Approved 3-27-86
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Marvin L. Littlejohn at
Chairperson

1:30 ~~/ /~~ p.m. on March 19, 1986 in room 423-S of the Capitol.

All members were present except:

Rep. Foster, Rep. Pottorff, excused.

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norman Furse, Revisor
Sue Hill, Secretary to Committee

Conferees appearing before the committee:

Senator Karr
Paul Klotz, Executive Director of Assn.Community Mental Health Centers of Ks.
John G. Randolph, Ph.D. Mental Health Centers of Kansas
Richard B. Maxfield, Ph.D., Kansas Psychological Association
Dr. Gerald Hannah, Department of SRS.
John Grace, Executive Director, Ks. Association of Homes for the Aging
Dick Hummel, Executive Director, Ks. Health Care Association
Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc.

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

Chairman called meeting to order and brought attention to hearings to be held this date.

Hearings began on SB 549:--

Senator Karr gave hand-out to members, (see attachment No.2), for details. He explained SB 549 as an act concerning communication between patient and personnel of a treatment facility. This came about as a result of Task Force recommendations made up of individuals serving in Mental Health centers in the state, and was helped along by Senate committee on Public Health and Welfare more specifically the subcommittee headed by Senator Jack Walker. The bill will bring on a parity, the confidentiality and privileged communications between individuals and staff at Mental Health Centers and State Hospitals. Section 3 gives detailed exemptions, and he then stated as SB 549 is currently structured, it is a positive addition to the statutes. He answered few questions from members, i.e., proposed amendments relating to ancillary personnel, and treatment personnel, and language changes to "treatment records" rather than "medical records", rather than saying "patient", perhaps, "patient of mental health centers", might be more appropriate. There was discussion on these recommendations. He asked for careful consideration of SB 549 by this committee.

Dr. John Randolph, of Mental Health centers of Kansas gave hand-out to members, see (Attachment No.3), for details. He stated SB 549 will provide protection for outpatients of public treatment facilities. At present there is no privileged communication for mental center patients receiving direct services from a masters level psychologist, pastoral counselor, or other counselors not currently licensed in Kansas. These patients have no assurance that their private, personal communciations could not be ordered divulged for any number of purposes in some possible future courtroom proceedings. A patient of a community mental health center should enjoy the same privileged communication in receiving services, regardless of the discipline of the provider. We hope that privileged communication would be associated with the treatment facility, not with a range of professional disciplines with or without varied statutory protection of privacy of patient communications. He urged for the favorable consideration of SB 549. He answered questions from members. There was discussion about all employees of mental health facilities being asked to keep all conversations with patients kept in confidence.

Hearings continued on SB 549.

Richard B. Maxfield, Ph.D., Kansas Psychological Association gave hand-out, (see Attachment No.4), for details. He stated he feels confidentiality is essential to conduct meaningful treatment, and a prerequisite for patient's ability to form a trusting and open therapeutic relationship with the Psychologist. He spoke to two proposed amendments, i.e., Page 3, line 112, they would suggest striking "medical" and inserting the word "treatment" instead. Page 4, line 136, add language as shown in (balloon copy as part of Attachment No.4), after the phrase or former patient, "or other individuals who have provided information used in the treatment of the patient or former patient; or". He answered questions from members, i.e., concerns with an employer facing a situation of discrimination in hiring practices if he does perhaps hire a person who has been under psychiatric care, somehow seems unfair if the person applying for the job has not included such treatment and care. Dr. Maxfield stated he feels it is a matter of public choice for the patient not to disclose this information. It was the feeling of some on committee it is not a fair situation for the employer. There were concerns in regard to exemptions in cases of applying for insurance coverage. Dr. Maxwell stated it is standard procedure that a patient sign a release of records so treatment centers can send diagnosis to the Insurance company. There were questions, are school counselors covered in SB 549; cannot ethics of this profession speak to this matter rather than having it legislated?

Dr. Gerald Hannah, SRS gave hand-out to members, (see Attachment No.5), for details. One of the reasons the Department of Social Rehabilitation Services feels that SB 549 is important is that it would create a legal privilege for treatment information, regardless of the professional discipline to which an individual therapist belongs. The priviledge created would be strong and could not be overridden by rules of discovery generally applicable to civil and criminal litigation. Without creating a facility based privilege for community mental health centers, the exact nature of client protection may depend upon the professional discipline of the therapist randomly assigned to a client. Moreover, without creating a strong privilege, treatment facilities may not be able to protect the highly sensitive information which is necessarily disclosed during the course of treatment.

SB 549 sends out the message that Kansas policy makers are very consumer oriented, as it gives assurances of confidentiality, and at the same time there are checks and balances that speak to the exceptions. He spoke to the question of an employer seeking information of potential employee having had psychiatric treatment and the stigma that follows such treatment in eyes of some. He gave examples of kinds of treatment, marriage counseling for example as he personally had had, so therefore there are many many people who have had some type of counseling that may not choose to put this on an employment record when applying for work. Other questions on release of records in a specific case where Dr. Harder had to intervene and help a community know where to place children because records could not be released to allow the community to know where to make such placement on their own. Dr. Hannah replied that this situation is under way of being changed so it will not occur again.

Hearings closed on SB 549.

Hearings began on HCR 5050:--

Chair noted two members of our committee introduced this legislation. Rep. Hassler, and Rep. Branson, and he invited them to speak to the bill.

Rep. Branson giving rationale for HCR 5050, said, during the 1985 session 2 bills were introduced to speak to unlicensed employees of adult care homes, whose employment is terminated for reasons that affected the resident of said homes. These bills addressed a centralized registry, but the committee was bogged down due to complexity of this registry. An Interim Committee Study was done, and this HCR comes from the Minority Report filed from the Interim Committee recommendations. The committee focused primarily on those employees who provided direct care to residents in adult care homes. The potential does exist it was learned, for client abuse/neglect, substance abuse, performance of acts or duties beyond the training and scope of duties of the employees and other kinds of problems. Some instances discharged personnel do find employment in another type of setting similar to the adult home they were discharged from. Without this being identified to the employer, abuse/neglect could occur on a repeated basis. Employees presently are limited to questions they can ask a potential employee by the Equal Employee Opportunity Act and other Federal and State laws. There is concern about adverse information about employees can be carried to new potential employer without incurring liability. She strongly supports the concept that the Homes be provided immunity for any reporting of employees who were discharged for above causes. Conclusions of Interim Committee, i.e., there was concern that some employees that were to provide direct patient care may be unqualified for such employment because of abuse/neglect, substance abuse, etc. Further, the Interim Committee suggests that the Homes themselves should address the problem by adopting responsible and resonsive personnel policies.

