

Approved 3-4-86  
Date

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 February 25, 1986 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Clarene Wilms, Secretary

Conferees appearing before the committee:

Barbara Sabol, Secretary, Department of Health and Environment  
Marilyn Bradt, Kansans for Improvement of Nursing Homes  
John Grace, Kansas Association for Homes for Aging  
Dick Hummel, Kansas Health Care Association

Others attending: See attached list

Secretary Sabol testified and presented written testimony supporting SB-580. Attachment I Secretary Sabol stated that although there have been no situations where a \$5,000 fine would have been imposed, it was felt that a higher fine could help with more rapid compliance when a citation was issued. The time lapse from beginning to end of the issue was discussed; also the qualifications of those making the inspections.

The chairman presented the minutes of February 18, 19, 20 and 21, 1986, for correction or approval. Senator Mulich moved that the minutes be accepted as presented with a second by Senator Riley. Motion carried.

Marilyn Bradt testified and presented written testimony in support of SB-580. Attachment II Ms. Bradt stated that it was the concern of her organization to see that nursing homes complied with rules and regulations and civil penalties were needed for persistent non-compliance.

John Grace testified and presented written testimony opposing SB-580. Attachment III. Mr. Grace questioned the need for this bill when only a very small percentage of fines were imposed. It was stated that it appears the system is working. The question was raised as to who would foot the fine in the final analysis.

Dick Hummel testified and presented written testimony opposing SB-580. Attachment IV Mr. Hummel stated that after several hours of testimony the House Public Health and Welfare Committee had defeated a similar bill basing their decision on the fact that the agency can accelerate processes in the event of severe problems. It was also stated that the federal government is considering a 23 day compliance period, then medicaid payments would be withheld until complete compliance was obtained.

Questions from committee members covered the length of time involved in the Health and Environment Department process, who would ultimately pay the fine and concern over the fact that one agency is paying for care and another agency is inspecting and levying fines.

Meeting adjourned at 10:59 a.m.



KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SENATE BILL NO. 580

PRESENTED TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

FEBRUARY 25, 1986

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill No. 580.

BACKGROUND INFORMATION:

Senate Bill No. 580 amends KSA 39-946 to increase the maximum amount of a civil penalty assessment from five hundred dollars to five thousand dollars. The bill makes no changes in the process leading up to assessment of a civil penalty, nor does it change the maximum one hundred dollars per day per deficiency limitation on the assessment.

KSA 39-945 authorizes the Secretary to issue a correction order to an adult care home when she determines that non-compliance exists which "affects significantly and adversely the health, safety, nutrition, or sanitation of the adult care home residents." The statute also requires that the correction order state the deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and specify the time allowed for correction.

Following the specified time allowed for correction, the department reinspects to determine if the corrections have been made. If the adult care home has not made the corrections, KSA 39-946 requires the department to issue a citation listing the uncorrected deficiency or deficiencies. Following the issuance of a citation, the department conducts another inspection and makes a determination as to whether or not the corrections have been made.

If the correction has still not been made, the Secretary may assess a civil penalty in an amount not to exceed one hundred dollars per day per deficiency but the maximum assessment may not exceed five hundred dollars.

The record confirms that civil penalties are assessed against very few adult care homes. Civil penalties are assessed only in those cases where homes knowingly and/or willfully continue to operate in violation of patient care standards.

	<u>1983</u>	<u>1984</u>	<u>1985</u>
Correction Orders	253	201	201
Citations	33	57	64
Civil Penalties	4	8	9

Attachment I  
2/25/86 S. PH&W

Attachment I

Senate Bill No. 580 will have no affect on the number of civil penalties assessed nor will the bill change the current process of inspections and notices to an adult care home prior to the decision to assess a civil penalty. Current statutes require a minimum of three separate inspections and two formal notices to the licensee before a civil penalty may be assessed.

In selected cases, the increase in the maximum total assessment from five hundred dollars to five thousand dollars will represent an effective economic deterrent to continued non-compliant behavior by a licensee. At the present time, it may be cheaper for a licensee to continue the non-compliance. At the same time, the five thousand dollar limit would be reached in very few cases. In calendar year 1985, the department assessed nine civil penalties for an aggregate total of three thousand-three hundred dollars. If the five thousand dollar limit would have been in effect in 1985, we estimate that the aggregate assessment for the nine civil penalties would have been four thousand-eight hundred dollars. This limitation on the maximum assessment occurs because the nature of many violations that lead to a civil penalty assessment is such that we cannot prove that they existed except on the days that our staff was present to observe the violation.

