

Approved 3-29-88 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 March 21, 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:

Bob Williams, Executive Director, The Kansas Pharmacists Association
Pat Parker, Vice Present, Kansas State Board of Pharmacy
Ron Gaches, Boeing, Wichita
Mark Beshears, Attorney, Medco Containment Services, Inc.
Chip Wheelen, Kansas Psychiatric Society
Chip Wheelen, Kansas Medical Society
Larry Buening, General Counsel, Kansas State Board of Healing Arts
Terri Roberts, KSNA
Don Strohle, Attorney for Physicians Assistants
William Rein, Director of Quality Assurance/Risk Management, Bureau of Adult
and Child Care
Tom Bell, Kansas Hospital Association
Written Testimony, HB-2759, Marla Williams, M.T.(ASCP) Topeka

Bob Williams appeared in support of HB-2505 which would allow the Kansas Board of Pharmacy to inspect out-of-state pharmacies doing business in Kansas. Mr. Williams stated that an Attorney General's opinion of 1984 concluded that "...the Kansas Pharmacy Act requires that out-of-state pharmacies doing business in Kansas hold a Kansas pharmacy license and be subject to Kansas regulations." However, the Board of Pharmacy's ability to enforce Kansas regulations is hampered by their inability to inspect or contract for inspection of out-of-state pharmacies doing business in Kansas. Attachment 1

Pat Parker appeared in support of HB-2505 stating concerns as to whether or not various out-of-state organizations were registered, whether it be in the state where the business is operated or any other type of registration. Mr. Parker stated that the Board of Pharmacy was asking that everyone be subject to the same rules and regulations. There is a statutory requirement to license but they cannot license without the ability to inspect.

Ron Gaches spoke concerning HB-2505 stating that the major concern of Boeing would be the passage of legislation that would prohibit out-of-state pharmacies from doing business in the state of Kansas. It was further stated that no evidence has been presented to the committee concerning difficulties caused by using out-of-state pharmacies.

Mark Beshears, representing Medco Containment Services, Inc., appeared concerning HB-2505 and presented written testimony. Mr. Beshears stated that HB-2505 expands the authority of the Board of Pharmacy to cover the inspections of pharmacies, institutional drug rooms, and places where drugs are manufactured, packaged and sold that are located outside the state of Kansas. An amendment offered by Mr. Beshears is shown in its entirety in Attachment 2.

Chairman Ehrlich introduced Dr. Tom Simpson, "Doctor of the Day" from Sterling and also the two pages, Ann Simpson and Suzanne Hamaker from

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 524-S, Statehouse, at 10:00 a.m. ~~pm~~ on March 21, 1988.

Chip Wheelen, representing the Kansas Psychiatric Society appeared before the committee in support of HB-2643 stating that standards of care and risk management in psychiatric hospitals should be at least the same level of quality as other health care settings. Mr. Wheelen also requested that the amendment by the House Committee be retained. Attachment 3

Chip Wheelen, representing the Kansas Medical Society presented a balloon of HB-2643 to the committee. The balloon contains two amendments, one a new definition of health care providers and one on lines 400-405. Attachment 4

Larry Buening appeared in support of HB-2643 and also supported the changes made by the House Committee As A Whole. Mr. Buening stated that current language, K.S.A. 65-4915(d) appears to conflict with other statutes which require the Board to maintain the confidentiality of reports and records it receives. "K.S.A. 65-2898a and 65-4925 require that the confidentiality be maintained unless the information reports are submitted into evidence in a disciplinary proceeding. However, the current language of K.S.A. 654915(d) states that the reports become public records when a formal disciplinary proceeding is filed whether or not that information is ever submitted into evidence during the course of the proceeding." Attachment 5

Terri Roberts, KSNA, appeared in support of HB-2643 stating that the bill specifically names professional nurses licensed by the Board of Nursing in the new definition of Health Care Provider for mandatory reporting purposes." Attachment 6

Due to time constraints the remaining conferees were unable to appear. Written testimony was presented to the committee.

Don Strohle, Attorney for Physicians Assistants, presented written testimony supporting HB-2643. Attachment 7

William Rein, KDHE, presented written testimony in support of HB-2643 stating that the Department believes the additional providers of health care listed in the proposed amendments should be required to report incidents which either were or might have been below the appropriate standard of care and either did or might recently have caused patient injury. Attachment 8

Tom Bell, Kansas Hospital Association, presented written testimony concerning HB-2643. Mr. Bell stated that these amendments were originally enacted as part of the medical malpractice bills and that the courts have thrown part of the package into question; however, these statutes remain on the books and are very elaborate and sometimes confusing. One concern expressed was the hope that the addition of another substantial group of providers will not disrupt the present on-going process of becoming accustomed to the rules and regulations adopted under this statutory plan. Attachment 9

Written testimony from Marla Williams in support of HB-2759 was provided for the committee members. Ms. Williams expressed concern with wording of Section 1, (a) and makes recommendations to amend this section. Attachment 10

The meeting adjourned at 11:03 a.m. and will convene at 10:00 a.m. on March 22, 1988, Room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE March 21, 1988

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Ken Bahr Topeka

Kevin Remarante
CHRISTIAN SCIENCE COMMITTEE
ON PUBLICATION FOR KANSAS

KEITH R LANDIS "

Chip Wheeler "

Ks Medical Society
BOEING

KON CACHES WICHITA

GARY Robbing

Ks Optometric Assn

Carl Schmitzheuer

Kansas Dental Association

Mark Burkhead

MedCo. Containment Services, Inc.

Carolyn Maddindog

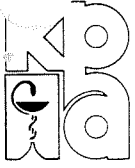
KSWA

William C. Rein

KDHE

Terri Roberts

KSOA



THE KANSAS PHARMACISTS ASSOCIATION

1308 WEST 10TH

PHONE (913) 232-0439

TOPEKA, KANSAS 66604

ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

TESTIMONY - HOUSE BILL 2505
Senate Public Health and Welfare Committee

My name is Bob Williams. I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the committee.

This bill would allow the Kansas Board of Pharmacy to inspect out-of-state pharmacies doing business in Kansas. Current law allows the Board of Pharmacy to only inspect pharmacies located in the state of Kansas.

The Attorney General's opinion of 1984 (attached) concludes that "...the Kansas Pharmacy Act requires that out-of-state pharmacies doing business in Kansas hold a Kansas pharmacy license and be subject to all Kansas regulations." One method the Kansas Board of Pharmacy uses to regulate pharmacies is through the inspection of pharmacies. Currently, the Board of Pharmacy's ability to enforce Kansas regulations regarding dispensing of drugs is hampered by their inability to inspect or contract for inspection of out-of-state pharmacies doing business in Kansas. The state's interest in close regulation of health professions and dangerous drugs hardly needs detailing here. The Tenth Amendment to the United States Constitution reserves to the states the powers not delegated to the United States or prohibited to the states. This has repeatedly been interpreted to reserve broad police power as to a state's health, safety and welfare. This is particularly recognized as to health professions and pharmaceuticals. The interstate commerce clause does not forbid

Senate Public Health & Welfare
March 21, 1988
Attachment 1

burdens being imposed on interstate commerce. The burden simply cannot be undue. As to controlled substance law, Congress, in 21 United States Code Section 903, has expressly authorized states to regulate controlled substances, basically saying state statutes will be upheld unless they are in positive conflict, such that the federal and state laws cannot stand together. Thus, the whole scheme of federal regulation in the area of drugs indicates the field has not been preempted from the states.

