



March 8, 2022

### **Testimony Opposing SB 453**

Rep. Landwehr and members of the House Committee on Health and Human Services, KABC appreciates the opportunity to testify today in opposition to SB 453. I am here today to speak to the concerns of the “end users” of nurse aide services – the older adults who reside in long term care facilities in Kansas – your constituents, your parents and loved ones, your friends and neighbors.

SB 453 is a dangerous step in the wrong direction. It seeks to create a new level of certified aide who will be allowed to provide hands-on care after receiving less than half of the 90 hours of training currently required in Kansas regulation to be a Certified Nurse Aide (CNA). In addition to reducing training hours and clinical experience for certified aides, the bill cuts in half the training that Instructors of certified aides would have, reducing the required education for an Instructor from a Registered Nurse (RN) to a Licensed Practical Nurse (LPN). This dramatically lowers the education and experience nurse aide trainees benefit from and studies demonstrate that less training for aides translates to poorer care for older adults in care facilities.

SB 453 sets a bad precedent and should not be passed. There are better options to addressing the workforce issues facing nursing homes. KABC offers the following recommendations:

- 1) Workforce – Pass legislation that convenes a workgroup to comprehensively address workforce deficits which includes educators, business, health care professionals and consumer, and government representatives. This bill will not alleviate or fix staffing shortages.
- 2) Alternatively, send this specific problem to KDADS to fulfill its legislative-designated role to create standards for nurse aide instruction. KDADS already has the flexibility to address the geographic specific deficits that proponents have stated are the reason the legislation was introduced. KDADS has historically convened stakeholders to provide additional expertise and problem solving. This bill was drafted outside of the KDADS process and excluded major stakeholders.

These changes may seem simple on their face but can have life-and-death consequences. A pre-pandemic [2017 study published in The Gerontological Society of America](#) provided evidence “that increased CNA clinical, in-service and total initial training hour requirements over federal minimum were related to nursing home quality indicators rates reflecting better care quality.” The study showed the ratio of clinical hours divided by didactic hours had a “significant negative association” with quality indicators, especially related to rates of depression. “In other words, as clinical hours as a proportion to total training hours increased, there was a significant decrease in odds of nursing homes having residents with depression,” regardless of size of the facility. Pain, antipsychotic medication use, and weight loss were similarly related, especially in smaller facilities.

The changes proposed in SB 453 are unnecessary. The Kansas Department of Aging and Disability (KDADS) is statutorily charged with overseeing and enforcing state and federal rules and regulations related to the training of unlicensed nursing home staff, including certified nurse aides (CNAs). The Kansas Legislature and the federal Nursing Home Reform Act of 1987 required states to define a process for the state’s agency, KDADS to delineate in regulation the CNA training and instruction guidelines. This bill removes that responsibility from KDADS, asking the Kansas Legislature to do the agency’s work.

As the licensing agency, KDADS establishes the necessary standards, rules and regulations which prescribe the number, qualifications, training, and standards of conduct and integrity for the staff who care for nursing home residents. The breadth and scope of the concerns that are being raised in this hearing, the number of serious questions that remain unanswered, all underscore the need for a more serious look at what changes may or may not be needed to address today's workforce issues, especially related to training. Instead of assuming those responsibilities as proposed by SB 453, the Kansas Legislature should require KDADS to facilitate a comprehensive overview and update of training requirements taking into consideration current workforce challenges and federal compliance requirements. This overview should be transparent and include all stakeholders from all areas of the state and across all parties.

### **Federal Compliance**

The aide changes proposed in SB 453 will not comply with federal laws and regulations as set forth in 42 C.F.R. 483.152 which set out mandatory requirements for training hours, qualifications of instructors, and subject areas for training. Additionally in SB 453 on page 1; line 20 the bill strikes through the words "~~or persons~~" leaving only one qualified person required to be in attendance when residents receive care. Kansas Adult Care Home regulations require there be at minimum (depending on the size of the facility) of two staff in a facility at all times; one of those to be an licensed nurse. Striking those words in the statute is not simply a "technical" clean up, but rather changes the required number and potentially reduces the qualifications of the personnel in a licensed facility at a given time who are able to respond to and care for residents and oversee the certified assistants.

**Amendment 1: restore the current language in Sec. 1(b) to "a qualified person or persons ..." in all references.**

### **Training Concerns**

SB 453 weakens training requirements at a time when employees need more, not less, training focused on providing care for residents. The bill language is problematic and vague. State law already provides the Secretary of KDADS with the flexibility to address the difficulty in securing qualified Registered Nurses to provide for training in the geographic areas of Kansas who need assistance. The bill is not needed because the fix is available. It leaves important requirements undefined by quantifiable measures, and some of the new language is in direct conflict with existing state laws. (i.e. 40 hours, in good standing, nurse scope of practice for RN & LPN).

