

Testimony in Support of Senate Bill 191 – Creating the right to appeal an involuntary discharge or transfer from an adult residential care facility, commonly known as an assisted living facility.

Senate Public Health and Welfare Committee

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Thank you for the opportunity to provide proponent testimony on Senate Bill 191.

Before I begin, I think that it is crucial that I provide you with a couple of definitions. In the bill, you will notice the phrase “adult residential care facility.” An adult residential care facility is commonly known as an assisted living facility, and includes other forms of group home arrangements. An assisted living facility provides residents with some level of assistance and care, but its residents have the ability to live independently in small apartments or rooms. My clients often transition from living independently in homes and independent apartments to assisted living facilities when they need a higher level of care, but are still mobile and able to provide for their daily needs. An adult care home is commonly referred to as a nursing facility or nursing home. Residents of nursing homes need a much higher level of care than residents of assisted living facilities. Assisted living facilities are the focal point of this bill.

Last year, I participated on the Judicial Council’s Advisory Committee on Adult Care Home Involuntary Discharge Appeals, which was initiated at the request of Representative Concannon. The objective of the study, with which our committee was tasked, was to answer the following question: “If Kansas creates an appeal process for involuntary discharge of residents from assisted living, residential healthcare and home plus facilities, what should be the procedures for that appeal process?” The question was not whether Kansas should create an appeal process, but simply, if it does, what should the process look like.

Our committee met numerous times, and a drafting subcommittee was formed to draft the language of the appeal process. I was also a member of the drafting subcommittee. Proponents and opponents of this issue worked together to accommodate considerations on all sides to create the best possible appeal process, should the state of Kansas decide to enact one. The Judicial Council staff attorney who assisted our committee, Laura Nordgren, compiled laws from other states so we could compare the appeal process in each state. We included portions of the plans that we thought were useful.

For example, Alaska requires an assisted living facility to offer a case conference if a resident appeals an involuntary discharge. This requires the resident, resident’s representative, the home administrator, and other relevant parties to discuss the appropriateness of the discharge. Our committee liked the idea that the parties would have an opportunity to talk, informally, to try to resolve the existing issues. As such, Senate Bill 191 allows the person appealing to request an informal conference prior to the administrative hearing. This allows all parties the opportunity to come to an understanding and solve the situation together. Successful settlements prior to hearing

would also preserve the resources of the Office of Administrative Hearings. This is just one example.

The subcommittee also spent hours delving into the language and setting forth the best plan that would accommodate all involved. Ultimately, a majority of the committee determined that Senate Bill 191 was the best, most comprehensive plan, that balanced the rights of residents to appeal involuntary discharges while also giving assisted living facilities the ability to keep residents safe and preserve their business interests.

It is at this point that I would like to remove my committee member's hat and don my advocacy hat. I have been an attorney at Kansas Legal Services for the past 14 years. I came out of law school working with senior citizens and practicing elder law. When our organization received a grant to assist seniors who were victims of crime or elder abuse, I was named the Director of our Elder Rights Project. In 2020, Governor Kelly appointed me as a consumer member of the Board of Adult Care Home Administrators, where we regulate, examine, and administer Kansas standards for the practice of adult care home administration. As a consumer member of the Board, I try to process my thoughts on these issues from the lens of the residents of nursing facilities. All of this is to say, I have devoted my career to protecting Kansas' vulnerable senior citizens. As such, I strongly urge the Judiciary Committee to pass Senate Bill 191, as the protections it affords our vulnerable residents of assisted living facilities are sorely needed.

Opponents of this bill will likely argue that the current regulations are sufficient to deal with discharges. That is simply not the case from the lens of assisted living residents. Kansas' regulations require that the resident receive notice, but do not provide any sort of appeal process for residents of assisted living facilities. After having compared the laws in other states, Kansas is one of just a few states in the country that fails to provide these residents with any right to appeal an involuntary discharge. For these residents, this is their home!

Residents of nursing homes have a right to appeal involuntary discharges through the Office of Administrative Hearings. Tenants of rental units in Kansas have their rights laid out in the Kansas Landlord Tenant Act. Homeowners facing foreclosure have numerous rights that a court of law must enforce. Why should this one segment, of one of the most vulnerable populations, be excluded? Are their rights not as important as others? After already having had to downsize, move out of their homes and apartments, and transition to a new way of life where they already feel they are losing control of their choices and dignity, why should the residents of assisted living facilities not also have a right to have their voices heard?

In response to that, you are going to hear concerns that allowing a resident to stay during an appeal may result in a lack of care or unsafe practices for residents. The fact is, these issues have been addressed in Senate Bill 191. There IS an emergency transfer or discharge provision, in which the timeline for appeal is drastically reduced, as well as a section stating that an immediate danger to the resident or other residents may warrant immediate removal. When the advisory committee began drafting these provisions, all of these considerations were weighed heavily. Failing to pass Senate Bill 191 will result in continued unfairness and less freedom for Kansas' 10,000+ residents who currently live in an assisted living facility.