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Testimony to the House Health & Human Services Committee

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Chairman Morrison and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for Kansas Advocacy and Protective Services. Kansas Advocacy & Protective Services, Inc. (KAPS) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, KAPS is the officially designated protection and advocacy organization for Kansans with disabilities. KAPS is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy organization for Kansans with disabilities our task is to assist persons with disabilities, regardless of age or disability, to live in the most integrated setting possible, and to ensure that they receive the appropriate medical care, support services and treatment in a safe and effective manner as promised by federal, state and local laws. That responsibility includes protecting the rights of individuals with disabilities who reside in adult care homes.

One of our core priorities is to “promote positive systems and policy changes that will increase the independence of Kansans with disabilities and enable them to live with dignity, independence and respect in the most integrated setting possible.” The legal and civil rights advocacy that KAPS does is all based in that belief. My comments today are also based in that core principle.

KAPS adamantly opposes SB 430 for both its content and the principals on which it is proposed. Adult care home inspection reports, Health and Human Services compliance reports, and other required reports are indicators of whether or not that particular care home is complying with

applicable laws and regulations required for cleanliness, quality of food, recreation activities for residents and, most importantly, they are reports that address the quality of care and treatment of the individuals who live there. These reports are generally public information and as such provide adult care home accountability to its residents and the public.

We need to be clear. Many people living in a care facility are our most vulnerable citizens. Many are non-verbal and can not “speak up” when they are being mistreated, many unfortunately have lost the capacity to speak up for themselves when they believe that they are being mistreated, and finally, you must understand that residents far too often feel intimidated to where they do not speak out under a perceived fear of retaliation. In these cases the required reports speak on behalf of the residents.

In its 1998 case *Adams vs. St Francis* (264 KAN. 144 (1998)) the Kansas Supreme Court spoke to this very issue of access to compliance and other reports for the purpose of enforcing the rights of patients / residents to enforce an individual’s right to due process for mistreatment, or in this case malpractice. In its ruling, the Court stated “Although the interest in creating statutory peer review privilege is strong, it is outweighed by plaintiff right to have access to all facts relevant to issues raised in malpractice action against a defendant health care provider.” The Kansas legislature can not institute a law that denies a person’s right to full access to the courts and due process under the law. The proposal in SB 430 would be the ultimate abuse of the people who live in adult care homes, a denial of their right to defend themselves by what is all too often their last line of defense, due process of law.

KAPS strongly opposes any public policy that reduces or eliminates accountability of adult care homes. SB 430 and HB 2306 are bad public policy.