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Barbara J. Hickert, State Ombudsman

Laura Kelly, Governor

Testimony of
Barbara J. Hickert
State Long-Term Care Ombudsman
In support of House Bill 2229
January 22, 2020

Chairwoman Concannon and Members of the House Children and Senior Committee,

Our agency advocates for the rights of individuals residing in adult care homes throughout Kansas. This includes nursing facilities, as well as long-term care units of hospitals, assisted living facilities, home plus facilities, residential health care facilities, boarding care facilities, and adult day care centers. Our network of paid and volunteer ombudsmen investigate and resolve complaints made by or on behalf of residents with the goal of enhancing their quality of life and quality of care.

HB 2229 would amend the Electronic Monitoring law passed in 2018 by deleting the provisions on the use of a tape or recording as evidence. These provisions limit the use of tapes or recordings as evidence in any proceeding any tape or recording made in the private area of a resident's room in an adult care home, if the recording does not have *a)* a date and time stamp on it and *b)* if there is any editing or enhancing of the recording.

Should either of these requirements not be met by a recording, then, the electronic recording cannot be used as evidence in any proceeding- criminal, civil or administrative: not to prosecute a criminal abuse, not to secure civil damages for injury or death, and not to verify mistreatment of a resident under state and federal law and regulation governing the practices of adult care facilities, Medicare/Medicaid fraud or other similar deficient practices of a facility or any individual in the facility.

This provision sets up an inequitable situation for residents of adult care homes compared to other Kansans. Kansans should not have to relinquish any of the rights afforded to others when an adult care home becomes their home.

We would ask that you not just delete these provisions, but rather that you amend to section to affirm that the recordings may be used subject to applicable rules of evidence and procedure as follows:

(m) Subject to applicable rules of evidence and procedure, any video or audio recording created through electronic monitoring under this section may be admitted into evidence in a civil, criminal, or administrative proceeding.

Since the electronic monitoring law went into effect in 2018, we have had the opportunity to see how the law is and isn't working for residents. I want to address a couple of areas of concern that have come up and ask that you consider further amendments to help strengthen the law.

Issue 1: Access to public use internet and Wi-Fi

The current law states that the resident, or their guardian or legal representative shall pay all cost associated with installing and maintaining an electronic monitoring device; and that the facility should make reasonable physical accommodations. Much of the electronic monitoring equipment today uses internet technology. Many of our adult care homes have internet or Wi-Fi which they allow residents and family to access. We recommend that the bill be amended on page 2, section (e) to include:

- (e) An adult care home shall make reasonable physical accommodations for authorized electronic monitoring, including:
 - (1) Providing a reasonably secure place to mount the electronic monitoring device;
 - (2) providing access to power sources for the electronic monitoring device;
 - (3) *allowing access to the facility's public-use Internet or Wi-Fi systems when available for other resident and/or public uses.*

Issue 2: The term “reasonable accommodations” as used in the law needs to be further defined

Residents who wish to conduct electronic monitoring and who live in a shared room may have a roommate(s) who refuse to give consent for electronic monitoring. The law states that the facility must make reasonable accommodations for the resident who wished to conduct electronic monitoring. The term “reasonable accommodations” is relative, leaving too much subject to interpretation. We recommend the bill be amended on page two, section (e) (3):

- (3) making reasonable accommodations if a resident in a multiresident room wishes to conduct electronic monitoring pursuant to this section and the resident or residents with whom the resident shares the room do not consent to the monitoring. *A facility has met the requirement to make a reasonable accommodation when, upon notification that a roommate has not consented to the use of an electronic monitoring device in the resident's room, the facility offers to move the resident to another shared room that is available at the time of the request. If a facility is unable to accommodate a resident due to lack of space, the facility must reevaluate the request every two weeks until the request is fulfilled.* ~~including offering to move the resident who wishes to conduct electronic monitoring to another shared room that is available or becomes available; and~~

Thank you for the opportunity to speak in support of this bill and to propose these additional changes to strengthen the law for residents.