Rep. Hassler then spoke to HCR 5050. She stated the Minority Report was concerned with three areas, i.e., patient care; (patient being protected by not having an undesirable employee go from Home to Home with no way to track that employee who had been discharged because of patient/neglect, etc.); patient cost; and not over-regulate unnecessarily. She stated then the Resolution was drafted to have homes to establish these policies, make sure employees are aware of policy, and dismissal procedures are spelled out, that it is documented and all will know how and why dismissal was done, and that Health and Environment will encourage those homes to establish personnel policy for aides. At this point there was discussion in regard to liability of reporting, specific cases of some persons feeling they were wrongly discharged, sometimes there are persons wrongly accused and discharged becasue of false accusations.

Dick Morrissey, Department of Health and Environment spoke to members on HCR 5050, saying they share some of the same concerns. The issue is real, the rights of the patients is most important. It is difficult to draft regulations. He stated the words "inferior performance", should infact be changed to "neglect", since that truly is what takes place. There is already in place some requirements for homes to have personnel policy, and other policies that are spoken to in HCR 5050. Even if we do paper compliance, it is very difficult to make sure all these regulations are being followed. It all takes time. Staffing is important and we would have to look at priority as we undertake still more inspections. He answered questions from members, i.e., yes, the liability problem is real; we would like to be more oriented to direct patient care, and less oriented to administrating organizational types of requirements. He asked members to remember there would be cost involved, and they do not presently have the staff to handle the tasks spoken to in HCR 5050. He stated that many Homes currently suspend or discharge personnel for reasons much less objectionable than patient abuse/neglect. Many times discharging an employee is done because of absenteeism and other charges are not documented, and it is doubtful that HCR 5050 if passed will change this at all.

John Grace, Kansas Assocaition of Homes for the Aging, gave hand-out, see (Attachment No.6), for details. Their Association is in support of HCR 5050, and feel every Adult Care Home should ahve a complete personnel program, personnel policies, procedures for hiring and termination, guidelines for disciplining, and handling of employee complaints. There are current regulations requiring the same. Subsection (b) does present concerns because of language that speaks to documentation.

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on March 19, 1986.

Hearings continue on HCR 5050:

Mr. Grace spoke to specific statutes that relate to teachers of school districts that could be similarly drawn for employees of Adult Care Homes. He also spoke to Statutes on Blacklising where the employer can furnish in writing on request, the cause of such discharge, could provide effective methods of dealing with these concerns. He answered questions, i.e., he could see no real major changes would take place if HCR 5050 were passed. They already are complying with all the proposals the bill speaks to.

Mr. Dick Hummel, Ks. Health Care Association, gave hand-out, (Attachment No.7), for details. He says this issue is very serious, and although he commended the sponsors for their work in drafting this legislation, his Association feels the Resolution is unnecessary. He stated there are currently many regulatory requirements in place and good common sense as in any business should serve to eliminate these problems spoken to here today. He said the real issue and problem has been skirted, and he called attention to lines 20-25 that speaks to unlicensed personnel. (His attachment also contained a detailed paper of nursing services, job description, personnel action form, employee counseling form, notice of resignation form.) There was discussion at this point about "certification", i.e., there is no such thing as a "certified aide", or "certified medication aide". These persons are not issued a certificate to practice, they are issued a certificate that says they have completed a course and passed a test. Therefore there is not a certificate employed franchise involved. At this point, he answered questions from members.

Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc., gave hand-out, (see Attachment No.8), for details. KINH concurs in the findings of the committee, however, is disappointed that no steps were proposed to assure that the report would be duly noted and heeded by the nursing home and home health agencies. They would be sorry to see the recommendations lost in the Interim Committee Report. HCR 5050 is a means to breathe life into efforts to request the Dept. of H&E to adopt requlations requiring nursing homes and home health agencies establish sound personnel policies and adhere to them. Yes, there are some homes who now have many of these policies, but a reference check of former employees should be required in all. Also documentation of substandard behaviors of performance should be required in all. She urged for support of HCR 5050. She answered a few questions from members.

Hearings closed on HCR 5050.

Meeting adjourned at 3:10 p.m.

Next meeting will be 2:00 p.m. tomorrow, March 20, 1986.

GUEST REGISTER

DATE 3/19/86

HOUSE

PUBLIC HEALTH AND WELFARE

DATE 3-19-86

NAME	ORGANIZATION	ADDRESS
John Grace	KS Homes For Aging	Topeka
Barb Koch	Assoc. CMHC's KS	Topeka
Dick Hyman	KS Health Care Assn	Topeka
Marsha Hutchison	KS Medical Society	Topeka
Jack Peterson	KS Assn Mental Retardation	Topeka
Gerald T Hannah	MHRS/SRS	Topeka
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	"
Richard MAXFIELD	Kansas Psychological Assoc	Topeka
John Randolph	Assoc of Community Mental Health Centers of KS.	Emporia
Ed + Elmer Beck	Reno Co Farm Bureau	Plevna Ks
Grant + Betty Hill	" " " "	Plevna, Ks
Richard MORRISSEY	KDHER	Topeka
Marilyn Bradt	KINH	Lawrence
Bernard Gunnarlet	Barton Co Farm Bureau	RR Hoisington
Evelyn McCormick	Adult Care Home Services/SRS	SCW Topeka
Anne Moriarty	KS N.O.W.	Topeka
THERESA SHIVELY	KANSAS NARAL	Topeka

Attachment 1
3-19-86
Hs. PHW

STATE OF KANSAS

GERALD "JERRY" KARR
SENATOR SEVENTEENTH DISTRICT
CHASE, LYON, MARION, MORRIS,
OSAGE COUNTIES
R R 2, BOX 101
EMPORIA, KANSAS 66801

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER AGRICULTURE
ASSESSMENT AND TAXATION
FINANCIAL INSTITUTIONS AND INSURANCE
EDUCATION
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

SENATE CHAMBER
March 19, 1986

Senate Bill 549:

I would like to introduce Senate Bill 549 which is an act concerning communication between a patient and personnel of a treatment facility. The bill before you is the result of a task force made up primarily of individuals serving in Mental Health Centers throughout the state. Their work has been further enhanced by the Senate Committee's work, specifically the subcommittee's headed by Senator Jack Walker.

