

Approved

2-15-89
Date rh

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

1:30 a.m./p.m. on February 13, 1989 in room 423-S of the Capitol.

All members were present except:

Representative Weimer, excused

Committee staff present:

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

Conferees appearing before the committee:

Claire McCurdy, Chief Counsel, Department on Aging
Janet Schlansky, Department of SRS
Bruce Roby, Attorney, Department of SRS
Jim Maag, Kansas Bankers Association
Jim Turner, Kansas Leanding Institutions
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Keith Landis, Christian Science Committee on Publication
for Kansas
Richard Gannon, Executive Director, Kansas Board Healing Arts
Larry Buening, General Counsel, Ks. Board Healing Arts
Carolyn Bloom, Physical Therapy Examining Committee
Joan Arterburn, American Physical Therapy Assn, Ks. Chapter

Chairman called meeting to order, drawing attention to a request from the Board of Pharmacy to change K.S.A. 65-1642 slightly by adding "and patient profile". Chair explained rationale, then asked wishes of committee.

Rep. Green made a motion to comply with the request to add this language to K.S.A. 65-1642, and have the bill returned to this committee, seconded by Rep. Flower. No discussion. Vote taken, motion carried.

Chair noted that on February 9th, we ran out of time and could not hear all the conferees that were scheduled. Hearings on HB 2108 will continue today.

Chair recognized first conferee.

Ms. Claire McCurdy, Chief Counsel, Department on Aging, offered handout, (Attachment No.1). She called attention to a news article attached to her hand-out, which noted one of 25 seniors that are abused; 24% are abused by children; 58% abused by spouses. They support the concepts of HB 2108, are concerned however with some new duties for attorneys, but think they can be worked out; feels there is some ambiguity for the definition of "care-giver". She answered questions.

Janet Schlansky, (Attachment No.2), she gave background information on legislation from 1988, i.e., HB 2925. **HB 2108** is only a piece of that bill, placing more emphasis on investigations of reports rather than assessing the need for services and provision of protective services to these vulnerable adults. Therefore this bill is not a great deal different than what SRS is currently doing under current statutes. They would suggest the focus be on the provision of services to adults residing in the community who are in need of protection. SRS supports the effort to change current legislation, but would like to see an effective adult protection service program that responds to the needs of the reported, and that will handle long-range solutions to handling abuse/neglect/exploitation.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 /a.m./p.m. on February 13, 1989

HEARINGS CONTINUED ON HB 2108:--

Ms. Schlansky continued:-

Funding has to be addressed. Services cannot be provided without sufficient funds. She explained protective services; and recommended changes in the bill, detailed on pages 2 and 3 of Attachment No.2. She answered questions, i.e., yes, we realize language in lines 171175 is current statutes, but yes, we do wish this to be changed. She cited statistics on reporting/findings, and no, they would not be able to handle the increase in work-load with present staff.

Bruce Roby, Attorney for SRS gave hand-out, (Attachment No.3). He noted there are problems with existing statutes in handling litigation; concerns with the term, "willful", the voluminous amount of paper work in regard to the reporting register, that is not shared information; An SRS finding of abuse/neglect is not a criminal conviction, civil penalty, or loss of any license. It has no practical effect; reason to believe there is abuse, is all that is necessary for referrals to Law Enforcement. He answered questions. It was noted the intent of HB 2108 is to provide a register of prospective care givers that would be free of any record of abusing adults. He agreed perhaps there could be a clearing house for this type of system.

Jim Maag, Kansas Bankers Association, (Attachment No. 4). He noted they applaud the concept of legislation that attempts to resolve a serious problem, but we do have concerns about requirements in Section 2, i.e., an employee of a financial institution, and the reporting requirements for suspected abuse/neglect/or exploitation. This is highly discriminatory since no other private sector group not directly involved in health or public protection services is subject to such a requirement. We have no difficulty with language in Section 2 that states individuals "may report", however. He asked attention be given to their concerns.

Jim Turner, Kansas League of Savings Institutions, (Attachment No.5), stated they are in support of the intent of HB 2108, however, have concerns regarding the inclusion of employees of financial institutions being required to report under the provisions of the bill. Tellers, secretaries, and loan officers of financial institutions are not trained in the reporting of such offenses. He requested that in Section 2, line 95 the words "and an employee of a financial institution" be deleted. He answered questions.

Marilyn Bradt, Kansans for Improvement of Nursing Homes stated they feel since HB 2108 deals with a highly vulnerable group of individuals, the inclusion of bank employees should be included in the language of the bill. She cited a specific case of an elderly gentleman who on many occasions was accompanied with a young couple to his bank while he was inebriated, and each bank visit would withdraw a large sum of money. Over a period of time, a sizeable amount of money was gone from his account, and it was finally noted perhaps the gentleman had been taken advantage of. HB 2108 will speak to this problem, and she asked for favorable support.

Keith Landis, Christian Science Committee, (Attachment No. 6), thanked Rep. Sader for including in HB 2108 wording already in statutes that deals with adult abuse. He did ask however, that Page 2, line 81, HB 2108 be amended to delete the words, "Pursuant to section 8". If so done, it will make the wording similar to existing abuse statutes and will not restrict its application to the decisions and actions of the secretary permitted by Section 8. He noted it is his understanding the author of the bill is not opposed to this amendment.

HEARINGS CLOSED ON HB 2108.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

room 423-S Statehouse, at 1:30 a/m/p.m. on February 14, 1989

HEARINGS BEGAN ON HB 2160:---

Richard Gannon, Executive Director, Ks. Board of Healing Arts, (Attachment No. 7), noted the last few months their Board has been very aggressive in the discipline of licensees of their Board. This requires investigative help, and HB 2160 will provide immunity for civil liability for those providing investigative information for them. He noted these consultants used are not employees within the definition of K.S.A. 75-6102, but are independent contractors and do not fall within the Tort Claims Act, and immunities provided by that act. He asked for favorable consideration of HB 2160. He answered questions.

