Approved 4-7-89
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 March 28, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:
Emalene Correll, Legislative Research
Bill Wolff, Legislative Research
Norman Furse, Revisors Office
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Brenda Fitzsimmonn, Social Worker, Winfield State Hospital
Joyce Rodda, Senior Employment Program
Bob Mikesic, Independence, Inc.
Janet Schlanskey, Director of Community Services, SRS Adult Services Commission
Tom Davis-Bissing, Overland Park
Mike Donnally, Three Rivers Independent Living Center
Written testimony, HB-2160, Richard G. Gannon, Executive Director, Board of Healing Arts

The minutes for March 20, 21, 22 and 23 were placed before the committee for approval or rejection. Senator Hayden moved, with a second by Senator Salisbury to approve the minutes as presented. The motion carried.

The chairman informed committee members that SB-365 had been removed from the Senate Public Health and Welfare Committee and sent to Ways and Means Committee.

Hearings continued on HB-2012 with Brenda Fitzsimmons telling the committee she had worked on a screening team as a social worker for SRS from 1986 to 1988. During that two year period HCBS went through several major changes. Each change lessened the client and the client's family's ability to have a hand in directing these identified services and brought more agency control in the delivery of in-home care services. These program changes brought about an increase from 1 or 2 care givers in a home to as many as 5. Also, over the two year period, costs increased and services delivered decreased. She also told of watching changes take place and the diminished ability of the client to have a say in their care. She urged support for HB-2012 as it allows clients to direct their own care services.

Joyce Rodda appeared, stating she had worked as a case manager until last year. Changes were made and each one seemed to take away a few more areas where the client had the ability to direct his personal care. Ms. Rodda stated that the disabled have a natural affinity to join in a coalition with one another and learn to work within the system as their own advocates. The elderly do not have the frame of mind to learn how to make the system work for them. She stated concerns that the frail elderly are not in a position to choose when rules make decisions necessary. Kansas has used both methods and it appeared to function more successfully when the consumer has some rights, both in terms of expense and in terms of the person getting to choose who comes into their home. House Bill 2012 would solve some of the problems.

Bob Mikesic told the committee he strongly supported HB-2012. The nationwide trend is to allow resources for a person to live independently. The expanded services in the SRS program will greatly increase the consumer's ability to live in the community. He further stated that this bill will allow them to direct their own personal care services and assist them in securing services from SRS or other agencies. (Attachment 1)

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.

Janet Schlansky, Director of Community Services, SRS told the committee there is a wide range of medical and social needs of persons currently receiving services in the home and community based services program. She further stated that the Nurse Practice Act is now clarified in HB-2012 as amended by the House Committee as a Whole. She said the department feels the bill is a good compromise between concerns representing the nursing profession as well as disabled consumers. (Attachment 2)

Senator Salisbury questioned Ms. Schlansky about the federal requirements and the limits of the appropriations. Ms. Schlansky said that in order to receive the waiver they have to assure that the services and care plan are less costly than a nursing home and in doing so make calculations based on the average payment made the previous year. If a person would be eligible for an intermediate care facility this year, their in-home care could cost no more than $750. One difficulty in trying to develop a care plan is the consumer often needs more than $750 of services to remain independent. Another difficulty is the type of services that can be provided. The new Federal guidelines prohibit the use of a family provider. If there is a disabled young adult SRS cannot pay for the parents to be providers of their care. Ms. Schlansky stated that at the present time the SRS attorney feels the care giver must be someone outside the family. A more extensive legal opinion has been requested. Provision is made should there is no other provider available, as could possibly happen in a rural area. She stated she was not so sure it could be done in other areas. In further answering Senator Salisbury, Ms. Schlansky said that, generally speaking, if the in-home care didn't exceed or was less than ICF care, the person would probably qualify. Senator Salisbury stated that it seemed to her the whole idea of in-home care was to allow people who choose independent living to do so and the greatest argument for it was that it would probably be less costly. The things involved in the federal requirements seem to really counter the intended goal and the Senator stated she would like to have the federal aspect explored further.

Tom Davis-Bissing, Overland Park, told the committee he currently worked as a volunteer for the Coalition of Independent Living. He stated that he did not need an attendant at this time but probably would in the future. He further stated that HB-2012 was a much needed bill as it would give a person the right to choose to manage his own care which in turn allows choice of food, clothes and the hours they keep. An attendant could conceivably become more involved with pleasing the employer than pleasing the person needing care resulting in the individual getting lost. The bill will save money, increase personal freedom and has no opposition.

