

Approved 2-14-89
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m./~~p.m.~~ on February 7, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Tom Hitchcock, Executive Secretary, Kansas Board of Pharmacy
Richard Morrissey, Director, Bureau of Adult and Child Care, KDHE
Jeff Chaney, Vice President, Government/Legislative Affairs, Kansas
Association of Homes for Aging
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Written Memorandum from Staff concerning SB-98.

The meeting was called to order with the chairman calling for requests for committee bills.

Tom Hitchcock, Board of Pharmacy, requested a bill concerning the Pharmacy Act. Mr. Hitchcock told the committee that this bill would make changes dealing with professional incompetency and unprofessional conduct. Other changes would correct an error from the 1988 session at which time verbage from a 1983 bill was erroneously used. (Attachment 1)

Senator Burke made the motion, seconded by Senator Vidricksen, to accept this request for a committee bill. The motion carried.

The minutes for January 23, 24, 25 and 26 were presented for approval or correction. Senator Langworthy, with a second from Senator Burke, moved adoption of the minutes as presented. The motion carried.

Senator Ehrlich welcomed the pages who were from Ellinwood, Christopher Fertig, Blake Madden and Brian Haddon.

Richard Morrissey presented testimony including an amendment to SB-115. The amendments would allow a license to remain in effect unless suspended or revoked and include the federal language establihsing a maximum time between surveys. These changes would allow a more flexible survey cycle. (Attachment 2)

Jeff Chaney, KAHA, appeared in support of SB-115 stating his organization felt the proposed changes would provide more flexibility on the timing of surveys for licensure and certification. (Attachment 3)

Marilyn Bradt, KINH, appeared stating her organization could support SB-115 with the proposed amendments citing the need for a flexible inspection cycle. (Attachment 4)

Senator Burke, with a second by Senator Anderson, moved adoption of the amendments to SB-115 as proposed by Kansas Department of Health and Environment. The motion carried.

Senator Strick, with a second by Senator Langworthy, moved SB-115 be passed favorable for passage as amended.

A substitute motion to place SB-115 on the consent calendar was offered by Senator Anderson with a second by Senator Reilly. Discussion questioned whether or not an amended bill could be placed on the consent

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 7, 1989
calendar was followed by withdrawal of the substitute motion.

The original motion by Senator Strick carried.

The committee members were presented with a MEMORANDUM from staff providing background to SB-98 as requested. (Attachment 5)

The meeting adjourned at 10:30 a.m. and will convene at 10:00 a.m. February 8, 1989.

SENATE BILL NO. _____

By

AN ACT concerning the pharmacy act of the state of Kansas; relating to licensed pharmacists; amending K.S.A. 1988 Supp. 65-1626 and K.S.A. 1987 Supp. 65-1627, as amended by section 195 of chapter 356 of the 1988 Session Laws of Kansas, and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive

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or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner.

(h) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(i) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(j) "Distributor" means a person who distributes a drug.

(k) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, as defined in K.S.A. 47-501 and amendments thereto, if such livestock remedy has been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated.

(l) "Generic name" means the established chemical name or official name of a drug or drug product.

(m) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined

by the Kansas code for care of children and the Kansas juvenile offenders code;

(C) students of the Kansas college of technology, a public or private university or college, a community college or any other institution of higher learning which is located in Kansas; or

(D) employees of a business or other employer.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(n) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

(o) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the

direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(p) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(q) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(r) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(s) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(t) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian,

scientific investigator, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee or other person expressly licensed or registered to administer, prescribe and use prescription-only drugs in the course of professional practice or research.

(u) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(v) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(w) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(x) "Prescription-only drug" means any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."

(y) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner.

(z) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(aa) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to

the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

{aa} (bb) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a drug the label of which is required to bear substantially the statement "Caution: Federal law prohibits dispensing without prescription"; or (3) a drug intended for human use by hypodermic injection.