The bill, as amended, has the support of SRS, as well as the staff from the Menninger Foundation. I think the key element within the bill is to bring on a parity, the confidentiality and privileged communications between individuals and staff at both Mental Health Centers and at State Hospitals. In Section 3 there is a very detailed exemption in which a detailed list of situations in which the privileged communications does not apply. For example, this kind of privileged communications is not in effect when we become involved in court situations, such as an insanity defense, or in emergency treatment situations that would be detrimental to the patient and of course such examples as allowing normal patient's progress reports to his immediate family.

I think the bill, as it is currently structured, is a positive addition to the Kansas Statutes and should receive your favorable support. In order to further answer questions about the use of this particular type of statute, I have with me today a representative from the Mental Health Center in Emporia. Are there any questions?

Attm. # 2
3-19-86
Hs. PHW

Association of Community
Mental Health Centers of Kansas
835 S.W. Topeka Ave., Suite B/Topeka, Kansas 66612/913 234-4773
Paul M. Klotz, Executive Director

Testimony to the House Public Health and
Welfare Committee
March 19, 1986
Representative Marvin Littlejohn, Chairman
by John G. Randolph, Ph.D.

As a psychologist of some 17+ years of experience in mental health center work, and as spokesman for the Association of Community Mental Health Centers of Kansas, I appreciate the protection Senate Bill 549 provides to outpatients of public treatment facilities. At present, there is no privileged communication for mental health center patients receiving direct services from a masters level psychologist, pastoral counselor, or other counselors not currently licensed in Kansas. Such patients have no assurance that their private, personal communications could not be ordered divulged for any number of purposes in some possible future courtroom proceedings. For instance, adversary parties in civil litigation occasionally seek to use records of mental health evaluation and treatment to attempt to impeach the credibility of a patient or a former patient. Such vulnerability to unwanted exposure is hardly conducive to the open, honest expression of concerns and conflicts so critical to successful psychotherapy.

I have been chairman of an Ad Hoc Association Committee which has studied privileged communication and confidentiality issues for over two years, and am familiar with the rationale underlying the elements of this legislation. In our view, the patient of a community mental health center should enjoy the same privileged communication in receiving services, regardless of the discipline of the provider. We would hope that privileged communication would be associated with the treatment facility, not with a range of professional disciplines with or without varied statutory protection of privacy of patient communications.

Senate Bill 549 provides significant benefit to patients of community mental health centers. I appreciate the opportunity to address any questions you may have.

Thank you.

Attm. #3
3-19-86
Hs. PHW

KANSAS PSΨCHOLOGICAL ASSOCIATION

March 19, 1986

TESTIMONY OF RICHARD B. MAXFIELD, Ph.D. REGARDING SENATE BILL 549

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify on Senate Bill 549. I am Dr. Richard Maxfield. I am the Chief Psychologist of the Adult Diagnostic and Consultation Service of the Menninger Foundation and I am here today representing the Kansas Psychological Association.

The Kansas Psychological Association believes that confidentiality is essential to conduct meaningful treatment as we believe it is a necessary prerequisite for the patient's ability to form a trusting and open therapeutic relationship. We are very much in favor of this Bill as it extends the patient's right to privacy and confidentiality to treatment personnel who currently have no legal restriction against breaching confidentiality. We believe that this measure is clearly a benefit to patients as it may allow for more meaningful and productive treatment. Further, we believe that the exceptions to the privilege of confidentiality contained in Section 3 of this Bill provide appropriate safeguards for the public.

We do have two proposed amendments which escaped our attention when the Bill was initially heard in the Senate Public Health and Welfare Committee. The first is a technical amendment which would bring this Bill in line with recently passed mental health legislation. On Page 3, line 112, we would suggest the striking of the word medical and substituting the word treatment.

On Page 4, line 136, we do have an amendment which makes a substantive difference. I have attached to my testimony a balloon of that language. In my experience there are many instances in which concerned family members provide information to treatment personnel which they would not want the patient to be informed of. Often that information is contained within the patient's treatment record and I believe the head of the treatment facility should use appropriate judgment prior to releasing that information directly to the patient. For instance, a

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Hs. PHW

Central Office/P.O. Box 1262/Lawrence, Kansas 66044-8262/(913) 841-2425
Affiliate of the American Psychological Association

March 19, 1986

concerned family member may communicate information about their personal lives which may be useful for the treatment personnel to know but would be unnecessary and potentially harmful to the person who provided the information if the patient were to find out that information. We believe by adding this proposed language the Committee will allow for concerned family members to be more open and honest in their communications with the treatment personnel.

We hope this Committee will consider our proposed changes and will act favorably on Senate Bill 549. I would be happy to attempt to answer any questions the Committee might have.

the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, ~~or the patient's next of kin,~~ except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient; ~~or~~

or other individuals who have provided information used in the treatment of the patient or former patient; or

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information.

(b) The ~~psychotherapist~~ *treatment personnel* shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

Sec. 4. This act shall be interpreted to encourage ~~psychotherapy~~ *treatment* in a confidential setting and the rules of discovery shall not take precedence over the provisions of this act.

New Sec. 5. Any treatment personnel or ancillary personnel willfully violating the patient's confidentiality as defined by this act shall be guilty of a class C misdemeanor.

Sec. 6. K.S.A. 59-214 is hereby amended to read as follows: 59-214. The books and records of the district court involving

STATE DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
Statement Regarding Senate Bill No. 549

1. Title - This Bill creates a legal privilege for treatment information compiled by a community mental health center, private psychiatric hospital licensed under K.S.A. 75-3307b, state psychiatric hospital, and state institution for the mentally retarded.

2. Purpose - This Bill would create a legal privilege for treatment information, regardless of the professional discipline to which an individual therapist belongs, i.e. physician, psychologist, social worker, etc. The privilege created would be strong and could not be overridden by the rules of discovery generally applicable to civil and criminal litigation. Without creating a facility based privilege for community mental health centers, the exact nature of client protection may depend upon the professional discipline of the therapist randomly assigned to a client. Moreover, without creating a strong privilege, treatment facilities may not be able to protect the highly sensitive information which is necessarily disclosed during the course of treatment.

