

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Jan Meyers at
Chairperson

10 a.m./~~p.m.~~ on January 28, 1983 in room 526-S of the Capitol.

All members were present except:

Senators Chaney and Vidricksen

Committee staff present:

Emalene Correll and Norman Furse

Conferees appearing before the committee:

Ron Todd, Assistant Commissioner of Insurance

Others present: see attached list

Ron Todd, Assistant Commissioner of Insurance presented three proposals to be introduced by the PH&W Committee: Proposal #12 to amend a section of the Health Care Provider Insurance Availability Act so as to allow for the reasonable and necessary expenses incurred by the Commissioner in administering the Health Care Stabilization Fund, to be paid from the Health Care Stabilization Fund; Proposal #13 recommending the establishment of a State Health Care Commission to address the issue of health care costs; and Proposal #18 amending a section of the Kansas Health Care Provider Insurance Availability Act to place a limit of one million dollars on the liability of the Health Care Stabilization Fund arising from any one claim. (Attachment #1).

Senator Morris stated that he had some concerns about the bills, but thought that they should be introduced.

Senator Morris moved that all three bills from the Insurance Commission be introduced. Senator Ehrlich seconded the motion and it carried.

SB 32 - Secretary of SRS authorized to charge fees for screening and evaluation of services

Senator Meyers asked for discussion and action on SB 32. There was some discussion concerning whether it was necessary to include the definition of adult care homes in the bill.

Senator Ehrlich moved that SB 32 be reported favorably. Senator Francisco seconded the motion and it carried.

SB 33 - provision of services for protection of persons from abuse or neglect

Senator Meyers asked for discussion and action on SB 33. There was some discussion concerning the amendment proposed by Keith Landis, Christian Science Committee on Publication for Kansas.

Senator Ehrlich moved that the amendment proposed by Mr. Landis be adopted. Senator Roitz seconded the motion and it carried.

Emalene Correll, Legislative Research Department, proposed a technical amendment to SB 33, deleting "state nursing home ombudsman" in line 90 and substituting "secretary on aging".

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10 a.m. ~~pm~~ on January 28, 19 83

Senator Hayden moved that this technical change be made. Senator Gordon seconded the motion and it carried.

Senator Francisco proposed an amendment to SB 33 which would require the posting of a notice concerning abuse and neglect in adult family homes.

Senator Francisco moved that this amendment be adopted. Senator Bogina seconded the motion and it carried.

Senator Johnston moved that SB 33 be reported favorably, as amended. Senator Hayden seconded the motion and it carried.

The meeting was adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
DATE 1-28-83

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

NAME AND ADDRESS	ORGANIZATION
KEITH R LANDIS TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Michael E. FRANCIS TOPEKA	AM. INS. ASS'N
Robert Hardin Topeka	SRS
Caleb Whitfield Topeka	SRS
Ron Todd "	President
Dr Lois P. Scibetta "	Ks St Bd of Nursing
Russ Hilderbrand olathe	Ks Health Care Ass.
Dick Hummel TOPEKA	" " "
Marilyn Braadt Lawrence	Kans. for Improvement of ^{Nursing Home}
Nickie Stein, R.N. Topeka	KS St. Nurses' Assn.
Gary Pollock "	Ks Opt Assn
Ken Schafmeyer "	KS Pharmacists Assn
Lynelle Kuy "	Ks St. Nurses' Assn
Rebecca Kuyper "	KS Hospital Assoc.
JERRY SLAUGHTER	KS MEDICAL SOCIETY
Joe Noftall	KD N+E
Doug pet	KDOA
Wade Patton	KHCA
Jim Klausner	KHCA
Ronald E Hastings	KHCA
D. J. Abel	KD N+E

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 12

Legislative Proposal No. 12 amends the Kansas Health Care Provider Insurance Availability Act to maintain the financial integrity of the Health Care Stabilization Fund and to address some administrative matters.

This proposal seeks to amend subsection (b) of K.S.A. 40-3403 of the Health Care Provider Insurance Availability Act so as to allow for the reasonable and necessary expenses incurred by the Commissioner in administering the Health Care Stabilization Fund to be paid from the Health Care Stabilization Fund. At the present time, these expenses are charged to the Kansas Insurance Department Budget, and eventually the State General Fund. The cost of those reasonable and necessary expenses is tentatively estimated to be approximately one hundred thousand dollars (\$100,000) and include the payment of approximately four salaried personnel and the incidental expenses of filing, mailing, computer time, etc., necessary to manage the Fund.

