



The Ohio House of Representatives  
**House Commerce & Labor Committee**  
Representative Dick Stein, Chair

HOUSE BILL 435  
OPPONENT WRITTEN TESTIMONY

Chairman Stein, Vice Chair Johnson, Ranking Member Lepore-Hagan, and members of the House Commerce & Labor Committee, thank you for the opportunity to provide written testimony expressing our major concerns over House Bill 435 (“HB 435”), which mandates specific employer infection control policies that that undermine employers’ and schools’ ability to keep their patients, students, customers, employees, and workplaces safe.

University Hospitals (“UH”) is a Cleveland-based super-regional health system that serves more than 1.2 million patients in 16 Northeast Ohio counties with over 30,000 caregivers. The hub of our 23-hospital system is University Hospitals Cleveland Medical Center, a 1,032-bed academic medical center known for advanced care. Included on UH’s main campus are University Hospitals Rainbow Babies & Children’s Hospital, among the nation’s best children’s hospitals; and University Hospitals Seidman Cancer Center, part of the National Cancer Institute-designated Case Comprehensive Cancer Center at Case Western Reserve University (the nation’s highest designation). UH strives to strengthen the health care needs of our community by providing outstanding service, the highest quality physicians and nurses, and using innovative techniques.

HB 435 includes two provisions that are helpful to healthcare providers as we respond to record volumes and the latest COVID-19 surge from the Delta variant. First, HB 435 would extend all HB 606 qualified liability immunity provisions through June 30, 2023 for health care and emergency services provided during a government-declared disaster/emergency and also for exposure to or transmission or contraction of certain coronaviruses. Second, HB 435 allows Emergency Medical Technicians (basic, intermediate, and paramedic) who have received proper training to administer COVID-19 tests and collect/label test specimens. These are common sense policies that should pass regardless of HB 435 as they improve our ability to care for our patients during this global pandemic.

Except for these provisions, HB 435 would have a disastrous impact on public health. HB 435 is intended to restrain businesses from enacting the employee requirements that they may determine are necessary for their business and the safety of their workforce, those that use their services, and to comply with federal requirements. Indeed, the proposed legislation micromanages how private businesses and healthcare providers implement specific policies in response to the dangers of infectious disease affecting their local community.

It is established that getting vaccinated is one of the most important ways people can protect themselves, the people they care about, and their communities from COVID-19 because COVID-19 vaccines prevent severe illness, hospitalization, and death. COVID-19 is an easily transmissible respiratory virus that spreads when people are together. Recent studies have shown that current variants are now more infectious and transmissible than ever before.<sup>1</sup>

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>

We describe the current scientifically-proven methods of preventing infection and transmission as easy as ABC:

**A**lways mask in indoor public spaces;  
**B**e aware of symptoms;  
**C**lean your hands and your space;  
**D**istance physically, but not socially; and  
**E**veryone that can get vaccinated, should.<sup>2</sup>

Federal requirements have been announced, though not yet published, which will require vaccines as part of workplace safety for businesses with more than 100 employees and as a Condition of Participation for Medicare. HB 435 may limit our ability to comply with these workplace safety requirements or Medicare Conditions of Participation, depending on the specifics of those rules. In fact, HB 435 is likely in direct conflict with expected federal rulemaking. Thus, we may be put in a situation where we are faced with the decision to violate either state or federal law because it may be impossible to comply with both. We are awaiting further details from the federal government, but it is very clear that the Centers for Medicare and Medicaid Services (“CMS”) intends on requiring all health care workers in our health system to get vaccinated or we may lose our eligibility to serve Ohio’s vulnerable Medicare patients. CMS is already measuring our employee vaccination rate as a quality measure.

Under current Ohio and federal law, Ohioans may decline vaccinations for a variety of reasons, including medical or religious reasons.<sup>3</sup> HB 435 goes well beyond those exemptions already afforded to our employees by offering additional exemptions that are not based on scientific consensus and are impracticable and expensive to implement for employers.

