

**KABC Advocacy in Action**  
***Bill Status as of April 30, 2018***

**Signed by the Governor, becomes law upon publication in the Statute Book**

**\*HB 2232**/electronic monitoring to prevent and detect poor care or abuse in adult care homes – Signed by the governor. This bill allows a resident of an adult care home, or their guardian/legal representative, to electronically monitor their living area to prevent or detect abuse, or to monitor care. The bill becomes law upon publication in the statute book.

Under HB 2232, adult care facilities cannot discharge or refuse to admit a person based on a request to conduct authorized electronic monitoring. Residents or their families are required to notify the facility through a form being developed by the Kansas Department for Aging and Disability Services (KDADS). The form must be kept in the resident's file.

The resident and/or the resident's family is responsible for the costs associated with installing and maintaining the device. The person who places a device in a resident's room or discloses a recording made on such a device may be civilly liable for an unlawful violation of the privacy rights of another person. No court or State agency is allowed to admit into evidence or consider during any proceeding any tape or recording created using an electronic monitoring device or take or authorize action based on such tape or recording unless:

- The tape or recording shows the time and date when the event occurred; and,
- The contents of the tape or recording have not been edited or artificially enhanced.

The facility must post a conspicuous notice at the entrance to the facility and at the entrance of each resident's room stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents.

A person found guilty of knowingly hindering, obstructing, tampering with or destroying a device installed in a resident's room or a video or audio recording obtained in accordance with this bill, without the consent of the resident or individual who authorized the monitoring would be guilty of a class B nonperson misdemeanor. Violations done with the intent to omit or conceal the commitment of misdemeanor offense would be a class A nonperson misdemeanor; if done with the intent to commit or conceal the commitment of a felony offense would be a severity level 8, nonperson felony.

**\*SB 311**/Adds Emergency Medical Services personnel as mandated reporters of abuse, neglect and exploitation of vulnerable adults. Signed by the Governor.

**Awaiting the Governor's Signature to Become Law**

**\*Sub for HB 2427**/Employee Background Check would allow fingerprinting of all employees working with vulnerable persons. The contents of the bill were embedded within **S Sub HB 2386** in conference committee. Awaits the Governor's signature. It was presented to him today (May 1<sup>st</sup>) - he could sign at any time.

The bill expands the classes of persons who cannot be employed by an adult care homes, hospitals, and home health agencies to include persons who have had adverse findings on any State or national registry, as defined by KDADS. The inclusion of a national database search will improve safety. **KABC advocated for additional changes because as is, this bill increases the risk of harm to older adults by allowing “provisional employment.”**

- Provisional employment allows a provider or facility to employ a person and allow them to work directly with vulnerable adults for 60 days without a completed, clean background check. A clean background check would reflect no history of abuse or other harm. Disallowed offenses are defined in the bill.
- During the provisional employment period, the provider/facility is not required to have “eyes on” the provisional employee. So essentially, for 60 days the provider/facility may hire an employee who has access to an older adult and their property without providing direct supervision of the employee.
- The provider or facility is not required to inform the older adults in care facilities or individuals who receive in-home care services about provisional employment, or identify those employees who do not have a cleared background check but are working within older adults during the 60 day window.
- Providers and facilities are protected from civil liability even if the provisional employee harms an older adult.
- Provisional employment transfers all the risk to the vulnerable older adult, even though he/she is the most unable to protect her/himself from abuse or other wrong-doing.
- The bill strips older adults of the right to pursue civil legal action against the provider/facility that hired the person, is not required to provide direct supervision of the provisional employee, nor required to inform the older adult of the potential risk a provisional employee poses to the older adult.
- Provisional Employment presents serious and significant harm risks to older adults, without any proper notice, and it deprives them of appropriate remedy through the civil legal system.

KABC will continue to raise these concerns and promote awareness of the risk this legislation creates for older adults. **If you want to communicate with the Governor about any concerns you have with his signature on this bill – contact him quickly via email at <https://governor.kansas.gov/serving-kansans/constituent-services/legislation-and-policy-issues/> or by phone Toll Free: 877-579-6757 or in Topeka: 785-368-8500**  
**If you believe this bill should not be signed into law as it currently reads, let the Governor know you want him to veto the bill and ask the legislature to close this dangerous loophole.**

S Sub HB 2386 also amends law related to licensure, certification or registration (licensure) qualifications. Among its changes, the bill requires any licensing body to list the specific civil and criminal records that could disqualify an applicant from receiving a license, certification or registration. The revision of existing requirements must be done within 180 days of publication in the statute book.

### **Bill In House/Senate Conference Committee, Needs Agreement to Move Forward**

\***HB 2458**/adds physical abuse, unreasonable punishment or unreasonable confinement to the list of elder victim crimes. It also adds taking personal property or financial resources from a dependent adult through a violation of the act for obtaining a guardian or conservator or both. This merges the two crimes of mistreatment of a dependent adult and mistreatment of an elder person into a single crime of mistreatment of a dependent adult or an elder person. It also changes the definition of “elder person” from 70 to 60 years of age.

It has been bundled in conference committee with HB 2649/assault and battery against a law enforcement officer and SB 378/counterfeit currency. It is in conference committee.

### **Bill Requires Action to Move Forward**

\***SB 38**/Bridge to a Healthy Kansas – Expands Medicaid in Kansas. Passed favorably by Senate Public Health Committee and awaits vote by the full Senate.

\***SB 300**/KanCare 2.0 Delay – The provisions of SB 300 have been placed as a proviso within the Omnibus budget bill S Sub HB 2359 and agreed to by both chambers. The proviso would require a three-year delay to substantial changes in the KanCare Medicaid program.

\***KanCare Oversight Committee** – Mitzi McFatrach testified April 23 at the KanCare Oversight Committee stressing the need for strong adult care facility inspections to protect older adults from harm and assure good care. KABC’s testimony addressed the failure of Kansas Department for Aging and Disability Services (KDADS), the State agency responsible for nursing home inspections, in meeting its legal, statutory obligation to conduct facility inspections every 12 months. KDADS is currently inspecting facilities at 18 months on average and with a range of 15-24 months. McFatrach reminded the committee that the KDADS inspection unit is seriously understaffed – down 17 to 22 inspectors out of 59. KDADS Secretary Tim Keck said the agency has requested additional funds from the legislature to raise the salaries of the current surveyors, and is lowering the educational standard for inspectors by allowing for hire of licensed practical nurses (LPN), rather than the current requirement of registered nurses (RN).

Senators Vicki Schmidt (R-Topeka), Barbara Bollier (R-Mission Hills) and Representatives Jim Ward (D-Wichita) and Barbara Ballard (D-Lawrence) all expressed concerns about the State’s failings to bring the process back into compliance for inspection frequency. Attempts by committee members to rescind the committee’s November recommendation to “give surveyors latitude in interpreting deficiencies” were denied by committee Chair Rep. Dan Hawkins (R-Wichita). He did not allow any motions to be made by committee members or debated by the committee on any issue throughout the meeting. The Topeka Capital Journal covered the meeting and this issue with the following story: <http://www.cjonline.com/news/20180424/kansas-agency-failing-to-perform-timely-nursing-home-inspections>

### **Bill Died in Committee. KABC will advocate for New Bill in 2019 Legislature**

\***HB 2704**/Requires written informed consent by a resident before administering an anti-psychotic medication in an adult care home. Died in the House Children & Seniors Committee.

\***S Sub for 2674**/Establishes a licensure category of mid-level oral health providers. Died in conference committee.