3. Background - Community mental health centers are currently uncertain of the privilege which attaches to information obtained during treatment. There are at least four statutes which create some type of privilege for psychiatric treatment in Kansas - K.S.A. 59-2931 (Treatment Act for Mentally Ill Persons), K.S.A. 60-427 (Physician/Patient Privilege), K.S.A. 74-5323 (Certified Psychologist Privilege), and K.S.A. 75-5360 (Licensed Social Work Privilege). However, treatment is often provided by professionals from several different disciplines, or by professionals who are not included in some of these statutes. This leads to uncertainty and the possibility that sensitive information shared by clients is not subject to legal protection.

   The selection of a therapist in a community mental health center is often made by an intake worker. In almost every case, the client has a reasonable expectation that confidentiality is "facility" based, and not dependent upon which therapist he or she is randomly assigned to. Moreover, statutes should not vary among disciplines since all services are provided under the direction of the center's clinical director.

   In addition to clarifying the privilege which applies to mental health center records, there is also a need to strengthen the protection provided by that privilege. The need for a stronger privilege exists for both mental health centers and psychiatric hospitals. K.S.A. 59-2931 includes mental health centers, state hospitals, and any "adult care home, physician or any other institution or individual authorized or licensed by law to give treatment to any patient." However, it is not a genuine privilege in that the court may compel testimony "after a determination...that...records are necessary for the conduct of proceedings before it and are otherwise admissible in evidence." Therefore, even though the privilege is recognized by the court, the standard for compelling testimony is low. A true legal privilege protects a confidence to its ultimate limits - even a court cannot compel its disclosure.

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Hs. PHW

Not only does the privilege need to be strengthened, but there have been cases during the past year when the disclosure has been ordered without notice to the clients or the opportunity for them to appear and claim its protection. Information obtained during psychiatric treatment is highly sensitive and may be embarrassing to clients if disclosed. Such sensitive information should be protected. S.B. 549 would limit exceptions to those situations where the need for disclosure clearly outweighs the need for protection. In addition, even if the client puts his or her own mental condition into evidence, the Bill would require a specific finding by the judge to that effect.

S.B. 549 creates exceptions when hospital staff need to seek an involuntary commitment order, when a court has entered an order for evaluation, when the court has found that a client has made his or her mental condition an element of a claim or defense in a lawsuit, when state law requires a report to be submitted to a public official, when information is necessary for the emergency treatment of a client or former client, when information is necessary to protect a person in the community from substantial physical harm, and when the client has consented to a release. In addition, there are two other exceptions authorizing a state psychiatric hospital to release information to the Secretary of Corrections when patients have been transferred pursuant to K.S.A. 75-5209 and when information is needed for accreditation, certification, or licensing.

4. Effects of Passage - Passage of this Bill would protect the "function" of providing mental health services in community mental health centers, psychiatric hospitals, and state institutions for the mentally retarded instead of the "professional discipline" of individual therapists. It would also create strong safeguards against disclosure without the client's consent.

5. SRS Recommendation - The Department of Social and Rehabilitation Services supports this legislation in order to advance the rights of clients to confidentiality of treatment records in a facility based setting.

Robert C. Harder
Secretary
Social & Rehabilitation Services
296-3271
March 19, 1986

KAHA
The Organization of Nonprofit Homes and Services for the Elderly

Kansas Association of Homes for the Aging
One Townsite Plaza
Fifth and Kansas Avenue
Topeka, Kansas 66603

913-233-7443

March 19, 1986

House Public Health and Welfare Committee

Testimony by John Grace, Executive Director, Kansas Association of Homes for the Aging.

Re: House Concurrent Resolution No. 5050
A CONCURRENT RESOLUTION requesting the secretary of health and environment to adopt rules and regulations concerning adult care home personnel practices.

Chairman Littlejohn and members of the committee.

We support Resolution 5050.

Every adult care home should have a complete personnel program consisting of at a minimum, personnel policies, procedures for hiring and termination, guidelines for disciplining, and handling of employee complaints. In fact, the current regulations 28-39-85 currently require facilities to have the same:

> 28-39-85. Administration; personnel policies and staff development standard. (a) The administrator shall develop, implement and maintain written personnel policies, procedures, job description,...(b) Records. Personnel records shall be current and shall contain documentation of the employee's qualifications for the position to which the employee is assigned.

Subsections (a) and (c)of HCR 5050 are in our opinion, covered under these regulations. Subsection (b) does present a special concern because of the following language:

> " adult care homes document any violations of such personnel policies and make such documentation available to potential employers...

In this day and age of the rampage of civil liability lawsuits, employers are releasing fewer and fewer items of information regarding the past work records of past

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Hs. PHW

employees. The standard operating procedure for many facilities is to release only the following information:

> Dates of employment
> Voluntary or involuntary termination

We offer for the committees consideration a Kansas Statute in present law, that relates to teachers of school districts that could be similarly drawn for employees of adult care homes:

> KSA 72-9005. Evaluation documents; presentation to employee; acknowledgement; limited availability. "...evaluation documents and responses thereto shall be available only to the evaluated employee...the board and the administrative staff of any school to which such employee applies for employment, and any other persons specified by the employee in writing to his or her board."

This type of language in the law, along with the Blacklisting statute KSA 44-117, where the employer can

> "...furnishing in writing, on request, the cause of such discharge.",

could provide effective methods of dealing with this situation.

Thank You Mr. Chairman and members of the committee.

Kansas Health Care Association
Member of ahca

Attm. #7
3-19-86

TESTIMONY PRESENTED BEFORE THE HOUSE COMMITTEE
ON PUBLIC HEALTH AND WELFARE

BY
Dick Hummel, Executive Director
Kansas Health Care Association

March 19, 1986

House Concurrent Resolution No. 5050
"A Concurrent Resolution requesting the Secretary of Health and Environment to adopt rules and regulations concerning adult care home personnel practices."

Mr. Chairman and Members of the Committee:

On behalf of our association, a non-profit organization which represents over 200 licensed adult care homes (nursing homes) in Kansas--both for profit as well as not-for-profit, facilities large and small in both urban and rural areas--thank you for this opportunity to present our position on HCR 5050.