Subsection (c) is amended to authorize a payment by the Fund of more than three hundred thousand dollars (\$300,000) per year by the Fund when a judgment is rendered against it is so large that ten percent (10%) of it is greater than the three hundred thousand dollars (\$300,000) figure. The basis for this proposal is to assure the Fund will be able to pay whatever judgments are rendered against it, thereby avoiding the dilemma of being unable to pay the judgment principal and post judgment interest of a large judgment.

Legislative Proposal No. 12 seeks to amend K.S.A. 40-3404(a) and (c) to eliminate the ten million dollars (\$10,000,000) balance of the Fund and add new subsection (c) to require a minimum annual surcharge on all health care providers.

Proposed subsection (c) will require the assessment of annual surcharges of forty-five percent (45%) on all health care providers complying with the Health Care Provider Insurance Availability Act for the first time and twenty-five percent (25%) thereafter. If the balance of the Fund is projected to fall below ten million dollars (\$10,000,000) during any fiscal year, the Commissioner would be authorized to assess surcharges in excess of those minimum prescribed amounts, not to exceed sixty-five percent (65%). This proposal would provide for the gradual growth of the balance of the Fund which is essential to assure solvency and avoid the imposition of assessment of an excessively large surcharge in any given year. The forty-five percent (45%) surcharge figure for first time compliers is based upon the surcharge figure imposed on health care providers at the initiation of the Act. The twenty-five percent (25%) figure reflects a modest annual surcharge to maintain a reasonably reliable flow of money into the Fund to help offset the increased obligations that have arisen and will probably continue to arise as the Fund continues to mature.

Finally, this proposal seeks to delete language of K.S.A. 40-3411 to limit a primary insurance carrier's right of settling claims under their one hundred thousand dollars (\$100,000) coverage and exposing the Fund to further liability. On occasion, plaintiffs have attempted to settle with primary carriers in amounts less than their limits on the condition that plaintiffs can then proceed against the Fund. Plaintiffs have argued that the language (to be deleted) authorizes such settlement by the primary carrier. It is the Fund's position that such a settlement violates the intent of the Kansas Health Care Provider Insurance Availability Act which requires the primary carrier to be responsible for the first one hundred thousand dollars (\$100,000) of any claim or settlement. If plaintiffs are authorized to settle with the primary carrier on this basis, the primary carriers will, in essence, be providing funds to finance plaintiffs lawsuit against the Fund. This, in turn, exposes the Fund to greater liability. Further, the language seems to remove any motive for the primary carrier to observe its obligation to the Fund to attempt to settle the case within the primary insurer's policy limits.

The Senate Committee on Public Health and Welfare will be requested to introduce this proposal.

AKC h. 1

LEGISLATIVE PROPOSAL NO. 12

AN ACT relating to insurance; health care provider insurance availability act; limitation on primary insurer's right of settlement; limiting liability of fund; minimum annual surcharge, removal of limitation on amount in fund; amending K.S.A. 1982 Supp. 40-3403, 40-3404 and 40-3411 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 40-3403 is hereby amended to read as follows: 40-
2 3403. (a) For the purpose of paying damages for personal injury or death arising out of
3 the rendering of or the failure to render professional services by a health care
4 provider, self-insurer or inactive health care provider subsequent to the time that such
5 health care provider or self-insurer has qualified for coverage under the provisions of
6 this act, there is hereby established the health care stabilization fund. The fund shall
7 be held in trust in a segregated fund in the state treasury. The commissioner shall
8 administer the fund or contract for the administration of the fund with an insurance
9 company authorized to do business in this state.

