

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 March 24, 1983 in room 526-S of the Capitol.

All members were present except:

Senator Francisco

Committee staff present:

Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department

Conferees appearing before the committee:

Rep. Marvin Littlejohn
Dr. Robert Harder, SRS
Rep. Jessie Branson
Richard J. Morrissey, Director, Health Facilities, DH&E
Dick Hummel, Kansas Health Care Association
Nadine Burch, Topeka
Linda Fornelli, Nurse Aide Instructor, Manhattan, Kansas
Joseph Shocklee, Plan Development Coordinator, HSANEK
Marilyn Bradt, KINH
Sylvia Hougland, Department on Aging
Lynelle King, Kansas State Nurses Association

Others present: see attached list

Senator Meyers called the meeting to order and asked Rep. Marvin Littlejohn to comment on HB 2368 and HB 2474.

Rep. Littlejohn stated that HB 2368 creates a new set of laws to protect employees against insolvency in an adult care home, and would require that they deposit cash, securities, or a surety bond with the licensing agency in an amount that is the greater of 5% of the home's operating expenditures for the first year of operation, or twice the home's estimated average monthly operating expenditures for the first year of operation. This bill sets out the period in which a deposit is required, the procedure for releasing a deposit, and the procedure for recovery for those injured by a breach of the obligation covered by a surety bond.

Rep. Littlejohn said that HB 2474 requires a training program for adult care home aides, and was introduced by the House Public Health and Welfare Committee at the request of Rep. Jessie Branson and Barbara Sabol, Secretary, DH&E. The 40 hours of training required by this bill is to be a part of the course of education and training already required to be completed by adult care home aides. They must have 40 hours of training before they can give hands-on care.

Dr. Robert Harder, SRS, stated that SRS supports what has previously been said concerning HB 2368, and testified in support of HB 2474. He declared that the State of Kansas now supports an 80-90 million dollar business in the nursing home industry, and this is important legislation which adds to the overall good management in the nursing home program.

Rep. Branson testified in support of HB 2474 and said that it is important that the aides in nursing homes have training before giving hands-on care.

HB 2368 - Richard J. Morrissey, Director, Office of Health Facilities, DH&E, distributed testimony stating that HB 2368 would provide some protection against the possibility that an adult care home does not fulfill its financial obligations, but DH&E proposed amendments for Section 4,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 426-S, Statehouse, at 10 a.m. ~~p.m.~~ on March 24, 1983

Section 6(a), and Section 6(b). The department recommends that HB 2368 be passed with the amendments suggested. (Attachment #1). Mr. Morrissey stated that many nursing homes would not be required to post this bond, only those who needed to, and that DH&E could set criteria through rules and regulation.

Marilyn Bradt, KINH, testified in support of HB 2368, and distributed testimony stating that KINH is in complete agreement with the concept that nursing homes must be held responsible for efficient operation and management. KINH feels that it is important for the state to provide leverage for enforcement of high standards of operation and to fund the receivership provisions already in the Kansas statute. (Attachment #2).

Dick Hummel, Kansas Health Care Association, testified that KHCA is concerned about the impact of HB 2368 upon existing operators of adult care homes in Kansas. They are in conceptual agreement with the bill, but are uncertain as to its full implications and request that it be referred to an interim committee for study. (Attachment #3).

HB 2474 - adult care homes, unlicensed employees, basic training program

Nadine Burch, Topeka, testified in support of HB 2474, and said she was speaking from the standpoint of many years of experience as an aide and practical nurse in geriatric settings. She stated that she had proper supervision and on-the-job training, but knew of situations where this was not true. This is detrimental both to the patients and to the aides.

Linda Fornelli, R. N., Nurse Aide Instructor, Manhattan, testified in support of HB 2474, and distributed testimony stating that this bill would protect residents, facilitate learning by the aide, and protect the aide and the nursing home. (Attachment #4).

Marilyn Bradt, KINH, testified in support of HB 2474, and distributed testimony stating that this bill ensures that untrained aides will not give direct patient care, and they particularly support the requirement that training be under the supervision of a registered professional nurse. KINH supports the House amendment, which clarifies the intent of the act, and standards and procedures by which it will be carried out. (Attachment #6).

Sylvia Hougland, Department on Aging, testified in support of HB 2474, and stated that this was a compromise bill which was intended to balance the need for good care and the industry's need for help. This bill protects residents, allows aides to be hired and perform certain tasks, but separates the tasks for which they need training.

