



**To: Senator Beverly Gossage, Chair and Members, Senate Public Health and Welfare Committee**  
**From: Kylee Childs, Director of Government Affairs, LeadingAge Kansas**  
**Date: 3/5/2024**

LeadingAge Kansas is the state association for not-for-profit and mission-focused aging services. We have 150 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, home 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.

#### **Testimony in Support of House Bill 2777**

On January 19, 2024, we learned the Office of the State Fire Marshal (OSFM) showed up to a healthcare provider inspection wearing a body camera. After reaching out to the OSFM through email and in-person, we learned their inspectors have been wearing these devices on inspections since 2021. The OSFM stated they had no obligation to provide disclosure on this policy to stakeholders. The decisions by this state agency are what bring us before you today.

#### **Resident Rights**

While cameras in adult care homes are permitted per K.S.A. 39-981, this is based entirely on consent of individuals recorded. Consent is not able to be obtained by each individual resident for the OSFM as they are often unannounced inspections. Around August 2016, the Centers for Medicare and Medicaid Services (CMS) issued a memorandum to nursing facilities on their requirements to protect resident privacy and prohibit mental abuse related to photographs or videos of residents without consent. This standard along with our providers embrace of person-centered care and creating environments that are as home-like as possible are what brings concerns with the OSFM equipping their inspectors with body cameras in healthcare settings.

#### **Inspections versus Investigations**

There are different purposes between criminal investigations and survey and certification inspections in adult care homes, with investigations carrying a higher level of liability for the role of an officer due to life-or-death circumstances. In those scenarios, we feel it makes sense for individuals employed with the OSFM to wear body cameras. However, inspections do not carry the same weight and there is a presumption that since the OSFM is subcontracted by the Kansas Department of Aging and Disability Services (KDADS) to carry out these inspections, they should be adhering to the same policies as the KDADS Survey, Certification, and Credentialing Commission (SCCC) who are not utilizing recording devices of any kind.

### **Government Officials Have Concerns with the Practice**

Our association, along with other state and national healthcare associations, have been in contact with officials at the regional and national CMS office to seek guidance on whether this is an approved practice. We have also followed up with the Fire Marshal's office who confirmed that CMS shares the same concern as healthcare stakeholders. We have also had conversations with various legislators who expressed concerns related to resident privacy.

### **Not A Common Practice**

When we have reached out to other state LeadingAge associations, this issue does not seem to be occurring on inspections for states who are utilizing the OSFM as sworn law enforcement. Other states such as Iowa have realigned their government to delineate differences between officers performing investigations and inspectors reviewing compliance in healthcare settings. Our national association shared CMS was not aware of this practice and had not been approached about this in other states, indicating it is not a common practice – in contrast with prior OSFM statements.

### **Liability and Lawsuits**

The OSFM has stated not wearing body cameras will open the state to liability and lawsuits through “malicious” he-said, she-said statements from providers. Our question is how many lawsuits were filed against the office prior to the use of the body cameras in 2021? Is this an actual cause for concern or just a way to justify government overreach into the personal lives of Kansas residents? OSFM has stated in other hearings and flyers on this topic it is the responsibility of the provider to ensure an inspector wearing a device is not in areas where residents may be. This is an impossible ask since these are residents' homes and short of locking residents in their rooms, there is no way to ensure this will not occur. We would argue concerns about provider liability are far greater than any potential lawsuit the state may face.

### **Implications without Intervention**

We believe that while this practice may be legal and within the OSFM right as designated law enforcement in the state of Kansas, it does not necessarily mean it is the *right* thing to do. In the last few weeks, we have been receiving conflicting statements from the OSFM on whether they are continuing this practice. Our last conversation with the leaders indicated that until they receive a hardline no, they will continue this practice. We are asking the legislature to step in and provide that hardline no.

For all these reasons, we would ask you to support the passage of HB2777. Thank you for the opportunity to provide supportive testimony and we are available for additional questions.