

Approved 2-23-88  
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./~~pm~~ on February 17, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research  
Bill Wolff, Legislative Research  
Norman Furse, Revisors Office  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Stanley C. Grant, Secretary, KDHE  
Dick Hummel, Kansas Health Care Association  
John Grace, Kansas Homes for Aging  
Esther V. Wolf, Secretary, Department on Aging  
Carolyn Middendorf, Legislative Chairperson, Kansas State Nursing  
Association  
Marilyn Bradt, Kansans for Improvement of Nursing Homes  
Jim Behan, Chairman, Kansas State Legislative Committee of AARP  
Helen Miller, National Council on Aging  
Mark Intermill, Kansas Coalition on Aging  
Ruben J. Krisztal, Kansas Trial Lawyers Association and private citizen

Chairman Ehrlich called the meeting to order and placed the minutes of February 8, 9 and 10, 1988, before the committee for approval or correction. Senator Hayden moved to accept the minutes as presented with a second from Senator Vidricksen. The motion carried.

Stanley C. Grant, Secretary, KDHE, appeared and presented written testimony in support of SB-585. Secretary Grant told the committee that SB-585 would address issues as follows: 1) eliminate the citation step prior to assessment of a financial penalty; 2) increase the possible assessment from \$500 to \$2,500; 3) provide for a doubling of the assessment for repeat significant and adverse violations within 18 months; 4) authorize the Secretary to ban admissions whenever a violation exists that significantly and adversely affects the health, safety, welfare and nutrition of residents, or the facility is in substantial noncompliance. The goal of these changes is to make intermediate sanctions immediate and meaningful to the degree that they need to be used only sparingly. Attachment 1

Dick Hummel, Kansas Health Care Association, appeared concerning SB-585. Mr. Hummel noted that the term "significantly and adversely" is vague and open to interpretation and requested that this term be defined as shown in the balloon bill contained in Attachment 2. Other amendments concern 24 hour nursing staffing, reinspection in 10 days, informal conferences with KDHE Secretary and public provider information. Attachment 2

John Grace, Executive Director of Kansas Association of Homes for Aging appeared in support of SB-585. Mr. Grace stated that his organization felt the 3 components encompassed by the bill were fair and reasonable, namely 1) the increase in amount of maximum fine, 2) the shortened time period for implementing the fine, and 3) the banning of admissions to facilities under action by the Department of Health and Environment. Attachment 3

Esther V. Wolf, Secretary, Department on Aging, appeared in support

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 17, 1988

of SB-585. Secretary Wolf stated the increased fine, coupled with the denial of new admissions should draw attention and facilitate the correction of problems. Attachment 4

Carolyn Middendorf, Legislative Chairperson, KSNA, appeared in support of SB-585. Ms. Middendorf stated that SB-585 strengthens the current statutory remedies to be used when Kansas nursing homes fail to comply with correction orders for cited deficiencies. Attachment 5

Marilyn Bradt, Kansans for Improvement of Nursing Homes appeared in support of SB-585. Ms. Bradt stated that SB-585 is a long overdue step toward deterring violations and enforcing adult care home regulations. Attachment 6

Jim Behan, Chairman, Kansas State Legislative Committee of AARP spoke in support of SB-585. Mr. Behan stated that this bill is a direct response to the recommendations for improving the state's ability to endorse federal and state nursing home regulations. Attachment 7

Helen Miller, representing the National Council on Aging, spoke concerning SB-585. Ms. Miller stated that it was her belief that raising penalties to the levels described in this bill would serve to impact the industry in a meaningful, productive way. It was also stated that this would raise the standards of nursing homes and ensure more quality care for loved ones. Attachment 8

Mark Intermill, Executive Director, Kansas Coalition on Aging, testified in support of SB-585. Mr. Intermill stated that his support was based on the provision of basic consumer protection for older Kansans who are currently receiving care in an adult care home. Attachment 9

Ruben J. Krisztal, representing the Kansas Trial Lawyers Association and also himself as a private citizen, appeared requesting passage of SB-585 as submitted. Mr. Krisztal stated he was concerned about the amount of litigation occurring over neglect and abuse in nursing homes. Mr. Krisztal stated that the majority of homes are good but the few bad ones needed to be dealt with. Attachment 10

Chairman Ehrlich extended a welcome to the many Senior Citizens visiting the committee meeting.

A brief period of questioning followed with concerns expressed about guidelines to prevent abuse on both sides - there was concern that the patients would bear the ultimate cost of the fines being discussed.

Senator Bond requested the committee's permission to introduce an AIDS bill and moved that this bill request be accepted. Senator Mulich seconded the motion and the motion carried.

Senator Bond announced that the AIDS subcommittee will meet on Friday, at 10 a.m. in Room 526-S.

The meeting adjourned at 11:05 a.m. and will meet Thursday, February 18, 1988 at 10 a.m. in room 526-S.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE February 17, 1988

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
<u>Dick Hummel</u>	<u>Ks Health Care Assn.</u>
<u>Paul Wirth</u>	<u>"</u>
<u>KEITH R LANDIS</u> <u>TOPEKA</u>	<u>CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS</u>
<u>Bill McDaniel</u>	<u>SRS - Topeka</u>
<u>JOE MEDITZ</u>	<u>N. A. R. F. E.</u>
<u>Maquet L. Behrest</u> <u>410 So Blue</u> <u>Banner Spring 102</u> <u>Kansas St. 18</u>	<u>S. A. L. K. I. N. H.</u>
<u>Del DIMROW</u>	<u>Rt 1 Box 243 Scot City</u>
<u>Louise Astlund</u> <u>1203 1/2 10th Ave.</u> <u>Lawrence 66048</u>	<u>KIN H</u>
<u>Bob Brubaker</u> <u>Boulder</u>	<u>HAARP State Leg Comm</u>
<u>Quentin Miller</u> <u>Lapeka</u>	<u>Natl Coon aging</u>
<u>Joseph Turner</u> <u>1429</u> <u>Lawrence</u> <u>ASGHW Dr</u>	<u>SHL -</u>
<u>Esther V Wolf</u> <u>KP</u>	<u>K. D. O. A.</u>
<u>Nancy McReynolds</u>	<u>So. Co Area Agency on Aging</u>
<u>Arthur A. Collins</u> <u>9400 STATE</u> <u>KCKS 66112</u>	<u>Wy/LV Area Agency on Aging</u>
<u>Arleta Benzler</u> <u>Colby</u>	<u>KIN H</u>
<u>Harriet Nehring</u> <u>Lawrence</u>	<u>KIN H</u>
<u>Petey Cerf</u> <u>Lawrence</u>	<u>KIN H</u>
<u>Thomas M. Brown</u>	<u>Silver Haired Legislators</u>
<u>Ellen Brannon</u>	<u>Dist. 5, Johnson County</u>
	<u>BATT</u>

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-17-88

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

EUNICE DORST - MANHATTAN

KSU

Shirley Spikes Manhattan

NC/FH Care Agency on Aging

Sam Gordon Manhattan

NC/FH A.A.O.A.

RUBEN JORGE KRISTAC Overland Park,

KTLA.

Michael Wolf, Topeka

KTLA

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field*

*Topeka, Kansas 66620-0001*

*Phone (913) 296-1500*

Mike Hayden, *Governor*

Testimony presented to

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 585

BACKGROUND INFORMATION

Authority for civil penalties to be assessed against adult care homes was established by 1978 legislation as recommended by a special task force appointed by Governor Robert Bennett. The task force conceived of civil penalties as an intermediate sanction, that is, a level between routine deficiencies and severe or life threatening problems for which a license would be revoked. The same task force recommended the present receivership statutes to protect residents from severe or life threatening problems.

CURRENT LAW

K.S.A. 39-945 authorizes the Secretary to issue a correction order to an adult care home when noncompliance 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.

The Department reinspects following the specified time allowed for correction to determine if the corrections have been made. If the adult care home has not made the corrections, K.S.A. 39-946 requires the Department to issue a citation listing the uncorrected deficiency or deficiencies. The Department then reinspects again and makes a determination as to whether or not the corrections have been made following the issuance of a citation.

If the corrections have still not been made, the Secretary may assess a civil penalty in an amount not to exceed \$100 per day per deficiency but the maximum assessment may not exceed \$500.

Attachment A graphs the number of correction orders, citations and assessments issued each calendar year since 1982. The results in 1987 reflect the Department's efforts to focus more on significant deficiencies and problem facilities.

### ISSUES ADDRESSED

This bill is proposed to enhance the use of intermediate sanctions, in lieu of revocation or denial of licensure. The current procedure to assess civil penalties remains cumbersome to implement and not as effective as desired in dealing with chronic noncompliance by some facilities. The proposed bill would address these concerns by:

- (1) eliminating the citation step prior to assessment of a financial penalty;
- (2) increasing the possible assessment from \$500 to \$2,500;
- (3) providing for a doubling of the assessment for repeat significant and adverse violations within 18 months, and;
- (4) authorizing the Secretary to ban admissions whenever a violation exists that significantly and adversely affects the health, safety, welfare and nutrition of residents, or the facility is in substantial noncompliance.

The goal of these changes is to make intermediate sanctions immediate and meaningful to the degree that they need to be used only sparingly. The most effective deterrent is one that is used infrequently.

### BENEFITS

1. Eliminating the citation from the three procedural steps prior to assessment of the civil penalty.

The civil penalty process can only be initiated for violations that significantly and adversely affect the health, safety, welfare and nutrition or sanitation of residents. A common problem cited is restraining an individual for periods in excess of 2 hours without opportunity to stretch, exercise or perform bathroom activities. The time delay caused by implementation of the second procedural step is not consistent with the need to protect individuals from the adverse effect of such violations. It is fair to the facility to provide one warning; it is unfair to residents to give more than one warning. Attachment B compares the current process to the proposed process and shows the time saved by elimination of the second procedural step.

2. Increase the maximum assessment from \$500 to \$2,500.

As shown in Attachment A, the number of facilities assessed a financial penalty has historically been a small percentage of facilities cited for significant and adverse violations. Attachment C shows the reason a penalty was assessed eleven times in 1987. This indicates that \$500 is not an effective enough a deterrent to assure all individuals in adult care homes are protected from significant and adverse violations. Given today's rates and reimbursements, even a small 60-bed facility will have an operating budget approaching \$1,000,000. Five hundred dollars simply is not a deterrent.

3. Double the assessment for repeat violations within an 18-month period.

Attachment C also shows the number of facilities within a period of 18 months that were assessed for repeated violations that significantly and adversely affected the health, safety, welfare and nutrition of individuals in adult care homes.

This pattern of correcting serious violations to avoid immediate sanction only to repeat that violation when the department is not observing is unacceptable in the interests of residents. A facility that violates a statute or regulation that significantly and adversely affects a resident and then does so again ought to be subject to double the penalty of the first time violator.

4. Ban on admissions.

A facility that has violations that significantly and adversely affect residents or that is in substantial failure to comply with all requirements or that is subject to an order revoking its license has demonstrated an inability to provide acceptable care to the persons who reside there. Such a situation demands that no new person be placed at risk in such an environment and that the facility's resources be applied to protecting its current residents.

There is no more effective deterrent that so clearly and directly relates to protection of the public than a ban on admissions.

These proposals are not intended as a punitive hammer to be wielded by the agency but rather as a deterrent to recurrent conditions that threaten the dignity and safety of our most frail citizens. Attachment D compares current Kansas civil penalty authority to other states. A 1986 survey of 30 states showed 25 states have civil penalty authority up to \$25,000 per violation. The median civil penalty was \$1,000 per violation. Few states place a ceiling on fines per facility as does Kansas.

Twenty-two of the twenty-five states having authority to fine, did so in 1985.

Twenty of the twenty-five states provide for a maximum fine per violation greater than Kansas.

Fourteen of twenty-five have a maximum fine per violation greater than the maximum total fine in Kansas.

According to the 1986 Institute of Medicine Report on Improving the Quality of Care in Nursing Homes, 32 states have authority to suspend all admissions.

In order attract and retain the best society has to offer, Kansas must be a leader in quality nursing home care. Having in place effective sanctions for the purpose of deterring unacceptable behavior and, if necessary, penalizing such behavior, is an important ingredient to a progressive and attractive community.