10 (b) Subject to subsection (e), the fund shall be liable to pay: (1) Any amount due
11 from a judgment or settlement which is in excess of the basic coverage liability of all
12 liable resident health care providers or resident self-insurers for any such injury or
13 death arising out of the rendering of or the failure to render professional services
14 within or without this state; (2) any amount due from a judgment or settlement which
15 is in excess of the basic coverage liability of all liable nonresident health care
16 providers or nonresident self-insurers for any such injury or death arising out of the
17 rendering or the failure to render professional services within this state. In no event
18 shall the fund be obligated for claims against nonresident health care providers or
19 nonresident self-insurers who have not complied with this act or for claims against
20 nonresident health care providers or nonresident self-insurers that arose outside of this
21 state; (3) any amount due from a judgment or settlement against a resident inactive
22 health care provider for any such injury or death; (4) any amount due from a judgment
23 or settlement against a nonresident inactive health care provider for any injury or
24 death arising out of the rendering or failure to render professional services within this
25 state. In no event shall the fund be obligated for claims against: (A) Nonresident
26 inactive health care providers who have not complied with this act; or (B) nonresident
27 inactive health care providers for claims that arose outside of this state, unless such
28 health care provider was a resident health care provider or resident self-insurer at the
29 time such act occurred; (5) reasonable and necessary expenses for attorney's fees
30 incurred in defending the fund against claims; (6) any amounts expended for
31 reinsurance obtained to protect the best interests of the fund purchased by the
32 committee on surety bonds and insurance pursuant to K.S.A. 1980 Supp. 75-4401; (7)
33 reasonable and necessary actuarial expenses incurred in administering the act; and (8)
34 annually to the plan or plans, any amount assessed or assessable from insurers under
35 any plan or plans existing pursuant to K.S.A. 40-3413; and (9) reasonable and necessary
36 expenses incurred by the insurance department in the administration of the fund.

37 (c) All amounts for which the fund is liable pursuant to paragraphs (1), (2), (3) or
38 (4) of subsection (b) of this section shall be paid promptly and in full if less than three
39 hundred thousand dollars (\$300,000) or if three hundred thousand dollars (\$300,000) or
40 more by installment payments of three hundred thousand dollars (\$300,000) or 10%
41 of the amount of the judgement whichever is greater per fiscal year, the first installment
42 to be paid within sixty (60) days after the fund becomes liable and each subsequent
43 installment to be paid annually on the same date of the year the first installment was
44 paid, until the claim has been paid in full. Any attorney's fees payable from such
45 installment shall be similarly prorated.

46 (d) A health care provider shall be deemed to have qualified for coverage under
47 the fund: (1) On and after the effective date of this act if basic coverage is then in
48 effect; (2) subsequent to the effective date of this act, at such time as basic coverage
49 becomes effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414.

50 Sec. 2. K.S.A. 40-3404 is hereby amended to read as follows: 40-3404. (a) The
51 commissioner shall levy an annual premium surcharge on each health care provider who
52 has obtained basic coverage and upon each self-insurer for each fiscal year. Such
53 premium surcharge shall be an amount equal to a percentage of the annual premium
54 paid by the health care provider for the basic coverage required to be maintained as a
55 condition to coverage by the fund by subsection (a) of K.S.A. 40-3402. The annual
56 premium surcharge upon each self-insurer shall be an amount equal to a percentage of

57 the amount such self-insurer would pay for the basic coverage as calculated in
58 accordance with rating procedures approved by the commissioner pursuant to K.S.A.
59 40-3413. The commissioner shall determine the applicable percentage, of not less than
60 twenty-five percent (25%) but not to exceed sixty-five percent (65%), to be used in
61 computing the premium surcharge in each fiscal year. ~~Such determination shall be~~
62 ~~based upon actuarial principles and calculated to accumulate approximately ten million~~
63 ~~dollars (\$10,000,000) within a ten-year period following the effective date of this act.~~
64 ~~Such premium surcharge shall not be less than forty percent (40%) of the annual basic~~
65 ~~coverage premium for any fiscal year until the fund accumulates five million dollars~~
66 ~~(\$5,000,000).~~

67 (b) In the case of a resident health care provider who is not a self-insurer, the
68 premium surcharge shall be collected in addition to the annual premium for the basic
69 coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-
70 1113 and 40-2801 et seq. The amount of the premium surcharge shall be shown
71 separately on the policy or an endorsement thereto and shall be specifically identified
72 as such. Such premium surcharge shall be due and payable by the insurer to the
73 commissioner within thirty (30) days after the annual premium for the basic coverage
74 is received by the insurer, but in the event basic coverage is in effect at the time this
75 act becomes effective, such surcharge shall be based upon the unearned premium until
76 policy expiration and annually thereafter. Within fifteen (15) days immediately
77 following the effective date of this act, the commissioner shall send to each insurer
78 information necessary for their compliance with this subsection. The certificate of
79 authority of any insurer who fails to comply with the provisions of this subsection shall
80 be suspended pursuant to K.S.A. 40-222 until such insurer shall pay the annual premium
81 surcharge due and payable to the commissioner. In the case of a nonresident health
82 care provider or a self-insurer, the premium surcharge shall be collected in the manner
83 prescribed in K.S.A. 40-3402.

