



To: Rep. Bob Bethell, Chair, and Members,
House Aging and Long-Term Care Committee
From: Rachel Monger, Director of Government Affairs
Date: February 16, 2012

Testimony in Support of House Bill 2738

Thank you, Chairman Bethell and Members of the Committee. I am Rachel Monger, the Director of Government Affairs for LeadingAge Kansas, formerly known as KAHSA. Our 160 members include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living and residential health care residences, homes plus, low income housing, licensed home health agencies and other community based service programs throughout Kansas.

LeadingAge Kansas supports the requirement in HB 2738 for schools conducting a nursing program (i.e., training of LPNs, RNs or Nurse Aides) to conduct a criminal background check on potential students prior to enrollment.

No person may work in an adult care home who has been convicted of any crime listed in Kansas statute 39-970(a)(1). A person may work in an adult care home if they have been convicted of certain crimes not listed in 39-970(a)(1) if five years have elapsed since their conviction. The operator of an adult care home must perform a criminal background check on any person who works in the adult care home, or is being considered for employment by the adult care home. (K.S.A. 39-970(d))

Currently, there are some schools who do not perform criminal background checks on students who enroll for a nurse aide training program. As a result, some nurse aide candidates with prohibited criminal convictions commit their time and resources to complete their training and take their certification test, unaware that they are unemployable by an adult care home or home health provider. LeadingAge Kansas has received reports from members of hosting a nurse aide trainee during required clinical training, and finding that they are not able to hire the newly certified aide after a background check is conducted. In such situations, the potential aide was unaware that their past convictions barred them from employment at the home.

Although we support the criminal background check requirement in HB 2738, we do have concerns about some aspects of the bill as introduced.

1. Use of the term “nursing assistant”

Under adult care home statutes and Kansas Department of Health Environment regulations, the terms “nurse aide” and “certified nurse aide” are used. We would support a substitute of “nurse aide” for “nursing assistant” under the definition of “nursing program” in paragraph (a)(2).

2. Discrepancy in barred convictions between HB 2738 and Adult Care Home statutes

As mentioned previously in our testimony, any person convicted of a crime listed in 39-970(a)(1) is permanently banned from working in an adult care home. Some of the crimes listed in this statute are not covered by the ban on student nurse enrollment in paragraph (b) of HB 2738. See Appendix A for a list of such crimes.

In addition, there are certain crimes for which a conviction only bars a person from working in an adult care home for five years. Some of those crimes are covered by paragraph (b) of HB 2738. See Appendix B for a list of such crimes.

3. HB 2738 does not apply to nurse aide training programs not sponsored by a post-secondary institution

Under KDHE regulations, nurse aide training courses may be conducted by adult care homes and hospital long term care units, as well as post-secondary institutions. We would suggest that the provisions of the bill be applied to all three types of training entities.

We must also note that KDHE regulations also allow for certified medication aide courses conducted by professional health care associations and state-operated institutions for the mentally retarded, home health aide courses sponsored by home health agencies, and paid nutrition assistant courses sponsored by adult care homes.

4. Barriers to Fingerprinting Requirement

Until the federal government has implemented a system and appropriated funds for a comprehensive national database, there may be some implementation and cost related barriers to the fingerprinting requirement for state and national criminal record checks.

In addition, state and federal regulations require that an adult care home who hires a newly certified nurse aide must reimburse the cost of the nurse aide's training course and certification test. Some or all of the money paid for nurse aide training is then reimbursed by the state Medicaid program in the home's daily reimbursement rate. Therefore, any additional costs for expanded criminal record checks for nurse aides may potentially be borne by adult care homes and the Medicaid program.

We appreciate the opportunity to present these concerns to the Committee. Thank you for your attention to this issue. I would be pleased to answer questions.

Appendix B

List of Crimes

5 Years to Work in Adult Care Home

vs.

Permanent Ban from Enrollment in Nursing Program in HB 2738

- 21-5405 Involuntary Manslaughter
- 21-5406 Vehicular Homicide
- 21-5408 Kidnapping, Aggravated Kidnapping
- 21-5409 Interference with Parental Custody
- 21-5410 Interference with Custody of a Committed Person
- 21-5411 Criminal Restraint
- 21-5412 Assault, Aggravated Assault
- 21-5413 Battery, Aggravated Battery
- 21-5414 Domestic Battery
- 21-5415 Criminal Threat, Aggravated Criminal Threat
- 21-5416 Mistreatment of a Confined Person
- 21-5418 Hazing
- 21-5419 Crimes Against an Unborn Child
- 21-5420 Robbery, Aggravated Robbery
- 21-5421 Terrorism
- 21-5422 Use of Weapons of Mass Destruction
- 21-5423 Furtherance of Terrorism
- 21-5424 Exposure to a Life Threatening Communicable Disease
- 21-5425 Unlawful Administration of a Substance
- 21-5426 Human Trafficking
- 21-5427 Stalking
- 21-5428 Blackmail

Appendix A

List of Crimes

Banned from Work in Adult Care Home

vs.

Allowed to Enroll in Nurse Program in HB 2738

- 21-5503 Rape
- 21-5504 Aggravated Criminal Sodomy
- 21-5505 Sexual Battery, Aggravated Sexual Battery
- 21-5506 Indecent Liberties with a Child, Aggravated Indecent Liberties 21-5508 Indecent Solicitation of a Child
- 21-5510 Sexual Exploitation of a Child
- 21-5301 Attempt to Commit Any Crime Listed in 39-970(a)(1) (See *Appendix C*)
- 21-5302 Conspiracy to Commit Any Crime Listed in 39-970(a)(1) (See *Appendix C*)
- 21-5303 Criminal Solicitation to Commit Any Crime Listed in 39-970(a)(1) (See *Appendix C*)

Appendix C

Complete List of Crimes

**Conviction is a Permanent Ban from Working in an Adult Care Home
K.S.A. 39-970(a)(1)**

- 21-5401 Capital Murder
- 21-5402 First Degree Murder
- 21-5403 Second Degree Murder
- 21-5404 Voluntary Manslaughter
- 21-5407 Assisted Suicide
- 21-5417 Mistreatment of a Dependent Adult
- 21-5503 Rape
- 21-5504 Aggravated Criminal Sodomy
- 21-5505 Sexual Battery, Aggravated Sexual Battery
- 21-5506 Indecent Liberties with a Child, Aggravated Indecent Liberties
- 21-5508 Indecent Solicitation of a Child
- 21-5510 Sexual Exploitation of a Child
- 21-5301 Attempt to Commit Any Crime Listed Above
- 21-5302 Conspiracy to Commit Any Crime Listed Above
- 21-5303 Criminal Solicitation to Commit Any Crime Listed Above