



May 18, 2020

Chairman Wilborn and Members of the Senate Judiciary Committee;

Thank you for the opportunity to speak with you regarding access to the judiciary for frail elders.

The first major COVID-19 outbreak in the United States occurred in a nursing home at the Life Care Center in Kirkland, Washington. The first COVID-19-related death in Kansas was reported at the Life Care Center of Kansas City. The first major outbreak in Kansas occurred at the Life Care Center of Burlington. All of these long term care facilities are owned by the same corporation.

This is not a coincidence or an isolated incident. We know from news reports that the virus has taken a heavy toll on nursing home residents and staff. According to an April 26, 2020 report, Kansas City Star, 70% of COVID-19 deaths have occurred in nursing homes.

(<https://www.kansascity.com/news/local/article242262076.html>) Unlike other in states, we cannot tell you the actual number of cases and deaths by facility which would allow us to better comprehend the magnitude of this public health crisis for elders, because the Kansas Department for Health and Environment is not tracking and sharing that data with the public or policy makers.

The corona virus targets those with multiple chronic conditions which is true for the overwhelming majority of older adults who reside in adult care facilities. We know the environment in nursing and assisted facilities keeps vulnerable elders in close proximity to one another, including rooms shared by non-related elders. We know that long before the virus hit, many adult care facilities routinely operated with less staff than is safe for elders who reside there. Few Kansas nursing facilities provide safe staffing minimums of 4.1 hours per resident per day (as defined by the federal government in 2001). Understaffing dangerously increases workload for nurse aides, leaving inadequate time to meet the needs of many elders and to take the precautions of simple hand washing which is considered primary for preventing and stopping the spread of Covid 19.

In addition to these conditions and failings, frail elders in care facilities are made more vulnerable by:

- State and Federal Oversight **during** Covid
 - a) annual health inspections are suspended during the undefined period of the emergency
 - b) only the severest levels of abuse will result in inspector investigations
 - c) only clusters of Covid will prompt outside inspectors to enter facilities, leaving residents at risk for other negative events such as pressure ulcers, falls, etc.
- Police barred from entering a facility when called by a resident to investigate abuse
- Barring visitors which are often the outside eyes to see and report abuse or sub-standard care
- No Long-Term Care Ombuds in facilities to advocate with and for residents harmed
- Reductions in nurse aide training from 90 hours to 8 hours on-line and too little nurse supervision to understand and manage infection control.

- State Oversight Failures **ahead** of Covid
 - a) Kansas Department for Aging and Disability Services is mandated by federal and state law to inspect all nursing facilities every 12 months (on average), and state law mandates inspection of all non-nursing assisted facilities every 12 months
 - b) from 2012-2020 the length of time between inspections for a nursing facility climbed to nearly 2 years and for assisted facilities to as long as 3 years. In 2020 it is still 2 years in assisted facilities.
 - c) delayed inspections allow abuse, neglect and failures to meet health and safety standards to continue unchecked
 - d) Facilities previous lack of compliance with infection control and prevention measures and facility repeat offenders (please see attachment which accompanied testimony)

Given these realities, now is not the time to close the doors to justice for frail elders who live in nursing homes. Now is not the time to protect adult care facilities and providers who were failing in their responsibility to provide adequate infection control or adequate staffing prior to this pandemic. To offer such protection only serves to make elders more vulnerable and emboldens poor quality providers to continue as they have pursuing profits over resident need.

Essentially, the only mechanism available for a nursing home resident to hold facilities responsible for substandard care is judicial recourse. By removing this safety net, adult care facilities will have little oversight. For the legislature to quickly move forward legislation which offers blanket immunity without thoughtful consideration and broader input warranted strips frail elders of the protections they deserve.

Legal liability has always functioned as a safeguard for elders living in adult care facilities by incentivizing care facilities to provide quality care and comply with laws and regulations. Stripping elders of their right to hold nursing homes accountable for substandard care will put more residents at risk and inevitably result in more avoidable deaths.

We are asking that you keep this fundamental right of access to the judiciary in place for elders in adult care facilities. And instead, pursue other solutions to promote the safety and well-being of elder residents such as Covid testing, personal protective equipment for workers and residents, and the strong defense of complying with basic infection control procedures, such as good handwashing.

It is clear we must protect frontline workers, aides and staff who are committed to caring for vulnerable elders. Like other health care workers, many nursing home and assisted living staff have gone above and beyond, giving up their home life to protect their families and putting their own health at risk to give care. This virus is shockingly opportunistic and knows no boundaries. This crisis has exposed the fact that good infection control measures were not in place in too many long-term care facilities prior to the pandemic. As the number of clusters and deaths in nursing homes continues to climb, the vulnerability of residents to be victims of COVID-19 also increases.

Asking residents to pay with their lives for the woefully insufficient emergency preparedness and substandard care of nursing homes, and allowing adult care homes to face no repercussions for their egregious behavior would be perverse and unjust.

Mitzi E. McFatrach, Executive Director - On behalf of Board of Directors and Members

KABC is a not-for-profit organization whose mission is to improve the quality of long-term care for elders in nursing and assisted facilities and in-home. KABC is not a provider of government funded services. For 45 years KABC's role has been as a resource and advocate for older adults and families and as a resource to policy makers on aging and quality care issues. KABC provides consumer education information and tracks and reports on quality care performance issues.

Kansas Advocates for Better Care 536 Fireside Court, Suite B Lawrence, Kansas 66049
phone: 785.842.3088 toll-free: 1-800.525.1782 email mitzim@kabc.org www.kabc.org