#### RECOMMENDATIONS

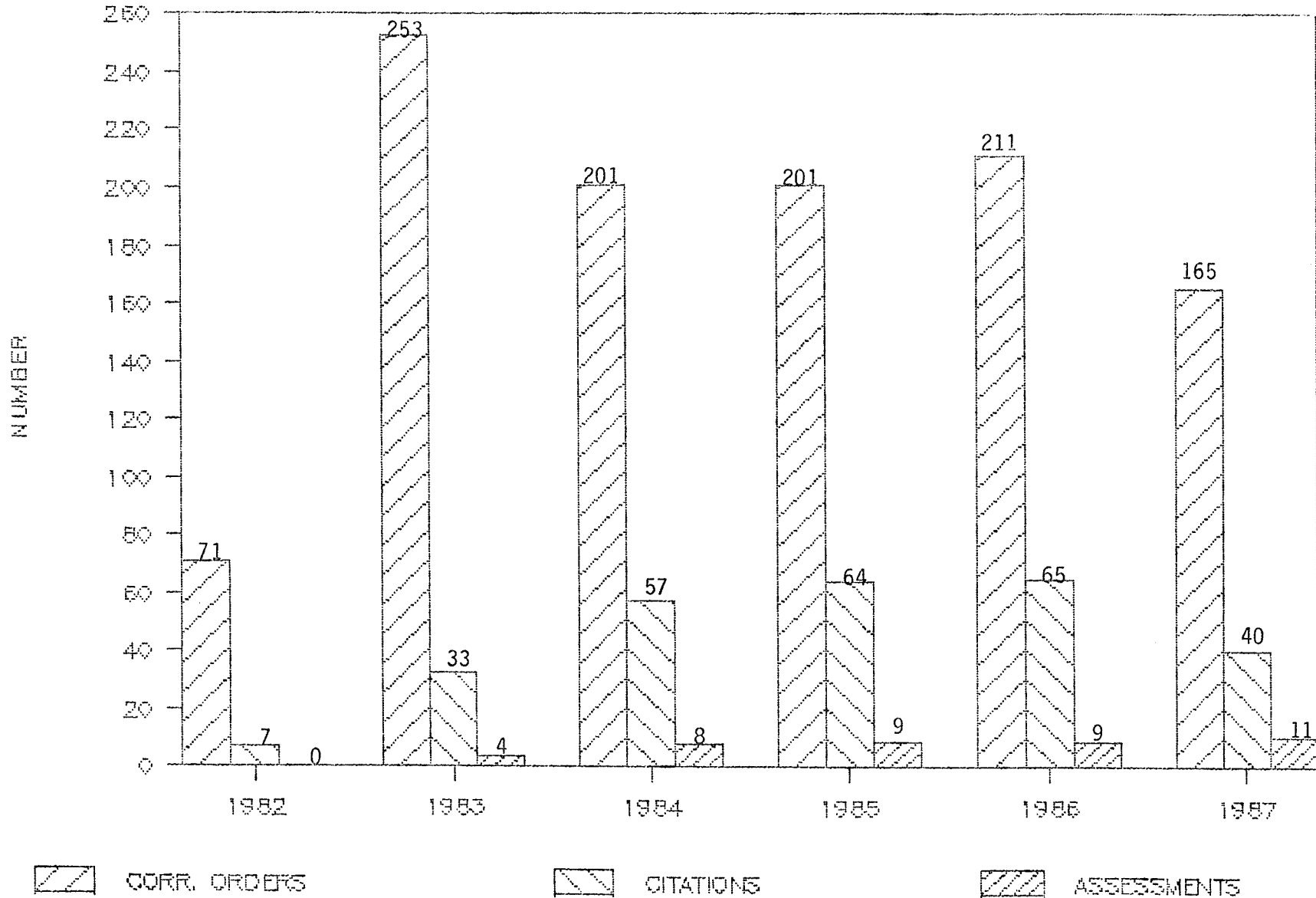
We recommend that the committee report SB 585 favorably for passage.

Presented by: Stanley C. Grant, Ph.D.  
Secretary, Department of Health and Environment  
February 17, 1988



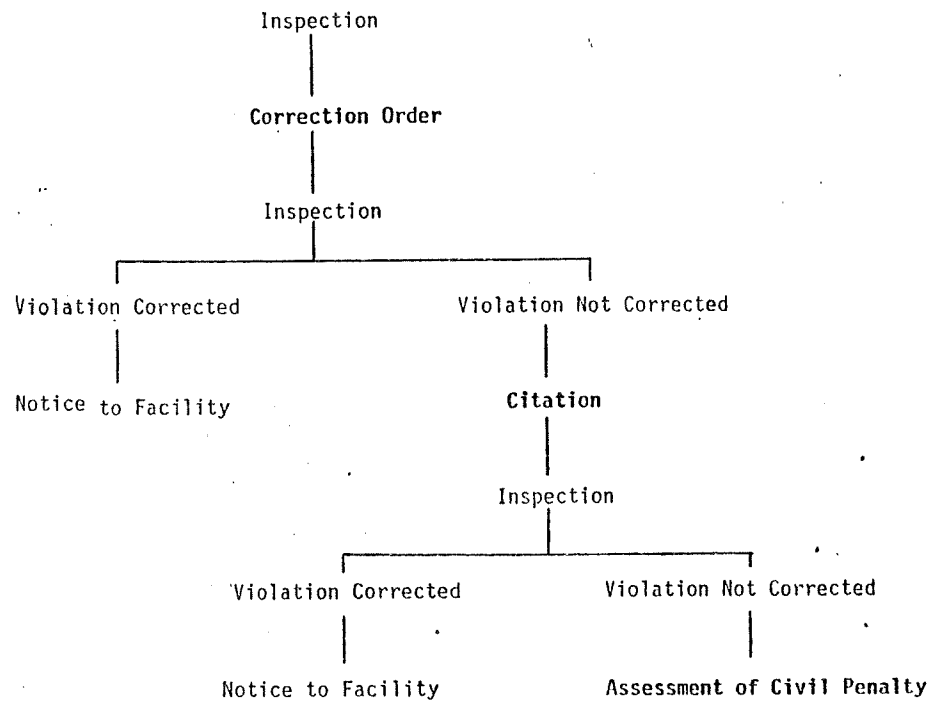
# CIVIL PENALTY ACTIONS 1982 TO 1987

NUMBER OF ACTIONS COMPARED BY YEAR

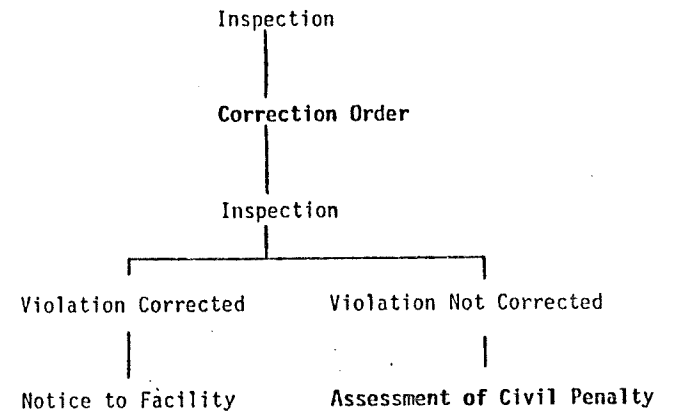


KANSAS ADULT CARE HOME CIVIL PENALTY PROCESS

Current Process



Proposed Process



## 1987 Assessments

<u>Facility #</u>	<u>Violation(s)</u>
1	Restraints not released
2 *	medications not administered per physican orders
3	restraints not released, nursing needs not met, medications accessible to residents
4	treatments not given per physician's order
5 *	infection control, nursing needs not met, medications accessible to residents
6 *	asepsis technique on treatments, medications not administered per physician's order
7 *	restraints not released, medications and treatments not given per physician's order
8	medications accessible to residents, asepsis technique
9	unsafe medication administration, lack of bowel and bladder retraining, hazardous chemicals accessible
10 *	asepsis technique with medications
11	medications not administered per physician's order

\* Five of ten of the above facilities were assessed a fine for a violation cited in a correction order in 1986. The eleventh facility was not operating in 1986.

Attachment D

1986 Survey of 30 states

Maximum Fine per Violation	Number of States
\$25,000	1
15,000	1
10,000	2
5,000	5
1,500	1
1,000	4
Kansas facility cap..... 500	4
300	2
Kansas per violation cap..... 100	2
50	1
25	1
Other	1
	<hr/>
TOTAL	25
MEDIAN:	\$1,000
MEAN:	\$3,891

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In The Matter Of The Correction Order  
Against [REDACTED]

Case No. 87-ACF-85

CORRECTION ORDER

TO: [REDACTED]

Licensee and administrator for the above-captioned facility.

You are hereby notified that [REDACTED] has been determined to be in noncompliance with KAR 28-39-78(a)(7), KAR 28-39-87(e), KAR 28-39-87(a), KAR 28-39-87(f)(8)(B), KAR 28-39-87(h)(3), KAR 28-39-98(a), KAR 28-39-89(a), KAR 28-39-87(i)(1), KAR 28-39-87(i)(2), KAR 28-39-87(i)(3), KAR 28-39-89(f), KAR 28-39-92(d)(1), KAR 28-39-89(f)(1), KAR 28-39-97, KAR 28-39-101(e), and KAR 28-39-109(m), which provide:

KAR 28-39-78(a)(7) -- The resident shall be free from restraints unless the restraints are authorized by a physician for a specified and limited period of time or when necessary to protect the resident from injury to self or others.

KAR 28-39-87(e) -- There shall be a signed physician's order for any restraint, including justification, type of restraint, and duration of application. A resident shall not be restrained unless, in the written opinion of the attending physician, it is required to prevent injury to the resident or to others and alternative measures have failed.

CORRECTION ORDER

Page 2

KAR 28-39-87(a) -- Each facility shall provide programs and personnel to meet the nursing needs of the residents.

KAR 28-39-87(f)(8)(B) -- Treatment for pressure sores shall be given according to written physician's orders.

KAR 28-39-87(h)(3) -- Food and fluid intake of residents shall be observed recorded, and reported to the charge nurse.

KAR 28-39-98(a) -- The facility shall provide a sanitary environment and shall follow proper techniques of asepsis, sterilization, and isolation.

KAR 28-39-89(a) -- The facility shall ensure safe and accurate ordering, storage, distribution, administration, review, and recording of all medications and biologicals and shall have written policies and procedures for pharmacy services.

KAR 28-39-87(i)(1) -- The facility shall have a written program of restorative nursing care which shall be an integral part of nursing services. The written program shall be directed toward assisting the resident to achieve and maintain an optimal level of self-care and independence.

KAR 28-39-87(i)(2) -- There shall be evidence of regular staff development training sessions, for all nursing personnel, in restorative nursing techniques to promote ambulation, to aid in activities of daily living, to assist in activities, to assist in bladder and bowel retraining, to encourage self-help, to promote the maintenance of normal range of motion, to ensure correct chair and bed positioning, and to prevent or reduce incontinence.

KAR 28-39-87(i)(3) -- Written records shall be maintained regarding all restorative nursing services performed.

KAR 28-39-89(f) -- The facility shall ensure that all medications are administered to residents in a safe and accurate manner and in accordance with a physician order and requirements of law.

KAR 28-39-92(d)(1) -- Menus shall be planned and followed to meet the nutritional needs of residents in accordance with physicians' orders, the residents' nutritional care plans, and to the extent medically possible, the current recommended daily allowances of the food and nutrition board of the national research council, national academy of sciences, as in effect on July 1, 1981.

CORRECTION ORDER

Page 3

KAR 28-39-89(f)(1) -- All medications shall be administered by physicians, licensed nursing personnel, or by other personnel who have completed a state-approved training program in medication administration. Injectables shall be administered only by physicians or licensed nurses.

KAR 28-39-97 -- The skilled nursing home and intermediate nursing care home shall provide staff and services to ensure a clean, safe, and comfortable environment for residents and shall meet the environmental sanitation and safety requirements prescribed in KAR 28-39-98 to KAR 28-39-102, inclusive.

KAR 28-39-101(e) -- Building and equipment supplies shall be stored in areas not accessible to residents.

KAR 28-39-109(m) -- The facility shall provide laundry areas and equipment appropriate to the needs of the residents and non-residents served the facility.

Relative to this matter [REDACTED] has been inspected on the following occasions: June 1, 2, 3, 4, and 5, 1987, by [REDACTED] and [REDACTED], and on June 8, 1987, by [REDACTED]

This facility was determined to be in noncompliance on the following dates and was notified by preliminary inspection reports dated June 5 and 11, 1987, and signed by [REDACTED]. Attached as Exhibit A and incorporated herein is a copy of the deficiency reports setting forth the factual basis for this order.

These deficiencies (nonconformities) are deemed to significantly and adversely affect the health, safety, nutrition, or sanitation of the residents.