HEARINGS CLOSED ON HB 2160:

HEARINGS BEGAN ON HB 2161:--

Richard Gannon, Ks. Board of Healing Arts, (Attachment No.8), noted HB 2161 amends some provisions of statutes governing physical therapy, i.e., temporary registration, process of renewal changes; and fee changes. He outlined these and noted if enacted will allow the legislature more authority for setting statutory fees, and create more continuity to establish the same type of fee categories as in Healing Arts Act, Podiatry Act, and the proposed Physicians' Assistant Bill. He urged for support. He answered questions, along with Mr. Larry Buening, General Counsel for the Board of Healing Arts. There was discussion on if fees are to be for one year, or two years. There was confusion, and Chair asked that Mr. Buening get that information to Chairman so that it may be made available for committee.

Carolyn Bloom, Vice President of Physical Therapy Examining Committee, Ks. Board of Healing Arts, (Attachment No. 9) stated their support of HB 2161 as currently written. Changes proposed will not vary current practice of physical therapy in the state, but will clarify procedural actions of the Board. She outlined their position on numerous sections of the bill. She answered questions, i.e., procedures required for re-issuance of license to practice, education requirements, where such education is made available; difference between re-education and continuing education were defined.

Joan Arterburn, Representing Kansas Chapter of American Physical Therapy Association, gave hand-out, (Attachment No. 10). She stated their support for all changes in language proposed in HB 2161, and detailed all those changes. This will help to assure quality patient/public safety. She answered questions, i.e., qualifications of persons to practice as a Physical Therapist; we have been grandfathering in some persons but we will no longer, she said.

At this point, Chair gave some background information on the process of Certification/ Registration/ Licensure. Currently the State does not recognize Certification. Yes, there can be groups who carry a certificate of certification, but it would not be recognized by the State.

Meeting adjourned 3:15 p.m.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date Feb. 13, 1989

Name	Organization	Address
Janet Schmalansky	SRS - Adult	Topeka
Allen Gorkner	S.R.S.	"
Xatee Pyle	SAL	"
FRANCES KASTNER	Physical therapy assn	"
Vicki Fund	Social Work Student	"
Cathy Reoney	KOME	"
<u>Harold E. Riem</u>	<u>KAOM</u>	"
David O. Baumgartner		Philipsburg
KATH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	TOPEKA
Rosily James-Martin	SRS - Adult Services	
JEFF SONNICH	KLSI	TOPEKA
Joni Juner	Kansas League of Sewing	TOPEKA
Joni McBride	ob server	Topeka
Kathy Taylor	Kans Bankers Assn	Topeka
Joan Arterburn	Kansas Physical Therapy ^{Assn.}	"
Ben Ray	SRS	Topeka
<u>Clive McCurdy</u>	<u>Sept on Aging</u>	<u>Topeka</u>
Marilyn Bradt	KIWH	Lawrence
<u>Paul Samson</u>	<u>Ed of Healing Art</u>	
<u>Jane Swearing</u>		
<u>RG Fry</u>	KTLA	TOPEKA
Skip Wheelen	KMS	Topeka
Therese Parks, Jr	KCA KCA	Topeka

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

February 9, 1989

House Bill 2108

Presentation by Claire McCurdy
Chief Counsel/Special Assistant
Kansas Department on Aging

PHW
attm #1
2-13-9

A. Introduction

House Bill No. 2108 addresses abuse, neglect and exploitation of those adults who are dependent on someone else for certain needs, and consequently vulnerable to abuse by their caregivers. This is a problem that is occurring with increasing frequency, particularly in the older population in our State. This legislation seeks to provide a method of reporting alleged abuse and providing protective services when they are found to be necessary. The Kansas Department on Aging supports this bill and encourages the committee to move it forward in the legislative process.

B. Elder Abuse Exists in Kansas and Needs to be Addressed

As you may have read in yesterday's Topeka Capital-Journal, reports of abuse of senior citizens are increasing at an alarming rate. The abuse or neglect can take several forms including physical, emotional and financial. Frequently the individual responsible for this treatment of the senior is a family member.

Specifically, physical abuse includes such things as withholding food or medication, restricting the person's freedom of movement such as by strapping him or her to the bed for long periods of time, or failing to assist the person with such daily activities as personal hygiene.

Emotional abuse can be a little more nebulous and may include telling the person (s)he is unwanted or unneeded, or hiding things so the older person believes (s)he may be becoming senile. Such treatment undermines the older person's dignity and self-esteem. Often this leads to depression or self-neglect, which can eventually hasten the person's death.

The current law is similar in several respects to this bill (e.g. mandated reporting of suspected abuse by certain persons), but House Bill No. 2108 provides for quicker investigation of suspected abuse, which is important, particularly when the older person is in a potentially life threatening situation. Also, while SRS continues to be the lead agency for investigating reports of suspected abuse, this bill involves law enforcement as a recipient of reports made outside SRS' normal working hours.

C. Conclusion

We acknowledge the concerns of some organizations about the implications of including fiduciary abuse in this legislation. Moreover, some of the definitions have been revised and some new definitions have been added that may need some adjustment to make their intent clearer. We feel confident these concerns can be addressed however, and that this bill can serve a very worthwhile purpose in protecting Older Kansans from the physical and emotion abuse that is becoming increasingly prevalent in our society.

Thank you for the opportunity to provide input on this important legislation.

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Abuse of the elderly: 'An ugly American secret'

Reports of battered, neglected seniors increasing with 'frightening regularity'

By DAVID LARSEN
LA Times-Washington Post Service

In Los Angeles, paramedics responding to an emergency call found 77-year-old Virginia Jeter in a waste-and pest-ridden bed. She died Dec. 26 in a hospital. Her daughter, Cynthia Jeter Green, 38, has been charged with involuntary manslaughter and endangering an elderly person through neglect.

Ambulance attendants answering a call found 80-year-old Otelia Boithillet, whose body showed other signs of neglect, so emaciated that her vertebrae stuck through her skin. After she died Dec. 31, the Los Angeles County District Attorney's Office filed neglect and involuntary manslaughter charges against her son, Roger Louis Hummel, and his wife, Cindy Lee Hummel, 31. Deputy Public Defender Gregory C. Fisher, appointed to represent Cindy Hummel, said that the Hummels had not neglected Boithillet and, "certainly ... weren't trying to cause (her) to suffer or let her lie there until she was dead..."

