

Approved 3-29-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 16, 1989 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Winter, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Elwaine Pomeroy, Private Citizen
Ron Smith, Kansas Bar Association
Tom Bell, Kansas Hospital Association
Sister Mary Francine, Catholic Health Association
Randy Hearrell, Kansas Judicial Council
Ralph J. Rodgers, American Association of Retired Persons

House Bill 2009 - Durable power of attorney, health care decisions

The chairman reviewed the bill.

Elwaine Pomeroy stated he was testifying as a former senator and a private citizen. He stated as a member of the National Conference on Uniform State Laws I always had interest in durable power of attorney because I introduced it. Some people are having problems with durable power of attorney in making decisions. As a practitioner I have used the durable power of attorney. It is very helpful, usually in helping a person who is concerned about someone to take care of them and authorizing someone else to act for them. It is a way of preventing guardianship and the expense of the cumbersome situation. I have had no problem in my practise with power of attorney. Mr. Pomeroy raised a question with regard to new Section 7, that provides knowledge of compensation, and in the power of attorney there is no right for compensation. This bill applies to all powers of attorney. Good faith arrangements that have been made and are in place and could not be changed after the fact. A committee member referred to page 2, lines 64 through 70 and 76 through 95 that refers to "actual knowledge" and inquired what is "actual knowledge"? The committee member stated concern for accountability.

Ron Smith, Kansas Bar Association, referred to a letter he received from William Q. Martin with The Smith County State Bank concerning House Bill 2009 (See Attachment I). Mr. Smith stated the KBA does not have a formal position on this bill. In response to a question Mr. Smith said in the next few years the legal profession will be studying these issues.

Tom Bell, Kansas Hospital Association, testified the bill is designed to work in conjunction with our living will law. It provides health care providers with guidance concerning what powers of attorney may and may not do. It gives the potential patient the peace of mind of knowing that a trusted person can be given the authority to make these important decisions. A copy of his testimony is attached (See Attachment II). He said we do support the bill and the amendments Kansans For Improvement of Nursing Homes will provide. A committee member stated this is a great effort and something we should do, but it can be ignored by anybody anytime. Mr. Bell replied it would clear up some confusion because of disagreement out there.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 16, 1989

House Bill 2009 - continued

Sister Mary Francine, Catholic Health Association, testified there is a whole category of people who have no one to speak for them. It gets families to discuss and make decisions within the family. We have people who have no living relatives, health care providers get caught in situations. It is very effective. We in health care struggle to find a decision maker. For her hospital it would be better to have it. People who are divorced and remarried in later life are very interested in this. A committee member inquired, are you concerned there is no requirement for manner of accountability. She replied, I am hearing it more in the sense of fiduciary.

Randy Hearrell, Kansas Judicial Council, testified everyone wants something to be done about this and not sure what they want done. He pointed out the judicial council proposals as indicated in the balloon (See Attachment III). Mr. Hearrell stated everyone is in favor of it we just need a way to do it. During committee discussion, Sister Francine said we want a simple lay person's approach to appointing a decision maker. It has been tied too much of this to a living will.

Ralph J. Rodgers, American Association of Retired Persons, testified the association has indicated its approval, in principle, of the bill while the same was being debated in the House. We reiterate such approval and support it. A copy of the testimony is attached (See Attachment IV).

Since there was not enough time for all the conferees to testify, the chairman announced the committee will spend 15 minutes tomorrow on this bill.

The chairman asked the interested parties to meet and provide a balloon version of their proposed amendments.

Senator Gaines moved to approve the minutes of March 1, 1989. Senator Rock seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment V).

Copy of testimony of Kansans for Improvement of Nursing Homes is attached (See Attachment VI).

