



To: Representative Connie O'Brien, Chairwoman
Members of the House Committee on Children and Seniors

From: Margaret Farley, P.A., Lawrence
On Behalf of the Kansas Association for Justice

Date: February 21, 2013

RE: **HB 2348 relating to adult care homes; staffing; inspections; admissions; reporting**

The Kansas Association for Justice (KSAJ) is a non-profit professional association of attorneys. KSAJ appreciates this opportunity to testify in support of HB 2348.

I am a Member and Past President (2008-09) of the Kansas Association for Justice. Currently I also volunteer as President of Kansas Advocates for Better Care, a non-profit advocacy organization that assists nursing home residents and their families in Kansas. In addition to being a practicing attorney, I also earned a Bachelor of Science in Nursing from the University of Kansas, and practiced nursing for over ten years, focused mainly on the care of elder Kansans needing long term care.

As an attorney, I represent persons who have been seriously injured or who have died as a direct result of poor nursing home care. I come at the issue of understaffing in nursing homes from several different perspectives and with a long history of working closely with the problems faced by nursing homes residents. Most of the preventable harm and injuries to residents of nursing homes occur as a direct result of too few nursing personnel who have too little training, and not enough professional nurse supervision and care management.

With proper staff resources, many such problems are almost entirely preventable.

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The trial attorneys of the Kansas Association for Justice seek to redress the injuries which their clients have suffered, through the system of justice. ***But plaintiffs' attorneys, just like their clients, would really rather that these serious injuries, illnesses and deaths not occur at all.*** That is why we urge you to approve and pass HB 2348. It directly addresses three key problems in Kansas nursing facilities: insufficiently trained staff; insufficiently supervised staff, and insufficient numbers of nursing personnel in Kansas nursing homes.

I first started working in nursing home advocacy in the early 1980's as an RN discharge planner at Shawnee Mission Medical Center in Overland Park. That is when I first witnessed the hazards of poor nursing home care, when families returned, complaining about the nursing home referrals. Back then a key staffing requirement was 2.00 direct care staffing hours per resident per day. Guess what it is today, over 30 years later? Essentially the same. This is true even though nursing home residents today are sicker and require more care.

Adequate staffing with professional nurses and certified aides is a health and safety issue for Kansas citizens who need long term care. Who among us would choose our elders to suffer more serious injuries and painful deaths? Obviously, no one does. Nursing home residents are our mothers, grandmothers, fathers, sons, grandfathers, sisters, brothers, daughters, friends and neighbors.

You have testimony before you from Kansas Advocates for Care from the federal Center for Medicare and Medicaid services (CMS), over 12 years ago. Over a decade ago, CMS found that the minimum staffing hours to avoid harm ranged from 4.1 to 4.8 hours per resident per day. We all know that you can't build a safe building if you short the structural supports. The same concept applies to nursing facilities, too. Proper staffing in nursing homes is a core structural support. Nursing homes cannot give adequate care without an adequate number of staff to provide that care. There is too high a cost to poor care, both in human agony and in unnecessary medical expenses. It also increases worker injuries: just think of the aide who tries to lift a resident by herself, when two aides are required.

Most directors of nursing in Kansas nursing facilities will tell you that they staff well above the minimum requirement in Kansas, which begs the question. Why have we kept required staffing so low for so long? ***Almost all of the injuries and deaths which I deal with in my legal practice are caused directly or indirectly by staffing problems.*** It is a key cost center for nursing home corporations. Keeping staff costs down helps fiscal managers to balance the budget.

To give you an idea of the preventable injuries, I want to share with you just a few of the people I have represented over the past several years:

- 1 A man found with unexplained injuries including massive bruising and several broken ribs, who could not get out of bed on his own. He died within a few days after the injuries, of pneumonia. Did someone drop him while transferring him alone?
- 2 A woman with a fractured pelvis and pelvic floor bruising: no one in her nursing home could explain how she got those injuries; she died within a month. Was she raped by an intruder, because no one was there?
- 3 A woman who fell at her nursing home when she tried to go to the bathroom, and fractured her hip. After she returned to the nursing home, she developed a blood clot which despite

many symptoms, no one figured out for several days. She died of a pulmonary embolism when the clot went from her leg to her lungs. Did she receive professional care planning and supervision to prevent the fall or get her prompt medical care?

- 4 A man with diabetes who lost both of his legs to amputation from heel sores, because the nursing staff did not provide adequate daily foot care like his wife had, at home safely, for so many years. Was the staff too busy to provide daily foot care?
- 5 A woman with known swallowing problems died from choking on her food because no one had the time to cut up her piece of chicken into bite size pieces she could swallow. Why was no nurse or aide with her to cut up her chicken and watch her?

All of these cases involve entirely preventable serious injuries and/or preventable deaths. All these people suffered horribly and unnecessarily because the nursing homes did not have enough professional and direct care staff. Many residents and families would rather avoid a nursing home admission, and are heart broken when their choice turns into a disaster.

As a nurse and as an attorney, I have watched this problem for so long that I have to ask, is it society's prejudices against the old and disabled adults that allows us to know our nursing homes are too often grossly under-staffed and still look the other way? How are we able to sleep at night when some residents lie awake in fear that no-one will answer their call light if they need to go to the bathroom? Or, that they will be dropped when overworked aides rush the transfer from bed to wheel chair? ***How can we justify this lack of concern for those who can no longer help themselves? Isn't it really inhumane?***

On behalf of the Kansas Association for Justice, I respectfully request that you help protect Kansas nursing home residents by passing HB 2348. It is long past time to increase the minimum staffing in Kansas nursing homes.