84 ~~(c) If the fund exceeds the sum of ten million dollars (\$10,000,000) at the end of~~
85 ~~any fiscal year after the payment of all claims and expenses, the commissioner shall~~
86 ~~reduce the surcharge in order to maintain the fund at an approximate level of ten~~
87 ~~million dollars (\$10,000,000).~~

88 ~~(d) (c) Each health care provider initially complying with the basic coverage~~
89 ~~requirement of K.S.A. 40-3402 shall be subject to a minimum annual premium~~
90 ~~surcharge of twenty-five percent (25%) forty-five percent (45%), without regard to any~~
91 ~~annual premium surcharge or fund limitations contained in subsection (a) or (c), and~~
92 ~~this minimum surcharge shall be applicable to only the first twelve-month period such~~
93 ~~health care provider complies with the basic coverage requirement. Thereafter, all~~
94 ~~health care providers shall be subjected to a minimum premium surcharge twenty-five~~
95 ~~percent (25%) each year the balance in the health care stabilization fund equals or~~
96 ~~exceeds ten million dollars (\$10,000,000). The provisions of this subsection (d) (c) shall~~
97 ~~be applicable to resident, nonresident and self-insured health care providers, and the~~
98 ~~minimum surcharge shall be applicable to only the first twelve-month period such~~
99 ~~health care provider complies with the basic coverage requirement.~~

100 Sec. 3. K.S.A. 40-3411 is hereby amended to read as follows: 40-3411. (a) In any
101 claim in which the insurer of a health care provider or inactive health care provider
102 covered by the fund has agreed to settle its liability on a claim against its insured or
103 when the self-insurer has agreed to settle liability on a claim and the claimant's
104 demand is in an amount in excess of such settlement, to which the commissioner does
105 not agree, or where the claim is against an inactive health care provider covered by
106 the fund who does not have liability insurance in effect which is applicable to the
107 claim and the claimant and commissioner cannot agree upon a settlement, an action
108 must be commenced by the claimant against the health care provider or inactive
109 health care provider in a court of appropriate jurisdiction for such damages as are
110 reasonable in the premises. If an action is already pending against the health care
111 provider or inactive health care provider, the pending action shall be conducted in all
112 respects as if the insurer or self-insurer had not agreed to settle.

113 (b) Any such action against a health care provider covered by the fund or
114 inactive health care provider covered by the fund who has liability insurance in effect
115 which is applicable to the claim shall be defended by the insurer or self-insurer in all
116 respects as if the insurer or self-insurer had not agreed to settle its liability. The
117 insurer or self-insurer shall be reimbursed from the fund for the costs of such defense
118 incurred after the settlement agreement was reached, including a reasonable
119 attorney's fee; ~~except that if the insurer or self-insurer settles the claim for an~~
120 ~~amount less than one hundred thousand dollars (\$100,000), the insurer or self-insurer~~
121 ~~shall be responsible for all defense costs until the insurer's or self-insurer's total~~
122 ~~combined payments equal one hundred thousand dollars (\$100,000) with respect to such~~
123 ~~claim, and neither the health care provider, unless such provider is a self-insurer, or~~

124 ~~the fund shall be obligated to pay the difference between such settlement and one~~
125 ~~hundred thousand dollars (\$100,000).~~ The commissioner is authorized to employ
126 independent counsel in any such action against a health care provider or an inactive
127 health care provider covered by the fund.

128 (c) In any such action the health care provider or the inactive health care
129 provider against whom claim is made shall be obligated to attend hearings and trials,
130 as necessary, and to give evidence.

131 (d) The costs of the action shall be assessed against the fund if the recovery is in
132 excess of the amount offered by the commissioner to settle the case and against the
133 claimant if the recovery is less than such amount.

