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Barbara J. Hickert, State Ombudsman

Laura Kelly, Governor

Date: February 2, 2021  
To: Rep. Fred Patton, Chair  
House Children and Seniors Committee  
From: Barbara Hickert, State Long-Term Care Ombudsman  
Re: Testimony in opposition to House Bill 2126

Chairman Patton and Members of the Judiciary Committee,

My name is Barbara Hickert, and I am the State Long-term Care Ombudsman. Thank you for the opportunity to offer this testimony. The Long-term Care Ombudsman Program (LTCOP) is mandated by the Older Americans Act and Kansas Long-term Care Ombudsman Act to provide services to protect the health, safety, welfare, and rights of the residents of long-term care facilities. Ombudsmen investigate and resolve complaints brought to us by residents and by others on behalf of the resident. We educate residents, families, and facility staff about residents' rights, good care practices, and available resources. As the State Ombudsman, it is my responsibility to represent the interests of residents in order to recommend changes to the laws, regulations, policies and actions which affect the resident's quality of life and care. And so, on behalf of the thousands of residents in Kansas adult care homes, especially the 1,108 who have lost their lives to this pandemic, I ask you to vote no on HB 2126

Under normal circumstances, many individuals, including family and friends, regularly visit the nursing homes and observe directly and report any concerning issues. Given the ban on visitation, unless the resident is at the end of life or experiencing a significant change in condition, all interaction with residents is limited to video, window, or limited outdoor visits. And sometimes, even those visits are being denied. Family and friends are not able to enter the nursing homes to observe the current conditions.

The pandemic has also limited the ability for KDADS to conduct annual inspections of adult care homes, having spent much of the last year focused on limited infection control surveys and complaints that rise to the highest level of harm. KDADS was already 2-3 years behind on annual inspections of assisted, home plus, and residential health care facilities before the pandemic hit. KDADS was only getting current with mandated annual inspections in nursing facilities just prior to the suspension of these inspections in March 2020. Current CMS data shows that 38.7% of Kansas nursing homes are now overdue for their annual inspection.

Likewise, up until this point, in-person long-term care Ombudsman visits have been similarly restricted. Although every effort is being made to advocate on behalf of residents by the Long-Term Care Ombudsman Program (LTCOP), there is unquestionably less oversight. This unprecedented isolation of long-term care residents has residents, families, and advocates concerned about the increased risk for abuse and neglect. Our office has received thousands of calls related to complaints and concerns resulting from the pandemic and these restrictions.

Accountability is essential and means requiring homes to provide quality care that meets the needs of each individual. Exempting nursing homes from liability for all except gross negligence gives bad actors license to neglect residents' needs and rights. By removing liability for negligent care, the legislature would be eliminating an effective tool that encourages facilities to comply with state and federal laws and regulations. No accountability for bad actions means more residents will be harmed.

Long-term care facility operators are denying all responsibility for conditions long-term care facilities during Covid-19. They point to state and federal government failures to provide Covid-19 tests and personal protective equipment like masks and gloves for residents and staff. They say government initiatives did not sufficiently prioritize nursing homes' access to personal protective equipment and tests, compared with hospitals. And they are right. But that argument does not justify offering immunity to nursing home operators that acted irresponsibly.

In Kansas and across our country, long-term care residents are the people most profoundly impacted by this crisis. In Kansas, they make up less than 5% of the cases but 30% of the deaths. They are not receiving the care they need to prevent harm from other health problems because there is simply not enough staff to provide that care. To protect them from COVID-19, they have been stripped of their rights in ways that no other Kansan have been during this pandemic. They have spent the last 11 months without the ability to see their loved ones in person, to touch or hug their children, their grandchildren, their spouse. Some have spent much of that time isolated in their small rooms, not even seeing other residents. They've been denied the right to make the decisions about receiving needed healthcare. Judicial recourse is one of the last remaining rights and protections for these residents. HB2126 removes this safety net and places nursing home residents in jeopardy at a time when they are the Kansans suffering most from the COVID-19 pandemic. Our parents, grandparents, friends, and neighbors deserve better.