Approved 3-1-88
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./p.m. on February 24, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

John Schneider, Commissioner, Division of Income Maintenance and Medical Services
Dick Hummel, Executive Vice President, Kansas Health Care Association
Paul Klotz, Association of Community Health Centers
Richard Morrisey, Director, Bureau of Adult and Child Care, KDHE
Joan Strickler, Executive Director, Kansas Advocacy of Protective Services
Nancy Kirk, Administrator, Countryside Health Center, Topeka
Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc.
Patricia Schloesser, M.D., Director, Division of Health, KDHE

John A. Schneider testified on SB-657 stating that the proposed language changes seemed to be unnecessary and would take away considerable flexibility from the agency. Mr. Schneider requested that SB-657 be reported unfavorable. Attachment 1

Dick Hummel stated that his organization totally concurred with the statements made by John Schneider, Commissioner, SRS, and felt that SB-657 was not necessary.

Paul Klotz appeared before the committee stating that his organization joined with SRS in opposing SB-657.

Written testimony was presented by Richard J. Morrissey, requesting exploration of other ways to meet the needs of the sponsors of SB-657. Attachment 2

Joan Strickler appeared before the committee stating that the amendment contained in SB-658 would have the effect of removing certain important protections and rights provided by Kansas law to persons diagnosed as mentally ill. Attachment 3

Richard J. Morrisey appeared before the committee on SB-658. Mr. Morrisey stated that certain exceptions to the statutes were resolved by the 1986 legislature. It was further stated that a specific exception for adult care homes could be added to an exception made for Larned State Security Hospital instead of removing adult care homes completely from the act. Attachment 4

Dick Hummel appeared before the committee requesting adoption of SB-658 stating concern that without this bill one could possibly see a return of the use of chemical restraints or even cause reinstitutionalization of some patients. Senate Bill 658 could place the physician in an even greater liability situation. Attachment 5

Nancy Kirk appeared before the committee in support of SB-658. Ms. Kirk stated that the exemption of adult care homes from the 3 hour medical reevaluation requirement for the use of restraints will permit the IFC-MH program to continue to serve the long term mentally ill elderly without regard to their physical status. Attachment 6

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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 24, 1988.

Marilyn Bradt appeared stating that her organization opposed SB-658 as it would remove adult care homes from the definition of "treatment facility" entirely. Ms. Bradt suggested the possibility of exempting those facilities from the regulation requiring medical reevaluation for any use of restraints for a period exceeding 3 hours. Attachment 7

Patricia Schloesser, M.D., appeared before the committee concerning SB-659. Dr. Schloesser stated that this bill basically changed the terminology of the title to convey a less negative image. The Federal Crippled Children's Services was changed last year to Programs for Children with Special Health Needs and this bill would change the name to coincide with the federal title. Attachment 8

Senator Salisbury made the motion to pass out SB-659 favorable for passage. Senator Hayden seconded the motion and the motion carried. Senator Salisbury will carry the bill.

Senator Bond made the motion to report SB-657 unfavorable for passage with a second by Senator Kerr. The motion carried.

In consideration of SB-658, Senator Salisbury requested that the revisor develop language which would indicate that the circumstances applying to the use of restraints by this group of adult care homes would be outlined in rules and regulations in order that the committee could review certain possibilities.

Senator Anderson moved that SB-660 be amended to read "at least one-half of the Council members shall be 60 years of age or older." Senator Reilly seconded the motion and the motion carried.

Senator Bond made the motion to table SB-660. Senator Morris seconded the motion. The motion failed.

Senator Anderson made the motion to report SB-660 favorable as amended. Senator Kerr seconded the motion. The chair was in doubt. The motion carried with 4 yes votes and 3 opposed. Senator Anderson will carry the bill.