A 76-year-old widow, who asks that her name not be used, reports that her daughter has inquired about her insurance money, cursed at her and even shoved her. "My husband was an attorney, and he sometimes told me of cases of abuse of older adults," the terrified woman said. "But I never thought it would happen to me."

"With frightening regularity, officials say that they are handling an increasing number of reports of abuse of the elderly, which some experts believe affects one of every 25 senior citizens nationwide each year.

Though this ugly secret of American society slowly is receiving more scrutiny, the haunting questions remain: How and why does abuse of the elderly occur? Who is likely to be abused and who is likely to be the abuser?

There are no simple responses, though experts have begun to develop a clearer picture of the problem.

It happens between spouses, some of whom write brutal final chapters to the tale of long tumultuous relationships. It happens between parents and children, some of whom cannot bear the shift in relationship that makes them responsible for trying to resolve unsolvable problems. It happens between the elderly and troubled relatives in their homes, individuals who have mental problems or histories of drug or alcohol abuse.

It happens in degrees. The abuse may be a relative being loud, mean or short with a senior. It can be that someone in their home inflicts psychological trials on the elderly, for example, by hiding their things to make them think they are becoming senile.

But elderly abuse also can become a crime involving violence and even death.

Elder abuse, according to a watershed 1985 report by a congressional subcommittee headed by 88-year-old Rep. Claude Pepper, D-Fla., is a problem that is "increasing nationally."

"Stresses in our society" are partly to blame for that, said Dr. Daniel Thursz, president of the National Council on the Aging Inc. "For instance, the anger and frustrations of adult children, when they are faced with problems they can't solve, sometimes manifests itself, and they lash out."

Many families, he noted, are wracked by role reversals in which elderly

parents, who are in the midst of other major and uncomfortable changes in their lives, also find themselves in the unfamiliar position of having to take directions from their now-adult children.

The children, meantime, find themselves dealing with awkward situations involving their parents.

In "You and Your Aging Parent," Barbara Silverstone and Helen Hyman point out that daily dealings with older people also may provide disturbing reminders to younger people of their own aging, frailties and mortality; in turn, may affect how they relate to seniors.

Increased pressures by insurers and government health care programs for shorter periods of hospitalization also may contribute to the problem of elderly abuse, said Dr. Gary W. Small, a Los

Continued on page 2-B, column 4

Differing degrees of abuse afflict nation's elderly

By DAVID LARSEN
LA Times-Washington Post Service

Not all elder abuse is physical or violent, said Lee Pearson, assistant manager of criminal justice services for the American Association of Retired Persons. She described how abuse of the aged can occur in varying degrees including:

- **Passive neglect** — In this case, the adult child may agree to care for a parent in their home but may simply not know that the senior requires a certain medication at a certain time. The adult children may still have their own family responsibilities. "And if there is this or other similar neglect, it isn't willful," Pearson said. The care-giver simply may not know everything he or she needs to help.

- **Active neglect** — "This is willful, when the adult child hates the parent.

The child, say, may go out of the way to deprive the senior of food or care," Pearson said. A congressional subcommittee cited the case of an 80-year-old arthritic woman in the care of a son. He left her alone all day and part of the night. Before leaving the house, he tied her in bed with a rope, leaving a few crackers and a jug of water within her reach. Authorities found the woman sweating in a room where the temperature exceeded 90 degrees.

- **Financial exploitation** — "This is when, for instance, a child prevails on an elderly parent to sign a Social Security or private pension check, then the offspring cashes it and does what he or she pleases with the money," Pearson said. The congressional report cited the case of a senior citizen who was swindled out of a 40-acre orange grove by a trusted nephew. The nephew had included liquor with his elderly relative's medications and then threatened the senior citizen with physical harm until he agreed to sign some forms.

- **Psychological abuse** — "The care-giver in a home setting," Pearson said, "may demean the elderly person. In some cases, this may result in terminal decline, because the person is so hurt and the quality of life is so diminished. The disappointment is vast, and personal acquaintances who might be consulted have themselves died." Congressional researchers found a case involving a family who ordered an aged female relative out of the kitchen whenever they ate. They told the woman, who lived with them, that she was unwanted. She ended up in tears on the steps of a church.

Topekans: Where to get help

Topeka-area seniors who are being abused or neglected, care-givers who are inflicting abuse, or people who suspect a friend or neighbor is being abused, have a couple of options concerning where to turn for help.

According to Joanna Lacouture, Aging Clinician for Shawnee Community Mental Health Agency, the first place to report a possible abuse/neglect case is to the Adult Protective Services division of Social Rehabilitation Services. She said that Project Access, Shawnee Community Mental Health Center, the police department and Protective Services all have "an informal agreement" to work together on cases, or to rotate cases, depending on who's available.

Other area senior activists said they are concerned by a lack of a clear, central location where people can turn for help. They said that while Adult Protective Services is where people should report, results can be slow because that office has only one staff member. They encouraged people to be persistent in following through on their report.

Battered seniors

Continued from page 1-B

Angeles psychiatrist and co-author of "Parentcare." He noted that the "earlier discharge of patients places a greater burden on home care."

Money problems also can be a factor. "If the care-giver is under an economic burden, the resulting stress may contribute to elderly abuse," Small said.

The prevalence of elder abuse, which professionals define as "an act or omission that results in harm or threatened harm to the health or welfare of an elderly person," also can be blamed on "ageism," which Small explained, "essentially is prejudice against old age."

"In this youth-oriented society, unfortunately we all have a tendency to disregard the old in favor of the young."

"For a long time, elder abuse wasn't coming to light, because a lot of the older persons were ashamed to admit it was at the hands of their own children," said Thursz of the national council on aging.

When the congressional subcommittee studied elder abuse, its staff members amassed a grim collection of extreme cases, said Kathy Gardner, the panel's staff director.