Copy of testimony from Christian Science Committee on Publication For Kansas is attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-16-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Barbara Miller	DSOB 5th Fl.	SRS
Randy Harrell	Topeka	Judicial Council
Jessica Rulon	Emporia	
George Goebel	Topeka	Chr. AARP Capital Area Task Goodell, Station, 2nd Atty for Ks. Hospital Assn.
Maria Q. Ruchert	Topeka	
Tom Bell	"	KHA
KETH R LANDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Marilyn Bradt	Lawrence	KINH
JOHN H HOLMGREN	Topeka	Catholic (232-6597) Health Association
Claire McWhirly	Topeka	Sept on Aging
Sister M. Francine	Topeka	Catholic Health Association
Jerry Sloan	"	OJA
Paul Shelby	Topeka	OJA
Mary J. Slaybaugh	Topeka	SRS
Mark Intermill	Topeka	Kansas Coalition on Aging
Edgar J. Rodgers	Kansas City, KS	AARP
Luanne A. Komarog	Topeka	Citizen
Chip Wheeler	Topeka	Ks Medical Soc
Glossie Alway	KDOA Topeka	KDOA
Fon Smith	Topeka	Ks Bar Assoc
Kelly Arnold	Lawrence	City of Lawrence
Sandy Praeger	Lawrence	City of Lawrence
Melanie Miller	Hays	Kansas Library Assn.

THE SMITH COUNTY STATE BANK

AND TRUST COMPANY
SMITH CENTER, KANSAS

WILLIAM Q. MARTIN
Vice President
and Trust Officer

RECEIVED

MAR - 7 1989

KANSAS BAR
ASSOCIATION

March 3, 1989

Mr. Ron Smith
Legislative Counsel
Kansas Bar Association
1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601

Re: Durable Powers for Health Care

Dear Ron:

This will acknowledge our recent phone conference regarding my response to your February 20, 1989 letter to Steve Brown who is President of the Real Estate, Probate and Trust Law Section of the Kansas Bar Association. As a member of the Section, Steve has requested that I respond to your inquiry.

Pursuant to your request I have reviewed HB 2009 and the proposed revision presented by Marilyn Bradt of the Kansans for Improvement of Nursing Homes. My thoughts and suggestions on her proposal follow:

1. It appears that she is concerned about language in the current law in that a fiduciary presently has no power to make health care decisions. As I understand the issue, her concern relates to the last sentence of K.S.A. 58-612 which reads as follows:

"The fiduciary has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not disabled or incapacitated."

Under New Section 6 of HB 2009, the agent of a durable power of attorney for guardianship and conservatorship powers will have the such powers as set forth in the instrument, but will not include the right to revoke any previously existing declaration under the natural death act (In other words, a living will).

I take it that she wishes to make it clear that a "fiduciary charged with management of all of the principal's property..." (In other words, a conservator) would not have the right to revoke the living will, nor would it have the right to revoke the a "power of attorney for guardianship powers".

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Mr. Ron Smith
March 3, 1989
Page 2

If this is in fact the intent of New Section 6 of HB 2009, then I would concur with Marilyn Bradt as to this issue.

However, I would not suggest that her designated language be used. She suggests that the following be added to the cited sentence,

"other than health care decisions pursuant to Section 6."

I would think the use of the term "guardianship" rather than "health care" should be used to keep the terminology consistent with existing law. K.S.A. 59-3002(d) and 59-3002(f) contain definitions of the terms and it would appear proper to have the durable power of attorney statute use these words of art.

It appears to me that the general intent of New Section 6 is to allow an individual to appoint by a power of attorney document someone to act as a guardian (with the authority of the designated agent to commence when a physician declares the principal to be disabled or incapacitated). This in effect allows for the creation of a de facto guardianship without the need for court intervention. Because of this I would favor the use of the term "guardianship" for purposes of consistency.

2. Marilyn Bradt has inquired as to why the term "guardian of the estate" is used with the term "conservator". I am not aware of the legislative history when this language was adopted by the Kansas legislature when the Uniform Durable Power of Attorney Act was adopted in 1980 other than to note that such language was part of the Probate Code 1979 Amendments.

