

**Testimony to the Idaho Senate
Judiciary Rules and Administration Committee
Opposing RS 28049
AARP Idaho
Lupe Wissel, State Director**

Mr. Chairman and members of the Committee, my name is Lupe Wissel, State Director for AARP Idaho. On behalf of our nearly 186,000 Idaho members and all older Idahoans, I am here to oppose RS 28049 regarding civil liability, related to actions during coronavirus-related pandemics or epidemics, for nursing homes, assisted living facilities, and other long-term care facilities.

Nursing homes and other LTC facilities play an important role in America's long-term services and supports system. They are unique from other businesses in that these are people's homes. It is not a relationship like one would have with a store or restaurant. Facility residents are heavily reliant on others to provide for their care. They deserve at least the current amount of protections and not less. We oppose this legislation for the following reasons:

1. LTC facilities should be liable for negligence to long-term care facilities.

During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges. While there may be some circumstances beyond facilities' control, it cannot be ignored that more than half of the COVID-19 deaths in Idaho are associated with LTC facilities. It is essential that long-term care providers remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

2. During this pandemic, facility oversight has been minimal from the public, advocates, and regulatory personnel.

Given that most inspections of nursing homes have been suspended, family in-person visits have been effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits have been similarly restricted, there have been fewer eyes observing what is happening in facilities.

3. The ability to pursue action against a facility is already a difficult process.

Pursuing a nursing home for neglect or abuse case in court is not easy to do. In Idaho, there are already many barriers to accessing the courts including stringent caps on damages that can be recovered for the neglect or death of a nursing home resident.

4. Intent-based protections are very difficult to disprove.

*Attachment 1
H 6
8/24/2020*

Language in the legislation states that those who have acted in a good faith to adapt or not to adapt their behavior in response to the pandemic would be immune. Unfortunately, lack of “good faith” is difficult to show.

I will offer an option for consideration to protect the safety of the most vulnerable adults:

- To specifically carve nursing and assisted living facilities out of the legislation. While many facilities performed admirably under tough conditions, other facilities endangered their residents. They should not escape culpability.

Mr. Chairman, there are more than 4100 nursing home residents in the state. We all need to remember that these facilities are their place of residence. We all have control of who and what comes into our own homes – residents of nursing home, assisted living facilities and other LTC do not.

We hear from families from across the state regarding their loved ones in facilities. Some are reporting that the facility their loved one is in is doing a great job trying to deal with the situation. They communicate. They take the needed precautions. They care for the residents of their facility the best that they can. Others are reporting the opposite.

Idaho should not strip away the rights and protections of residents. Long-term care facilities should know they will continue to be responsible and accountable for providing the level of quality care that is required of them, and for which they are being compensated. This accountability also incentivizes facilities to self-correct by addressing problems to improve care.

I appreciate your time and ask for a no vote on RS 28049.