



March 16, 2021

Chair Warren and members of the Senate Committee on Judiciary:

Thank you for the opportunity to appear before you today on behalf of Kansas Advocates for Better Care (KABC). Protecting the rights of older adults and persons with disabilities is one of our organization's highest priorities. Let me explain to you why we so strongly oppose HB 2126.

The health risks associated with COVID-19 have disproportionately targeted older adults and persons with disabilities and/or chronic illnesses. Nursing home residents have suffered and died from not only the effects of the virus but also from isolation. To date, 4,195 of the 4,824 Kansans who have died from the virus were over the age of 65. While we don't know for certain, it is likely a majority of those persons died in a Kansas nursing home.

KABC opposes HB 2126 because it takes away one of their last remaining rights, their right to a fair trial if they are abused or neglected. People give up their homes and much of their independence when they move into a nursing home. The pandemic took away more of their rights – their right to see their friends and family, their right to eat in the dining room with the people they live with, the right to leave the facility, just to name a few. Many residents weren't allowed to leave their rooms for months.

I urge you to read two articles, both of which speak to the heart of the argument as to why nursing homes should not be immune from accountability.

The first, an account by the Associated Press, shifts our attention to those residents who avoided contracting the virus but fell victim to its side effects, nonetheless. In November, [“Not just COVID: Nursing home neglect deaths surge in the shadows,”](#) reports estimates that for “every two COVID-19 victims in long term care, there is another who died prematurely of other causes. Those ‘excess deaths’ could total more than 40,000 since March (2020), or roughly 15% higher than beyond the normal rate of fatalities.

In case after case, family members report situations of neglect after months of being refused visitation rights. From dehydration to malnutrition, from lack of personal hygiene care to inattention that resulted in falls and in one case, a resident choking to death during mealtime. June Linnertz, he daughter of a resident in a Minnesota facility summed it up:

“What the pandemic did was uncover what was really going on in these facilities. It was bad before, but it got exponentially worse because you had the squeeze of the pandemic. If we weren't in a pandemic, I would have been in there ... This wouldn't have happened.”

Linnertz father's death certificate states he died of Lewy Body Dementia. When she visited her father in June two days before his death, she found him in an 85-degree room, his sheets soaked in sweat, fingernails so long they curled over his fingers, eyes crusted shut. When she removed his diaper, his genitals were deep red, and the skin was sloughing off. He may not have died from being infected with the virus, but he did die as a result of the virus.

The second article, posted just days ago, is from the NY Times. The March 13 article. [“Maggots, Rape and Yet Five Start: How U.S. Ratings of Nursing Homes Mislead the Public.”](#) analyzes the nursing home industry's own data which is used to determine the federal 5-star rating system. The Times reviewed ratings data including inspection surveys and financial statements of the nation's more than 10,000 nursing homes. The data aligns with the conditions we hear about from older adults and their family members. Together, they paint a horrific story of an industry in crisis.

“[T]he nursing home industry was ill equipped for the pandemic. The rating system allowed facilities to score high grades without upgrading the care they provided,” the story concludes.

“They were allowed to not have enough staffing, and they were allowed to ignore infection-control deficiencies, so they had poorer quality than the public knew about, and they were in the worst position to manage COVID,” said Charlene Harrington, RN, PhD, FAAN who sits on the board CMS ratings system advisory board. Harrington is also social behavioral sciences professor emeritus at the University of California, San Francisco.

As amended, HB 2126 provides immunity to facilities who are in “substantial compliance” with the current public health directives at the time the cause of action is alleged to have occurred. But we have seen throughout the pandemic that public health directives can vary based on differences by authority and timeframe. How much compliance is avoided because the compliance bar is low during a time of crisis.

The data is deep and consistent, over and over again pointing to the need for more oversight, not less. In May 2020, the Government Accountability Office (GAO) released a report, “Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic.” The GAO's analysis of CMS data showed infection prevention and control deficiencies were the most common type of deficiency cited in surveyed nursing homes prior to the COVID-19 pandemic. Of all the homes surveyed across the country, 82% had one or more infection deficiency. The report concluded most nursing homes had infection control deficiencies half of which had persistent problems.

Almost half (48%) of the nation's nursing homes with an infection prevention and control deficiency cited in one or more years were cited for infection control in multiple consecutive years from 2013 through 2017, indicating ongoing, persistent problems. Additionally, 19% of the nursing homes had an infection prevention and control deficiency cited in multiple nonconsecutive years. Furthermore, 35% of the nursing homes with an infection prevention and control deficiency cited in multiple consecutive years, were cited over 3 or 4 consecutive years, and 411 nursing homes had these deficiencies cited across all 5 years.

In Kansas, the GAO found 33.5% of nursing homes were cited for non-compliance with infection health safety standards in 2017. During the 2013-2017 time period, the GAO reviewed 369 Kansas nursing homes. Their findings documented that:

- **41 Kansas nursing homes had no infection deficiency cited;**
- **100 Kansas nursing homes were cited for one infection deficiency;**
- **77 Kansas nursing homes had multiple infection deficiencies over multiple non-consecutive years; and,**
- **151 (41%) Kansas nursing homes were cited for infection deficiencies during multiple consecutive years**

The COVID health crisis has exposed the fact that too many long-term care facilities did not comply with good infection control measures before the pandemic, increasing the vulnerability of older Kansans. In addition, KABC regularly hears from families concerned their loved ones are suffering from weight loss due to inadequate food, poor hygiene, dehydration and loneliness.

Compliant facilities have nothing to worry about. We all agree poor performing homes should be held accountable. HB 2126 seeks to take away residents' right to hold those poor performing facilities accountable for harmful or egregious practices.

Residents and their families expect the care they receive and pay for complies with federal and state health, safety and infection control guidelines. It is past time to make care for our older adults a priority. Our policies and laws must focus on fairness for residents, accountability and oversight to assure facilities are safely taking care of the people who have taken care of us. We ask you to oppose HB 2126.

Margaret Farley, Executive Director - On behalf of Board of Directors and Members

KABC is a statewide not-for-profit organization whose mission is to improve the quality of long-term care for elders in nursing and assisted facilities and in-home. KABC is not a provider of government funded services. For 45 years KABC's role has been as a resource and advocate for older adults and families and as a resource to policy makers on aging and quality care issues. KABC provides consumer education information and tracks and reports on quality care performance issues.

Not just COVID: Nursing home neglect deaths surge in the shadows, Associated Press, Nov. 19, 2020;
<https://apnews.com/article/nursing-homes-neglect-death-surge-3b74a2202140c5a6b5cf05cdf0ea4f32>;

Maggots, Rape and Yet Five Stars: How U.S. Ratings of Nursing Homes Mislead the Public, NY Times; March 13; <https://www.nytimes.com/2021/03/13/business/nursing-homes-ratings-medicare-covid.html>

Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic, Government Accountability Office (GAO) Report, May 202;
<https://www.gao.gov/assets/710/707069.pdf>