



December 14, 2020

Chair Landwehr and Members of the KanCare Oversight Committee,

The fact that the committee is hosting a day long hearing on long-term care and no older adults or aging advocates are speaking is indicative of the depth of how voiceless older adults are as decisions are made about their welfare and restrictions on their freedoms. Even though older adults in adult care facilities have borne the heaviest toll of COVID 19 and are a majority of deaths from COVID, their voices are not heard within facilities or outside of facilities on the issue of such high import.

As you consider the State's COVID 19 response and legislative actions such as granting immunity to adult care homes, I would ask you bear in mind:

- The adults who live in adult care homes are medically fragile and physically frail, more than half have dementia;
- Elders in adult care homes are denied their constitutionally guaranteed right to freedom of association since March 2020, although the government has not "formally" suspended this constitutional right, it has in practice. Only persons incarcerated for crimes are similarly denied this constitutional right;
- Elders in adult care homes have been denied their right to have visitor of their choosing and at times they choose since March 2020. This resident right is assured by State and Federal law;
- KDADS has not conducted annual inspections of adult care homes to assure the general health and safety of elder residents since March 2020 and are responding with inspections only when the highest levels of harm is reported to the hotline;
- KDADS was already 2-3 years behind on annual inspections of assisted, home plus, and residential health care facilities before the pandemic hit, which means that health and safety concerns and non-compliance have gone unchecked and uncorrected for years;
- KDADS was only getting current with mandated annual inspections which assure resident health and safety in nursing facilities just prior to the suspension of inspections in March 2020;
- Long-term care ombudsmen have not been able to meet in-person with elders to hear their complaints and advocate with facility administrators for their needs since March. Ombudsmen are hampered in their ability to communicate with residents – having to rely often on facilities to make communication possible;
- In addition to federal and state restrictions on who can enter a facility to visit a resident, facilities also have the right to implement additional policies on who and under what circumstances visits can occur for residents;
- Neither the legislature nor federal or state regulators have assured/required that residents have a voice in the decision making about the exposure risk they are willing to assume or the protection they desire.

All of these things results in older Kansans residing in adult care homes having nearly every avenue that typically provides formal and informal oversight for them cut off – family/friends, inspections, ombudsmen. These are compelling reasons to assure that resident voices be part of each and every deliberation and policy-making action which continues or increases the restrictions

placed on them, and decision-making about the State's efforts which remediate the harsh impact of COVID 19 on Kansans in adult care facilities.

The flip side of any discussion of granting immunity to adult care facilities is that elder residents have another of the few remaining doors, which they could otherwise use to access justice, slammed in their faces. Immunity denies elders access to the courts when they are harmed or injured and die.

The balance is not fair or right here. The law requires that when depriving a citizen of a right, the remedy offered must be of similar value. That is wholly absent in this situation.

We are not suggesting that the State abandon elders and facilities in this pandemic. Older adult residents deserve that those providing long term care to them be sufficient in number, adequately trained, provided with personal protective equipment and be tested to manage COVID exposure. We are not asking for that – these are already mandated by laws that this body and the federal government has passed, and by state and federal regulations already approved. We are asking you to diligently work to make these things happen. On this, older adults, advocates and providers in the long-term care industry are in accord.

We are asking that older adults' voices are intentionally heard in each and all deliberative and decision-making bodies while their rights are so denied/restricted. We are asking that residents have access to courts without restrictions from immunity, as well as to State oversight entities, and advocates. Thanks to COVID funding, legislators and regulators could invite facility residents' voices into the room and be heard in policy deliberations and at points of decision-making, via the electronic devices facilities received. The Long Term Care Ombudsman program is optimally situated to identify and support residents willing to bring their voices forward.

Respectfully,

Mitzi E. McFatrach, Executive Director, on behalf of Kansas Advocates for Better Care.

KABC is a statewide, non-profit organization dedicated to improving long-term care for older Kansans at-home and in adult care facilities since 1975.

Kansas Advocates for Better Care
Office: 536 Fireside Court, Lawrence, Kansas 66049
phone: 785.842.3088 toll-free: 800.525.1782
e-mail: info@kabc.org website: www.kabc.org