{bb} (cc) "Secretary" means the executive secretary of the board.

{ee} (dd) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;
 (2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions; or

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

- (9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or
(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

Sec. 2. K.S.A. 1987 Supp. 65-1627, as amended by section 195 of chapter 356 of the 1988 Session Laws of Kansas, is hereby amended to read as follows: 65-1627. (a) The board may revoke, suspend, place in a probationary status or deny a renewal of any registration license of any pharmacist upon a finding that:

- (1) The registration license was obtained by fraudulent means;
- (2) the registrant licensee has been convicted of felony and the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;
- (3) the registrant licensee is found by the board to be guilty of gross-immorality unprofessional conduct or professional incompetency;
- (4) the registrant licensee is addicted to the liquor or drug habit to such a degree as to render the registrant licensee unfit to practice the profession of pharmacy;
- (5) the registrant licensee has violated a provision of the federal or state food, drug and cosmetic act or the uniform controlled substances act of the state of Kansas;
- (6) the registrant licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner;
- (7) the registrant licensee is found to be mentally or physically incapacitated to such a degree as to render the registrant licensee unfit to practice the profession of pharmacy;
- (8) the registrant licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;
- (9) the registrant licensee has failed to comply with the

requirements of the board relating to the continuing education of pharmacists; or

(10) the registrant licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto; or

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

(b) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board.

(c) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal or state food, drug and cosmetic act; or (3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services.

(d) A registration to manufacture or to distribute at wholesale a drug or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent: (1) Has materially

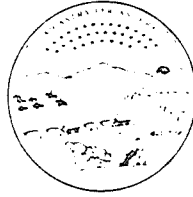
falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas; (2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs; (3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked; (4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629 and amendments thereto; or (5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations.

(e) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 3. K.S.A. 1988 Supp. 65-1626 and K.S.A. 1987 Supp. 65-1627, as amended by section 195 of chapter 356 of the 1988 Session Laws of Kansas, are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

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

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

Testimony presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill No. 115

Background

The nursing home reform amendments included in the Omnibus Budget Reconciliation Act of 1987 require that the Health Care Financing Administration implement a flexible survey cycle in order to reduce the predictability of nursing home inspections. This requirement was rooted in a finding of the Institute of Medicine that nursing homes know when an inspection is coming because of the annual certification and licensure schedule.

Congress addressed this issue by requiring the Health Care Financing Administration to establish a survey system with no more than fifteen months between inspections for individual facilities and for a state-wide average of not more than twelve months between inspections. Certification periods will not be time limited.

Issues

Since the Department conducts one inspection for both licensure and certification purposes, the objective of reducing the predictability of the survey cannot be accomplished unless the same rules are used for both certification and licensure. The Department proposed Senate Bill 115 to change the annual licensure cycle to an eighteen month licensure cycle in order to accommodate the flexible survey cycle required by Congress.

After further consideration, we have concluded it would be more effective to eliminate the requirement for renewal of a license on any arbitrary time period and simply provide for a license to remain in effect unless suspended or revoked. Under this approach, a home would be required to file an annual report and pay an annual fee even though the license would not be "renewed." The attached amendments to Senate Bill 115 implement this change and also include the federal language establishing a maximum time between surveys.

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Recommendation

The Department respectfully recommends that the committee amend Senate Bill 115 as proposed in the attached balloon and recommend the amended bill favorably for passage.