We are especially concerned about the addition of language requiring a CNA instructor be "licensed and in good standing." (page 3; lines 5-8). The bill doesn't not define "in good standing" which would be a qualitative rather than a quantitative determination. Other statutes and regulations include definitive terms such as "no pending or current disciplinary actions." "In good standing" is not the terminology used in multi-state licensure and may not comply for those individuals referenced in the bill.

**Amendment 2: Replace the language in Sec. 1(c) (1) (A) with the following:**

*(A) Each instructor of such training shall be licensed in Kansas and have no pending or current disciplinary actions against their license.*

### **Workforce Concerns**

The work of CNAs is physically and emotionally demanding, and they must juggle multiple work and family responsibilities. Passage of SB 453 will continue the relentless "churn" of workers through long-term care facilities because doing hard work with inadequate training and support is not rewarding and it is dangerous. This bill does not provide an incentive for facilities to successfully recruit and retain employees. Workers are looking for employment opportunities that support them with additional training, not less.

For example, caring for residents with dementia should be part of an annual refresher program, instead of the current 24-month requirement. Nursing homes should provide their staff access to training devoted to oral health care, alternatives to the use of antipsychotic drugs, infection control and of course, person-centered care.

[A 2009 study published in The Gerontologist](#) looked at workforce characteristics of CNAs to guide and support efforts to identify, recruit and retain these essential workers. The study showed that nursing assistants are largely minority women who are economically disadvantaged, many living on their single income as a CNA. Many have attained a high school education or a GED, live at or below the poverty level and make little more than minimum wage. At the time of the study, CNAs with 10 years of experience averaged just \$2/hr more than aides who were new to the field. Many could not afford health insurance, even if offered through their employer. At the time of the study nearly a third of CNAs were receiving at least one type of public assistance. Thirteen years and a pandemic later, it's doubtful these facts have improved.

The bill before you will not improve nor maintain the competence of the care that residents who live in Kansas care facilities deserve and have been promised by the state and federal governments. It does not support the stated needs of frontline workers who want more training and competence to do a difficult job well. Without incentives and a recognition by employers of the need for more training by qualified instructors it will most assuredly continue the steady exit of workers from adult care homes. Without the support of employers who value these essential workers and are committed to providing ongoing and appropriate training to improve staff competency and confidence to do the challenging work of caring for older adults, staff will leave, assuming they start down this path in the first place. That outcome is in direct conflict with the goals we are all trying to achieve.

Growing and maintaining a trained healthcare workforce is an important issue that demands our collective and immediate attention. Many groups are working on this issue, including the Senior Care Task Force which currently has a special workgroup focused specifically on workforce issues. SB 453 bypasses the work of those groups by asking this committee to compress decision-making without full information from all perspectives and rush to make changes that require more careful and thoughtful consideration.

### **Stakeholder Concerns**

For decades KDADS has used a process of open stakeholder involvement to bring broad technical, educator, provider, regulator, and consumer expertise to advise the Health Occupations Credentialing process. The HOC unit sets CNA training and instruction requirements. The drafting of SB 453 lacked the depth of technical and consumer expertise. The bill's authors did not seek broad-based participation from all stakeholders through a transparent, inclusive process. That is a contributing reason why you are hearing strong opposition voicing a variety of concerns today. Gathering the information needed to make informed decisions and anticipate consequences is a process that takes some time.

The COVID pandemic has exacerbated the long-standing serious deficiencies in our long term care system that must be addressed immediately. COVID has shown us that current law and regulation provides adequate flexibility to deal with emergencies while we review our training curriculum and requirements. The complexities of these concerns and questions is a caution to rushing to make a change that may have unintended negative consequences for residents, staff and/or risks Kansas compliance with federal requirements.

Passing SB 453 does not address any of these deficiencies and poses more questions than it answers. Passing SB 453 does not address the factors which are contributing to the workforce shortage in nursing homes while putting residents and staff at risk of being harmed. For these reasons, we ask you to not to pass SB 453.

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KABC is a statewide not-for-profit organization whose mission is to improve the quality of long-term care for elders in nursing and assisted facilities and in-home. KABC is not a provider of government funded services. For 46 years KABC's role has been as a resource and advocate for older adults and families and as a resource to policy makers on aging and quality care issues. KABC provides consumer education information and tracks and reports on quality care performance issues.

**Sources cited:**

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