



To: Rep. Brenda Landwehr, Chair and Members, House Health and Human Services Committee  
From: Rachel Monger, President/CEO, LeadingAge Kansas  
Date: February 7, 2023

LeadingAge Kansas is the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

#### **Testimony in Opposition to House Bill 2264**

Heartbreaking is not an adequate word for what nursing home residents and their families suffered under COVID-19 pandemic isolation. We agree with the substance of HB 2264 and will move to whole-hearted support if amendments are made to protect our adult care homes from liability exposure and allow them to preserve their Medicare and Medicaid funding through compliance with CMS rules and regulations.

The resident visitation restrictions addressed in this bill were regulatory requirements from the Centers for Medicare and Medicaid Services. Nursing homes had to follow those requirements exactly, and failure to do so resulted in hundreds of thousands of dollars in fines, loss of Medicare and Medicaid funding, and inevitable closure. The Kansas Department for Aging and Disability Services chose to match state-licensed adult care home requirements to CMS rules. As visitation restrictions started to loosen, we had many nursing homes who were reluctant to be as liberal as they could with visitation due to fear of lawsuits, especially after the state of Kansas carved them out of the liability protections given to other health care providers.

After much pushing by nursing home providers and resident advocates, CMS finally lifted all visitation restrictions for residents, pledging to never again order nursing home lockdowns. We can only hope they'll keep their promise.

On behalf of our nonprofit adult care homes and hospice facility members, we respectfully request the committee to add the following amendments to HB 2264. We believe these

amendments will support the aims of the legislation without risking the vital Medicare and Medicaid funding needed to keep our long term care system functioning in Kansas. These amendments will also alleviate remaining liability fears in our provider community around COVID-19 lawsuits, and clarify that patients always retain the right to refuse or revoke visits from others.

#### Amendment #1

Nothing in this act shall be construed to supersede federal laws, regulations, rules and guidance regarding patient care facilities or prevent the patient care facility from taking necessary actions to ensure they remain an eligible participant in Federal programs and remain eligible for Federal funds or reimbursement for services provided in patient care facilities.

#### Amendment #2

No patient care facility shall be held liable for damages in an action involving a liability claim against the facility arising from compliance with the provisions of this act; provided no recklessness or willful misconduct on the part of the facility has occurred.

#### Amendment #3

The patient has the right to refuse or revoke visitation from any person at any time.

We thank Committee members for their time today, and respectfully request the Committee to vote No on HB 2264 unless amendments are made to protect Medicaid and Medicare funding for long term care providers and liability protections are extended to those providers who are acting in compliance with the No Patient Left Alone act.