

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Roy M. Ehrlich at  
Chairperson

10:00 a.m. ~~p.m.~~ on March 28, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:

Secretary Barbara Sabol, Department of Health and Environment  
Dick Hummell, Kansas Health Care Association  
Tom Bell, Kansas Hospital Association  
H. Philip Elwood  
Carol Niles, Kansas Dietetic Association

Others Attending: See attached list

HB-2436 - providing for designation of receivers relating to adult care homes

Secretary Barbara Sabol testified and presented written testimony in support of HB-2436. The Secretary stated that the purpose of this bill is to allow her department to set up the lines of authority to designate someone other than the secretary to act as receiver prior to an urgent need to create a receivership. Attachment I

Dick Hummel testified in support of HB-2436 stating he concurred with Secretary Sabol. His written testimony was presented to the committee earlier in the week.

Senator Hayden made the motion to pass out HB-2436 and the motion was seconded by Senator Kerr. The motion carried.

HB-2438 - relating to maternity hospitals and homes and homes for children requiring certain information to be confidential

Secretary Barbara Sabol testified and presented written testimony supporting HB-2438. The secretary stated that the issue was that of protecting the identity of the victim. Attachment II

Senator Walker made a motion to pass out HB-2438 with a second from Senator Hayden. The motion carried.

HB-2467 - relating to hospitals; concerning monies received

Tom Bell, Kansas Hospital Association, introduced H. Philip Elwood who testified and presented written testimony in support of HB-2467. Attachment III

Senator Hayden made a motion to clean up line 71 of HB-2467. Senator Reilly seconded the motion and the motion carried.

Senator Hayden made a motion to reinsert the language the house took out of the bill, lines 69 and 70 and 130,133, 134 and take care of the language of 136 and 72 to give the boards the latitude of supporting the ambulance emergency care first responder systems, if indeed, they thought it was in their best interest to do so. Senator Reilly seconded the motion and the motion carried.

Senator Morris made the motion that HB-2467 be in force from and after its publication in the statute book and not after its publication in the register. Senator Salisbury seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S, Statehouse, at 10:00 a.m./~~PM~~ on March 28, 1985.

Senator Hayden moved that HB-2467 be passed out as amended by the committee. Senator Morris seconded the motion and it carried.

HB-2468 - concerning home health agencies

Secretary Sabol testified and presented written testimony in support of HB-2468. The Secretary also recommended that the language in lines 155-159 be restored as she felt it was struck inadvertently when the house committee was dealing with the bill. Attachment IV

Senator Reilly made a motion to restore lines 155-159 to HB-2468. Senator Walker seconded the motion and the motion carried.

Carol Niles presented a proposed amendment to HB-2468. Attachment V

Senator Walker made a motion to amend line 39 adding after "respiratory therapy" by adding "nutritional or dietetic consulting". Senator Reilly seconded the motion and it carried.

Senator Morris made the motion to pass out favorably HB-2468 as amended. Senator Mulich seconded the motion and the motion carried.

Pages of Senator Morris, Alexia Moore and Lori Lee Wright, were introduced to the committee.

A group of seniors from Ellinwood High School made a brief visit to the committee.

HB-2497 - relating to maternity hospitals or homes and homes for children; providing issuance of temporary permits; authorizing suspension of licenses, certificates of registration and temporary permits

Secretary Sabol testified and presented written testimony supporting HB-2497. Attachment VI The Secretary stated that sections 3 and 4 were new rules relating to temporary permits covering homes already caring for a child. It would also allow temporary suspension of a license, certificate of registration or a temporary permit pending a hearing in order to protect the children in out-of-home care who are at risk.

Senator Mulich made the motion to pass out HB-2497 with a second from Senator Walker. The motion carried.

Meeting adjourned.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE  
DATE 3-28-85

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

J. G. Hollowell

KDNE

Dick Hummel

KHCA

Dick Morrissey

KDHE

Carrol Niles

KDA

John Peterson

RDA

HAROLD C. PITTS

TARTA

Marilyn Bratt

KINH

Dr. Lois R. Scibetta

KS ST Bd of Nursg.

Joe Fujaria

KASB

PAT SHAFER

TOPEKA

DIVISION OF BUDGET

Robert G. Lay

Ks. Comm on Civil Rgts.