The meeting adjourned at 10:58 a.m. The committee will meet in Room 313-S on February 25, 1988 with Lt. Governor Jack Walker reporting on the Governor's Task Force on AIDS.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
DATE February 24, 1988

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
~~Flo~~ Floyd C Eaton	KHCA
Nancy A Kirk	Countryside Health Center
Dick Hummel	KHCA
Richard Morrissey	KDHE
Cassie Lauver	KDHE
Marilyn Bradt	KINH
Ken Bahr	Kaiser Permanente
Paul M. Klotz	Assoc. of CMHCs of Ks
John Bolger	SRS
John Schwendi	SRS
Chip Wheelen	KMS
Tom Bell	KHA
Carl Schmitthenner	Kansas Dental Association

TESTIMONY ON SENATE BILL 657
SENATE PUBLIC HEALTH AND WELFARE

Senate Bill No. 657 proposes to place the language contained in K.A.R. 30-5-59 and K.A.R. 30-5-60 in statute, which would seem unnecessary. These existing regulations have the force of law given that they are promulgated by the Secretary as he/she is empowered by law to do. Such a bill, be it concerned with Medicaid providers or any other of the many subjects covered by our regulations, would take away considerable flexibility from the agency in running its programs. Any changes would take much more time to implement and would presumably require passage by the legislature.

I do have one specific concern related to a word change from what is in the current regulations to the language contained in the bill. Throughout SB No. 657, the "secretary of social and rehabilitation services" has been used wherever the word "agency" appears in the regulations. In our opinion, this is a significant change which could have serious consequences. The reasoning is that K.S.A. 75-3306, which provides for the internal administrative hearing process for SRS, states in part: "The secretary of social and rehabilitation services shall provide a fair hearing for any person who is an applicant, client, inmate, or other interested person or tax payer who appeals from the decision or final action of any agent or employee of the secretary." (emphasis added)

Decisions of the Secretary himself are beyond the scope of this statute and are, therefore, not considered to be appealable under the administrative hearing process. This could mean that decisions made pursuant to Sec. 3 (c), for example, in addition to being extremely time consuming for the Secretary, could only be challenged by filing an action directly in district court. It would seem much more desirable to have these types of decisions made by employees so that the administrative hearing process can be used to help resolve differences.

We would encourage the Committee to not vote this bill out favorably.

John A. Schneider
Commissioner of Income Maintenance and Medical Services
Department of Social and Rehabilitation Services

(913) 296-6750

February 23, 1988

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 657

BACKGROUND INFORMATION

Senate Bill 657 appears to quote directly to the existing Department of Social and Rehabilitation Service regulations governing participation in and termination from the medical assistance program.

ISSUES ADDRESSED

The department is concerned that Senate Bill 657 might unnecessarily complicate the administration of the federal requirements for certification as a provider in the Medicaid program. Passage of Senate Bill 657 would require that future administrative changes would also require passage of the bill.

DEPARTMENT POSITION

We recommend that the committee explore other ways to meet the needs of the sponsors of Senate Bill 657 short of placing appropriate administrative regulations in statute.

Presented by: Richard J. Morrissey, Director
Bureau of Adult and Child Care
February 24, 1988

Office Location: Landon State Office Buildi

.nsas Advocacy & Protective Services, Inc.

Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

Chairperson
R. C. (Pete) Loux
Wichita

Vice Chairperson
Robert Anderson
Ottawa

Secretary
Neil Benson
El Dorado

Treasurer
Robert Epps
Topeka

Rep. Rochelle Chronister
Neodesha

Sen. Norma Daniels
Valley Center

Sen. Ross O. Doyen
Concordia

Harold James
Hugoton

James Maag
Topeka

W. Patrick Russell
Topeka

Rep. Jack Shriver
Arkansas City

Raymond L. Spring
Topeka

W. H. Weber
Topeka

Liaison to the Governor
Jose A. de la Torre

Executive Director
Joan Strickler

TO: The Senate Committee on Public Health and Welfare
Senator Roy Ehrlich, Chairperson

FROM: Kansas Advocacy and Protective Services, Inc.
R. C. Loux, Chairperson

RE: Senate Bill 658

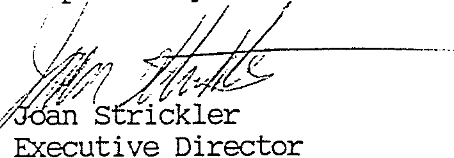
DATE: February 24, 1988

The amendment proposed in Section 1 (q) of K.S.A. 59-2902, to remove adult care homes from the definition of "treatment facility," would have the affect of removing certain important protections and rights provided by Kansas law to persons who are diagnosed as mentally ill.

