

Neutral Testimony

HB 2246 – Establishing requirements for the involuntary discharge or transfer of a resident in an adult residential care facility, the right to appeal such discharge or transfer and a process for such appeal

House Judiciary Committee

February 9, 2023

Chairman Patton and Members of the House Judiciary Committee,

My name is Lacey Hunter, and I am Commissioner for the Kansas Department for Aging and Disability Services Survey, Certification and Credentialing Commission. My Commission is responsible for providing the licensure and compliance requirements necessary to be an Adult Care Home in Kansas. To complete these duties, we employ a team of field staff surveyors who perform unannounced on-site inspection for licensure and certification requirements.

On behalf of KDADS, I am here to provide neutral testimony for HB 2246 which would require an appeal process for residents of adult residential care facilities.

The concepts in House Bill 2246 were originally introduced in the 2021 Legislative Session as House Bill 2004 commonly referred to as “Charlie’s Bill.” In December 2021, Representatives Susan Concannon asked the Judicial Council to study the issues raised in 2021 HB 2004, regarding the creation of the right to appeal an involuntary discharge or transfer from an adult residential care facility and creating equitability among all residents within a licensed adult care home. The Judicial Council created an ad hoc advisory committee to complete this study.

The Kansas Judicial Council an ad hoc advisory included proponents as well as opponents of HB 2004 as well as representatives from KDADS and Office of the Long-Term Care Ombudsman, Adult Care Home Administrators and Operators and both legislative chambers. The advisory committee made the following recommendations:

- If the Legislature enacts an appeal process for a 30-day notice of involuntary transfer or discharge from a medium care level facility, the Committee recommends the appeal process be structured as set out beginning on page 18 of attachment one.

- If the legislature enacts an appeal process for an emergency involuntary transfer or discharge from a medium care level facility, the Committee recommends the appeal process be structured as set out beginning on page 25 of attachment one.
- The Committee recommends KDADS enacts a regulation requiring the written notice of an emergency involuntary transfer or discharge to include information about the resident's right to appeal.
- During the legislative process, the committee recommends the additional of a liability limiting provision to provide some amount of protection for the facility from an action based on negligence if the facility does not provide services to a resident that are outside the scope of the negotiated service agreement

KDADS is supportive of the concepts studied by the Judicial Council to provide all residents with an appeal right when they are discharged involuntarily from an adult care home in Kansas. The committee's recommendations and bill language would add additional administrative requirements to KDADS to enact the administrative hearing and timeline obligations added into the bill language of HB 2246. These additions include a process for an informal meeting after an appeal has been filed and before the administrative hearing with Office of Administrative Hearing (OAH). KDADS also would have to review and approve of emergency discharges as outlined in Sections 7 and 10 of HB 2246.

The bill also will create a separate of resident rights within Adult Care Homes as defined in K.A.S. 39-923. The bill only provides appeal rights to part of the Adult Care Homes licensed by the KDADS and leaves out other populations of vulnerable adults living in licensed adult care homes. It also creates appeals process for an emergency discharge that does not currently exist for residents in Medicare or Medicaid certified facilities.

Thank you for the opportunity to provide testimony on this important issue.