



To: Sen. Jeff King, and Members,
Senate Judiciary Committee
From: Rachel Monger, Director of Government Affairs
Date: January 23, 2013

Testimony on Senate Bill 17

Thank you, Chairman King and Members of the Committee. I am Rachel Monger, the Director of Government Affairs for LeadingAge Kansas. Our 160 members include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living and residential health care residences, homes plus, low income housing, licensed home health agencies and other community based service programs throughout Kansas.

We are here today to contribute our perspective on Senate Bill 17, which amends the Unlawful Sexual Relations statute to make consensual sexual acts between an adult care home employee and a mentally competent adult residing in an adult care home a criminal act. It is our understanding that the bill has been introduced as a result of a singular situation that the Attorney General's office encountered several years ago.

To clarify, Senate Bill 19 does not address acts of sexual abuse. Sexual abuse is a result of non-consensual sexual acts done through force or fear, or acts perpetrated on someone who is mentally incompetent, and thus, incapable of giving legal consent. In a case of sexual abuse, there are multiple avenues for justice, including State sex crime statutes, the Mistreatment of a Dependent Adult statute, as well as Federal and State requirements specifically geared to adult care homes.

We appreciate the bill proponent's desire to protect a medically dependent adult from entering into a potentially harmful relationship with their caregiver. However, as an association of providers charged with the protection of resident rights of choice and self-determination, we also look at the bill from a resident advocate perspective.

After having conversations with other consumer advocate groups, we confirmed that the provisions of this bill are problematic. Criminalizing a sexual relationship between two consenting adults, without proving mental incompetence, is an erosion of resident rights under State and Federal adult care home laws.

Nursing home reform laws passed in the late 1980s (also known as OBRA '88) make clear that simply because a person passes through the doorway of an adult care home, does not mean they have given up any of their rights as a citizen or as an adult living in our society.

We may not approve of the choices other people make, we may even have grave concerns. However, absent a showing of mental incompetence, we are all allowed to make decisions about our lives and our relationships – no matter how unwise or potentially harmful to ourselves. The State and Federal

government have made it absolutely clear that residents of adult care homes give up none of those same rights.

In conclusion, we believe that several current mechanisms are already in place to prosecute sexual abuse, and that SB 17 is therefore not necessary. SB 17 also has an unintended consequence of infringing on the rights of competent persons who reside in adult care home settings.

We appreciate the opportunity to present these concerns to the Committee. Thank you for your attention to this important issue.

Appendix: Federal Regulations Concerning Nursing Home Resident Rights

CFR §483.10 Resident Rights

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

- (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
- (2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

CFR §483.15 Quality of Life

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(b) Self-determination and participation. The resident has the right to –

- (1) Choose activities, schedules and health care consistent with his or her interests, assessments, and plans of care;
- (2) Interact with members of the community both inside and outside of the facility; and
- (3) Make choices about aspects of his or her life in the facility that are significant to the resident.

Kansas regulations contain the same requirements.