HB 435 proposes a natural immunity exemption under which the student or employee must submit to the school, institution, or employer written documentation that the student or employee has been tested for the presence of COVID-19 antibodies in a manner recognized by the medical community and, at the time of testing, had antibodies in an amount at least equal to or greater than those conferred by a COVID-19 vaccine for which the FDA has issued a biologics license. Studies have shown that while there is temporary protection from COVID-19 infection, “natural immunity” is not equivalent to vaccination, since it is temporary<sup>4</sup> and less effective<sup>5</sup> than vaccines. Testing for antibodies and measuring them on an on-going basis for employees or students who assert this reason not to comply with vaccination requirements will be expensive, time-consuming, complicated, and require clinical resources that otherwise would be used for patient care. Furthermore, commercial antibody testing may not detect all antibodies after natural infection, including antibodies against the spike protein, which is most important in immune protection. Further, some of these tests may be unreliable. Encouraging this kind of “protection” seems to contradict the available clinical guidance and has the potential to encourage intentional infection and also discourage vaccination.

Additionally, the bill requires the Ohio Department of Health to adopt rules establishing the frequency with which a student or employee must be retested for the presence of COVID-19 antibodies. Until the rules are adopted, however, the student or employee is not required to submit any additional information beyond the initial written documentation. This is troubling as we will have legislators vote on something critically important that has yet to be defined. The bill does not specify how the standard of a test that is “recognized by the medical community” will be determined, especially given the medical consensus does not support “natural immunity” equivalency, and it is unclear how a school or employer would make the determination that a student or employee’s antibody levels meet or exceed those conferred by vaccination.

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<sup>2</sup> <https://www.uhhospitals.org/university-hospitals-healthy-restart>

<sup>3</sup> <https://www.lsc.ohio.gov/documents/reference/current/membersonlybriefs/133Ohio%20Immunization%20Laws.pdf>

<sup>4</sup> <http://dx.doi.org/10.15585/mmwr.mm6947a2>

<sup>5</sup> <http://dx.doi.org/10.15585/mmwr.mm7032e1>

Next, HB 435 proposes an exemption related to an individual's reasons of conscience to refuse to comply with a COVID-19 vaccine mandate. There is no definition of a "reason of conscience" so one must presume it is intended to be exceptionally broad. This exemption is a major cause for concern, as any employee or student could claim this exemption, whether they are acting in bad faith and whether they are causing a direct threat of harm to those around them. This exemption will effectively permit an individual to avoid a vaccine requirement under any circumstance without giving due consideration to the health and safety of an employer's workforce and the customers or patients they serve. HB 435 interferes with employers and schools, so that they are powerless and unable to enforce their policies for workforce/students because of an all-inclusive exception imposed by the Government.

We appreciate the general intent behind exempting those in children's hospitals and those in ICUs of hospitals from these proposed legislative exceptions to employer policies, as it acknowledges the protection provided by vaccines and the potential safety derived from being able to require them. However, this carve out is not enough to effectively protect our patients and caregivers. We serve many unvaccinated patients and immunocompromised patients, including cancer patients and many other vulnerable patients, across our health systems. It would be challenging to divide our employees, those affected and not affected by these exceptions, especially given on-going staffing re-assignments based on surge needs.

HB 435 provisions prohibit employers and schools from requiring *any* vaccine for which the FDA has not fully approved. It is unclear why the bill does not specify COVID-19 vaccinations if it is intended to be Ohio's "COVID-19 Vaccine Fairness Bill". This provision is troublesome not only because it limits the ability for employers to require the Moderna or J&J COVID-19 vaccines, despite consensus that they are safe and effective and endorsements of their safety and efficacy by the Ohio Department of Health,<sup>6</sup> but also because we have seen the dangerous outcomes of variants during this pandemic. In the event that there is a more deadly variant that manifests and a new booster is developed that may be drastically needed to help save lives, yet the lack of full approval would limit our ability to better protect our immunocompromised patients.

UH has serious concerns about HB 435. This legislation will only exacerbate the harm caused by COVID-19 and stymie efforts to end the pandemic to return to normal life. We urge you to not pass this legislation, which poses great risks to business, hospitals, and human life. Thank you Chairman Stein, Vice Chair Johnson, Ranking Member Lepore-Hagan, and members of the House Commerce & Labor Committee for this opportunity to provide feedback on this important legislation.

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<sup>6</sup> <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/covid-19-vaccination-program>