Presented by: Richard J. Morrissey, Director
 Bureau of Adult and Child Care
 Kansas Department of Health and Environment
 February 7, 1989

SENATE BILL No. 115

By Committee on Public Health and Welfare

1-30

15 AN ACT concerning adult care homes; amending K.S.A. 39-928 and
16 39-935 and repealing the existing sections.
17

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

19 Section 1. K.S.A. 39-928 is hereby amended to read as follows:
20 39-928. Upon receipt of an application for license, the licensing
21 agency with the approval of the state fire marshal shall issue a license
22 if the applicant is fit and qualified and if the adult care home facilities
23 meet the requirements established under this law. ~~The license shall~~
24 ~~be issued for a period of not to exceed 18 months as established by~~
25 ~~the licensing agency.~~ The licensing agency, the state fire marshal,
26 and the county, city-county or multicounty health departments or
27 their designated representatives shall make such inspections and
28 investigations as are necessary to determine the conditions existing
29 in each case and a written report of such inspections and investi-
30 gations and the recommendations of the state fire marshal and the
31 county, city-county or multicounty health department or their au-
32 thorized agents shall be filed with the licensing agency. The licensing
33 agency and the state fire marshal may designate and use county,
34 city-county or multicounty health departments and local fire and
35 safety authorities as their agents in making such inspections and
36 investigations as are deemed necessary or advisable. Such local au-
37 thorities are hereby authorized, empowered and directed to perform
38 such duties as are designated. A copy of any inspection reports
39 required by this section shall be furnished to the applicant.

40 A license, unless sooner suspended or revoked, shall ~~be renewable~~ remain in effect
41 ~~for a period of not to exceed 18 months as established by the licensing~~
42 ~~agency, annually~~ upon filing by the licensee, and approval by the
43 licensing agency and the state fire marshal or their duly authorized

44 agents, of an ~~annual report and application for renewal~~ upon such _____ annual report
 45 uniform dates and containing such information in such form as the
 46 licensing agency prescribes. Each license shall be issued only for _____ and payment of an annual fee.
 47 the premises and persons named in the application and shall not be
 48 transferable or assignable. It shall be posted in a conspicuous place
 49 in the adult care home. If ~~application for renewal~~ is not so filed, _____ the annual report
 50 such license is automatically canceled ~~as of the date of expiration.~~ _____ and annual fee is not paid

51 Any license granted under the provisions of this act shall state the
 52 type of facility for which license is granted, number of residents for
 53 which granted, the person or persons to whom granted, the date,
 54 the expiration date and such additional information and special lim-
 55 itations as are deemed advisable by the licensing agency.

56 Sec. 2. K.S.A. 39-935 is hereby amended to read as follows: 39-
 57 935. Inspections shall be made and reported in writing by the au-
 58 thorized agents and representatives of the licensing agency and state
 59 fire marshal, and of the county, city-county and multicounty health
 60 departments as often and in the manner and form prescribed by the
 61 rules and regulations promulgated under the provisions of this act.
 62 Access shall be given to the premises of any adult care home at any
 63 time upon presenting adequate identification to carry out the re-
 64 quirements of this section and the provisions and purposes of this
 65 act, and failure to provide such access shall constitute grounds for
 66 denial or revocation of license. A copy of any inspection reports
 67 required by this section shall be furnished to the applicant, except
 68 that a copy of the preliminary inspection report signed jointly by a
 69 representative of the adult care home and the inspector shall be left
 70 with the applicant when an inspection under this section is com-
 71 pleted. This preliminary inspection report shall constitute the final
 72 record of deficiencies assessed against the adult care home during
 73 the inspection, all deficiencies shall be specifically listed and no
 74 additional deficiencies based upon the data developed at that time
 75 shall be assessed at a later time. An exit interview shall be conducted
 76 in conjunction with the joint signing of the preliminary inspection
 77 report.

78 The authorized agents and representatives of the licensing agency
 79 shall conduct at least one unannounced inspection of each adult care _____ within 15 months of any previous inspection
 80 home ~~during each year turnover period~~ for the purpose of deter-

81 mining whether the adult care home is complying with applicable
statutes and rules and regulations relating to the health and safety
of the residents of the adult care home.

The statewide average interval between inspections shall not exceed 12 months.