134 Sec. 4. K.S.A. 1982 Supp. 40-3403, 40-3404 and 40-3411 are hereby repealed.

135 Sec. 5. This act will take effect and be in force from and after its publication in
136 the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO.13

Legislative Proposal No. 13 recommends the establishment of a State Health Care Commission to address the always increasing and already critical issue of health care costs. The commission envisioned by this proposal would not perform a regulatory function and would have no authority to do so. The commission would, however, be required to look at the causes of the health care cost problems in the broadest possible sense and would be statutorily unfettered with respect to the recommendations they propose to the Governor and the Legislature to alleviate what is an unbearable situation.

The proposal itself is relatively simple. It creates a health care commission, identifies its charge, provides a funding mechanism for its operation and imposes a deadline for completion of its work. But, despite this simplicity, the fact that the commission would be a statutory creature endowed with the necessary support facilities to carry-out its mission and given life by the Legislature with approval of the Governor gives it an authoritative presence that no voluntary ad hoc group could have. At the same time it avoids the inevitable controversy that would surround attempts to create some type of regulatory mechanism without credible, Kansas oriented, findings as to whether such a mechanism would be appropriate, how such a mechanism should be structured, some reasonable definition of the results that might be anticipated, and a thorough exploration of alternatives.

Health care costs have reached an intolerable magnitude. Something must be done and this proposal represents a reasonable, positive attempt to address the subject in a way that will generate productive results.

The Senate Public Health and Welfare Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 13

AN ACT relating to health care; establishing a state health care commission; purpose, funding; authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. (a) There is hereby created an independent state health care
2 commission which is hereby directed to review, evaluate and develop appropriate
3 recommendations to address the high cost of health care in Kansas. This shall include
4 a study of (1) the medical necessity of health care services rendered to citizens of this
5 state; (2) the quality of the health care services rendered in this state; (3) the
6 reasonableness of the charges made for the rendering of such health care services
7 either individually, collectively, or both; (4) the efficacy of existing laws and
8 administrative implementation in providing public assurances that health care
9 providers licensed or certified to render professional services in Kansas are adequately
10 qualified and reasonably competent; (5) the need to implement statutory cost control
11 measures with respect to the sale and purchase of prescription drugs and the purchase
12 of medical equipment and supplies by health care providers or patients; and, (6) such
13 other elements, systems, and procedures of the Kansas health care delivery system as
14 the commission deems necessary.

15 (b) The jurisdiction and powers of the commission shall specifically include
16 authority to obtain any relevant information regarding the charges made and services
17 performed by any person engaged directly or indirectly in the delivery of health care
18 services in this state. The commission is also empowered to require the submission of
19 reports and information which among other things is or may be relevant to establishing
20 community guidelines designed to generate less costly delivery of adequate health care
21 services.

22 (c) The commission shall be comprised of eleven members including the
23 Secretary of Health and Environment, the Commissioner of Insurance, the Secretary of
24 Social and Rehabilitation Services and eight people appointed by the governor. Four of
25 the appointed members shall have no connection with the management or policies of
26 any health care facility or related institutions and at least two of the four shall
27 represent consumer interests. One member shall represent health insurers, one shall
28 represent both nonprofit service corporations and nonprofit hospital, medical, surgical
29 plans, one shall represent the state hospital association, and one shall represent the
30 state medical society. Of the initial appointees, two shall be appointed for four years,
31 two for three years, two for two years and two for one year. Thereafter, all
32 appointments shall be for terms of four years and no member shall be eligible for
33 appointment to more than two consecutive terms.

34 (d) The governor shall appoint a chairman and vice-chairman. Meetings shall be
35 held as frequently as the commission's duties require. Six members shall constitute a
36 quorum, but a vacancy in the commission membership does not impair its power to act.
37 Action of the commission shall be effective as determined by a simple majority of six
38 members. Members may receive compensation and reimbursement for expenses as
39 provided for in the commission budget. The commission may apply for, receive and
40 accept grants, gifts, payments and other funds, advances, appropriations, properties or
41 services from the United States, the State of Kansas or any other governmental body,
42 agency or agencies or from any other public or private corporation or person, and enter
43 into agreements with respect thereto including the undertaking of studies, plans,
44 demonstrations or projects. The commission shall annually prepare and submit a
45 budget for the performance of its functions under this act to the governor for
46 approval. Upon approval, the commission shall equitably assess the cost of the
47 approved budget on health care facilities, physicians and other health care providers
48 licensed to render services in this state.