The rules and regulations contained in the Kansas Pharmacy Act and enforced by the Kansas Board of Pharmacy serve a legitimate public interest. They represent the minimum standards needed to protect the health, safety and welfare of the citizens of Kansas.

Such potential hazards as the recycling of prescription drugs, the dispensing of prescription drugs after the doctor-patient relationship has terminated, the dispensing of the wrong prescription, the substitution of a generic for a brand name without informing the patient, and the potential drug diversion of controlled substances all point to the need for the Kansas Board of Pharmacy to have the ability to take regulatory action over all pharmacies doing business in Kansas.

We do not believe the bill places any more undue burden on cost other than those born by any type of organization that wants to operate in multiple states. It does not outweigh the public interest in this matter. The primary reason for the bill is to assure that the health and safety of Kansas residents receiving prescription drugs from out-of-state pharmacies is protected.

We encourage you to pass this bill. Thank you.



RECEIVED

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K.P.H.A.

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OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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July 20, 1984

ATTORNEY GENERAL OPINION NO. 84- 71

Lynn E. Ebel
Attorney, Kansas Board of Pharmacy
Davis, Davis, McGuire & Thompson
P.O. Box 69
400 Shawnee Street
Leavenworth, Kansas 66048

Re: Public Health -- Examination and Registration of
Pharmacists -- Registration of Out of State Pharmacists
Doing Business in Kansas

Synopsis: The requirements of the Kansas Pharmacy Act, K.S.A.
65-1601 et seq extend to all persons within or without
the state who deliver prescription drugs in Kansas.
Cited herein: K.S.A. 65-1636, K.S.A. 1983 Supp.
65-1626, 65-1631, 65-1643.

* * *

Dear Ms. Ebel:

As counsel for the Kansas Board of Pharmacy, you request our opinion regarding the authority of the board to require out of state pharmacies doing business in Kansas to hold Kansas pharmacy licenses and be subject to the board's regulations.

K.S.A. 65-1636 is contained in the Kansas Pharmacy Act, K.S.A. 65-1625 et seq., and provides:

Lynn E. Ebel
Page Two

"Except as otherwise provided in this act, the sale and distribution of drugs shall be limited to pharmacies operating under registrations as required by this act and the actual sale or distribution of drugs shall be made by a registered pharmacist or other person acting under his or her immediate personal direction and supervision."

K.S.A. 1983 Supp. 65-1626(i) states that to "distribute means to deliver . . . any drug." Subsection (g) states that to "dispense means to deliver prescription medication to the ultimate user pursuant to the lawful order of a practitioner."

The term pharmacy is defined at K.S.A. 1983 Supp. 65-1626(s) as "premises, laboratory, area or other place (1) where drugs are offered for sale, where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed" As noted above, only pharmacies operating under the direction of a registered pharmacist may distribute drugs in Kansas under K.S.A. 65-1636. K.S.A. 1983 Supp. 65-1643(f) provides that it is unlawful for "any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board"

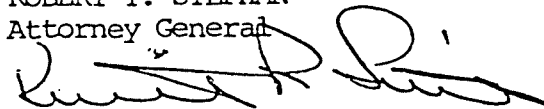
In none of the foregoing statutes is there any language of limitation which suggests that only Kansas residents are subject to the board's control. Rather, Kansas statutes provide for the registration on a reciprocal basis of out of state pharmacists without examination. K.S.A. 1983 Supp. 65-1631(d). We therefore conclude that the language of the Kansas Pharmacy Act does not suggest that its provisions are limited to pharmacies within this state.

A consideration of the purpose of the act also suggests that there was no intent to limit the application of the act. The state's interest in establishing and maintaining high standards in the dispensation of prescription drugs is clear. See, e.g., State ex rel. v. Fadely, 180 Kan. 652, 665 (1957). We therefore conclude that both the language and purpose of the Kansas Pharmacy Act require that out of state pharmacies doing business in Kansas hold a Kansas pharmacy license and be subject to all Kansas regulations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Kenneth R. Smith
Assistant Attorney General

RIS:JEF:KRS:may

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OF COUNSEL
ROBERT A. McCLURE

March 21, 1988

The Honorable Roy M. Ehrlich, Chairperson
Senate Public Health and Welfare Committee
Kansas State Senate, Room 138-N
The Capitol Building
Topeka, KS 66612

Re: Testimony on House Bill No. 2505

Dear Senator Ehrlich:

My name is Mark Beshears. I am with the Topeka Law Firm of Goodell, Stratton, Edmonds & Palmer and I am here today representing Medco Containment Services, Inc., which is one of the largest providers of prescription drugs in the United States.

House Bill No. 2505 expands the authority of the Board of Pharmacy to cover the inspection of pharmacies, institutional drug rooms, and places where drugs are manufactured, packaged and sold that are located outside the State of Kansas.

Medco Containment Services, Inc. is opposed to the licensing requirement contained in House Bill No. 2505. It would be almost virtually impossible for Medco to continue to provide low cost mail order pharmaceuticals if it had to comply with the licensure requirements of the Board of Pharmacy.

Medco would ask this Committee to consider the following amendment to House Bill No. 2505:

1. A pharmacy located outside Kansas which ships, mails or delivers, in any manner, controlled substances or dangerous drugs or devices into Kansas shall be considered a nonresident pharmacy, and shall be registered with the Board of Pharmacy, and shall disclose to the Board of Pharmacy all of the following:

- a. The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to the residents of this state.

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March 21, 1988

A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer or pharmacist.

- b. The nonresident pharmacy will comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the Kansas Board of Pharmacy. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the Kansas Board of Pharmacy, a nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.
- c. The nonresident pharmacy shall maintain its records of controlled substances or dangerous drugs or devices dispensed to patients in Kansas so that the records are readily retrievable from the records of other drugs dispensed.
- d. No out of state manufacturer, wholesaler or pharmacy doing business in Kansas who has not obtained a certificate, license, permit, registration or exemption from the Kansas Board of Pharmacy and who sells or distributes drugs in Kansas through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, exemption or through a selling or distribution outlet which is licensed as a wholesaler shall conduct the business of selling or distributing drugs in the state without obtaining an out of state drug distributor's license from the Board or registering as a nonresident pharmacy.
- e. Applications for an out of state drug distributor's license or a nonresident pharmacy registration shall be made on the form furnished by the Board of Pharmacy. The Board of Pharmacy may require such information as the Board deems is reasonably necessary.

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If this amendment is adopted it would require any pharmacy located outside Kansas that ships, mails, or delivers any controlled substances or dangerous drugs or devices into Kansas to register with the Board of Pharmacy, and to disclose specified information to the Board of Pharmacy, and meet certain other conditions.

Previous testimony to this Committee has indicated that with the advent of alternate methods of health delivery, third party payers and insurance companies have sought to control the cost and utilization of pharmacy services through the use of mail order pharmacies located outside of the State of Kansas.

The adoption of the proposed amendment would continue to protect the Kansas consumer - patient, by having all out of state pharmacies that provide services to Kansas residents be registered with the Board of Pharmacy, and disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

Thank you for allowing me to present testimony to your Committee, and if you need any further information, please feel free to contact me.

