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House Judiciary Committee
Wednesday, February 3rd, 2021

Testimony given by:
Haely Ordoyne, Chairwoman
Kansas Adult Care Executives Association

Representative Patton and Members of the Committee:

Thank you for the opportunity to share the experiences of adult care executives working in the senior living sector.

The Kansas Adult Care Executives (KACE) is a non-partisan, non-profit professional association serving nursing home administrators and assisted living operators in Kansas. Our membership includes 300 individual administrators and operators from both the nonprofit and for-profit adult care sectors. Our association brings the unique perspective of not only the profession of healthcare, but of those professionals living it every day of their lives.

We are here today to advocate in favor of HB 2126. We know that many Kansas legislators have supported providing adult care homes with immunity from civil liability, and we are thankful for your previous and future support. We greatly appreciate your recognition of this important matter and wanted to take this opportunity to provide front line experience of why this is so vital to our industry.

Long-term care is, and always have been, health care providers.

Suggesting less isn't fair to the healthcare heroes working in our industry to provide support every day in Kansas adult care homes. If we are not health care providers, we would appreciate anyone's clarification defining exactly what we are. It is simply cruel and unjust to consider us HERO's one day, only to paint us as the villains the very next. This is a huge slap in the face to providers putting their own lives and health at risk.

Liability insurance rates are skyrocketing

Yes, there is a general expectation that they will increase annually. However, in reaching out to our brokers, many feel that being left out of last year's legislation is a huge contributing factor

for that. We were left defenseless against an invisible enemy with not many resources. Many of us risked everything we could to keep people safe. By being left out of liability protection, we're simply being told "sorry, your best just wasn't good enough".

Affirmative Defense is no defense at all

Yes, LTC providers have affirmative defense, but affirmative defense requires defending the facility after a suit has been filed. At that point, how much damage has already been done to our facility reputation, individual reputation and staff morale? In addition, mounting a defense is not a small undertaking financially or from a labor standpoint. Adult care nursing home resources need to be focused on keeping residents and staff safe while providing the highest level of care possible to their residents. We already have a huge undertaking with all the additional requirements of COVID-19. Defending ourselves against one more thing, could literally be the final straw to cripple an already strained industry.

Some adult care homes will not survive a predatory lawsuit. Many homes, especially in rural and frontier communities, serve as a major employer for their communities. Once a lawsuit begins, there's no going back. Irreversible damage is done and lives are forever changed. You all know the damage a lawsuit can have to a business. We aren't just a business location, we are people's homes! If these suits begin to happen, they will lead to closings. Even one Kansas home closing is too many.

The fear of the "what if" has already started having an impact

This impact has not only been financial with premium increases, but also in regards to Administrators and Operators. Both Administrators and Operators are leaving our industry at record high rates. COVID-19 has been an exhausting emotional roller-coaster for us all. We have sat beside our beloved elders as they breathe their last, struggling, breath, while simultaneously giving play by play updates to loved ones outside the walls. We have had to power through sometimes 16-hour shifts, multiple days in a row because we knew there was no other option.

Without the protection from predatory lawsuits, you will continue to see leaders flee at a mass exodus. At the end of the day, being a hero isn't what we're there for, the residents are. However, when we're painted as villains for caring, with love, in unknown fights, doing the best we know how, when no one else is stepping up to the plate, we've been defeated before we have even begun.

We thank you all for your efforts regarding this bill. We pray for its passing to protect those on the front lines and are happy to collaborate and be of any assistance in this process. The future of senior living healthcare is literally in danger if not passed.