

Senate Committee on Public Health and Welfare

Chairman Michael O'Donnell

March 3, 2016

SB 456- Neutral

Mr. Chairman and Committee Members-

I am Cindy Luxem, CEO/President of the Kansas Health Care Association and Kansas Center for Assisted Living; a trade association with a membership of nursing homes, assisted living, residential health care, home plus, and nursing facilities for mental health. We are the oldest and largest nursing home trade association in Kansas. Our membership takes care of 20,000 elders across the state each and every day. The homes who care for these elders directly employ more than 45,228 Kansans. There is a senior care home in each and every county one of the 105 counties in the state and KHCA/KCAL has a member home in the majority of those counties.

Thank you for the opportunity to address SB 456 concerning the use of electronic monitoring in Kansas adult care homes. First let me say that our members' number one priority is health and safety of the elders in their care. Quality first is their pledge and ours. On the issue of electronic monitoring, our trade association is neutral.

Providing Quality care – that's what our members are all about. We have much research and access to tremendous resources on this issue from our parent association, the American Health Care Association and national Center for Assisted Living.

Attached you will find an article from a leading industry magazine Provider that discusses the nation-wide issue of electronic surveillance in adult care homes. We would be happy to provide additional resources as you research this issue.

We stand ready to assist you through this process.

I'd be happy to stand for questions.

# NEWS | CURRENTS

## CAPITAL NEWS ★

### COMING SOON TO A FACILITY NEAR YOU: GRANNY CAMS

#### A NEW ILLINOIS LAW WILL ALLOW

"senior" or "Granny" cameras in resident rooms of skilled nursing facilities (SNFs) at the request of residents and their families.

The Land of Lincoln is the sixth state to pass legislation on these devices. Early adopters with similar laws include New York, New Mexico, Oklahoma, Texas, and Washington. Maryland has guidelines for SNFs that choose to allow residents to install cameras upon request. California allows cameras in common areas but not resident rooms. Missouri is considering similar legislation.

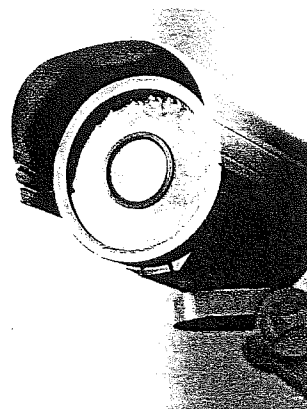
"The new year will bring new peace of mind for nursing home residents and their families, because for the first time, they will have the option of installing recording devices to ensure their loved ones are receiving appropriate care," said Illinois Attorney General Lisa Madigan in her office's news release.

The Illinois law, Public Act 99-0430, which went into effect Jan. 1, will:

- Allow for audio and video electronic monitoring devices in resident rooms;
- Require resident and roommate consent;
- Make nursing center residents or their representatives responsible for the purchase, installation, and maintenance expenses of the devices;
- Prohibit facility retaliation against residents for the use of the devices;
- Provide for recordings to be admissible into evidence in administrative, civil, and criminal proceedings; and
- Provide misdemeanor and felony penalties for any person or entity that intentionally hampers, obstructs, tampers with, or destroys a recording or an electronic monitoring device.

Granny cams range from the simple to the complex: battery-operated cameras that record action on a memory card, clocks with hidden pinhole cameras, and motion-activated cameras that broadcast live video feeds to laptops and smartphones.

These relatively new laws, the first passed in Texas in 2001, come with a double-edged sword. While these devices may crack down on the mistreatment of nursing



center residents, they also may encroach upon resident and nursing center staff privacy and ability to consent. Senior advocates point out that residents may be videotaped eating and sleeping, but also being bathed,

having their diapers changed, and having consensual sex.

They also say that allowing residents to be video-recorded without their consent may violate Health Insurance Portability and Accountability Act (HIPAA) privacy regulations and could result in an invasion of privacy lawsuit. Most states have tape-recording/wire-tapping laws that allow a conversation or interaction to be recorded if one participant in the conversation consents. Yet 12 states require both parties' consent.

The nursing care center profession has mixed feelings about states allowing cameras in residents' rooms. On the one hand, the technology could help ensure delivery of quality care, said Greg Crist, senior vice president of public affairs for the American Health Care Association. On the other hand, these facilities could face higher staff turnover if employees decide that they are not keen to the constant electronic scrutiny.

To achieve balance, the profession has pushed for amendments to state legislative proposals (that is, requiring the resident or family to pay for the camera and that a sign be posted outside the door of the room, warning that electronic monitoring is in use).

"In our tech-driven society, it's tempting to view cameras as a catch-all solution to security. But it's not," says Crist. "Just as a family wouldn't want care completely monitored by video, they shouldn't expect one's safety to be guaranteed through video either."

—Jackie Oberst