

Approved 3-3-83
Date sh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin Littlejohn at
Chairperson

1:30 /a.m./p.m. on March 1, 1983 in room 423-S of the Capitol.

All members were present except: Rep. Cribbs, excused

Committee staff present: Emalene Correll, Research Department
Bruce Hurd, Revisor's Office
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Rep. Littlejohn, Sponsor of HB 2368
Dick Morrissey, Director of Health Facilities, Ks. Dept. of Health & Environ.
Dick Hummel, Kansas Health Care Association
Marilyn Bradt, Kansans' for Improvement of Nursing Homes

Visitor's register, see (Attachment No. 1.)

Chairman called meeting to order.

Chairman called committee's attention to HB 2455, and a companion to it, HCR 5011, and explained some of the highlights of those bills.

Rep. Niles moved that HB 2455 be amended in Sec. (3), to take effect after publication in 1983 of the Kansas Register. Motion seconded by Rep. Hassler, motion carried.

Rep. Wagnon moved that HB 2455 be reported out of committee favorably as amended, for passage. Motion seconded by Rep. Walker, motion carried.

HCR 5011 was given detailed explanation by Chairman to committee. The recommended changes were noted. Rep. Niles moved that HCR 5011 be passed favorably out of committee for passage. Motion seconded by Rep. Wagnon, motion carried.

HCR 5012 was comprehensively briefed by staff, Emalene Correll. Some questions followed this briefing.

Rep. Hassler moved that HCR 5012 be passed out of committee favorably. Motion seconded by Rep. Branson, and motion carried.

HCR 5016 was explained in detail to committee. Rep. Buehler made a motion this resolution be moved out of committee favorably for passage. Motion seconded by Rep. Spaniol, and motion carried.

HCR 5018 was explained in detail to committee. Rep. Buehler made a motion to move this resolution out of committee favorably. After discussion, Rep. Buehler then amended his motion to say that HCR 5018 be put on the consent calendar. Motion seconded by Rep. Kline, discussion followed. Voice vote then taken and motion carried. HCR 5018 will be placed on the consent calendar.

Chairman Littlejohn then relinquished his chair to Vice-Chairman, Rep. King for the remainder of the committee meeting this date.

Vice-Chairman King recognized Rep. Littlejohn as a conferee on HB 2368.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 423-S, Statehouse, at 1:30 a/m/p.m. on March 1, 1983

Hearings on HB 2368 begin:

Rep. Littlejohn related to a problem with insolvency in a Nursing Home in his District, and further stated there are other problems in this regard throughout the state. Hopes that this bill he has introduced will help to eliminate situations of this kind. He has been in contact with the Department of Health and Environment on specifics on requirements and language in this bill. A balloon copy of HB 2368 (Attachment No. 2.) was discussed, and specifics in Sections 2,4,and 6. Performance Bond will be necessary as set out in Sec. 1, pg. 1. Provisions for licensing, those wishing to file action suits because of default on salaries, and other specifics were explained to the committee.

Rep. Littlejohn requested of committee that HB 2368 be put out of committee, sent to the floor and passed on to the Senate. Then, help them to get the bill cleaned up. Rep. Littlejohn answered questions from committee.

Dick Morrissey, of Health and Environment distributed to committee printed testimony on HB 2368. See (Attachment No.3.) for details. Mr. Morrissey stated that the Attorney General's office is in the process of trying to determine if there is criminal intent on this Nursing Home in Phillipsburg area earlier mentioned. The SRS, plus many other businesses have funds due from this Nursing Home. There is cause for concern, and this bill will provide some protection against this being repeated. Mr. Morrissey explained the technical amendments they are proposing for the bill by section, as shown in attachment No. 3. In concluding his comments, he stated that the Department recommends to amend HB 2368 as suggested and to report the bill favorably for passage.

Mr. Morrissey answered questions from committee.

Dick Hummel, of Health Care Association presented printed testimony to committee. (See Attachment No. 4.) Mr. Hummel stated that they are in conceptual agreement with HB 2368, but are uncertain to its full implications, and they requested that it be referred to an Interim Study. They find concerns with Performance Bond. This is a broad generic and technical term and they are also concerned that the 30 days would not perhaps be sufficient time in which to have this bond secured. Also having problems with language in lines 0041-0042. Mr. Hummel answered questions from committee.

Marilyn Bradt of Kansans' for Improvement of Nursing Homes presented committee her printed statement. (See Attachment No. 5.) Ms. Bradt stated she is in complete agreement that Nursing Homes be fiscally sound. It is also essential that the state be able to stop the flow of Kansas dollars to out-of-state corporate pockets. Feels perhaps HB 2368 will be a vehicle for helping to solve these problems.

Hearings on HB 2368 concluded.