Section 3(b) of the Uniform Act specifically refers to "conservator, guardian of the estate or other fiduciary charged with the management of all the principal's property..." I would see no reason to retain the use of the phrase "guardian of the estate" in HB 2009.

3. The last suggestion presented by Marilyn Bradt is the implementation of the Proposed Revision V to HB 2009. I have carefully read both the existing New Section 6 and the proposed revision and frankly find the existing language of HB 2009 both more comprehensive and consistent with current law especially with respect to terminology.

In summation, although I agree with several of the specific suggestions presented by the Kansans for Improvement of Nursing Homes as they relate to the current law, I find the existing form of New Section 6 preferable to the proposed revisions.

Mr. Ron Smith
March 3, 1989
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I hope our observations and suggestions have been of help. If Steve Brown or I can be of further assistance, please don't hesitate to call on us.

Very truly yours,

William Q. Martin
Vice-President & Trust Officer

cc: Mr. Steven W. Brown
King, Adrian, King & Brown, Chartered
Attorneys at Law
P.O. Box 2120
Salina, Kansas 67402-2120

Ms. Marilyn Bradt
916 Tennessee, #2
Lawrence, Kansas 66044

Memorandum



Donald A. Wilson
President

March 16, 1989

TO: Senate Judiciary Committee
FROM: Thomas L. Bell, Vice President
SUBJECT: H.B. 2009

The Kansas Hospital Association appreciates the opportunity to comment in support of H.B. 2009. This bill would amend our current durable power of attorney statutes to provide specifically for a power of attorney for decisions concerning health care matters.

Traditionally, powers of attorney have been used in connection with actions affecting the principal's property. Some difference of opinion has arisen whether such powers of attorney are restricted to matters of property alone. The result has been an increasing number of statutes concerning powers of attorney for health care decisions.

In addition, more states have begun to recognize that power of attorney legislation can supplement current living will statutes. While living will statutes have some inherent limitations, powers of attorney provide, in most cases, for broader authority.

H.B. 2009 has a number of positive aspects. First, it is designed to work in conjunction with our living will law. Second, it provides health care providers with guidance concerning what powers of attorney may and may not do. Finally, and most importantly, it gives the potential patient the peace of mind of knowing that a trusted person can be given the authority to make these important decisions.

TLB:mkc

Attachment II
TLB
3-16-89

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1989

HOUSE BILL No. 2009

By Special Committee on Judiciary

Re Proposal No. 20

12-22

21
22 AN ACT concerning power of attorney; relating to the uniform du-
23 rable power of attorney act; health care decisions; amending K.S.A.
24 58-610, 58-611, 58-612, 58-613, 58-614 and 58-615 and repealing
25 the existing sections.

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

27 Section 1. K.S.A. 58-610 is hereby amended to read as follows:
28 58-610. A durable power of attorney is a power of attorney by which
29 a principal designates another as the principal's ~~attorney in fact~~
30 *agent* in writing and the writing contains the words "this power of
31 attorney shall not be affected by subsequent disability or incapacity
32 of the principal" or "this power of attorney shall become effective
33 upon the disability or incapacity of the principal," or similar words
34 showing the intent of the principal that the authority conferred shall
35 be exercisable notwithstanding the principal's subsequent disability
36 or incapacity.

37 Sec. 2. K.S.A. 58-611 is hereby amended to read as follows: 58-
38 611. All acts done by an ~~attorney in fact~~ *agent* pursuant to a durable
39 power of attorney during any period of disability or incapacity of
40 the principal have the same effect and inure to the benefit of and
41 bind the principal and the principal's successors in interest as if the
42 principal were competent and not disabled.