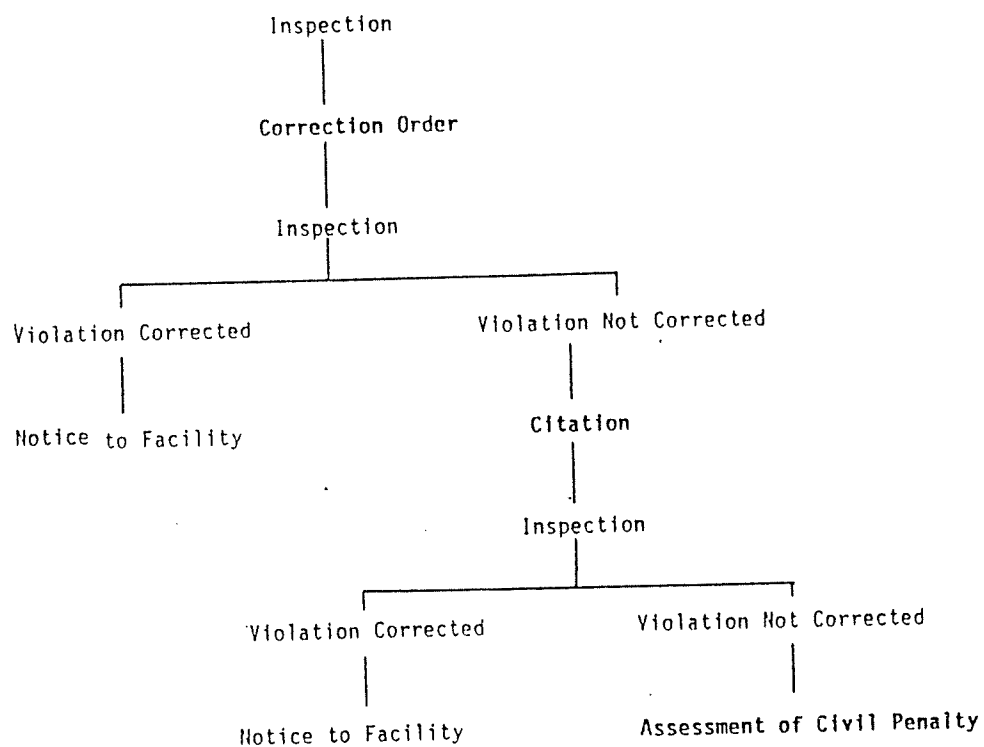
Civil penalties are assessed only for violations that endanger the health, safety or welfare of nursing home residents. Civil penalties are not assessed for violations having to do with administrative or other non-patient related violations.

DEPARTMENT'S POSITION:

The passage of Senate Bill No. 580 will implement a modest improvement in the effectiveness of the adult care home civil penalty statutes. The Department of Health and Environment respectfully recommends that the committee report Senate Bill No. 580 favorably for passage.

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

KANSAS ADULT CARE HOME CIVIL PENALTY PROCESS





**Kansans for Improvement of Nursing Homes, Inc.**

913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842 3088

TESTIMONY PRESENTED TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
CONCERNING SB 580

February 25, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Kansans for Improvement of Nursing Homes believes that it is essential to the enforcement of adult care home regulations that there be functional intermediate steps that the state can take between simply informing the facility repeatedly that it is out of compliance with regulations and is expected to rectify its deficiencies, and closing the home because it continues out of compliance.

Closing a nursing home is a drastic step which can have a highly detrimental effect upon the frail elderly who must be moved to other facilities, in some cases far from home, relatives and friends. The Department of Health and Environment is understandably reluctant to take that step. Nor is it KINH's goal to see adult care homes closed; it is, rather, our desire to see that nursing homes be compelled to comply with Health and Environment regulations. Meaningful civil penalties for persistent, serious non-compliance are such an intermediate step.

It is true that Kansas now has a civil penalties law. In too many cases, unfortunately, it is not an effective tool to enforce compliance. The limitation of \$500 maximum fine which may be levied is in some instances less costly for the nursing home to pay than to rectify the condition which called forth the fine. The National Senior Citizens Law Center, in discussing enforcement mechanisms, observes, "If the citation system is to have any real deterrent effect, the amount of a civil fine must be greater than the amount of money which a facility can save by not complying with the law. Obviously, if it is less costly for facilities to pay a fine than to comply with the law, at least some of them can reasonably be expected to violate the law and, if cited later, to pay the fine." We agree.

Attachment II

2/25/86

S. PH&W

*Attachment II*

We would point out that the maximum limitation of \$5000 would not mean that every fine would be \$5000. It would simply give Health and Environment the ability to adjust the fine according to the severity of the violation and take into account the cost of compliance so that the fine would provide real incentive to comply.

KINH supports SB 580 and urges your favorable consideration.

Marilyn Bradt, Legislative Coordinator



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

February 25, 1986

Testimony for the Senate Public Health and Welfare Committee

Re: Senate Bill No. 580

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

Chairman Ehrlich and Members of the Committee.

The Kansas Association of Homes for the Aging is the organization of community, governmental and religious sponsored homes and services for the aging of Kansas. We have 73 members located in all regions of the state.

We oppose Senate Bill 580.

