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February 21, 2013

The Honorable Representative Connie O'Brien
Chair, House Children and Seniors Committee

Reference: HB 2348 – Support of Increasing Nursing Home Staffing Hours

Good morning Madam Chair and committee members. My name is Maren Turner and I am the Director of AARP Kansas. AARP represents more than 337,000 members across Kansas. I am a former long-term care ombudsman in the District of Columbia, where I monitored and advocated for individuals in nursing homes and other long-term care environments. I am also a former monitor for intermediate care facilities (ICF) and community residential facilities (CRF), also in the District of Columbia. Thank you for this opportunity to express our comments and support of increasing nursing home staffing hours in Kansas nursing homes.

AARP Position

AARP Kansas promotes regulations and legislation that will improve quality and diminish disparities in nursing home care in Kansas nursing facilities. We have been a constant proponent of long-term care services and assisting the state in achieving the highest quality of care possible for nursing home residents. We believe that older adults have the right to be provided the best quality of care and should not be subjected to a lesser quality of care at a time when they are most vulnerable.

Background

The decision to place a loved one in a long-term care facility can be emotionally painful and is often based upon the expectation that the nursing home will provide a safe, engaging environment and provide the level of care that your loved one requires. Many find that this expectation is met. Many do not. The elderly are our most defenseless population and can be easy targets for abuse and neglect.

When families make the very important and difficult decision to admit their elderly loved ones into a nursing home, they should have confidence that their loved ones are in good care. Nursing homes are often a crucial last resort for older adults who have disabilities or chronic illnesses. The vulnerability of these elderly nursing home patients places them at risk for neglect. Those with mental or physical disabilities may be at

greater risk. They have difficulty providing for their own needs and may also have difficulty telling someone if they do experience abuse or neglect. The social isolation of many nursing home residents also places them at risk. Even if they could tell someone that they are experiencing neglect, they may have no one to tell.

Gaps in state laws that regulate nursing homes and understaffing have led to deficiencies and abuses that have jeopardized this vulnerable population. Families are often not notified, or know to ask, about the number of care hours that their loved one will receive. They may have no idea that their role as a caregiver has just begun. Since the elderly may have a limited ability to communicate, family members and caregivers must monitor their loved ones' care and look for any potential signs of abuse, neglect and poor levels of care including:

- Over- or under-medication
- Unexplained cuts, bruises, or welts
- Rapid weight loss or weight gain
- Dehydration, malnutrition, and bedsores
- Unsanitary living conditions
- Infections
- Broken bones
- Isolation
- Sudden death

When a nursing home allows a resident to be hurt or neglected, family members may feel betrayed and confused about how to protect their loved one and where to turn for help. We believe they will turn to you and that passage of HB 2348 by this committee and by the full legislature will be a giant step towards supporting family members and protecting this vulnerable population.

History

The last significant legislation on the matter of nursing home quality was the Nursing Home Reform Act within the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Although OBRA '87 was a commendable effort that addressed many pressing issues, significant gaps remain regarding consumer protection and quality enforcement. State governments have a duty to ensure the quality of nursing homes. But a Government Accountability Office (GAO) review found that many states are failing to identify problem facilities. The GAO has reported chronic quality deficiencies in low-performing nursing homes that can cause actual harm to residents. The causes of elder abuse are numerous, including understaffed nursing homes.

The Problem

According to the PBS NewsHour “Health Spotlight,” research found that more than 90 percent of current nursing home residents are 65 years of age and over. Almost half are 85 years or over. The average age upon admission to a nursing home is 79, and women are almost three times more likely to live in nursing homes than men. The research also found that 42 percent of nursing home patients suffer from some level of dementia and 33 percent of nursing home patients have documented symptoms of depression.