The subcommittee, which issued its study calling elder abuse "a national disgrace," had reports of a 74-year-old woman who required emergency treatment after she was beaten on the head with a shoe by her daughter; an elderly woman, disabled by arthritis, who had to have a plate surgically installed in her head after her son hit her with a board, and an elderly man who lived alone and was ganged up on by his three sons, who broke into his home and beat the man so badly he was sent to the hospital three times.

Men — especially sons — are the most likely people to commit abuses; daughters are the next most likely suspects, experts agree.

And "with the increasing existence of extended families nowadays, sometimes the abusers of the elderly are the grandchildren, sometimes teen-agers," said Faye Washington, general manager of the Los Angeles Department of Aging.

Sally Hoover, a gerontologist in Los Angeles, noted that "a significant proportion of elder abuse is spousal; the participants have simply grown old together. Generally, spouses live with each other, and the opportunity exists."

Indeed, a study by the Family Research Laboratory at the University of New Hampshire found that 24 percent of abused elderly had been mistreated by their children, but 58 percent had suffered at the hands of spouses.

"One of the major risk factors is living with someone else," noted Karl Pillemer, a University of New Hampshire assistant sociology professor who headed the abuse study. "An abuser doesn't drop by on Saturday nights to beat up his elderly mother. Basically, there are so many more people who live with spouses than with adult children. Therefore, the opportunity for abuse is much greater."

"In this youth-oriented society, we have a tendency to disregard the old in favor of the young."

—Gary Small

"One reason for the reluctance," said Julia Takeda of the Los Angeles County Department of Public Social Services, "is that the person may fear being removed to a strange and new environment."

She said that the elderly, even if they are being maltreated, still feel more at ease in familiar surroundings. "They sometimes are afraid that no one will take care of them if their care-givers are reported to authorities," Takeda said.

"One thing we need are more foster homes for the elderly," Thursz said. "Europe has had this for years, but the concept hasn't yet caught as well here."

"In perspective," he noted, "it is a small percentage of the population that is committing this offense. But any percentage is too high."

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R-17-a

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary
February 9, 1989

Testimony concerning H.B. 2108

AN ACT relating to abuse, neglect and exploitation of certain adults; requiring reports thereof by certain persons; directing investigations thereof by the department of social and rehabilitation services; directing other persons and public and private agencies to assist therein; providing for protective services; declaring certain acts to be unlawful and providing penalties therefore; repealing K.S.A. 39-1421 to 39-1429, inclusive.

Thank you for allowing me the opportunity to speak to you today regarding H.B. 2108.

Presently there are two (2) statutes mandating the Department of Social and Rehabilitation Services to investigate reports of adult abuse, neglect and exploitation. K.S.A. 39-1401 through 39-1410, which was passed during the 1980 Kansas legislative session and signed into law by former Governor John Carlin, directs the Department to investigate complaints in medical facilities (Adult Care Homes, Adult Family Homes and State Institutions). K.S.A. 39-1420 through 39-1429 was passed during the 1985 Kansas legislative session. It directs the Department to investigate complaints of adults residing outside of a medical setting (own home, family members home, boarding facility). SRS is currently receiving and investigating reports in both medical and non-medical settings. Since both statutes are so closely related SRS staff follow the same procedures in investigating complaints received in an adult care home and an individual's home.

As many of you may recall, HB 2925 was introduced during the 1988 legislative session. The purpose of HB 2925 was to consolidate the two adult abuse statutes into one statute that would cover both medical and non-medical reports received by the Department. HB 2108 is only a piece of HB 2925, with the medical having been removed. Proposed Bill 2108 repeals the current non-medical statute K.S.A. 39-1421 through 39-1429. This bill is intended to ensure that vulnerable adults residing in the community will be protected, but it places more emphasis on investigations of reports rather than assessing the need for services and the provision of protective services to vulnerable adults. Therefore, this bill is not substantially different from what SRS is currently doing under the provision of the current statute.

Since the submittal of HB 2925 last year, the Department has re-evaluated the adult protective service program in Kansas and would like to suggest that the focus be on the provision of services (service delivery system) to adults residing in the community who are in need of protection. While SRS supports the effort to change the current legislation, the Department would like to see an effective adult protective service program that will respond to the needs of the reported and will provide for a long-range solution to handling abuse, neglect and exploitation.

Alt. # 2

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SRS is currently receiving and investigating reports of suspected abuse, neglect and exploitation of adults residing outside of a medical setting. The intent of our investigation is to focus on meeting the needs of adults residing in the community who are unable to provide for their own health, welfare and safety. These adults are unable, without assistance from others, to manage their resources, perform the activities of daily living, or protect themselves from harm; and have no one willing or able to assist them in a responsible manner. This does not include abuse found in typical domestic violence situations. Spousal abuse, as it is most commonly known, is the responsibility of law enforcement as per K.S.A.60-3101 through 60-3111. (Protection From Abuse Statute).

In the community, self-neglect is one of the most difficult problems for adult protective services to resolve and the source of a substantial portion of reported cases. In self-neglect cases, in-home services are essential to prevent serious mental and medical consequences to the reported. Abuse is related to the frailty of the reported and the pressures that result from caregiving by family members and friends. In-home and community-based services are needed to enable the reported to remain in the home while relieving the stress and pressure on the caregiver that creates an abusive situation. The problem of financial exploitation is even more difficult to resolve. At the time that SRS receives a complaint, the damage has been done and the financial resources have been exhausted. A major effort must be mounted to involve the legal system in the prosecution and restitution in such cases. The Department, therefore, recommends that we work towards a statute that will focus on the delivery of services to vulnerable adults to ensure that these adults receive the proper kind of services at the time the services are needed.

A well designed and effective adult protective service program responds to the needs of the victims and provides for a long-range solution of handling adult abuse, neglect and exploitation. As with every attempt to enhance a service delivery system the issue of funding has to be addressed. Services cannot be provided without sufficient funds.