This resolution requests the Secretary of Health and Environment to adopt regulations for adult care homes, personnel practices, including job descriptions and hiring and firing procedures.

Although we commend the sponsors for their well-intentions, we believe this resolution is unnecessary for the following reasons:

ALREADY REGULATORY REQUIREMENT: Current adult care home regulations already proscribe certain administrative requirements, for example:

1. K.A.R. 28-39-83. Administration; Management Standard.

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Hs. PHW

"We Care"

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(b) Policies and Procedures. The licensee shall adopt and enforce written policies and procedures relative to the health care, safety, psychosocial and self-esteem needs of the residents....

2. K.A.R. 28-39-85. Administration; Personnel Policies and Staff Development Standard.

(a) The administrator shall develop, implement and maintain written personnel policies, procedures, job descriptions, and staff development policy and procedure for all employees to assure effective delivery of services to residents.

An adult care home's written policies and procedures, and the implementation of them, have been an area of rigorous enforcement review by the Department of Health.

Finally, in order to assist Kansas adult care homes with the development of their own policies and procedures, this association compiled a 400-page, model standards manual. (Attached to this testimony are portions from it giving sample job descriptions.)

HIRING AND FIRING PRACTICES: Adult care homes, in most cases as most other employers, are adroit business people and follow sound personnel management practices. As others, they are also subject to the same laws, and consequences of the employment marketplace, which generally is balanced in favor of the employee.

Good sense says reference checks should be done on all potential employees by all businesses and that reasons for termination or discharge should be candid. However, it doesn't always happen, in our sector, and in the business community at-large.

In our opinion we don't think it either probable or possible to legislate or regulate sound personnel practices.

The approach we've taken for our members is through the continuing education process with recurring workshops and seminars about business practices and principles.

GENERAL RULE-WRITING AUTHORITY: We have a concern, in general, about the open-endedness of the resolution, in that it presents a request for the promulgation of administrative regulations. Because of the Legislature's diminished "check and balance" authority over agency regulations, the resolution's direction is a concern to us.

REAL ISSUE -- UNQUALIFIED EMPLOYEES: The real issue, and problem, has been skirted; we reference lines 0020-0025 of the resolution.

We find a handful of employees (out of more than 12,000) who have been given a certificate to practice by the State but who, for the reasons mentioned, should not be allowed to work in nursing homes. They continue to practice. The authority that gave the certificate should also be responsible for removing, for cause, the certificate-employment franchise.

I'd be happy to respond to any questions.

This facility provides twenty-four (24) hour nursing service to meet the nursing needs of all residents. A skilled nursing facility employs one fulltime Registered Nurse as Director of Nursing who works the day tour of duty, eight (8) hours, from 6:00 A.M. to 9:00 P.M. In the case of facilities where a Licensed Practical (or vocational) Nurse, serves as the Supervisor of Health Services, consultation is provided by a Registered Nurse, at regular intervals, but not less than four (4) hours weekly. There is at least one Registered Nurse or Licensed Practical Nurse in charge during the day shift for each nursing unit, seven days a week, and trained or experienced aides are employed in sufficient number for each tour of duty to meet the residents' needs, but not less than:

A. Skilled Nursing Home Facilities: 2.0 hours per resident per 24 hours on a weekly basis and no less than 1.85 on a daily basis.

B. Intermediate Nursing Care Facilities: 1.75 hours per resident per 24 hours on a weekly basis and no less than 1.60 on a daily basis.

The staffing pattern provides for relief personnel in adequate number. Weekly time schedules are maintained for 12 months on file and indicate the number and classification of nursing personnel including relief personnel who worked on each unit for each tour of duty.

Each resident in the facility will receive considerate care required by his condition. Residents will be encouraged to be active, to develop techniques for self-help and be stimulated to develop hobbies and interests.

A. Each resident will be given supervision, personal attention and nursing care. The following will be observed:

1. Kind and considerate care and treatment at all times.

2. A minimum of monthly shampoos and assistance or supervision of daily hair grooming for bed residents as well as ambulatory residents.

3. Men shall shave, be assisted with shaving or be shaved as necessary to keep them clean and well groomed.

4. Adequate care of mouth and teeth with provision of assistance or supervision daily and more often as indicated. Fingernails and toenails will be cleaned and trimmed regularly. Lotion or oil will be applied to extremities as necessary to prevent dryness and scaling of skin. Precautions will be taken to prevent foot-drop in residents who are susceptible, i.e., footboards or sandbags or in accordance with physician's orders.

5. Beds will be made daily and linens will be changed as needed and adjusted as necessary.

6. Freedom from offensive odors.

8. Freedom from pressure sores, measures taken toward their prevention, and if they exist, adequate treatment on a written medical order. Bony prominences and weight-bearing parts, such as heels, elbows and back will be bathed and given care as often as necessary to prevent discomfort and development of bedsores and pressure areas. The position of bed patients will be changed at least every two hours during the day and every two hours during the night, unless otherwise ordered by physician.

9. Incontinent residents will be kept dry and changed as needed night and day. Residents who are incontinent will have partial baths every time the bed linen or clothing is wet or soiled. Soiled or wet clothing and linen will be replaced with clean, dry ones. Rubber or plastic sheets will be cleaned often to prevent accumulation of odors and replaced as necessary. Disposable underpads may be used.

10. Assistance with the use of commode, bedpan, urinal or toilet and keeping of commode and bedpan and urinal clean and free of odor.

11. Receives treatments, medications and diet as prescribed; assist with feeding and monitoring of fluids and food intake.

12. Residents shall receive kind, considerate care and treatment at all times and shall not be abused in any way. Every precaution will be taken to assure the safety of the residents. Adequate equipment and supplies for first aide shall be readily available at all times.

13. Residents shall have clean, mended, suitable clothing as needed to present a decent appearance, to be free of odors, and be comfortable.

14. Fluids will be offered at frequent intervals when the resident is unable to obtain fluids.

15. Every resident's vital signs will be taken and recorded monthly. All residents, if possible, shall be weighed and weight recorded once each month or more often per doctor's orders.

16. In case of serious illness or accident, this facility will immediately notify the person or agency who placed the resident in the home. In all cases of emergency the resident's physician on emergency call must be notified immediately. Adequate medical attention will be given. Depending on the seriousness of the emergency, the Director of Nursing and the Administrator may be called. Personnel and physicians on call for emergencies are listed with their telephone numbers, posted at each nursing station. In case of death, the person or agency placing the resident in the home will be notifed promptly.