CORRECTION ORDER

Page 4

IT IS THEREFORE ORDERED pursuant to KSA 39-945, that

provide:

1. That a physician's order for physical restraints be obtained prior to administering any physical restraint in accordance with KAR 28-39-78(a)(7) and KAR 28-39-87(e) immediately upon receipt of this order.
2. That adequate health services be provided to ensure that nursing services are provided as ordered as required by KAR 28-39-87(a) immediately upon receipt of this order.
3. That decubitus treatments be administered as ordered by the physician and using proper nursing techniques as required by KAR 28-39-87(a) and (f)(8)(B) immediately upon receipt of this order.
4. That adequate health services be provided to ensure that proper catheter care is given as required by KAR 28-39-87(a) immediately upon receipt of this order.
5. That food and fluid intake of each resident shall be observed, recorded, and reported to the charge person as required by KAR 28-39-87(h)(3) immediately upon receipt of this order.
6. That proper nursing techniques be followed in administration of medications as required by KAR 28-39-89(a) and KAR 28-39-98(a) immediately upon receipt of this order.
7. That adequate rehabilitation services be provided to meet the resident's needs as required by KAR 28-39-87(i)(1)(2)(3) immediately upon receipt of this order.
8. That all medications be administered according to physician's orders as required by KAR 28-39-89(f) immediately upon receipt of this order.
9. That all therapeutic diets be served as ordered as required by KAR 28-39-92(d)(1) immediately upon receipt of this order.

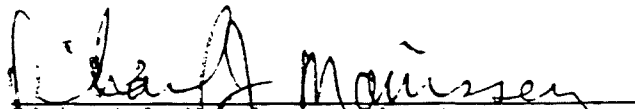


CORRECTION ORDER

Page 5

10. That all injectables are administered by either physicians or licensed nurses in accordance with KAR 28-39-89(f)(1) immediately upon receipt of this order.
11. That all hazardous chemicals, such as cleaning solutions, be stored in areas not accessible to residents as required by KAR 28-39-97 and KAR 28-39-101(e) immediately upon receipt of this order.
12. That the facility shall provide a laundry areas and equipment appropriate to meet the needs of the residents and non-residents as required by KAR 28-39-109(m) immediately upon receipt of this order.

Dated this 15<sup>th</sup> day of July, 1987.

  
Richard J. Morrissey, Director  
Bureau of Adult & Child Care Facilities

CORRECTION ORDER

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CERTIFICATE OF MAILING

I hereby certify that on the 15<sup>th</sup> day July, 1987, a true and correct copy of the foregoing Correction Order was mailed to:

deposited the same in a properly addressed envelope, postage prepaid, certified mail, return receipt requested in the U.S. mail.

Staff Member

Certified Mail # 518644875

Certified Mail # 518644874



PRELIMINARY INSPECTION REPORT OR  
FOLLOW-UP REPORT

LICENSE OR  
PROVIDER NUMBER

DATE OF VISIT

6/1-5/87

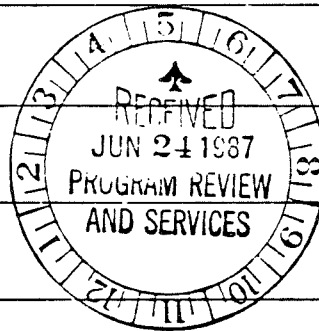
NAME OF FACILITY

STREET ADDRESS CITY STATE ZIP CODE

ITEM

PRESENT STATUS

I felt the survey team was very helpful and helped our staff understand the survey process. I believe the process was fair and the problems noted were defined in enough detail to allow our staff adequate information to correct the issues. This was a good experience.



The signatures below acknowledge discussion of the deficiency list and receipt of a copy of the same

DATE

SURVEYOR

ADULT CARE HOME REPRESENTATIVE'S SIGNATURE

DATE

6/5/87

6-5-87

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING

B. WING

Generalist  
6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
D F47 F49	<p>CFR 405.1121(k)(1)(2), 442.311(a)(3)(4)                      KAR 28-39-78(a)(1), (5)(3) and 83(b)(5)                      The admission financial agreement and verification of resident rights were signed by someone other than the resident or legal guardian in 4 of 13 independent residents reviewed.</p>			
D F65 F68	<p>CFR 405.1121(k)(6), 442.311(b) and 442.320(a)(2)                      KAR 28-39-83(j)(1)(4)                      The facility has managed funds for 15 residents since March, 1987 but did not have authorization for any of these residents. Receipts for disbursements were signed by the activity director and not the resident in 6 cases.</p>			
D F71 F118	<p>CFR 405.1121(k)(7) and 405.1124(c), 442.311(j)(2)(i)                      KAR 28-39-78(a)(7) and 87(2), 442.335                      Three residents lacked a physician order for the use of physical restraints, one resident lacked a current order for the use of duct-tape restraints, two residents were duct-tape restrained.</p>			

page 1 of 14

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

L1-1

<b>STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION</b>	(X1) PROVIDER NUMBER [REDACTED]	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED <i>6/1-5/87</i>
---	------------------------------------	--	---

NAME OF PROVIDER OR SUPPLIER [REDACTED]	STREET ADDRESS, CITY, STATE, ZIP CODE [REDACTED]
--	---

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
<i>13</i> <del>F113</del>	<i>Continued .....</i>			
	<i>Orders awarded for duration and justification for use, one resident locked order for type of restraint used (sheet). One resident was observed restrained in a wheelchair for 3 1/2 hours before release and opportunity for exercise or change of position.</i>			
<i>F113</i>	<i>CFR 405.1124(c) and 442.338(a)</i>			
<i>F114</i>	<i>KAR 28-39-87(a)</i>			
	<i>Nursing services were not provided to meet the needs of each resident because of the following reasons:</i>			
	<i>a) Resident # 12 had 4+ pitting edema of feet and lower legs and on order for TED hose but were never applied.</i>			
	<i>b) Blood pressure readings were not available as ordered for 3 of 13 independent residents.</i>			
	<i>c) Weights were not taken for 2 independent residents as ordered by the physician. (resident # had congestive heart failure cardiac arrhythmias, weight loss)</i>			

PROVIDER REPRESENTATIVE'S SIGNATURE	TITLE	(X6) DATE
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*page 2 of 14*

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

81-1

## STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING

B. WING

6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4)  
ID  
PREFIX  
TAGSUMMARY STATEMENT OF DEFICIENCIES  
(EACH DEFICIENCY SHOULD BE PRECEDED  
BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)ID  
PREFIX  
TAGPROVIDER'S PLAN OF CORRECTION  
(EACH CORRECTIVE ACTION SHOULD BE CROSS-  
REFERENCED TO THE APPROPRIATE DEFICIENCY)(X5)  
COMPLETION  
DATE

5) F117

CFR 405.1124(c) and 442.338  
KAR 28-39-87 (f)(8)(B)

One resident with 3 decubiti was observed on 6/1/87 with fecal material on the dressing to the coccyx area and had no dressing on 2 areas (coccyx and rt hip) on 6/2/87. Two residents with decubiti did not have areas cleaned prior to application of ointments. One of these residents had feces on buttocks and Foley catheter at time of treatment on 6/2/87.

6) F120

CFR 405.1124(c) and 442.338  
KAR 28-39-87(a)

Residents with Foley catheters did not always receive proper care. Four residents were observed laying on the catheter and/or tubing. Two residents were observed with the catheter tubing dragging the floor, one had feces on the catheter. One resident had a physician order to remove catheter on 6/2/86 in one week but was not removed until 6/17/86. Inlet intake and output was not recorded for one resident with a Foley catheter in May and inconsistently recorded for one other resident with a catheter.

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X8) DATE

page 3 of 14

► Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite for continued program participation.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A BUILDING \_\_\_\_\_

B WING \_\_\_\_\_

6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
F121	<p>CFR 405.1124(c) KAR 28-39-87(a)(h)(3) One skilled patient receiving nasogastric tube feedings lacked a record of feedings to verify compliance with physicians orders. The physicians order did not include amount of water to be administered via N/G tube and the amount of feedings recorded varied each day.</p>			
F123	<p>CFR 405.1124(c) and 442.338 KAR 28-39-98(a) and 89(a.) Proper techniques were not followed in medication administration because: a) Good handwashing was not always practiced between residents. b) Some residents had medications crushed that were contraindicated (Zerono sulfate, Motrin, mircap). c) The treatment cart, containing multiple bottles of betadine, hydrogen peroxide, and band-aids, was left unattended in the hall and accessible to residents while the treatment nurse</p>			
PROVIDER REPRESENTATIVE'S SIGNATURE			TITLE	(X8) DATE

page 4 of 14

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.



STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING

B. WING

6/15/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
<del>155</del>	continued --- was inside resident rooms performing treatments.			
D) F155 F158 F159	<p>CFR 405.1124 (e) and 442.338 and 442.343(f) KAR 28-39-87 (i)(1)(2)(3) and (j)(8)(E) Rehabilitative nursing services were not adequate to meet resident needs because of the following reasons:</p> <ul style="list-style-type: none"> <li>a) One <sup>targeted</sup> resident lacked application of a wrist splint on all days of the survey as ordered by physician</li> <li>b) One <sup>in depth</sup> resident <sup>received</sup> was receiving no assistance with ambulation as ordered</li> <li>c) Three of 13 targeted residents and one other observed lacked supportive devices to prevent foot drop.</li> <li>d) No heel protectors were provided as indicated for 4 of 13 residents.</li> <li>e) Bowel and/or bladder retraining programs initiated for 7 residents were not properly implemented. Records did not indicate these residents were taken</li> </ul>		G.D.A. 7/15/87	
PROVIDER REPRESENTATIVE'S SIGNATURE			TITLE	(X6) DATE

page 5 of 14

\*Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

1-21

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING

B. WING

6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
	<p>Continued to the bathroom, every 2 hours, after fluids furnished, or daily, response to the program.</p> <p>f) Restorative nursing services were not consistently recorded as provided as prescribed or planned. Documentation stated restorative aide were pulled to floor duty, not provided on complete days, or restorative aide absent on 26 of 41 records reviewed.</p>			
	<p><del>F165 CFR 405.1124(h) and 442.334 KAR 28-39-87(4)(3)</del></p> <p>F172 CFR 405.1124(h)(g), 442.334(a).</p> <p>F173 CFR 442.341 and 442.342</p> <p>F174 KAR 28-39-89(8)(d)</p> <p>F209 Medications were not administered in accordance with physicians orders as follows:</p> <p>a) Three residents <del>to</del> observed during drug pass and 1 indigent resident reviewed did not receive medications</p>			

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PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

# STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

A BUILDING

B WING

6/1-5/87

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
<p>Continued ....</p> <p>as ordered by the physician because the medication was not available (arisea, synthroid, endural) Insurance was borrowed from another resident.</p> <p>b) One resident had an antibiotic ordered 5/5/87 but was not administered until 5/12/87. Only 17 of the 30 doses ordered were recorded as administered.</p> <p>c) One resident lacked documentation of insulin injections 10 times in May, 1987</p> <p>CFR 405.1125(c)(2), 442.332(b)(1)(2)</p> <p>KAR 28-39-92 (a)(3)(i)(g)(1)</p> <p>The nutritional needs of each resident were not met because:</p> <p>a) Diabetic residents were served 2% milk rather than skim milk and one diabetic resident was given sugar by a nurse aide at breakfast 6/1/87</p> <p>b) One resident had a physician order for poly care to increase calories but was not provided because it was not available. (unusual)</p> <p>c) Plates of food were placed on tables before residents arrived in the dining room and were cold before</p>				
<p>PROVIDER REPRESENTATIVE'S SIGNATURE</p>	<p>TITLE <i>page 7 of 12</i></p>		<p>(X6) DATE</p>	

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See **verse for further instructions.**) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to ongoing program participation.

1-23

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING  
B. WING

6/15/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
	<p><i>continued...</i></p> <p>residents arrived. Two meal trays were observed standing in an unheated cart for 25 minutes prior to being served to residents in feeder area at breakfast meal 6/12/87. A Taste Test of food directly from the steam table at breakfast and lunch, <sup>6/12/87</sup> revealed that food was not served hot.</p> <p>d) All foods were prepared without salt at breakfast meal 6/12/87 and no salt was provided to residents in the feeder area of the dining room.</p>			
F240	<p>CFR 405.1124 (d), 442.341 KAR 28-39-84 (d)(4)</p> <p>Reviews of all care plans <sup>deleted</sup> <del>revised</del> Reviews of all care plans did not address all problems and reflect changes in patient condition. Reviews of several problems were reflected in only one general statement.</p>			

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PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

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1-24

## STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

BUILDING

B WING

6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4)  
ID  
PREFIX  
TAGSUMMARY STATEMENT OF DEFICIENCIES  
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COMPLETION  
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KAR 28-39-85 (1)(2)(3)(4)

Six employees, hired since the last survey that have worked longer than 10 days, lacked a physical exam signed by a physician.

KAR 28-39-78(a)(3)

The facility admission financial agreement stated 5 days notice would be given in advance of transfer or discharge rather than 15 days as required in 7 of 13 independent residents received.

KAR 28-39-89(f)(1)

Insulin was documented as administered to one resident by a CMA at 5 PM on 6/1 and 6/2/87.

