

**WRITTEN TESTIMONY
Senate Bill 456**

**Senate Public Health and Welfare Committee
Chair Senator Michael O'Donnell**

**By Barbara Hickert
Kansas State Long-Term Care Ombudsman
March 3, 2016**

Chairman O'Donnell and Members of the Health and Welfare Committee:

Thank you for allowing me to provide this testimony in opposition to Senate Bill 456, in its current form. The Kansas State Long-Term Care (KSLTCO) Ombudsman Program is a state agency which 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.

Every year our network of regional ombudsman and certified ombudsman volunteers investigate and resolve complaints made by or on behalf of residents with the goal of enhancing their quality of life and quality of care. Our experience tells us the video monitoring is often a last-ditch step by relatives who suspect abuse or serious neglect but feel that their concerns will not be acted on. Families are witnessing injury and neglect of their loved one and feel the only way to detect this is to use hidden cameras.

We believe that residents have the right to install cameras in what is their home, whether that is a apartment in an assisted living facility or a room in a nursing home; and in the case of residents residing in a shared room, with permission from the other resident or their responsible party.

However, the use of video cameras in adult care homes raises a variety of issues including 1) the residents' right to privacy and dignity; 2) potential improvement in quality of care; 3) the impact on the adult care home as a workplace; 4) cost, including the inability of residents without financial resources to use this as a means to protect themselves from abuse and neglect; and 5) obtaining consent.

Our concerns with this bill in its present form are outlined below:

1. We object to the language in Section 1 (b): Residents (or their responsible party) are not "permitted" by the facility to conduct electronic monitoring and should have to ask

permission of the facility to do so; they would be permitted to conduct electronic monitoring by this act. We suggest rewording this statement to say “A resident shall be permitted to conduct electronic monitoring through the use of electronic monitoring devices placed in the room subject to the requirements of this act”.

2. Consent of resident: The issue of electronic monitoring most frequently involves a long-term care resident who lacks capacity to consent to being recorded, so the decision is usually made by a representative. The proposed bill should be amended to state that a resident’s representative should only be allowed to conduct electronic monitoring if the resident has not affirmatively objected to the authorization and should require a physician to determine that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring.
3. At (c), in addition to prohibiting discharge, the act should also prohibit retaliation against any resident for consenting to electronic monitoring.
4. We strongly object to the requirement at (g) (2) that the resident or their representative post a notice at the entrance to the resident room stating that the room is being monitored electronically for the following reasons:
 - a. Certainly, abuse has been exposed precisely because staff member did not know about the hidden cameras. If rooms with electronic monitoring are identified at the door as being monitored this, does nothing to protect the other residents in the facility and may in fact put them at increased risk. If workers think they may be monitored but don’t know for certain, that uncertainty may deter abusive behavior, but only if the staff member is unable to easily identify which room are monitored and which are not.
 - b. This notice is not necessary given the notice requirement at (g) (1).
 - c. Postings of this type are incongruent with person centered care, specifically a Home Environment where the environment is recognized as the resident’s home and eliminates institutional elements.
5. The act should prohibit tampering with, obstructing, or destroying an electronic monitoring device installed in a resident room without the permission of the resident or the individual who consented on behalf of the resident.
6. If a resident residing in a shared room wants to conduct electronic monitoring and the another resident living in or moving into the same shared room refuses to consent to the use of electronic monitoring, the adult care home should be required to make reasonable attempts to accommodate the resident wishing to conduct electronic monitoring by offering to move the resident who wishes to conduct electronic monitoring to another shared room that is available.
7. A list of standard conditions or restrictions that the resident or a roommate may elect to place on use of the electronic monitoring device should be included in the form prescribed by the secretary for aging and disability services. This should include:
 - a. prohibiting audio recording;
 - b. prohibiting video recording;
 - c. turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

- d. turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed;
- e. turning the electronic monitoring device off for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and
- f. any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device

While we believe that residents have the right to install cameras in what is their home, we believe that in its current form this bill doesn't adequately protect residents nor does it adequately address many of the complex issues surrounding electronic monitoring in adult care homes. The Office of the Long-Term Care Ombudsman asks that this you not pass this bill without further study.