Some of these rights and protections are involved in the administration of medication and other treatments, protections relating to the disclosure of records, and in K.S.A. 59-2929, a bill of rights of patients. Persons who live in community facilities, such as ICF/MH's, should be entitled to the same basic protections provided patients in our state psychiatric facilities.

If Kansas is to offer a full range of service options for persons with mental disabilities, incorporating state operated state institutions as well as privately operated community residential programs, it is important that we assure not only that adequate dollars follow the patient through that continuum, but that rights and protections follow as well.

Respectfully submitted:



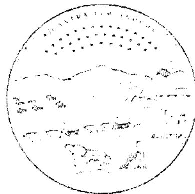
Joan Strickler
Executive Director

JS/jw

KAPS has been charged with developing systems of advocacy and protective services in Kansas relevant to the provisions of Sec. 113 of P.L. 94-103, as amended; the Developmental Disabilities Services and Facilities Construction Act, and P.L. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act.

Senate Public Health & Welfare
February 24, 1988
Attachment 3

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

TESTIMONY PRESENTED TO

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

BY

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill 658

Background

Senate Bill 658 was introduced by the Senate Committee on Public Health and Welfare on February 16, 1988. The bill would amend the treatment act for mentally ill persons by redefining the term "treatment facility" as it now appears at KSA (1987 Supp.) 59-2902.

Current law defines the term "treatment facility" as:

> Any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

The treatment act for mentally ill persons was substantially amended in 1986 by passage of House Bill 2050. The primary reasons for amendments in 1986 were to redefine those individuals who were subject to involuntary hospitalization, to authorize outpatient commitment and other alternatives which might make better use of the state's developing community support programs, and to obtain a legislative solution for the issue of whether a committed patient could refuse standard psychotropic medications.

The precise issue presented by Senate Bill 658 is whether adult care homes licensed by the Department of Health and Environment should be

included in the definition of treatment facilities in the act for mentally ill persons. As mentioned in the previous paragraph, this issue was not a focus of recent amendments in the act. However, it should be noted that the term "treatment facility" before 1986 specifically included adult care homes in its definition. The reason for deleting adult care homes from the definition in 1986 is unclear, although two possible explanations have usually been offered: (1) specific inclusion of adult care homes was redundant since the new definition already included any "other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient," or (2) adult care homes were intentionally removed from the definition.

Since at least 1976 with the original passage of Senate Bill 26, the treatment act for mentally ill persons placed specific limitations upon health care providers when providing psychiatric treatment in Kansas facilities. For example, even court-committed patients could refuse certain types of treatment, such as psychosurgery, electroshock therapy, experimental medication, aversion therapy, and hazardous treatment procedures. In addition, all patients were guaranteed certain rights, such as the right to wear personal clothing of their choice, to receive confidential telephone calls, to refuse involuntary labor, to have explained the nature of all medications and treatments prescribed, to be visited by personal physicians or attorneys, and to receive written notice of treatment rights under Kansas law. Moreover, the treatment act limited the use of restraints and seclusion to those situations when they were required to prevent substantial bodily injury to the patient others. No restraint could be applied to a patient unless it had been ordered by a physician and reapproved by a physician no less than every three hours.

In October 1987 the Department of Health and Environment proposed certain amendments to administrative regulations concerning adult care homes. Upon review of these amendments by the State Attorney General, the regulation dealing with restraints (KAR 28-39-87) was found to be in conflict with requirements of KSA 59-2928 discussed earlier. Specifically, in a letter to Secretary Stanley C. Grant, Department of Health and Environment, the Honorable Robert T. Stephen, Attorney General of Kansas, stated that:

> The Regulatory requirements are less stringent than those stated in KSA 59-2928. While an argument may be made that the code for care and treatment of mentally ill persons does not apply to adult care homes, I believe a review of KSA 59-2902 and 59-2928 reveals that in some, if not all cases that code does apply. I, therefore, respectfully request that KAR 28-39-87(e) be amended to reflect the statutory requirements of KSA 59-2928.

As a result of this ruling, the Department of Health and Environment amended its proposed regulation to conform with the provisions of the treatment act for mentally ill persons in intermediate care facilities for mental health.