The elderly population of Kansas is increasing. According to the 2010 census, 13.2 percent (376,116) of the population of Kansas is 65 years of age or older. That number of Kansans over 65 is expected to grow to be 20 percent (605,000) of the population by 2030. Because of increased longevity, many Kansans will exhaust or outlive their own resources and families and eventually require assistance from the Medicaid program and nursing home care. Currently, approximately 19,000 Kansans reside in the state’s 342 nursing homes. Approximately 5.2 percent of Kansans 65 and older live in nursing homes - far more than the national average of 3.8 percent, and 55 percent of these Kansans rely on Medicaid for their care.

In 2010, 32.2 percent of Kansas nursing homes received deficiency ratings for actual harm or jeopardy to their residents. Between April 2009 and November 2012, 106 Kansas nursing facilities received 131 deficiencies specifically for failure to provide adequate nurse staffing.

A nursing home may receive a **deficiency** for problems which can result in a negative impact on the health and safety of residents. The Centers for Medicare and Medicaid Services (CMS) define "**actual harm**" as a "deficiency that results in a negative outcome that has negatively affected the resident's ability to achieve his or her highest functional status, and “**Immediate jeopardy**" is defined as a deficiency that "has caused (or is likely to cause) serious injury, harm, impairment, or death to a resident receiving care in the nursing home." All of these findings indicate a serious need for improvement that can be addressed through increasing staffing hours.

Racial Disparities

Older Americans at high risk for placement in nursing home facilities are those aged 85 years and older, women, and African Americans, who are also more likely to rely on Medicaid as their primary source of payment. According to the Center for Medicare Advocacy, Inc., Caucasian Americans are moving into assisted living facilities and

minorities are moving into nursing facilities. The good news in the new study is that members of racial minorities have better access to nursing home care, which in some cases is the only realistic long-term care option. The bad news is that disparities in access to non-institutional care – home- and community-based services - may be a partial cause.

Reducing racial disparities in health care is an important national policy goal. Previous research on racial disparities has focused on nursing home placement rates. Recent research suggests that black nursing home residents may be more likely than residents of other races to reside in facilities that have serious deficiencies such as low staffing ratios and greater financial vulnerability.

According to the Division of Healthcare Statistics in a 2004 report, 11% of the 1.3 million nursing home residents aged 65 and over in the United States were black. National descriptions of black nursing home residents are limited. Data from the most recent National Nursing Home Survey highlights differences observed between elderly black nursing home residents and residents of other races in functioning and resident-centered care. The specific measures highlighted are functional status, incontinence, and management of incontinence. Key findings:

- Black nursing home residents had poorer functional status than residents of other races.
- Black residents were more likely to be totally dependent in both eating and toileting and to be totally dependent in all five activities of daily living.
- Black nursing home residents were more likely to be incontinent of bladder, bowel, or both.
- Among bladder-incontinent nursing home residents, black residents were less likely than those of other races to have scheduled toileting plans.

In a 2007 report by Kathleen Fackelmann, USA Today revealed that a system of separate and unequal nursing home care for black Americans exposes seniors to substandard care. Also, a new report reveals a system of separate and unequal nursing-home care for black Americans, one that could expose frail seniors to substandard care. The study, out in the September/October issue of *Health Affairs*, finds that 60% of blacks in nursing homes ended up in just 10% of the facilities — typically ones that had been cited for quality problems. "The analysis in *Health Affairs* also found that:

- Blacks were nearly three times as likely as whites to be in nursing homes that predominantly cared for Medicaid patients.
- Blacks were twice as likely to be located in homes that had provided such poor care that they were subsequently kicked out of Medicaid and Medicare.

- Blacks were nearly 1½ times as likely as whites to be in homes that had been cited for deficiencies that could cause immediate harm.

Increased staffing hours will help improve quality of care and reduce disparities in care.

Current Staffing Levels

The Elder Abuse Information website reports that inadequate staffing leads to abuse and neglect in some nursing homes, because many nursing homes do not meet the recommended staffing levels. When nurses and certified nursing assistants must care for too many residents, they may not receive the care they need.

