

Chair Landwehr and Members of the Committee,

As you consider recommendations that this committee will make to the 2021 legislature regarding KanCare, we would ask that you place the highest priority on policies and funding that immediately remediate the dangers of COVID 19 for older adults who live in nursing and other adult care facilities and which uphold their constitutionally assured civil liberties. As you are aware older adults in adult care facilities have suffered the harshest effects of COVID 19. Our state and the nation have not been equipped to nor risen to sufficiently meet this pandemic. The result has been devastating death, illness, and isolation for older Kansans who live in adult care facilities.

We are in a crisis where older adults in congregate settings are dying at alarming rates and it is getting worse not better.ⁱ

We ask that as you prioritize funding, legislation, and provide direction for the State's COVID response that you remain focused on:

- **Immediate assurance of constitutionally guaranteed rights and civil liberties of adults** living in adult care facilitiesⁱⁱ
 - In-person visitation with needed safety precautionsⁱⁱⁱ
 - Adequate staff to support in-person and virtual visits at the frequency which residents request it
 - Require residents have direct voice in all facility and state policy decision-making which restrict their right of association guaranteed by the US Constitution
 - Access to justice through the courts as guaranteed by the US and Kansas Constitutions for harm suffered due to failure of facilities to meet defined health safety requirements^{iv}
 - Assure access by long-term care ombudsmen/women who are the legally sanctioned resident representatives (non-legal)^v
- **Marshalling and distribution of the resources needed to stop the rampant spread of COVID through adult care facilities**
 - Adequate type and supply of personal protective equipment for older adults, staff, and designated visitors
 - Medical strike teams to assure competent staff are available to meet staffing needs for the daily assistance and health care older adults in care facilities require
 - Authorization of and access for “Essential Caregivers,” individual(s) designated by the resident to assist with their mental, emotional, and physical needs^{vi}
 - Adequate supplies for regular testing of staff, residents, essential caregivers, visitors and inspectors
- **Assure adequate oversight of adult care facilities** by KDADS survey/inspection unit for nursing facilities and for all licensed adult care facilities^{vii} by allocating funding needed for inspectors and needed PPE and testing^{viii}

- **Transparency of COVID public health information** reporting to the public daily on the location of adult care facilities with any COVID outbreaks and COVID deaths in the facility
- **Public reporting on federal and state COVID funding** facilities receive(d) and specifics on how the funding was/is used to address COVID needs for residents and staff

While news about possible COVID vaccine success and distribution is welcome, older adults are on month nine of the suspension of their civil liberties and the toll that COVID and forced isolation are taking on them and with no immediate end in sight. Even with vaccines coming in December, there is no expectation that it will be received in amounts adequate to cover the 30,000+ older Kansans in adult care facilities or staff who working in them.

The COVID 19 pandemic has laid bare the deficits of the current long-term care system. Significant reforms and higher levels of accountability and transparency are needed in long-term care, as are support for options to receive long-term care that re-balance our system away from institutional care and toward the more cost effective model of home and community based services, which supports where older adults want to remain in their homes in their community.

To live at home is what elders want, least restrictive setting is what the Olmstead decision requires, and a “robust” home and community-based provider network is what the State was promised by KanCare/Medicaid Managed Care in 2013.

For current HCBS participants and to make the shift away from costly institutional care to home based services, specific infrastructure is needed:

- **Strong Case Management** - older Kansans and persons with disabilities served by the KanCare waivers need a case management system which helps them effectively navigate the complexities of KanCare and the long-term care system. Older adults are most at risk of institutionalization during times of crisis such as hospitalization or during the pandemic. Case management can make the difference, tipping the scales away from more costly facility based care and loss of independence for the individual.
- **Personal Protective Equipment and Testing** to stop the spread of COVID is as important for elders and persons with disabilities receiving long-term care at home as it is in other settings. The ability to access and move PPE and testing where it is needed is imperative to maintain health for waiver participants.

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

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 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 www.kabc.org info@kabc.org 1-800-525-1782

ⁱ The recent data posted Dec. 2 on the KDHE COVID-19 website showed of the 386 people who died from COVID the previous week, 362 were connected with a Kansas long term care facility.

ⁱⁱ At the heart are constitutional rights of an individual's right of freedom to associate and access to the courts to hold the facility accountable for harm. Especially important as there has been no formal suspension of this constitutionally protected right, the Executive Order and CMS guidance only addresses the rights of a visitor to enter the facility. And with regard to holding the facility accountable please consider that there has been a suspension of regular health safety inspections, only the highest harm complaints are being inspected, ombuds are not in the facilities in person to advocate for residents, families are denied access to the facility and frequently are unable to talk with a facility resident, many facilities were non-compliant with infection prevention and control requirements pre-COVID 19, news stories have reported about facilities which did not require staff to wear protective equipment (Norton Andbe facility and others). **HB 2016 struck a balance between resident rights and nursing homes liability. It gave nursing homes an affirmative defense protection which means they cannot be held liable if they can prove they were following State and/or federal safety guidelines.**

ⁱⁱⁱ <https://nursinghome411.org/nursing-home-covid-visitation/> Reasonable policies and practices for restoring residents' rights to visitors in a sensible and safe way

^{iv} See May 20, 2020 GAO report. 82% of US nursing homes failed to meet health safety requirements to prevent or control the spread of infection, and 50% failed to meet them repeatedly. <https://www.gao.gov/products/GAO-20-576R> This included facilities being cited for staff not washing their hands or failing to implement preventive measures during infectious disease outbreaks such as isolating sick residents and using masks and other personal protective equipment to control the spread of infection. 77% (261 of 341) Kansas facilities were cited for non-compliance with infection control practices which in turn deprived residents of basic protections from infection.

^v Ombuds need access to residents in order to be effective advocates for residents. This entails PPE, access to testing, infrastructure for residents which allow for "virtual" private communications.

^{vi} Essential Caregivers have been implemented by some states to assure care for residents, remediate effects of isolation, and reduce distress of persons with dementia. Minnesota is one example. <https://www.health.state.mn.us/diseases/coronavirus/hcp/lccaregiver.pdf>

^{vii} KDADS has been conducting inspections during COVID 19 of only the most serious abuse reports and for inspection control compliance. KDADS continues to be far behind in mandated annual inspections of assisted adult care facilities (non-nursing homes) with current inspections at a frequency of between 2-3 years. Additional inspectors are needed to assure health and safety for thousands of Kansans in assisted adult care facilities. The state currently has 7 inspectors for the around 450 of these licensed facilities.

^{viii} Oversight which not only inspects regularly but assures implementation of appropriate measures to correct the specific failures in a facility to meet minimum health safety standards and that corrections are sustained. <https://www.oversight.gov/sites/default/files/oig-reports/71703218.pdf> OIG 2017 report on KS' failure to assure plans of correction were implemented