Sincerely,

Mark Beshears



Kansas Psychiatric Society

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March 21, 1988

TO: Senate Public Health and Welfare Committee
FROM: Kansas Psychiatric Society *Night Zeelen*
SUBJECT: House Bill 2643, As Amended by
House Committee of the Whole

The Kansas Psychiatric Society wishes to express its support of the amendment to current law (Section 2(e)) which would treat psychiatric hospitals the same as other medical care facilities for purposes of mandatory reporting of perceived substandard care. Standards of care and risk management in psychiatric hospitals should be at least the same level of quality as other health care settings.

We also want to emphasize the importance of the House Committee amendment in subsection (2)(E) of Section 1(a) (line 54). This insures that peer review committees of psychiatric hospitals will enjoy the same protections of confidentiality that are essential to the success of these risk management programs.

Thank you for considering our concerns.

CW:nb

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1988

HOUSE BILL No. 2643

By Special Committee on Public Health and Welfare

Re Proposal No. 29

12-16

0022 AN ACT concerning certain health care providers; relating to
0023 regulation, risk management and peer review; amending
0024 K.S.A. 65-4216 and 65-4217 and K.S.A. 1987 Supp. 65-430,
0025 65-4915, 65-4921, 65-4923, 65-4924 and 65-4930 and repealing
0026 the existing sections.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 Section 1. K.S.A. 1987 Supp. 65-4915 is hereby amended to
0029 read as follows: 65-4915. (a) As used in this section:

0030 (1) "Health care provider" ~~has the meaning provided by~~
0031 *means: (A) Those persons and entities defined as a health care*
0032 *provider under K.S.A. 40-3401 and amendments thereto; and (B)*
0033 *a dentist licensed by the Kansas dental board, a dental hygienist*
0034 *licensed by the Kansas dental board, a professional nurse li-*
0035 *censed by the board of nursing, a practical nurse licensed by the*
0036 *board of nursing, a mental health technician licensed by the*
0037 *board of nursing, a physical therapist assistant certified by the*
0038 *state board of healing arts, an occupational therapist registered*
0039 *by the state board of healing arts, an occupational therapy*
0040 *assistant registered by the state board of healing arts and a*
0041 *respiratory therapist registered by the state board of healing*
0042 *arts.*

0043 (2) "Health care provider group" means:

0044 (A) A state or local association of health care providers;

0045 (B) the board of governors created under K.S.A. 40-3403 and
0046 amendments thereto;

0047 (C) an organization of health care providers formed pursuant

0048 to state or federal law and authorized to evaluate medical and
0049 health care services;

0050 (D) a review committee operating pursuant to K.S.A. 65-
0051 2840b through 65-2840d, and amendments thereto;

0052 (E) an organized medical staff of a licensed medical care
0053 facility as defined by K.S.A. 65-425 and amendments thereto or a
0054 private psychiatric hospital licensed under K.S.A. 75-3307b and
0055 amendments thereto;

0056 (F) a health care provider; ~~or~~

0057 (G) a professional society of health care providers or one or
0058 more committees thereof; ~~or~~

0059 (3) "Peer review" means any of the following functions:

0060 (A) Evaluate and improve the quality of health care services
0061 rendered by health care providers;

0062 (B) determine that health services rendered were profes-
0063 sionally indicated or were performed in compliance with the
0064 applicable standard of care;

0065 (C) determine that the cost of health care rendered was
0066 considered reasonable by the providers of professional health
0067 services in this area;

0068 (D) evaluate the qualifications, competence and performance
0069 of the providers of health care or to act upon matters relating to
0070 the discipline of any individual provider of health care;

0071 (E) reduce morbidity or mortality;

0072 (F) establish and enforce guidelines designed to keep within
0073 reasonable bounds the cost of health care;

0074 (G) conduct of research;

0075 (H) determine if a hospital's facilities are being properly
0076 utilized;

0077 (I) supervise, discipline, admit, determine privileges or con-
0078 trol members of a hospital's medical staff;

0079 (J) review the professional qualifications or activities of
0080 health care providers;

0081 (K) evaluate the quantity, quality and timeliness of health
0082 care services rendered to patients in the facility;

0083 (L) evaluate, review or improve methods, procedures or
0084 treatments being utilized by the medical care facility or by

(H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services.

0381 tion were made in good faith and did not represent as true any
0382 matter not reasonably believed to be true.

0383 Sec. 8. K.S.A. 1987 Supp. 65-4924 is hereby amended to read
0384 as follows: 65-4924. (a) If a report to a state licensing agency
0385 pursuant to subsection (a)(1) or (2) of K.S.A. ~~1986~~ 1987 Supp.
0386 65-4923 *and amendments thereto* or any other report or com-
0387 plaint filed with such agency relates to a health care provider's
0388 inability to practice the provider's profession with reasonable
0389 skill and safety due to physical or mental disabilities, including
0390 deterioration through the aging process, loss of motor skill or
0391 abuse of drugs or alcohol, the agency may refer the matter to an
0392 impaired provider committee of the appropriate state or county
0393 professional society or organization.

0394 (b) The state licensing agency shall have the authority to
0395 ~~enter into an agreement with the impaired provider committee of~~ an
0396 ~~the appropriate state or county professional society or organiza-~~ an
0397 tion to undertake those functions and responsibilities specified
0398 in the agreement and to provide for payment therefor from
0399 moneys appropriated to the agency for that purpose *which*
0400 *moneys shall be matched on a dollar-for-dollar basis by the state*
0401 *or county professional society or organization which is a party*
0402 *to the agreement*[, except that this matching requirement shall
0403 not apply to a state or county professional society or organization
0404 of any provider defined as a health care provider under K.S.A.
0405 40-3401 and amendments thereto]. Such functions and responsi-
0406 bilities may include any or all of the following:

- 0407 (1) Contracting with providers of treatment programs;
- 0408 (2) receiving and evaluating reports of suspected impairment
0409 from any source;
- 0410 (3) intervening in cases of verified impairment;
- 0411 (4) referring impaired providers to treatment programs;
- 0412 (5) monitoring the treatment and rehabilitation of impaired
0413 health care providers;
- 0414 (6) providing posttreatment monitoring and support of reha-
0415 bilitated impaired health care providers; and
- 0416 (7) performing such other activities as agreed upon by the
0417 licensing agency and the impaired provider committee.

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TO: Senate Committee on Public Health & Welfare

FROM: Lawrence T. Buening, Jr., General Counsel
Kansas State Board of Healing Arts

DATE: March 21, 1988

RE: HB-2643

I am appearing on behalf of the State Board of Healing Arts to specifically support those changes to K.S.A. 1987 Supp. 65-4915 set forth on lines 120 - 133 on pages 3 & 4 of HB-2643, as it was amended by the House Committee as a whole.

The proposed changes at lines 120 - 133 were recommended by the Special Committee on Public Health & Welfare following its interim study last summer on Proposal 29.

The current language of K.S.A. 65-4915(d) appears to conflict with other statutes which require the Board to maintain the confidentiality of reports and records it receives. K.S.A. 65-2898a and 65-4925 require that confidentiality be maintained unless the information and reports are submitted into evidence in a disciplinary proceeding. However, the current language of K.S.A. 65-4915(d) states that the reports become public records when a formal disciplinary proceeding is filed whether or not that information is ever submitted into evidence during the course of the proceeding. The Board is concerned that if K.S.A. 65-4915(d) is not amended as provided for in lines 120 - 133 that reporting entities will be reluctant to fully disclose information and reports to the Board if there was a high likelihood that those would eventually become public knowledge.

