

## **KABC Advocacy Activities**

**February 27, 2018**

The 2018 session has hit the half-way point of its annual 90-day session. Also known as “turn-around,” all bills that do not pass out of their house of origin by this point are considered dead – unless they were introduced or referred at some point to one of the seven committees that are exempt from this deadline: House Appropriation, Senate Ways and Means, both House and Senate Federal and State Affairs Committees, House and Senate Tax Committees and House Calendar and Printing.

Long-term care issues and bills impacting older adults have been at the center of significant policy discussions during the 2018 session. The following summarizes the issues and the bills that KABC has been involved with during the legislative session.

### **The State of Long-Term Care in Kansas**

Long-term care has been a priority issue for the 2018 legislative session. In addition to hearing public testimony on proposed bills, legislative health and budget committees have held “informational hearings” to hear from consumer and advocacy groups, the nursing home industry and the State agencies responsible for long-term care programs in Kansas.

Mitzi McFatrach, KABC executive director, has brought the perspective of the older adults and their families to these informational hearings focusing on the importance of a strong inspection and enforcement program, the inappropriate and overuse of antipsychotics in Kansas nursing homes, and the need for policies to improve care for persons with dementia.

KABC’s testimony has focused on deficits in the State’s oversight of health and safety standards in nursing facilities. The Kansas Department for Aging and Disability Services (KDADS) is responsible for conducting inspections to assure Kansas adult care homes comply with health, safety and sanitation laws and regulations. Survey frequency in a nursing facility can range from 15-22 months and longer, lagging far behind the statutory requirement to inspect facilities on a 12-month average. McFatrach pointed out to legislators that the federal Centers for Medicare and Medicaid Services (CMS) has found Kansas to be out of compliance noting that KDADS was four months behind at a 16-month statewide average on survey frequency.

This deficiency is largely due to a high number of open surveyor positions within the agency. Nearly a third of the 60 survey positions are currently open. This lag in inspections and understaffing leaves nursing home residents at risk of harm by abuse, neglect, exploitation and substandard care.

As a result, KABC supported the KDADS budget request for additional funding to increase surveyor salaries to a competitive level for registered nurses. The additional funding would also fund one new surveyor position.

## **Antipsychotic Use in Nursing Homes**

On February 13<sup>th</sup>, KABC, the Human Rights Watch (HRW) organization, and a family caregiver testified to the House Children and Seniors Committee about the inappropriate and overuse of antipsychotics drugs on Kansas nursing home residents with dementia. This has been a major priority issue for KABC because of the danger the drugs present to older adults, and because Kansas currently ranks 51<sup>st</sup> worst in the nation and has made little improvement during the past 5 years of a national campaign to reduce use. Kansas reduced anti-psychotic use by about 5% - nationally the reduction was over 30%. By comparison, California, a much larger, more populous, and more diverse state went from being ranked 49th worst to 4th best, Kansas went from 43rd to 51st worst. Arkansas and Tennessee - Midwest neighbors of Kansas - are among states with the highest reductions.

The Human Rights Watch recently documented this problem in a report: *"They Want Docile"* which was released February 5th. One of the HRW researchers, Bethany Brown, appeared before the committee to discuss their research and findings. The researchers visited 109 nursing facilities, including 20 in Kansas. They also visited facilities in California, Florida, Illinois, New York and Texas, mostly with above average rates of antipsychotic medication use between October 2016 and March 2017. Researchers also conducted 323 interviews with nursing home residents, their families, facility staff, long-term care ombudsmen, advocacy organizations and others.

The committee viewed a video prepared by HRW which featured two Kansas families including Charlene Wagner and her husband Allen, who has Lewy Body dementia and lives in a nursing home. He has been given antipsychotic drugs since 2009. When Mrs. Wagner questioned the use of antipsychotics she was told, "that's what they do at this nursing home." Also featured was Karla Benkula whose mother was given antipsychotics without her consent.

The Alzheimer's Association and a man whose wife needed antipsychotics while she was receiving hospice care also testified.

KABC hosted a luncheon for members of the Children and Seniors Committee and the House and Senate Health Committees, so they could also hear about the report and hear from families who have been impacted by the use of these drugs.

As a result, Rep. Gallagher and several members of the Children and Seniors Committee have introduced a bill which would require written informed consent before nursing homes could administer an antipsychotic drug to a resident. HB 2704 would require written confirmation that an adult care home resident or their representative has been fully informed with regard to the medications by the prescriber and that the resident or representative has agreed or declined to use the medication after being fully informed. The bill has clear provisions to allow for the prescribing and use in an emergency. A hearing on the bill will soon be heard in the Children and Seniors Committee.

