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House Judiciary
Chairwoman Gossage and Committee Members
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Senate Bill 191 – Right to appeal an involuntary discharge of a resident.

Opponent

Good morning, Madam Chair and Committee Members. I am Linda MowBray, President/CEO of the Kansas Health Care Association and Kansas Center for Assisted Living. We are a trade Association representing for-profit and not-for-profit nursing home, assisted living, residential health care, home plus, and nursing facilities for mental health communities across the state. We are the oldest nursing home trade association in Kansas and have over 265 member communities. Our members care for nearly 20,000 elders across the state each and every day and employ over 20,000 workers.

We are here today to present testimony opposing SB 191: AN ACT concerning the adult care home licensure act; relating to involuntary transfer or discharge of residents from an adult residential care facility; creating a right to appeal an involuntary transfer or discharge; requiring the secretary for aging and disability services to review notices and preside over appeals. Many of the protections in SB 191 are already in K.A.R. 26-39-102 Admission, transfer and discharge rights of residents in adult care homes. This bill delays and prolongs the process to discharge to a more appropriate level of care during which time, a resident's needs may not be met.

For Kansas Assisted living communities and residential care communities K.A.R 26-41-200 addresses Resident Criteria for admission and retention of a resident. I have made reference to them here. Home Plus has very similar regulations under K.A. R. 26-42-200.

26-41-200. RESIDENT CRITERIA. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident: (1) Incontinence, if the resident cannot or will not participate in management of the problem; (2) immobility, if the resident is totally dependent on another person's assistance to exit the building; (3) any ongoing condition requiring two or more persons to physically assist the resident; (4) any ongoing, skilled nursing intervention needed 24 hours a day; or (5) any behavioral symptom that exceeds manageability. (b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

K.A.R. 26-41-203 outlines additional types of care and services that may be offered. This will vary from home to home. The regulations go on to say that if special care is to be provided, the community must have written policies and procedures for delivering this care as well as a clearly defined admission and discharge criteria.

(d) Special care. Any administrator or operator of an assisted living facility or residential health care facility may choose to serve residents who do not exceed the facility's admission and retention criteria and who have special needs in a special care section of the facility or the entire facility, if the administrator or operator ensures that all of the following conditions are met: (1) Written policies and procedures are developed and are implemented for the operation of the special care section or facility. (2) Admission and discharge criteria are in effect that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, medical care provider's progress notes, or both shall justify admission to the special care section or the facility. (3) A written order from a medical care provider is obtained for admission. (4) The functional capacity screening indicates that the resident would benefit from the services and programs offered by the special care section or facility. (5) Before the resident's admission to the special care section or facility, the resident or resident's legal representative is informed, in writing, of the available services and programs that are specific to the needs of the resident. (6) Direct care staff are present in the special care section or facility at all times. (7) Before assignment to the special care section or facility, each staff member is provided with a training program related to specific needs of the residents to be served, and evidence of completion of the training is maintained in the employee's personnel records. (8) Living, dining, activity, and recreational areas are provided within the special care section, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility. (9) The control of exits in the special care section is the least restrictive possible for the residents in that section. 99 (e) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in each resident's bedroom and common areas inside and outside the facility as specified in the admission agreement. (f) Services not provided. If an administrator or operator of an assisted living facility or residential health care facility chooses not to provide or coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the facility. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

Finally, the appeal process itself: by forcing the community to retain or readmit a resident that they can no longer care for is not only against the regulations but the wrong thing to do for the resident, the staff and potentially for the other residents. The amount of time given in SB 191 for an appeal to happen is just the tip of the iceberg. Appeal after appeal could drag on for months. It would be irresponsible with the potential for grave consequences for a community to attempt to care for someone whose needs are clearly outside of the services they can provide.

Please, do not support SB 191 for the safety of all residents living in our state licensed only homes.

Thank you and I'll stand for questions at the appropriate time.

Linda MowBray, President/CEO
KHCA/KCAL