

To: Senate Public Health and Welfare Committee

From: Codi Thurness
Commissioner of Survey, Certification, and Credentialing Commission

Date: March 3, 2016

Subject: SB 456, Electronic monitoring in adult care homes

Interim Chairman O'Donnell and members of the Committee:

I appreciate the opportunity to submit testimony regarding SB 456, legislation which would permit a resident, or a resident's guardian or legal representative, to conduct authorized electronic monitoring in the resident's room of an adult care home. In context, the Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of the adult care home licensure act found at K.S.A. 39-923 et seq., and rules and regulations promulgated to promote the safe, proper and adequate treatment and care of individuals in adult care homes. Within KDADS, the Survey, Certification, and Credentialing Commission (SCC) has responsibility for administration of the act and regulatory oversight of adult care homes.

SB 456 requires the adult care home to make certain physical accommodations for authorized electronic monitoring and to post a notice stating that some residents may be monitored electronically. The adult care home would require that a resident or their guardian post a conspicuous notice at the entrance to the resident's room stating that the room is being electronically monitored. In addition, if the electronic monitoring device is a video surveillance camera, the resident or their guardian would be required to choose whether the camera will always be unobstructed or will be obstructed in specified circumstances to protect the dignity of the resident. Importantly, adult care homes could not discharge or refuse admission based on a request to conduct authorized electronic monitoring.

In order to conduct the electronic monitoring specified in SB 456, a resident or their guardian would submit a request for such monitoring to the adult care home. The request would be made on a form prescribed by the Secretary for Aging and Disability Services. The form would be required to be maintained in the person's resident file at the adult care home and would require the resident or their guardian to release the adult care home from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device. Also, if the resident resides in a multi-resident room, the resident or their guardian would be required to obtain the consent of other residents in the room on a form prescribed by the KDADS Secretary.

KDADS currently receives inquiries from adult care home residents, guardians and facilities regarding electronic monitoring. We are aware that Texas has a law outlining specific provisions and criteria for electronic monitoring. While we do not believe the practice to be widely utilized in Kansas at present, KDADS does not have or enforce regulations specific to electronic monitoring and it is not prohibited so long as any video does not invade the privacy of other residents. Within that context, nothing stops a resident or their guardian from utilizing electronic monitoring in an adult care home.

However, SB 456 may lack certain provisions important for resident protections. For example, while the bill requires that consent to monitoring be obtained from other residents of the room being monitored, privacy concerns could arise if a resident with memory or cognitive impairment, residing in a different room, enters the monitored room without awareness of consent. In addition, liability and operational concerns should be considered.

As noted above, SB 456 directs KDADS to promulgate rules and regulations regarding electronic monitoring in adult care homes. Staff time, particularly during the initial phase of development, would be required to create and distribute necessary forms. KDADS further anticipates that electronic monitoring will result in additional complaints to the SCC licensing division's complaint hotline. Regardless of whether occurrences resulted in violations, video monitoring – particularly partial observation that would result from context-limited cameras – would likely increase the number of reports of misdeeds against residents. In turn, additional site visits would be required of survey staff as well as increased investigation by program and legal staff to process complaints. We estimate that one additional Complaint Intake Specialist position would be required to handle the escalated workload. KDADS would expect an annual total cost increase of approximately \$73,000 inclusive, if SB 456 were enacted.