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A BUILDING  
B WING

6/1-5/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

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<p>---</p> <p>(18)</p>	<p>KAR 28-31-101(d)</p> <p>Resident care equipment was not maintained in a safe and sanitary manner as follows:</p> <ul style="list-style-type: none"> <li>a) Floor cleaner (Sundance) in individual janitors closet hall 4 6/1/87</li> <li>b) a gallon peri-wash and alcohol spray in residents bathroom 415 6/1/87</li> <li>c) shoe vests, with warning label, in room 412 and hall 1 mens shower room 6/1/87</li> <li>d) alcohol on dresser in room 405</li> <li>e) Jam pads in wheelchair removed</li> <li>f) <del>worn shoe (string) in room 412</del></li> <li>g) 3 soiled brushes and 1 soiled comb were observed unidentified in the whirlpool room hall 1 on 6/1/87.</li> </ul>			
<p>---</p> <p>(19)</p>	<p>KAR 28-39-87(g)(5)</p> <p>A "no smoking" sign was not posted on the corridor side of the door in room 409 where a resident was receiving oxygen as needed on 6/1. Then 6/5/87.</p>		<p>page 13 of 17</p>	

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER [REDACTED] (X2) MULTIPLE CONSTRUCTION BUILDING \_\_\_\_\_ WING \_\_\_\_\_ (X3) DATE SURVEY COMPLETED 6-8-87

NAME OF PROVIDER OR SUPPLIER [REDACTED] STREET ADDRESS, CITY, STATE, ZIP CODE [REDACTED]

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
F342 F345	<p>(7) CFR 405.1135(d) Linens were not handled, processed, and transported in such a manner as to prevent the spread of infection as evidenced by:</p> <p>(a) KAR 28-39-99(e) &amp; KAR 28-39-104(k) Soiled laundry was manually sorted on the floor, as adequate bins or tables were not provided.</p> <p>(b) KAR 28-39-104(k) After five hours of work by the laundry staff, the quantity of soiled laundry was so great as to nearly prohibit passage through the sorting area. One of only two washing machines shook so badly during spin cycles that it was eventually shut down.</p> <p>(c) KAR 28-39-100(e) Hot water supplied to the washing machines measured 150°F, rather than the required 160°F.</p>			

Note: Change of Ownership Deficiencies corrected with the exception of item (3) (Item 39 on 10/11/85 letter of 9-26-86)

PROVIDER REPRESENTATIVE'S SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_ (X6) DATE \_\_\_\_\_

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1-27

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In The Matter Of The Correction Order  
Against [REDACTED]

Case No. 87-ACF-85

CITATION

Now on this 20<sup>th</sup> day of August, 1987, Stanley C. Grant, Ph.D., Secretary, Kansas Department of Health and Environment, reviews the file on this matter and after consultation with his staff finds that a Citation should be issued pursuant to KSA 39-946.

The Secretary finds that a Correction Order was issued on July 15, 1987, stating that the above-entitled facility was in violation of KAR 28-39-78(a) (7), KAR 28-39-87(e), KAR 28-39-87(a), KAR 28-39-87(f) (8) (B), KAR 28-39-87(h) (3), KAR 28-39-98(a), KAR 28-39-89(a), KAR 28-39-87(i) (1), KAR 28-39-87(i) (2), KAR 28-39-87(i) (3), KAR 28-39-89(f), KAR 28-39-92(d) (1), KAR 28-39-89(f) (1), KAR 28-39-97, KAR 28-39-101(e), and KAR 28-39-109(m) and that the facility was to correct these immediately upon receipt of that order.

The Secretary finds that on July 16, 1987, a representative from [REDACTED] and on July 22, 1987, [REDACTED] signed the receipts for the Correction Order on behalf of [REDACTED]

The Secretary finds that [REDACTED] was revisited on July 29 and 30, 1987, by [REDACTED]. Attached as Exhibit A and incorporated herein is a copy of the deficiency reports setting forth the factual basis for this order.



CITATION

[REDACTED]

Page 2

The Secretary further finds that as a result of the July 29 and 30, 1987 inspection, the following items were deemed not to be corrected.

KAR 28-39-78(a) (7) and KAR 28-39-87(e) -- One resident lacked a physicians order for the use of physical restraints. Residents were not released from physical restraints every 2 hours for exercise or change of position. Five residents were observed restrained for periods ranging from 2½ to 4½ hours before release.

KAR 28-39-87(a) -- One resident did not have TED hose applied on July 29, 1987, because none was available. Blood pressure readings were not available as prescribed or planned for 4 of 5 residents and the other resident had a daily blood pressure reading ordered and the physician was to be notified if above 165 systolic and 105 diastolic. This resident had a blood pressure reading recorded 180/100 on July 7, 1987, and 168/108 on July 15, 1987, but there was no evidence the physician was notified.

KAR 28-39-87(a) and KAR 28-39-(f) (8):(B) -- Treatments were not documented or administered as ordered for 8 of 8 residents reviewed. The treatment nurse scheduled to provide treatments on the day shift observed July 29, 1987, did not have time to complete all treatments on the day tour of duty.

KAR 28-39-87(a) — Proper catheter care was not provided because 2 residents were observed lying on the catheter tubing, 2 were observed with feces on the catheter, and 2 residents were observed with catheter tubing and drainage bags dragging the floor while up in wheelchair.

KAR 28-39-87(h) (3) -- Food and fluid was not recorded consistently for meals or for residents with Foley catheters. Intake was not recorded for one resident receiving tube feedings, one resident for fluid restrictions, and one resident with poor fluid and food intakes.

KAR 28-39-89(a) and KAR 28-39-98(a) — Proper techniques of good handwashing was not practiced between residents. Two residents were not observed by the medication nurse while taking the drug. Ten of 14 residents did not received medications at the right time. The medication nurse on Hall 1 and 2 had worked only 5 days in the facility and was still passing 9:00 am medications at 12:00 noon and 1:00 pm medications at 3:00 pm.

KAR 28-39-87(i) (1) (2) -- Only 30 of 128 residents were on a restorative nursing service program. Residents were identified in need of restorative services but were not receiving this service. Three residents had daily orders for services but were not provided on weekends. Supportive duties to prevent foot drop were not available as indicated nor were heel protectors provided. Cones were not provided to all residents with contractural hands. The bowel and bladder retraining program had been attempted but not consistently provided and not recorded daily.

One restorative aide was absent on June 23 and 25, 1987, and was pulled to floor duty and June 29 and July 2, 1987 and therapy services were not provided during these days. The other aide was absent on July 7, 1987, and services were not provided.

KAR 28-39-89(f) -- One resident observed during drug pass on July 29, 1987, did not have the medication available and was not administered. Another resident did not have insulin recorded as given on June 29, 1987 and the order for insulin in the pm on this date was not given according to physicians order (10 units given rather than 5 units as ordered).

KAR 28-39-92(d) (1) -- Therapeutic diets were not served as ordered and planned on the menu. Two resident diet orders did not agree with the tray/plate diet order card. Diabetic residents were served whole milk on July 29, 1987, rather than non-fat milk because non-fat milk was not available and one diabetic resident was served whole milk on July 30, 1987. One resident did not receive polycase on food at breakfast July 29, 1987, because none was available. There was no salt seasoning in food for regular diets at breakfast meals observed.

KAR 28-39-97 and KAR 28-39-101(e) -- An unidentified chemical was stored in an unlocked cabinet in Hall 3 soiled workroom. Brights Washroom cleaner and Respond Spray Buff were in unlocked area of Hall 3 soiled utility room.

CITATION

Page 5

KAR 28-39-109(m) -- The facility did not provide a laundry service to meet the needs of the residents. On July 30, 1987, laundry was observed being sorted on the floor. Two bags of dish towels from dietary were on the floor in the laundry on July 29, 1987, and 2 large laundry bins of soiled linens were stored approximately 4 feet above the level of cart, uncovered, in the holding room and 1 bin in the washer room and there were 9 barrels of soiled linen in the holding room. There were insufficient linens (blankets, sheets, incontinent pads, wash cloths) on the halls to care for residents. Nurse aides had to leave resident care and go to the laundry to obtain clean linen in order to change beds and care for incontinent residents. One resident was crying "I'm cold." The aide said no blankets were available. There were only 2 #50 capacity washers in use. Residents and resident families were complaining that clothing had been lost in the laundry.

The Secretary finds that the uncorrected deficiencies set forth above have an endangering relationship to the health, safety, nutrition, or sanitation of the adult care home residents.

Failure to correct the deficiencies set out above may result in the assessment of a penalty not to exceed \$100.00 per day per deficiency for each day subsequent to the day following issuance of this Citation that the deficiencies have not been corrected - the maximum assessment not to exceed \$500.00.

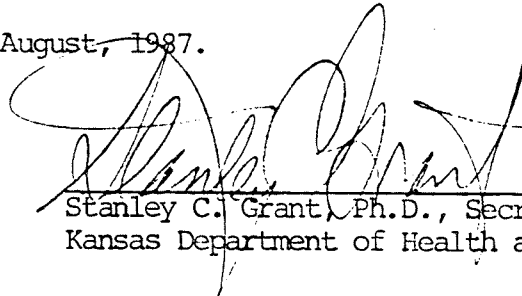
CITATION

[REDACTED]

Page 6

The Secretary orders, adjudges, and decrees that a Citation be issued pursuant to KSA 39-946, against [REDACTED] [REDACTED] for the above violations.

Dated this 20<sup>th</sup> day of August, 1987.



Stanley C. Grant, Ph.D., Secretary  
Kansas Department of Health and Environment

CITATION

Page 7

CERTIFICATE OF MAILING

I hereby certify that on the 21<sup>st</sup> day of August, 1987, a true and correct copy of the foregoing Citation was mailed to:

depositing the same in a properly addressed envelope, postage prepaid, certified mail, return receipt requested in the U.S. mail.

Staff Member )

Certified Mail # 518 644966

Certified Mail # 518 644967

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(A) PROVIDER NUMBER

A. BUILDING

B. WING

Correction Order  
7/29, 30/87

1-35

PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

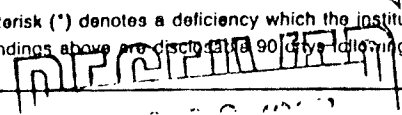
ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
---	<p>KAR 28-39-78 (a) (7) and 87 (a) <u>Not Corrected</u></p> <p>One resident lacked a physicians order for the use of physical restraints. Residents were not released from physical restraints every 2 hours for exercise or changes of position. Five residents were observed restrained for periods ranging from 2 1/2 to 4 1/2 hours before release.</p>			
---	<p>KAR 28-39-87 (a) <u>Not corrected</u></p> <p>a) One resident did not have TED hose applied on 7/29/87 because none was available.</p> <p>b) Blood pressure readings were not available as prescribed or planned for 4 of 5 residents and the other resident had a daily blood pressure reading order and the physician was to be notified if above 165 systolic or 105 diastolic. This resident had a blood pressure reading recorded 180/100 on 7/7/87 and 168/108 on 7/15 but there was no evidence the physician was notified.</p> <p>c) <u>Corrected</u> weights were recorded in records pursuant as ordered.</p>			

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X0) DATE

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION:

(X3) DATE SURVEY COMPLETED

A. BUILDING \_\_\_\_\_

WING \_\_\_\_\_

*Correction Order*

7/29, 30/87

1-36

PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS- REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETION DATE
---	KAR 28-39-87(a) and (f)(8) (B <sup>Not</sup> corrected)			
③	Treatments were not documented as administered as ordered for 8 of 8 residents received. The treatment nurse scheduled to provide treatments on the day shift observed 7/29/87 did not have time to complete all treatments on the day shift of duty.			
---	KAR 28-39-87(a) Not corrected Proper catheter care was not provided because 2 residents were observed lying on the catheter tubing, 2 were observed			

REVIEWED BY STATE CERTIFYING AGENCY <input type="checkbox"/> APPROVED BY STATE CERTIFYING AGENCY <input type="checkbox"/>	REVIEWED BY (INITIALS)  	DATE  	PROVIDER REPRESENTATIVE'S SIGNATURE  	X6 DATE  
REVIEWED BY DHHS REGIONAL OFFICE <input type="checkbox"/> APPROVED BY DHHS REGIONAL OFFICE <input type="checkbox"/> (ONLY FACILITIES REQUIRE RESPONSE IN THIS BLOCK)	REVIEWED BY (INITIALS)  	DATE  	TITLE  	X6 DATE  

Deficiency statement ending with an asterisk (\*) denotes a condition which the institution may be excused from correcting if it is determined that other safeguards provide sufficient protection to the patients. (Reverse for further instructions.)