84 Every adult care home shall post in a conspicuous place a notice
85 indicating that the most recent inspection report and related doc-
86 uments may be examined in the office of the administrator of the
87 adult care home. Upon request, every adult care home shall provide
88 to any person a copy of the most recent inspection report and related
89 documents, provided the person requesting such report agrees to
90 pay a reasonable charge to cover copying costs.

91 Sec. 3. K.S.A. 39-928 and 39-935 are hereby repealed.

92 Sec. 4. This act shall take effect and be in force from and after
3 its publication in the statute book.

94



KANSAS ASSOCIATION OF HOMES FOR THE AGING

February 7, 1989

Our position on SENATE BILL No. 115: Support

Presented by Jeff Chanay, Vice President
Government/Legislative Affairs

Our association represents 120 not-for-profit nursing and retirement homes in rural and urban areas across our state.

We believe the changes proposed will provide more flexibility on the timing of surveys for licensure and certification.

Hopefully, with a maximum of a 15 month time period, the Department can focus its resources and timing on surveying those facilities having problems earlier than the 15 month period, and extend the time period for those homes who have a consistent record of compliance and quality care.

We do not object to the amendments proposed by the Department.

Thank you.

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Attachment 3



Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
CONCERNING SB 115

February 7, 1989

Mr. Chairman and Members of the Committee:

The annual survey of each nursing home has always been directly linked to its relicensure. While that may seem a reasonable schedule, the result has been that the nursing home can confidently predict that the survey will be conducted very close to the time of relicensure, though most knowledgeable consumers are agreed that an unexpected survey is highly desirable. SB 115 attempts to provide a flexible, and therefore unanticipated, survey cycle by establishing only a maximum time of eighteen months for relicensure. Presumably the Department of Health and Environment could inspect and relicense several months earlier if they chose. However, since the process is still triggered by the application for relicensure, it is not clear to KINH exactly how it would work or whether it would achieve its objective. Further, we are uncomfortable with the idea that it would be possible for all the nursing homes in the state to be inspected only every eighteen months.

KINH is supportive of the concept of a flexible survey cycle. However, we would prefer a flexible cycle such that the statewide average inspection period would be approximately twelve months, with the agency having the discretion to inspect better homes less frequently, marginal or troubled homes more frequently.

KINH suggests that a better mechanism for providing the desired flexibility be sought.

*SPH/CO
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Attachments*

MEMORANDUM

February 6, 1989

TO: Senate Committee on Public Health and Welfare

FROM: Kansas Legislative Research Department

RE: Background on Senate Bill No. 98

There are two distinct issues relating to accident and health insurance and the coverage of certain social work services that appear in S.B. 98. Both issues have been before the Kansas Legislature at previous times and the Legislature has acted on the policy issues involved in the form in which the law now appears.

Mandated Coverage of Licensed Specialist Social Work Services

Section 2 of Senate Bill No. 98 would reverse a policy decision made by this Committee in 1982 in regard to the mandating of coverage for the services of clinical social workers in all health and accident policies or medical service corporation contracts. Although conferees meeting with the Committee on Monday did not describe the provisions of the present law (K.S.A. 40-2.114) as a technical error or omission on the part of the Legislature, the current statute has been described in this manner in correspondence about the statute from licensed clinical social workers to other members of the Legislature; such is not the case.

K.S.A. 40-2,114 was created in 1982 through the adoption by the 1982 Legislature of 1982 House Bill No. 3002. House Bill No. 3002 was introduced by the House Committee on Insurance at the request of the Kansas Chapter of the National Association of Social Workers who were represented by former Senator Bob Story in lobbying for the bill. The bill, as introduced, required any individual or group policy or contract for health and accident insurance to reimburse for a service provided within the lawful scope of practice of a licensed specialist clinical social worker by such social worker. The bill was reported favorably as introduced by the House Committee on Insurance and was adopted by the House as introduced on a vote of 94 to 29. The bill as it left the House was identical to Section 2 of S.B. 98 if the amendments contained in Section 2 were adopted.