Thank you very much for the opportunity to appear before you today and I would be happy to answer any questions you might have.

sl



FOR MORE INFORMATION CONTACT:

TERRI ROBERTS, J.D., R.N.
EXECUTIVE DIRECTOR
KANSAS STATE NURSES' ASSOCIATION
820 QUINCY, SUITE 520
TOPEKA, KANSAS 66612

(913) 233-8638

March 21, 1988

H.B. 2643: MANDATORY REPORTING AND PEER REVIEW

Senator Ehrlich and members of the Senate Public Health and Welfare Committee, my name is Terri Roberts, J.D., R.N., I am a Registered Nurse representing the Kansas State Nurses' Association.

H.B. 2643 specifically names professional nurses licensed by the Board of Nursing in the new definition of Health Care Provider for mandatory reporting purposes. This bill also includes LPN's, LMHT's, RT's, OT's, and Dentists in the new definition. This bill was introduced by the Special Committee on Public Health and Welfare from the Interim Study of Proposal # 29 a copy of which is attached to this testimony.

HISTORY OF MANDATORY REPORTING

In 1986 the Legislature passed H.B. 2661 which has been more notably referred to as a Tort Reform Bill for Medical Malpractice. This bill had provisions in it mandating Health Care Institutions to institute "Plans for Risk Management within their facilities" and it also included a "reporting" mechanism for licensees that were at that time defined as "health care providers" under the Health Care Stabilization Fund. The specific Health Care Providers for purposes of mandatory reporting in H.B. 2661 were: MD's, DO's, Chiropractors, Pharmacists, Optometrists, PT's and PT aides, Podiatrists and Registered Nurse Anesthetists. Reportable incidences are any act of a health care provider that (1) is or may be below the applicable standard of care and that has a reasonable probability of causing injury to a patient, (2) may be grounds for disciplinary action by the appropriate health care provider regulatory agency. One year after this bill was passed an elaborate reporting system was in place through the Department of Health and Environment (for Hospitals), the Board of Healing Arts (MD's, DO's, Podiatrists, Optometrists, PT's and PT Aides and Chiropractors), the Board of Pharmacy (Pharmacists) and the Board of Nursing (Registered Nurse Anesthetists).

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H.B. 2643 is based on the following recommendation from the Interim Committee studying proposal # 29:

While the Committee understands that concern for the protection of the Health Care Stabilization Fund and the focus of the 1985 special committee on malpractice insurance availability and affordability led to the limited applicability of K.S.A. 1987 Supp 65-4921 as introduced, the members believe the applicable standard of care should be viewed in light of the welfare of the patients of providers who are protected by state registration. For this reason, the Committee concludes that those health care providers now omitted from the definition should be brought under the authority of K.S.A. 1987 Supp. 65-4921 through 65-4930.

KSNA has one major objection to H.B. 2643 in its current form. They are two amendments that were made in H.B. 2643 in the House. The amendments I am referring to are on page 11 on lines 0399 of the amended bill.

As you may know pursuant to K.S.A. 65-4924, a state agency that regulates health care providers (as currently defined in K.S.A. 1987 Supp 65-4921) is authorized to enter into an agreement with the impaired provider committee of an appropriate state or county professional society or organization to undertake responsibilities related to impaired providers specified in the agreement. The state agency may, pursuant to any agreement, provide for payment to the state or county professional society or organization from state money appropriated to the agency for purposes of the agreement.

In the House Public Health and Welfare Committee one of the Committee members offered an amendment to H.B. 2643 which would require that any professional society or organization entering into a contract with a state agency for purposes of monitoring impaired licensees would match dollar for dollar what the state agency funds for the agreement.

The specific language adopted by the House PH&W Committee was as follows: (page 11, line 0399)

Which moneys shall be matched on a dollar- for-dollar basis by the state or county professional society or organization which is a party to the agreement.

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This amendment was further refined on the floor of the House by an amendment by the Chairperson of the PH&W Committee to exclude the professional societies or organizations that are participating in the health care stabilization fund from the 50% matching fund requirement. So in essence, the Medical Society, the Chiropractors Association, the Osteopathic Association and the Pharmacy Association would not be required to match, but the Nursing Association, the Dental Association and others "newly" included under the mandatory reporting requirements would have this responsibility.

The language amended on the floor of the House was as follows: (page 11, line 0402)

Which moneys shall be matched on a dollar-for-dollar basis by the state or county professional society or organization which is a party to the agreement, except that this matching requirement shall not apply to a state or county professional society or organization of any provider defined as a health care provider under K.S.A. 40-3401 and amendments thereto.

On behalf of the Kansas State Nurses' Association I would like to request that this amended language be stricken from the bill. The distinction for matching funds vs. full funding is not supported and is quite discriminatory to those agencies now being included in the mandatory reporting requirements by H.B. 2643. A ballon of the language to strike is also attached.

I have spoken with members of the Kansas Medical Society and Kansas Dental Association on the KSNA proposed amendment-and they agree that the original language of H.B. 2643 as proposed by the Interim Committee as it relates to the contractual agreements with professional society's and organizations for impaired provider programs should be retained.

I want to Thank You for this opportunity to address the Committee and would be happy to address any questions you may have.

0381 tion were made in good faith and did not represent as true any
0382 matter not reasonably believed to be true.

0383 Sec. 8. K.S.A. 1987 Supp. 65-4924 is hereby amended to read
0384 as follows: 65-4924. (a) If a report to a state licensing agency
0385 pursuant to subsection (a)(1) or (2) of K.S.A. 1986 1987 Supp.
0386 65-4923 and amendments thereto or any other report or com-
0387 plaint filed with such agency relates to a health care provider's
0388 inability to practice the provider's profession with reasonable
0389 skill and safety due to physical or mental disabilities, including
0390 deterioration through the aging process, loss of motor skill or
0391 abuse of drugs or alcohol, the agency may refer the matter to an
0392 impaired provider committee of the appropriate state or county
0393 professional society or organization.

0394 (b) The state licensing agency shall have the authority to
0395 enter into an agreement with the impaired provider committee of
0396 the appropriate state or county professional society or organiza-
0397 tion to undertake those functions and responsibilities specified
0398 in the agreement and to provide for payment therefor from
0399 moneys appropriated to the agency for that purpose ~~which~~
0400 ~~moneys shall be matched on a dollar for dollar basis by the state~~
0401 ~~or county professional society or organization which is a party~~
0402 ~~to the agreement], except that this matching requirement shall~~
0403 ~~not apply to a state or county professional society or organization~~
0404 ~~of any provider defined as a health care provider under K.S.A.~~
0405 ~~40-3401 and amendments thereto].~~ Such functions and responsi-
0406 bilities may include any or all of the following:

- 0407 (1) Contracting with providers of treatment programs;
- 0408 (2) receiving and evaluating reports of suspected impairment
0409 from any source;
- 0410 (3) intervening in cases of verified impairment;
- 0411 (4) referring impaired providers to treatment programs;
- 0412 (5) monitoring the treatment and rehabilitation of impaired
0413 health care providers;
- 0414 (6) providing posttreatment monitoring and support of reha-
0415 bilitated impaired health care providers; and
- 0416 (7) performing such other activities as agreed upon by the
0417 licensing agency and the impaired provider committee.

Proposed Amendment to H.B. 2643

STRIKE LANGUAGE

Retain original language of the Bill-- as proposed by the Interim Committee.

REPROPOSAL NO. 29 -- MANDATORY REPORTING AND PEER ASSISTANCE FOR HEALTH-RELATED PROFESSIONALS*

Proposal No. 29 directed the Special Committee on Public Health and Welfare to determine the necessity for and the feasibility of mandating and standardizing reporting requirements concerning health-related professionals; to review existing treatment programs for impaired health-related professionals, including peer assistance; and to consider whether the state should participate in providing financial support for any such program.

