

Approved _____

Date 2-5-90

MINUTES OF THE HOME COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

1:30 a.m. on February 1, 1990 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Research
Norman Furse, Revisor

Conferees appearing before the committee:

Representative Kenneth Green
Dr. Gary Hulett, Special Assistant for Health/Environment,
Governor's Office.
Chairman Littlejohn
Joseph F. Kroll, Director/Bureau of Adult/Child Care
Department of Health and Environment
Gina McDonald, Program Administrator, Kansas Department of SRS
John Kelly, Executive Director, Planning Council on Developmental
Disabilities Services, (Printed testimony only)
Julia A. Schlobohm, Education Program Specialist/Bureau of Adult and
Child Care, Department of Health and Environment

Chair called meeting to order, noting hearings would continue on HB 2594, with testimony being given by Department of Health/Environment and Department of SRS only. He would then allow questions.

Chair noted this is Licensed Practical Nurses' Day at the Capitol, and he welcomed those who were attending our meeting, and introduced President Bernice Smith. He thanked them for their interest.

Chair drew attention to Bill requests .

Rep. Green offered bill draft, (Attachment No. 1). He detailed the draft. He noted options that did not appear in HB 2012 that was passed last year. The parents or guardians of individuals in need of in-home care given option to select/train/pay/dismiss the attendant; Page 2 paragraph 5, regarding specialized equipment and supplies/dental and medical care and physical therapy services; laundry list on page 4. This bill is a sister bill to HB 2012.

Rep. Green moved to have this bill introduced and returned to this committee, seconded by Rep. Shallenburger, motion carried.

Dr. Gary Hulett, Special Assistant for Health and Environment, Governor's office offered draft of bill, (see Attachment No. 2). He noted the bill relates to abuse, neglect, exploitation of certain persons. We request this bill be introduced as a Committee bill. He outlined the bill, noting the responsibility of reporting of abuse/neglect for those residing in institutions has been since 1980 on the Department of SRS. This bill would transfer that responsibility to the Department of Health/Environment. This is part of the Governor's effort to consolidate inspection and regulatory duties of these facilities. This bill is much like legislation from last year presented by Rep. Sader, except this new proposal speaks to the Institutional setting.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 /a.m./p.m. on February 1, 1990

Rep. Foster made a motion to introduce this bill and have it returned to this committee, seconded by Rep. Amos, motion carried.

Chairman then drew attention to (Attachment No.3). He explained the bill request, noting it is in regard to receivership for adult care homes. It seems there is confusion on the part of Departments of Health and Environment and Social and Rehabilitation Services as to who is responsible liabilities in this regard, i.e., Operating Group, the Administrator, the Building Owner or who.

Rep. Branson moved to introduce this bill, seconded by Rep. Buehler, motion carried.

HEARINGS CONTINUED THIS DATE ON HB 2594.

Gina McDonald, Director/Bureau of Adult and Child Care, Department of Health and Environment, (see Attachment No. 4) she noted their Department is in support of HB 2594. There currently is an extreme shortage of personal care attendants. Passing this bill would begin to remedy this problem. She drew attention to curriculum required, noting it is 40 hours and has been successful in other states. She answered questions, i.e., currently these services are not reimburseable, but it is their commitment to make it so. There was also discussion in regard to whether of not non-health related services are reimburseable or not. Questions were also answered by Marlene Finney, and Linda Lubensky.

Joe Kröll, Director/Bureau of Adult and Child Care, Department Health and Environment offered hand-outs, (Attachment No. 5 and 5-a). He noted the issue of "personal care attendant" has been debated for at least two years. Their department sees a need for this legislation, but does not support the provisions of Sections 2 and 3 pertaining to K.S.A. 65-5101 and 65-5112. The 40 hour training curriculum creates a new level of home health personnel which is duplicative of existing requirements. Regulatory problems associated with distinguishing between personal care attendants and home health aides are troublesome. To determine the line between these two categories of aides is already a problem. Their Department further does not believe the creation of still another level of non-professional home health personnel will promote home care quality. The references to "supervision" are not clear. He drew attention to Attachment 5-a, a comparative analysis on State and Federal Requirements on curriculum for training. He asked He asked that HB 2594 be unfavorably reported. He answered numerous questions, i.e., this legislation is in regard to the home health agencies, not nursing homes; yes, a key part of our concern is the confusion for our Agency, not the main thrust however.

At this point the Chair invited questions members from those giving testimony yesterday. There were none.

It is recorded that (Attachment No. 6) is printed testimony only from John Kelly, Planning Council on Developmental Disabilities Services, and (Attachment No. 7) printed testimony only from Julia Schlobohm Bureau of Adult and Child Care, Department of Health/Environment.

Meeting adjourned. Next meeting will be held Monday, February 5, 1990.

VISITOR REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-1-90

NAME	ORGANIZATION	ADDRESS
Michael Donnelly	SACIL	810 W. Wamego
Martha Gabelein	Commission on Disability Concerns	1430 S. W. Topeka, Topeka
Michael Lechner	"	"
Frederic Beard	SRS Adult Services	West Hall Topeka
Linn Wilson	SRS AS	West Hall Topeka
Maxine Finney	SRS AS	Topeka
Theresa Reese	KDHE	Topeka
Cathy Rooney	"	"
Julia Schlotch	KDHE	Topeka
Joseph F. Koce	KDHE	Topeka
ALAN COBB	KS Resp. Care Society	Wichita
Virginia Ricky, LPN	KFLPN	2611 Porter Wichita, KS 67204
Berniece M. Smith LPN	KFLPN	1016 Ash Ottawa, KS 66067
Janet Jacobs	KFLPN	3031 So. Custer Wichita 67217
Marilyn Brant	WINH	Lawrence
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE 60 PUBLICATION FOR KANSAS	TOPEKA
Tom Oress	KS Hosp. Assn	LI
Betty Johnson	Central Plains Area Agency on Aging	510 N. Main Wichita, KS 67203
Nonda Barth	WU Student	Topeka
Lana Jean Embrey	WU Student	Topeka
John Kelly	DD Council	Topeka
ELIZABETH E TAYLOR	KS Fed of LPNs	"
LINDA LUBIENSKY	KS Home Care Assn	Lawrence
Pat Johnson	Board of Nursing	Topeka
Melba Gwaltney	SRS / Rehab SVS.	Topeka