In FY 88 Adult Protective Service Workers investigated 942 reports on adults residing in the community. 545 were over the age of 60 years. 262 of the reports were confirmed. Self-neglect included 359 (38%) of the reports investigated. 410 (43%) of the adults were determined to be at potential risk and in need of services as a preventive measure. In all, approximately 75 (8%) of those reported received services, however; an additional 335 would have benefited from services if funding had been available.

Protective services include: 1) Community-Based services such as emergency/temporary shelter for the elderly whose living arrangements are shared with the perpetrator, medical assistance when not reimbursed or paid by third parties, or day programs; 2) In-Home services such as homemaker, attendant care, respite, night support, meals on wheels.

*Attn # 2
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2-13-9*

With the emphasis on enabling adults to remain in their own homes and in the community there is also a responsibility to provide the necessary protective services to ensure their welfare and safety. With the demand for more services SRS must identify the service needs of abused, neglected and exploited adults. This will assist the Department in long-range planning of the funding that will be needed to ensure that these adults receive the proper kind of help at the time they need it.

As indicated earlier, we recognize the concerns with the existing statute that gave rise to HB 2108, but we are concerned that the bill does not address the key issues of abuse, neglect and exploitation of adults in the community. We, therefore, recommend to this committee that the following suggestions be considered for amendments to HB 2108. These proposed amendments will bring Kansas in step with the national movement by other states of focusing on the provision of services to adults in need of protective services.

1. The definitions of adult, abuse, neglect, caretaker, in need of protective services, report; and the addition of Fiduciary abuse enlarges the scope of protective services and will require the SRS workers to make determinations that are of a legal nature (i.e. in the definition of abuse "willful"; in neglect the word "anguish") We recommend that the above mentioned definitions be revised to focus on service needs and the provision of services.
2. The reference to section 8 (page 2, line 81) weakens its intent by limiting its application to when a person is in need of protective services, whereas the intent of the statement was to apply to all reports received and the other provisions of the current statute. Our recommendation is to delete "Pursuant to section 8".
3. Section 4 (3), line 171, states that the SRS worker will prepare written findings of whether abuse, neglect or exploitation occurred. This provision is included in our current statute and has created difficulties for protective service workers, by the mere nature of their training and knowledge as social workers, being requested to determine a legal allegation against an alleged perpetrator. Therefore, this creates litigation. "An assessment of the findings for the need for protective services" is suggested for more appropriate wording.
4. Section 5 (b) presents concerns regarding lengthy litigation procedures over findings of a report. An effective adult protective services program directs it's energies toward providing services to the vulnerable adults. Maintaining a list of identified perpetrators is not a deterrent to abusive behavior. We strongly recommend that this section be deleted.

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5. Section 10, "If the secretary finds that an adult is being or has been abused, neglected or exploited"...presents the same concerns as we have mentioned in number 4, above.
6. Lastly, the Department recommends that provisions be added to include:
1) Payment for protective services; and 2) Authority and responsibility of the Department of Social and Rehabilitation Services in providing the protective services. This amendment would include the provisions for: 1) the Department to determine, under specific guidelines, whether an adult is financially capable of purchasing services and; 2) the Department to provide or to arrange for the services.

Thank you.

*Attn #2
Jg-4
2-13-9*

TESTIMONY
KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
WINSTON BARTON - SECRETARY
HB 2108

The provisions of HB 2108 would enlarge the serious concerns and problems already occurring from the present adult protective service acts. The problems come from the register and most of all from the "findings" requirements.

The present act (in K.S.A. 39-1422(a) and (d)) requires a register that essentially does not go anywhere. It is an extremely confidential record that does not prevent the hiring of abusers. HB 2108 only slightly changes that in its Sec. 5 with its disclosure exception for "such information identifying the names of confirmed perpetrators may be disclosed to a caretaker." But its earlier Sec. 1(i) definition for "Caretaker" takes the "institution" out of the present K.S.A. 39-1421(d) definition so that the disclosures would be only to individual caretakers and not necessarily any employers or care givers.

There are several levels or types of information that could be kept in a register. One level could be simply the reported information. Obviously such information may be inaccurate and may require investigation (although this potential inaccuracy is ignored in HB 2108's Sec. 4 which assumes the report to be accurate enough to set varying times to begin the investigation from just the type of report). Another type of information is the action or referral taken from the reported information. This could be the best type because of the problems at the next level.

*PHW
Attn #3
2-13-9*

HB 2108 goes to that next level and further expands and confuses it. This is the level of "findings." These findings may be an unnecessary governmental abuse. Sec. 4(a)(3) requires SRS to

Prepare, upon completion of the evaluation of each case, written findings which shall include a finding of whether there is or has been abuse, neglect or exploitation, recommended action, a determination of whether protective services are needed, and any follow-up.

(emphasis added.)

Findings for "abuse" may then require (by the Sec. 1(b) definition) a finding of "the willful infliction of injury", etc. "Willful" is a term of intent for criminal and tortuous acts. It is a finding that even judges or juries are not allowed to make without extensive checks and balances. Here it is expected that protective service workers - persons with social work training - are to make and impose the stigma and effects of legal findings. Does Sec. 5(b) solve that problem when it provides that:

Before any person is identified as a confirmed perpetrator of abuse, neglect or exploitation, the person will be given due process prior to having such person's name entered into the statewide registry.

No, it continues to create problems. First, due process requires giving the confidential abuse reports to the perpetrator for his or her defense in direct conflict to Sec. 5(c). This creates a situation where an alleged perpetrator can get all the information on the supposed abuse that is still confidential from even the family of the supposed victim. That only begins the problems.

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2-13-9

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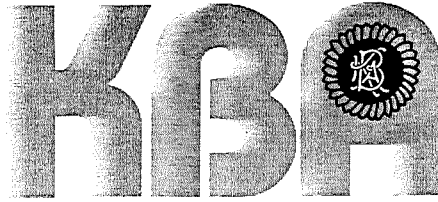
Hearing on such findings involve numerous witnesses, many of those witnesses themselves may be infirm, and extensive attorney and hearing time and expenses. They also divert the protective service workers from time to investigate other reported cases. And the biggest problem is that it is all an unnecessary waste.