During the past three years, the Department of Health and Environment has issued 655 Correction orders, 146 Citations, and 21 fines. These figures indicate that only 3.2% of the correction orders resulted in fines. In addition, if the 21 fines were for 21 individual facilities, then 5.6% of the total Adult Care Homes in the State were fined. If the system is designed to minimize the number of fines issued, and in turn, to insure that the correction orders are corrected, then if only 5.6% of facilities were being fined, we would ask the question, "Is the system not working?" It would seem that if nearly 95% of the facilities are not receiving fines, then the system seems to be accomplishing its objective.

Two additional questions we would pose in consideration of this bill. Will the raising of the fine from \$500 to \$5000 serve as a deterrent to those 5.6% of the facilities from violating the regulations? Currently, there is an average lag time of five months from the date of the survey to the assessment of the fine. Would it not make more sense to deal with those few problem situations in a more timely and aggressive manner?

If a serious problem exists, then they should be dealt with as expeditiously and effectively as possible to protect the health and welfare of the residents. Continuing the current system, and allowing facilities to delay correcting the problem, and then at the end fine them \$5000, is punishment after the fact. The real losers in this procedure are the residents who have been subjected to inadequate care for the time period.

Attachment III  
2/25/86 S. PH&W

Attachment III



Senate Public Health and Welfare  
Chairman Roy Ehrlich  
February 25, 1986  
Re: Senate Bill 580  
Page 2

The second question for your consideration is, "Who will pay the fine of \$5000?". If the ownership pays the fine of \$5000, how can we be assured that the Residents, in the end would not foot the bill.

We would prefer to see the department develop a more aggressive and timely survey and correction procedures utilizing the existing statutes to deal with those few homes that are violating the regulations that significantly and adversely affect the health and welfare of the residents.

Thank you Mr. Chairman and Members of the Committee.

Member of



Kansas Health Care Association



TESTIMONY PRESENTED BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

By

Dick Hummel, Executive Director Kansas Health Care Association, Inc.

February 25, 1986

SENATE BILL NO. 580

"AN ACT relating to adult care homes; providing for the assessment of civil penalties."

Mr. Chairman and Committee Members:

Thank you for this opportunity to appear in opposition to S.B. 580, a proposal to increase from \$500 to \$5000 as the maximum amount of a civil penalty, or fine, that can be assessed against an adult care home.

The Kansas Health Care Association is a voluntary, non-profit organization representing over 200 licensed Kansas adult care homes (nursing homes). Our membership includes both proprietary as well as not-for-profit facilities, large and small, in urban and rural locales.

The citation or civil penalty process has been in Kansas statutes since 1978, and it permits the Department of Health and Environment to levy a monetary fine against a nursing home for regulatory deficiencies that "have an endangering relationship to the health,

2/25/86 Attachment IV S. PH&M

pp We Care

safety or sanitation of the adult care home residents."

We find no justification or rationale for a ten-fold increase in fines, other than the explanation stated in "The Governor's Legislative Message" -- "...to encourage compliance with licensing requirements."

COMPLIANCE WITH LICENSING REQUIREMENTS: To analyze this.

Adult care homes are subject to literally hundreds of different regulatory requirements and standards. At least once each year an unannounced state inspection is made. Subsequent reinspections may be made as often and as frequently as determined by the state agency.

Local county health departments visit many homes monthly; the State Fire Marshall's office also inspects nursing homes.

SRS survey personnel (IPR teams) inspect intermediate care facilities every six months.

The Kansas Long-Term Care Ombudsman has unlimited access to the premises of an adult care home.

The Kansas State Department of Health and Environment is charged with enforcing state licensure standards, and has a number of alternative "police-power" options in encouraging compliance.

One is the civil penalty process; another is the authority to outright take over the operation of a home under the nursing home receivership statutes when "conditions exist in the adult care home that are life threatening or endangering to the residents, or the adult care home is insolvent, or the Secretary has issued an order revoking the license of the adult care home."

These powers are known as intermediate sanctions short of licensure revocation or denial of licensure renewal.

FEDERAL SANCTION. The federal Medicaid Agency, HCFA, is about to unfold a "bed-hold" on new admissions sanction. HCFA is developing a fast-track, termination procedure, a 23-day process to stop new Medicaid admissions when it is established that nursing home conditions pose a "serious and immediate" threat to patient health and safety.

In conclusion, we don't believe any increase in civil penalties is warranted.

Also, please consider the cost implications of this upon both the facility and other residents. Our membership on average carries a 50-50 Medicaid/private pay population mix. One \$5000 penalty is equal to almost five months of revenue for a Medicaid recipient. An assessment of that magnitude, while it certainly would get the attention of the adult care home, would also have an affect on the private sector. Civil penalties are non-allowable costs under the Title XIX Medicaid Program.

After weighing and balancing all considerations, we hope you agree with us that S.B. 580 should be reported adversely.

Thank you very much.