

February 3, 2021

The Honorable Fred Patton, Chairman
House Judiciary Committee

Reference: HB 2126 — AARP Kansas' Strong Opposition to providing immunity from civil liability for COVID-19 claims for adult care facilities.

Good afternoon Chairman Patton and Members of the House Judiciary Committee. My name is Judy Bellome. I am the AARP Kansas Volunteer State President. I am a Registered Nurse and former Navy Nurse Corp Officer. I have worked as a registered nurse in home care and hospice and with many long-term care facilities, and I believe myself an expert on geriatric care.

AARP Kansas, on behalf of our more than 291,000 members and all older Kansans, stands in strong opposition to House Bill 2126. AARP opposes this bill because of the serious negative impact this bill would have on seniors and their families.

House Bill 2126 would grant sweeping immunity to adult care homes from "Covid-19" claims. An adult care home includes many places seniors call their homes, including nursing homes, assisted living facilities, residential healthcare facilities and boarding care homes.

Among other things, this bill shields these facilities from civil liability for "any claim for damages or liability that arise out of or relate to acts, omissions or decisions related to the COVID-19 public health emergency" without defining what it means for a cause of action to be "related to" the public health emergency.

All of this is particularly alarming in that the bill would seem to immunize (release from liability?) just about anything a nursing home or assisted living facility did or did not do, so long as they could argue it arose out of or was related in some way to the public health emergency, regardless of whether that action or failure to take action was reasonable given the totality of the circumstances. We also remain greatly concerned that this bill does not contain any sunset provision.

Here's just one example of how this section could have a serious negative impact on the ability of residents of long-term care facilities and their families to seek redress. Let's say a nursing home had a long history of understaffing, to the point they were not regularly

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meeting the care needs of residents. Let's say also they had been the subject of multiple complaints prior to the pandemic and afterwards. A resident, Mrs. Jones was found to have a massive decubitus ulcer (commonly known as a bedsore) that went all the way to the bone and later died of this. It was determined that she frequently was left in soiled diapers and was never turned in her bed or gotten out of bed, as required by her care plan, due to the ongoing lack of staff. This proposed bill would potentially shield the nursing home from liability for Mrs. Jones's death by allowing it to claim that the lack of staffing made them unable to provide the care they were required to provide. And that is so, even though the lack of staffing long preceded the pandemic, or the understaffing may not have been in any way related to COVID-19. They simply may not have made any reasonable effort to increase staffing levels or otherwise care for Mrs. Jones so as to prevent her death and that failure to act, while negligent, would be made okay by this bill.

AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other long-term care facilities play an important role in America's long-term services and supports (LTSS) system, and during this time of pandemic they face unprecedented challenges. However, while there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that these long-term care providers remain responsible for their negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Residents of nursing homes, assisted living and other adult care homes may be unable to advocate for themselves and have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress. Pursuing a neglect or abuse case in court is not easy to do. There exist many significant barriers to accessing the courts by a nursing home resident or family member. No resident or family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Kansas should not strip away the rights and protections of residents. Kansas Adult Care Homes, including assisted living facilities and nursing homes, should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP Kansas appreciates your consideration of these views and urges you to reject House Bill 2126. Families all across Kansas are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities.

Thank you. I will stand for questions.