HOUSE BILL NO. _____

By _____

AN ACT concerning individuals in need of in-home care; defining certain terms; modifying the home and community based services program; concerning exemptions from the Kansas nurse practices act; amending K.S.A. 1989 Supp. 39-7,100, 65-1124 and 65-6201 and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 39-7,100 is hereby amended to read as follows: 39-7,100. (a) As used in this section:

(1) "Home and community based services program" means the program established under the state medical assistance program under waivers as defined in title XIX of the federal social security act in accordance with the plan adopted under subsection (s) of K.S.A. 39-708c and amendments thereto to provide attendant care services to individuals in need of in-home care who would require admission to an institution if the attendant care services were not otherwise provided.

(2) "Secretary" means the secretary of social and rehabilitation services.

(b) ~~On--and--after--October--17--1989,~~ The secretary as part of the home and community based services program shall provide that:

(1) Priority recipients of attendant care services shall be those individuals in need of in-home care who are at the greatest risk of being placed in an institutional setting;

(2) adult individuals in need of in-home care who are recipients of attendant care services and the parents or guardians of individuals in need of in-home care who are minors shall have the right to choose the option to make decisions about, direct the provisions of and control ~~their~~ the attendant care services received by such individuals including, but not

*John
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Attn #1*

limited to, selecting, training, managing, paying and dismissing of an attendant;

(3) any proposals to provide attendant care services solicited by the secretary shall be selected based on service priorities developed by the secretary, except that priority shall be given to proposals that will serve those at greatest risk of being placed in an institution as determined by the secretary;

(4) providers, where appropriate, shall include individuals in need of in-home care in the planning, startup, delivery and administration of attendant care services and the training of personal care attendants; and

(5) within the limits of appropriations therefor, on and after January 1, 1991, the program shall make available to individuals in need of in-home care specialized equipment and supplies, dental and medical care and physical therapy services; and

~~(5)~~ (6) within the limits of appropriations therefor, the home and community based services program shall serve eligible individuals in need of in-home care throughout this state.

(c) Within the limits of appropriations therefor, the secretary may initiate demonstration projects to test new ways of providing attendant care services and may conduct specific research into ways to best provide attendant care services in both urban and rural environments.

(d) On or before ~~October 1, 1990~~ January 1, 1991, the secretary shall submit a written report to the governor and to the legislature, which report shall include a summary of attendant care services provided under the home and community based services program, a description of the service models utilized as part of the program, the costs by service model and units of service provided per client, client demographics and such other information as the secretary deems appropriate.

Sec. 2. K.S.A. 1989 Supp. 65-1124 is hereby amended to read as follows: 65-1124. No provisions of this law shall be construed as prohibiting:

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- (a) Gratuitous nursing by friends or members of the family;
- (b) the incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) caring for the sick in accordance with tenets and practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;
- (d) nursing assistance in the case of an emergency;
- (e) the practice of nursing by students enrolled in accredited schools of professional or practical nursing nor nursing by graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following such graduation;
- (f) the practice of nursing in this state by legally qualified nurses of any of the other states as long as the engagement of any such nurse requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, and as long as such nurses do not represent or hold themselves out as nurses licensed to practice in this state;
- (g) the practice by any nurse who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of official duties;
- (h) auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse;
- (i) the administration of medications to individuals in need of in-home care as defined under K.S.A. 1989 Supp. 65-6201 and amendments thereto, to residents of adult care homes or to patients in hospital-based long-term care units by an unlicensed person who has been certified as having satisfactorily completed a training program in medication administration approved by the secretary of health and environment and has completed the program

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on continuing education adopted by the secretary, or by an unlicensed person while engaged in and as a part of such training program in medication administration;

(j) the practice of mental health technology by licensed mental health technicians as authorized under the mental health technicians' licensure act;

(k) performance in the school setting of selected nursing procedures, as specified by rules and regulations of the board, necessary for handicapped students;

(l) performance in the school setting of selected nursing procedures, as specified by rules and regulations of the board, necessary to accomplish activities of daily living and which are routinely performed by the student or student's family in the home setting; or

(m) performance of attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 1989 Supp. 65-6201 and amendments thereto.

Sec. 3. K.S.A. 1989 Supp. 65-6201 is hereby amended to read as follows: 65-6201. As used in this act:

(a) "Attendant care services" means those basic and ancillary services which enable an individual in need of in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care and mobility.

(b) "Basic services" shall include, but not be limited to:

(1) Getting in and out of bed, wheelchair or motor vehicle, or both;

(2) assistance with routine bodily functions including, but not limited to:

(A) Health maintenance activities;

(B) bathing and personal hygiene;

(C) dressing and grooming; and

(D) feeding, including preparation and cleanup.

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(c) "Ancillary services" means services ancillary to the basic services provided to an individual in need of in-home care who needs one or more of the basic services, and include the following:

(1) Homemaker-type services, including but not limited to, shopping, laundry, cleaning and seasonal chores;

(2) companion-type services including but not limited to, transportation, letter writing, reading mail and escort; and

(3) assistance with cognitive tasks including, but not limited to, managing finances, planning activities and making decisions.

(d) "Health maintenance activities" include, but are not limited to, catheter irrigation; administration of medications, enemas and suppositories; and wound care, if such activities in the opinion of the attending physician or licensed professional nurse may be performed by the individual if the individual were physically capable, and the procedure may be safely performed in the home.

(e) "Individual in need of in-home care" means any functionally disabled ~~adult~~ individual in need of attendant care services because of physical impairment who requires assistance to complete functions of daily living, self-care and mobility, including, but not limited to, those functions included in the definition of attendant care services.

(f) "Physician" means a person licensed to practice medicine and surgery.

