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Senate Public Health and Welfare  
Chairwoman Gossage and Committee Members  
March 5, 2024

**HB2777 – Proponent (written only)**

Good morning, Madam Chair and Committee Members. I am Linda MowBray, President/CEO of the Kansas Health Care Association and Kansas Center for Assisted Living. We are a trade Association representing for-profit and not-for-profit nursing homes, assisted living, residential health care, home plus, and nursing facilities for mental health communities across the state. We are the oldest nursing home trade association in Kansas and have over 265 member communities. Our members care for nearly 20,000 elders across the state 24 hours a day with an employee team of over 20,000 workers.

We appreciate the opportunities to present testimony in support of HB2777, an act concerning health and healthcare; relating to patient {licensed} care facilities; prohibiting the state fire marshal and the marshal's representatives from wearing or operating a body camera during an on-site inspection at a patient {licensed} care facility.

We understand the important nature of the state fire marshal's office unannounced inspections of our adult care homes as it relates to life safety codes. This is an essential function that works to keep residents, family members and staff safe. These inspections, however, should not be recorded.

Early in 2024, we were surprised to learn that inspectors from the Office of the State Fire Marshal (OSFM) were wearing body cameras during routine life safety inspections in both hospitals and adult care homes. This was done without the knowledge or consent of the facility. Additionally, this was also without knowledge and consent from the residents in these settings, their family members, and the staff. Clearly this was an infringement on their right to privacy, dignity and to provide consent.

We exchanged emails with CMS Region 7 office out of Kansas City, MO and received the following response: *We have been working with the SAs and FM this week. As of today (Wednesday, February 7, 2024), the FM is suspending the use of the body cams in HC. More to come. Sincerely, Katharine (Achor)* The email thread is attached this testimony. It seems clear that CMS does not support this use.

Finally, it would seem reasonable for a member of the OSFM to use a body camera during an investigation of a fire or other such incident, however, normal routine inspections would not seem to rise to this level.

Thank you for this opportunity to provide testimony supporting HB2777.

**Linda MowBray**  
**President/CEO**  
**KHCA/KCAL**

**From:** [Achor, Katharine \(CMS/CCSQ\)](#)  
**To:** [Linda MowBray](#)  
**Cc:** [Achor, Katharine \(CMS/CCSQ\)](#)  
**Subject:** RE: Office of the State Fire Marshal News.  
**Date:** Wednesday, February 7, 2024 6:29:59 PM

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You don't often get email from [katharine.achor@cms.hhs.gov](mailto:katharine.achor@cms.hhs.gov). [Learn why this is important](#)

Linda,

We have been working with the SAs and FM this week. As of today, the FM is suspending the use of the body cams in HC. More to come.

Sincerely,  
Katharine

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**From:** Achor, Katharine (CMS/CCSQ) <[Katharine.Achor@cms.hhs.gov](mailto:Katharine.Achor@cms.hhs.gov)>  
**Sent:** Monday, February 5, 2024 6:48 PM  
**To:** Linda MowBray <[LMowBray@khca.org](mailto:LMowBray@khca.org)>  
**Cc:** Achor, Katharine (CMS/CCSQ) <[Katharine.Achor@cms.hhs.gov](mailto:Katharine.Achor@cms.hhs.gov)>  
**Subject:** FW: Office of the State Fire Marshal News.

Hi Linda! I have sent your question to my manager and will try to get back with you this week.

Sincerely,  
Katharine

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**From:** Linda MowBray <[LMowBray@khca.org](mailto:LMowBray@khca.org)>  
**Sent:** Monday, February 5, 2024 3:09 PM  
**To:** Achor, Katharine (CMS/CCSQ) <[Katharine.Achor@cms.hhs.gov](mailto:Katharine.Achor@cms.hhs.gov)>  
**Subject:** FW: Office of the State Fire Marshal News.

Hi Kathy – please the attachment and comments below. Is this common practice in other states?

Linda MowBray President/CEO  
KHCA/KCAL

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**From:** Brenda McNorton [KSFM] <[brenda.mcnorton@ks.gov](mailto:brenda.mcnorton@ks.gov)>  
**Sent:** Friday, February 2, 2024 11:43 AM  
**To:** Bristow, Chad <[cbristow@ksbor.org](mailto:cbristow@ksbor.org)>; Chad Austin <[caustin@kha-net.org](mailto:caustin@kha-net.org)>; Kimberly Cervantes [KDHE] <[Kimberly.Cervantes@ks.gov](mailto:Kimberly.Cervantes@ks.gov)>; Jarvis Doleman [KDHE] <[Jarvis.Doleman@ks.gov](mailto:Jarvis.Doleman@ks.gov)>; Rachel <[rachel@leadingagekansas.org](mailto:rachel@leadingagekansas.org)>; Suzi Lenker <[executivedirector@kaceks.org](mailto:executivedirector@kaceks.org)>; Linda MowBray <[LMowBray@khca.org](mailto:LMowBray@khca.org)>; Lacey Hunter [KDADS] <[Lacey.Hunter@ks.gov](mailto:Lacey.Hunter@ks.gov)>; Patricia Purdon [KDADS] <[Patricia.Purdon@ks.gov](mailto:Patricia.Purdon@ks.gov)>; Becky Schwartz <[becky@pmak.org](mailto:becky@pmak.org)>; John M. Calvert <[jcalvert@ksde.org](mailto:jcalvert@ksde.org)>  
**Subject:** RE: Office of the State Fire Marshal News.

Sorry, everyone there was an error on the first email.

We ask that you please share this information with your organization/facilities.

Office of the State Fire Marshal is providing a brochure to all facility operators who might have questions about OSFM staff use of body worn cameras.

Due to recent questions, our legal counsel has visited with legal counsel from the Kansas Hospital Association, Kansas Association of School Boards, Kansas Board of Education, and other groups/entities who have contacted us with concerns over the use of the Body Cameras. In all cases, the attorneys have agreed that OSFM is operating legally, and the use of the body worn camera by our staff does not violate HIPAA or FERPA. All the attorneys have agreed that they need to better educate their membership and will be distributing the pamphlet.

Our personnel are to be accompanied by a staff member who ensures rooms are clear and no private materials are visible before we ever enter them. Under the law, it is the facility staff responsibility to protect privacy, and this is nothing new. That responsibility existed prior to the invention of body worn cameras.

Our personnel understand that these cameras are there to defend them from malicious allegations and that the videos are not viewed unless a complaint is made against an employee or there is an unusual incident that needs to be documented. Our recordings are protected from disclosure by K.S.A. 45-254, which defines the recordings as a criminal investigation record. In the end, these cameras document the true events and protect the State of Kansas against frivolous claims and complaints- saving an enormous amount of funding from having to defend against unsubstantiated allegations against our employees.

If you have any questions, please feel free to contact our legal counsel, Jared P Smith at [jared.smith@ks.gov](mailto:jared.smith@ks.gov) or 785-250-9498.

Thank you.

Brenda McNorton  
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Office of the State Fire Marshal  
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Topeka, KS 66612  
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