## **KanCare Oversight Committee**

At the November meeting of the members of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight heard complaints from the nursing home industry who claimed that KDADS was overly punitive in enforcing health and safety regulations and resulting fines were excessive.

At the conclusion of the November meeting, the committee recommended that KDADS "develop policies and practices for surveying long-term care facilities that will give surveyors latitude in interpreting deficiencies, provide adequate salaries and thorough training to enhance the work of surveyors, and

monitor inspections and provide reports to the committee regarding citations and fines.” This recommendation was based on an incomplete picture of the survey process, with only a brief opportunity for KDADS staff to respond but no opportunity at that time for the perspective of nursing home residents.

Mitzi McFatrach, followed up at the committee’s January meeting by reminding the committee that State inspections, oversight and enforcement are the single access residents in nursing facilities have to protect them from poor care and harm. She brought to the Oversight Committee the information that she had been sharing with the House and Senate Health Committees, the Senate budget committees and the House Children and Seniors Committee to clearly illustrate the need for inspections and a strong oversight and enforcement system to assure the rights of older adults and adults with disabilities in nursing facilities

As a result of her testimony, the Oversight committee agreed to reconsider its recommendation to the 2018 Kansas Legislature at its next quarterly meeting in April.

### **Electronic Monitoring in Nursing Homes**

For two years, KABC has worked closely with consumers and advocacy organizations on HB 2232, legislation that would affirm use of electronic monitoring in an adult care home after notifying the facility of the resident’s intent to monitor in their personal room.

The bill includes the following individual protections:

- person cannot be refused admission or evicted from an adult care home for electronic monitoring;
- person will be informed of how and who to report suspected abuse or other mistreatment, theft, exploitation;
- decide what modification to camera use is acceptable to address personal privacy & dignity;
- resident can withdraw their consent to electronic monitoring;
- resident must cover the cost associated with equipment and monitoring, and resident also owns the content;
- equipment must be safety compliant.

It also requires that a person wishing to use electronic monitoring must obtain written consent from a roommate and that a roommate can withdraw their consent to electronic monitoring.

As a result, the bill releases the adult care home from liability for any violation of resident’s privacy rights when the person chooses to electronically monitor. It also requires that the facility make reasonable accommodations for electronic monitoring equipment, its installation and power source and to make reasonable accommodation for a resident who wishes to conduct electronic monitoring if their roommate does not consent. The facility must post notice at each resident’s room that electronic monitoring may be occurring. The bill states that the facility may require that electronic monitoring is placed in plain view.

HB 2232 states that a person who tampers with electronic monitoring equipment may be held criminally liable. Any recording may only be used as evidence in a court or state agency proceeding if the recording a) shows a date and time stamp (if video), and b) the contents of the recording have not been edited or artificially enhanced. The Senate amended the bill after it passed the House in 2017. The House has not yet agreed to those amendments. If it does not, the bill will go to a conference committee with the Senate.

## **Other legislation of interest:**

### **Support:**

**HB 2458/adds physical abuse to elder victim crimes.** Prior legislation created the elder victim crime category but was specific to financial exploitation and financial abuse, and omitted physical abuse.

**HB 2031/Establishes an advisory council on palliative care and quality of life** and palliative care education program. Has passed the House and was passed out of Senate Public Health Committee and is waiting for a vote by the full Senate.

**SB 38/Bridge to a Healthy Kansas – Expands Medicaid in Kansas.** Has passed out of Senate Public Health Committee and is waiting for a vote by the full Senate.

**SB 300/KanCare 2.0 Delay** – Sets a three-year delay to substantial changes as proposed under KanCare 2.0. Has passed out of Senate Ways & Means and is waiting for a vote by the whole Senate.

**HB 2530/Adds Emergency Medical Services personnel as mandated reporters** of abuse, neglect and exploitation of vulnerable adults. Has passed the House and is waiting for a hearing in Senate Public Health.

**HB 2704/Requiring written informed consent** before administering an anti-psychotic medication to an adult care home resident. Introduced and waits a hearing in House Committee on Children and Seniors.

### **Neutral:**

**SB 312/Establishes a licensure category of mid-level oral health providers.** Passed the Senate and is waiting on a hearing in House Health and Human Services Committee.