Background

During the 1986 Session of the Kansas Legislature, a comprehensive act developed during the previous interim by the Special Committee on Medical Malpractice was enacted. The new act, which now appears as K.S.A. 1987 Supp. 65-4921 through 65-4930, creates mandatory reporting of certain acts and incidents relating to the treatment of patients of specified health care providers, requires the establishment of risk management programs by medical care facilities, and authorizes certain health care provider agencies to enter into agreements with the impaired provider committee of an appropriate state or county professional society or organization to carry out agreed to responsibilities relating to impaired providers.

Applicability

The 1986 act applies only to persons or entities defined as health care providers in K.S.A. 40-3401, *i.e.*, (1) persons licensed to practice medicine and surgery and persons licensed to practice chiropractic, including those holding a temporary permit and persons engaged in an approved postgraduate training program; (2) health maintenance organizations; (3) medical care facilities as defined in K.S.A. 65-425; (4) optometrists; (5) podiatrists; (6) pharmacists; (7) licensed

H.B. 2642 and H.B. 2643 accompany this report.

professional nurses authorized to practice as registered nurse anesthetists; (8) professional corporations of health care providers; (9) partnerships of persons who are health care providers; (10) Kansas not-for-profit corporations organized to render professional services by persons who are health care providers; (11) dentists who are certified to administer anesthetics in medical settings under K.S.A. 65-2899; (12) physical therapists; (13) psychiatric hospitals; and (14) mental health centers or clinics. The term currently does not apply to licensed nurses, dentists, dental hygienists, mental health technicians, physical therapist assistants, occupational therapists and occupational therapy assistants, respiratory therapists, and persons having an exempt license issued by the Board of Healing Arts. The latter groups are not included under the provisions of K.S.A. 1987 Supp. 65-4921 *et seq.*, because they are not providers under the Health Care Provider Insurance Availability Act. There are alternative reporting requirements applicable to licensees of the healing arts and to mental health technicians.

Reporting

K.S.A. 1987 Supp. 65-4923 requires a health care provider (as defined above) and any medical care facility employee or agent who is directly involved in the delivery of health care to report any reportable incident involving another health care provider, agent, or employee if the provider having a duty to report has knowledge of the incident. A reportable incident is any act of a health care provider that (1) is or may be below the applicable standard of care and that has a reasonable probability of causing injury to a patient, or (2) may be grounds for disciplinary action by the appropriate health care provider regulatory agency.

A reportable incident is to be reported to the appropriate state or county professional society or organization if the incident did not occur in a medical care facility; to the chief of the medical staff, chief administrative officer, or risk manager for referral to the appropriate executive or professional practices peer review committee if the incident occurred in a medical care facility; and, if the reportable incident involves a medical care facility as the health care provider to be reported, to the chief of the medical staff, chief administrative officer, or the risk manager for referral to the appropriate executive committee established pursuant to the facility bylaws. In each case the

review committee, whether of a professional society or organization or a medical care facility, has a duty to report to the appropriate state regulatory agency any finding that a health care provider acted below the applicable standard of care and the action had a reasonable probability of causing injury to a patient, or acted in a manner which may be grounds for disciplinary action by the appropriate regulatory agency in order that the latter may take appropriate disciplinary action.

If a reportable incident is reported directly to a state agency that regulates health care providers, the agency may investigate the report or refer it to a peer review or executive committee which could have made the investigation initially under the law. Each peer review and executive committee must submit a report summarizing the reports of incidents received at least once each three months to the appropriate regulatory agency, including whether an investigation was conducted and any action taken. If a state agency determines that local committees are not fulfilling their duties, it may require that all reportable incidents be reported directly to the agency.

No person or entity is subject to civil liability for failure to report or investigate as required by the 1986 act, except on the basis of clear and convincing evidence that a report was based on evidence known to be false. However, the license of such person or entity may be revoked, suspended, or limited, or the provider may be subject to public or private censure by the appropriate health care provider regulatory agency if a provider is found to have willfully and knowingly failed to make a report. Failure to report also constitutes a class C misdemeanor. A medical care facility or a professional society or organization is not liable for damages for alleged failure to investigate or act upon a report made pursuant to the act. No employer may discharge or otherwise discriminate against an employee for making a report required by law.

Risk Management

K.S.A. 1987 Supp. 65-4922 requires each medical care facility (general or special hospital, ambulatory surgical center, or recuperation center) to establish and maintain an internal risk management program, which must include measures set out in the statute. A risk management plan had to be submitted to the Department of Health and Environment at 60 days before the time for renewal of the facility license in

1987, and failure to submit a plan resulted in denial of the license renewal. No medical care facility may be licensed in 1988 unless its risk management plan has been approved by the Department.

Impaired Providers

If a report to a state agency made pursuant to K.S.A. 1987 Supp. 65-4921 et seq., or any other report or complaint filed with the agency relates to a health care provider's inability to practice with reasonable skill and safety due to physical or mental disability, including loss of motor skill or abuse of drugs or alcohol, or deterioration through aging, the regulatory agency may refer the matter to an impaired provider committee of the appropriate state or county professional society or organization.

Pursuant to K.S.A. 65-4924, a state agency that regulates health care providers (as currently defined in K.S.A. 1987 Supp. 65-4921) is authorized to enter into an agreement with the impaired provider committee of an appropriate state or county professional society or organization to undertake responsibilities relating to impaired providers specified in the agreement. The state agency may, pursuant to any agreement, provide for payment to the state or county professional society or organization from state money appropriated to the agency for purposes of the agreement. K.S.A. 65-4929 sets out functions and responsibilities which may be covered by the agreement.

Under the statutory authority, a professional society or organization, if agreed to by the regulatory agency, may contract with treatment programs; receive and evaluate reports of suspected impairment; intervene in instances of verified impairment; refer impaired providers to treatment programs; monitor the treatment and rehabilitation of impaired providers; and provide post-treatment monitoring and support of rehabilitated providers. The organization must make periodic reports to the state agency; must periodically disclose and review information as considered appropriate by the agency, including immediate reporting of the name of an impaired provider who is believed to constitute an imminent danger to the public and any impaired provider who refuses to cooperate with an investigation or treatment or who exhibits professional incompetence. The statute also sets out authority which may be exercised by a regulatory agency that has entered into an agreement for services relating to impaired providers.

Confidentiality

K.S.A. 1987 Supp. 65-4925 makes certain reports and records of executive or review committees and professional societies or organizations confidential and privileged if such reports and records arise from K.S.A. 1987 Supp. 65-4923 or 65-4924.

Committee Activity

The Special Committee on Public Health and Welfare considered Proposal No. 29 on two separate occasions and held hearings on the subject matter of the proposal. Additionally, the Committee reviewed the applicable Kansas statutes in depth, reviewed the agreement entered into pursuant to K.S.A. 65-4921 and 1987 H.B. 2224 between the Board of Healing Arts and the Kansas Medical Society, heard reports on disciplinary actions by health care provider licensing agencies, reviewed written testimony supplied to the Committee, and reviewed the provisions of the federal Health Care Quality Improvement Act of 1986.

