



March 8, 2016

Chairman Masterson and members of the Senate Ways and Means

I am Mitzi McFatrach, executive director of Kansas Advocates for Better Care (KABC). KABC is neutral on SB 457, but not neutral on the quality provisions of the bill and the impact to nursing home residents. The statute lays out the purpose "to maintain or improve the quantity and quality of skilled nursing care in skilled nursing care facilities in Kansas."

Since 2011, a total of \$120 million has been given to nursing facilities through additional federal tax dollars in enhanced match. ¹

No state agency has audited nursing homes' use of this money to guarantee statutory direction was followed or that state and federal tax dollars have been spent to achieve maintenance of or improvement of skilled nursing care. The State has not offered an opinion on performance based on some objective data.

So we have looked for objective data which measures Kansas nursing facilities performance in complying with the requirements of the legislation. Two sources of objective data come from the state and are reported to the public.

The first is Kansas performance on reducing the inappropriate and non-approved use of anti-psychotic medications on older adults with dementia. Coincidentally there has been a national campaign to reduce such use over the years the provider assessment has been in place. From 2011 to the present Kansas has been ranked from 46th to 48th worst in the nation on this objective measure. You would hope that at a minimum Kansas ranking would improve if only minimally over those years - it has not. In February, the most recent usage ranking information continues to reflect Kansas highly concerning performance at 47th worst in the U.S.²

You might say, well there are so many areas which could be improved, so it isn't fair to pick just one - even though the anti-psychotic use is devastating to elders increasing death, infection, stroke, falls, and other serious conditions. So we looked at another objective measure which is tracked and reported by the state agency.

The second objective measure is nursing facility performance on the annual health inspection survey. We looked at the results of 3 health inspections for each Kansas nursing home from 2011 through 2015, in other words every annual health inspection over 3 annual cycles. We were surprised at what we found a very large number, 219 out of 342 nursing facilities were cited for the same deficient health care practices each year over a 4 year period.³ To clarify, a total of 219 facilities or 64% of all Kansas nursing facilities were cited on every single health inspection for recurring health violation(s) 3 years in a row. It is possible to identify the citation for a recurring deficient practice because each

health violation is identified by a numerical F-Tag. F-Tags can denote abuse or neglect, sub-standard care, not providing adequate nutrition, and so on. Each F-Tag is also scored for how much harm results or puts elders at risk of harm from the facility's deficient practice. The citation severity ranges from A (low) to L (high). Kansas doesn't cite any at the low levels of A to C, only those which pose a risk of harm or result in harm of elders are actually cited. This group had citations from minimal risk to widespread harm (D-K severity levels).

I am certain it was not the intent of the legislature to provide millions in extra taxpayer dollars for the delivery of deficient health practices and care. The nursing home trade associations, *Leading Age* and KHCA will tell you that the state isn't keeping up on care costs through its Medicaid reimbursement and that the provider assessment is only filling in what their costs are. How it looks to older adults, their families and taxpayers is that facilities are being paid for and agree to provide a certain type, level and quality of care when they accept money from the savings of older adults or taxpayer reimbursement, yet thousands of elders in nursing facilities are not getting the quality care that nursing homes promise to deliver and are being paid to deliver.

With this bill, facilities are asking for a 152% increase in the provider assessment and no accountability for whether or not those millions of tax payer and private pay dollars are actually maintaining quality or improving quality of skilled nursing care in skilled nursing facilities.

I imagine each of you share our concern for older adults who are your constituents, but without your action to create specific quality improvement requirements in this bill, they, you, and taxpayers will continue to provide millions of dollars to nursing homes and thousands of older residents will continue to receive sub-standard care.

We are offering you a solution which is a win for nursing facilities, a win for taxpayers, a win for legislators dealing with the state's revenue deficit and a win for older adults - increase the skilled nursing care older adults receive each day in nursing facilities by providing a safe amount of care to each resident daily. At four and a half hours of care from nurse aides and nurses, older adults will have a safe level of skilled nursing care and fewer preventable negative health outcomes from falling, loss of incontinence, mental and physical decline, untreated infections and similar conditions.⁷

The state has said it could not afford increased nurse staffing.⁴ The state has said it wants to hold down Medicaid costs through improved care and outcomes for those in the highest cost care settings which include nursing homes.⁵ A HHS Inspector General report found avoidable negative health outcome costs equated to \$2.8 billion spent on hospital treatment for harm caused in Skilled Nursing Facilities in FY 2011.⁶ This proposed large increase in the provider assessment would make it possible for the state to achieve its goal to hold down Medicaid costs through improved care and outcomes for those in the highest cost care settings through safe levels of nursing staffing in nursing facilities.

The specific quality of care improvements which this would impact include: fewer pressure ulcers, hospitalizations, and Urinary Tract Infections; less weight loss, catheterization, and deterioration in the ability to perform Activities of Daily Living/ADLs.⁷

In 2020 when the legislation sunsets, the legislature will have the ability to measure whether or not the outcome was improved quality skilled nursing care, and not have to rely solely on the word of the industry which profits the most from the bed tax.

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Kansas Advocates for Better Care, a non-profit organization, is beholden to no commercial interests; supported almost entirely by citizen contributions in support of our mission to improve the quality of long-term care in nursing and assisted type facilities and at home. KABC does not provide any form of direct care or receive any government money reimbursement. For forty years KABC has been an established resource for older adults on long-term care issues. Those seeking our guidance and assistance are primarily elders and their families facing difficult, life-altering decisions. The transition of long-term services and supports to KanCare managed care is among KABC's policy priorities and we continue to actively advocate for policies that assure and protect older adults and other consumer rights.

We appreciate the opportunity to testify today on SB 457.

Footnotes

¹ Provider Assessment data provided to the Quality Care Improvement Panel by KDADS, 2011-2016.

² Anti-Psychotic by State 2015 Q1 through 2015 Q3, Centers for Medicare and Medicaid Services, 2/5/2-16.

³ Inspection Survey data from Centers for Medicare and Medicaid Services, 2015.

⁴ Fiscal Note HB 2201, attaches a price tag of \$43 million dollars spread over 3 years to provide 4.44 hours of nursing care per resident per day. The provider assessment would have paid for such care 3 times over during the years 2011-2016.

⁵ The state set four goals for KanCare Medicaid, this is one of the four goals.

⁶ "Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries." HHS Office of the Inspector General, February 2014. <http://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf> An estimated 22 percent of Medicare beneficiaries experienced adverse events during their SNF stays.

⁷ "RN Staffing Time and Outcomes of Long-Stay Nursing Home Residents" American Journal of Nursing. http://www.nursingcenter.com/journalarticle?Article_ID=609538