43 Sec. 3. K.S.A. 58-612 is hereby amended to read as follows: 58-
44 612. (a) If, following execution of a durable power of attorney, a
45 court of the principal's domicile appoints a conservator, ~~guardian of~~
46 ~~the estate~~ or other fiduciary charged with the management of all of

strike

personal representative

Attachment III
3-16-89

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the principal's property or all of the principal's property except specified exclusions, the ~~attorney in fact~~ agent is accountable to the fiduciary as well as to the principal. The ~~fiduciary~~ has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not disabled or incapacitated.

or charged with the responsibility for the principal's person
personal representative
personal representative
concerning the principal's property

(b) A principal may nominate, by a durable power of attorney, a conservator, ~~guardian of the principal's estate~~ or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

strike

Sec. 4. K.S.A. 58-613 is hereby amended to read as follows: 58-

613. (a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the ~~attorney in fact~~ agent or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the ~~attorney in fact~~ agent or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(c) A voluntary revocation by a principal of a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the revocation, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Sec. 5. K.S.A. 58-614 is hereby amended to read as follows: 58-

614. ~~As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that the attorney in fact~~

84 did not have, at the time of exercise of the power, actual knowl-
 85 edge of the principal's death, disability or incapacity or of the
 86 termination of the power by revocation is conclusive proof of
 87 the nonrevocation or nontermination of the power at that time.
 88 If the exercise of the power of attorney requires execution and
 89 delivery of any instrument that is recordable, the affidavit when
 90 authenticated for record is likewise recordable. This section
 91 does not affect any provision in a power of attorney for its
 92 termination by expiration of time or occurrence of an event
 93 other than express revocation or a change in the principal's
 94 capacity. Anyone presented with a power of attorney who, without
 95 actual knowledge of any matters affecting its validity (and with no
 96 obligation to make affirmative inquiry into any matters beyond the
 97 express terms of the written document), acts in good faith under
 98 the power shall not be liable civilly or criminally for relying on the
 99 power of attorney.

100 ~~New Sec. 6. Any durable power of attorney containing the words~~
 101 ~~"power of attorney for guardianship powers" or "power of attorney~~
 102 ~~for guardianship and conservatorship powers," or similar words show-~~
 103 ~~ing the intent of the principal that the authority conferred shall~~
 104 ~~include the authority to do acts that a guardian can do, shall convey~~
 105 ~~to the agent the authority to: (a) do all acts that a guardian can do~~
 106 ~~under Kansas law, including the power to place the principal in~~
 107 ~~any facility or institution, including any treatment facility, but~~
 108 ~~such agent shall not be required to obtain any court order to~~
 109 ~~take any such action except as set out in subsections (g)(3), (4),~~
 110 ~~(5), (6), (7) and (8) of K.S.A. 59-2018;~~
 111 ~~(b) make arrangements, contracts, employ, discharge or oth-~~
 112 ~~erwise, any health care provider, as defined in K.S.A. 1088~~
 113 ~~Supp. 60-513d, and amendments thereto, hospice, nursing~~
 114 ~~home, convalescent home or similar institution or in the prin-~~
 115 ~~icipal's residence should such principal desire, and ensure that~~
 116 ~~all the principal's essential needs are provided for at such fa-~~
 117 ~~ility or residence and to pay them or cause them to be paid~~
 118 ~~reasonable compensation; [(b) make all necessary arrangements~~
 119 ~~for the principal at any hospital, hospice, nursing home or similar~~
 120 ~~institution; to employ, discharge health care personnel to include~~

"New Sec. 6. (a) Any durable power of attorney showing the intent of the principal to grant authority to do acts that a conservator and guardian can do shall convey to the agent the authority to do and perform all acts which are set out in writing in the power of attorney and in addition thereto:

(1) Do all acts that a conservator can do under Kansas law, and in addition thereto the following:

(2) Do all acts that a guardian can do under Kansas law, which shall include but not be limited to:

(A) make all necessary arrangements for the principal at any hospital, hospice, nursing home or similar institution, to employ or to discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists, any other health care providers, or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for the physical, mental and emotional well-being of the principal and to pay or cause payment of reasonable compensation therefor, or

(B) Request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any release for other documents that may be required in order to obtain such information.