After the conforming amendment was made to the restraint regulation, the department received a number of letters from ICF/MH facilities objecting to the new medical reevaluation requirement. The primary concerns raised by the ICF/MH facilities were: (1) adult care homes did not have on-duty physicians as did psychiatric hospitals and it was extremely difficult to obtain physician services on short notice, (2) the unavailability of physicians would lead to underuse of restraints but a corresponding overuse of psychotropic medication to the detriment of patients, and (3) underutilization of physical restraints would cause unnecessary hospitalization since adult care homes could not prevent some patients from harming themselves or others through the use of such restraints. However, after a public hearing on November 23, 1987, the proposed amendments to KAR 28-39-87 were approved as permanent regulations effective May 1, 1988.

Recommendations

Although adult care homes were specifically included by the definition of "treatment facility" as contained in the treatment act for mentally ill persons since 1976, there has been confusion about the meaning of that inclusion. In other words, when was an adult care home a treatment facility under the act? Was it only when the adult care home had accepted a psychiatric patient on a court commitment under the act, when the patient had a primary diagnosis of mental illness, or when the patient was housed in a distinct part of the facility licensed by the Department of Social and Rehabilitation Services as an intermediate care facility for mental health (ICF/MH)?

The question of whether adult care homes, intermediate care facilities for mental health, or intermediate care facilities for mental retardation are treatment facilities which must comply with the various patient's rights provisions of the treatment act should have a legislative determination to avoid further uncertainty. However, similar concerns with the restraint and seclusion statute (KSA 59-2928) were resolved by the 1986 legislature. In that session, a Subsection (b) was added which established three exceptions to the general requirement for a medical reevaluation every three hours. An exception was made for Larned State Security Hospital, when restraints were needed to prevent a patient from causing injury to self or others, and when restraints were needed primarily for examination or treatment of a physical illness or injury. In other words, a specific exception for adult care homes, ICF/MHs, or ICF/MRs might be added in Subsection (b) instead of removing adult care homes completely from the act. It does seem proper that any adult care home which accepts a patient on court order should be required to follow the general patient's rights provisions of the treatment act.

Presented by: Richard J. Morrisey, Director
Bureau of Adult and Child Care
Department of Health and Environment

February 24, 1988

(e) Restraints. 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. Physical restraints shall be released and the resident exercised and toileted at least every two hours. Restraints shall be monitored no less than once each thirty minutes. In facilities recognized by the secretary of social and rehabilitation services as intermediate care facilities for mental health, the use of a restraint shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 a.m. and 8:00 a.m.

(f) Resident care and hygiene. The facility shall provide supportive services to maintain the residents' comfort and hygiene as follows:

(1) Residents confined to bed shall receive a complete bath every other day or more often as needed.

(2) Incontinent residents shall be checked at least every two hours and shall be given partial baths and clean linens promptly when the bed or clothing is soiled.

(3) Pads shall be used to keep the resident dry and comfortable.

(4) Rubber, plastic, or other types of protectors shall be kept clean, completely covered, and not in direct contact with

APPROVED BY
DEC 2 1987
ATTORNEY GENERAL

DEPT. OF ADMINISTRATION
NOV 30 1987
APPROVED BY FDL

Kansas Health Care Association

Member of ahca

DATE: Wednesday, February 24, 1988

TO: Senate Public Health & Welfare Committee

FROM: Dick Hummel, Executive Vice President
Kansas Health Care Association

RE: **Testimony in Support of S.B. 658 -- Adult Care Homes Excluded from Definition of Treatment Facility for the Mentally Ill**

Senator Ehrlich and Committee Members:

The Kansas Health Care Association (KHCA) is a voluntary, non-profit organization which represents all categories of adult care homes in Kansas -- skilled and intermediate care nursing facilities, intermediate care homes for the mentally retarded and mentally ill, and personal care homes. Our membership encompasses the entire state and is composed of both proprietary and non-profit homes.

The purpose of this bill, which was introduced at our request, is to remedy a problem caused by the Attorney General's informal reading and opinion that adult care homes should fall under a portion of the law relating to the care and treatment of the mentally ill, i.e., K.S.A. 59-2902 et. seq., and that adult care homes are "treatment facilities."

Specifically, the Department of Health and Environment was advised that all adult care homes should meet the standard of K.S.A.59-2928 dealing with the use of restraints. KDH&E disagreed and was able to negotiate the applicability of this requirement to only a portion of the adult care home community, the category of Intermediate Care Facilities for the Mentally Ill (ICF-MH).