1982 House Bill No. 3002 was referred to the Committee on Public Health and Welfare in the Senate, where the Committee raised concerns about the affect of legislation of this type on the cost of health insurance and of health care in general. The Committee was particularly concerned about the affect on the cost of individual and group insurance of the additional exposure for reimbursement for mental and emotional services that would result from adding clinical social work services as a mandated benefit. Committee minutes indicate that, although the per session fees of licensed social workers might be less than those of psychologists or psychiatrists, there would be additional cost associated with mandating coverage of social work services since individuals who had health insurance or coverage under Blue Cross would be able to seek services from a much larger number of providers without referral from a physician. With the concurrence of the representative of the Kansas Chapter of the National

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Association of Social Workers, the Senate Committee on Public Health and Welfare amended House Bill No. 3002 to make the requirement for insurers to reimburse for the services of clinical social workers subject to refusal by the purchaser of the health and accident insurance or medical service corporation contract. The Senate adopted the bill as amended by Senate Committee on a vote of 39 to 1, and the House concurred in the Senate amendments on a vote of 105 to 17.

OUT OF STATE CONTRACTS

K.S.A. 40-2,103, which would be amended by Section 1 of Senate Bill No. 98, was originally enacted in 1974 as one section of House Bill No. 1795 (Chapter 190, 1974 Session Laws of Kansas). The 1974 act had nothing to do with clinical social workers or social work services. More specifically, the two new statutes created by the 1974 legislation dealt exclusively with enactment of a new policy under which individual and group health insurance policies and indemnity contracts issued by for-profit or nonprofit corporations were required to cover new-born children from the moment of birth of the newly born child, if such policies or contracts included coverage for a family member of the insured or the subscriber. The 1974 legislation required coverage of newborns to consist of coverage of injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. New Section 5 of the 1974 legislation, which is now K.S.A. 40-2,103, simply made the new requirements relating to mandatory coverage of newborns applicable to all policies and contracts delivered 120 days after July 1, 1974. The other sections of the chapter made the provisions of New Sections 4 and 5 relating to newborn coverage applicable to mutual nonprofit hospital service corporations (Blue Cross), nonprofit medical service corporations (Blue Shield), and nonprofit dental service corporations, respectively.

The 1984 amendments to K.S.A. 40-2,103 as set out in Section 1 of Chapter 168, 1984 Session Laws of Kansas, included references to (1) K.S.A. 40-2,100, which sets out the requirement that any policy or contract for accident and health insurance or medical and surgical coverage that covers the services of licensees in the healing arts (medical doctors, doctors of osteopathic medicine, and chiropractors) reimburse or indemnify for services lawfully provided by optometrists, dentists, or podiatrists that also fall under the healing arts (enacted in 1973), (2) the provisions of 40-2,101, which states that no group or individual policy or contract that provides for reimbursement or indemnity for services provided by licensees in the healing arts shall deny reimbursement or indemnity for services of other providers that are lawfully authorized to provide a type of service that also falls under the healing arts (enacted in 1973), and (3) K.S.A. 40-2,104, which sets out the requirement that individual or group policies or contracts must reimburse for services provided by a licensed psychologist if such services are within the scope of practice of a licensed psychologist, whether such services are provided by a licensed psychologist or physician (enacted in 1974), to the provisions of the statute that previously related only to coverage for medical problems of newborns, and made the provisions of such statutes applicable to policies or contracts of individuals who reside or who are employed within the state. All of the requirements that were added to the statute involve mandated coverages, not optional coverage as is applicable to the services of clinical specialist social workers.

Thus, the omission of clinical social workers from the 1984 amendment was not an oversight nor a technical error because the law could not require the inclusion of reimbursement or indemnity for social work services in any policy affecting a resident of Kansas or individual employed in Kansas since the purchaser of the policy or contract has the option of refusing the inclusion of social work services in the policy.