Sec. 4. K.S.A. 1989 Supp. 39-7,100, 65-1124 and 65-6201 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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Received from Kansas
Office 1/19/90

9 RS 1818

PROPOSED BILL NO. _____

By

AN ACT relating to abuse, neglect and exploitation of certain persons; declaring certain acts to be crimes and providing penalties for violations; amending K.S.A. 39-1402, 39-1404, 39-1406 and 39-1409 and K.S.A. 1989 Supp. 39-1401 and 39-1430 and repealing the existing sections; also repealing K.S.A. 39-1405, 39-1407, 39-1408 and 39-1410.

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

Section 1. K.S.A. 1989 Supp. 39-1401 is hereby amended to read as follows: 39-1401. As used in this act:

(a) "Resident" means:

(1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or

~~(2) any client cared for in an adult family home; or~~

(3) (2) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility, as defined by K.S.A. 65-425 required to be licensed under K.S.A. 65-427 and amendments thereto, which is operated by the state or federal government; or except that, for purposes of this act, the term "resident" shall not include any individual receiving treatment at a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatimie state hospital, Rainbow mental health facility, Topeka state hospital, Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center;

~~(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;~~

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(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923 and amendments thereto.

(c) ~~"Adult--family-home"--has-the-meaning-ascribed-thereto-in K.S.A.-39-1501.~~ "Exploitation" means an unjust or improper use of another person for one's own advantage.

(d) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical and mental health.

(e) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(f) "Protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse or neglect or exploitation.

(g) "Abuse" means neglect, ~~willful~~ infliction of physical or mental injury or ~~willful~~ deprivation by a caretaker of services which are necessary to maintain physical and mental health.

(h) "Neglect" means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health or emotional well-being is injured.

(i) "Caretaker" means a person or institution who has assumed the responsibility for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

No person shall be considered to be abused or neglected for

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the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 2. K.S.A. 39-1402 is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, ~~the~~ a chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse and or a licensed practical nurse, who has reasonable cause to believe that a resident is being or has been abused or, neglected or exploited, or is in a condition which is the result of such abuse or, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of ~~social--and rehabilitation-services~~ health and environment, except that a report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report as required by this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person having reasonable cause to suspect or believe that a resident is being or has been abused or, neglected or exploited, or is in a condition which is the result of such abuse or, neglect or exploitation or is in need of protective services may report such information to the department of ~~social and-rehabilitation-services~~ health and environment.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall

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be posted in a conspicuous place in every adult care home and ~~adult--family--home~~ and medical care facility required to be licensed under K.S.A. 65-427 and amendments thereto in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

Sec. 3. K.S.A. 39-1404 is hereby amended to read as follows:
 39-1404. (a) The department of ~~social-and-rehabilitation-services~~ health and environment upon receiving a report that a resident is being, or has been, abused or, neglected or exploited, or is in a condition which is the result of such abuse or, neglect or exploitation, within 48 hours of receiving such report, shall initiate an investigation, including a personal visit with the resident and, within two weeks of receiving such report, shall initiate a thorough investigation ~~and-evaluation-to-determine-the-situation-relative-to-the-condition--of--the--resident--and--what-action--and--services,--if--any,--are-required~~ to determine if the resident is being or has been abused, neglected, exploited or is in a condition which is a result of such abuse, neglect or exploitation. The ~~evaluation~~ investigation shall include, but not be limited to, a visit to the named resident and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the ~~evaluation~~ investigation of each case, written findings shall be prepared which shall include a finding of whether there is or has been abuse or, neglect ~~7-recommended--action--and--a--determination--of--whether-protective-services-are-needed~~ or exploitation.

(b) ~~The--secretary--of--social--and--rehabilitation-services shall-maintain-a-statewide-register-of-the-reports-received,--the-findings,--evaluations--and-the-actions-recommended.--The-register shall-be-available-for-inspection-by-personnel-of-the--department of--social--and--rehabilitation-services.--The-secretary-of-social-and-rehabilitation-services-shall-forward-a-copy-of-any-report-of~~

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abuse or neglect of a resident to the secretary of health and environment and, in the case of a report of abuse or neglect of a resident of an adult care home or an adult family home, to the secretary of aging.

(c) Neither the report nor the written evaluation findings shall be deemed a public record or be subject to the provisions of K.S.A. 45-201 to 45-203, inclusive, and any amendments thereto. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. No information contained in the statewide register shall be made available to the public in such a manner as to identify individuals.

(b) The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a licensed provider of services to the appropriate licensing authority. The appropriate licensing authority may consider the finding in any disciplinary action taken with respect to a licensed provider of services under the jurisdiction of the licensing authority.

(c) The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any disciplinary action taken with respect to any licensed provider of services under the jurisdiction of the secretary.

(d) The information gathered pursuant to this act shall be confidential and shall not be subject to the open records act. The name of the person making the original report or any person alleged in such report to have been abused, neglected or exploited shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer shall have made a specific finding, in writing, after a

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hearing, that under all the circumstances, the need for the information outweighs the need for confidentiality. No information made available pursuant to this section shall be made available to the public in such manner as to identify persons abused, neglected, or exploited or persons making complaints of abuse, neglect or exploitation.

Sec. 4. K.S.A. 39-1406 is hereby amended to read as follows: 39-1406. Any person, department or agency authorized to carry out the duties enumerated in this act or under K.S.A. 39-1430 et seq. and amendments thereto and the nursing home ombudsman shall have access to all relevant records. The authority of the ~~secretary of social-and-rehabilitation-services~~ secretary of health and environment under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

Sec. 5. K.S.A. 39-1409 is hereby amended to read as follows: 39-1409. In performing the duties set forth in this act, the secretary of ~~social--and--rehabilitation--services~~ health and environment may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private ~~agencies, groups or individuals~~ agency, group or individual who are is appropriate and who may be available to assist the department in the investigation and determination of whether a resident is being, or has been, abused, neglected, exploited, or is in a condition which is a result of such abuse, neglect, or exploitation.

