



Feb. 9, 2023

Chairman Patton and members of the House Judiciary Committee: I am Dan Goodman, executive director of Kansas Advocates for Better Care. KABC is a statewide 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 receives no state or federal funding.

Thank you for the opportunity to appear before you today about the need to close a gap in the due process laws of Kansas, specifically a gap that exists for residents of assisted living facilities. I am here today to ask for your support for HB 2246, also known as Charlie's Bill, which would grant the right of appeal to assisted living residents who are involuntarily discharged from Kansas assisted living facilities.

The terms "assisted living" and "nursing homes" are often used interchangeably, but there are distinct differences. Nursing homes provide round-the-clock skilled nursing care for persons who need more than minimal help with common activities of daily living. Because they receive funding through the federal Medicare and Medicaid programs, nursing homes must comply with certain conditions of participation, including consumer protections such as the right to appeal an involuntary discharge.

There are facilities, such as assisted living and Home Plus facilities for persons needing less medical care but who still need help with activities of daily living. These homes do not provide 24-hour nursing care. They generally do not take Medicare and/or Medicaid so are not bound by the same rules prescribed for skilled nursing homes. They are subject to only State regulations which do not include the right to appeal an involuntary eviction.

There currently are no provisions for an independent, third-party entity to review an eviction even though Kansas regulations for ALL adult care homes are otherwise the same. State regulations give residents 30 days to find a safe, appropriate place to live and requires the facility to provide the family with the reasons for the discharge and a doctor's approval.

The experience of Rachel and Charlie Imthurn, of Maple Hill illustrates the problem. Charlie was a resident of an assisted living facility specializing in memory care for persons with dementia. They promised families a continuum of care for residents with increased care as the disease progressed.

Rachel was given one week's notice with no reason or doctor's approval for the move. It was difficult for Rachel to find another place on such short notice, but finally she found a new home for her husband. It was stressful for Rachel, but the move proved fatal for Charlie. He died 9 days after the move from transfer trauma.

Rachel filed complaints with State agencies and left no stone unturned in trying to discover why the facility was able to breach all requirements without consequence. She came up empty-handed every time “because” as the Attorney General’s deputy told her, “No laws were broken.”

At the Rep. Concannon’s request, the issue was studied by the Kansas Judicial Council this summer and fall. In a report, released in December, the Judicial Council’s advisory committee took a two-prong approach recommending a template for a 30-day appeal process which includes

- Increased communication between the facility and resident supports prior to the discharge notice being served;
- a standardized form to be drafted and reviewed by the State, and
- allows the Long Term Care Ombudsman to file the appeal notice if directed to do so by the resident.
- To assure the resident can be safely cared for, the process included specific time frames for the administrative hearing and the decision.
- The inclusion of a liability limiting provision to provide some protection for the facility.

In addition, the Judicial Council recognized there may be situations that require immediate action. For those situations, it also recommended a process for **emergency involuntary transfer or discharge appeal**, similar to the 30-day notice except it allows for:

- shortened timeframes,
- less administrative involvement, and,
- it requires the notice be made prior to or within 48 hours after the discharge occurred

HB 2246 reflects the Judicial Council’s recommendations which provide a strong framework for an appeals process that balances the residents’ rights to due process and the health and safety of the residents and facility staff.

Thank you again for the opportunity to talk to you today and I urge you to join us in closing the due process gap for people living in assisted living facilities. We ask you to pass HB 2246 out of committee.