121 physicians, psychiatrists, psychologists, dentists, nurses, therapists
122 or any other person who is licensed, certified, or otherwise au-
123 thorized or permitted by the laws of this state to administer health
124 care; as the agent shall deem necessary for the physical, mental
125 and emotional well being of the principal and to pay them or cause
126 them to be paid reasonable compensation;] and

127 (c) request, receive and review any information, verbal or writ-
128 ten, regarding the principal's personal affairs or physical or mental
129 health including medical and hospital records and to execute any
130 releases of other documents that may be required in order to obtain
131 such information.

132 This power to contract and make decisions effecting the principal's
133 health shall not be construed to authorize the withholding or with-
134 drawal of life sustaining procedures unless the principal shall have
135 executed a declaration in accordance with the natural death act,
136 pursuant to K.S.A. 65-28,101 et seq., and amendments thereto, and
137 provided further that the principal has not revoked the declaration
138 as authorized by K.S.A. 65-28,106, and amendments thereto. The
139 powers of the agent herein shall be limited, however, to the extent
140 set out in writing in the power of attorney[, and shall not include
141 the power to revoke or invalidate a previously existing declaration
142 by the principal in accordance with the natural death act]. No
143 guardian powers shall be effective until the occurrence of the prin-
144 cipal's disability or incapacity [as determined by the principal's at-
145 tending physician, as defined by K.S.A. 65-28,102, and amendments
146 thereto, or any other person who is licensed, certified or otherwise
147 authorized or permitted by the laws of this state to administer
148 health care], unless the power of attorney specifically provides oth-
149 erwise. Nothing herein shall affect the validity of any power of
150 attorney which conveys by its language the powers a guardian would
151 have under Kansas law, even though the language referred to above
152 is not used.

153 New Sec. 7. ~~[Unless and to the extent provided for in the written~~
154 ~~document, the agent is not entitled to compensation. However]~~ The
155 agent shall be entitled to reimbursement for all actual and reasonable
156 expenses incurred on behalf of the principal.

157 Sec. 8. K.S.A. 58-615 is hereby amended to read as follows: 58-

(b) A durable power of attorney may specifically authorize the agent to withhold or withdraw life-sustaining procedures by the execution of the declaration on behalf of the principal in accordance with the natural death act, pursuant to K.S.A. 65-28,101 et seq., and amendments thereto. Provided however, if the agent is not specifically so authorized, the power to contract and make decisions effecting the principal's health care shall not be construed to authorize the withholding or withdrawal of life-sustaining procedures unless the principal shall have executed a declaration in accordance with the natural death act, pursuant to K.S.A. 65-28,101 et seq., and amendments thereto, which remains unrevoked. Unless otherwise provided in the durable power of attorney, powers granted hereunder shall not include the power to revoke or invalidate previously existing declarations of the principal in accordance with the natural death act.

(c) A durable power of attorney may specifically authorize the agent to make decisions about organ donations, autopsy and disposition of body. Unless otherwise provided in the durable power of attorney, powers granted hereunder shall not include the power to revoke or invalidate previously existing declarations of the principal relating to organ donation, autopsy and disposition of body. Death of the principal shall not prohibit or invalidate acts of the agent in arranging for organ donation, autopsy or disposition of body.