The Nursing Home Reform Act requires that nursing homes provide, at a minimum, eight hours of registered nurse (RN) coverage and 24 hours of licensed practical nurse (LPN) coverage per day. In addition, the law requires nursing homes to provide the scope of care and services (including sufficient qualified staff) to ensure that each resident can attain or maintain his or her "highest practicable physical, mental and psychosocial well-being."

A 2002 study by the Centers for Medicare and Medicaid Services (CMS) identified minimum staffing thresholds below which residents were at significantly greater risk of harm. These thresholds were 2.8 hours per resident per day for nurse aides, 1.3 hours for RN and LPN combined staff time, and .75 hours for RNs. Residents in facilities that fell below the minimum staffing thresholds were at significantly greater risk of hospitalization for potentially avoidable causes, lack of functional improvement, incidence of pressure sores and skin trauma, lack of improvement in resisting assistance from staff (a sign of problems in the relationship between residents and staff), and weight loss. The study provides evidence that 97 percent of nursing homes had staffing levels that fell below these thresholds.

In Kansas, the current required minimum, by law, is 2 hours of direct care by nursing staff each day. This minimum care requirement has seen no increase for more than 30 years, while the level of frailty of persons living in nursing facilities, and the assistance they require, has climbed steadily upward. The nursing staff included in the 2-hour-per-resident-day requirement includes Registered Nurses, Licensed Practical Nurses, Certified Nurse Aides and Certified Medication Aides, nurse aid trainees, nutrition assistants and mental health technicians. Nursing care facility staffing levels are self-reported by Kansas nursing homes at or around the time of survey, and many homes report care levels above the state minimum. However, staffing levels reported on the basis of employee payroll reports might yield a better understanding of actual ongoing staffing levels in Kansas. A study by the Centers for Medicare & Medicaid Services

(CMS) said “facilities self-reported staffing and quality measure data cannot be relied on to provide an accurate picture of a nursing facility.”

The goal of changing the minimal staffing requirements should be to increase the thresholds to at least the levels determined necessary to protect from or prevent illness, injury, death and to maintain functioning levels. 2010 findings from the Kaiser Family Foundation revealed a 50-state comparison of the percentages of certified nursing facilities with top ten deficiencies. Kansas certified nursing homes had higher than the national percentage of certified nursing facilities with top ten deficiencies in:

- Accident Environment deficiencies:
  - Kansas - 60%
  - Overall national - 43%;
- Quality of Care deficiencies:
  - Kansas - 42%
  - National - 34%;
- Unnecessary Drugs deficiencies:
  - Kansas - 67%
  - National - 23%;
- Comprehensive Care Plans deficiencies:
  - Kansas - 57%
  - National - 28%;
- Food Sanitation deficiencies:
  - Kansas - 55%
  - National - 39%.

Finally, 32.2% of Kansas certified nursing facilities received a deficiency for actual harm or jeopardy, compared to the 50-state rate of 23.4%. The average number of deficiencies per Kansas certified nursing facility was 15 compared to the national average of 9.4, placing Kansas in the highest grouping - “poor” - regarding numbers of reported deficiencies, with a ranking of 5th highest in the nation.

The Solution

In a recent AARP Kansas survey of members and non-members, Republicans and Democrats, “Voices of 50+ Kansans-Dreams and Challenges” revealed that over four in five respondents support strengthening enforcement of quality standards in Kansas nursing homes.

Also, late in 2011, AARP Kansas released a state-specific *Long-term Care Services and Supports (LTSS) Scorecard* on the status and quality of services available to seniors, adults with disabilities, and family caregivers. The *Scorecard* is designed to help states improve the performance of their LTSS systems so that older people and adults with disabilities in *all* states can exercise choice and control over their lives, thereby maximizing their independence and well-being.

The *Scorecard* examines state performance across four key dimensions of LTSS system performance, including quality life and care. All 50 states and the District of Columbia were ranked. Kansas rankings included:

- 13th - Percent of high-risk nursing home residents with pressure sores (2008);
- 38th - Nursing home staffing turnover- a ratio of employee terminations to average number of active employees (2008);
- 35th - Percent of long-stay nursing home residents with a hospital admission (2008);
- 14th - Quality of life and quality of care.

