

Date: May 18, 2020

From: AARP Kansas

Ref: Opposition to efforts to grant immunity related to COVID-19 to nursing homes, assisted living facilities, and other long-term care (LTC) facilities.

House Judiciary Committee

Chairman Patton and Members of the Committee:

Good afternoon, Chairman Patton and Committee Members. My name is Maren Turner and I am AARP Kansas State Director. On behalf of our more than 300,000 members and all older Kansans, we appreciate the opportunity to submit this written testimony to voice our strong opposition to efforts to grant immunity related to COVID-19 to nursing homes, assisted living facilities, and other long-term care (LTC) facilities. AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other LTC facilities play an important role in America's long-term services and supports (LTSS) system. There are more than 16,800 nursing home residents in Kansas. During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges, and tragically, according to a report in the Kansas City Star on April 26, at least 70 percent of Johnson County COVID-19 deaths have been nursing home residents.¹

On April 24, AARP Kansas sent a letter to Governor Kelly urging the state "...to take swift action to protect Kansans receiving long-term care in nursing facilities and those receiving home and community based long-term care services." Among our requests to the Governor, was that the state increase transparency to the public by disclosing the names of nursing homes, assisted living communities, and other residential care facilities with confirmed COVID-19 cases among residents or staff. We greatly appreciate that the state has recently started reporting the overall number of cases and deaths in LTC facilities, but we believe that releasing the names of facilities is also critical for public health and the health and well-being of the residents, staff, and their family members.

¹ <https://www.kansascity.com/news/local/article242262076.html>

In addition, AARP Kansas strongly opposes any current or future proposal to grant immunity related to COVID-19 for nursing homes, assisted living facilities, and other LTC facilities. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing a nursing home neglect or abuse case in court is not easy to do. In Kansas, there are already significant barriers to accessing adequate redress including strict financial caps limiting certain types of recovery in wrongful death suits. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Kansas should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP Kansas appreciates your consideration of these views. We urge you to reject attempts to grant immunity related to COVID-19 for LTC facilities and, instead, to continue the dialogue of how our state can best protect the most vulnerable Kansans. Families all across the state are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions, please feel free to contact me by email at mturner@aarps.org or by phone at 785/221-1889.

Sincerely,

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State Director
AARP Kansas