



June 4, 2020

Chairman Wilborn and Members of the Senate Judiciary Committee;

Thank you for the opportunity to speak with you regarding access to the judiciary for frail elders.

Older Kansans, their families, and advocates are concerned about the legislature closing off access to legal oversight entities which will deny vulnerable elders of a fundamental right when they are harmed. Older adults who live in nursing homes are by definition vulnerable and made more so by:

- State and Federal Oversight during Covid in which
 - a) annual health inspections are suspended during the undefined period of the emergency
 - b) only the severest levels of abuse will result in inspector investigations
 - c) only clusters of Covid will prompt outside inspectors to enter facilities, leaving residents at risk for other negative events such as pressure ulcers, falls, etc.
- Police barred from entering a facility when called by a resident to investigate abuse
- Barring visitors which are often the outside eyes to see and report abuse or sub-standard care
- No Long-Term Care Ombuds in facilities to advocate with and for residents harmed
- Reductions in aide training from usual 90 hours to 8 hours done on-line by temporary aides who have too little nurse supervision or training to understand and prevent or manage infection control.
- Routine understaffing by many facilities which play into poor infection control – it is impossible to practice safe hygiene and respond in a timely manner to the care needs of the 8-20 residents that nurse aides are given responsibility for

Stripping elders of their right to hold nursing homes accountable for substandard care will put more elder residents at risk and inevitably result in more avoidable deaths.

The fact that 261 out of 341 Kansas nursing facilities were cited for non-compliance with basic infection control practices means that 77% of facilities did not do what they could do, and were paid to do to provide basic protection from infections, Covid 19 and other infections for older Kansans. (see attachment CMS data 2017-2019)

That 144 nursing facilities were cited for recurring deficits in providing basic infection control means that a 42% of all facilities created an environment of higher risk for infection for the elder Kansans who live in them.

The rights and protections for vulnerable older Kansans should be front and center in every conversation about protection that is needed, not the facilities which have failed them repeatedly.

To protect nursing homes who repeatedly failed the elders in their care only supports and emboldens poor practices.

On May 20, 2020, the GAO/Government Accountability Office which is an independent, nonpartisan agency that works for Congress, sent a report to the US Senate Committee on Finance entitled: “Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic” <https://www.gao.gov/assets/710/707069.pdf>ⁱ

The conclusions reached in the report was this: “Most Nursing Homes Had Infection Control Deficiencies Prior to the COVID-19 Pandemic; Half of These Homes Had Persistent Problems”

The GAO’s analysis of CMS data shows that infection prevention and control deficiencies:

- were the most common type of deficiency cited in surveyed nursing homes, **82 percent of all surveyed homes had one or more infection deficiency.**
- Infection prevention and control deficiencies cited by surveyors included staff did not regularly use proper hand hygiene or failed to implement preventive measures during an infectious disease outbreak, such as isolating sick residents and using masks and other personal protective equipment to control the spread of infection. Many of these practices can be critical to preventing the spread of infectious diseases, including COVID19.

In each individual year from 2013 through 2017, the percent of surveyed nursing homes with an infection prevention and control deficiency ranged from 39 percent to 41 percent. In 2018 and 2019, we found that this continued with about 40 percent of surveyed nursing homes having an infection prevention and control deficiency cited each year.

About half, (48 percent) of the nursing homes with an infection prevention and control deficiency cited in one or more years of the period we reviewed had this type of deficiency cited in multiple consecutive years from 2013 through 2017. **This is an indicator of persistent problems.** An additional 19 percent of the nursing homes had an infection prevention and control deficiency cited in multiple nonconsecutive years. Furthermore, of the nursing homes with an infection prevention and control deficiency cited in multiple consecutive years, **35 percent had these deficiencies cited in 3 or 4 consecutive years**, and 6 percent (411 nursing homes) had these deficiencies cited across all 5 years. At the state level, **all states had nursing homes with infection prevention and control deficiencies cited in multiple consecutive years.**

The GAO found that 33.5% of Kansas nursing homes were cited for non-compliance with infection health safety standards in 2017.

Kansas-specific Nursing Home GAO findings for 2013-2017 looking at 369 nursing homes:

- 41 - Kansas Nursing Homes with No Infection Deficiency Cited
- 100 – One Infection Deficiency
- 77 – Infection Deficiencies in Multiple Non-Consecutive Years
- 151 – Infection Deficiencies in Multiple Consecutive Years (41%)

The COVID crisis has exposed the fact that good infection control measures were not in place in too many long-term care facilities prior to the pandemic. As the number of clusters and deaths of

elders in nursing homes continues to climb, the vulnerability of older Kansans to be victims of COVID-19 also increases.

Asking residents to pay with their lives for the woefully insufficient emergency preparedness and substandard care of nursing homes, and allowing adult care homes to face no repercussions for their egregious behavior would be perverse and unjust.

Should older adults pay with needless illness and death, while facilities are protected for their pre-existing failures, we hope you will agree they should not.

Mitzi E. McFatrach, Executive Director - On behalf of Board of Directors and Members

KABC is a 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.

Kansas Advocates for Better Care 536 Fireside Court, Suite B Lawrence, Kansas 66049
phone: 785.842.3088 toll-free: 1-800.525.1782 email mitzim@kabc.org www.kabc.org

ⁱ“The Centers for Medicare & Medicaid Services (CMS), an agency within the Department of Health and Human Services (HHS), is responsible for ensuring approximately 15,500 nursing homes nationwide meet federal quality standards to participate in the Medicare and Medicaid programs. These standards require, for example, that nursing homes establish and maintain an infection prevention and control program. At a minimum, nursing homes must (1) have a system to prevent, identify, report, investigate, and control infections and communicable diseases for all residents, staff, volunteers, visitors, and others providing services in the home; (2) have written standards, policies, and procedures for their infection prevention and control program; (3) have antibiotic use protocols and a system to monitor antibiotic use; and (4) have a system for recording incidents identified under the home's infection prevention and control program and any corrective actions taken. 42 C.F.R. § 483.80(a)(1)-(4) (2019).

When nursing homes are found to be non-compliant with the federal government health safety standards, inspectors issue deficiencies. Nursing homes are required to submit a plan of correction that addresses how the home would correct the noncompliance and implement systemic change to ensure the deficient practice would not recur.”

The GAO looked at health safety inspection data for nursing homes in the US from 2013-2019. “Using CMS's data, we determined the most common type of deficiency among nursing homes, the number of nursing homes that had infection prevention and control deficiencies, as well as the number of homes with repeated infection prevention and control deficiencies over the 5-year period from 2013 through 2017 and the characteristics of those homes.” The GAO looked at additional inspection data for 2018-2019.