Vice-Chairman King adjourned the meeting at 2:48 p.m.

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HOUSE BILL No. 2368

By Representative Littlejohn

2-9

(Attachment 2)

0017 AN ACT relating to adult care homes; concerning licensure
0018 thereof and providing protection against insolvency.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (a) Each licensed adult care home or each new
0021 application for such license in addition to the provisions of K.S.A.
0022 1982 Supp. 39-927 shall deposit with the licensing agency or a
0023 trustee acceptable to such agency, cash, securities, a performance
0024 bond or any combination thereof, in the amount set forth in
0025 subsection (b) of this section.

0026 (b) The amount for such deposit described in subsection (a)
0027 shall be the greater of:

0028 (1) Five percent of its estimated operating expenditures for
0029 the first year or current year of operation;

0030 (2) twice its estimated average monthly operating expendi-
0031 tures for its first year or current year of operation; or

0032 (3) \$100,000.

0033 Sec. 2. Unless not applicable, a licensed adult care home that
0034 is in operation on the effective date of this act shall within 30
0035 days of such effective date comply with the deposit requirements
0036 of section 1.

0037 Sec. 3. The deposit requirements shall be applicable through

18 months

0038 the first ~~3 years~~ of operation by the same licensee.

0039 Sec. 4. The licensing agency may require the deposit re-
0040 quirement set out in section 1 of any license, when in the
41 department's opinion a licensee's operations indicate insufficient
0042 net worth or inefficient operation and management.

Upon completion of that period of the licensee's satisfactory operation and management, as determined by the licensing agency, the deposit set forth in section 1 shall be returned by the licensing agency to the licensee or any person or entity designated by the licensee, or if a performance bond has been provided, that bond shall be cancelled.

0043 Sec. 5. The licensing agency may waive any of the deposit
0044 requirements set forth in section 1, for a licensee which have been

licensing agent's

0045 in operation ~~3 years~~ or more and are assured the licensee has

18 months

0046 sufficient net worth and an adequate history of operations to
0047 assure its financial stability for the next year.

0048 Sec. 6. This act shall take effect and be in force from and after
0049 its publication in the Kansas register. 7

Sec. 6. (a) The licensing agency may require the posting of a performance bond as set out in section 1, when, in the licensing agency's opinion, a licensee's operations indicate insufficient net worth or inefficient operation and management.

(b) The bond shall be in favor of the state of Kansas for the benefit of all persons, their legal representatives, attorneys or assigns, and shall be conditioned on the faithful performance of all the licensee's duties in the operation and management of an adult care home. Any person injured by the breach of any obligation may commence suit on the bond in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond.

(c) County or city owned and operated adult care homes shall be exempt from the requirements set out in section 1, but county and city owned adult care homes operated by others who are not employees of the county or city shall be subject to those requirements set out in section 1.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL NO. 2368

PRESENTED MARCH 1, 1983

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

This is the official position taken by the Kansas Department of Health and Environment on House Bill No. 2368.

House Bill No. 2368 would provide some protection against the possibility that an adult care home does not fulfill its financial obligations. The practice of requiring performance or surety bonds is established in other fields, with recent attention focused on requirements for grain warehouses.

The requirement for a bond would also provide an additional check on the financial capability of a new applicant for license through the financial review and risk assessment performed by the bonding company.

The department has reviewed the balloon distributed on the bill and offers the following technical amendments for the committee's consideration:

Section 2 - "Unless waived by the licensing agency pursuant to Section 5, a licensed adult care home that is in operation on the effective date of this act shall within 90 days of such effective date comply with the deposit requirements of Section 1."

Section 4 - "The licensing agency may require the deposit requirement set out in Section 1 of any licensee when in the licensing agency's opinion the licensee may not have sufficient financial resources to perform all of the duties and obligations required for the operation and management of an adult care home. The licensing agency shall adopt, in rules and regulations, guidelines to be considered in making a determination to require a bond under this section."

Section 5 - "The licensing agency may waive any of the deposit requirements set forth in Section 1 for a licensee who has held a license for three years or more."

*(Attachment
no. 3.)*

Section 6(a) - Appears to duplicate Section 4.

Section 6(b) - Add "the State of Kansas may commence suit on the bond in any court of competent jurisdiction to recover costs to the state of a receivership granted pursuant to K.S.A. 39-958."

DEPARTMENT'S POSITION:

The department recommends that committee amend House Bill No. 2368 as suggested above and report the bill favorably for passage.

PRESENTED BY: Richard J. Morrissey, Director
Office of Health Facilities
Kansas Department of Health and Environment

Kansas Health Care Association

TESTIMONY BEFORE THE HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

By
Dick Hummel
Executive Director

March 1, 1983

HOUSE BILL NO. 2368

"AN ACT relating to adult care homes; concerning licensure thereof and providing protection against insolvency."