An SRS finding of abuse or neglect is not a criminal conviction, civil penalty, or loss of a license. It has no practical effect. Most of all, it is simply not necessary. Sec. 8(a) shows that actions can be taken on a "reason to believe." That is all that is necessary for referrals to Law enforcement (for their own investigations), to arrange protective services, and even for the due process beginning of guardianship petitions. The pseudo-criminal findings for a secret list are a government waste and abuse that should be removed to allow for the real goals of least obtrusive protective services.

Tim Owens
General Counsel
(913) 296-3968

Bruce A. Roby
Attorney
(913) 296-2431

*attn #3
29-3-
PHW
1-13-9*



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 9, 1989

TO: House Committee on Public Health and Welfare
FROM: James S. Maag, Kansas Bankers Association
RE: HB 2108 - Reporting of adult abuse, neglect and exploitation

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss the provisions of HB 2108 with the Committee. While we heartily applaud the concept of this legislation and the attempt to resolve a serious problem, we do have a deep concern about the requirement that certain classes of employees are mandated to make reports under the act.

Section 2 of the bill state that "an employee of a financial institution" who has reasonable cause to believe an adult is being "abused, neglected or exploited" shall report the matter to SRS or a law enforcement agency within six hours. If they "knowingly" fail to do so they can be found guilty of a class B misdemeanor. We believe this requirement is highly discriminatory since no other private sector group which is not directly involved in health or public protection services is subject to such a requirement. Employees of banks and other "financial institutions" (which is not defined in the act) are not trained for such purposes and to place them in a position that could result in legal action against them even though it is not related to their job is totally unrealistic.

If the intent of including "financial institution" employees in the bill was to spot situations involving "fiduciary abuse" then it would be necessary to include all attorneys who handle trusts, realtors involved in home sales, insurance agents, and securities brokers as well as many others who handle financial transactions. As with "financial institution" employees, these people would not be adequately trained for such reporting either.

We have no difficulty with the language of subsection (c) of Section 2 which states that individuals "may report" such instances, but would not be subject to the penalties set forth in subsection (d). This would be a much more practical way to work with private sector employees.

Again we commend the Committee for addressing a serious problem, but we do believe the requirements relating to "financial institution" employees in Section 2 are unworkable and unrealistic and should be removed from the bill. We appreciate the Committee's attention to our concerns.

Jim #1
2-13-89
PHW.

KLSI Kansas League of Savings Institutions

JAMES R. TURNER, President • Suite 512 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

February 13, 1989

TO: HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS
RE: H.B. 2108 (ABUSE, NEGLECT AND EXPLOITATION OF ADULTS)

The Kansas League of Savings Institutions appreciates the opportunity to appear before the House Committee on Public Health and Welfare to request consideration of an amendment to H.B. 2108.

While we appreciate and support the intent of H.B. 2108 we have concerns regarding the inclusion of employees of financial institutions among those required to report under the provisions of the bill. This provision is found on Page 3, Section 2, line 95 of the bill.

We would point out that all other persons mentioned in Section 2 are professionals trained in such observations; tellers, secretaries, and loan officers at financial institutions are not. Further, we are concerned that others engaged in commercial activities, i.e., store clerks, receptionists, food service, etc. and not included as observants and reporters; only financial institution employees.

Accordingly, we would request that Page 3, Section 2, line 95, be amended to delete the words "and an employee of a financial institution."

James R. Turner
President

JRT:bw

*PKW
attm 5
2-13-9*

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

February 9, 1989

To: House Committee on Public Health and Welfare

Re: House Bill 2108

It is requested that House Bill 2108 be amended on page 2, in line 81, by deleting "Pursuant to section 8."

The proposed amendment will make the wording of this paragraph similar to existing Kansas abuse statutes and will not restrict its application to the decisions and actions of the secretary permitted by section 8.

Individuals will still be protected because this paragraph applies only when reliance on spiritual means for treatment is the "sole reason" for considering a person to be abused, neglected, or exploited. Such a finding can still be made if other factors support such a conclusion.

It is my understanding that the author of this bill does not oppose this amendment.



Keith R. Landis
Committee on Publication
for Kansas

*attn #6
PHW
2-13-89*

State of Kansas

Office of

RICHARD G. GANNON, EXECUTIVE DIRECTOR
CHARLENE K. ABBOTT, ADMINISTRATIVE ASSISTANT
LAWRENCE T. BLUENING, JR., GENERAL COUNSEL
JOSEPH M. TERJANIC, DISCIPLINARY COUNSEL



London State Off. Building

900 S.W. JACKSON, SUITE 553
TOPEKA, KS 66612-1256
(913) 296-7413

Board of Healing Arts

TO: House Committee on Public Health & Welfare
FROM: Richard G. Gannon, Executive Director
DATE: February 13, 1989
RE: TESTIMONY IN SUPPORT OF HB NO. 2160

The Board seeks passage of HB 2160 and feels providing immunity to consultants and experts who assist the Board in both the investigative or hearing stage will enable the Board to better meet its statutory duties and obligations.

The Kansas State Board of Healing Arts daily receives complaints regarding its licensees. Those complaints are investigated and the results received by the Board. Often it is suspected that a licensee is afflicted with a mental or physical impairment such as chemical dependency. Also, most of the complaints deal with medical procedures and an expert opinion is required to determine if the individual failed to meet the appropriate standard of care. Those licensees are then dealt with in a variety of ways including:

- a. Bringing the licensee into the board office for an interview, with a Board consultant present to evaluate the mental and/or physical state of the licensee, or to obtain better knowledge of the licensee's practice;
- b. sending the licensee out to a facility where a Board consultant will evaluate the mental and/or physical state of the licensee; or
- c. having a consultant review voluminous medical records and render an opinion on standard of care.

