

**Testimony on Senate Bill 303
Senate Public Health and Welfare Committee
Secretary Lee A. Norman, MD
Kansas Department of Health and Environment
March 29, 2021**

Chairman Hildebrand and members of the Senate Public Health and Welfare Committee, thank you for the opportunity to provide testimony in opposition to Senate Bill 303 which concerns the rights of access by residents in city and county homes for the aged and in county hospitals. As the State's Public Health agency, we are concerned about the impact this bill will have on infectious disease spread in Kansas.

As the Secretary of the Kansas Department of Health and Environment, I am required to exercise general supervision over the health of the people of the State of Kansas pursuant to K.S.A. 65-101. Pursuant to this statute the Secretary is required to act to prevent the introduction and spread of infectious and contagious disease in the State. When dealing with infectious and contagious diseases, there are, broadly, two approaches to controlling the effects of disease – prevention before it spreads and control after an infection occurs. SB 303 would make these approaches to controlling infectious disease within the county homes for the aged and hospitals futile.

In a situation where SB 303 were in effect, a resident that is infected with a disease that could be transmitted by aerosol (tuberculosis, measles, mumps) would be allowed to refuse an isolation or quarantine order and still receive individuals in their room or other meeting locations. This would put the visitor and all individuals who come into contact with them at risk. If this outbreak becomes widespread, the impact on local health resources, like doctors' offices, clinics and hospitals, are threatened and the overall ability for the state to respond is strained. For this reason, SB 303 does not make good public health sense.

In regard to specifics provisions within this legislation, the agency is concerned with two specific impacts:

- SB303 deals with federal controls on facilities involving long-term care and medical care. In our current medical environment, a facility must factor in federal reimbursements as part of its economic life. For such a facility to receive federal reimbursements for the care provided to either Medicare or Medicaid covered individuals, the LTC facility or hospital must meet the federal conditions of participation stated at 42 C.F.R. Part 483. For example, LTC residents are granted a number of resident rights at 42 C.F.R. 483.10 involving respect, dignity, and self-determination. However, one of the resident rights includes being in a safe environment. That's why 42 C.F.R. 483.80 has infection control as a federal condition of participation for a long-term care facility. This includes isolation and quarantine restrictions, if necessary, to control transmission of disease. There are similar federal conditions of participation for hospitals dealing with infection control which are required under 42 C.F.R. 483.42. In summary, a state-level law cannot override these federal reimbursement requirements. If the facility wishes to receive federal reimbursements for its Medicare and Medicaid residents, the facility must comply with the federal conditions of participation. The unfortunate result of SB 303 would be facilities looking whether to lose reimbursements or to discharge individuals.

- The second specific issue that KDHE has with SB 303 is the bill sets up, potentially, two similarly situated categories of facilities with different results, which could result in litigation. As written, SB 303 applies to city and county homes for the aged and to county hospitals. In terms of the city and county homes for the aged, both require action by that municipal or county governing body to create such a home for the aged. Similarly, a county hospital has to be created by the county. If the impact of SB 303 is only on those specific homes and hospitals, then SB 303 doesn't apply to private adult care homes or hospitals or to a state facility. In short, there would be two different results from similarly situated facilities.

If the exercise of the individual rights championed by SB 303 leads to a potential outbreak of disease, one can only speculate that a city or county home for the aged or county hospital loses appeal to the local governing body due to the many issues that might flow from the citizens of a community seeking answers. This is particularly true for a county home for the aged which is to be funded by a mill levy.

To date, there have been 646 outbreaks, 14,760 cases, 1,237 hospitalizations, and 1,887 deaths due to covid-19 in long term care facilities. The deaths in these types of facilities attributed to 92% of the overall deaths for outbreaks. By removing the facilities ability to lockdown, you are removing an important infection control tool away from them. Thank you for the opportunity to testify on SB 303.