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Senate Interim Committee on Judiciary
Testimony on Liability Concerns Related to COVID-19 Epidemic: LTC Facilities
Andrea Meyer, Director of Government Relations
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AARP Oregon, on behalf of our over 510,000 members and all older Oregonians, **is sharing our strong opposition to any proposal to grant immunity related to COVID-19 for nursing homes, assisted living facilities, and other long-term care (LTC) facilities.** AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other LTC facilities play an important role in America’s long-term services and supports (LTSS) system. There are approximately 45,000 residents in Oregon who live in APD licensed LTC facilities. During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges, and tragically as of May 27, 2020 over 85 residents of LTC facilities have lost their lives due to COVID-19, representing close to 60% of the number of COVID-related deaths in Oregon. Given the lack of reporting of cases and deaths, as well as testing, we assume this number is a significant undercount. While there may be some circumstances beyond facilities’ control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing a nursing home neglect or abuse case in court is not easy to do. There already are many significant barriers to accessing the courts, including a cap on damages and arbitration

requirements as part of the resident admission agreement. In addition, while Oregon provides special legal protections for vulnerable Oregonians as defined as those who are elderly (over 65), incapacitated or with a disability, and allows for a civil action for abuse (ORS 124.100), that law, explicitly excludes any lawsuits against LTC facilities (ORS 124.115). No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Oregon should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also would encourage facilities to self-correct to address problems and improve care.

AARP Oregon appreciates your consideration of these views and urges you to reject any legislation that would grant immunity to nursing homes and LTC facilities. Families all across Oregon are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions, please feel free to contact me.