Sec. 6. K.S.A. 1989 Supp. 39-1430 is hereby amended to read as follows: 39-1430. As used in this act:

(a) "Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm through action or inaction by either another individual or through their own action or

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inaction. ~~Such term shall not include a resident as the term "resident" is defined under K.S.A. 39-1401 and amendments thereto.~~

(b) "Abuse" means the intentional infliction of injury, unreasonable confinement, fiduciary abuse, intimidation, cruel punishment, omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(c) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(d) "Exploitation" means taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(e) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(f) "In need of protective services" means that an adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.

(g) "Services which are necessary to maintain physical or mental health or both" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of an adult to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that

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this term shall not include taking such person into custody without consent except as provided in this act.

(h) "Protective services" means services provided by the state or other governmental agency or by private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services, and assistance in securing medical and legal services.

(i) "Caretaker" means a person who has assumed the responsibility for an adult's care or financial management or both.

(j) "Secretary" means the secretary of social and rehabilitation services.

(k) "Report" means a report of abuse, neglect or exploitation under this act.

(l) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges, whether that duty extends to all crimes or is limited to specific crimes.

(m) "Involved adult" means the adult who is the subject of a report of abuse, neglect or exploitation under this act.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

New Sec. 7. Intentional abuse, neglect or exploitation of a resident as defined in this act is a class E felony.

New Sec. 8. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or

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unconstitutional clause, paragraph, subsection or section.

Sec. 9. K.S.A. 39-1402, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409 and 39-1410 and K.S.A. 1989 Supp. 39-1401 and 39-1430 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after October 1, 1990, and its publication in the statute book.

P. H. W.
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Attn. #2.
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HOUSE BILL NO. _____

By

AN ACT concerning adult care homes; relating to receiverships for adult care homes; amending K.S.A. 39-959, 39-960 and 39-961 and repealing the existing sections.

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

Section 1. K.S.A. 39-959 is hereby amended to read as follows: 39-959.

(a) A receiver appointed in accordance with the provisions of this act shall have the following powers and duties:

(a) (1) Conduct the day to day business operations of the adult care home;

(b) (2) reimburse the owner or licensee, as appropriate, a fair monthly rental for the adult care home, taking into account all relevant factors, including the condition of such adult care home and set-offs arising from improvements made by the receiver;

(c) (3) give fair compensation to the owner or licensee, as appropriate, for all property taken or used during the course of the receivership if such person has not previously received compensation for the property being taken or used;

(d) (4) correct or eliminate any deficiency in the adult care home that concerns the health, safety, nutrition, or sanitation of the residents of the adult care home and is life threatening or endangering;

(e) (5) enter into contracts as necessary to carry out his or her the duties as receiver and incur expenses for individual items of repairs, improvements or supplies without the procurement of competitive bids, if otherwise required by law, where the total amount of such individual item does not exceed five hundred dollars (\$500);

(f) (6) collect incoming payments from all sources and apply

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them to the costs incurred in the performance of his or her functions as receiver including the compensation of the receiver, if any;

(g) (7) honor all existing leases, mortgages, chattel mortgages and security interests;

(h) (8) operate the adult care home so as to provide safe and adequate health care for the residents of the adult care home;

(i) (9) provide for the orderly transfer of all residents in the adult care home to other adult care homes or make other provisions for their continued safety and health care, as necessary;

(j) (10) other powers and duties as authorized or imposed by the district court.

(b) As used in this section, the term "owner or licensee" shall not include a lessor of the facility whose only connection with the operation or management of the adult care home is the ownership of the facility and the receipt of lease payments and who is not otherwise involved in the management of the affairs or operation of the adult care home. This definition of "owner or licensee" shall apply to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, which was commenced prior to the effective date of this act and which has not been terminated prior to the effective date of this act and to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, commenced on or after the effective date of this act.

Sec. 2. K.S.A. 39-960 is hereby amended to read as follows:
39-960. (a) The secretary of social and rehabilitation services, upon request of a receiver, may authorize expenditures from moneys appropriated for purposes set forth in this act if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions as receiver or for purposes of initial operating expenses of the receivership. Any payments made by the

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secretary of social and rehabilitation services pursuant to this section shall be owed by the owner or licensee and repaid to the secretary of social and rehabilitation services when the receivership is terminated pursuant to K.S.A. 39-963 and amendments thereto and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

(b) As used in this section, the term "owner or licensee" shall not include a lessor of the facility whose only connection with the operation or management of the adult care home is the ownership of the facility and the receipt of lease payments and who is not otherwise involved in the management of the affairs or operation of the adult care home. This definition of "owner or licensee" shall apply to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, which was commenced prior to the effective date of this act and which has not been terminated prior to the effective date of this act and to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, commenced on or after the effective date of this act.

Sec. 3. K.S.A. 39-961 is hereby amended to read as follows:
39-961. (a) The personnel and facilities of the department of health and environment shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of health and environment.

(b) The department of health and environment shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department of health and environment. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

(c) As used in this section, the term "owner or licensee"

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shall not include a lessor of the facility whose only connection with the operation or management of the adult care home is the ownership of the facility and the receipt of lease payments and who is not otherwise involved in the management of the affairs or operation of the adult care home. This definition of "owner or licensee" shall apply to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, which was commenced prior to the effective date of this act and which has not been terminated prior to the effective date of this act and to any proceeding in receivership under K.S.A. 39-954 et seq., and amendments thereto, commenced on or after the effective date of this act.

Sec. 4. K.S.A. 39-959, 39-960 and 39-961 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

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KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony before

The House Committee for

Public Health and Welfare

Regarding

House Bill 2594

on

January 31, 1990

Gina McDonald
Program Administrator

presented on behalf of:

Jan Allen, Commissioner
Adult Services
Department of Social and Rehabilitation Services

*PHW
2-1-90
Attn # 4*

Testimony

House Bill 2594

The Department of Social and Rehabilitation Services supports HB 2594 which defines a personal care attendant as a new level of home health care worker. The addition of this category would be beneficial both to the Department of Social and Rehabilitation Services and to consumers across the state who use this service

There is currently an extreme shortage of personal care attendants across the state. This is the major concern the Department has with it's program and the most critical factor for consumers who can't locate people to serve as personal care attendants. Consumers also have a difficult time locating "backups" if the assigned personal care attendant does not report to work.

