

To: House Judiciary Committee  
From: James Krehbiel, President/CEO Bluestem Communities  
Date: February 3, 2021  
Re: HB 2126 COVID-19 Liability Bill

Thank you to the Committee members and chair, Representative Fred Patton, for the opportunity to share with you about the effects of COVID-19 on our life plan communities. I have the privilege to serve as President and CEO of Bluestem Communities, a nonprofit senior care organization with four campuses in south central Kansas.

Bluestem Communities includes two life plan communities – Kidron Bethel Village in North Newton and Schowalter Villa in Hesston – which provide independent living, assisted living and long-term health care. Bluestem PACE (Program for All-Inclusive Care for the Elderly) in McPherson and an alternative care site to open in Hutchinson later this year, partners with individuals aged 55 and better and their caregivers in six counties so seniors can remain safe and independent in their own homes for as long as possible. Throughout our campuses, we serve more than 830 residents and participants with 577 staff.

We are grateful for the careful consideration being given to HB 2126 because of what it means for life plan communities like ours' all across the state. We are also grateful to representatives like our own district representative, Stephen Owens, for advocacy on behalf of senior care organizations both with HB 2126 and with the pre-filed HB 2024. Of the states that have granted COVID-19 liability immunity to businesses and health care providers, Kansas is the only state that has not included that liability protection for adult care homes. Without that protection, senior care organizations in Kansas are burdened with financial challenges and decisions that affect the quality of life and care of residents and participants. HB 2126 addresses and rectifies some of those difficulties. It is important to note that HB 2126 does not grant care facilities immunity from gross negligence.

Over the months of the pandemic, Bluestem Communities and other care organizations have faced challenges on multiple fronts. Staffing levels, which were not a concern for many life plan communities before the pandemic, became a struggle during COVID-19. Some staff left their positions out of fear of COVID-19, while at many other times, staffing levels were left short due to staff being out with positive cases or quarantine. Many shifts in departments including nursing, dining, housekeeping and maintenance have operated well below full capacity, which affects the care and services staff are able to provide to residents and participants.

Routine testing of staff became a requirement for long term care facilities nationwide in the fall of 2020. The rate of testing is determined by positivity rates within the county. Testing at the maximum rate of twice per week, which the positivity rate in many Kansas counties has demanded for much of the time, can take as much as 12 hours per day in facilities of our size, representing thousands of staff hours each week.

The availability and quality of personal protective equipment (PPE) has also been an issue for our communities – both finding the appropriate types of PPE and assuring the quality of the items. Staff routinely reuse PPE until they are soiled or worn beyond use in order to conserve available quantities. All these things in combination add time that could be directed toward resident care.

Testing, PPE and other factors have caused substantial, unplanned financial expenditures. To date, COVID-19 costs for Bluestem Communities total \$1.7 million. Likewise, without the liability immunity that HB 2126 would provide, litigation costs are likely to become an additional area of great concern. Our organization experienced a general liability premium increase of 10.3% for the current year with most of that attributable to COVID-19 liability risk. In the previous three years, premiums have only increased an average of 1.6%. Over time, the continuance of these kinds of financial burdens will, perhaps, become one of the greatest challenges to nonprofit organizations like ours, and could be the reason some will be forced to close.

With liability threats a reality in the work we do, facilities like ours will be overly cautious in re-opening to visitors and other activities that benefit residents. Perhaps the most notable effect of COVID-19 on senior care communities is that of resident isolation. As one of the greatest at-risk populations to COVID-19, due to regulatory requirements set in place by Centers for Medicare and Medicaid Services (CMS), elderly residents have faced many weeks and months confined to their rooms. A positive resident or staff member in a health care neighborhood forces precautionary isolation in the neighborhood for 14 days following the last exposure. During these times, residents are confined to their rooms or only allowed in public spaces one at a time and do not see other residents. Only after 14 days with no additional positive cases are residents again allowed to share spaces with one another with appropriate masking and physical distance. This kind of isolation can have a dramatic effect on an individual's mental and physical health. Even with the benefits technology affords, nothing can replace face-to-face interactions and the ability to touch and hug loved ones. Considering the regulatory requirements which are already significantly stricter than any other health care provider including hospitals, there is no rational reason to withhold liability immunity from long term care settings.

To protect our residents and prevent spread, our long term care communities screen each person who enters the building, test staff two times per week, test all residents every week if there is one positive resident or staff member, place all residents in 14-day precautionary isolation if there is one positive resident or staff member, and visitors are significantly limited. Meanwhile, hospitals do not test staff, screening entries is minimal and visitors (while limited) are allowed without testing. While hospitals have minimal accountability for COVID-19 prevention and control, they have liability from immunity. Long term care communities already heavily regulated by CMS to enforce COVID-19 prevention and control should have the same protections from liability that hospitals and other medical providers receive.

Our senior care facilities need the support of policy makers to make it through this pandemic. This affects every senior care facility in the state of Kansas and the seniors whom they serve. We need your understanding of the liability threats to our organizations and the quality of care and life for residents. As such, I ask that you please consider the ways we can better serve residents by passing HB 2126.

Thank you for your time.

James Krehbiel, President/CEO