Mike Donnally testified concerning HB-2012 stating this type of care would allow the person in need of care to make choices and retain his dignity. The choice to choose an attendant to meet one's specific needs is of vital importance. Mr. Donally stated that dollars cannot buy dignity. (Attachment 3)

Senator Strick moved, with a second from Senator Burke, to recommend HB-2012 favorable for passage. The motion carried.

The chairman called the attention of the committee to HB-2160. Written testimony from Richard G. Gannon, Executive Director, Board of Healing Arts, was presented to the committee. (Attachment 4) The chairman told the committee that this bill was placed on the Consent Calendar and passed the House 124 Yea votes, 0 Nay votes.

Senator Anderson moved, with a second by Senator Langworthy, to pass HB-2160 favorable and request it be placed on the Consent Calendar. The motion carried.

The meeting adjourned at 10:45 a.m. and will convene at 10 a.m. March 29 in room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
DATE March 28, 1989

(PLEASE PRINT) NAME AND ADDRESS		ORGANIZATION
RAY PETTY	TOPEKA	TOPEKA INDEPENDENT LIVING RESOURCE COUNCIL
MARDA GASENHART	Topeka	KDHR/KACEH
GREG RESSER	TOPEKA	KDHE
Mike Oakes	Topeka	DHR/KACEH
Mike Lechner	Topeka	DHR/KACEH
[illegible]	Lawrence	KANSAS ASSOC. Centers for Independent Living
Bob Mikesic	Lawrence	Dr Degen Dental Inc
Jaspi Hess Rodda	Wellington	Ex SRS HCBS Case Manager currently in Employment Pro.
Brenda Johnson	Wellington	former adult Services Social Worker
George Goebel	Topeka	Chr AARP Capital Area Task Force
Mark Intermill	Topeka	Kansas Coalition on Aging
Jessica Intermill	Topeka	KCOA
Allyn Johnson	"	S.R.A.

THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE
House Bill 2012

Robert Mikesic
Independence Inc., March 28, 1989

Thank you, Mr. Chairman, for this opportunity to speak.

I'm the Residential Services Specialist with Independence Inc., an Independent Living resource center for people with a physical or mental disability in Lawrence and the surrounding area. Independence Inc. strongly supports House Bill 2012. It follows the nationwide trend of supplying enabling legislation so that people with a disability have more resources for living in the community rather than an institution.

The Interim Study Report and House Bill 2012 reflect a high degree of understanding, and a positive resolution of the many issues raised during the Committee's hearings. The expanded services in SRS's program (health maintenance and companion type services) and the exemption in the Nurse Practice Act will greatly increase the consumers ability to live in and be an active part of the community.

House Bill 2012 provides a significant, previously missing opportunity for self determination and consumer involvement for persons receiving attendant services from the Kansas Department of Social and Rehabilitation Services (SRS). The many individuals who are capable and actively directing all other aspects of their lives, would now be given the option of directing their own personal attendant services.

It is clear from the Special Committee's report (p.404) that HB 2012 intends to build flexibility into the SRS attendant program. In addition to self-direction there is also an option for individuals "who choose not to take responsibility for their own (attendant) care". Such individuals would have their attendant services provided by SRS or some other licensed professional or agency.

Independent Living Centers will make every effort to enable consumers to succeed in a self directed plan. We will also assist them in securing attendant services from SRS or some other agency if that is their choice of service delivery.

As this bill greatly increases the consumer's ability to manage their own lives with a genuine sense of dignity and freedom, we support House Bill 2012.

Thank you.

Lawrence Independent Living Resource Center • 1910 Haskell • Lawrence, Kansas 66046 • 913-841-0333

INDEPENDENCE INC.

SP&W
3-28-89
Attachment 1

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary
March 28, 1989

Testimony concerning House Bill 2012

An act concerning individuals in need of in-home care; defining certain terms; directing the secretary of social and rehabilitation services to perform certain duties as part of the home and community based services program; providing an exemption from the Kansas nurse practice act.

We appreciate the opportunity to provide information related to House Bill 2012. As a point of information I have attached a chart which briefly describes the inhome services currently provided by the Department of Social and Rehabilitation Services. The handout describes the four major programs which provide home health, homemaker, medical attendant and non-medical attendant services. These services are provided either by employees of the Department of Social and Rehabilitation Services or through community agencies who have provider agreements with the Kansas Medicaid Program.