*Page 2 of 2*



STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

A. BUILDING

B. WING

Correction Order  
7/29, 30/87

1-37

PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID # PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION, (EACH CORRECTIVE ACTION SHOULD BE CROSS- REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
	Continued .... with feces on the catheters, 2 residents were observed with catheter tubing and drainage bags dragging the floor while up and wheelchair.			
	KAR 28-39-87(4)(3) <u>Not corrected</u> Food and fluid was not recorded consistently for meals or for residents with Foley catheters. Intake was not recorded for one resident receiving tube feedings, one resident for fluid restriction, one resident with poor fluid and food intake.			
	KAR 28-39-89(a) and 98(a) <u>Not corrected</u> Proper techniques of good handwashing was not practiced between residents. Two residents were not observed by the medication nurse while taking the drug. 10 of 14 residents did not receive medications at the right time. The medication nurse on hall 1 and 2 had worked only 5 days in the facility, and was still passing 9 AM meds at 12 noon and 1 PM meds at 4 PM.			
	PROVIDER REPRESENTATIVE'S SIGNATURE		TITLE	(X6) DATE

A deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See case for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to program participation.

Page 3 of 7

**STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION**

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

*Correction order  
7/29-30/87*

1-38

PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION, (EACH CORRECTIVE ACTION SHOULD BE CROSS- REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
<p>--- ⑦</p>	<p>KAR 28.39-87(i)(1)(2) <u>Not Corrected</u> Only 35 of 128 residents were on a restorative nursing service program. Residents were identified in need of restorative services but were not receiving this service. Three residents had daily orders for services but were not provided on week-ends. Supportive devices to prevent foot drop were not available as indicated nor were heel protectors provided. Cones were not provided to all residents with contracture of hands. The bowel and bladder retraining program had been attempted but not consistently provided and not recorded daily. One restorative aide was absent on 6/23+25 and was pulled to floor duty on 6/29+7/2/87 and therapy services were not provided during these days. The other aide was absent on 7/2/87 and services were not provided.</p>			

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

A deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to program participation.

# STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(1) PROVIDER IDENTIFICATION

(2) MULTIPLE CONSTRUCTION

(3) DATE SURVEY COMPLETED

*Correction Order*  
7/29-30/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

A. BUILDING  
B. WING

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION, (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
---	<p>KAR 28-39-89 (f) <u>Not corrected</u></p> <p>One resident observed during drug pass on 7/29/87 did not have the medication available and was not administered.</p> <p>Another resident did not have insulin needed as given on 6/29/87 and the order for insulin in the PM on this date was not given according to physician's order. (10 units given rather than 5 units as ordered)</p>			
---	<p>KAR 28-39-92 (d)(1) <u>Not corrected</u></p> <p>Therapeutic diets were not served as ordered and planned on the menus.</p> <p>Two residents diet order did not agree with the tray/plate diet order card.</p> <p>Diabetic residents were served whole milk on 7/29/87 rather than non-fat milk because non-fat milk was not available and one diabetic resident was served whole milk on 7/30/87. One resident did not receive ptylcase on food at breakfast 7/29/87 because none was available. There was no saltiness in food for regular diets at breakfast</p>			
PROVIDER REPRESENTATIVE'S SIGNATURE			TITLE	(X6) DATE

*page 5 of 7*

A deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See reverse for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite for continued program participation.

# STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(K1) PROVIDER NUMBER

(K2) MULTIPLE CORRECTION

(K3) DATE SURVEY COMPLETED

*Correction Order*

*7/29-30/87*

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
⑨	<i>Continued ... Needs observed.</i>			
⑩	<i>KAR 28-39-89 (f)(1) <u>corrected</u> Insulin was documented as administered by licensed nurse.</i>			
⑪	<i>KAR 28-39-97 and 101 (e) <u>not corrected</u> An unidentified chemical was stored in an unlabeled cabinet in hall 3 soiled workroom. Bright's Bathroom Cleaners and Responal Spray Buff were in unlocked area of hall 3 soiled utility room.</i>			
⑫	<i>KAR 28-39-109 (m) <u>not corrected</u> The facility did not provide a laundry service to meet the needs of the residents. On 7/30/87, laundry was observed being sorted on the floor. Two bags of dishtowels from dietary were on the floor in the laundry on 7/29/87 and 2 large laundry bins of soiled linens were stored approximately 4 feet above the level of</i>			

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

*page 6 of 7*

A deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

# STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

*Correction Book*  
7/29-30/87

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION, (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
(12)	<p>Continued</p> <p>Coat, uncovered, in the holding room and 1 bin in the washed room and there were 9 barrels of soiled linen in the holding room. There were insufficient linens (blankets, sheets, incontinent pads, wash cloths) on the halls to care for residents. Nurse aides had to leave resident care and go to the laundry to obtain clean linen in order to change beds and care for incontinent residents. One resident was crying "I'm cold". The unit said no blankets were available. There were only 2 - 50# capacity washers in use. Residents and resident families were complaining that clothing had been lost in the laundry. The water temperature was in compliance (160°) on this visit.</p>			

PROVIDER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

A deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions for further instructions.) The findings above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

*Page 7 of 7*

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In The Matter Of The Correction Order  
Against [REDACTED]

Case No. 87-ACF-85

NOTICE OF ASSESSMENT

Now on this 25<sup>th</sup> day of September, 1987, Stanley C. Grant, Ph.D., Secretary, Kansas Department of Health and Environment, reviews the file on this matter and finds that a fining order should be issued pursuant to KSA 39-946.

The Secretary finds that a Citation was issued to this facility on August 26, 1987, for violation of KAR 28-39-78(a)(7), KAR 28-39-87(e), KAR 28-39-87(a), KAR 28-39-87(f)(8)(B), KAR 28-39-87(h)(3), KAR 28-39-89(a), KAR 28-39-98(a), KAR 28-39-87(i)(1)(2), KAR 28-39-89(f), KAR 28-39-92(d)(1), KAR 28-39-97, KAR 28-39-101(e), and KAR 28-39-109(m). The Secretary finds that the Citation was issued a result of a July 29 and 30, 1987 inspection.

The Secretary further finds that [REDACTED] received the Citation on August 28, 1987.

The Secretary further finds that a Correction Order was issued against the facility on July 15, 1987, for violation of KAR 28-39-78(a)(7), KAR 28-39-87(e), KAR 28-39-87(a), KAR 28-39-87(f)(8)(B), KAR 28-39-87(h)(3), KAR 28-39-98(a), KAR 28-39-89(a), KAR 28-39-87(i)(1), KAR 28-39-87(i)(2), KAR 28-39-87(i)(3), KAR 28-39-89(f), KAR 28-39-92(d)(1), KAR 28-39-89(f)(1), KAR 28-39-97, KAR 28-39-101(e), and KAR 28-39-109(m). The Secretary finds that the order was received on July 16, 1987.

The Secretary finds that [REDACTED]

[REDACTED] was visited on September 2 and 3, 1987.

The Secretary finds that as a result of the September 2 and 3, 1987 visit, that KAR 28-39-78(a) (7), KAR 28-39-87(e), KAR 28-39-87(a), KAR 28-39-87(f) (8) (B), KAR 28-39-89(a), and KAR 28-39-98(a) were not in compliance.

The Secretary finds that the facility did not release residents from restraints at least every two hours as required by KAR 28-39-78(a) (7) and KAR 28-39-87(e).

The Secretary finds that the facility did not provide treatment for skin conditions as required by KAR 28-39-87(a) and KAR 28-87(f) (8) (B).

The Secretary finds that medications were not being given at the proper time as required by KAR 28-39-89(a) and KAR 28-39-98(a).

The Secretary finds that a civil penalty in the amount of \$100.00 per day per deficiency should be issued against [REDACTED]

[REDACTED] Kansas, for being out of compliance with the above-listed regulations on September 1, 2, and 3, 1987. The Secretary finds that a maximum fine of \$500.00 should be assessed.

NOTICE OF ASSESSMENT

Page 3

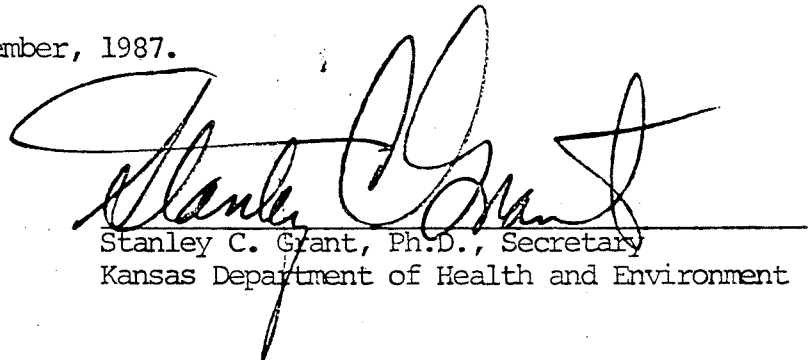
The fine is due and payable within ten days after the receipt of this Assessment. If the fine is not paid within ten days, the Secretary may file a certified copy of the Notice of Assessment with the Clerk of the District Court of [REDACTED] County and the Assessment can be enforced in that court.

The Assessment may be appealed by filing a written notice of appeal with the Secretary within ten days of receipt of this Notice of Assessment, in which case, a hearing will be conducted pursuant to the Kansas Administrative Procedure Act. The penalty must be paid as set out above regardless of whether this Assessment is appealed. If the appeal is sustained, the Assessment will be refunded pursuant to Statutes KSA 39-946 and KSA 39-948.

Therefore, the Secretary orders that an Assessment be issued pursuant to KSA 39-946, against [REDACTED] for the maximum fine of \$500.00 for the above violations.

IT IS SO ORDERED

Dated this 25<sup>th</sup> day of September, 1987.

  
Stanley C. Grant, Ph.D., Secretary  
Kansas Department of Health and Environment

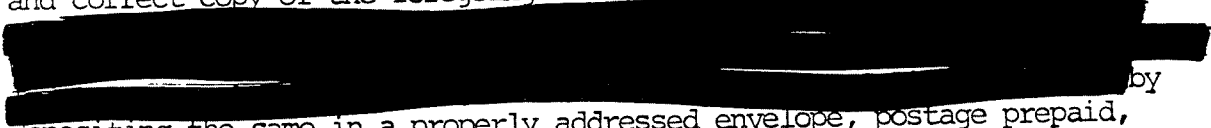


NOTICE OF ASSESSMENT

Page 4

CERTIFICATE OF MAILING

I hereby certify that on the 25<sup>th</sup> day of September, 1987, a true and correct copy of the foregoing Notice of Assessment was mailed to:

 by  
depositing the same in a properly addressed envelope, postage prepaid,  
certified mail, return receipt requested in the U.S. mail.

  
Staff Member

Certified Mail # 518577028

Certified Mail # 518577027

**STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION**

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A BUILDING \_\_\_\_\_

B WING \_\_\_\_\_

*Citation*

*9/2-3/87*

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4)

SUMMARY STATEMENT OF DEFICIENCIES  
(EACH DEFICIENCY SHOULD BE PRECEDED  
BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)

ID  
PREFIX  
TAG

PROVIDER'S PLAN OF CORRECTION  
(EACH CORRECTIVE ACTION SHOULD BE CROSS-  
REFERENCED TO THE APPROPRIATE DEFICIENCY.)

(X5)

COMPLETION  
DATE

④

*KAR 28-39-87(a) Corrected  
Catheter care was improved significantly  
as observed during this visit*

⑤

*KAR 28.39-87(h)(3) Corrected  
Acceptance of meals was now recorded  
and intake and output was available  
for residents as indicated in condition*

⑥

*KAR 28-39-89(a) and 98(a) Not corrected  
Good handwashing was practiced.  
and residents were observed while  
taking medications but 8 AM medications  
were still being administered at 10 AM.*

⑦

*KAR 28-39-87(i)(1)(2) Considered corrected  
The facility had hired a physical therapist  
on 8/1/87. Services were now provided  
to 46 residents. Heel protectors and  
cushes were utilized for residents as  
needed. Bladder and bowel retraining  
was still in the initial phase and  
recommendations for better documentation  
were given to staff during this visit*

APPROVED BY STATE CERTIFYING AGENCY

DISAPPROVED BY STATE CERTIFYING AGENCY

REVIEWED BY  
(INITIALS)

DATE

PROVIDER REPRESENTATIVE'S SIGNATURE

X6 DATE

APPROVED BY DHHS REGIONAL OFFICE

DISAPPROVED BY DHHS REGIONAL OFFICE

(MEDICAID ONLY FACILITIES REQUIRE

NO RESPONSE IN THIS BLOCK)

REVIEWED BY  
(INITIALS)

DATE

TITLE

\*Any deficiency statement ending with an asterisk (\*) denotes a condition which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients.

(See reverse for further instructions.)