(d) No powers granted under subsections (a)(2), (b), or (c), of this section, shall be effective until the occurrence of the principal's disability or incapacity as certified in writing by the principal's attending physician or other physician as defined by K.S.A. 59-2902(j), unless the power of attorney specifically provides otherwise."

strike

reasonable compensation and

158 615. This act shall be applied and construed to effectuate its general
159 purpose to make uniform the law with respect to the subject of this
160 act among states enacting it. *Any power of attorney which is a valid*
161 *durable power of attorney under the laws of the state of the prin-*
162 *cipal's residence at the time the power of attorney was signed, shall*
163 *be a durable power of attorney under this act. All acts taken by an*
164 *agent in this state under a power of attorney which would be valid*
165 *under the laws of this state, shall be a valid act. All acts taken by*
166 *an agent for a principal whose residence is Kansas at the time the*
167 *power of attorney is signed shall be valid if valid under Kansas law.*

168 New Sec. 9. The provisions of this act shall apply to all powers
169 of attorney regardless of when executed.

170 Sec. 10. K.S.A. 58-610, 58-611, 58-612, 58-613, 58-614 and 58-
171 615 are hereby repealed.

172 Sec. 11. This act shall take effect and be in force from and after
173 its publication in the statute book.



MEMORANDUM:

TO : The Judiciary Committee, Kansas State Senate.

FROM : Frank Lawler, Chairman, SLC/AARP, per Ralph J. Rodgers, Esq., Member, CCTF/AARP.

SUBJECT : Hearing on MB-2009, "Uniform Durable Power of Attorney Act for Kansas allowing an individual to make certain health and medical care decisions on behalf of the principal."

At a session of the State Senate Judiciary Committee held at the State Capital, Topeka, Kansas on Thursday, the 16th day of March, A. D., 1989.

PRESENT: MON. WINT WINTER, JR., CHAIRMAN,
Presiding.

House Bill No. 2009, being "An Act concerning power of attorney; relating to the uniform durable power of attorney; health care decisions; and, amending K. S. A. 58-610, 58-611, 58-612, 58-613, 58-614 and 58-615, and repealing the existing sections, was duly brought on to be heard.

The supplemental note on said MB-2009, as amended by the House Committee of the Whole, provided, substantially, as follows:

1. That the Uniform Durable Power of Attorney Act for Kansas would be altered to empower an individual "to make certain health and medical care decisions, when necessary, on behalf of the principal;" and,
2. That included therein would be the further power "to authorize the withdrawal or withholding of life sustaining procedures, provided, however, that the principal has, prior thereto, executed a Living Will in accordance with applicable State of Kansas Law."

The American Association of Retired Persons (AARP) has indicated its approval, in principle, of the foregoing MB-2009 while the same was being debated in the House. We reiterate such approval and support now, here. In addition, we hereby pledge our support, in principle, of such other acts and the execution of such other documents, e.g., "Living Wills, Durable Power of attorney for medical care decisions," as shall seem most likely to preserve and protect the rights, privileges and immunities of the principal and agent who, hitherto, shall have been so designated.

AARP is also concerned as to the manner in which the foregoing powers shall be effectuated. Accordingly, we would agree, in principle, to the inclusion in such documents certain provisions of the Kansas Natural Death Act, being K.S.A. 65-28, 101; 65-28, 102; 65-28, 103; 65-28, 103; 65-28, 104; 65-28, 105; ~~65-28, 106~~, 65-28, 107; 65-28, 108; and, 65-28, 109. In the event that such provisions are not bodily included



in whatever Durable Power of Attorney Act with authority to make Medical Care decisions on behalf of a principal that eventually may become a part of the law of the State of Kansas, it should, at the very least, provide that the foregoing principles shall be a part thereof and incorporated by reference therein.

In closing, Mr. Chairman, we appreciate the fact that the Senate Judiciary Committee has accorded (AARP) to appear and be heard on its position as to the passage of this most important Bill.



Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO THE SENATE JUDICIARY COMMITTEE
CONCERNING HB 2009
DURABLE POWER OF ATTORNEY

March 16, 1989

Mr. Chairman and Members of the Committee:

The members of Kansans for Improvement of Nursing Homes are drawn largely from among the relatives and close friends of nursing home residents, or are themselves approaching an age when nursing home care or other in-home care and assistance is becoming a real possibility. As such they have experienced very directly the need for legislation of this kind that will enable them to have some affect upon the course of their own care beyond the time when they can themselves make such decisions. KINH members strongly support the concept of this legislation.