The Problem: K.S.A. 59-2928 requires that a physician medically reevaluate the continued use of a physical restraint every three hours. Adult care homes, ICF-MHs included, are not treatment facilities, and this requirement is not necessary and would be impractical for the small number of residents in the ICF-MH who require the limited use of physical restraints. We will later cite examples of the types of restraints we're talking about.

"We Care"

221 SOUTHWEST 33rd ST. • TOPEKA, KANSAS 6661

February 24, 1988
Senate Public Health & Welfare
Senate Bill No. 658

At this point I wish to state that in previous meetings with KDH&E about this, that they too agreed that the requirement wasn't necessary. While reluctant to take the lead, the agency stated they'd support this effort.

The question arises will the mentally ill in ICF-MHs be at peril by the non-application of this statute and the exemption? The answer is no, because federal and state laws and regulations for adult care homes clearly and more rigidly stipulate the requirements for not only the use of restraints but also the protection and rights of residents in our facilities. We would be happy to review those with you.

Type of Restraints: We are talking about mittens to protect a resident from harming himself, bed rails to prevent a resident from falling from the bed.

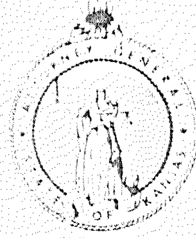
3-Hour Reevaluation: Means that a physician must reauthorize the use of such devices as these every three hours. Contacting primary care physicians or psychiatrists every three hours will be extremely difficult for the nursing staff of ICF-MH homes. Understand that these facilities are simply not designed like psychiatric units in which physicians are readily available 24-hours a day.

Consequences: If this requirement remains in effect it could lead to the use of over-use of chemical restraints or medications in some facilities for the management of at-risk individuals. It also could result in the transfer and institutionalization of persons to the state psychiatric hospitals. It further could place physicians at risk and increase their liability and exposure for non-compliance with the requirement.

In conclusion, the regulation adopted by KDH&E, prompted by the Attorney General's informal opinion of the statute governing the care and treatment of the mentally ill, is not appropriate or necessary for the adult care home sector. We are asking that you make this clear by adopting S.B. 658.

I have asked that Nancy Kirk, administrator of the Countryside Health Care Center, an ICF-MH facility here in Topeka, appear to discuss her facility's programs and services.

Thank you for this opportunity and I would be happy to try to answer any questions.



RECEIVED
OCT 22 1987
SECRETARY OF
DEPT. of HEALTH & ENVIRONMENT

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION: 296-3751

October 21, 1987

Stanley C. Grant, Ph.D.
Secretary, Department of Health and Environment
Forbes Field
Topeka, Kansas 66620-0001

Dear Secretary Grant:

Your office is in the process of amending K.A.R. 28-39-87 which regulates certain adult care homes. The regulation has been forwarded to my office for approval as to its legality. Two subsections of the regulation appear to conflict with current legislation.

First, subsection (6) would extend the expiration date of waivers from staffing requirements. The effect of this proposed amendment is to allow facilities to delay compliance with the staffing requirement until July 1, 1989. This conflicts with K.S.A. 39-932, which states that the Secretary may allow facilities up to twelve months to comply with new regulations. If it is impossible for some operators of intermediate nursing care facilities to comply with the regulation at this time, and if it is expected that they will not be able to comply within twelve months from the initial date of the regulation, then I believe that the remedy lies somewhere other than extending waivers for another twenty months. One suggested solution is to delay the effective date of the requirement. This would avoid disparate treatment between those who are now spending funds to be in compliance and those who are now unable to comply.

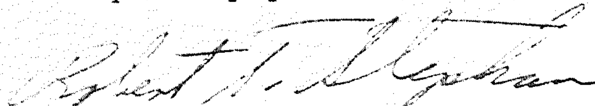
The second conflict between the regulation and a statute appears in subsection (e), which outlines the procedure for restraining patients. The Regulatory requirements are less stringent than those stated in K.S.A. 59-2928. While an argument may be made that the code for care and treatment of mentally ill persons does not apply to adult care homes, I believe a review of K.S.A. 59-2902 and 59-2928 reveals that in some, if not all cases that code does apply. I therefore

RESTRAINTS

respectfully request that K.A.R. 28-39-87(e) be amended to reflect the statutory requirements of K.S.A. 59-2928.