49 (e) The commission shall employ a staff, and may, irrespective of the provisions
50 of K.S.A. 75-3738 to 75-3744 inclusive, enter into contracts with individuals or firms
51 to perform any and all duties prescribed by the commission incident to carrying out the
52 requirements of this act. The commission may appoint advisory committees composed
53 of interested groups including representatives of consumers, health care providers and
54 insurance carriers and shall coordinate its activities with other state or federal
55 agencies to avoid a duplication of effort.

56 Sec. 3. The commission shall annually make a report to the governor and the
57 legislature reviewing its activities, future programs, and recommendations for
58 legislation.

59 Sec. 4. The provisions of this act shall expire as of the date the commission
60 tenders its final report or December 31, 1986 whichever is later unless extended by a
61 specific act of the legislature.

62 Sec. 5. This act shall take effect and be in force from and after its publication
63 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 18

Legislative Proposal No. 18 amends K.S.A. 40-3403 of the Kansas Health Care Provider Insurance Availability Act to place a cap or limit of one million dollars on the liability of the Health Care Stabilization Fund arising from any one claim. The purpose of this proposal is to protect the long term solvency of the Fund by eliminating the possibility of settlements or judgments being rendered against it in intolerable amounts. While this proposal would have no immediate effect of saving the Fund a great deal of money because, to date, the Fund has never paid over a million dollars in any one claim, it would avoid the catastrophic effect of an astronomical judgment or settlement.

The Senate Committee on Public Health and Welfare will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 18

AN ACT relating to insurance; health care provider insurance availability act; limitation on primary insurer's right of settlement; amending K.S.A. 1982 Supp. 40-3403 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 40-3403 is hereby amended to read as follows: 40-
2 3403. (a) For the purpose of paying damages for personal injury or death arising out of
3 the rendering of or the failure to render professional services by a health care
4 provider, self-insurer or inactive health care provider subsequent to the time that such
5 health care provider or self-insurer has qualified for coverage under the provisions of
6 this act, there is hereby established the health care stabilization fund. The fund shall
7 be held in trust in a segregated fund in the state treasury. The commissioner shall
8 administer the fund or contract for the administration of the fund with an insurance
9 company authorized to do business in this state.

10 (b) The fund shall be liable to pay: (1) Any amount due from a judgment or
11 settlement which is in excess of the basic coverage liability of all liable resident
12 health care providers or resident self-insurers for any such injury or death arising out
13 of the rendering of or the failure to render professional services within or without this
14 state; (2) any amount due from a judgment or settlement which is in excess of the
15 basic coverage liability of all liable nonresident health care providers or nonresident
16 self-insurers for any such injury or death arising out of the rendering or the failure to
17 render professional services within this state. In no event shall the fund be obligated
18 for claims against nonresident health care providers or nonresident self-insurers who
19 have not complied with this act or for claims against nonresident health care providers
20 or nonresident self-insurers that arose outside of this state; (3) any amount due from a
21 judgment or settlement against a resident inactive health care provider for any such
22 injury or death; (4) any amount due from a judgment or settlement against a
23 nonresident inactive health care provider for any injury or death arising out of the
24 rendering or failure to render professional services within this state. In no event shall
25 the fund be obligated for claims against: (A) Nonresident inactive health care
26 providers who have not complied with this act; or (B) nonresident inactive health care
27 providers for claims that arose outside of this state, unless such health care provider
28 was a resident health care provider or resident self-insurer at the time such act
29 occurred; (5) reasonable and necessary expenses for attorney's fees incurred in
30 defending the fund against claims; (6) any amounts expended for reinsurance obtained
31 to protect the best interests of the fund purchased by the committee on surety bonds
32 and insurance pursuant to K.S.A. 1980 Supp. 75-4401; (7) reasonable and necessary
33 actuarial expenses incurred in administering the act; and (8) annually to the plan or
34 plans, any amount assessed or assessable from insurers under any plan or plans existing
35 pursuant to K.S.A. 40-3413.

