



To: Chairwoman Concannon, Members, House Children and Seniors Committee  
From: Rachel Monger, Vice President of Government Affairs, LeadingAge Kansas  
Date: January 22, 2020

### **Testimony in Opposition to House Bill 2229**

Thank you, Chairman Concannon, and Members of the Committee. I am Rachel Monger, Vice President of Government Affairs for LeadingAge Kansas, the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

We strongly oppose House Bill 2229. The language that the proponents of this bill are attempting to remove from the Kansas adult care home electronic monitoring law is:

- Language that ensures fairness under a uniquely unfair set of legal circumstances
- Part of the Texas electronic monitoring model, which the entirety of our Kansas law is based upon
- Language that was compromised on by both advocates and legislators, and then unanimously approved by every voting member of the House and Senate.

### **Ensuring Fairness in the Legal Process**

The evidentiary requirement for electronic monitoring recordings is the fairest and most logical solution to the unique circumstances created by the allowance of resident surveillance in adult care homes.

Under our electronic monitoring law it is the resident and their family conducting the surveillance of the resident's room. The adult care home does not install or own the surveillance equipment, and most importantly, the adult care home does not have access to any of the footage that results from that surveillance. This means that when an electronic monitoring recording is used in a legal or government action, the adult care home is flying blind. The adult care home must rely completely on what the resident chooses to come forward with. That is why it is so important that recordings used as evidence in a judicial or administrative proceeding be unedited, unenhanced, and have some type of date and time stamp. It is the only way to ensure fairness, and to overcome the unique legal disadvantages that result from this type of electronic monitoring law. Manipulated recordings make it impossible for the

home to do an accurate and thorough investigation of the alleged incident and guarantee that the home will be unable to mount a full and fair defense against any resident claims.

Electronic monitoring recordings will likely be used in personal injury lawsuits claiming millions of dollars in damages, or in government proceedings resulting in high dollar fines to the adult care home. These are high stakes legal actions with the potential to devastate the operations of an adult care home, as well as their employees and the other residents living in the home. An unedited recording with a time and date stamp is the very least we could require in the unique legal situation created by allowing electronic monitoring in adult care homes.

### **A Long-Established Standard**

The Kansas adult care home electronic monitoring law at KSA 39-981 is modeled almost entirely on a 19 year old electronic monitoring law pioneered in Texas. (Specifically, Texas Health Code, Chapter 242, Subchapter R, Sections 242.841 through 242.852). We used the Texas electronic monitoring law as a model in Kansas because it is comprehensive, fair to both residents and providers, and has been in place since 2001.

The language that HB 2229 seeks to remove is taken directly from Sec. 242.849 of the Texas electronic monitoring statute. See Attachment A. You will note that only some of the Texas evidentiary requirements made it into our Kansas law. That is because some of the language was dropped as part of a larger compromise on amendments made to the electronic monitoring bill. Amendments which were unanimously approved by the House and Senate.

The evidentiary requirement for use of resident recordings has been in place in Texas for 19 years. We have not seen any examples in those nearly two decades that Texas residents have been robbed of justice, or that the evidentiary requirement is too high to meet when bringing forth lawsuits or criminal charges. It is significant to us that this evidentiary requirement has remained in Texas law, untouched, for 19 years. The well-established and well-tested evidentiary rules in Texas are proof that it is not a burdensome requirement for residents to meet, and they are a satisfactory element of the law in even litigation-friendly states like Texas.

### **Years of Work and Good Faith Compromise**

The Kansas Electronic Monitoring in Adult Care Homes law came about after years of discussion and hard work, as well as many compromises and negotiations between advocates, between lawmakers, and between both legislative chambers.

The evidentiary requirements that HB 2229 is attempting to remove was one of several amendments that were added to the final version of the electronic monitoring bill in the Senate Public Health and Welfare Committee. *Both* providers and advocates proposed amendments to the bill, and *both* providers and advocates had their amendments added after agreeing to compromise language hammered out by Senate committee members. *Both* providers and advocates left the hearing not getting everything that they wanted, and *both* providers and advocates stood aside and allowed the bill

to pass without any further protest or amendment. The bill, including the evidentiary requirements at issue, went on to pass the House and Senate unanimously.

There is no better, or more successful, definition of compromise than the negotiations and amendments that led up to the passage of Kansas's electronic monitoring law. And yet, only a year and a half into the law's enactment, this Committee is considering a bill that will unravel all of it.

LeadingAge Kansas made its compromises in good faith. We stepped aside to allow final passage of the bill after evidentiary requirements were added to balance out the inherent legal inequalities that would result from the law. If that section of the law is removed by HB 2229, so will our support of the electronic monitoring law as a whole. If HB 2229 is passed, we will begin our fight to repeal KSA 39-981 in its entirety, based on its failure to uphold the compromises that allowed for its final passage.

### **Votes in the House and Senate**

The language in KSA 39-981 was thoroughly vetted by the House Children and Seniors Committee and the Senate Public Health and Welfare Committee. The amendments to the bill, which included the evidentiary requirements for recordings, were negotiated and unanimously agreed to by members of the Senate Public Health and Welfare Committee and agreed to unanimously by the House Children and Seniors Committee in the subsequent conference committee report.

Our electronic monitoring law, then known as HB 2232 passed the House on a vote of 124-1. It passed the Senate 38-0. A motion to concur with Senate amendments to HB 2232 was brought by Rep. Linda Gallagher (Chair of the House Children and Seniors Committee) and was approved unanimously by the House on a vote of 119-0.

### **Conclusion**

The evidentiary requirements that HB 2229 seeks to remove from the Electronic Monitoring in Adult Care Homes statute are essential to preserving basic fairness under a very unique set of legal circumstances. It is a well-tested and long-standing part of the Texas model on which our Kansas law is based. And last, but certainly not least, it is language that was approved unanimously by every voting member of the Kansas legislature.

We are strongly opposed to HB 2229, and its attempt to remove basic evidentiary requirements for recordings made under KSA 39-981.