The Committee heard representatives of the Board of Healing Arts, the State Board of Optometry Examiners, the Kansas Optometric Association, the Kansas Hospital Association, the State Board of Nursing, the Kansas Medical Society, the Kansas Pharmacists Association, the Kansas Podiatric Medical Association, the Kansas State Nurses Association, the Kansas Chiropractic Association, the Kansas Dental Association, and the Kansas Association of Osteopathic Physicians. In general, conferees expressed support for peer intervention in the case of an impaired health care provider, noted the need for programs to be established and funded, and expressed concern about mandating reporting if a system of intervention is not in place. There was disagreement on the role of the state regulatory agency in the conduct of peer assistance programs. Under K.S.A. 1987 Supp. 65-4924, licensing agencies may refer impaired providers to appropriate professional committees for assistance. Some conferees suggested referral should be made prior to any formal disciplinary proceedings by the regulatory agency, others suggested a diversionary program commencing after a complaint or report is filed with the licensing agency.

Questions were raised by conferees about the procedure set out in K.S.A. 1987 Supp. 65-4923 under which reports are made directly to the appropriate state or county professional society or organization rather than to the state regulatory agency. In these instances, the regulatory agency will learn of the report only if the local component group finds, on investigation, that the reportable incident has a reasonable probability of causing injury to a patient or that the provider acted in a manner that may be grounds for disciplinary action under the appropriate health care provider regulatory act. Concerns were raised about the uniform quality of local review and whether peer review groups conduct their review on the basis of ethical and practice considerations rather than on the basis of legal issues arising from violations of the appropriate practice act. It was further noted that many reports will never reach the regulatory agency, thus making it impossible for the agency to maintain appropriate records indicating a pattern of reports or complaints against a specific provider. There may be a reduction in the number of formal investigations and actions filed against licensees by the regulatory agencies, since reports that previously reached the agency will no longer do so. It was emphasized that the Legislature and the public hold the regulatory agency responsible for the continued practice of incompetent or impaired providers rather than holding a professional society responsible.

Several conferees representing health care provider boards suggested they sought assistance from the Committee in clarifying issues before proceeding to enter into agreements as authorized by law.

Conclusions

The Committee concluded that a number of issues were not adequately addressed by the 1986 legislation that mandated reporting of certain acts or incidents involving the treatment of patients of certain health care providers, that mandated certain risk management programs by medical care facilities, that authorized the development of peer assistance procedures, and that authorized the financial support of certain activities carried out by private organizations from state funds.

Definition of Provider

Among the issues which the 1986 legislation failed to address is the extension of mandatory reporting of incidents involving the treatment of patients to providers who are not required to have insurance in compliance with the Health Care Stabilization Fund. For this reason there is no mandatory reporting for several of the ancillary health groups registered by the Board of Healing Arts, i.e., occupational therapists, respiratory therapists, and occupational therapy and physical therapy assistants. Licensed nurses and mental health technicians regulated by the Board of Nursing are not included within the definition of health care provider, except for those registered professional nurses who are authorized to practice as nurse anesthetists. Dentists and dental hygienists licensed by the Kansas Dental Board are omitted from the reporting requirements.

While the Committee understands that concern for the protection of the Health Care Stabilization Fund and the focus of the 1985 special committee on malpractice insurance availability and affordability led to the limited applicability of K.S.A. 1987 Supp. 65-4921 et seq., as introduced, the members believe that reporting of incidents of patient treatment that are below the applicable standard of care should be viewed in light of the welfare of the patients of providers who are licensed by the state to practice or whose professional titles are protected by state registration. For this reason, the Committee concludes that those health care providers now omitted from the definition should be brought under the authority of K.S.A. 1987 Supp. 65-4921 through 65-4930.

Reporting

Some members of the Committee have reservations about the desirability of allowing reports of incidents involving health care professional practice that is or may be below the standard of care and that has a reasonable probability of causing injury to a patient or that may be grounds for disciplinary action as set out in state statutes to be reported to and investigated by a peer review group set up by a professional society or organization without being reported to the agency created by the Legislature to regulate the "practice of the profession. However, given the short time the reporting requirements have been in effect, the Committee concluded that no changes should

be recommended in K.S.A. 1987 Supp. 65-4923 at this time. The Committee further concludes that the Legislature should monitor the number and type of disciplinary actions taken by health care provider licensing agencies in comparison with previous years; should monitor the type and quality of investigations and actions taken by peer review committees operating through professional societies or organizations; and should solicit the experience and advice of the licensing agencies in evaluating the procedure created by K.S.A. 1987 Supp. 65-4923.

Medical Care Facilities

K.S.A. 1987 Supp. 65-28,121 requires medical care facilities, subject to the provisions of subsection (c) of K.S.A. 1987 Supp. 65-4923, to report to the Board of Healing Arts any information the facility may have that appears to show that a person licensed to practice the healing arts has committed an act which may be a grounds for disciplinary action. A medical care facility must also inform the Board whenever the practice privileges of a licensee in the healing arts are terminated, suspended, or restricted, or are voluntarily surrendered or limited for reasons relating to the licensee's professional competence. Any medical care facility which fails to report to the Board within 30 days of receipt of the information required to be reported is subject to a civil fine of up to \$1,000 per day for each day following the 30-day reporting period. Currently the statute, while requiring the Board of Healing Arts to notify the Secretary of Health and Environment who licenses medical care facilities of any failure to report as required by law, authorizes the Board of Healing Arts to assess the civil fine. The Committee concluded that it is inappropriate for an agency that has no regulatory authority over a health care provider to be vested with authority to assess a civil fine against such provider. Accordingly, the Committee concluded that K.S.A. 1987 Supp. 65-28,121 should be amended to authorize the Secretary of Health and Environment to assess a fine against any medical care facility which fails to report when such failure is referred to the Secretary by the Board of Healing Arts. The Committee also notes the constitutionality of the statute has been challenged and was being litigated at the time of the Committee study.

Although a private psychiatric hospital is defined as a "health care provider," private psychiatric hospitals, Social and Rehabilitation institutions, and Department of Corrections institutions are not "medical

care facilities" and, therefore, no quarterly reports or risk management plans must be made or maintained by such facilities pursuant to K.S.A. 1987 Supp. 65-4921 et seq. Although not included under the definition of "medical care facility," by agreement between the Departments of Health and Environment and Social and Rehabilitation Services, hospitals operated by the later agency are being licensed as medical care facilities. The Secretary of Health and Environment has concluded that such licensure makes the Social and Rehabilitation hospitals subject to the requirements of K.S.A. 1987 Supp. 65-4921 et seq. The Committee concurs with this interpretation of the law. At the present, the Department of Corrections does not operate a hospital and thus is not subject to the requirements relating to reporting and risk management. The Committee concluded that private psychiatric hospitals licensed under K.S.A. 75-3307b should be subject to the reporting and risk management requirements of the 1986 laws.

Impaired Providers

While some of the Committee members believe that the authority which may be granted by a licensing agency to an impaired provider committee of a state or county professional association through entering into an agreement is overly broad, the majority note that only one such agreement is currently in effect and that it has been in effect for only a short period of time. Thus, a majority of the Committee concluded that no statutory amendments should be proposed at this time.

The Committee did agree that any agreement entered into between a health care provider regulatory board and an impaired provider committee of a private professional society or association should not authorize the use of state funds for the purpose of treatment of impaired providers. The cost of treatment should be the responsibility of the individual impaired provider.