Dick Hummel, KHCA, testified that they support the concept of HB 2474, but have some concerns about, and would like aides to be able to perform tasks after they have learned them and not wait for the end of the 40 hour period. He distributed testimony stating their concerns, and proposing an amendment in lines 67-70. (Attachment #7).

Richard J. Morrissey testified in support of HB 2474, and stated that this bill was requested by Barbara Sabol, Secretary, DH&E. He submitted testimony stating that DH&E believes that this bill would correct a major flaw in the present program for nurse aide training and strongly recommends that the committee report the bill favorably. (Attachment #8). He also said that DH&E could develop rules and regulations to respond to Mr. Hummel's concern.

Lynelle King, Kansas State Nurses Association, testified in support of HB 2474, and commended everyone who had helped with it.

Joseph Shocklee, HSANEK, testified in support of HB 2474 and distributed testimony urging the passage of this bill. (Attachment #5).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10 ~~a.m.~~ on March 24, 1983.

Senator Ehrlich moved that HB 2474 be reported favorably. The motion died for lack of a second.

Senator Morris said that he had some unresolved questions concerning HB 2474 and would like to wait until Friday to take action.

Senator Vidricksen asked Mr. Hummel the cost of one of these bonds. He replied that the figure varies from \$2 to \$10 per thousand, accompanied by a letter of credit. For a 50-bed home it could run from \$50 to \$100 per thousand. Senator Vidricksen remarked that he had found that bonding companies are not interested in that type of bond.

Senator Morris moved that the minutes of March 23, 1983, be approved. Senator Vidricksen seconded the motion and it carried.

The meeting was adjourned.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL NO. 2368

PRESENTED MARCH 24, 1983

SENATE 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 offers the following amendments for the committee's consideration:

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 rules and regulations establishing criteria to be considered in making a determination to require a bond under this section."

Section 6(a) - This subsection duplicates Section 4 and should be deleted.

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



Kansans for Improvement of Nursing Homes, Inc.

927½ MASSACHUSETTS ST. #1

LAWRENCE, KANSAS 66044

842-3088 — Area Code 913

March 24, 1983

STATEMENT TO THE SENATE 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.

3-24-83

#3

Member of



Kansas Health Care Association



TESTIMONY BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

By
Dick Hummel
Executive Director

March 24, 1983

HOUSE BILL NO. 2368 AMENDED

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

Senator Meyers and Committee Members:

On behalf of the Kansas Health Care Association, thank you for this opportunity to appear on H.B. 2368.

This bill was prompted by one adult care home's financial irresponsibility (.027% of the 365 adult care homes in Kansas). While sympathetic to the sponsor's interest in what might be termed as "hitting the financial pocketbook of a bad apple in the barrel" by requiring certain financial assurances against insolvency, and in conceptual agreement with the bill in the House while cautiously guarded about its total implications; we have now had time to review it more closely subsequent to its amendments and urge, due to its complexities, that it be recommended as a topic for summer study.

To our knowledge the concept of a financial assurance against insolvency (we question what is meant by insolvency) for adult care homes is new, untried and untested in any other state.

SPECIFIC CONCERNS

1. Who Must Deposit and Why?

The bill stipulates that each adult care home must post financial assurances as set out in lines 0030-0033 within 90 days of the Act unless waived by the agency. Who is to be waived and what are the conditions for exemption, we ask?

What financial yardstick is to be used? Lines 0047 read that the agency may require the deposit of any licensee when in the department's opinion an operation indicates insufficient net worth or inefficient operation and management.

"We Care"

What's the meaning of insufficient net worth? What might be its impact upon a small locally-owned, 50 bed facility now experiencing occupancy problems, but is doing everything it can to hold its own, then to be additionally financially strapped by this requirement?

Will the agency need to hire experts, accountants and others with expertise in nursing home financial matters, or are they now on staff? If not, this could be a costly and complicated proposition.

We find similar vague language in Section 5, with words such as "sufficient net worth" and "adequate history of operations." Again, what objective criteria will be used to assess a facility's operation against such vague standards?

The agency is given an extreme, overly amount of discretionary authority in the bill.

2. Lawsuit for Breach of Duty. Section 6(b).

We find this section particularly disturbing in its granting "any person" injured by the "breach of any obligation" to commence suite for damages against the bond.

Any person is a broad term, and includes employees, residents, volunteers, visitors, etc., who all now have available legal recourse for alleged wrongful acts under contract, tort, negligence, misfeasance and malfeasance laws.

