



February 3, 2021

Chairman Patton and members of the House Committee on Judiciary:

Thank you for the opportunity to appear before you today on behalf of Kansas Advocates for Better Care (KABC). Protecting the rights of older adults and persons with disabilities is one of our organization's highest priorities. That is why we oppose HB 2126.

No one will disagree the health risks associated with COVID-19 have disproportionately targeted older adults and persons with disabilities and/or chronic illnesses. Nursing home residents have suffered and died from not only the effects of the virus but also from isolation. According to recent data from the Kansas Department of Health and Environment (KDHE), of the 3,808 Kansas who have died from the COVID virus, 3,263 were over age 65, many of whom lived in congregate settings.

People give up their homes and much of their independence when they move into a nursing home. The pandemic took away more of their rights — their right to see their friends and family, their right to eat in the dining room with the people they live with, the right to leave the facility, just to name a few. Some residents weren't allowed to leave their rooms for months. HB 2126 attempts to take away one of their last remaining rights, their right to a fair trial if they are abused or neglected.

In May 2020 the Government Accountability Office (GAO) released a report, "Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic" (<https://www.gao.gov/assets/710/707069.pdf>) The GAO's analysis of CMS data showed infection prevention and control deficiencies were the most common type of deficiency cited in surveyed nursing homes prior to the COVID-19 pandemic. Of all the homes surveyed across the country, 82% had one or more infection deficiency. The report concluded most nursing homes had infection control deficiencies half of which had persistent problems.

Almost half (48%) of the nation's nursing homes with an infection prevention and control deficiency cited in one or more years were cited for infection control in multiple consecutive years from 2013 through 2017, indicating ongoing, persistent problems. Additionally, 19% of the nursing homes had an infection prevention and control deficiency cited in multiple nonconsecutive years. Furthermore, 35% of the nursing homes with an infection prevention and control deficiency cited in multiple consecutive years, were cited over 3 or 4 consecutive years, and 411 nursing homes had these deficiencies cited across all 5 years.

In Kansas, the GAO found 33.5% of nursing homes were cited for non-compliance with infection health safety standards in 2017. During the 2013-2017 time period, the GAO reviewed 369 Kansas nursing homes. Their findings documented that:

- 41 Kansas nursing homes had no infection deficiency cited;
- 100 Kansas nursing homes were cited for one infection deficiency;
- 77 Kansas nursing homes had multiple infection deficiencies over multiple non-consecutive years;
- 151 (41%) Kansas nursing homes were cited for infection deficiencies during multiple consecutive years

The COVID health 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 increasing the vulnerability of older Kansans to be victims of COVID-19. In addition, KABC hears from families concerned their loved ones are suffering from weight loss due to inadequate food, poor hygiene, dehydration and loneliness.

The affirmative defense provision included in HB 2016 and passed during the 2020 special session, provides immunity for those adult care homes which comply with the COVID guidance from state and federal governments. Compliant facilities should have nothing to worry about. The affirmative defense protects them. No one would disagree that poor performing homes should be held accountable. Facilities are frequently inspected by the State providing ongoing oversight and enforcement to assure compliance. HB 2126 seeks to take away residents' right to hold those poor performing facilities accountable for harmful or egregious practices.

The current COVID affirmative defense provision strikes a fair balance between the people who live in nursing homes and those they trust to provide and care for them. This provision preserves that right to fairness and accountability while keeping them safe and should be maintained.

Residents and their families expect that the care they receive from facilities complies with federal and state health, safety and infection control guidelines. Our policies and laws must focus on fairness for residents, accountability and oversight to assure facilities are safely taking care of the people who have taken care of us. We ask you to oppose HB 2126.

Margaret Farley, Executive Director - On behalf of Board of Directors and Members

KABC is a statewide 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.