



ELDERLY ADVOCATES
Dedicated to Quality Care in Ohio
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Written Testimony on Senate Bill 308

Submitted by Paula Mueller, President/CEO of Elderly Advocates, Inc.

Senate Judiciary Committee

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

Thank you for the opportunity to give testimony in opposition to Senate Bill 308. My name is Paula Mueller. I am the Founder and President of Elderly Advocates, Inc. Our mission is to improve the quality of life for the elderly and all residing in long-term care in Ohio through education, support, and advocacy.

Our organization is dedicated in being a voice for the elderly in long-term care and providing support to family caretakers. Prior to the COVID-19 crisis, the residents and families were facing many challenges and issues obtaining acceptable care in many of the long-term care facilities, mostly due to understaffing.

Those facilities that operate with such a high set standard for care we believe will continue to provide quality care, regardless of immunity. We all applaud and celebrate those efforts. However, some facilities will lack incentive to maintain a high standard of care if they face virtually no consequences for poor care and most likely will continue substandard care that existed prior to COVID-19. With immunity for all liability, the wrong message is sent to the very providers of most concern for improper care. Poor management and infection control will likely continue or escalate at these facilities, likely resulting in more injuries and deaths.

We have seen extensive media coverage of the challenges and issues our treasured elderly have been trying to overcome for decades. We have seen recently too many facilities put on a special focus list due to poor care.

One month prior to this pandemic, Summit County was engaging a Nursing Home Task Force to improve long-term care as they saw challenges and issues that should not be ignored and worked to address them in a positive way. A report issued on December 1, 2018 by The Ohio Department of Health Assurance and Licensing, gives concerning data seen in trends. In their involvement with long-term care facilities, the report shows the number of health deficiencies were increasing the last two quarters. It also shows the civil penalties they imposed were decreasing in the final quarters reported. Data that we also find very concerning is that out of 1,246 complaints filed, only 332 were substantiated.

All this information suggests that we should not quickly legislate away acceptable care to such a vulnerable elderly population. Due diligences in research, data, and input from all interested parties should be thoroughly taken in account before making laws that more than likely will affect life and death decisions. This should never be taken lightly and passed in an expeditious manner, with input weighing heavily from only those who seek protection from a business standpoint in that their interest can highly depend on profits over care. When long-term care facilities choose to service the elderly, they knew the high level of care that would be expected always, even in an emergency and disaster. Most would think, the level of care would rise to the highest possible standard in these situations; however, this law provides immunity to the lowest level of care, including reckless care. Just as the long-term care facilities cannot close their doors, residents that depend on these facilities for the high level of care they need, cannot choose to leave due to their care needs.

Information we want to share from our followers is that they are most upset that they have gone to an average of five to seven attorneys and were turned down by all in helping them make a facility accountable for what they feel are clear injustices. They feel attorneys do not want to help them or do not care. Our organization tries to explain that the bar is set so high, that it is often difficult to prove these cases. We constantly give them our view, that if attorneys could make them accountable, they would.

Ohio has laws currently in place to address litigation. We feel confident that judges and juries will make the right decisions on who should be held accountable. We feel that it will not be that easy to blame a long-term care facility for obtaining COVID-19 due the uncontrollable spread that has been seen.

It will be very difficult to prove exactly where or how it was obtained. It is well known that PPE has been a real challenge for the long-term care facilities to obtain. If due diligence is engaged by facilities and not reckless regard, we believe it will not be easy to hold anyone responsible for that as well.

The three pillars of accountability are family member visits, regulatory inspections, and litigation. The first two pillars are severely curtailed and now this attempt to remove the only remaining pillar of accountability is being taken away: the right to litigate. Accountability and consequences are many times the driving forces that we often heavily consider in decisions. We cannot take away the driving force to do the best we are able to do even in emergencies and disasters. We should never pre-determine what actions can be taken, without knowing the facts of the circumstances. Although we are in full support of our economy reopening, we are also in support of our family members in long-term care recovering. If our loved ones in long-term care die because of poor care that is ignored due to this immunity bill, their chance to recover is nonexistent. Just as businesses try desperately to survive during the pandemic, we cannot lose sight that the vulnerable elderly is also trying to survive also.

With such possible grave consequences that accompany immunity, we ask the legislature to take a collective pause when bringing in SB 308 and consider that the bill may contribute to an increase of injuries and deaths in long term care facilities. We must never lose sight that these residents are our mothers, fathers, sisters, brothers, and other family members who are very near and dear to us.

One direct challenge that Elderly Advocates faces in the future, is explaining to our followers why a law allowing cameras in residents rooms that will help to protect their family members will likely take years to get passed; yet, an immunity law that does not protect their family members and encourages poor care can or will be passed in weeks or in a very short time. We seek to find that answer for them.

If this bill is to pass, it is our hope it will include protections for the vulnerable elderly in long-term care. If we give some level of immunity, we will hope laws would be engaged as to what standard of care would have to be engaged to receive immunity. We hope that our great State of Ohio will always engage laws that protect our treasured elderly who need help and have given us so much, and never settle for a lower standard of care--even in an emergency or disaster. They deserve so much better than this.