Ruth Krover

KCCy -

Jim Snyder

KEDA

Mack Smith

KS ST Bd of Embalming

Helen W. Christmann

Eleanor Kerr

Esther Sobering

Ks. Assoc. of Home Health Agencies

T. Myron Seitz (25 people)

Ellinwood Lion Club - High School

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL 2436

PRESENTED TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

MARCH 28, 1985

This is the official position taken by the Kansas Department of Health and Environment on House Bill 2436.

BACKGROUND INFORMATION:

The statutes authorizing receiverships in adult care homes were enacted in 1978. Since that time, the department has operated four homes in receivership, with the fourth home, Countryside Villa in Hutchinson, currently being operated by the department through a management company.

KSA 39-954 has always included language authorizing the court to appoint the Secretary of Health and Environment or "the designee of the Secretary" as receiver for an adult care home. In the four receiverships to date, the receiver has been the Secretary in each case.

ISSUES:

The Secretary has not designated someone else to act as receiver in the past partly because there has not been a process, nor the authority to establish a process, for selecting persons who would have the resources and capabilities to operate a home in receivership in advance of the urgent need to appoint a receiver. House Bill 2436 is intended to address this situation by authorizing the Secretary to adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

We envision establishing a list of person who would be qualified to act as receivers so that in future receiverships there would be a greater opportunity to appoint individuals other than the Secretary of Health and Environment as receivers. This will significantly decrease the direct staff involvement and cost to the Department of Health and Environment in operating a receivership. This cost impacts on the department by diverting our staff and resources from the purposes for which they are budgeted - enforcing the established standards in nursing homes, hospitals, and other health agencies.

DEPARTMENT'S POSITION:

The department respectfully recommends that the committee report House Bill 2436 favorably for passage.

Presented by: Barbara J. Sabol, Secretary  
Kansas Department of Health  
and Environment

3/29/85  
Attachment I

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HB 2438 AS AMENDED BY THE HOUSE

PRESENTED TO PUBLIC HEALTH AND WELFARE COMMITTEE OF THE SENATE

This is the official position taken by the Kansas Department of Health and Environment on HB 2438 as amended by the House.

BACKGROUND INFORMATION:

K.S.A. 1984 Supp. 65-516 mandates KDHE to revoke or deny licenses or registration certificates on information, the disclosure of which is restricted by the statutes, but which becomes open information when it is a part of a licensing/registration record or regulatory enforcement proceeding. This information includes alleged physical or sexual abuse of children by family members; legal action involving juveniles; or court removal of children from their parents' custody.

This proposed legislation would prohibit KDHE from publicly disclosing restricted information on licensing records and reports if disclosure would make it possible to identify individuals. It would also authorize hearing officers to close administrative hearings if the enforcement action is based on information the disclosure of which is restricted by other statutes. As amended by the House, the reference to an unwarranted invasion of personal privacy as a basis for closing administrative hearings was deleted. However, it is believed by the Department that other laws restricting the disclosure of confidential information will permit the hearing officer to protect the personal privacy of individuals involved in administrative hearings relative to child care.

By authorizing records and hearing to be closed, this legislation will protect the privacy of affected individuals while still allowing KDHE to collect and use confidential information as a basis for enforcement proceedings.

DEPARTMENT'S POSITION:

The Department respectfully recommends that the Committee report favorably for passage HB 2438 as amended by the House.

Presented by: Barbara J. Sabol, Secretary  
Kansas Department of Health  
and Environment

3/28/85  
Attachment II

# Other Statutes Restricting Public Access to Information.

①

## Child Abuse Reports:

**38-1507.** Records and reports concerning child abuse or neglect. (a) All records and reports concerning child abuse or neglect received by the department of social and rehabilitation services or a law enforcement agency in accordance with K.S.A. 1983 Supp. 38-1522 and amendments thereto are confidential and shall not be disclosed except under the following conditions:

(1) Upon the order of any court after a determination by the court issuing the order that the records and reports are necessary for the conduct of proceedings before it and are otherwise admissible in evidence, except that access shall be limited to *in camera* inspection unless the court determines that public disclosure of the information contained in the records and reports is necessary for the resolution of an issue then pending before it.