17. Treatments ordered by a physician will be carried out according to his order, using acceptable nursing techniques to safeguard the resident, minimize discomfort, and attain the physician's objective. No treatment or medication will be given without the physician's orders.

18. All residents have a right to privacy and nursing personnel must maintain this right. Visitors of one resident may not disturb another resident. This applies to radio and TV, etc.

JOB DESCRIPTION
DIRECTOR OF NURSING SERVICE/HEALTH SERVICE SUPERVISOR

General Job Summary

The Director of Nursing or Health Service Supervisor for this facility has the responsibility, administrative authority, and accountability for the functions, activities and training of the nursing staff.

Scope of Tasks

The Director of Nursing or Health Services Supervisor ensures the health requirements as outlined by residents' physicians. This includes daily observation of residents, delegation of responsibility to qualified staff, supervision and evaluation of health care personnel.

The Director/Supervisor regularly reviews and evaluates health care procedures and techniques; meets with other Department Supervisors and discusses the facility's methods of dietary, housekeeping, and maintenance operations effecting resident care; participates with Administrator and key staff members in formulation of policies and procedures influencing resident care and personnel; establishes a system for maintaining, reordering, containing and storing medical supplies and equipment. The Director/Supervisor must meet regularly with the Administrator to inform him of operations concerning resident care and problems with staffing.

Requirements

The Director of Nursing or Health Services Supervisor must be a Registered Nurse or Licensed Practical Nurse who meets the requirements of the Board of Directors and Administration. Experience in Gerontology is valuable, but not mandatory. The Director/Supervisor must be able to make decisions regarding residents and staffing; must be able to work directly with physicians, residents' families and staff to assure quality care is maintained. The job demands intense concentration and discipline of one's principles of nursing.

The Director of Nursing Service or Health Services Supervisor is responsible for all medical personnel in the facility who are involved in direct resident care, and proper health care procedures for all residents. He/She is accountable to the Administrator.

(Revised May 1983)

JOB DESCRIPTION: Director of Nursing Service

I. Job Specifications

a. Graduate of state approved school of nursing.
b. Current registration as registered nurse in this state.
c. Preparation in management and principles of supervision.
d. Genuine interest in geriatric nursing.
e. Initiative and judgement in determining needs of nursing service. in order to maintain quality nursing care.
f. Ability to maintain a good working relationships with all levels of personnel.

II. Job Requirements

a. Arranges for health programs for employees and residents.
b. Plans and implements in-service programs and educational classes.
c. Interviews, hires, schedules and discharges nursing personnel.
d. Serves as consultant on admitting and discharging of residents.
e. Assigns resident rooms.
f. Advises on nursing equipment and facilities.
g. Insures availablity of supplies.
h. Identifies and studies nursing service problems and assists in their solution.
i. Assumes ultimate responsibility for coordination of total care to residents.

III. Job Analysis

a. Health Programs

1. Employees

a. Plans for pre-employment physical and on going health requirements.
b. Provides for accident reports in event of occurrences on duty.

2. Residents

a. Provides for contact of doctor on admission of resident.
b. Makes arrangement for annual physical.

b. Nursing Personnel

1. Interviews and evaluates applications
2. Hires applicants as needed
3. Orients and trains nursing personnel
4. Terminates undesirable personnel
5. Conducts proficiency interviews
6. Prepares weekly and daily work schedules
7. Coordinates activities of all shifts

c. Ultimate Responsibility for Coordinated Resident Care

1. Consults with Administrator on admission, room assignment and discharge of residents
2. Determines need for nursing equipment and supplies
3. Promotes elimination of hazards
4. Coordinates nursing services, P. T., O. T., and R. T. programs
5. Receives thorough reports from head nurses on all shifts and works closely with them to insure maximum total care
6. Gives daily report on conditions in nursing service to administrator

d. In-Service Programs and Educational Classes

1. Assists Administrator in planning monthly in-service program for all employees
2. Conducts orientation and educational programs for nursing personnel
3. Conducts geriatric nursing classes for nursing personnel staff
4. Maintains a day-to-day educational atmosphere through discussing resident problems, posting pertinent information on bulletin boards, and encouraging use of the library and clipping file
5. Conducts activities meeting weekly to review and evaluate existing programs for each resident, and arranges monthly meetings with appropriate resource person

SUGGESTED JOB DESCRIPTION

Department - Nursing

Position - Charge Nurse

Qualifications:

1. L.P.N. or nurse attendant well versed in basic nursing procedures.
2. Ability to supervise.
3. Must be person of excellent character, thoroughly trustworthy and reliable.
4. Must have well developed personality and ability to work well with others.
5. Must be neat and well groomed.

General Description:

Charge nurse in a skilled nursing facility is a working supervisor, responsible for the nursing service on her shift, and to create and maintain a cheerful home-like atmosphere.

Responsibilities	
Change of shift report	Arrive on duty early enough to receive complete report from previous shift.
Work schedule	Assignment of aides work schedule a. Assignments according to shift
7-3 shift	Resident Care a. Bath - 1. Shaving of male patient b. Oral Care c. Hand and foot care d. Shampoo and hair care e. Special treatments f. Rehabilitation, aids to living and occupational therapy g. Temperature, pulse, respiration, blood pressure and weight as necessary h. Room care Auxiliary work a. Make written assignments to meet individual home requirements
3-11 shift	Resident care a. Preparation for dinner b. Oral care c. Special treatments, rehabilitation, aids to daily living - Room care d. P.M. care, preparation for sleep.

