



To: Sen. Wilborn, Members, Senate Judiciary Committee

Date: June 3, 2020

Re: Special Session Legislation and Liability Protection for Kansas Adult Care Homes

Kansas Health Care Association and LeadingAge Kansas are the two state associations who represent nearly all long term care providers in our state. Our members care for more than 45,000 older Kansans, and employ just as many workers across the state. We are writing to express our objection to the new Special Session legislation that carves adult care homes out of the liability protections being given to every other health care provider in the state.

Adult Care Homes need the same protections proposed for ALL health care providers in the new legislation you have before you. We oppose the definition in Section 9 (a) that excludes us from the definition of health care provider and Section 13 which only grants adult care homes an “affirmative defense” under limited circumstances. We urge you to oppose this as written.

Nursing homes and assisted living communities have been some of the hardest hit by COVID-19 in Kansas and across the nation. That is because COVID-19 is a stealthy virus that feeds off frail elders, the very population that nursing homes and assisted living communities serve.

Long term care workers are on the frontlines of this pandemic, and they are healthcare heroes. They are working under extraordinary conditions and shouldn't be forced to work under the threat of both death and litigation. Like many other health care providers, our staff are working long hours without enough PPE, without testing and without any assurance that they won't contract this virus and carry it home to their loved ones. In light of this dedication, it is disappointing to see adult care homes singled out for punishment and blame during this pandemic. It is misplaced and unfair.

There are many reasons, documented by experts, why COVID-19 spreads so quickly within nursing homes. By design, these care settings are home to a high concentration of older adults with serious underlying health conditions who live in a communal environment and require hands-on assistance with basic activities of daily living like dressing and bathing. There are many things about the virus we do not fully understand, and it has a very high rate of asymptomatic and pre-symptomatic spread. This combination of factors makes the virus extremely challenging to control, even for nursing homes that have honed their infection-control and prevention protocols during scores of influenza seasons.

Adult care homes also face additional challenges that are out of our control:

- We need proper personal protective equipment—including masks, gowns, and gloves—so we can keep our residents and caregivers safe. We have no priority access to proper PPE, and little ability to compete for it on the open market. Our nursing homes have begun to receive their one week's worth of PPE from the federal government – their

shipments contain cloth masks made of thin cotton reminiscent of Hanes underwear, as well as gowns of questionable quality and child-sized goggles.

- We need access to critical testing tools that would help us identify and isolate staff and residents who have been exposed to the virus. We are forced to wait days for test results, and are often limited in who the health department is willing to test, despite knowing that COVID-19 has a large number of asymptomatic victims, particularly among the elderly.
- We need adequate funding that actually covers the true cost of the care we provide. This includes rapid testing and fair pay for our caregivers that are risking so much for our older Kansans.
- Like other health care providers, we are forced to follow ever-changing and sometimes conflicting guidance from at least five different government agencies at the federal, state and county level. Unlike every other health care provider, adult care homes will be held liable for the confusion and conflicting standards of care developed by these varying levels of government.

The trifecta of need—for equipment, testing, and funds—has put adult care homes at a distinct disadvantage during this health emergency. They simply haven't been given the tools they need to fight COVID-19.

Now is the time to support adult care homes, give them the resources they sorely lack, and recognize their important role in the health care system. That includes providing them the same protections that every other health care provider needs during this unprecedented and heartbreaking time.

Respectfully,



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Debra Zehr, President/CEO
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