36 (c) All amounts for which the fund is liable pursuant to paragraphs (1), (2), (3) or
37 (4) of subsection (b) of this section shall be paid promptly and in full if less than three
38 hundred thousand dollars (\$300,000) or if three hundred thousand dollars (\$300,000) or
39 more by installment payments of three hundred thousand dollars (\$300,000) per fiscal
40 year, the first installment to be paid within sixty (60) days after the fund becomes
41 liable and each subsequent installment to be paid annually on the same date of the year
42 the first installment was paid, until the claim has been paid in full. Any attorney's
43 fees payable from such installment shall be similarly prorated.

44 (d) A health care provider shall be deemed to have qualified for coverage under
45 the fund: (1) On and after the effective date of this act if basic coverage is then in
46 effect; (2) subsequent to the effective date of this act, at such time as basic coverage
47 becomes effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414.

48 (e) In no event shall the fund be liable pursuant to paragraphs (1), (2), (3) or (4) in
49 an amount in excess of one million dollars for payment of any judgment or settlement
50 arising under this act against any active or inactive health care provider in any one
51 claim.

52 Sec. 2. K.S.A. 1982 Supp. 40-3403 is hereby repealed.

53 Sec. 3. This act will take effect and be in force from and after its publication in
54 the statute book.

SENATE BILL No. 33

By Senator Johnston

(By Request of the Social and Rehabilitation Services Review Commission)

1-11

0019 AN ACT concerning the provision of services for the protection
0020 of certain persons from abuse or neglect; amending K.S.A.
0021 39-1401 and 39-1404 and repealing the existing sections.

ADD: 39-1402

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 39-1401 is hereby amended to read as fol-
0024 lows: 39-1401. As used in this act:

0025 (a) "Resident" means:

0026 (1) Any resident, as defined by K.S.A. 39-923 and amend-
0027 ments thereto; or

0028 (2) *any client cared for in an adult family home; or*

0029 ~~(2)~~ (3) any individual kept, cared for, treated, boarded or
0030 otherwise accommodated in a medical facility, as defined by
0031 K.S.A. 65-425 and amendments thereto, which is operated by the
0032 state or federal government.

0033 (b) "Adult care home" has the meaning ascribed thereto in
0034 K.S.A. 39-923 and amendments thereto.

0035 (c) "Adult family home" has the meaning ascribed thereto in
0036 section 1 of 1983 House Bill No. 2027.

0037 ~~(b)~~ (d) "In need of protective services" means that a resident
0038 is unable to perform or obtain services which are necessary to
0039 maintain physical and mental health.

0040 (e) (e) "Services which are necessary to maintain physical
0041 and mental health" include, but are not limited to, the provision
0042 of medical care for physical and mental health needs, the reloca-
0043 tion of a resident to a facility or institution able to offer such care,
0044 assistance in personal hygiene, food, clothing, adequately heated
0045 and ventilated shelter, protection from health and safety hazards,

1-28-83
SB 33

Atch. 2

0046 protection from maltreatment the result of which includes, but is
0047 not limited to, malnutrition, deprivation of necessities or physical
0048 punishment and transportation necessary to secure any of the
0049 above stated needs, except that this term shall not include taking
0050 such person into custody without consent, except as provided in
0051 this act.

0052 ~~(f)~~ (f) "Protective services" means services provided by the
0053 state or other governmental or private organizations or individu-
0054 als which are necessary to prevent abuse or neglect.

0055 ~~(e)~~ (g) "Abuse" means neglect, willful infliction of physical
0056 or mental injury or willful deprivation by a caretaker of services
0057 which are necessary to maintain physical and mental health.

0058 ~~(f)~~ (h) "Neglect" means the failure of a caretaker to maintain
0059 reasonable care and treatment to such an extent that the resident's
0060 health or emotional well-being is injured.

0061 ~~(g)~~ (i) "Caretaker" means a person or institution who has
0062 assumed the responsibility for the care of the resident voluntarily,
0063 by contract or by order of a court of competent jurisdiction.