Impact of Improved Performance

If Kansas improved its performance to the level of the highest-performing state, results would include:

- Significant improvements in quality of life and care for Kansas nursing home residents;
- Reduction in nursing home turnover;
- Avoidance of 1,905 unnecessary hospitalizations of people in nursing homes.

Proposed legislation such as HB 2348 would raise the floor, or Kansas minimum requirement of care, that each nursing home resident receives daily and would result in improved quality of care and better outcomes for residents.

More than 70 studies have been completed over the past two decades. Many have recommended a minimum standard that would assure elders enough care to maintain their level of physical and cognitive function, avoid injury, illness and preventable deaths. None of the studies show better health care outcomes with less staffing hours.

No fewer than four national studies have researched and recommended increased resident care by nursing staff in nursing facilities. Those same studies have concluded residents have improved outcomes when receiving levels of care from 4.13 up to 4.85 hours per day. The 4 hour 26 minute mid-range is the recommended new minimum within HB 2348.

Therefore, AARP believes that as a minimum step, state governments should establish specific minimum staffing levels not less than the minimum thresholds identified by the Centers for Medicare and Medicaid Services (CMS) and require that facilities exceed the absolute minimum number of staff to ensure that each resident can attain or maintain his or her “highest practicable physical, mental and psychosocial well-being” as required by OBRA ‘87.

Kansas can see savings in reimbursement based upon nursing facilities cost reports from those facilities below the 4 hour 26 minute per patient day (hprd) recommended staffing level. Facilities can realize reduced costs in the areas of:

- hospitalization,
- lower worker compensation costs related to less worker injury (currently high in the nursing facility industry),
- reduced cost of supplies and drugs for incontinence and nutrition, and
- reduced turnover and the expenses related to recruiting and training new staff (estimated at four times an employee's monthly salary).

In advocating for quality care assessment legislation, nursing home associations have supported the passage specifically to fund increased staffing levels. In an effort to create the Connecticut provider tax,

> "The for-profit Connecticut Association of Health Care Facilities (CAHCF) supported the tax, while the Connecticut Association of Not-for-Profit Providers for the Aged (CANFPA) was against it.
> "In supporting the tax, CAHCF's Executive Vice President Toni Fatone testified that the state's nursing home industry was in a state of fiscal crisis and that many other states had already adopted such taxes. She was joined by Jane McNichol of the Connecticut Citizens Coalition for Nursing Home Reform, who spoke of the need to increase staffing levels to improve care for the elderly and said such a tax could make this possible" (Olsen, 2012).

Also, in Illinois,

> "A group representing the state's for-profit nursing homes, the Health Care Council of Illinois, has said the $6.07-per-resident bed tax will help the industry carry out a landmark nursing home reform law approved by state lawmakers and Gov. Pat Quinn in 2010.
> "But Bellows, a Skokie businessman whose properties include Maple Ridge Care Center in Lincoln, said the council's members have "united in support of the provider assessment because of what it means for the Medicaid-dependent residents throughout the state, especially those who are extremely frail and require significant care.
> "The council pushed for the bed tax, arguing that it would help nursing homes pay for higher nurse staffing levels required under the reform law" (Cohen, 2004).

HB 2160 states that all monies "shall be used to finance initiatives to maintain or improve the quantity and quality of skilled nursing care" and shall be "deposited in the quality care fund and used to finance actions to maintain or increase healthcare in skilled care facilities".

We suggest that using monies from the continuation and increase in the quality care assessment and savings incurred in enhancements to quality of care would support the increase in Kansas nursing home care hours.

Therefore, on behalf of our more than 337,000 members in Kansas, AARP Kansas would respectfully request your support of increasing nursing home care hours in Kansas Nursing homes.

Respectfully,
Maren Turner

Resources:

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