If my office may be of assistance in making any of these changes, please feel free to contact us.

Very truly yours.



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

RTS:MWS:ma

2/15

COUNTRYSIDE HEALTH CENTER
3401 Seward Avenue
Topeka, Kansas 66616-1697
913-234-6147

Testimony in support of Senate Bill 658
2-24-88

My name is Nancy A. Kirk and I wish to speak to you today in support of Senate Bill 658. I am here out of a personal and professional commitment to the long term mentally ill. I am a licensed master degree social worker and I have spent the past 20 years in various human service capacities. Currently I am the administrator of Countryside Health Center an intermediate care facility for the long term mentally ill, an ICF-MH.

The recent Attorney General's opinion which defined the ICF-MHs as treatment institutions places the ICF-MH in an unfortunate situation which the legislation under discussion seeks to correct. The purpose of Senate Bill 658 is to remove the adult care homes (i.e. nursing homes) from the definition of treatment institutions. Such institutions are required to have a medical re-evaluation of restraints every three hours. In state institutions where physicians are on staff and patients are acutely mentally ill, this requirement is a necessary and reasonable protection for patients. In ICF-MH facilities, where residents are not acutely ill, and physicians are not on staff, the requirement becomes impossible to meet.

The ICF-MH program was established in 1982 to serve the most vulnerable of the long term mentally ill; primarily those persons who were elderly, who had received maximum benefit from the active treatment programs in the state hospitals, and who had a history of failures in less structured group or apartment living programs. ICF-MH programs are community based services that offer a wide range of opportunities within a consistent environment; adult living skills, medication supervision and management, leisure time activities, pre-vocational programs, and continual opportunity for contact and interaction with the larger community. ICF-MH programs are not designed to provide services for those who are in the acute phases of mental illness nor those who have frequent acute episodes.

We are licensed and surveyed in the same way as geriatric ICFs and are therefore governed by the same rules and regulations. The regulations governing restraints have just been discussed and I will not repeat them, except to emphasize that our use of restraints is for the protection of our residents in the same way that geriatric facilities use restraints.

To illustrate what I am saying it may help if I describe one individual that we serve at Countryside. Mary B. has a diagnosis of schizophrenia, mental retardation, and a seizure disorder. Mary used to walk about the facility, but on occassion her seizure activity would become pronounced and she would begin to stumble and fall resulting in numerous cuts and brusies. Eventually her ability to walk without assistance was sufficiently impaired to require a physician's order to place her in a wheelchair. At first Mary was not restrained in the chair, however it quickly became apparent that she was unable to remember that she could no longer walk without our help and the physician ordered a vest restraint. A vest restraint is also used when Mary is in bed. Even though we use bed rails for her safety, she will climb out of bed, again forgetting that she is unable to walk. Mary B. has a long history of unsuccessful placements in facilities for the mentally retarded and those for geriatiric residents. Although she is 70 years old and mentally retarded, her primary problem is her schizophrenia which results in behaviors that are most problematic for her caretakers. Mary B. has been successfully cared for at Countryside since the establishment of the ICF-MH program, but the 3 hour re-evaluation of restraint orders will result in a transfer for this lady.

Mary B. is typical of the residents that we serve at Countryside who are restrained. They are restrained because they are unable to walk safely and cannot remember this reality. We do not place residents in physical restraints for punishment, nor to control psychotic behavior. We do not have time out rooms nor seclusion rooms. ICF-MH programs use vest and waist restrainsts to protect residents from falls, geriatiric chairs with trays for those who are unable to use wheelchairs, gloves and wrist restraints to prevent the scratching of sores or wounds, and bed rails to prevent falls. Each and everyone of these restraints requires a physician's order. The restraint regulations currently in the rules and regulations for adult care homes are sufficient to guarantee the safety of residents in a manner that is manageable and enforceable.