The program, which Section 2 of this bill addresses specifically, is the home and community based services (HCBS) program. There are currently thirteen services provided in home and community based services designed to allow recipients who have been screened and have been determined eligible and in need of nursing home service to choose home and community based services. In home and community based services, an individual plan of care is developed which allows the recipients to remain in their own home or other community setting in lieu of a nursing home.

With respect to Section 1, we believe the new definitions provided in House Bill 2012 are clear and consistent and can be incorporated into the programs managed by the Department of Social and Rehabilitation Services, although not all within the guidelines of existing funding services. Currently, approximately 1,600 persons receive services in the home and community based services program:

65% Elderly
10% Mentally retarded/developmentally disabled
25% Physically disabled (non-elderly)

There is a wide range of medical and social needs of persons currently receiving services in the home and community based services program.

With respect to Section 3, House Bill 2012 does now clarify the Nurse Practice Act and responds to the questions and concerns we raised during the interim study. The Department of Social and Rehabilitation Services is supportive of House Bill 2012 as amended by the house committee as a whole, and the department feels as you have heard from other conferees, it is a good compromise between concerns representing the nursing profession as well as disabled consumers.

3 pages
3-28-89
Attachment 2

We welcome the opportunity, as described in Section 2, to develop options in the manner in which home and community based services can be provided. As many of you know, there have been several attempts over the past several years to change the manner in which services have been provided; this bill will allow a complete review and report to the governor and the legislature October 1, 1990.

We are appreciative of the amendment on Section 108 which gave us additional time for this report. This time will allow us to pilot different methods, to thoroughly research them, and to prepare a more thorough report.

I do feel, however, that I need to say to the committee that House Bill 2012 will not solve all the issues that were raised during the interim study nor during the hearings in the House. There remain federal requirements on the home and community based services program which will limit, to some degree, the services provided to clients. Other limits are imposed by the level of appropriation the department receives. Examples of this are the caps that are placed on waivered services to assure they are more cost-effective than nursing home services. The department does not foresee, however, any changes needed in the state statutes to enable us to implement a more flexible program.

I, too, would like to express my appreciation to everyone who has worked so hard during the interim study committee process and during this legislative session on this bill. I feel comfortable these changes will improve the service delivery system for inhome services in Kansas.

I would be happy to respond to any questions.

Janet Schalansky
Director of Community Services
SRS Adult Service Commission
913-296-4687

COMMUNITY-BASED LONG TERM CARE
ADULT SERVICES PROGRAM

	HOME CARE:SOCIAL SERVICE BLOCK GRANT (SSBG)	HOME AND COMMUNITY-BASED PROGRAMS (HCBS)
ELIGIBILITY	Income Eligible Personal non-medical need	Medicaid/Medikan Medical need Active treatment program for MR only
AGE	18 +	16 + 65 + (mentally ill only)
ALLOWABLE MAXIMUM	None	ICF-MR - $1,647 SNF - $ 970 ICF - $ 750
CLIENT OBLIGATION	No	Yes - Spenddown required to meet financial elig.
RECIPIENT	Elderly Physically Disabled Mentally Retarded/DD Mentally Ill	Elderly Physically Disabled Mentally Retarded/DD Mentally Ill (over 65 yrs)
SERVICES	1 Home Care -Homemaker -Household Maintenance -Non-medical attendant *Provided by either SRS Home Care staff or community providers	1 Adult Day Health 2 Residential Care 3 Residential Care/Training 4 Habilitation 5 Home Health Aide 6 Hospice Services * 7 Homemaker * 8 Non-medical attendant 9 Medical Attendant Care 10 Night Support 11 Respite Care 12 Wellness Monitoring 13 Medical Alert
CLIENTS SERVED (88)	6,453	1,621 clients 742 home care-mo. av.
EST. FY 89 BUDGET	$6,401,813	$ 631,695 (cs. mgrs.) $3,528,265 (service) $3,263,854 (home care)
FUNDING	73% Fed 27% State	45% SGF 55% Fed