0064 Sec. 2. K.S.A. 39-1404 is hereby amended to read as follows:
0065 39-1404. (a) The department of social and rehabilitation services
0066 upon receiving a report that a resident is being, or has been,
0067 abused or neglected, or is in a condition which is the result of
0068 such abuse or neglect or is in need of protective services shall,
0069 within ~~forty-eight (48)~~ 48 hours of receiving such report, initiate
0070 an investigation, including a personal visit with the resident and,
0071 within two weeks of receiving such report, shall initiate a thor-
0072 ough investigation and evaluation to determine the situation
0073 relative to the condition of the resident and what action and
0074 services, if any, are required. The evaluation shall include, but
0075 not be limited to, a visit to the named resident and consultation
0076 with those individuals having knowledge of the facts of the
0077 particular case. Upon completion of the evaluation of each case,
0078 written findings shall be prepared which shall include a finding
0079 of whether there is or has been abuse or neglect, recommended
0080 action and a determination of whether protective services are
0081 needed.

0082 (b) The secretary of social and rehabilitation services shall

ADD: Section 39-1402 as
attached and as amended to
include adult family home.

Renumber existing
section 2 to be section 3.

ADD: "and adult family home"

39-1402 MENTALLY ILL, INCAPACITATED, DEPENDENT PERSONS

or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(d) "Protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse or neglect.

(e) "Abuse" means neglect, willful infliction of physical or mental injury or willful deprivation by a caretaker of services which are necessary to maintain physical and mental health.

(f) "Neglect" means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health or emotional well-being is injured.

(g) "Caretaker" means a person or institution who has assumed the responsibility for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

History: L. 1980, ch. 124, § 1; July 1.

39-1402. Reporting abuse or neglect of residents of adult care homes and certain medical care facilities; persons reporting; contents of report; posting notice of requirements of act.

(a) Any person licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse and a licensed practical nurse, who has reasonable cause to believe that a resident is being or has been abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of social and rehabilitation services.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful

in an investigation of the case and the protection of the resident.

(c) Any other person having reasonable cause to suspect or believe that a resident is being or has been abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services may report such information to the department of social and rehabilitation services.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult care home in this state.

History: L. 1980, ch. 124, § 2; July 1.

39-1403. Immunity from liability of persons reporting; employer prohibited from imposing sanctions on employee making report.

(a) No person who makes any report pursuant to this act, or who testifies in any administrative or judicial proceeding arising from such report shall be subject to any civil liability on account of such report or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

History: L. 1980, ch. 124, § 3; July 1.

39-1404. Duties of department of social and rehabilitation services; investigation; evaluation and written findings; statewide register; report and evaluation not public record; disclosure of certain individuals prohibited. (a) The department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services shall, within forty-eight (48) hours of receiving such report, initiate an investigation, including a personal visit with the resident and, within two weeks of receiving such report, shall initiate a thorough investigation and evaluation to determine the situation relative to the condition of the resident and what action and services, if any, are required. The evaluation shall include, but not be limited to, a visit to the named resident and consultation with those individuals

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Public Health and Welfare

Recommends that Senate Bill No. 32

"AN ACT authorizing the secretary of social and rehabilitation services to charge and collect fees for the provision of certain services."

Be passed.

_____Chairperson

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Public Health and Welfare

Recommends that Senate Bill No. 33

"AN ACT concerning the provision of services for the protection of certain persons from abuse or neglect; amending K.S.A. 39-1401 and 39-1404 and repealing the existing sections."

Be amended:

On page 2, following line 63, by inserting the following:

"No person shall be considered to be abused or neglected for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.";

"Sec. 2. K.S.A. 39-1402 is hereby amended to read as follows: 39-1402. (a) Any person licensed to practice any branch of the healing arts, the chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse and a licensed practical nurse, who has reasonable cause to believe that a resident is being or has been abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of social and rehabilitation services.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the

next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person having reasonable cause to suspect or believe that a resident is being or has been abused or neglected, or is in a condition which is the result of such abuse or neglect or is in need of protective services may report such information to the department of social and rehabilitation services.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult care home and adult family home in this state.";

And by renumbering subsequent sections accordingly;

On page 3, in lines 90 and 91, by striking "state nursing home ombudsman" and inserting in lieu thereof "secretary of aging"; in line 102, by inserting before "and" the following: ", 39-1402";

On page 1, in the title, line 21, by inserting after "39-1401" the following: ", 39-1402";

And the bill be passed as amended.

_____Chairperson