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TESTIMONY
House Bill 2232

By Barbara Hickert
Kansas State Long-Term Care Ombudsman
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Chairwoman Schmidt and Members of the Committee,

I am Barbara Hickert, the Kansas State Long-Term Care Ombudsman and I thank you for allowing me to provide neutral testimony to House Bill 2232. Our agency 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 electronic monitoring is often a last-ditch step by relatives who suspect abuse or serious neglect but feel that their concerns have not been taken seriously. Families are witnessing injury and neglect of their loved one and feel the only way to stop it is through use hidden cameras.

The decision of whether resident can possess cameras in rooms that are essentially their homes, should not be decided by the facility. People do not leave their right to personal property — and protective surveillance — at the nursing home door. In fact, state and federal regulations list the rights of a resident as including, “The right to retain and use personal possessions...as long as it doesn’t interfere with the rights, health, or safety of other residents”. This right includes the right to possess and use a camera or other electronic monitoring devices, as long as it does not violate the privacy rights of another resident in a shared room.

We appreciate that this bill would ensure all residents in long-term care facilities are guaranteed the explicit right to possess and use cameras in their rooms. The absence of state law and guidance on this issue means residents and family members are frequently told by facility administration that it is not allowed, either by law or by facility policy.

We do have a significant concern with the bill, and that is the addition of the following amendment which was added to the original bill last session:

(2) Each adult care home shall require that a resident, or such resident's

guardian or legal representative, who conducts the electronic monitoring to post a conspicuous notice at the entrance to the resident's room stating that the room is being monitored electronically.

(j) If electronic monitoring is conducted, the adult care home may require the resident, the resident's guardian or legal representative, to conduct the electronic monitoring in plain view.

The bill already required the adult care home post a conspicuous notice at the entrance to the adult care home stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents. It requires a form to be completed by the resident and provided to the facility notifying staff that electronic monitoring is taking place. These amendments are unnecessary, burdensome and potentially help protect those who would abuse vulnerable adults.

1. It is unnecessary to protect privacy rights. The ACLU provided written testimony on this bill before these amendments were added, stating that: "We have analyzed the language of HB 2232 and believe that it offers safeguards for the right to privacy."
2. It places an unnecessary burden on the resident or the resident's representative by making it their responsibility to post and ensure that the notice remains at the entrance to the resident room. For a family member who lives in another city or state, this is just one more reason to choose not to exercise this right on behalf of their loved one.
3. It protects those who would prey on vulnerable adults. It is a sad fact that there are people who prey on vulnerable people including residents of adult care homes. They chose victims based on their vulnerability and their belief that they can get away with their crime. Identifying each resident room where electronic monitoring is taking place may protect that resident in that room from abuse, but it leaves all other residents more at risk.

The state ombudsman office asked that this committee remove this unnecessary, burdensome and potentially harmful amendment before passing.

Thank you.