We also note that adult care homes carry insurance coverage for and including: general liability, malpractice, fire and extended, visitors, business interruption, workers' compensation, volunteers, etc.

We believe that the language in 6(b) would require dual or duplicative coverage of the types of coverage mentioned above.

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.

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 where due deliberation and careful consideration can be given to an issue as technical and complicated as this.

I'd be happy to respond to any questions.

Position on House Bill No. 2474

We support House Bill No. 2474 because it would:

1. Protect residents: Require aides to have some skills before giving care to residents, who may be helpless and unable to communicate needs.
2. Facilitate learning by the aide: It is more effective to teach aides correct and safe procedures before they have acquired unsafe practices on their own.
3. Protect the aide and nursing home: Requiring pre-employment training to produce aides who practice safely would help protect nursing homes and aides from the consequences of providing negligent care.

Myrna J. Bartel, R.N., M.S.
Nurse Aide Instructor

Linda Fornelli, R.N.
Nurse Aide Instructor

3-24-83

#5

HEALTH SYSTEMS AGENCY
OF NORTHEAST KANSAS
COMMENTS ON THE
KANSAS HOUSE BILL 2474
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
STATE CAPITOL, ROOM 526 S
MARCH 24, 1983

Atch. 5

Good Morning, Madam Chairperson Meyers and members of the Senate Public Health and Welfare Committee. My name is Joseph Shocklee, Plan Development Coordinator of Health Systems Agency of Northeast Kansas (HSANEK). I am testifying today representing the Board of Directors of the HSANEK with which some of you are familiar, for those of you who are new members of the committee, the HSANEK is a non-profit organization with a 50 member volunteer Board of Directors, which has 25 county appointed representatives, one by each County Commission, and the remaining Board members come from a wide range of rural and urban community groups and organizations.

One of the HSANEK'S functions is to guide the development of the health care delivery system through the area Health Systems Plan (HSP).

In view of this primary concern of the HSANEK, I appreciate this opportunity to present the following testimony on House Bill 2474, an Act concerning adult care homes, unlicensed employees, basic training program.

The 1982-83 Health Systems Plan of the HSANEK recommends: "All educational institutions which train health professionals and para-professionals who work in nursing homes should provide training in the care of geriatric patients. This training should be available both to full time students and to night students. Some training should be offered to aides especially." Consequently, the Health Systems Agency of Northeast Kansas would like to support and urge the passage of House Bill 2474. It is still necessary to encourage the training of Nurse's Aides in Nursing Homes. In order to ensure that our institutionalized elderly population is and will continue to receive adequate care.

Thank you for providing us with the opportunity to provide our input in such an important piece of legislation which affects the lives of thousands of institutionalized elderly in Kansas.

3-24-83 #6



Kansans for Improvement of Nursing Homes, Inc.

927 1/2 MASSACHUSETTS ST. #1

LAWRENCE, KANSAS 66044

842-3088 — Area Code 913

March 24, 1983

STATEMENT TO SENATE PUBLIC HEALTH AND WELFARE COMMITTEE REGARDING HB 2474

KINH has appeared before this committee and its predecessors many times in support of the elemental concept that aides should not be permitted to give hands-on care to residents of nursing homes without first having been trained in the basic techniques of such care. We return once more to offer our firm support for HB 2474.

This measure does not, it is true, provide for pre-employment training which we believe would be easier to enforce than any plan for training after employment. The goal, however, is the same; it is to ensure that untrained aides will not give direct patient care. KINH is firmly committed to the belief that such a goal is not only humanitarian, but will prove to be cost effective as well. Trained care, we are convinced, will save on costly hospitalizations as well as prevent the needless suffering of the frail nursing home residents.

KINH fully supports the legislation as amended by the House committee. The House amendment greatly clarifies both the intent of the act and the standards and procedures by which it will be carried out. We are particularly supportive of the requirement that the training be under the supervision of a registered professional nurse, for we consider the professional qualifications of those supervising the instruction to be of the greatest importance.

We are grateful to Secretary Sabol for her commitment to better nursing home care, and we urge the committee to support HB 2474.

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3-24-83

#7

Member of



Kansas Health Care Association



TESTIMONY BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

By
Dick Hummel
Executive Director

March 24, 1983

HOUSE BILL NO. 2474 AMENDED

"AN ACT relating to adult care homes; providing for basic training for unlicensed employees; amending K.S.A. 39-936 and repealing the existing section."

Senator Meyers and Committee Members:

Thank you for this opportunity to appear on H.B. 2474 dealing with the training of adult care home aides, not an unfamiliar topic to you.

