



making elder care better every day

March 3, 2016

Chairman O'Donnell and members of the Senate Public Health Committee

We appreciate the opportunity to testify today in opposition to SB 456 Electronic Monitoring in Adult Care Homes.

I am Mitzi McFatrigh, executive director of Kansas Advocates for Better Care (KABC). KABC, a non-profit organization, is beholden to no commercial interests; supported almost entirely by citizen contributions in support of our mission to improve the quality of long-term care in nursing and assisted type facilities and at home. KABC does not provide any form of direct care or receive any government money reimbursement. KABC is an established resource for older adults on long-term care issues. Those seeking our guidance and assistance are primarily elders and their families facing difficult, life-altering decisions. The transition of long-term services and supports to KanCare managed care is among KABC's policy priorities and we continue to actively advocate for policies that assure and protect older adults and other consumer rights.

KABC is a strong proponent of protecting the rights of older adults and of measures that would prevent the abuse, neglect and/or exploitation of adults in adult care homes. We do not believe that SB 456 as it is written is an effective means to achieve such protection or prevention. KABC strongly urges the committee to refer not pass this legislation forward as it is currently written.

To comply with the equipment requirements in SB 456 would cost older adults or their families far more than less expensive and less intrusive alternatives already available to them. The cost of equipment purchase and installation will place the protections such equipment might offer beyond the reach of approximately 10,000 people or more than half the individuals who live in nursing facilities and whose care is covered through Medicaid. Requiring the use of the equipment and in the manner prescribed by SB 456, will effectively deprive half or more of the nursing home population from the protection the bill seeks to promote. SB 456 would insert a statutory impediment to recording mistreatment of an adult in an adult care home where there currently is no impediment. The bill makes no provision of funds to enable Medicaid participants to purchase and install electronic monitoring devices

Certain language in the bill does not protect the adult care facility resident from repeated expenses caused by change of roommate unwilling to consent to electronic monitoring in a shared room.

“(3) if the resident resides in a multi-resident room, obtain the consent of other residents in the room on a form prescribed for this purpose by the secretary.” (page 1 & 2 lines 35-37)

Additionally certain language in the bill is so broad as to create unnecessary and unwarranted liability for older adult residents or their families who choose to procure and install allowed electronic monitoring equipment. “(f) A resident, or such resident's guardian or legal representative, shall **pay all costs**

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associated with installing and maintaining an electronic monitoring device requested under this section.” (Page 2 lines 8-10) and in “(1) That a person who places an electronic monitoring device in a resident's room or discloses a recording made by such device may be **civilly liable for any unlawful violation of the privacy rights of another person;**” (Page 2, lines 23-26) The language of the privacy rights of another person is overly broad and could include staff and vendors or others not appropriately covered by such an assertion of their right to privacy.

SB 456 creates potential liability for older residents and/or their absent family or legal representative by requiring the resident or legal representative to post conspicuous notice to the resident's room, and presumably assure that such notice is always present and in place or be liable for its absence. “(2) Each adult care home shall require that a resident, or such resident's guardian or legal representative, who conducts authorized electronic monitoring to post a conspicuous notice at the entrance to the resident's room stating that the room is being monitored electronically.” (Page 2 lines 15-18)

This bill contains no penalty for anyone obstructing, disconnecting, or otherwise impairing the functionality of the electronic device and which interferes with the prevention or protection purpose of the electronic recording device. Another state's law requires that: “A person or entity that violates this Section in the commission of or to conceal a felony offense is guilty of a Class 4 felony.”

The bill is silent on “dissemination of recordings, evidentiary use in litigation, ownership of the recording, admissibility of evidence, or requirement to report misdeeds.”

SB 456 inadequately incorporates in statutory language reasonable protections of the rights of older adults (or their designated representative) who are seeking to prevent or protect from harm, and instead leaves the specifics of implementation, protections and accompanying liability undefined by the law and at the discretion of the secretary. “ (i) The secretary for aging and disability services shall adopt rules and regulations as may be necessary to administer the provisions of this section.” (Page 2 line 35-37)

Other states have passed legislation which clearly defines these areas of concern and protects the rights of an older adult living in an adult care home. Illinois is one such law that went into effect January 1, 2016. <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0430>