Physicians who were told of the recent opinion made it clear there was no way they would be able to provide a medical re-evaluation every three hours and such a requirement would then become a liability issue. We would anticipate the re-emergence of physician recruitment and retention problems for adult care homes. As a result facilities who serve the long term mentally ill would not be able to admit those who require restraints for safety and would have to transfer those individuals who are currently being served. For the most part, the long term mentallv ill who are elderly have lost contact with their families. The successful ICF-MH placement has provided them with stability and a sense of belonging; their only remaining home and family. To move these persons simply because they have become frail is cruel and uncaring.

The exemption of adult care homes from the 3 hour medical re-evaluation requirement for the use of restraints will permit the ICF-MH program to continue to serve the long term mentally ill elderly without regard to their physical status. I strongly urge you to support this legislation and to reduce the discrimination experienced by those who are elderly and mentally ill.

Respectfully,
Nancy A. Kirk, LMSW
Administrator
Countryside Health Center

KINH 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 658

February 24, 1988

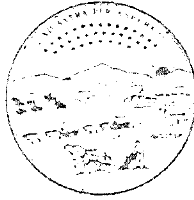
Mr. Chairman and Members of the Committee:

Kansans for Improvement of Nursing Homes understands the regulatory problem underlying SB 658 and has some sympathy for the dilemma the regulations pose for Intermediate Care Facilities for Mental Health (ICF/MHs). We suggest, however, that there may be a solution less sweeping than that proposed in SB 658, which would remove adult care homes from the definition of "treatment facility" entirely.

It might be possible to exempt those facilities from the regulation requiring medical reevaluation for any use of restraints for a period exceeding 3 hours. We would agree that it is not a realistic requirement for small facilities that do not have on-site medical staff.

However, there are other requirements in the act for care and treatment for mentally ill persons that <u>should</u> apply to ICF/MHs. We believe, therefore, that passage of SB 658 in its present form is not advisable and that some other solution should be sought.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to

Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

S.B. 659

The Crippled and Chronically Ill Children's Program (CCICP) promotes the functional skills of young persons in Kansas who have a handicap, disability or chronic disease by providing or supporting needed specialty health care. Diagnostic services are available, without regard to family income, to all Kansas youth under the age of twenty-one who are suspected of having a handicapping condition, or chronic disease. Ongoing treatment services are available for youth meeting financial and medical eligibility. Services include medical specialists, outpatient care, hospitalization, surgery, durable medical equipment and reimbursement for transportation to medical specialty care.

The current program originated from the Kansas Crippled Children's Commission which was created in 1931 (K.S.A. 1972 Supp. 74-3401 to 74-3409; and 65-5a01 to 65-5a16) and consisted of a five member governing board appointed by the Governor. The functions of the Commission were transferred to the Department of Health and Environment in 1977. In July, 1978, amendments to K.S.A. 65-5a01 transferred the determination of program eligibility from the courts to the Department of Health and Environment. In FY 1984 amendments to K.S.A. 65-5a01, 65-5a05, 65-5a08, 65-5a10, 65-5a11, 65-5a12, 65-5a13, 65-5a14, 65-5a16, 75-5643 and 75-5644, changed the title to Crippled and Chronically Ill Children's Program to designate the scope of services for handicapping conditions and chronic diseases.

Office Location: Landon State Office Building

Over the last several years public sentiment has supported a change from Crippled and Chronically Ill Children's Program to a title which conveys a less negative image. Last year the title of the federal Crippled Children's Services was changed to Programs for Children with Special Health Care Needs. This change was the result of this same public sentiment. In response to the public concern, we are supporting a name change for the CCICP and we have elected to change the title from Crippled and Chronically Ill Children's Program to Services for Children with Special Health Care Needs.

Presented by:

Patricia Schloesser, MD
Director of Health

Cassie Lauver, ACSW
Director, Crippled and Chronically Ill Children's Program

February 24, 1988

ADMINISTRATIVE OFFICE

Kansas Crippled and Chronically Ill Children's Program
Kansas Department of Health and Environment
Forbes Field, Building 740
Topeka, Kansas 66620-7110
(913) 862-9360, Ext. 455

FIELD OFFICES

Kansas Crippled and Chronically Ill Children's Program
University of Kansas Medical School at Wichita
1010 N. Kansas
Wichita, Kansas 67214-3199
(316) 261-2671

Kansas Crippled and Chronically Ill Children's Program
Kansas University Medical Center
39th and Rainbow, Room 129-CRU
Kansas City, Kansas 66103-2918
(913) 588-6343

The Kansas Crippled and Chronically Ill Children's Program is funded by State and Federal Title V funds.