Further, the Committee concluded that an impaired provider should be reported to the appropriate licensing agency prior to being diverted to a treatment program. The Committee acknowledges the arguments of those conferees who believe that voluntary referral for treatment may result in the identification of and intervention with individuals who would not otherwise come to the attention of the appropriate regulatory agency. However, the Committee concluded that the protection of the

public is an overriding state concern, and that such protection is better served by requiring in any agreement entered into between a state agency and an impaired provider committee that the impaired providers be referred to the appropriate board for referral to treatment programs. Under such agreement, the regulatory agency will have a record of the investigation and finding of the peer assistance committee which can be correlated with any additional reports or complaints the agency may have about the provider, the agency will have on record that diversion to treatment was ordered, and the regulatory agency will be in the position of taking prompt action against a regulated provider who fails to complete treatment or who constitutes an immediate threat to the public because of refusal to cooperate with a treatment program. The Committee notes that the current agreement between the Board of Healing Arts and the Kansas Medical Society authorizes the Society's peer assistance committee to refer impaired providers to treatment programs without Board approval or referral. No such agreement should be entered into in the future.

Additionally, the Committee concluded that no agreement should be entered into unless the agreement provides for reimbursement of the peer assistance committee on a per case basis, subject to an agreed to maximum expenditure of state funds. The Committee noted that some provider associations appeared to believe that the fee funds of the regulatory agency having jurisdiction over them are not, in reality, state funds and should, therefore, be available to their associations or societies with little or no state intervention. Such is not the case, and the regulatory agency has the responsibility for prudent and efficient use of such funds whether they represent fee funds or State General Fund appropriations.

Confidentiality of Reports

It was brought to the Committee's attention that the provisions of K.S.A. 1987 Supp. 65-4915(d) relating to the confidentiality of peer review reports conflict with the provisions of K.S.A. 65-2898a and K.S.A. 1987 Supp. 65-4925, both of which provide that reports made to the Board of Healing Arts are confidential unless submitted into evidence in a disciplinary proceeding. Under K.S.A. 1987 Supp. 65-4915, reports of peer review committees are confidential until the Board files a formal disciplinary proceeding against a licensee. The Committee concluded that the latter statute should be amended to provide that

er review records remain confidential unless submitted into evidence to the Board of Healing Arts or other health care provider licensing or disciplinary board.

Recommendations

The Special Committee on Public Health and Welfare recommends that the reporting requirements mandated by K.S.A. 1987 Supp. 65-4921 be extended to include licensed professional nurses, licensed practical nurses, mental health technicians, dentists, dental hygienists, physical therapist assistants, occupational therapists and occupational therapy assistants, and respiratory therapists. The Committee believes that this should be accomplished by amendment to K.S.A. 1987 Supp. 65-4921 and 65-4915, rather than through amending each of the professional practice acts. H.B. 2643 carries out these recommendations.

The Committee further recommends that the definition of medical care facility as it appears in K.S.A. 1987 Supp. 65-4921 be extended to include private psychiatric facilities licensed by the Secretary of Social and Rehabilitation Services. This amendment will subject such facilities to the quarterly reporting and risk management provisions of K.S.A. 1987 Supp. 65-4921 ~~et seq.~~, and to the penalties for failure to comply therewith. This recommendation is implemented by H.B. 2643.

The Committee recommends that K.S.A. 1987 Supp. 65-4915 be amended to conform with the provisions of K.S.A. 65-2898a and K.S.A. 1987 Supp. 65-4925 and to provide that all records of peer review committees supplied to a regulatory agency shall remain privileged and not subject to discovery, subpoena, or other means of legal compulsion unless they are submitted into evidence in a disciplinary proceeding. H.B. 2643 implements this recommendation.

The recommendation of the Committee is that K.S.A. 1987 Supp. 65-28,121 be amended to authorize the Secretary of Health and Environment rather than the Board of Healing Arts to assess a fine against a medical care facility that fails to report as required by law. This recommendation is implemented in a separate bill, H.B. 2642.

Since authorized peer assistance programs for impaired health professionals authorized by K.S.A. 1987 Supp. 65-4921 have not yet been implemented, except in the case of the Board of Healing Arts, the Committee recommends no changes in the statute at this time. However, the Committee does recommend that the Legislature review the program being operated pursuant to an agreement between the Board of Healing Arts and the Kansas Medical Society at a later time when more data is available.

Further, the Committee recommends that any agreements entered into between health care provider boards now authorized to enter into peer assistance agreements or those that would be so authorized under the amendments proposed in H.B. 2643 follow Committee recommendations, i.e., that impaired providers be reported to the appropriate board for referral to treatment rather than authorizing referral by a peer assistance committee; that agreements provide only for per case reimbursement with state funds, up to an agreed to cap; and that no state funds be expended for treatment.

The Committee also recommends that the appropriate regulatory agency monitor the effectiveness of peer assistance programs with great care to insure that equality of implementation exists; that legal definitions of grounds for disciplinary actions are identified and reported; and that the public is adequately protected from impaired or incompetent providers.

The Committee recommends that H.B. 2642 and H.B. 2643 be enacted by the 1988 Legislature.

Respectfully submitted,

November 24, 1987

Sen. Roy Ehrlich, Chairperson
Special Committee on Public
Health and Welfare

Rep. Marvin Littlejohn,
Vice-Chairperson
Rep. Eugene P. Amos
Rep. Jessie Branson
Rep. Frank Buchler
Rep. Theo Cribbs
Rep. Kenneth Green
Rep. Elaine Hassler
Rep. Tim Shallenburger
Rep. Franklin E. Weimer

Sen. Norma Daniels
Sen. Audrey Langworthy
Sen. Bill Morris
Sen. Joseph Norvell
Sen. Joe Warren

3

KANSAS ACADEMY OF PHYSICIAN ASSISTANTS

TO: Senate Public Health and Welfare Committee

From: Donald G. Strole
Attorney for Physician Assistants

RE: House Bill 2643

The Kansas Academy of Physician Assistants (KAPA) respectfully requests that physician assistants be included under the definition of health care provider in House Bill 2643. Physician assistants work closely with the other health care providers and thus are in a position where they would have information that should be reported to the state board of healing arts.

In addition, KAPA is in the process of forming an impaired physician assistants program and would like the opportunity to contract for assistance from the state board of healing arts. Thank you for the opportunity to appear before your committee.

As Amended by House Committee

Session of 1988

HOUSE BILL No. 2643

By Special Committee on Public Health and Welfare

Re Proposal No. 29

12-16

0019 AN ACT concerning certain health care providers; relating to
0020 regulation, risk management and peer review; amending
0021 K.S.A. 65-4216 and 65-4217 and K.S.A. 1987 Supp. 65-430,
0022 65-4915, 65-4921, 65-4923, 65-4924 and 65-4930 and repealing
0023 the existing sections.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. K.S.A. 1987 Supp. 65-4915 is hereby amended to
0026 read as follows: 65-4915. (a) As used in this section:

0027 (1) "Health care provider" ~~has the meaning provided by~~
0028 *means: (A) Those persons and entities defined as a health care*
0029 *provider under K.S.A. 40-3401 and amendments thereto; and (B)*
0030 *a dentist licensed by the Kansas dental board, a dental hygienist*
0031 *licensed by the Kansas dental board, a professional nurse li-*
0032 *censed by the board of nursing, a practical nurse licensed by the*
0033 *board of nursing, a mental health technician licensed by the*
0034 *board of nursing, a physical therapist assistant certified by the*
0035 *state board of healing arts, an occupational therapist registered*
0036 *by the state board of healing arts, an occupational therapy*
0037 *assistant registered by the state board of healing arts and a*
0038 *respiratory therapist registered by the state board of healing*
0039 *arts.* |

0040 (2) "Health care provider group" means:

0041 (A) A state or local association of health care providers;

0042 (B) the board of governors created under K.S.A. 40-3403 and
0043 amendments thereto;

0044 (C) an organization of health care providers formed pursuant
0045 to state or federal law and authorized to evaluate medical and

and a physician's assistant registered
by the state board of healing arts.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

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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

House Bill 2643

Background

House Bill 2643 was introduced by the Special Committee on Public Health and Welfare pursuant to a study of Proposal 29.