Clearly, the goal and purpose of a durable power of attorney for health care is to permit a person of sound mind and will (the principal) to designate another person of his or her choice (the agent) to make health care decisions for the principal in the event that the principal is unable to do so, and to assure that the agent will act, as nearly as possible, as the principal would act if he/she were able to make decisions.

To do that requires 1) that the principal freely choose the agent and communicate to the agent the principles that should govern the agent's decisions, and 2) that the agent, in assuming that responsibility, accept the obligation to carry out the principal's wishes as fully as possible.

Certain elements should be included in a durable power of attorney for health care:

- 1) It should protect against coercion or duress.
- 2) It should provide specific instructions concerning the withholding or withdrawal of life-support systems and should be explicit about what powers are not authorized. A standard form for the document itself might be helpful.
- 3) It should provide some assurance that in accepting the durable power of attorney the agent agrees to carry out the wishes of the principal to the best of his/her ability, as those wishes are known.

*Attachment VI
Senate Judiciary Comm
3-16-89*

- 4) The statute should be as simple as possible, and readily understood by the consumer. The form, if prescribed, should be simple as well, and should contain all relevant instructions in a single document.
- 5) It should not involve the courts in determinations of incapacity or guardianship-type actions.

With regard to some of these elements, we find HB 2009 not entirely satisfactory. We have, accordingly, worked with some other interested persons -- conferees when the bill was considered in the House -- to offer some changes we believe would improve the bill. We have, in some instances, used concepts and language from the original bill, HB 2824, introduced last session.

We strongly urge the committee to pass legislation that will provide us all with the ability to set the course for our own later lives according to our own convictions and desires. Conferees may well differ as to how to achieve that end; I am aware of none who do not support the goal.

Marilyn Bradt
Legislative Coordinator

Christian Science Committee on Publication For Kansas

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To: Senate Committee on Judiciary

Re: House Bill 2009

Last year we gave enthusiastic support to HB 2824 with its broad language which allowed a principal to authorize an agent to choose from a wide selection of health care services on behalf of the principal.

House Bill 2009, as originally drafted, was so restrictive that it appeared to offer little beyond the choices allowed in existing law. We appreciate the efforts in the House to make the present bill more useful. Unfortunately, the bill still contains provisions which can lead to confusion and which are more restrictive than necessary.

The language of Section 3, which in current law refers to property, seems to allow a fiduciary to remove or override the decisions of an agent designated to make health care decisions.

New Section 6 is so intertwined with guardianship laws and the natural death act that it is difficult to determine the extent of an agent's authority. Further, this language places unnecessary restrictions on the right of a competent adult, the principal, to direct the choices to be made on his behalf by his personally selected agent.

An amendment is needed to make clear that nonmedical treatment is permitted in lieu of medical care. The following amendment is requested:

"Nothing in this act shall be construed as prohibiting

*Attachment VII
Senate Judiciary Comm
3-16-89*

an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member."

This amendment could be added at the end of Section 6, after line 152, if the bill is to remain similar to its present form.

We prefer, and support, the amendments being offered by Marilyn Bradt of Kansans for Improvement of Nursing Homes. Our proposed amendment is included within those amendments and would not need to be added separately if they are adopted.

Because a Christian Scientist may not be receiving medical care, we prefer language in the bill to allow an alternative to a physician's determination of incapacity. "Unless the power of attorney specifically provides otherwise" seems to meet that need.

I will be available and will be glad to work with the committee in developing suitable language for this bill. The bill is needed and promises to be one of the most useful bills of this session if it is simple enough to be readily understood by those who would benefit from its provisions.



Keith R. Landis
Committee on Publication
for Kansas