11-7 shift	Auxiliary Work a. Assignments to meet individual home needs Patient Care a. Routine check of sleeping residents b. P.R.N. change of incontinent resident c. Special treatments include turning bed patients to prevent pressure area d. Awaken residents 1. Bed patients a. Offer bedpan or urinal b. Wash water and oral care 2. Ambulatory residents a. Assist in dressing b. Supervise face and hand washing, oral hygiene and combing hair e. Early a.m. room care Auxiliary work a. Assignments listed to meet need in home
Daily visitation of residents	Extremely important that all emotional and physical needs of residents can be met.
Medication	Pour and pass medication according to procedure Give all medications at time prescribed. Check and properly record any new medications ordered and received on your shift Chart medications as given Note any change of shift report.
Physicians	Make round with physician Call physician at any change in condition, or any accident of any resident. Call physician of any new admission for orders and for admission physical if needed. Assist with physical as necessary. Interpret and supervise any new treatments or orders of the physician. a. Contact L.P.N. for instructions and supervision on unfamilar treatment or medication.
Equipment and supplies	Check equipment for care and storage at end of shift. Note for L.P.N. any needed supplies. Report any non-functioning equipment to L.P.N.
Charts	Note any change of condition of resident Supervise report of accident notes made by attendant witnessing accident, or note unwitnessed accident accurately. Record physician visits-including time physician called and the time he visited.

	Admittance notes and records on new residents. Departure notes on any resident leaving home on your shift for any reason. Assist attendant in recording acceptable notes.
In-Service training	Attend all classes Follow up on all procedures and class instructions.
Change of shift notes	Change of condition of any resident Report any new admission including: a. Resident's name b. Diagnosis c. Physician d. Physical condition 1. Activities and limitations 2. Medications 3. Treatments 4. Diet e. Mental attitude 1. Emotional problems 2. Adjustment 3. Interests New medications and treatments Absence of any resident from home Dismissals Deaths Physician called and not yet visited Physician visits Report any accident Unfinished auxiliary work
Death- (In critically ill residents follow individual religious procedures)	Notification of physician Notification of administrator Notification of family - (the notification of family responsibility will vary with policy of home.) Notification of undertaker Preparation of body - (Follow procedure approved by home.)
Auxiliary work	Schedule of auxiliary will be adjusted on individual homes requirement. Charge nurse will see that all work assigned to her shift is completed or uncompleted work reported to oncoming shift with reasonable explanation of why not completed.

Personnel	Attitudes and cooperation of employees on your shift are your responsibility - coordinate personnel and residents for most happy efficient conditions. Consult with L.P.N. and/or nursing supervisor in personality problems.
Housekeeping - Sanitation Safety	Daily inspection of beds, bedside tables, closets, and residents' rooms. Daily inspection of utility rooms, bath rooms, storage area, etc.
Family and Friends	Maintain cordiality toward visitors in home. Insure privacy for visitation when needed.
Stand by to help	Assist in any capacity needed. Arrange to overlap on work loads left unavoidably by preceding shift in an emergency. Contact L.P.N. for instruction or help in any area that her assistance is needed.

JOB DESCRIPTION: Nursing Assistant

I. Job Specifications

A. High School education or equivalent
B. A love for older people
C. Desireble personal and character qualification
D. Good health
F. Pleasant, courteous manner
G. Must be a certified Geriatric Aide

II. Job Requirement

A. Receives assignment. Checks patient schedules for the day or shift.
B. Gives general a.m. care to patients. Bathes and dresses patients. Sees that patients are properly and comfortably clothed at all times. Gives beauty care, shaves male patients (may be done by orderly), trim nails, assists patients with personal and dental hygiene. Makes beds, sets room in order, water flowers, etc.
C. Assists patients on general diets with menu selection, checks diet trays with diet orders before serving, serves tray, may help feed patients, removes trays. Assists with or gives personal after meal care. If patients are able to eat in the dining room, transports patients to and from dining area and may supervise them while they are in the dining room. Settles patients for naps. Serves nourishments, fresh water.
D. Assists patients to and from bathroom, offers bedpans, and keeps incontienent patients clean at all times, changing linens as often as necessary. Encourages showers and other self-help measures and activities.
E. Prepares patients for tests and x-rays; visits by physicians and dentists; occupational therapy, physical therapy, speech therapy; recreation; visits to chapel and other areas of the institution and may transport them to areas or departments where the above takes place. May assist with physical therapy. May accompany patient to other facilities for the above services; as directed by supervisor.
F. Performs personal services for patients within reason such as reading to them, writing letters for them, operating TV and radio, assisting them with recreational and occupational therapy projects in their rooms, may run errands; and doing whatever possible that will promote comfort, security and rehabilitation. May wash clothing in self-care and psychiatric units on emergency or limited basis.
G. Gives p.m. care and settles patients for the night.
H. Assists relatives, visitors and guests.
I. Assists with and/or performs procedures as outlined, with proper instruction and supervision, such as: admitting, transferring, discharging patients; taking and recording vital signs; measuring and recording intake and output; collecting specimens such as urine, stool and sputum, doing clinitests, acetone tests, gives enemas, inserts rectal tubes; changes dressings, bandages, binders.

slings, colostomy bags and drainage bottles; applies hot and cold compresses; gives sitz baths; gives special care to patients in casts or traction; cares for patients in isolation; may give exercise and massage; assists with care of dying and dead; sees that safety devices are in use and safety precautions are followed; sees that room temperature and humidty are compatible with patient needs; assists nurses in giving treatments and examining patients.

J. Applies aseptic technique in all patient care to prevent spread of disease and infection.

K. Observes patients and notes physical condition, attitude, reactions, appetite, etc, and reports changes or unusual findings to supervisor.

L. Assists with restorative and rehabilitative care of patient and instruction in self-help, using medical appliances, etc.

M. Charts required information and signs entries.

N. Performs assigned clerical duties at nursing station, answers lights, may answer telephone and intercom, runs errands as directed by supervisor.

O. Participates in ward or unit cleaning duties which are not performed by housekeeping personnel, as directed.

P. Gives and receives reports.

Q. Attends inservice meetings.

R. May perform other duties as directed by supervisor.

I. Job Specifications

A. High School education or equivalent
B. A love for older people
C. Desirable personal and character qualifications
D. Good health
E. Pleasant, courteous manner
F. Ability to work congenially with others and under direction
G. Complete the required training course for state certification

II. Job Requirements

A. Receives assignment. Checks residents' schedules for the day.

B. Gives nursing care to male residents: bathes, gives lotion rubs and personal hygiene; lifts, walks, and positions residents to make them more comfortable and to prevent decubiti; gives restorative care and instructs residents in self-help; makes beds, assists at mealtime; assists residents to bathroom, offers bedpans and urinals, keeps incontinent residents clean.