In passing this bill we could begin to remedy this problem. By creating a new level, Home Health Agencies could design an appropriate training curriculum to properly instruct the worker in the nonmedical tasks they will perform.

There are two general categories of need by individuals (consumers) who require assistance in order to live in the community. The first set of needs relates to assistance with activities of daily living, which are routine activities performed by a family member such as fixing a meal, light housekeeping, and transferring a consumer from a wheelchair to a bed or commode. They may assist with personal hygiene tasks, feeding, dressing and other tasks that are nonmedical in nature.

The second set of needs relates to medical activities, some of which should be performed by trained professionals.

The first set of needs which are most critical to the quality of life of the consumer can be satisfied with training of no more than 40 hours. Many of the tasks should be completed with the consumer giving instructions.

By creating a basic curriculum of training of 40 hours for personal care attendants, rather than a Certified Nurse Aide training program of 90 hours, we will be responding to the needs of consumers in the community. Forty hour training curriculum will increase the likelihood of finding interested people who will be personal care attendants and will not require them to have knowledge of medical procedures, since they will not be performing tasks that are medical in nature

This new level of home care workers, namely personal care attendants, will increase the number of people interested in becoming workers because it reduces the time they have to spend in training thus reducing the cost for in-home service. Moreover, the curriculum under the 90 hour Certified Nurse Aide training is inappropriate for in-home care. Personal care attendants will be supervised by a licensed professional nurse. If the consumer had medical needs, a trained qualified individual will perform those tasks. The personal care attendant will perform only those tasks that are nonmedical.

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Testimony, House Bill 2594
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page 2

New York has a program of contracting with home health agencies and uses 40 hours of training for nonmedical workers. Their curriculum is similar to that used in Kansas. This program has been in effect since 1978. Home Health Agencies under the New York system provide a 40 hour course or equivalency testing. If the individual pre-tests successfully, they do not have to take any training

Other states including Maine and Missouri, offer consumer directed care where no formal training programs are required. The consumer merely signs a statement indicating the competency of the trainer.

More and more consumers are staying at home and not going to Adult Care Homes and institutions. This relates to an improved quality of life for the consumer and a cost savings for the state. But as the population changes, so do their needs. This bill is a response to the changing needs that have been identified in the community.

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State of Kansas

Mike Hayden, Governor

Department of Health and Environment

Division of Health

Stanley C. Grant, Ph.D., Secretary

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2-1-90
attn #5*

Testimony presented to

House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2594

Background

The issue of creating a "personal care attendant" as an alternative to home health aide has been debated for at least the last two years. In testimony presented to the Special Committee on Public Health and Welfare during its review of Proposals No. 37 and No. 40 during the summer of 1988, the Kansas Department of Health and Environment expressed the opinion that development of yet another curriculum for persons rendering assistance with daily living may unnecessarily complicate a well established program of assuring that non-professional persons rendering such care can do so without jeopardizing the recipient's health. Current law provides for a person to become a home health aide (HHA) by completing a 20 hour addendum to a basic 90 hour nurse aide course. This, in effect, allows such a person to become recognized as both a nurse aide and a HHA utilizing one core curriculum. We think that adding additional layers or levels of home health personnel receiving less training would only lead to confusion.

Further, it is already possible for individuals to be employed by home health agencies who do not provide services defined in the curriculum. These persons are referred to as companions or homemakers. K.A.R. 28-51-112 (a) requires training of each home health aide "who is assigned primary responsibilities of those patient care functions for which training is provided in the curriculum."

Issues

Medicare Certification Requirements

During testimony presented in August, 1988, the Department referenced potential changes in the Omnibus Budget Reconciliation Act of 1987 (OBRA) related to home health aide training. We now know that effective August 14, 1990, the Health Care Financing Administration (HCFA) will require home health care aides to receive at least 75 hours of training, including such personal hygiene techniques as "shampoo, nail and skin care, oral hygiene, and maintenance of a clean, safe and healthy environment." There are no provisions in HCFA regulations recognizing a "personal care attendant" or lower level of home health aide. Since approximately 70% of

*attn #5
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licensed home health agencies are Medicare certified, the creation of a 40 hour personal care attendant at this time would undoubtedly conflict with Medicare expectations. In addition, the areas expected to be part of the 75 hour home health aide training for Medicare certification found in 42 CFR 484.36 (copy attached) are the same as those which House Bill 2594 would expect to be completed in a 40 hour training course.

Need for Additional Regulation

Should House Bill 2594 be enacted, it would be the Department's recommendation that K.S.A. 65-5101 (c) also be amended. K.S.A. 65-5101 (c) defines home health services and includes nursing, physical therapy, speech therapy, nutritional or dietetic consulting, occupational therapy, respiratory therapy, home health aide or medical social service." If HB 2594 is passed, the definition of personal care attendant should also be included in this listing of home health services. This inclusion would assure that those agencies currently operating in Kansas which provide such "environmental services" as companionship, meal planning and preparation, dishwashing, light housekeeping, physician or other health care professional notification, shampooing, etc. would be duly licensed as home health agencies. The net result would be that any service being provided in the home would include the training of a "personal care attendant" at a minimum.

Conclusion

The Kansas Department of Health and Environment does not support the provisions of Sections 2 and 3 of House Bill 2594 pertaining to K.S.A. 65-5101 and K.S.A. 65-5112. The 40 hour personal care attendant training curriculum merely creates a new level of home health personnel which is duplicative of existing training requirements. Further, the regulatory problems associated with distinguishing between personal care attendants and home health aides are troublesome. Determining the line between a "home health aide" service and a "homemaker" service is already difficult, and assuring that a "personal care attendant" is not involved in "home health aide" activity does not clarify the task. Additionally, the definition of a "personal care attendant" would seem to negate any regulatory discretion the Department may now have as related to licensure versus non-licensure of homemaker and companion services. Finally, the Department does not believe that the creation of another level of non-professional home health personnel will promote home care quality. The definition of a "personal care attendant" references "supervision" but does not indicate by whom the supervision would be provided. It would be conceivable that "personal care attendants" providing "personal hygiene" services might be supervised merely by a home health aide, without any nursing intervention at all.

