck. Our heroic health care workers were there and continue to be there to provide the care these individuals need despite COVID-19. We continue to serve people with COVID-19 and to protect those we serve from contracting the virus to the best of our ability and despite many impediments.

COVID-19 is indeed unprecedented. The rapidity of the spread, the high prevalence of negative outcomes among the elderly and people with underlying medical conditions, and the fact that the virus is transmitted by people who show no outward symptoms have made our members' jobs extremely difficult. This has been compounded immensely by shortages of critical supplies such as personal protective equipment and test kits, massive additional costs and revenue losses, ongoing difficulties retaining staff because of quarantines and other COVID-related factors, and ever-changing guidelines for care delivery.

Most importantly, it is impossible under the current state of the science to protect completely against COVID-19 or to guarantee that it will not spread, particularly in the congregate care settings that make up the bulk of OHCA's membership. This reality underscores most clearly that the ordinary principles of liability are not appropriate.

Unfortunately, people who are older and who have chronic medical conditions are much more susceptible to negative outcomes, including death, from COVID-19. The statistics in Ohio and elsewhere bear this out. These negative outcomes will lead to lawsuits, despite the incredible unpredictability of COVID-19, the fact that there is no way to prevent transmission completely, and the malleable and ever-changing care guidelines.

OHCA supports Senate Bill 308 because the legislation protects our members from liability for their good-faith acts in providing care during an incredibly difficult and constantly changing environment, but still allows recovery if a provider engages in intentional, egregious conduct.

Senate Bill 308 builds on existing Ohio law that provides limited immunity to certain health care providers in disasters and emergencies. Unfortunately, the existing statutes are a patchwork of coverage developed over time and are specific to certain circumstances and types of providers, while excluding other, similar situations. Senate Bill 308 would fill these gaps by establishing a comprehensive liability protection coverage system that includes all health care providers and applies to COVID-19 and to any other declared emergency or disaster.

Many other states across the country either already had liability protection in their state codes or provided protection with the advent of COVID-19 through legislation or executive order. Like all of those states, Senate Bill 308 recognizes for Ohio that the unprecedented nature of COVID-19 and the different circumstances brought about by emergencies and disasters require higher standards than for garden-variety negligence or medical malpractice.

We understand the committee is adopting a substitute version of Senate Bill 308 that will make some needed adjustments to the language to ensure full coverage of relevant health care providers and to harmonize the general business and health care sections of the bill. OHCA supports those changes as improvements to what already was a very good piece of legislation.

Turning to a few key points about the legislation:

- Legislation in this area should cover both emergencies and disasters, as they are similar situations but are activated by different official proclamations.
- All health care providers who deliver care – both medical care and personal care - during an emergency or disaster should be covered because they are all laboring under the challenges of the circumstances.
- We believe wanton and willful misconduct is the proper standard for liability in the emergency/disaster scenario. This standard is used in analogous situations under Revised Code sections 5502.30, 4765.49, 2305.23, 2305.234. Senate Bill 308 builds on these statutes by applying the same standard to all health care providers in an emergency/disaster.

- Adding the clear and convincing evidentiary standard to the health care section of Senate Bill 308 would harmonize it with the general business section and existing Revised Code section 2315.21 on punitive damages.
- The legislation should clarify that claims against health care providers responding to a disaster or emergency are allowed only in the event of serious physical harm or death to prevent aggregating claims for minor impacts of COVID-19.
- The bill's provisions should apply to all legal claims for damages regardless of the theory under which they are brought (e.g., tort, contract, Patient's Bill of Rights).
- Senate Bill 308's standards should apply to wrongful death claims because they will be the most likely type of claim related to COVID-19. Established Ohio Supreme Court precedent allows the legislature to limit the circumstances under which wrongful death claims can be brought, as the constitution only prohibits limiting damages. Senate Bill 308 would permit recovery for wrongful death under the same standards as personal injury.
- Liability protection should apply both to provision of services and inability to provide services because of the emergency or disaster.

Thank you for the opportunity to testify in support of Senate Bill 308. We urge the committee's favorable consideration of the bill and would be happy to answer any questions you may have.