

**House Judiciary
Proponent Testimony
February 9, 2023
By Camille Russell, Kansas State Long-Term Care Ombudsman
Office of Kansas Long-Term Care Ombudsman**

I am Camille K. Russell, the Kansas State Long-Term Care Ombudsman. Thank you for allowing me to provide testimony as a proponent for HB2246. At the mandate of state and federal law, the Long-Term Care Ombudsman Program advocates for the rights of individuals in long-term care facilities throughout Kansas. This includes nursing facilities, long-term care units of hospitals, assisted living facilities, home plus facilities, residential health care facilities, and boarding care facilities.

Both federal and state regulations allow facilities to initiate discharges of residents only in specific instances. Despite these protections, discharges that violate regulations continue to be one of the most frequent complaints made to State Long Term Care Ombudsman Programs. A nursing home is required to provide a written 30-day involuntary discharge notice for any discharge not initiated by the resident. The facility must provide a copy to the state ombudsman. The notice must include specific elements, including information about the right to appeal

State-licensed adult care homes like assisted living, residential health care, and home plus facilities also must give written 30-day involuntary discharge notice, but currently there is no requirement to provide a copy to the State Ombudsman or to allow for appeal rights. This places residents in those settings at increased risk of mortality.

There are many homes that rarely find reason to issue a notice of involuntary discharge. There are also facilities that are “serial offenders,” some that fail to provide the required written notice at all, while others do not provide an appropriate reason or rationale. In many cases, the underlying problem is a symptom of other issues: lack of staff or other capacity to care for people with complex behavior or mental health needs. Providers often lack appropriate training and education in person-centered practices to support “a person who is experiencing difficulty.” Instead, they apply an improper label of “a difficult person.”

Some facilities, even those that advertise as memory care providers, attempt to assert common behaviors associated with dementia as a reason for discharge. Residents who become lost and enter others’ rooms, who pace, or are nervous and agitated, are labeled as a danger to others instead of the facility recognizing the need to develop a plan that supports the resident. Ombudsmen often observe environments contributing to confusion or disorientation for these residents. Providers are often not assessing and creating plans around what works and what does not work for the individual.

Providers often fail to provide supervision as needed or involve the person in daily activities they can participate in positively. There is a failure to reassure the person as often as needed or identify times a person is most likely to exhibit anxiety, agitation, and restlessness and plan preferred activities during

that time. Often there is a failure to ensure basic needs are met, including toileting, nutrition, and hydration. In most instances where a person is labeled as difficult, or even dangerous, they simply were communicating an unmet need through behaviors.

Not every notice the Long-Term Care Ombudsman reviews fails to have merit; but a vast majority are lacking in the requirements.

Providers are required to provide a proper written reason and rationale for any involuntary discharge. Yet homes fail to provide the notice, or they assert reasons for which they provide no evidence to support.

Further, they fail to include the required information regarding the address and telephone number of the complaint program of the Kansas Department on Aging where a complaint related to involuntary transfer or discharge can be registered; or the address and telephone number of the State Long-Term Care Ombudsman; or for residents who have developmental disabilities or who are mentally ill, the address and telephone number of the Kansas Advocacy and Protective Services organization.

Home and Community Based Service (HCBS) allows waiver recipients to live in assisted living, home plus, residential health care, and boarding care facilities that contract with one or more managed care organizations. Medicaid requires that individuals in those settings have landlord-tenant protections equal to those that live in the broader community. Kansas currently does not provide for equal protections and appeal opportunities in these settings.

Appeal rights should be available for residents in ALL long-term adult care facilities; nursing homes, assisted living facilities, home plus, residential care facilities, and boarding care homes. It is a reasonable expectation that facilities be required to follow the rules of the business they chose and to be accountable for the service they agreed to provide.

This legislation allows individuals to receive due process. Valid involuntary discharges will be supported, involuntary discharges deficient in notice, reason and rational will be denied. There should be no undue burden on a provider in asking them to deliver the service to their customer that they agreed to provide upon admission.

While, our Office is a proponent of this legislation, we request amendments to provide clarity and consistency by aligning with nursing home involuntary discharge requirements.

We recommend removing, "if known" in sec 2 (c) (7):

(7) *the location where the resident will be transferred or discharged, ~~if known~~*;

Knowing the specific location the person will be transferred to is necessary as the purpose of the 30 days is to provide for adequate time for discharge planning.

Further, a change in location should require that a new notice be issued, allowing for 30 days to provide adequate discharge planning.

The Kansas Long-Term Care Ombudsman Program supports HB2246 to allow for appeal rights for involuntary discharge for all Kansas adult care home residents.

Respectfully Submitted,

Camille Russell

Kansas State Long-Term Care Ombudsman