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION

(X1) PROVIDER NUMBER

(X2) MULTIPLE CONSTRUCTION

(X3) DATE SURVEY COMPLETED

A. BUILDING \_\_\_\_\_  
B. WING \_\_\_\_\_

*Continuation*  
*9/23/87*

NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY SHOULD BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION.)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY.)	(X5) COMPLETE DATE
①	<p>KAR 28-39-78(a)(7) and 87(e)                      Not corrected Two of five restrained residents observed were not released from restraints at least every 2 hours as per facility policy and as required. These residents were physically restrained for 3 hours before release and opportunity for exercise or change of position.</p>			
②	<p>KAR 28-39-87(a) Not corrected One resident with orders for 20 four hot water provided. Six of twenty residents lacked a record of blood pressure readings as prescribed or planned.</p>			
③	<p>KAR 28-39-87(a), KAR 28-39-87(f)(8)(B) Not corrected Nine of nine residents arrived with physician orders for treatment to skin conditions, did not have treatment provided as ordered. When a staff member was not assigned to do treatment, specifically, all treatments were not able to be completed.</p>			

APPROVED BY STATE CERTIFYING AGENCY <input type="checkbox"/> DISAPPROVED BY STATE CERTIFYING AGENCY <input type="checkbox"/>	REVIEWED BY (INITIALS) _____ DATE _____	PROVIDER REPRESENTATIVE'S SIGNATURE _____ DATE _____	X6 DATE _____
APPROVED BY DHHS REGIONAL OFFICE <input type="checkbox"/> DISAPPROVED BY DHHS REGIONAL OFFICE <input type="checkbox"/> (MEDICAID ONLY FACILITIES REQUIRE NO RESPONSE IN THIS BLOCK)	REVIEWED BY (INITIALS) _____ DATE _____	TITLE _____	

\*Any deficiency statement ending with an asterisk (\*) denotes a condition which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients.  
 (See reverse for further instructions.)



DATE: FEBRUARY 17, 1988

TO: SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

FROM: DICK HUMMEL, EXECUTIVE VICE PRESIDENT

SUBJECT: SENATE BILL 585, ADULT CARE HOME CIVIL PENALTY SYSTEM

SENATOR EHRLICH AND COMMITTEE MEMBERS:

REPRESENTING OVER 200 LICENSED ADULT CARE HOMES, BOTH LARGE AND SMALL, URBAN AND RURAL, PROFIT AND NONPROFIT, THE KANSAS HEALTH CARE ASSOCIATION (KHCA) SUPPORTS S.B. 585 WITH THE ATTACHED AMENDMENTS.

AS EXPLAINED TO YOU BY THE SECRETARY, THE PURPOSE OF THE BILL IS TO REFINE AND ACCELERATE THE PROCESS IN ORDER TO LEVY THE POWER OF THE AGENCY QUICKLY ON A SMALL MINORITY OF ADULT CARE HOME PROVIDERS WHICH HAVE RECURRING SERIOUS LICENSURE INFRACTIONS. WE AGREE THAT IS THE PURPOSE OF THE CIVIL PENALTY SYSTEM AND HOW IT SHOULD FUNCTION, BUT IT HASN'T.

RATHER, IT HAS BEEN USED BROADLY AND SUBJECTIVELY -- A WIDE SHOT PATTERN WITH ALL PROVIDERS AS TARGETS. OUR AMENDMENTS ARE TO TIE THE AMOUNT OF THE FINES AND PUNITIVE ACTIONS TO THE SEVERITY OF THE INFRACTION -- TO FOCUS THE BARREL SIGHT ON THE TARGET.

*"We Care"*

THE TERM "SIGNIFICANTLY AND ADVERSELY" APPEARING ON LINES 0032 AND 0091 IS THE DESCRIPTOR WHICH HAS BEEN USED INTERNALLY BY THE AGENCY TO DETERMINE WHETHER OR NOT AN INFRACTION IS SERIOUS ENOUGH TO BEGIN THE CIVIL PENALTY PROCESS. THIS TERM, VAGUE AND OPEN TO INTERPRETATION, IS THE KEY AND TRIGGER TO THE WHOLE PROCESS. THIS IS THE STANDARD OF PERFORMANCE, OR NON-PERFORMANCE. IT SETS OFF THE CHAIN REACTION TO NOW LEVY HIGHER FINES, REMOVE THE CITATION STEP, DOUBLE THE AMOUNT OF FINES, AND DENY NEW PATIENT ADMISSIONS.

WE ARE ASKING THAT THIS TERM BE DEFINED, PER OUR AMENDMENT, TO A HIGHER THRESHOLD OF OFFENSE AND THAT THE SYSTEM BE AIMED AT VIOLATIONS THAT POSE IMMEDIATE JEOPARDY, IMMINENT DANGER, OR HARM TO RESIDENTS. WE THINK THIS IS REASONABLE IF THE FINES ARE TO BE HIGHER -- RELATE THE PENALTY TO THE SERIOUSNESS OF THE OFFENSE.

THE OTHER AMENDMENTS ACCOMPLISH THE FOLLOWING:

2. EXEMPTION FOR NON-COMPLIANCE WITH 24 HOUR NURSE STAFFING. ON JULY 1, 1988, ALL NURSING HOMES MUST HAVE 24-HOUR STAFFING (FEDERAL REQUIREMENT OCTOBER 1990). IF FACILITIES HAVE MADE DILIGENT ATTEMPTS TO OBTAIN NURSING PERSONNEL, BUT THEY ARE UNAVAILABLE, WE DON'T BELIEVE THIS SHOULD BE A FINEABLE OFFENSE.

3. REINSPECTION IN 10 DAYS. WE BELIEVE THIS IS GOOD POLICY, NOW GENERALLY FOLLOWED BY THE AGENCY, BUT SHOULD BE IN STATUTE.

4. INFORMAL CONFERENCE WITH KDH&E SECRETARY.  
BEFORE A FINE IS ISSUED, THE PROVIDER COULD REQUEST AN INFORMAL CONFERENCE TO REVIEW ALL RELEVANT FACTS. THIS WOULD REPLACE THE CURRENT CITATION STEP WHICH THE AGENCY IS ASKING TO BE REMOVED.

5. PUBLIC/PROVIDER NOTICE AND INFORMATION.  
UNDER THIS SECTION THE AGENCY WOULD BE REQUIRED QUARTERLY TO ISSUE A NEWS RELEASE IDENTIFYING NURSING HOMES WHICH HAVEN'T RECEIVED A CORRECTION ORDER. (AGENCY NOW ISSUES TO THE PRESS THE NAMES OF FACILITIES FINED.) THIS IS POSITIVE REINFORCEMENT.

THE OTHER REQUIREMENT IS VERY IMPORTANT, THAT IS, FOR THE AGENCY TO TELL US THE TYPES AND NUMBER OF LICENSURE VIOLATIONS WHICH THEY HAVE DETERMINED TO BE CORRECTABLE OFFENSES. WE KNOW THAT IT WOULD BE IMPRACTICAL TO PUBLISH A "LAUNDRY LIST" IN THE STATUTES; HOWEVER, WE ALSO KNOW THAT IN THIS PROCESS THAT SOMEONE MAKES A DETERMINATION OF WHAT SHOULD OR SHOULDN'T BE TARGETED AS AN OFFENSE. WE'RE ASKING, IN FAIR PLAY, THAT THIS BE SHARED WITH US.

THANK YOU VERY MUCH FOR THIS OPPORTUNITY. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS.

# SENATE BILL No. 585

By Committee on Public Health and Welfare

2-8

0016 AN ACT concerning the adult care home licensure act; relating  
0017 to the issuance of correction orders, citations and assessments;  
0018 prohibiting new admissions to adult care homes in certain  
0019 cases; amending K.S.A. 39-945 and 39-946 and repealing the  
0020 existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 39-945 is hereby amended to read as fol-  
0023 lows: 39-945. A correction order may be issued by the secretary  
0024 of health and environment or the secretary's designee to a person  
0025 licensed to operate an adult care home whenever the state fire  
0026 marshal or the marshal's representative or a duly authorized  
0027 representative of the secretary of health and environment in-  
0028 spects or investigates an adult care home and determines that the  
0029 adult care home is not in compliance with the provisions of  
0030 article 9 of chapter 39 of the Kansas Statutes Annotated or ~~rule~~  
0031 ~~and regulation~~ *rules and regulations* promulgated thereunder  
0032 which *individually or jointly* affects significantly and adversely  
0033 the health, safety, nutrition or sanitation of the adult care home  
0034 residents. The correction order shall be served upon the licensee  
0035 either personally or by certified mail, return receipt requested.  
0036 The correction order shall be in writing, shall state the defi-  
0037 ciency, cite the specific statutory provision or rule and regulation  
0038 alleged to have been violated, and shall specify the time allowed  
0039 for correction.

0040 Sec. 2. K.S.A. 39-946 is hereby amended to read as follows:  
0041 39-946. (a) If upon reinspection by the state fire marshal or the  
0042 marshal's representative or a duly authorized representative of  
0043 the secretary of health and environment it is found that the  
0044 licensee of the adult care home which was issued a correction

ADD: (a) Significantly and adversely as used above is defined to mean those violations of the adult care home standards which individually or jointly may:

(1) Have been a direct, proximate cause of death of a resident, or;

(2) Present either imminent danger that death or serious harm to the resident would result therefrom or a substantial probability that death or serious physical harm to a resident would result therefrom, or;

(3) Pose immediate and serious jeopardy to the health and safety of a resident.

(b) A correction order shall not be issued to a facility for its failure to provide 24 hour professional nurse staffing if the facility has exercised bona fide, good faith efforts to recruit and hire such personnel but is unable to do so, the agency has issued a waiver from the requirement to the facility, and alternate arrangements for meeting the nursing service needs of residents have been made.

0045 order has not corrected the deficiency or deficiencies specified  
 0046 in the order, the secretary of health and environment or the  
 0047 secretary's designee shall issue a citation listing the uncorrected  
 0048 deficiency or deficiencies. The citation shall be served upon the  
 0049 licensee of the adult care home either personally or by certified  
 0050 mail, return receipt requested. The citation shall also specify  
 0051 whether the uncorrected deficiencies have an endangering rela-  
 0052 tionship to the health, safety or sanitation of the adult care home  
 0053 residents.

0054 (b) The secretary of health and environment may assess a  
 0055 civil penalty in an amount not to exceed one hundred dollars  
 0056 (~~\$100~~) \$500 per day per deficiency against the licensee of an  
 0057 adult care home for each day subsequent to the day following the  
 0058 issuance of a citation pursuant to this section time allowed for  
 0059 correction of the deficiency as specified in the correction order  
 0060 that the adult care home has not corrected the deficiency or  
 0061 deficiencies listed in the ~~citation~~ correction order, but the max-  
 0062 imum assessment shall not exceed five hundred dollars (~~\$500~~)  
 0063 \$2,500. A written notice of assessment shall be served upon the  
 0064 licensee of an adult care home either personally or by certified  
 0065 mail, return receipt requested.

0066 (b) If the secretary of health and environment finds that  
 0067 some or all deficiencies cited in the correction order have also  
 0068 been cited against the adult care home as a result of any  
 0069 inspection or investigation which occurred within 18 months  
 0070 prior to the inspection or investigation which resulted in such  
 0071 correction order, the secretary of health and environment may  
 0072 double the civil penalty assessed against the licensee of the  
 0073 adult care home, the maximum not to exceed \$5,000.

0074 (c) All civil penalties assessed shall be due and payable  
 0075 within ~~ten (40)~~ 10 days after written notice of assessment is  
 0076 served on the licensee, unless a longer period of time is granted  
 0077 by the secretary. If a civil penalty is not paid within the applica-  
 0078 ble time period, the secretary of health and environment may file  
 0079 a certified copy of the notice of assessment with the clerk of the  
 0080 district court in the county where the adult care home is located.  
 0081 The notice of assessment shall be enforced in the same manner

ADD: (b) The reinspection mentioned in this section shall be conducted within 10 days from the date of the receipt of the notice of the written assessment.

(c) Before the issuance of a civil penalty an informal conference shall be held by the secretary with the licensee, if requested by the licensee. All relevant facts shall be considered by the secretary, including, but not limited to:

(1) The probability and severity of the risk which the violation presents to the resident's mental and physical condition.

(2) The resident's medical condition.

(3) The good faith efforts exercised by the facility to prevent the violation from occurring.

(4) The licensee's history of compliance with the regulations.



0082 as a judgment of the district court.