Testimony

Presented by: Joseph F. Kroll, Director, Bureau of Adult and Child Care
Date: January 31, 1990

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governing scope of services offered, admission and discharge policies, medical supervision and plans of care, emergency care, clinical records, personnel qualifications, and program evaluation. At least one member of the group is neither an owner (§ 484.14(b)) nor an employee of the agency.

(a) *Standard: Advisory and evaluation function.* The group of professional personnel meets frequently to advise the agency on professional issues, to participate in the evaluation of the agency's program, and to assist the agency in maintaining liaison with other health care providers in the community and in the agency's community information program. The meetings are documented by dated minutes.

§ 484.18 *Condition of participation: Acceptance of patients, plan of care, medical supervision.*

Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence. Care follows a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine.

(a) *Standard: Plan of care.* The plan of care developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. The therapist and other agency personnel participate in developing the plan of care.

(b) *Standard: Periodic review of plan of care.* The total plan of care is reviewed by the attending physician and HHA personnel as often as the severity of the patient's condition requires, but at least once every 62 days. Agency professional staff promptly alert the physician to any changes that suggest a need to alter the plan of care.

(c) *Standard: Conformance with physician's orders.* Drugs and treatments are administered by agency staff only as ordered by the physician.

The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature. Agency staff check all medicines a patient may be taking to identify possibly ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medication, and promptly report any problems to the physician.

Subpart C—Furnishing of Services

§ 484.30 *Condition of participation: Skilled nursing services.*

The HHA furnishes skilled nursing services by or under the supervision of a registered nurse and in accordance with the plan of care.

(a) *Standard: Duties of the registered nurse.* The registered nurse makes the initial evaluation visit, regularly reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, provides those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes, in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in inservice programs, and supervises and teaches other nursing personnel.

(b) *Standard: Duties of the licensed practical nurse.* The licensed practical nurse furnishes services in accordance with agency policies, prepares clinical and progress notes, assists the physician and registered nurse in performing specialized procedures, prepares equipment and materials for treatments observing aseptic technique as required, and assists the patient in learning appropriate self-care techniques.

§ 484.32 *Condition of participation: Therapy services.*

Any therapy services offered by the HHA directly or under arrangement are given by a qualified therapist or by a qualified therapist assistant under the supervision of a qualified therapist and in accordance with the plan of care. The qualified therapist assists the physician in evaluating level of function, helps develop the plan of care (revising as necessary), prepares clinical and progress notes, advises and consults with the family and other agency personnel, and participates in inservice programs.

(a) *Standard: Supervision of physical therapist assistant and occupational therapist assistant.* Services furnished

by a qualified physical therapist assistant or qualified occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant performs services planned, delegated, and supervised by the therapist, assists in preparing clinical notes and progress reports, and participates in educating the patient and family, and in inservice programs.

(b) *Standard: Supervision of speech therapy services.* Speech therapy services are furnished only by or under supervision of a qualified speech pathologist or audiologist.

§ 484.34 *Condition of participation: Medical social services.*

If the agency furnishes medical social services, those services are given by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, and in accordance with the plan of care. The social worker assists the physician and other team members in understanding the significant social and emotional factors related to the health problems, participates in the development of the plan of care, prepares clinical and progress notes, works with the family, uses appropriate community resources, participates in discharge planning and inservice programs, and acts as a consultant to other agency personnel.

§ 484.36 *Condition of participation: Home health aide services.*

Home health aides are selected on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job. They are closely supervised to ensure their competence in providing care. For home health services furnished (either directly or through arrangements with other organizations) after August 14, 1990, the HHA must use individuals who meet the personnel qualifications specified in § 484.4 for "home health aide".

(a) *Standard: Home health aide training—(1) Content and duration of training.* The aide training program must address each of the following subject areas through classroom and supervised practical training totalling at least 75 hours, with at least 16 hours devoted to supervised practical training. The individual being trained must complete at least 16 hours of classroom training

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before beginning the supervised practical training.

- (i) Communications skills.
- (ii) Observation, reporting and documentation of patient status and the care or service furnished.
- (iii) Reading and recording temperature, pulse, and respiration.
- (iv) Basic infection control procedures.
- (v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.
- (vi) Maintenance of a clean, safe, and healthy environment.
- (vii) Recognizing emergencies and knowledge of emergency procedures.
- (viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy and his or her property.
- (ix) Appropriate and safe techniques in personal hygiene and grooming that include—
 - (A) Bed bath.
 - (B) Sponge, tub, or shower bath.
 - (C) Shampoo, sink, tub, or bed.
 - (D) Nail and skin care.
 - (E) Oral hygiene.
 - (F) Toileting and elimination.
- (x) Safe transfer techniques and ambulation.
- (xi) Normal range of motion and positioning.
- (xii) Adequate nutrition and fluid intake.
- (xiii) Any other task that the HHA may choose to have the home health aide perform.

"Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(2) *Conduct of training—(i) Organizations.* A home health aide training program may be offered by any organization except an HHA that has been determined to be out of compliance with one or more of the requirements of this part within any of the 24 months before the training program is to begin.

(ii) *Qualifications for instructors.* The training of home health aides and the supervision of home health aides during the supervised practical portion of the training must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of home health care, and who has supervised home health aide services for at least 6 months. Other individuals may be used to provide instruction under the

supervision of a qualified registered nurse.

(3) *Documentation of training.* The HHA must maintain sufficient documentation to demonstrate that the requirements of this standard are met.

(b) *Standard: Competency evaluation and in-service training—(1) Applicability.* An individual may furnish home health aide services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this paragraph. The HHA is responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section.

(2) *Content and frequency of evaluations and amount of in-service training.* (i) The competency evaluation must address each of the subjects listed in paragraph (a)(1) (ii) through (xiii) of this section.

(ii) The HHA must complete a performance review of each home health aide no less frequently than every 12 months.