Since Board consultants are not employees within the definition of K.S.A. 1988 Supp. 75-6102, but are actually independent contractors, they do not fall within the Tort Claims Act and the immunities provided by that act. Further, due to the fact that the Board is not a health care provider or health care

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JOHN P. WHITE, D.O., PITHBURG

Attn # 7
pkw
2-13-89

Testimony Re: HB-2160
February 13, 1989
Page 2

provider group within the definition of K.S.A. 1988 Supp. 65-4915 (a)(1) and (2), Board consultants are not protected under the immunities provided for in the peer review or risk management statutes including K.S.A. 1988 Supp. 65-4915(b),(c),(d) and (e), and 65-4921 through 65-4925.

Although none of the Board's consultants have yet been sued, they have expressed concern about the possibility. It is our opinion that this is a legitimate concern and, therefore, we respectfully request the passage of this bill.

Thank you for the opportunity to appear before you in support of this bill.

RGG:LTB:sl

attm #7
Pg 2
2-13-9

State of Kansas

Office of

RICHARD G. GANNON, EXECUTIVE DIRECTOR
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900 S.W. JACKSON, SUITE 553
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(913) 296-7413

Board of Healing Arts

TO: House Committee on Public Health & Welfare
FROM: Richard G. Gannon, Executive Director
DATE: February 13, 1989
RE: TESTIMONY ON HOUSE BILL NO. 2161

This bill amends various provisions of the statutes governing physical therapy. Several changes were suggested by the Physical Therapy Examining Committee. Carolyn Bloom, a member of that committee, is present and prepared to provide testimony on these recommendations, specifically (1) the deletions in lines 119 and 120 on page 4; (2) the repeal of K.S.A. 65-2907; and (3) changing "certification" of physical therapist assistants to "registration". My testimony will not deal with these changes in detail, but will rather touch upon other amendments as proposed in the bill. These are as follows:

1. Temporary Registration.

Under section 5, subsection (c) of this bill, temporary registration to both physical therapists and physical therapist assistants will be specifically authorized. For some time now, the Board has been granting temporary registration to physical therapists under K.A.R. 1966 100-36-1 and to physical therapist assistants. However, no statutory authority has actually existed for issuance of these temporary registrations and we feel such should be provided, as temporary registration is allowed under all other professions regulated by the Board.

2. Process of Renewal Changes.

Section 6 states suggestions for changes in the processes of renewal, late renewal, and reinstatement of registration. This is being revised to conform with other professions under the Healing Arts Act, Podiatry Act, and proposed Physicians' Assistants Bill and to create consistency in this process for all professions.

The Board requests that the words "on a biennial basis" in line 185 on page 6 of the bill be deleted and the word "annually"

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2-13-89
P.H.W.

be inserted instead. The Board also requests that section 6, subsection (f) be deleted in its entirety. The reasoning for these two requested amendments is that the Board asked the revisor of statutes to include these provisions from language in SB-35 from the 1987 session. That bill provided for biennial renewal. However, for a variety of reasons, the Board wishes to continue with annual registration. Therefore, a balloon specifying these two changes is attached.

3. Fee Changes.

Section 7 of this bill sets the new fees and fee categories for physical therapists and physical therapist assistants. Presently only one statutory maximum exists as set out in K.S.A. 1963 65-2910 of the Physical Therapy Act.

This provision of the bill will provide more authority for the legislature in this arena to set the statutory fees.

This provision will also create more continuity across the board to establish the same type of fee categories as in the Healing Arts Act, Podiatry Act, and in the proposed Physicians' Assistant Bill.

Thank you for the opportunity to appear before you today in support of this bill.

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Attachment

*Attmt #8
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2-13-9*

156 (b) The board may issue a certificate of registration as a physical
157 therapist assistant without examination therein to an applicant who
158 presents evidence satisfactory to the board of having passed an ex-
159 amination as a physical therapist assistant as approved by the state
160 board of healing arts or an examination before a similar, lawfully
161 authorized examining board in physical therapy of another state,
162 District of Columbia, territory or foreign country, if the standards
163 for certification ~~in~~ or registration as a physical ~~therapy~~ therapist
164 assistant in such other state, District of Columbia, territory or foreign
165 country are determined by the board to be as high as those of this
166 state. At the time of making such application, the applicant shall
167 pay to the board a fee as prescribed, no part of which shall be
168 returned established pursuant to K.S.A. 65-2911 and amendments
169 thereto.

170 (c) The board may issue a temporary registration to an applicant
171 for registration as a physical therapist or as a physical therapist
172 assistant who applies for temporary registration on a form provided
173 by the board, who meets the requirements for registration except
174 board action on the application for registration and who pays to
175 the board the temporary registration fee as established under K.S.A.
176 65-2911 and amendments thereto. Such temporary registration shall
177 expire on the date the board acts on the application for registration.

178 Sec. 6. K.S.A. 65-2910 is hereby amended to read as follows:
179 65-2910. (a) The registration of every registered physical therapist
180 or certified registered physical therapist assistant shall, during each
181 January, apply to the board for an extension of such person's
182 registration or certification and pay a fee as determined by the
183 board expire on the date of expiration established by rules and
184 regulations of the state board of healing arts and may be renewed
185 ~~on a biennial basis~~ upon request of the registrant. The request for
186 renewal shall be on a form provided by the state board of healing
187 arts and shall be accompanied by the renewal fee established pur-
188 suant to K.S.A. 65-2911 and amendments thereto which shall be paid
189 not later than the expiration date of the registration.

190 (b) The state board of healing arts shall require every registered
191 physical therapist or registered physical therapist assistant as a con-
192 dition of ~~extension~~ renewal of registration to submit with the ap-

annually

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2-13-14

230 therapist assistant has been reinstated under subsection (e).

231 (e) Any registrant who allows the registrant's registration to lapse
232 by failing to renew as herein provided may be reinstated upon
233 recommendation of the state board of healing arts and upon payment
234 of the renewal fee and the reinstatement fee and upon submitting
235 evidence of satisfactory completion of any applicable reeducation and
236 continuing education requirements established by the board. The
237 state board of healing arts shall adopt rules and regulations estab-
238 lishing appropriate reeducation and continuing education require-
239 ments for reinstatement of persons whose registrations have lapsed
240 for failure to renew.