0083 New Sec. 3. (a) At any time the secretary of health and  
 0084 environment initiates any action concerning an adult care home  
 0085 in which it is alleged that there has been a substantial failure to  
 0086 comply with the requirements, standards or rules and regula-  
 0087 tions established under the adult care home licensure act, that  
 0088 conditions exist in the adult care home which are life threatening  
 0089 or endangering to the residents of the adult care home, that the  
 0090 adult care home is insolvent, or that the adult care home has  
 0091 deficiencies which significantly and adversely affect the health,  
 0092 safety, nutrition or sanitation of the adult care home residents,  
 0093 the secretary may issue an order, pursuant to the emergency  
 0094 proceedings provided for under the Kansas administrative pro-  
 0095 cedure act, prohibiting any new admissions into the adult care  
 0096 home until further determination by the secretary. This remedy  
 0097 granted to the secretary is in addition to any other statutory  
 0098 authority the secretary has relating to the licensure and operation  
 0099 of adult care homes and is not be construed to limit any of the  
 0100 powers and duties of the secretary under the adult care home  
 0101 licensure act.

0102 (b) This section shall be part of and supplemental to the adult  
 0103 care home licensure act.

0104 Sec. 4. K.S.A. 39-945 and 30-946 are hereby repealed.

0105 Sec. 5. This act shall take effect and be in force from and  
 0106 after its publication in the statute book.

ADD Sec. 4. The Secretary shall once each quarter:

(a) Issue a public information release to the states' news media identifying all adult care homes in the state which have not had a correction order in the past 12 months, and

(b) Issue to adult care homes a report summarizing by category of licensure violation and frequency of occurrence those violations which have resulted in the issuance of correction orders and civil penalties in the past 12 months.



The Organization of  
Nonprofit Homes and  
Services for the Elderly

Kansas Association of Homes for the Aging  
641 S.W. Harrison  
Topeka, Kansas 66603

913-233-7443

February 16, 1988

Senate Public Health and Welfare Committee

Senator Roy Ehrlich, Chairman

I am John Grace, Executive Director of the Kansas Association of Homes for the Aging - not-for-profit homes sponsored by churches, community and governmental organizations.

Most of us hope that we'll never need the services of a nursing home in our lifetime. We hope that we'll never become that disabled. However if we do, we want to be assured that we receive good care from caring people.

Most of the nursing homes in this state do just that. However, there are a few that do not. Our association wants to be sure that those few homes receive additional corrective actions to abide by the rules and regulations.

It is for this reason that we step forward to support SB 585 and say lets deal with those few homes that are giving our industry a bad name.

There are three components of the bill that we believe are fair and reasonable:

1. Increasing the amount of fine from maximum of \$500 to maximum of \$2500. Since the \$500 has not been increased in 10 years, it seems only right that the amount be adjusted. In addition, a doubling of the fine to the provider that continues to violate the law seems appropriate.
2. Shorten the time period for implementing the fine. Two years ago, we expressed our disappointment over the length of time it took the Department to actually impose the fine. By eliminating the citation step, the time period should be shortened. We believe that if a provider is given a warning to correct the problem, they should correct it.
3. Banning admissions to facilities under action by H&E. This is a logical step to protect further injury of new residents admitted. Common sense would indicate that no new resident should be exposed to harm or injury until the problem is corrected.

Senate Public Health and Welfare  
February 16, 1988  
SB 585

These changes in the law that SB 585 are focused on dealing effectively and swiftly with those few homes that need corrective action to protect the residents.

The implementation of this law is of course the responsibility of the Department of Health & Environment. Based upon the record of the Department in the last 6 or 7 years, we have no reason to believe that they will be unfair in their application of these changes. If they are, we'll be back to see you.

Thank you, Mr. Chairman and Members of the Committee.

TESTIMONY ON S.B. 585  
BEFORE THE SENATE HEALTH AND WELFARE COMMITTEE  
BY  
THE KANSAS DEPARTMENT ON AGING  
FEBRUARY 17, 1988

Bill Summary:

S.B. 585 provides that a \$500 fine per deficiency, per day be levied, not to exceed \$2,500 per day when conditions significantly and adversely affect the health, safety, nutrition, or sanitation of nursing home residents. The bill also provides that no new admissions may be accepted in a facility with these conditions. The bill also removes the statutory requirement for a citation, thus shortening the time before the civil penalty can be assessed.

Bill Brief:

Currently, K.S.A. 39-945 and 39-946 provides for a civil penalty of \$100 per day, per deficiency not to exceed \$500. There is no provision for denial of new admissions. S.B. 585 raises the fine per deficiency, per day and raises the maximum to \$2,500 that may be levied per day.

Bill Testimony:

In February, 1986, the Institute of Medicine issued a report. It was concerned with strengthening the quality of care given to nursing home residents. Members of the industry, health care providers, regulators and consumers were a part of the committee submitting the report. It recommended more stringent intermediate sanctions for those homes not meeting standards.

In September 1987, the U.S. General Accounting Office (GAO) issued a report on Nursing Home Enforcement identifying Kansas as a state which consistently had a history of repeat violations relating to conditions significantly and adversely affecting the health, safety, nutrition or sanitation of nursing home residents.

In Federal Fiscal Year 1987, the Kansas Long Term Care Ombudsman (KLTCO) received 921 complaints - an increase of 45% from the previous year. In Federal Fiscal Year 1986, there were 624 complaints - an increase of 34% from the previous year. It is not only the increased numbers that cause concern but the kind of complaints received, not only by the Kansas Department on Aging but the ones received by the Departments of Health and Environment and Social and Rehabilitation Services.

The law states, "adversely affecting the health, safety...of nursing home residents." What this means in individual cases is a decubitus ulcer so large and so deep that the hip muscle was exposed, a broken hip untreated for two days, a decubitus ulcer unnoticed for months until surgery was needed. Unfortunately, the list is nearly endless.

It is important that no new admissions be accepted to a facility with such problems. If residents already there are not being given appropriate care, it is unlikely that new people coming in will receive appropriate care either.

Because some nursing homes are not doing the job they have committed to do, the Department of Health and Environment needs a bigger stick to get their attention. In today's world, a \$100 fine per deficiency, per day not to exceed \$500 a day is nothing more than a minor inconvenience. The increased fine, coupled with the denial of new admissions is more likely to get attention and facilitate the correction of problems.

Recommended Action:

It is recommended that the committee report favorably on this bill.

DS:mj  
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FOR MORE INFORMATION CONTACT:

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## S.B. 585 Civil Penalties for Nursing Homes

Senator Ehrlich and Members of the Senate Public Health and Welfare Committee, my name is Carolyn Middendorf, R.N., M.N. and I am presently a nursing instructor at Washburn University School of Nursing. I have been in the field of Gerontological Nursing for 12 years, including working as a Consultant to the Bureau of Nursing Homes; Kansas Department of Health and Environment, and consulting for several nursing homes. I represent the Kansas State Nurses' Association on the Kansas Coalition on Aging, serve on the Advisory Board of the NAMFE project for Frail Elderly out of the KU School of Nursing and am currently the Legislative Chairperson for the Kansas State Nurses' Association.

The Kansas State Nurses' Association (KSNA) supports S.B. 585 which strengthens the current statutory remedies to be used when Kansas Nursing Homes fail to comply with correction orders for cited deficiencies.

The General Accounting Office (GAO) of the federal government issued a report in July, 1987 indicating that a number of states, including Kansas, have had a great deal of difficulty enforcing state and federal standards.

The current cap of \$500 civil penalty is unfortunately not a significant deterrent to Nursing Homes. Repeated violations for the same deficiencies, that could be life-threatening are inexcusable for licensed nursing homes and make a mockery out of well meaning statutes and regulations.

The three significant changes in the civil penalties proposed by S.B. 585 should assist the Kansas Department of Health and Environment in enforcement of current regulatory standards and provide greater latitude to the agency for Nursing Homes that have repeatedly violated state and federal standards.

THANK YOU.



# 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 585 - CIVIL PENALTIES FOR VIOLATION OF NURSING HOME REGULATIONS  
February 17, 1988

Mr. Chairman and Members of the Committee:

Kansans for Improvement of Nursing Homes is a consumer organization of some 900 members, most of whom have relatives in nursing homes. As such, we have a strong interest in the regulatory process for adult care homes, both the substance of the regulations and the way in which they are enforced.

In July of last summer the General Accounting Office of the federal government (GAO) issued a well-documented report concerning the need, nationwide, for better enforcement of Medicare and Medicaid regulations for nursing homes.

In that report, the GAO showed very clearly that enforcement of regulations is a major problem in many state. Kansas was one such state, and was among the 5 states singled out for a closer examination of specific problem homes which had violated the same regulations over and over again.

The underlying problem, said the GAO, is that neither federal nursing home regulations, nor state regulations in many states, provide for a full range of enforcement penalties capable of dealing appropriately with a wide variety of violations.

#### PROBLEMS WITH KANSAS' CURRENT ENFORCEMENT MEASURES

1. Decertification (closing a home) is too severe a penalty for any but the most serious, life-threatening deficiencies. The goal of good enforcement is not to close nursing home; it is to protect the welfare of nursing home residents by assuring that the homes comply with state and federal regulations.
2. Receivership is not a practical alternative to decertification unless the state is willing to provide money and staff for that process. Further, receivership, like decertification, is too extreme an action for any but the most serious categories of violation.
3. The current Civil Penalties statute is far too weak to be an effective enforcement tool. It is neither a deterrent to violation nor a significant penalty even when the same violation occurs repeatedly.

The GAO report points out that "nursing homes with deficiencies that seriously threaten the health and safety of residents are able to remain in the Medicare and/or Medicaid programs by correcting the deficiencies between the inspection and the end of the certification period. When the facility is out of compliance with the same requirement during the next inspection, it can again avoid decertification by correcting the deficiencies."

The current Kansas Civil Penalties law does not speak in any respect to repeat deficiencies or to the "yo-yo effect" which is the term often used for the home that repeatedly goes in and out of compliance with regulations.

4. The current ban on Medicaid admissions has been useful in some instances, but when a home has few Medicaid residents the ban has essentially no effect. It further erodes the supply of Medicaid beds without necessarily achieving long-lasting compliance, as long as unlimited private residents can be admitted.

#### WHAT CHANGES ARE NEEDED?

Of these current enforcement mechanisms, the Civil Penalties statute and the ban on admissions can be substantially improved upon. The Civil Penalties law can be made an effective enforcement tool by the changes in SB 585, which would impose a more realistic fine and would provide for a double fine for repeat violations. And a ban on all new admissions, as proposed in this bill, would greatly improve the current provision on Medicaid admissions and would make of that concept a most effective means of enforcement.

#### MAJOR PROVISIONS OF SB 585

1. Increases the penalty for violation of nursing home regulations which "significantly and adversely" affect the health, safety, nutrition or sanitation of the adult care home residents from the current \$100 per day per deficiency to \$500. The current maximum cumulative penalty of \$500 would be increased to \$2500.
2. Permits the Secretary of Health and Environment to double those penalties if some or all of the deficiencies recur within 18 months.
3. Shortens the process of assessing the penalty by eliminating one step.
4. Permits the Secretary of Health and Environment to prohibit the home from admitting any new residents until the deficiencies have been corrected.

#### UNDER WHAT CONDITIONS SHOULD THE CIVIL PENALTIES STATUTE BE APPLIED?

As in past attempts to improve the Civil Penalties law, there will probably be many questions raised as to what constitutes a "significant and adverse affect" upon the health safety, nutrition and sanitation of nursing home residents.

Among the conditions the Department of Health and Environment generally cites in correction orders are:

1. Improper use of resident restraints
2. Improper administration of medications
3. Insufficient staffing including unqualified persons
4. Inadequate health services in caring for bedfast residents, incontinent residents and residents with decubitus ulcers.
5. Failure to provide nursing services as ordered
6. Failure to meet dietetic needs of residents
7. Environmental deficiencies.

Within categories such as these, some judgement must, of course, be used in assessing the severity of the conditions and the frequency of occurrence -- the professional judgement of the nurse-surveyors and the sanitarians.

Surely it is clear beyond question that these conditions significantly and adversely affect the health, safety, nutrition, and sanitation of nursing home residents. Not all of them are necessarily life-endangering in themselves, though they may be. Any one of them or any combination of them can make for a generally miserable existence of the kind I do not believe Kansas legislators would find acceptable as a quality of life for frail, sick, elderly Kansans.

#### CONCLUSION

KINH has never looked upon the GAO report as an indictment of the will of the Department of Health and Environment to enforce nursing home regulations; it is, rather, a clear indication that the laws of Kansas are inadequate as enforcement tools.

SB 585 is a long overdue step toward deterring violations and enforcing adult care home regulations. We ask your support for SB 585.





1987-1988  
KANSAS STATE LEGISLATIVE COMMITTEE

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Mr. Oscar M. Haugh  
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Lawrence, KS 66044  
(913) 843-7613

Mr. Chairman and Members of the Senate Public Health and Welfare Committee:

I am Jim Behan, Chairman of the Kansas State Legislative Committee of the American Association of Retired Persons. AARP is vitally concerned about the issue of quality of long-term care services and the quality of life for recipients of services.