While supporting the basic concept of this bill -- 40 hours of patient care skills training for an unlicensed employee before direct patient care can be given -- we none-the-less have some practical questions about it.

Before presenting them we wish to point out that the provisions of H.B. 2474 differ from a similar measure, S.B. 361 from the 1981 session, which we opposed. The latter required 40 hours of training in the first week of employment and the hours were in addition to the 90 hours required for nurse aide certification. The 40 hours required in H.B. 2474 are included in the 90 hours for certification.

✓ Our specific questions are:

1. Performance of Skills Permitted as Mastered.

Lines 0064-0067 state that direct care cannot be given until the 40 hours have been completed. We think it is reasonable to permit someone to perform a function -- bedmaking, giving of baths -- as they are learned, as a component, within the 40 hours rather than waiting until the entire 40 hour course is completed. An amendment to this effect might resolve this:

✓ Line 67: After the word "residents." "Individual components of care and treatment required within the 40 hours of training may be provided after each component is completed by the unlicensed employee."

"We Care"

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2. Supervision by a Registered Nurse.

Lines 0067-0070 require the 40 hours of training to be supervised by an R.N. If this means that an R.N. must be directly on-site to supervise the training, we have strong objections to this provision as a costly proposition.

We mention that an intermediate care facility (ICF), of which there are approximately 314 in Kansas, is required to have an LPN on the day shift with four hours of weekly consultation by an R.N., with a licensed nurse on-call for the other two shifts. Conceding that there is a percentage of ICFs fortunate enough to have an R.N. on staff, many do not.

✓ If R.N. supervision is interpreted to mean "on-site" supervision, H.B. 2474 will be both a costly and untenable requirement.

To clarify this matter we recommend that:

-strike "shall be supervised by a registered professional nurse" appearing in lines 0068-0069 and replace it with "may be presented by qualified staff of the adult care home...."

3. Training On-Premises or Educational Institution.

The 40 hours of training, as the current 90 hour training program for certification, may be presented by an adult care home or by an educational institution, e.g., vocational school, community college. Considering that an adult care home may elect to conduct the 40 hours of skills training within but choose to use the educational facility for the 50 hours of classroom training, what are the assurances that the educational institution will modify its course and still not require the nurse aide to take its entire 90 hour course?

We don't know the answer and this could be a potential barrier.

The intent of H.B. 2474 is for formalized aide training to start sooner after employment. As mentioned, we are in conceptual agreement not withstanding our practical concerns.

I would be happy to respond to any questions at this time.

3-24-83 #8

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL NO. 2474

PRESENTED MARCH 24, 1983

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

This is the official position taken by the Kansas Department of Health and Environment on House Bill No. 2474.

Need For

Research in the field for geriatric care suggests that training of nurse aides will improve the quality of care they can offer for a number of reasons (Winn, et al, 1978). Of all nursing home staff, nurse aides tend to exhibit the lowest educational achievement and receive the lowest pay. In addition, and of major importance, research indicates that nurse aides tend to have the most negative attitudes toward the nursing home resident as well as the lowest preception of their rehabilitation potential (Gillis, 1973). Winn, et al, (1978) conclude that above and beyond all else training nurse aides will improve the quality of care they can offer by elevating their personal feelings of job competence and confidence as well as reducing or eliminating their negative stereotypes of the aged.

Common sense tells us that it is good business to train an employee in a job before the employee is turned loose to function. What businessman would turn an expensive machine over to a new employee before determining that the employee could operate the machine competently? Unfortunately, this is just what we do at the present time with frail and vulnerable elderly residents of nursing homes. The present requirements for training of nursing home aides do not require that a newly employed nurse aide receive any training or demonstrate any particular skills before providing direct care to residents.

STRENGTHS: House Bill No. 2474 would, for the first time, implement the critical step of requiring minimal training before an aide provides direct care to residents.

The training required would focus on basic skills practiced by a nurse aide and would be integrated (not added on) with the training required to become certified.

Training before providing care can assure minimum skill levels, reinforce positive attitudes and perceptions of the elderly, and improve self-confidence and job satisfaction for aides.

Atch. 8

WEAKNESSES: None identified.

DEPARTMENT'S POSITION:

The department believes that House Bill No. 2474 would correct a major flaw in the present program for nurse aide training and strongly recommends that the committee report the bill favorably for passage.

PRESENTED BY: Barbara J. Sabol, Secretary
Department of Health and Environment