(iii) The home health aide must receive at least 3 hours of in-service training per calendar quarter. The in-service training may be furnished while the aide is furnishing care to patients.

(3) *Conduct of evaluation and training—(i) Organizations.* A home health aide competency evaluation program and the in-service training may be offered by any organization except as specified in paragraph (a)(2)(i) of this section.

(ii) *Evaluators and instructors.* The competency evaluation must be performed by a registered nurse, and the in-service training generally must be supervised by a registered nurse who possesses a minimum of 2 years of nursing experience at least 1 year of which must be in the provision of home health care and who has supervised home health aide services for at least 6 months.

(iii) *Subject areas.* The subject areas listed at paragraphs (a)(1) (iii), (ix), (x), and (xi) of this section must be evaluated after observation of the aide's performance of the tasks with a patient. The other subject areas in paragraph (a)(1) of this section may be evaluated through written examination, oral examination, or after observation of a home health aide with a patient.

(4) *Competency determination.* (i) A home health aide is not considered competent in any task for which he or she is evaluated as "unsatisfactory". The aide must not perform that task without direct supervision by a licensed nurse until after he or she receives training in the task for which he or she

was evaluated as "unsatisfactory" and passes a subsequent evaluation with "satisfactory".

(ii) A home health aide is not considered to have successfully passed a competency evaluation if the aide has an "unsatisfactory" rating in more than one of the required areas.

(5) *Documentation of competency evaluation.* The HHA must maintain documentation which demonstrates that the requirements of this standard are met.

(6) *Effective date.* The HHA must implement a competency evaluation program that meets the requirements of this paragraph before February 14, 1990, and must provide the preparation necessary for the individual to successfully complete a program after August 14, 1990.

(c) *Standard: Assignment and duties of the home health aide.* The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or therapist as appropriate. Duties include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's conditions and needs, and completing appropriate records.

(d) *Standard: Supervision.* The registered nurse makes a supervisory visit to the patient's residence at least every 2 weeks, either when the aide is present to observe and assist, or when the aide is absent, to assess relationships and determine whether goals are being met. If a patient is receiving only skilled therapy services and home health aide services, a skilled therapist may make the supervisory visits at least every 2 weeks, in lieu of a registered nurse.

§ 484.38 Condition of participation: Qualifying to furnish outpatient physical therapy or speech pathology services.

An HHA that wishes to furnish outpatient physical therapy or speech pathology services must meet all the pertinent conditions of this part and also meet the additional health and safety requirements set forth in §§ 405.1717 through 405.1719, 405.1721, 405.1723, and 405.1725 of this chapter to implement section 1861(p) of the Act.

§ 484.48 Condition of participation: Clinical records.

A clinical record containing pertinent past and current findings in accordance

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

COMPARATIVE ANALYSIS: CURRENT STATE REQUIREMENTS, FEDERAL REQUIREMENTS, HB 2594 REQUIREMENTS

State Requirements KAR 28-51-112 Current Certified Home Health Aide	OBRA Requirements FEDERAL REGISTER - 8-14-89 Certified Home Health Aide	HB 2594 Requirements PCA - Personal Care Attendant
1 Training and competency required.	1 Training and competency required.	1 Duplicative training - no competency required.
2 HHA training: 90 hours NA + 20 hours HHA = 110 hours required.	2 HHA training: Minimum 75 hours - 16 hours supervised clinical required.	2 PCA training: Minimum 40 hours - no supervised clinical.
3 NA Similar services - inpatient/ residents.	3 NA similar services - inpatients. HHA similar services - homes.	3 Hygiene, feeding, dressing are "direct care" tasks duplicated in HHA which require competency.

Training and Competency

- a Current training is built around "core of knowledge" of NA training - 90 hours.
- b No "direct care" is given without training, competency, and direct supervision by RN of the trainee's ability.
- c Competency is built into training through skills checklist.
- d OBRA mandates minimum training and competency.

Training

Training in current programs meet and surpass OBRA minimums:

NA

OBRA 75 hours' minimum.
Entire training directly supervised by RN.
Current KS - 90 hours' minimum.

HHA

OBRA 75 hours' minimum - 16 hours
supervised clinical.
Current KS - 110 hours' minimum -
eight hours recommended super-
vised clinical.

Proposed Personal Care Attendant

Proposed 40 hours' minimum - 0 hours
supervised clinical.
35-hour shortage for OBRA minimum
training.
16-hour shortage for OBRA clinical
supervision.

Similar Services

- a Hygiene, feeding, dressing are "direct care" tasks duplicated in NA and HHA training which requires competency.
- b OBRA: "We believe that it is appropriate to require the same amount of training for home health aides as for nurse aides in these facilities. Nurse aides in these facilities furnish essentially the same services to inpatients and residents of these facilities as home health aides furnish to patients in their homes."
- c KDHE recently (12-89) amended home health agency regulations (KAR 28-51-108) to allow home health agencies increased flexibility in supplementing training of home health aides if specific and adequate training is given and documented by patient's attending physician and/or the supervising nurse.

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

COMPARATIVE ANALYSIS: CURRENT STATE REQUIREMENTS, FEDERAL REQUIREMENTS, HB 2594 REQUIREMENTS

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OBRA 75 hours' minimum.
 Entire training directly supervised by RN.
 Current KS - 90 hours' minimum.

HHA

OBRA 75 hours' minimum - 16 hours
 supervised clinical.
 Current KS - 110 hours' minimum -
 eight hours recommended super-
 vised clinical.

Proposed Personal Care Attendant

Proposed 40 hours' minimum - 0 hours
 supervised clinical.
 35-hour shortage for OBRA minimum
 training.
 16-hour shortage for OBRA clinical
 supervision.

Similar Services

- a Hygiene, feeding, dressing are "direct care" tasks duplicated in NA and HHA training which requires competency.
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*PH/LLW
 2-1-90*

TESTIMONY

House Committee on Public Health and Welfare

January 31, 1990

Thank you, Representative Littlejohn and members of the Public Health and Welfare Committee for the opportunity to provide support for House Bill 2594.

