



To: Representative Fred Patton, Chair and Members, House Judiciary Committee
From: Rachel Monger, Chief Advocacy Officer, LeadingAge Kansas
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Testimony in Support of House Bill 2652

LeadingAge Kansas is the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

HB 2652 Provides Justice for Residents While Preserving our Long Term Care System

HB 2652 does not shield bad actors from accountability. Just like the immunity provisions given to other health care providers during the pandemic, HB 2652 liability protections do not apply to acts, omissions or decisions that result in gross negligence or willful and reckless conduct. It is a sad fact that in any situation, and in any industry, there will be someone who decides to do the wrong thing. If there is an adult care home in Kansas who decided to turn their back on their residents during the pandemic or decided to ignore clear public health directives around fighting COVID-19, then they should be held accountable. HB 2652 allows for that accountability to happen in court.

The liability protections in HB 2652 that apply to the rest of our adult care homes are an acknowledgement of the unprecedented public health emergency we have found ourselves in for the last 24 months. Our ability to care for and protect our residents from the COVID-19 virus continues to be hampered by shortages in every way possible. At every phase of this pandemic, we have faced evolving and sometimes conflicting guidance and requirements from federal, state and local authorities, shortages in testing, PPE, and staffing.

The Expanded Protections in House Bill 2652 are Necessary

HB 2652 amends the adult care home provisions of the COVID-19 Response and Reopening for Business Liability Act to ensure that adult care homes in Kansas receive the same degree of protection from unwarranted and potentially ruinous lawsuits as every other business and health care provider in the state during this continuing health care emergency.

The Story Behind the Fight Against COVID-19 in Long Term Care

In early November 2020 the Associated Press worked with researchers from the University of Chicago to study nursing home outbreaks in twenty states, including Kansas. The researchers found that the quality of a nursing home was unrelated to the number of COVID-19 infections and deaths they experienced during the sudden surge in nursing home outbreaks this past fall. The biggest factor in nursing home outbreaks was the degree of infection spread in the community. If the county had a high infection rate, so did the nursing home, no matter how good of care they were providing. Researchers found that the main contributors to the surge in nursing home outbreaks were (1) high community infection rates; (2) high number of asymptomatic carriers; (3) nursing home staffing shortages; (4) lack of access to timely testing and testing supplies; and (5) inadequate supplies of personal protective equipment. To be clear, these issues were not limited to early on in the pandemic. Many of these issues continue on today.

Staffing: For much of the pandemic nursing homes have faced dire workforce shortages. We hear from Directors of Nursing putting in 80-100 hour work weeks to cover nursing shifts on top of their immense duties as head of clinical care at the nursing home. We hear from administrators and other leaders working as nurse aides to care for residents in a desperate effort to keep afloat while staff members are sent home to quarantine. Twenty four months into this pandemic our workers are exhausted and so is our workforce pool.

Testing: Access to testing supplies and timely lab results remains an issue. Antigen tests that adult care homes rely on for quicker and easier surveillance testing remain scarce. Confusion continues around regional lab contracts and a free surveillance testing option through Battelle whose challenges we are currently trying to find answers on.

Personal Protective Equipment: PPE supplies and supply chains remain shaky to this day, disrupting providers' ability to ensure quality resident care.

Conclusion

The liability protections in HB 2652 preserve the ability to go after actual bad actors, while allowing all other providers to continue doing their best during this pandemic without the constant threat of litigation that drains precious resources away from patient care. Singling out long term care for personal injury and class action lawsuits during this pandemic threatens the very existence of the senior care system in Kansas. A system that was already on the verge of disaster before the pandemic started. It also represents a demoralizing punishment for the tens of thousands of long-term care workers in this state who are loving, dedicated, and exhausted heroes risking their health every day to care for Kansas seniors during the one of the worst public health crises in history. Now is the time to support nursing homes, give them the resources and support 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 heartbreaking time.