



ELDERLY ADVOCATES

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**Written Testimony on Substitute HB 606
Submitted by Paula Mueller, President of Elderly Advocates
Senate Judiciary Committee, June 30, 2020**

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate's Judiciary Committee,

Thank you for allowing me to testify in opposition of Substitute HB 606. My testimony is different from that of SB 308 as I have gained more information on this issue. My name is Paula Mueller, I am founder of Elderly Advocates, a non-profit, non-partisan community-based organization in Ohio. The reason I founded this organization is because my uncle died a horrific death that could have been avoided. He fell five times in a week in a nursing home around the same time in the middle of the night in the same place, the bathroom, because no one would come to help him pull his pants up. His last fall this particular week sent him to the hospital during the time they were overwhelmed with flu patients He recovered from the fall and was ready to go back to the nursing home, but while he was in the hospital, it gave time for him to pick up HA MRSA. He took a terrible turn for the worse. He spent his last full day screaming my name over and over as he lost his ability to talk. He kept reaching out to grab my arm, the terror in his eyes I will never forget. Just two weeks before this, he told me, he did not know if he should give up. He said, "they won't help me, and I can't do some things anymore". I begged him not to give up, I would find a way to get him help. Although, with not getting the same help in about 8 other nursing homes, he was not confident it would ever change. He was right.

I filed complaints with the Ohio Dept of Health, I did not know about the falls, until their report, I was never notified by the nursing home. I could not believe the nursing home did not get cited for five falls in a week. They did get cited for not following a doctor's order to decrease a medication that was making him more prone to falls. I filed a complaint regarding the hospital that I was never notified of him being tied down so I could go and advocate for him when he refused and did not want a BI-Pap. However, it was falsely documented that I had been called. I realized later his defibrillator was not shut off and he was more than likely getting shocked in the dying process. After all this, I called about 5 attorneys as I could not make them accountable any other way. Not one of them could do anything, because the bar is already too high to make anyone accountable and due to the high cost of litigation.



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It was also very easy to blame his conditions of COPD or CHF for his death. However, these conditions were manageable until the falls and HA MRSA happened. Of course, it would affect his conditions with these circumstances. He had cognitive disabilities; he was like a big kid.

I promised to always protect him, and when I should have been able to, this broken health care system failed he and I. There was never accountability for all these falls that started a bad chain of events.

Sadly, this is the story of most I talk to. There is no accountability for bad outcomes. It is not the attorneys that chase the families, it is in fact, the families that chase the attorneys seeking justice that never comes. Families are not interested in a pay day for the loss of someone that they loved dearly, they want accountability and someone to say this was wrong. But most families seek an average of five attorneys with being turned down by all of them. Hence, I started this organization to be able to do something with the intent to truly help the residents and improve quality of care. Sadly, I found out of approximately 1,000 complaints a year made by families to the Ohio Department of Health, only about 200 get substantiated. Can 800 people be wrong? Neglect is almost impossible to prove before this crisis, having a law that takes it away accountability and consequences in nursing homes will give the nursing homes a wrong message, that neglect is accepted in an emergency to residents that require a higher level of care to survive every single day. The nursing homes knew this when they took residents, why we would ever let nursing homes give reasons not to provide what is critical to these residents.

It is said that normal neglect is not affected. However, it will be easy to tie COVID to poor care. Staffing will be a big excuse. Instead of allowing one family member in to take care of their loved one in short staffing situations, the residents will simply go without. Residents in a nursing home cannot be compared to a spill in a grocery store not being taken care of and someone falls. That is not guaranteed to happen. However, a resident must get water, food, turned so they do not get bed sores, and assistance so they do not fall. The spill compared to a grocery store is present every single day for every single resident. With the families being shut out with no cameras allowed, and no outside oversight, it will be almost impossible to prove anything. However, in those rare cases accountability and consequences could be faced, this bill takes away the last protection they have, facilities in fear of a lawsuit. Staffing issues will surely account for many errors and mistakes, which will not be considered done maliciously, reckless or with bad intent. Instead of finding a solution that this does not happen, this law simply excuses it.



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- This bill takes away anything that occurs under patient or resident bill of rights. This is not right to take away rights of an American Citizen because their home is in a nursing home. No one should ever lose basic rights.
- This bill includes overwhelming support from businesses interests; however, I compare that to a law that would allow all vehicle drivers exempt from any kinds of tickets. The list would be never ending of the support it would receive. Anyone that is excused from accountability and consequences would jump on that train. The overwhelming support I see is from businesses that seek to gain a free pass for no accountability or consequences.
- There is no standard of care established to receive immunity. Not even Federal Guidelines or State orders. Giving immunity without any protections for the residents is very wrong in a time the ones dying and truly are the ones that need protected.
- The bill states that thousands of lawsuits have been filed nationally, however, we have not been able to find any proof of that. There is not data or statistics to support this.
- The general comments have been that businesses needed this law to re-open, but those that can meet the guidelines have. Then, they say businesses need this bill to continue operating, however, lawsuits have been filed by businesses that they could not open including gyms, day care centers, restaurants. There is much conflict with Governor DeWine that he did not open fast enough So, they say one thing and do another. They are fighting to open and that want the free pass from liability in doing so.
- This law will not help our “heroes” but very well may hurt them. If their facility is short staffed, they will be asked to work unreasonable hours, if the facility is having financial issues due to COVID-19, they will be excused for not having PPE. This very well may cause some to quit and cause even more short staffing.
- We expect much public outcry once families realize the consequences of this bill to their family members in facilities.
- With a constant battle for transparency in reporting nursing home data about COVID-19 cases and inaccurate data, poor communication to families on policy, procedures and challenges, nursing homes taking covid-19 patients from hospitals without public listings of those facilities, and now an immunity law makes this very unfair to residents and families once they know what was kept from them.
- CMS just stopped the waiver for staffing requirements and is now enforcing payroll reporting again, and with everything moving forward with the economy, why is there still a need for an immunity law?



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I ask you to take out nursing homes until a more reasonable bill is made to protect all, and not just those who own businesses. The more that businesses support this bill, the more it shows what a big give a way this bill is to them in my opinion. We have received overwhelming support from families in Ohio as well as nationwide on a petition we have engaged asking for nursing homes to be taken out of this bill for now. More careful consideration is deserved for our most vulnerable population. These are our mothers, fathers, sisters, brothers, and other family members who we love dearly. Acceptable care is a high priority for us to get for them.

I intended to give this testimony in person from someone who has seen and heard many stories from others, however, the scheduling of this committee meeting made that impossible to engage. There were also several others who wanted to submit testimony, however, were unable to for the same reasons. It appears there is a big rush to get this bill passed. We do not understand the several in the legislature did not feel we should re-open sooner as the virus is under control. We do not understand why this law is needed. There are no lawsuits, the virus has been contained except for a few hot spots. There are always going to be lawsuits and we do not see any data or evidence that this law is needed. There is no reason to give a free pass to nursing homes that should always strive to give the higher level of care always required, even in an emergency. If there are exceptional situations, we believe they will not be sued for that as it is already hard to sue a facility in normal times.

Respectfully,
Paula Mueller
Founder of Elderly Advocates