241 ~~(f) The expiration date of each registration issued or renewed by~~
242 ~~the state board of healing arts shall be established by rules and~~
243 ~~regulations of the board. Subject to the provisions of this subsection,~~
244 ~~each registration shall be renewable on a biennial basis upon the~~
245 ~~filing of a renewal application and payment of the renewal fee or~~
246 ~~other fee as provided by this section. To provide for a system of~~
247 ~~biennial renewal of registrations, the board may provide by rules~~
248 ~~and regulations that registrations issued or renewed for the first~~
249 ~~time after the effective date of this act may expire less than two~~
250 ~~years from the date of issuance or renewal. In each case in which~~
251 ~~a registration is issued or renewed for a period of time less than~~
252 ~~two years, the board shall prorate to the nearest whole month the~~
253 ~~registration or renewal fee established pursuant to K.S.A. 65-2911~~
254 ~~and amendments thereto. The provisions of this subsection shall not~~
255 ~~apply to any temporary registration issued by the board.~~

256 Sec. 7. K.S.A. 1988 Supp. 65-2911 is hereby amended to read
257 as follows: 65-2911. (a) The state board of healing arts may adopt
258 such rules and regulations as necessary to carry out the purposes of
259 this act. The executive director of the board shall keep a record of
260 all proceedings under this act and a roster of all persons registered
261 or certified under the act. The roster shall show the name, address,
262 date and number of the original certificate of registration or certifi-
263 cate, and the renewal thereof.

264 (b) The following fees shall be established by rules and regula-
265 tions adopted by the state board of healing arts and shall be collected
266 by the board:

*Return to
2-15-11*

February 13, 1989

Carolyn Bloom, PT
Vice-President
Physical Therapy Examining Committee
of the Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, Ks 66603
913-233-2225 (work)

HOUSE BILL No. 2161

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

My name is Carolyn Bloom and I am a physical therapist and Vice-President of the Physical Therapy Examining Committee of the Kansas State Board of Healing Arts. My purpose today is to offer support to HB 2161 as currently written. The changes proposed in this bill will not vary the current practice of physical therapy in Kansas but will clarify procedural actions of the Board.

The change in terminology from certified to registered physical therapist assistant will not change the practice or responsibilities of the PTAs but will meet a directive from a Legislative Committee to conform with current Kansas statutes terminology.

Deletion of lines 119 and 120 clarify that applicants for examination as a physical therapist assistant must have completed successfully a program in an approved school. The stricken language is a remnant of a grandfather clause that was removed from the Practice Act in 1983. In order to maintain the quality of service provided to patients, the intention of the P.T. Examining Committee members is that all examination applicants receive a structured, approved training and not work experience only.

*att #9
2-13-89*

Lines 170 -177 allow for qualified physical therapists and physical therapist assistants to receive a temporary license in Kansas with the specific requirements stated in the Rules and Regulations. Examination applicants who have successfully completed training and all requirements awaiting the examination and scoring are allowed to request a six month temporary permit to practice.

Lines 183-189 allows for biennial registration renewal for PTs and PTAs.

Lines 190-200 allows for requirements for physical therapist assistants to obtain continuing education units for registration. This requirement is now consistent for all practitioners under the Kansas State Board of Healing Arts. I completed a survey of the 260 PTAs licensed in Kansas with 123 returned. Of the 123 surveys returned, 112 of the assistants wished to have mandatory CEUs.

The remainder of the changes are procedural clarifications and delineations of the fee structure. The Physical Therapy Examining Committee supports these changes in HB 2161 as currently written.

Thank you for the opportunity to speak to your Committee and of your consideration of HB 2161. I will be pleased to answer any questions.

*Attm #19
P 9 2
2-13-9*

KANSAS CHAPTER
AMERICAN PHYSICAL THERAPY ASSOCIATION

FEBRUARY 13, 1989

Joan Arterburn
Representative
Kansas Chapter,
American Physical Therapy Association
1237 SW Belle Terr.
(913) 272-4121

Mr. Chairman and members of the Public Health and Welfare Committee: My name is Joan Arterburn and I represent the Kansas Physical Therapy Association which serves over 90% of all practicing physical therapy personnel in this state. My purpose today is to address HB 2161 and the proposed changes in current language to our practice act.

The Physical Therapy Association supports all changes in language proposed in this bill regarding 1) process of registration renewal 2) fee structure of the State Board of Healing Arts 3) temporary registration of the physical therapist and the physical therapist assistant (PTA) 4) changes in certification to registration of the PTA and 5) qualifications for registration for the PTA.

Additional language in lines 209-255 replacing lines 201-208 clarifies the renewal of registration process for physical therapy personnel. Lines 264-296 outline clearly the fee structure set forth by the State Board of Healing Arts. Our

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2-13-9*

association also supports the language in lines 170-177 addressing temporary registration of the physical therapist and PTA. The changing of title from certified to registered of the PTA first seen in line 60 is also supported by our association under the definition of registration by law that would not change the current roles/responsibilities of the PTA.

Repealing lines 119-120 as recommended is strongly supported by our organization. Currently as the law reads (lines 119-120) anyone of legal age, possessing a high school education and that has loosely defined "equivalent experience" can make application for examination to become a PTA. If lines 119-120 are deleted from the practice act it would guarantee physical therapy assistants seeking Kansas registration would possess the formal basic science and supervised clinical instruction received in a physical therapist assistant educational program that is approved by the State Board of Healing Arts. The repealing of the grandfather clause (lines 119-120) would resolve the current situation of possible unqualified individuals without formal education past the high school level entering the ranks of Kansas registration in the physical therapy profession. In essence this is helping to assure quality patient/public safety.

In summary the Kansas Physical Therapy Association supports all recommended changes in HB 2161. The Kansas Physical

*Attm #10
P-92
2-13-9*

Therapy Association is always concerned with improving the quality of patient care and assuring public safety by having the best trained professionals at the public's disposal. Thank you for your attention and the privileged to supply input to this committee. I would be glad to entertain questions at this time.