



Testimony before the Senate Judiciary Committee, Am. Substitute House Bill 606

June 30, 2020

Dear Chair Eklund, Vice Chair Manning, Ranking Member Thomas, and Members of the Senate Judiciary Committee,

My name is Jean Makesh and I am the CEO of Lantern Group. Lantern Group is a premier Residential care (Assisted living) provider in the State of Ohio. The Lantern group owns and operates three Residential care communities (assisted living communities) in North East Ohio. We care and serve approximately 227 elderly with various medical conditions including Alzheimer disease.

The Lantern group is a strong proponent of Substitute House Bill 606. We appreciate and thank Representative Diane V. Grendell for her work on this important legislation that would protect Residential care providers like us and other Ohio businesses from liability for actions they take in response to the unprecedented crisis of COVID-19.

The incredible selfless staff at the Lantern provide essential services that were not suspended during COVID-19. Our heroic staff showed up every single day to provide the care and the love the elderly needed despite the deadly invisible enemy, COVID-19. We continue to protect and serve our elderly from COVID-19 and to protect the staff from contracting the virus to the best of our ability and despite many impediments.

COVID-19 is indeed unprecedented. Given its contagious nature, and the high prevalence of negative outcomes among the elderly and immuno-suppressed, and the very nature that the virus is transmitted by individuals who display no symptoms have made our assessments and identification even more difficult. The issue is further compounded profoundly by shortages of critical supplies such as personal protective equipment and test kits, massive additional costs and revenue losses and ongoing difficulties retaining staff because of quarantines and other COVID-related factors.

Most importantly, given the nature of the contagion and the many unknown factors of the virus, it is impossible to protect fully against COVID-19 or to guarantee that it will not spread, particularly in the congregate care settings like ours. 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. I strongly believe that negative outcomes will lead to lawsuits, despite the incredible unpredictability of COVID-19 and the fact that there is no way to prevent transmission completely.

The Lantern group and many residential care providers supports Sub. House Bill 606 because the legislation protects us from liability for our good-faith acts in providing care during an incredibly difficult and constantly changing environment.

House Bill 606 builds on existing Ohio law that provides limited immunity to certain health care providers in disasters and emergencies. It also would establish 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 those states, House Bill 606 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.

Legislation in this area should cover both emergencies and disasters, as they are similar situations but are activated by different official proclamations. All Residential 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.

House Bill 606 builds on these statutes by applying the same standard to all health care providers in an emergency/disaster. The bill's provisions should apply to all personal injury claims regardless of the theory under which they are brought (e.g., tort, contract, Patient's Bill of Rights). Substitute House Bill 606 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. House Bill 606 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.

I appreciate the opportunity to testify in support of Substitute House Bill 606. I urge the committee's favorable consideration of the bill and would be happy to answer any questions you may have.

Sincerely,

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