C. Assists with and/or performs procedures as outlined with proper instruction and supervision; such as: admitting, transferring, discharging residents; taking and recording vital signs; measuring stool and sputum, does clinitests, acetone tests; gives enemas; inserts rectal tubes; inserts, irrigates and changes catheters; applies or changes dressings, bandages, binders, slings, applies hot and cold applications; gives exercise, massages; observes residents undergoing oxygen therapy; cares for residents with casts or in traction; cares for residents in isolation; assists with care of dying and dead; sees that safety devices and precautions are being used; may set up and remove equipment and appliances used on the unit as directed by supervisor.

D. Applies aseptic techinque in resident care to prevent spread of disease and infection.

E. Observes residents and notes physical condition, attitude, reactions, appetite, etc. and reports unusual findings to supervisor.

F. Charts all required information on forms and nursing notes and signs entries.

G. Answers lights and intercom, may run errands as directed by supervisor, may participate in general ward cleaning duties not performed by housekeeping personnel.

H. Gives and receives reports.

I. Attends inservice meetings.

J. May perform other duties as directed by supervisor and as listed on job description for Nursing Assistant.

JOB DESCRIPTION: Nurse Aide and Orderly

III. Job Analysis

A. Day shift
1. Attends morning report
2. Serves breakfast and assists residents who need help
3. Collects breakfast trays and returns them to kitchen
4. Assists residents with partial or complete bath as indicated
5. Assists residents with care of nails, hair and teeth
6. Tidies resident's room
7. Encourages residents to do as much as possible for themselves
8. Carries out rehabilitative measures as indicated, transfers, etc.
9. Checks BM sheet daily and give enemas as directed.
10. Reports pertinent information (falls, high temperature, visitor)
11. Check resident's clothing and notifies head nurse of needs in this regard
12. Keeps residents' wardrobes neat and orderly

B. Evening Shift
1. Attends afternoon report
2. Assists day staff with afternoon care
3. Gets residents up from nap
4. Toilets involuntary residents
5. Sorts clean linen
6. Prepares residents for supper
7. Serves supper and assists residents who need help
8. Collects supper trays and returns them to kitchen
9. Settles residents for night
10. Makes rounds at least every two hours
11. Carries out assignments as directed by head nurse
12. Answers bells promptly
13. Reports and records all pertinent information

C. Night Shift
1. Attends night report
2. Complete assignmnents as directed by the head nurse
3. Answers bells promptly
4. Reports all pertinent information to head nurse
5. Wakes and assists residents to prepare for breakfast
6. Assists with breakfast

PERSONNEL ACTION

The following (warning) (separation) (commendation) was issued today and it is to be made a part of the official record.

NAME _____ DATE _____

SOCIAL SECURITY NUMBER _____ DEPARTMENT _____

1. ( ) Unreported Absence
2. ( ) Tardiness
3. ( ) Drinking On Duty
4. ( ) Insubordination
5. ( ) Dishonesty
6. ( ) Failure To Obey Orders
7. ( ) Fighting On Premises
8. ( ) Leaving Without Permission
9. ( ) Improper Conduct
10. ( ) Reporting Under The Influence Of Alcohol Or Drugs
11. ( ) Violation Of Company Rules
12. ( ) Defective And Improper Work
13. ( ) Carelessness
14. ( ) Destruction Of Company Property
15. ( ) Other

REMARKS: (Set forth all facts in detail.)

Use Reverse Side If Necessary

Signature of Supervisor

Signature of Employee

(seperated)
(warning)
(commendation)

The above has been noted and is made a part of the employee's record as of this day.

Offense No. 1. 2. 3. 4.

Administrator Date

EMPLOYEE COUNSELING FORM

DATE: _____

EMPLOYEE: _____

PROBLEM:

STATEMENT BY EMPLOYEE:

RESOLUTION OF PROBLEM OR ACTION TAKEN:

Signature of Staff Member

Signature of Employee

252a

NOTICE OF RESIGNATION

DATE: _____

TO: _____

THIS IS MY RESIGNATION FROM EMPLOYMENT BY

_____

EMPLOYER

AS _____ WHICH IS TO BE EFFECTIVE AT
JOB TITLE

_____ O'CLOCK _____

MY REASONS FOR RESIGNING ARE: 1. _____

2. _____

3. _____

_____

_____ _____
WITNESS SIGNATURE OF RESIGINING EMPLOYEE

_____

_____

ACCEPTANCE OF RESIGNATION

THE RESIGNATION OF _____ IS HEREBY ACCEPTED EFFECTIVE

_____ O'CLOCK _____
TIME DATE

_____ _____
DATE AUTHORIZED SIGNATURE

253

KINH Kansans for Improvement of Nursing Homes, Inc.
913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

TESTIMONY PRESENTED TO
THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING HCR 5050

March 19, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

In the conclusions reached by the Interim Committee on Public Health and Welfare concerning Proposal #48, Unlicensed Adult Care Home Employees, both the committee report and the minority report agreed that adult care homes and home health agencies should adopt responsible personnel policies as a means of dealing with the problem of incompetent or unsuitable unlicensed employees.

KINH concurs in the findings of the committee. We were disappointed, however, that no steps were proposed to assure that the report would be duly noted and heeded by the nursing homes and home health agencies. We would be sorry to see the recommendations lost in the soon forgotten pages of an interim committee report. HCR 5050 is a means to breathe life into the committee's efforts through requesting the Department of Health and Environment to adopt regulations requiring that nursing homes and home health agencies establish sound personnel policies and adhere to them.

Unquestionably there are adult care homes and home health agencies that now have such policies and follow good hiring and personnel management practices. Those that do not, should be required to do so. Such policies should include a reference check of former employees; should establish a procedure for documenting substandard behaviors or performance; should be prepared to provide such documentation to subsequent employers.

Though the committee heard that employers hesitate to supply adverse information about former employees for fear they will violate state or federal employment laws, KINH believes that KSA 44-117 speaks directly to that concern: "Any employer of labor in this state, after having discharged any person from his service, shall not prevent or attempt to prevent by word, sign or writing of any kind whatsoever any such discharged employee from obtaining employment from any other person, company or corporation, except by furnishing in writing, on request, the cause of such discharge." Proper documentation then becomes a vital part of the total "cause of such discharge", and would appear to be acceptable under the law.

KINH urges you to support HCR 5050 as a means to put into effect the conclusions of the Interim Committee.

attm # 8
3-19-86
Hs. PHW