Attached to my testimony is the Executive Summary of the Report of the General Accounting Office entitled Medicare and Medicaid: Stronger Enforcement of Nursing Home Requirements Needed. The Legislative Committee of the AARP found that report shocking in its evaluation of the kind of conditions that are permitted to exist in nursing homes, largely because enforcement procedures in Kansas and many other states are inadequate to assure that state and federal regulations are followed.

To note just a few of the frequently cited deficiencies identified in the report:

- \*Failure to provide nursing services, including restorative nursing, to meet the needs of the residents.
- \*Failure to assure that each resident receives treatments, medications, diets and other health services as prescribed and planned.
- \*Failure to plan and follow menus designed to meet the needs of residents in accordance with physicians orders or to store, prepare and serve food under sanitary conditions.

These very conditions can be found all too often in the survey reports of Kansas nursing homes. Why should it be possible for a nursing home in Kansas to be deficient in these ways time after time without penalty?

It should not be possible, but it is. It is possible, in part, because Kansas officials of the Department of Health and Environment, charged with the responsibility for regulating nursing homes, do not have a complete range of appropriate responses they can make to violations of nursing home regulations. Kansas has, at one end of the spectrum, decertification or delicensure -- in effect, closing a nursing home. And at the other end, a fining law so weak that it does not deter violation, does not significantly penalize violation after it occurs, and does nothing to prevent the immediate recurrence of the problem if it is corrected.

SB 585 is a direct response to the recommendations of the GAO report for improving the state's ability to enforce federal and state nursing home regulations. We believe the state can play a major role in bringing about much-needed changes by strengthening licensing, survey and enforcement procedures.

AARP urges you to support SB 585.

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# Executive Summary

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## Purpose

One of every four elderly will enter a nursing home during his or her lifetime. Because of continuing concern about the quality of care provided to nursing home residents, Senator John Heinz, Ranking Minority Member of the Senate Special Committee on Aging, asked GAO to (1) determine the extent of repeated noncompliance with federal requirements that could affect resident health and safety and (2) evaluate the adequacy of federal and state enforcement actions to correct the reported deficiencies.

GAO did the work in Arkansas, California, Connecticut, Kansas, and Wisconsin.

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## Background

Medicare is a federal health insurance program that assists almost all Americans 65 and over and certain disabled persons in paying for their health care costs. Medicaid is a grant-in-aid program by which the federal government pays from 50 to 79 percent of costs incurred by states for medical services provided to certain low-income persons. Together, the two programs pay about half of the nation's nursing home costs.

At the federal level, the Health Care Financing Administration, a part of the Department of Health and Human Services, is responsible for administering the two programs. States must determine each nursing home's compliance with federal requirements at least annually. This is done through an inspection of the nursing home.

Although the states decide whether nursing homes can participate in the Medicaid program, the Health Care Financing Administration reviews those decisions and can override the states when it disagrees or determines that a state did not follow federal requirements. The decision with respect to certification of nursing homes for the Medicare program is made by the Health Care Financing Administration.

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## Results in Brief

Nursing homes can remain in the Medicare and Medicaid programs for years with serious deficiencies that threaten patient health and safety by taking corrective action to keep from being terminated each time they get caught. GAO analyzed the four most recent inspections (covering about a 4-year period) for nursing homes participating in the programs in November 1985. Forty-one percent of skilled nursing facilities and 34 percent of intermediate care facilities nationwide were out of compliance during three consecutive inspections with one or more of the 126 skilled or 72 intermediate care facility requirements considered by

experts to be most likely to affect patient health and safety. A determination of the actual effects on patients' health and safety was beyond the scope of GAO's review.

Under current federal law and regulations, nursing homes that correct a deficiency prior to the end of the certification period or submit an acceptable plan for correcting the deficiency are allowed to continue to participate in Medicare and Medicaid without incurring any penalty for the noncompliance. Although a nursing home that has the same deficiencies in consecutive inspections without adequate justification should be terminated, according to Medicare and Medicaid regulations, neither HHS nor the states were enforcing this rule. No federal penalties currently apply to deficiencies, even if uncorrected, that do not pose an immediate threat to resident health and safety. The ability to avoid penalty even for serious or repeated noncompliance gives nursing homes little incentive to maintain compliance with federal requirements.

GAO believes additional sanctions are needed to strengthen federal and state enforcement options.

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## Principal Findings

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### Repeated Noncompliance Is Widespread

GAO found that 3,372 of the 8,298 skilled nursing facilities and 2,005 of the 5,970 skilled nursing facilities did not meet one or more of the requirements most likely to affect resident health or safety during three consecutive inspections.

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### Nursing Homes With Serious Deficiencies Avoid Penalties

GAO reviewed inspection records on 26 nursing homes in the five states in more detail to find out why they were able to continue in the program with repeated deficiencies. The 26 nursing homes were selected primarily on the basis of multiple repeat deficiencies. Among the most frequently cited deficiencies were inadequate nursing services, poorly maintained and dirty interior surfaces such as walls and floors, malfunctioning or broken plumbing, uncontrolled odors, improper use of physical restraints, and improper diets.

Of the 26 facilities, 15 were found during a total of 26 inspections to have deficiencies sufficiently serious to preclude continued participation in the Medicare and/or Medicaid programs if not corrected. Only three

of the inspections ultimately resulted in decertification. For the other 23 inspections, the facilities were, as permitted by federal law and regulations, given the opportunity to correct the deficiencies before the end of the certification period and remain in the programs without penalty. Seven of the nursing homes were again found to have serious deficiencies that would prevent continued participation in the Medicare and Medicaid programs in a subsequent inspection.

Two of the three nursing homes that were decertified were readmitted to the Medicaid program within 76 days even though they were still out of compliance with some of the requirements that caused them to be terminated. Generally, Medicare, but not Medicaid, law precludes the readmission of a nursing home unless the state can establish that the deficiencies that caused the termination have been corrected.

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### Less Serious Deficiencies Not Penalized

Although the other 11 facilities GAO reviewed also had repeat deficiencies, they faced no threat of decertification during the periods reviewed because they were judged to be in substantial compliance, i.e., with no deficiencies that immediately jeopardized patient health and safety. Federal regulations require only that such facilities submit an acceptable written plan for correcting the deficiencies.

Facilities with deficiencies that do not seriously threaten residents' health and safety have continued participation in the programs for long periods without maintaining compliance with the requirements. For example, a Kansas nursing home was cited in three consecutive inspections for having unqualified personnel insert or withdraw tubes used to administer drugs or provide nourishment, storing food improperly, and failing to control facility odors, and in two inspections for failing to keep the building interior clean and well maintained. The nursing home received no penalty for the repeat deficiencies because termination was the only sanction authorized under Medicare and Medicaid.

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### Justification of Repeat Deficiencies

Medicare and Medicaid regulations permit nursing homes with most types of repeat deficiencies to be recertified only if they can adequately justify the repeated noncompliance. These regulations were not adequately followed by the Health Care Financing Administration or the state Medicaid agency in any of the 49 inspections where GAO found they should have been applied. Federal and state officials generally said that they were reluctant to apply the repeat deficiency rules because decertification was too severe a penalty for most repeat deficiencies.

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## Alternative Penalties Needed

GAO agrees with the states and the Health Care Financing Administration that termination is too severe a penalty for many deficiencies. Two alternatives are civil monetary penalties and bans on new admissions until deficiencies are corrected.

About half of the states do not have authority, under state nursing home licensing laws, to impose civil monetary penalties or deny payment for new residents. States that do have such authority have made limited use of it. Because of the limited availability and use of alternative sanctions by the states, state programs do not adequately fill the gaps in the federal enforcement program.

Several federal agencies currently use civil monetary penalties as a means of enforcing regulations. For example, the Environmental Protection Agency considers the threat of fines to be an important deterrent in its toxic substances program. The penalty system tailors the penalty to the situation, considering such factors as the nature, circumstances, and extent of the violation, repeat violations, and the ability to pay without endangering continued operation.

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## Recommendations

Legislation has been introduced in both the House of Representatives (H.R. 2270 and H.R. 2770) and the Senate (S. 1108) to establish a wide range of alternative sanctions for noncompliance with nursing home requirements that could be used both by the states and the Department of Health and Human Services. These bills contain provisions that could help overcome the problems that have limited use of alternative sanctions in state licensing laws. GAO recommends enactment of such legislation, but believes it should be expanded to set conditions for readmitting nursing homes that have been terminated from the Medicaid program.

GAO is also making several recommendations to the Department of Health and Human Services to strengthen its use of existing regulatory authority to deal with nursing homes that have repeat deficiencies that threaten patient health and safety and should be terminated from the Medicare and Medicaid programs.

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## Agency Comments

GAO did not obtain agency comments.

My name is Helen R. Miller and I am registered lobbyist for National Council on Aging.

I would like to speak to you concerning S. B. 585.

I have been a social worker in nursing homes, and understand well some of the problems that occur in those homes. I have been distressed at the attitudes of management when they were assessed for violations. First and foremost they laughed at the small fines that were assessed, and then as there was not an adequate follow through, corrections were seldom made, and the next year they would pay the low fine again.

I firmly believe that raising penalties to the levels described in this bill, \$500.00 minimum to \$5,000 maximum would serve to impact on this industry in a meaningful productive way.

Let me share with you, there is nothing more tragic than when a home is temporarily or permanently shut down and the resident has to be moved. Unfortunately for those residents their wellbeing is far removed from the consideration of the management.

It is my hope that you will pass this bill which should raise the standards of nursing homes and ensure more quality care for our loved ones.

Thank you for your interest,



KANSAS COALITION ON AGING  
TESTIMONY ON SB 585  
SENATE PUBLIC HEALTH & WELFARE  
FEBRUARY 17, 1988

My name is Mark Intermill. I am the Executive Director of the Kansas Coalition on Aging. KCOA supports SB 585. We support this bill because it provides some basic consumer protection for older Kansans who are currently receiving care in an adult care home, or who are preparing to enter an adult care home.

The first means of providing protection, increasing civil penalties for nursing homes which violate rules and regulations designed to protect the health and safety of nursing home residents, is a measure for which members of the Kansas Coalition on Aging have expressed strong support. In a survey of our membership conducted last fall, we asked whether KCOA should advocate for more stringent sanctions against nursing homes which have been cited for violations of health and safety regulations and have not taken action to resolve the violation in the prescribed time period. All respondents answered the question affirmatively. It was the only issue for which there was a unanimous response.

We believe that the provision of an intermediate range of sanctions would provide incentives for adult care homes to correct deficiencies which adversely impact on the health and safety of residents. The current level of fines has remained constant since 1978. But, since 1978, the cost of nursing home care in Kansas has increased by nearly 300%. The impact

of the fine, as measured by the fine-rate ratio has been significantly diminished. We would hope that the proposed civil penalties would never have to be imposed on any nursing home. Many nursing homes in Kansas, which provide high quality care as a matter of course, will not be impacted by this legislation. But, we feel it is necessary to provide the Department of Health & Environment, which is charged with the responsibility of regulating the adult care homes in which the most vulnerable of our adult population resides, with the authority to impose meaningful sanctions in those cases where the health and safety of residents is jeopardized.

The second major provision of this bill bans admission of new residents to adult care homes which are in substantial noncompliance with health and safety regulations. This section is, in my opinion, the most important consumer protection provision of the bill. This action would provide persons who are preparing to enter an adult care home and their families with assurance that they will not be entering a nursing home which has been in substantial noncompliance with basic health and safety regulations. We believe that it is an appropriate extension to private pay residents of a protection currently provided to persons who receive Medicaid.

In closing, I want to reiterate our support for this bill, and to urge the committee to report it favorably for passage.



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ARTHUR C. HODGSON, Lyons

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DAVID JAMPOLSKY, Overland Park

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# KANSAS TRIAL LAWYERS ASSOCIATION

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February 17, 1988

Mr. Chairman, members of the Committee, my name is Ruben Jorge Krisztal. I am a practicing attorney and a member of Kansas Trial Lawyers Association Board of Governors, and I will be speaking today on their behalf.

For the last four years, I have worked almost exclusively in nursing home litigation.

The Kansas Trial Lawyers Association, and I, ask the Committee to act favorably on SB 585 in its present form for the following reasons:

- 1) The current system is not sufficient to deter negligent behavior that injures nursing home residents;
- 2) SB 585 allows the state to force correction of serious safety violations that occur in a very small percentage of negligent nursing homes; and
- 3) SB 585 will prevent lawsuits since negligent nursing homes will not be able to afford to continue practices that endanger the lives and safety of it's residents. If SB 585 is enacted, these violations will, most likely, be corrected without reaching the litigation stage.

Mr. Chairman, members of the Committee, I thank you for allowing me to testify today. I can be reached at the following address to answer any questions you might have.

Sincerely,

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Senate Public Health & Welfare

February 17, 1988

Attachment 10