House Bill 2643 increases the list of health care professionals who must comply with mandated reporting requirements of possible substandard care. Under current law, certain health care professionals are required to purchase medical malpractice insurance and are covered by the Health Care Stabilization Fund in the event of a malpractice lawsuit. Those professionals who must purchase insurance are defined at K.S.A. 40-3401 as "health care providers."

When the mandatory reporting provisions of K.S.A. (1987 Supp.) 65-4921 et seq were enacted in 1986 (House Bill 2661), only those persons and entities defined as "health care providers" were included. These were primarily medical and osteopathic positions, medical care facilities (hospitals, ambulatory surgical centers, and recuperation centers licensed by the Department of Health and Environment), optometrists, podiatrists, pharmacists, nurse anesthetists, dentist anesthetists, and physical therapists. House Bill 2643 would expand this list to include additional professionals, including those who have been recognized by the state through certification or registration since 1986. The new list would include dentists, dental hygienists, professional nurses, practical nurses, licensed mental health technicians, physical therapist assistants, occupational therapists, and respiratory therapists.

K.S.A. 65-4922, also enacted in 1986 as part of House Bill 2661, required every "medical care facility" to establish and maintain an internal risk management program. However, the term "medical care facility" included only hospitals, ambulatory surgical centers, and recuperation centers. It did not include private psychiatric hospitals licensed by the Secretary of Social and Rehabilitation Services (SRS) pursuant to K.S.A. 75-3307(b) or state psychiatric hospitals and institutions for the mentally retarded. As a result, House Bill 2643 would specifically require these additional facilities to file risk management plans with the Department of Health and Environment in the same manner as other medical care facilities did in 1987.

Recommendations

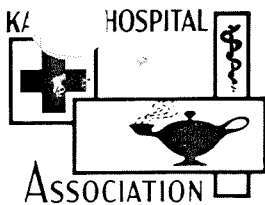
The Department of Health and Environment supports passage of House Bill 2643. The Department believes that the additional providers of health care listed in the proposed amendments to K.S.A. 65-4921(c) should be required to report incidents which either were or might have been below the appropriate standard of care and either did or might recently have caused patient injury. In addition, both the public and providers would benefit from the development of risk management plans in private psychiatric hospitals, state psychiatric hospitals, and state institutions for the mentally retarded.

One question which may need consideration is whether the Secretary of Health and Environment or the Secretary of Social and Rehabilitation Services should review and approve risk management plans developed by private psychiatric hospitals. Since the Department of Health and Environment does not have licensing authority over private psychiatric hospitals, it may be difficult to obtain compliance with risk management statutes and regulations. One option might be to have plans reviewed and monitored by the Department of Health and Environment, with program deficiencies presented to SRS for possible disciplinary action by it as the licensing agency. This might require an amendment to the licensing statute for private psychiatric hospitals, K.S.A. 75-3307(b). A second option might be to have SRS, as the licensing agency, review and monitor risk management programs in private psychiatric hospitals. Authority to enforce needed corrections would then be possible as with any other licensing requirement. As currently worded, private psychiatric hospitals would be required to submit risk management plans to the Department of Health and Environment for review pursuant to the provisions of K.S.A. 65-4922.

As stated earlier, the Department of Health and Environment recommends passage of House Bill 2643.

Presented by: William C. Rein, J.D.
Director of Quality Assurance/Risk Management
Bureau of Adult and Child Care

March 21, 1988



Donald A. Wilson
President

TESTIMONY

ON

HOUSE BILL 2643

TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

MARCH 21, 1988

The Kansas Hospital Association appreciates the opportunity to comment on House Bill 2643, which makes amendments to the health care provider risk management and reporting laws concerning health care providers. These laws were originally enacted in 1986 as part of a package of medical malpractice bills. The courts have now thrown part of that package into question, but these particular laws remain on the books. These statutes, K.S.A. 65-4921 through 65-4930, form perhaps the strictest statutory reporting scheme in the country. As staff has previously mentioned, this scheme is very elaborate and oftentimes confusing. The Kansas Hospital Association and other health care providers have spent much time, effort and resources in analyzing these statutes and educating members about specific requirements and implications.

One of the many challenges we have met with these statutes is that of creating a risk management and reporting system that is compatible with current quality assurance efforts already in the hospital and other requirements such as federal Medicare conditions of participation and standards of the Joint Commission on Accreditation of Health Care Organizations. Another is the difficulty of making those who staff hospitals feel comfortable with the idea of reporting on fellow health care providers. Despite these problems, Kansas hospitals are committed to making this program work as well as possible.

Much of House Bill 2643 is technical in nature. However, we would like to comment on two sections specifically.

Section 1. The amendments made in line ~~114~~¹³⁰ to line ~~127~~¹³³ were recommended by the Interim Committee. They simply bring that portion of the statute in line with other sections. The amendments also provide the Board of Healing Arts with more guidance.

Section 2. This section would redefine "health care provider" and bring a number of other professions into the mandatory reporting system. As we mentioned before, this statutory scheme was only officially established in July 1986. Both health care providers and state agencies are still in the process of becoming accustomed to the rules and regulations adopted under that scheme and are still in the process of creating a framework that will allow all those involved in the application of these laws to work together. Hopefully, the addition of another substantial group of providers into this system will not disrupt this process. In any event, we have often recommended to hospitals that such providers be included in the hospital risk management system in order to make it as integrated as possible.

We have no problem with Section 2(e), which brings private psychiatric hospitals under the risk management requirements. Even though this is a technical problem, we have advised our members to follow the system and put a risk management plan into place.

The Kansas Hospital Association appreciates the opportunity to comment on these proposed changes. We would be happy to try and answer any questions.

TLB:pac

Senate Public Health and Welfare Committee
Senator Roy M. Ehrlich, Chairman
State Capitol Building
Topeka, KS 66612

March 16, 1988

Letter of Testimony to the Senate Public Health and Welfare Committee
on H.B. 2759:

I am a certified medical technologist who performs the tests covered by H.B. 2759, and I support the passage of this bill. I agree that such critical test results should be monitored by the state.

I am however concerned with the wording of the bill in Section 1,(a). In order to be consistent with the other categories of the bill, and in order to write appropriate rules and regulations regarding the licensure of laboratories performing the testing, I believe that a reference should be made to personnel standards also.

I propose that Section 1,(a) be amended to read:

"The procedures, qualifications of personnel and standards of performance for approving laboratories performing..."

This proposed language would allow the secretary of health and environment to establish criteria for approving laboratories that would reflect an accountability that the public sector expects (and demands) in health care. The testing for drugs of abuse and for the antibody to the human immunodeficiency virus requires technique, theoretical knowledge, and specialized training that is best gained by completion of a formal program in clinical laboratory technology. The medical and social implications of these test results are justification that the state mandate high standards of quality.

Your consideration is appreciated.

Marla Williams

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