(2) The secretary or the law enforcement agency where the report is filed may authorize access to the records and reports to:

(A) A person licensed to practice the healing arts who has before that person a child whom the person reasonably suspects may be abused or neglected;

(B) an agency having the legal responsibility or authorization to care for, treat or supervise a child who is the subject of a report or record;

(C) a parent or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons;

(D) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; or

(E) an agency of another state charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children within that state, if the state of the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of this code.

(b) It is unlawful for any individual, association, partnership, corporation or other entity to willfully or knowingly permit or encourage the unauthorized dissemination of the contents of records or reports concerning child abuse or neglect received by the department of social and rehabilitation services or a law enforcement agency in accordance with K.S.A. 1983 Supp. 38-1522 and amendments thereto except as provided by this code.

History: L. 1982, ch. 182, § 7; L. 1983, ch. 140, § 14; July 1.

**38-1508.** Records of law enforcement agencies. All records and reports concerning child abuse or neglect received by law enforcement agencies shall be kept separate from all other records and shall not be disclosed to anyone except:

(a) The judge and members of the court staff designated by the judge of the court having the child before it in any proceedings;

(b) the guardian *ad litem* and the parties to the proceedings and their attorneys, subject to the restrictions imposed by subsection (a)(2)(C) of K.S.A. 1983 Supp. 38-1507 and amendments thereto;

(c) the department of social and rehabilitation services;

(d) the officers of public institutions or agencies to whom custody of the child has been granted; and

(e) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties in investigating or prosecuting a report of known or suspected child abuse or neglect.

History: L. 1982, ch. 182, § 8; L. 1983, ch. 140, § 15; L. 1984, ch. 153, § 2; July 1.

## Public Records

**45-221.** Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

- (5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.
- (6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.
- (7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.
- (8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.
- (9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.
- (10) Criminal investigation records, except that the district court, in an action brought pursuant to K. S. A. 1984 Supp. 45-222, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:



(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

Juvenile Offender Code

District Court Cases  
involving Children

Child in Need of Care Code:

**38-1552. Confidentiality of proceedings.** The court may exclude from any hearing all persons except the guardian *ad litem*, interested parties and their attorneys, officers of the court and the witness testifying. Upon agreement of all interested parties, the court shall allow other persons to attend the proceedings, unless the court finds the presence of the persons would be disruptive to the proceedings.  
**History:** L. 1982, ch. 182, § 40; Jan. 1, 1983.

Law Review and Bar Journal References:  
 "Media Access to Court Proceedings," Carl C. Monk, 50 J.K.B.A. 212, 216 (1981).

**38-1652. Confidentiality of proceedings.** (a) If the respondent was 16 or more years of age at the time of the alleged offense, the hearing shall be open to the public.  
 (b) If the respondent was under 16 years of age at the time of the alleged offense, the court may exclude all persons except the respondent, the respondent's parents, attorneys for interested parties, officers of the court and the witness testifying. Upon agreement of all interested parties, the court shall allow other persons to attend the hearing unless the court finds the presence of the persons would be disruptive to the proceedings.  
**History:** L. 1982, ch. 182, § 95; Jan. 1, 1983.

THE PROPOSED AMENDMENTS TO  
K.S.A. 1984 SUPP. 19-4608 AND 80-2518  
SET OUT IN HOUSE BILL 2467

Presented By:

H. Philip Elwood  
215 East 8th Avenue  
Topeka, KS 66603

I. What will the bill do?

A. Allows charitable gifts or bequests to a county or district hospital to be transferred to a separate Foundation.

1. Foundation - a tax exempt, not-for-profit Kansas corporation.
2. A public charity, not a private foundation, I.R.C. § 509(a)(1).
3. Purpose - support of health care.

B. The Board controls the transfer.

1. Board must determine:
  - a. The amount to be transferred is not required for the hospital's operations or obligations.
  - b. The transfer is in the best interest of:
    - i. the hospital and
    - ii. the residents served.
2. The Board may set conditions, restrictions, etc.
3. Restricted gifts to the hospital are not subject to transfer.

II. What is the effect?

A. The hospital gets some flexibility to adapt to the new competitive environment.

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- B. Provides alternatives already available to the not-for-profit charitable hospital.
  - 1. Joint venture with physicians and others in new delivery systems.
    - a. Home health care.
    - b. Physician clinics.
  - 2. Develop programs to improve health care.
    - a. Physician (nursing) educational loan programs.
    - b. Community education.
    - c. Enhancement of charitable support.

