

Feb. 15, 2022

## Testimony Opposing SB 453

Sen. Hilderbrand and members of the Senate Public Health and Welfare Committee, 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.

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 Agency, KDADS to delineate in regulation the CNA training and instruction guidelines. This bill instead asks the legislature to do the agency’s work.

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 help in employing qualified RN Instructors. The bill is not needed because the fix is available.

As the licensing agency, KDADS establishes the necessary standards, rules and regulations which prescribe the number, qualifications, training, 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 underscore the need for a more serious look at what changes may or may not be needed to address today’s workforce and training issues. 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 open, with participation from stakeholders who bring expertise from education, direct care nurses, facilities, regulatory, and older consumers.

### **State and Federal Compliance**

It is unclear that SB 453 would comply with federal laws and regulations as it is written. The CNA training hours referenced in the bill states 40 hours, federal requirements are for higher than that as are Kansas requirements. Another example on page 1; line 20 the bill strikes through the words “~~or persons~~” seemingly to require only one qualified person to be in attendance when residents are receiving care. Current legal requirements require a minimum of two direct care staff in a facility at all times, or adequate numbers of staff to meet the needs of the number of residents in a facility, one of which should be a licensed nurse. How does the striking of those words in the statute play out in meeting the needs of older adults in the day-to-day operation of a facility. Additionally, the proposed changes to allow LPNs as Instructor is out of line with the Kansas Nurse Practice Act which defines the Scope of Practice for Registered Nurse and Licensed Practical Nurse.

### **Undefined and Subjective Language**

The bill language is problematic and vague. It leaves important requirements undefined by quantifiable measures, and some of the new language is in direct conflict with existing state laws. I would point to page 3;

lines 5-8 requiring a CNA instructor be “licensed and in good standing.” The bill does not define “in good standing” which would be a qualitative rather than a quantitative determination nor does it reference another statute which defines “in good standing”. Kansas/KDADS regulations are more definitive, stating a licensed individual with “no pending or current disciplinary actions.” The multi-state licensure compact defines and uses “Adverse actions” and “Encumbrances” for actions on a nurse license. It is unclear if “in good standing” provides sufficient oversight for allowing instructors who hold multi-state licenses to teach Kansas students.

### **Training Concerns**

SB 453 weakens training requirements at a time when nurse aides are asking for more, not less, training to safely care for residents and protect themselves from injury.

The bill fails to specify the need for additional training and competence in subject matter areas already identified and well documented to negatively impact the care elder residents receive, including daily oral care, dementia care and approaches that avoid the overuse/misuse of deadly, dangerous antipsychotic drugs, infection control prevention, and person-centered care which was mandated by the Final Rule five years ago.

**Simulation Training:** SB 453 allows 50% of the CNA training to be done in a simulation laboratory. This is not current practice and will in no way meet the needs of older adults for competent, safe, hands-on care from certified nurse aides (CNAs), nor will it improve or maintain the current level of nurse aide competency for new trainees. Supervised hands on clinical work gives a CNA experience in handling the unexpected physical and verbal responses of older adults who depend on the aide to complete or assist with completion of many personal care functions each day. Older adults live in care facilities because they have complex medical needs. They require a range of assistance, from minimal support to total assistance with activities of daily living. These are actions most of us are able to do each day, without much thought such as brush our teeth, participate in activities that interest us, get dressed, shower, get out of bed, and go to the bathroom without assistance. Many residents in adult care facilities have a medical diagnosis of dementia or Alzheimer’s which requires frequent support and redirection of their cognitive and physical functioning in addition to physical support from CNAs. They rely on the competence, training, and decision-making of trained direct care staff who do the overwhelming majority of their hands-on assistance every day. The “greatest generation” is of an age who trusts that legislative and regulatory bodies will act in responsible ways to protect them and keep them safe.

Simulation training on a mannequin is not at all like moving, bathing, transferring a person. Unexpected falls, verbal or physical outbursts are not uncommon and aides graduating from simulation labs will not be competent to respond appropriately. The allowance of up to a maximum of 50% of training in a simulated setting is not safe for employees or residents.

### **Workforce Concerns**

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 adequately train/prepare them and support them for the job they will do.

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. It potentially could temporarily increase the number of individuals who take the CNA course, but 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 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.

### **Broad Participation, Better Solutions**

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 a broader stakeholder group brings. 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 takes broad participation.

The pandemic has spotlighted the serious, long-standing deficiencies in the long term care system. These must be addressed. The legislature has approved emergency response measures specific to the pandemic. The KDADS Secretary has authority to help provide relief to the geographic areas of the state experiencing RN Instructor shortages.

The combined complexities of unintended consequences in meeting the needs of older adults, training staff to competently and safely meet those needs, complying with federal regulatory requirements and avoiding conflicts with existing nursing statutes all speak to the problems with SB 453.

Passing SB 453 raises many more questions than it answers; will create more problems not solve the workforce shortage for nurse instructors or nurse aides. These are all reasons to oppose 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.