LONG-TERM CARE
ALTERNATIVES TO ADULT CARE HOMES
MEDICAL SERVICES PROGRAMS

	HOME HEALTH AGENCY	PERSONAL CARE MEDICAID
ELIGIBILITY	Medicaid/MediKan Physician has certified the need for the service. Documented as medically necessary. Would require acute care hospitalization or an adult care home if the service was not provided.	Medicaid/MediKan Need long-term maintenance or supportive care. Without ACIL the recipient would be institutionalized. Other resources for care are not available. No possibility of rehabilitation. There is RN supervision.
AGE	All	All
ALLOWABLE MAX	None	None
CLIENT OBLIGATION	Spenddown Third party resources	Spenddown
RECIPIENT	All Medicaid/MediKan	All who meet medical criteria.
SERVICES	Skilled nursing Home Health Aide Physical Therapy Occupational Therapy Speech Therapy Respiratory Therapy Restorative Aide Medical Supplies and Durable Medical Equipment	Basic personal care and grooming. Assistance with feeding, diet and nutrition. Assistance with self-administered medications. Assistance with transferring or ambulatory needs. Assistance with bladder and bowel requirements.
CLIENTS SERVED-FY 87	8,103	27
EST. 1988 Budget	$1,696,249	$258,985
FUNDING (%state/federal)	45.07/54.93	45.07/54

08/18/88

Three Rivers
Independent Living Resource Center

Making Our Community
More Accessible

Date: March 27, 1989

To: Senate Committee on Public Health and Welfare

From: Michael Donnelly, Executive Director, Three Rivers Independent Living Resource Center

Purpose: Testimony House Bill 2012

I am here to offer my support for HB 2012. As a provider of Independent Living Services to people with severe disabilities, as well as a past recipient of attendant care services, I see nothing so important as providing the means by which an individual can remain in his/her own home. This piece of legislation would be another step toward insuring that capability.

Of course, the most important factor that should be considered when contemplating this piece of legislation is whether or not it restores human dignity deserved by individuals who are disabled, not money (money can not buy dignity, self respect or happiness). To institutionalize people because "the program" doesn't allow a specific task to be performed on their behalf, strips that individual of all their dignity, self esteem, etc. This is a loss that cannot be counted in dollars, it is worth all cost to preserve. When this becomes the case then it is time to change the program.

As a quadriplegic myself I know the realities of these issues personally. Becoming a quadriplegic in 1977 I, like many others, was faced with the issue of meeting my personal care needs. My options in north-west Kansas were not overwhelming to say the least. My own experience was one which I believe has the potential to be that of more and more Kansans. I began receiving "non-medical" attendant care in January, 1978. The care I received then was considered "total care" as I was not capable at the time to fulfill my own personal care needs, including bowel & bladder care, bathing, medications, dressing housekeeping and so on.

Main Offices: 810 4th Street, Wamego, KS 66547 (913) 456-9915 (Voice/TTY)
Manhattan Office: Citizens Bank, 6th & Humboldt, Suite K, Manhattan, KS 66502 (913) 539-7320 (Voice/TTY)

SPHW
3-28-89
Attachment 3

When coming to Manhattan to attend college I left it up to the school to recruit an attendant on my behalf because I would need someone the day I arrived. I could never again trust someone to choose an attendant for me. When pressed as to why that individual was chosen to assist me the reply was on the order of "we thought you would be good for him because helping you with your baths and things might get him to get better with his own personal hygiene" I hired another attendant.

The first attendant I hired was a fellow by the name of Jamie Calcara, alias "Hamburger Jake". Jake was a hard man in that when he knew I could perform a task he made me do it myself. I learned more from him than any therapist, doctor or nurse could ever have taught me. He taught me not to give up on life and that I was not just a person imprisoned by a paralyzed body. My experience is not unique. Many persons utilizing attendant care services have the very same experience.

Because of "HB's" stubbornness by August, 1979 I needed assistance with house keeping only, and by the following Spring no assistance at all. Without the necessary attendant care in the beginning, some of which would not be allowed under the current regulations, I would not have had the opportunity to learn self care and thus not be the participating, productive, employed Kansan that I am. I am indebted to that "helping system" that does not currently exists for many in my place.

I hope that you as legislators can see the way to insure the dignity, to insure opportunity, and finally to insure cost effectiveness for all Kansans with impairments.

State of Kansas

Office of
RICHARD G. GANNON, EXECUTIVE DIRECTOR
CHARLENE K. ABBOTT, ADMINISTRATIVE ASSISTANT
LAWRENCE T. BUENING, JR., GENERAL COUNSEL
JOSEPH M. FURJANIC, DISCIPLINARY COUNSEL

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

Board of Healing Arts

TO: Senate Committee on Public Health & Welfare

FROM: Richard G. Gannon, Executive Director

DATE: March 27, 1989

RE: TESTIMONY IN SUPPORT OF HB NO. 2160

House Bill No. 2160 was recommended for passage by the House Committee and placed on the House Consent Calendar. The vote by the House in favor of the bill was 124-0.

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. After investigation the complaints 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

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Attachment 4

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 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 provide testimony in support of this bill.

RGG:LTB:sl