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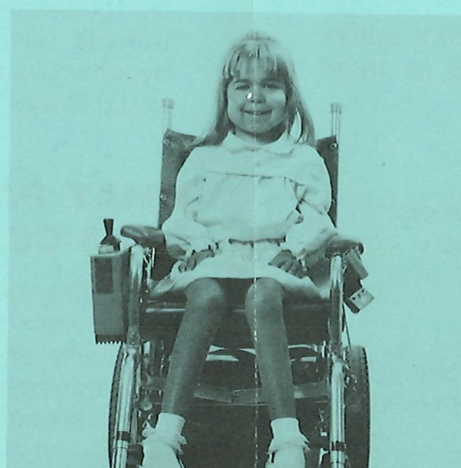

Kansas Department of Health and Environment
Forbes Field
Topeka, Kansas 66620-7110
913-862-9360

Jack D. Walker, M.D., Secretary
Mike Hayden, Governor

8-3

Crippled and Chronically Ill Children's Program

PURPOSE: To promote the functional skills of young persons in Kansas who have a handicap, disability, or chronic disease.

METHOD: By providing or supporting needed specialty health care.

SERVICES

DIAGNOSTIC services are available, without regard to family income, to all Kansas youth under the age of 21 who are suspected to have a severe handicap, disability, or chronic disease. Prior authorization is required and may be obtained by phone or by letter from program staff.

TREATMENT services include medical specialists, outpatient care, hospitalization, surgery, durable medical equipment, and reimbursement for transportation to medical specialty care. A limited amount of speech therapy is provided for preschool children with severe hearing loss or with cleft palate/cleft lip. A limited amount of rehabilitative physical therapy or occupational therapy is available for youth with severe burns or with eligible orthopedic conditions.

All treatment services must be prior authorized. Conditions that are eligible for treatment include:

* Spina Bifida
* Cleft palate/Cleft lip
* Acquired or congenital heart disease
* Gastro-intestinal or genito-urinary conditions requiring surgery
* Burns
* Major orthopedic problems
* Genetic and metabolic conditions (PKU, sickle cell, cystic fibrosis, hypothyroidism, galactosemia, hemophilia)
* Hearing loss
* Vision disorders
* Craniofacial anomalies (selected)
* Seizures

OUTREACH clinics bring specialty diagnosis, consultation, and follow-along care as close to the child's home as possible. Clinics are conducted for hearing loss, orthopedic conditions, neurological impairments, cardiac diseases, and genetic diseases.

SPECIAL services include counseling and planning for health care needs, developing an individual plan of health care, and follow-along for each person accepted for services. Where CCICP cannot provide the needed health services, an effort is made to identify other resources in the State.

WHO ARE ELIGIBLE FOR TREATMENT SERVICES?

* Youth who live in Kansas
* Youth under the age of 21 years
* Youth with a medical condition covered by the program
* Persons and families who meet the financial guidelines
* Kansas residents of any age who have hypothyroidism, sickle cell disease, PKU, cystic fibrosis, galactosemia, or hemophilia

WHAT PART OF THE COST DOES CCICP PAY?

CCICP may pay for all or part of the cost of medical services. Each case is considered individually, and the amount paid is based on family income and the anticipated cost of the health services.

HOW DO YOU APPLY?

Contact one of the listed CCICP offices, any community public health department, or social service departments of major hospitals for information, assistance, or application forms.

Referral may be initiated by any concerned person.

INFORMATION IS NEEDED ABOUT:

1. Family members.
2. Health insurance.
3. Financial status.
4. The youth's diagnosis or health problem.
5. Names and addresses of doctors and hospitals providing care to the youth who is referred for service.

HOW IS ELIGIBILITY DETERMINED?

Each application is individually reviewed and a decision is made according to guidelines established for financial and medical eligibility. The special needs of the person with the handicap and those of the family are considered as a part of each decision.

APPEAL

The family may appeal a decision to deny or to terminate services. The appeal should be addressed to the Director of the Crippled and Chronically Ill Children's Program, who will review the application information and provide a response. Further appeal m[illegible] directed to the Depa[illegible]t of Health and Environment.