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Barbara J. Hickert, State Ombudsman

Laura Kelly, Governor

Date: January 28, 2021
To: Rep. Susan Concanon, Chair
House Children and Seniors Committee
From: Barbara Hickert, State Long-Term Care Ombudsman
Re: In support of House Bill 2004

Chairperson Concannon and Members of the Children and Seniors Committee,

My name is Barbara Hickert, and I am the State Long-term Care Ombudsman. Thank you for providing this hearing today for House Bill 2004 and allowing me to provide this testimony in support of the bill. Our agency advocates for the right of individuals in adult care homes throughout Kansas. This includes nursing facilities, as well as assisted living facilities, residential health care facilities, home plus facilities, and boarding care homes.

Every year our network of paid and volunteer ombudsmen investigate and resolve complaints made by or on behalf of residents to protect their health, welfare, and rights. Complaints regarding facility-initiated discharge or involuntary discharges have been the most common complaint investigated by the Kansas long-term care ombudsman for the past nine years. These discharges have continued during the COVID-19 outbreak, leaving older Kansans at the highest risk of death, unusually vulnerable to losing their housing and needed care.

> Case example #1: Last year, after the pandemic had restricted visits in our adult care homes, a resident of a residential health care facility specializing in the care of individuals with dementia had become increasingly agitated. This person was accustom to having his wife visit every day, sometimes multiple times a day. His wife assisted with some of his care, helping with his meals and bathing. As the weeks went by without these visits, his agitation increased, and he became more difficult for the staff to redirect. His wife repeatedly requested that she be allowed to see him to help calm him, outside if necessary. Ultimately, one night the resident became aggressive with a staff member during care, and the facility felt he needed to be evaluated at a hospital. His wife again asked that she be allowed to be with him and try to calm him for the transfer to the hospital. The facility denied her request, and instead, the facility called the local police department who sent four uniformed, armed and masked officers to forcibly remove the resident from the facility, dramatically increasing his agitation. The hospital determined there was no reason for admission to their hospital, and that the resident, now stable, was ready to return to his home. The facility refused to allow the resident back, forcing the family to figure out what to do until they

could find a new home. The facility did allow several family members to enter the facility to remove his personal possessions the next week.

In 2020, our office opened cases on 110 involuntary discharges, 36 of those in residential health care type facilities. We also know that the number of residents we have opened cases for represents a small percentage of the number of residents either involuntarily discharged or threatened with discharge. During 2020, our office also provided information and assistance to 225 consumers related to involuntary discharges, for which we did not open a case. We regularly hear from residents and their families that they are afraid to question the facility about care issues or other concerns because they are afraid of retaliation in the form of an involuntary discharge. When we can make regular visits to facilities, we hear from residents about to be discharged but have not received proper notices.

Case example #2. Last fall, we worked with a couple who lived together in an assisted living facility. The couple enjoyed the support and assistance from a daughter who is a nurse and who lived nearby. They relied on her to arrange their medical appointments and attend those appointments with them as a support person. Their daughter made a necessary follow up appointment for her father after he had returned from the hospital. She inquired with the physician's office about their policies for Covid-19 and whether they would allow her to attend the appointment. They told her she would be. When she informed the facility about this plan, they immediately sent her an email informing her that they would be issuing a 30-day discharge notice for both her parents. After consulting with our office and learning that while it was inappropriate to discharge her parents under these circumstances, there was no right to appeal the discharges, the family decided not to "rock the boat."

Unlike nursing facility residents, Kansas who live in an assisted living apartment, home plus facility, or a residential health care facility has no right to appeal their discharge to a state agency. In a case we investigated the facility had moved a resident from the nursing home side of their campus to the residential healthcare side, where they could discharge the resident without dealing with the possibility of an appeal.

Case example #3: This resident was residing in a nursing home. The resident and her sister, who is the resident's guardian, were approached by the facility administration and offered a move from the nursing home to the facility's residential health facility wing. The move would allow the resident to have a private room and live in a less restrictive environment, so they agreed to the move. Two months later, the facility issued a 30-day discharge notice. With no right to appeal, our agency worked with the resident's MCO to find a new home and at one point stopped the facility from dropping the resident off at a homeless shelter. While appropriate for her needs, her new home is two hours away from her sister.

Change is difficult and moving is stressful, but especially for someone forced to move to a new location. This is particularly true for vulnerable long-term care residents. Most have already reluctantly left their homes to move into a long-term care facility and are now dependent on others for many or all aspects of their lives. The response to the stress caused by forced relocation may include depression, manifesting as agitation; increase in withdrawn behavior; self-care deficits, falls, and weight loss. These effects can be even more pronounced for residents with dementia. As in the example above, the resident is frequently moved further away from their family and other

supports that they may have built over a lifetime. Without these relationships and supports, the issues that resulted in the discharge can become more pronounced, setting the resident up for another eviction.

While our agency supports HB2004, we do believe there are two opportunities for improvement. Both of our recommendations are currently the requirement for nursing homes.

1. We recommend the inclusion of a requirement for the facility to send a copy of the written notice of transfer and discharge to the State Long-term Care Ombudsman's Office. This has been a requirement for nursing facilities since 2017. Receiving these notices has helped up reach out to residents to offer our services, explain the rules and provide them with options. Since that time, we have experienced a 20% decrease in involuntary discharge complaints.

2. We recommend the requirement to file a notice of appeal within 15 days after the date of the notice be deleted. This requirement would put undue pressure on residents and their families at a challenging time; notices may be delayed by mail; and residents are all too often hospitalized when given notice of discharge. It is also inconsistent with the requirements for nursing homes and will confuse consumers and facility staff.

We acknowledge that there are valid reasons for a facility to issue an involuntary discharge to a resident. These reasons are specified in this bill and in current regulations. But there are also many times when discharges are done improperly, for the wrong reasons, or without proper notice. HB2004 would give residents the legal right to question the facility's decision and help give residents a voice in determining whether it's appropriate for them to remain in the facility or not.

Thank you for the opportunity to provide our agency's support for HB2004.