My name is John Kelly, and I am the Executive Director of the Kansas Planning Council on Developmental Disabilities.

This bill addresses the need for a new category and the exemption from the Kansas nurse practice act. I encourage you to report this bill out of committee with a favorable recommendation.

The Special Committee on Public Health and Welfare this summer heard all the pros and cons concerning this bill as Proposal No. 42. I won't repeat those comments, as I am sure that you are keenly aware of the need to recognize a personal care attendant category. I will say, however, that for a large number of persons with disabilities, including myself, who need non-health related assistance that this bill addresses our needs.

A recent study found that 5.9 million people of all ages and disabilities who live at home, in nursing homes, or in other institutions use the assistance of another person for personal and household tasks. Only 850,000 of these people receive some financial help from home base publicly funded programs. The rest get assistance from family and friends.

Currently home health agencies do not have on a scale affordable to the majority of persons who work and have a severe disability an employment category that addresses their necessary daily living needs.

Again, I encourage you to report this bill out with a favorable recommendation.

John Kelly, Executive Director
KS Planning Council on
Developmental Disabilities Services
296-2608

*P. Kelly
2-1-90
Attn #6*



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Jan 17, 1990

Julia A Schlobohm
Education Program Specialist
Bureau of Adult and Child Care
Landon State Office Bldg.
Topeka, Ks 66612-1290

Dear Ms. Schlohohtm,

The the following are written comments that I would appreciate your presenting on my behalf regarding House Bill 2594.

Upon having read H.B. 2594 regarding the establishment of a personal care attendant category of Home Health Agency employee I am unclear as to why such a category would be set up, when we are striving on a daily basis to improve the quality of care for our elderly citizens. In the 1970's and 1980's we worked for certification of geriatric aides, requiring 90 hours of training, and certification of home health aides requiring 110 hours of training, and certification of medication aides requiring 150 hours of training, why then in the 1990's would we want to recommend "personal care aides" receive 40 hours of so-so training and then send them into our private homes to give care to the sick and elderly?

Personal care attendants assigned to a home away from professional supervision, will without any doubt, be faced with unexpected and unusual situations, which 40 hours of training cannot perpare them to handle. Kansas's aging population looks towards the credentialing agencies to protect their rights and all aging individuals deserve the best of care that can be given in the home and in institutions.

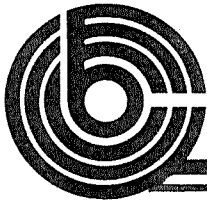
In Cloud County the numbers of elderly being served by the local home health agency has increased tremendously over the past year from caring for 30 to 40 individuals to the care of over 80 individuals in recent weeks. These 80 individuals are requiring more services and treatments than ever before since hospitals are dismissing patients earlier in their illness.

Kansans need increased, not decreased trained personal care in the home with certifying agencies controlling the care under the direct supervision of licensed professional personnel.

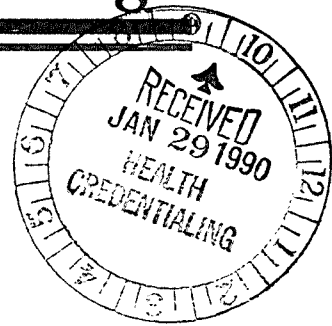
Sincerely,

Lu Cottingham RN MS
Director Allied Health
Cloud County Community College

*PHW
2-1-90
Attm #7*



Barton County Community College



January 25, 1990

Julie Scholobohm
Kansas Department of Health & Environment
Landon State Office Building, 10th Floor
900 Southwest Jackson
Topeka, KS 66612-1290

Dear Julie:

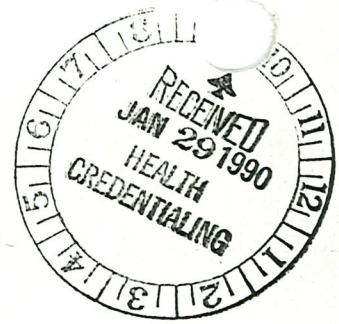
Thank you for forwarding House Bill no. 2594 to me. As an educator, a member of the health care team, and a consumer, I am always interested in issues affecting the quality of health care delivery. I have a prior commitment on January 31 and will be unable to attend the hearing. I am enclosing a written summary of my opinion of the proposed legislation. I would appreciate it if you would see that it reaches the attention of the Special Committee on Public Health and Welfare.

Please keep me informed of any further developments.

Sincerely,

Jeanette Sidman, Coordinator
Certified Nurse Aide/Medication Aide Programs

*PKP
2-1-90
Adm. #7
C92*



House Bill No. 2594

Home Health is a very rapidly growing industry in all areas of the United States. As a direct result of the changes in institutionalized health care, many people are either being discharged from health care institutions before they can adequately care for themselves or their illness or disability is not severe enough to require institutional care but still severe enough that they require assistance. Many of these people must rely on Health Care Agencies to adequately meet their needs. This has created a demand that currently exceeds the available resources.

I strongly disagree with the provision that would allow "personal care attendants" to provide direct client care without standard education requirements. This has the potential of increasing the pool or resources from which to draw but it would significantly reduce the quality of health care available to the consumer. The consumer has a right to expect that the agency will be providing someone who is both knowledgeable and competent to provide the care that is required. This may not be the case if this legislation is allowed to stand.

The proposed legislation would prevent the secretary of health and environment from requiring that personal care attendants either be educated or demonstrate a minimum competency. In all likelihood, the personal care attendant would be working with the client in an unsupervised setting. This should require more education not less. The health care providers should be required to demonstrate a minimum competency for the tasks that they will be expected to perform. There will almost certainly be instances where certified home health aides will not be available or will be considered too costly and uncertified personal care attendants will be used in their place.

Quality health care is an important issue. Education plays an important part in providing quality health care. I do not feel it is in the best interest of the citizens of the state of Kansas to flood the market with uneducated, uncertified "personal care attendants". This will only serve to discourage rather than encourage education.

I am asking you to reconsider the addition of the personal care attendant.

*PHUW
2-1-90
attm # 7
393.*