Mr. Chairman and Committee Members:

On behalf of the Kansas Health Care Association, a voluntary non-profit organization representing over 200 licensed adult care homes, both proprietary and non-proprietary ownership interests, we appreciate this opportunity to appear on H.B. 2368.

While sympathetic to the sponsor's interest in what might be termed as "getting at the financial pocket-books of a few bad apples in the barrel" by requiring certain financial assurances against insolvency, and in conceptual agreement, we are none-the-less cautiously guarded in our opinion as to whether or not the desired end result will be accomplished by this bill, as we have weighed and balanced its impact in "honing-in" on a few questionable operators versus its consequences on the entire Kansas nursing home industry.

Reviewing the bill, all adult care home licensees in operation for less than 18 months, upon the effective date of the Act, must show within 30 days certain financial assurances as a safeguard against insolvency through the deposit of cash, securities, a performance bond or a combination of the same.

A new licensee must do likewise for the first 18 months of operation.

Also, the licensing agency is extended broad, discretionary authority to apply these requirements upon any existing licensee, if in the department's opinion, the operation indicates insufficient net worth or inefficient operation and management.

(Attachment
no. 4.)

"We Care"

Testimony on H.B. 2368
By Dick Hummel
March 1, 1983
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COMMENTS

This is a new approach, unfamiliar to us in any other state. We ask the practical question, will the bill accomplish the objectives its sponsor has intended, or on the other hand, will it impose an unnecessary financial and administrative burden on bona-fide operators?

Two questions in particular come to mind:

1. Performance Bond. A performance bond is a broad, generic and technical term. We are uncertain what is meant by it in the bill's context. Discussing this recently with an insurance carrier representative having over 25 years experience and doing business in 20 states, we were informed that a performance bond as a protection against insolvency was unheard of by him. One, however, could be written with many variables considered, at a cost of 3-5% of the face amount with other collateral and a letter of credit.

Noting that a financial showing is required within 30 days of the effective date of the Act, we question whether a performance bond could be secured in that period of time.

We'd suggest that if the bill is enacted that rules and regulations be developed to clearly define the type and conditions of the bond requirement.

2. Terms in the Bill. We have concern with certain unclear terms in the bill, noting the phrases "sufficient net worth and an adequate history of operations to assure financial stability for the next year" appearing in lines 0045-0047 and "insufficient net worth or inefficient operation and management" in lines 0041-0042.

We ask, what objective criteria will be used to evaluate "sufficient or insufficient net worth," will generally accepted accounting principles be utilized, and will the persons making such decisions be versed in the complexities of nursing home reimbursement?

Many facilities, because of the shortcomings of the Title XIX, Medicaid reimbursement program, have small or no net worth.

CONCLUSION

We're not appearing here today as an apologist for any groups not doing its job, that is, the delivery of the best level of long-term health care possible, expected for and deserved by our 26,000 nursing home residents. Rather, members of this Association -- dedicated to quality care in a safe and comfortable environment for our elderly and infirmed residents -- have gone on record with our position regarding the small minority of operators who may abuse the system and openly and flagrantly violate the standards and rules and regulations.

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By Dick Hummel
March 1, 1983
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Close them up and get them out of the business. We charge the state agency to exercise its responsibility. If care and services aren't given according to the standards we as providers are all expected to maintain, the ultimate "police power" of the State Department of Health and Environment to revoke a license should be swiftly and judiciously exercised. Where, we ask, does accountability and responsibility lie?

In conceptual agreement with H.B. 2368, but uncertain to its full implications, we respectfully request that it be referred to an interim study, a comprehensive study to include the costs, quality and quantity of nursing home care in Kansas.

I'd be happy to respond to any questions.



Kansans for Improvement of Nursing Homes, Inc.

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LAWRENCE, KANSAS 66044

842-3088 — Area Code 913

March 1, 1983

STATEMENT TO THE HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE CONCERNING HB 2368

KINH is in complete agreement with the concept that nursing homes must be held responsible for efficient operation and management. It is not only in the interest of providing high quality care but is also in the best interest of, the taxpayers whose tax dollars are funding medicaid payments.

It is essential that the state be able to stop the flow of Kansas money to out-of-state corporate pockets which leaves the nursing home in a perilous financial condition, unable, in some cases, even to pay their employees much less provide quality care. The state often cannot move quickly to close a nursing home, as alternative placements for their elderly residents are not always readily available and 'transfer trauma' is a well known danger, even when the transfer is from a poor home to a better one. It is incumbent, then, upon the state to provide other leverage to be applied to the enforcement of high standards of operation and to fund the receivership provisions already in Kansas statute.

It is our hope that HB 2368 will furnish a usable tool for this purpose.

*(Attachment
No. 5.)*