III. Why is this important?

- A. Government hospitals are faced with the same survival problems of other not-for-profit hospitals without the same alternatives.
- B. Hospitals must be able to provide health care, not just acute care, in a variety of ways.
- C. House Bill 2467 helps county and district hospitals function in the changing environment.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL 2468

PRESENTED TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

MARCH 26, 1985

This is the official position taken by the Kansas Department of Health and Environment on House Bill 2468.

BACKGROUND INFORMATION:

House Bill 2468 proposes several changes to the home health licensing statute (Senate Bill 659) passed during the 1984 session. These changes are recommended by both the Department of Health and Environment and the Advisory Council on Home Health Services established pursuant to Senate Bill 659.

Section 1 - The term "home health services aide" is revised to "home health aide" to be consistent with the common title used in the industry.

Section 2(a) - Authority is added for the Secretary to license agencies during the first year of implementation without an onsite inspection in order to be able to handle the workload. We estimate that 90 percent of the agencies will have been inspected for Medicare certification purposes.

Section 2(e) - The Secretary is authorized to enter into reciprocal licensing agreements with states bordering Kansas that have licensure programs for home health agencies with standards substantially the same as those in Kansas.

Section 3(a) - The requirement that the state regulations be not less than the standards established for Medicare is recommended to be struck. The advisory council and the department concluded that this requirement would establish unnecessary costs for programs and services not covered by Medicare.

ISSUES:

The House committee struck the proposed language in Section 4(c) because of its decision, with this committee, to recommend an interim study on the issue of "certifying" nurse aides and medication aides. The department concurs with this decision. However, the House committee also struck the proposed new language in Section 4 in lines 155 through 159. We believe that this action was inadvertent in that the committee discussion of Section 4 only dealt with the new language in subsection (c).

The proposed language in lines 155 through 159 is intended to allow home health aide training to be integrated with the existing training

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Attachment IV

to avoid individuals having to duplicate training on the same material. The current nurse aide course requires 90 hours of training and the proposed home health aide course will require only 20 additional hours.

DEPARTMENT'S POSITION:

The department recommends that the language in lines 155 through 159 be restored and that the bill be reported favorably for passage.

Presented by: Barbara J. Sabol, Secretary  
Kansas Department of Health  
and Environment

Proposed amendment to House Bill 2468

In line 39 after "respiratory therapy," by  
adding, "nutritional or dietetic consulting"

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Attachment V

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HB 2497 as passed by the House

PRESENTED TO Public Health and Welfare Committee of the Senate

This is the official position taken by the Kansas Department of Health and Environment on HB 2497.

BACKGROUND INFORMATION:

K.S.A. 65-501 and K.S.A. 1983 Supp. 65-504 as currently written require child care providers to be licensed before caring for children. This proposed legislation offers amendments to those statutes which would authorize the Secretary upon receipt of an application for a child care license to issue a temporary permit for a period not to exceed 90 days. The temporary permit would allow the immediate enrollment of children for care.

New Section III and Section IV set forth the grounds and procedures for the temporary suspension of a license, registration certificate, or temporary permit pending a hearing when children need protection from threats to their health or safety. It requires the the Department to conduct administrative proceedings in accordance with relevant provisions of the Kansas Administrative Procedure Act.

ISSUES:

Amendments are proposed primarily for the benefit of day care home providers who frequently apply for a license after being asked to care for specific children. The temporary permit would not only authorize the enrollment of children following an application for license, but would also make it possible for the Child Care Food Program to reimburse the applicant for child care food costs following issuance of the temporary permit rather than having to delay payment until the license is issued.

New Sections III and IV allow temporary suspension of a license, certificate of registration or a temporary permit, pending a hearing, to protect children in out-of-home care who are at risk. The usual enforcement procedures may take up to three months, during which time the child care provider continues to care for children even though the reasons for the revocation may represent substantial threats the child's health and safety.

DEPARTMENT'S POSITON:

The Department of Health and Environment respectfully recommends that the Committee report the bill favorably for passage.

Presented by: Barbara J. Sabol, Secretary  
Kansas Department of Health  
and Environment

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Attachment VII