Approved 3-2-90
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Marvin L. Littlejohn, Chairperson, at 1:30 ~~a.m.~~/p.m. on February 26, 1990 in room 423-S of the Capitol.

All members were present except:

Rep. Foster, excused

Committee staff present:

Bill Wolff, Research
Norman Furse, Research
Sue Hill, Committee Secretary,

Conferees appearing before the committee:

Esther Wolf, Department on Aging
Dick Morrissey, Depute Director of Department of Health/Environment
John Grace, Kansas Association of Homes for Aging
Dick Hummel, Kansas Health Care Association
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Rep. Samuelson
Kenneth Dyck, Newton, (Bethel Home of Montezuma)
Marion Decker, Administrator of Bethel Home of Montezuma
Joe Kroll, Department of Health/Environment
Pat Johnson, State Board of Nurses
Martha Sanders, President of Kansas Assn.Nursing Continuing Education Providers (KANCEP)
Linda Sebastian, Menninger Hospital
Dr. John Holmlish, Director of Continuing Education, Menningers

Chair called meeting to order, drawing attention to hand-out provided to all members by the Chair. He noted this information would help clarify comments and mis-statements made earlier on the Physicians' Assistant's. (Attachment No. 1).

Chair requested all conferees presenting testimony this date to be as concise and brief as possible. There is a lengthy list of conferees, and in order for all to present their testimony, he asked for cooperation.

HEARINGS BEGAN ON HB 3003.

Esther Wolf, Secretary of Department on Aging (Attachment No. 2), spoke in support of HB 3003 because it brings the Long-term Care Ombudsman program into compliance with 1987 amendments to the federal Older Americans Act. Current statutes are inconsistent with Older Americans Act, which requires the Department on Aging to assure that ombudsmen "investigate and resolve complaints." Department of Social/Rehabilitation Services (SRS), and Ks. Department of Health/Environment (KDHE) have investigatory rules, still ombudsmen receive complaints that neither of these Departments investigate. She explained language on protection, noting many people have been afraid to complain about nursing homes problems. HB 3003 will require the Department on Aging to coordinate with the aging network and other state agencies, noted in Sec. 10 and Sec. 2. She outlined same noting that adequate legal counsel and representation for ombudsman will be made available, should legal action be brought against an ombudsman for performing official duties. Main thrust of HB 3003 provides some strengths and protections for those who act as informal mediators for nursing and long-term care consumers in Kansas. She answered numerous questions, as did her Associate, Sharee Wells, ombudsman and Karen McCurdy, legal counsel for their Department. It was noted the state is now divided into three regions with ombudsmen in each of these areas.

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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 26, 1990

HEARINGS CONTINUED ON HB 3003.

Dick Morrissey, Department of Health/Environment, (Attachment No. 3) stated the support of the bill except for provisions in new Section 7, establishing a long-term care ombudsman enforcement fund; authorization of volunteers to investigate complaints in Sections 8 (a) and 10 (a); and the new mandate for ombudsmen to attend exit conferences shown in Section 10 (j). In the interest of time, he would defer other comments except to say his Department and that of the Department on Aging have planned to meet together to work out their differences. He answered questions, i.e., yes, our differences are significant, but we feel it can be worked out. It appears the Department on Aging is trying to comply with Federal Mandates, and our Department feels the language goes too far in some instances and will have an impact on programs that we currently administer. However, we do feel it can be worked out to the satisfaction to both Departments.

John Grace, President of Kansas Association of Homes for the Aging, (Attachment No. 4) expressed concerns, i.e., duplication of many duties currently conducted by H&E; the use of "volunteers" for carrying out duties under the act; provision of fines; fiscal impact at a time of shrinking state resources. Currently the long term care ombudsman system is working fine. We do recognize Federal law may require some minor changes in order to meet new provisions, but HB 3003 goes far beyond minor revisions of existing law. He answered questions.

Dick Hummel, Executive Vice President of Kansas Health Care Association, (Attachment No.5) spoke in opposition to HB 3003. He outlined numerous changes this legislation will reflect, then stated, if the reason for the bill is because Long Term Care Ombudsman Program is overstrapped, we suggest the Department look at how it operates the program, and if more help is needed, request another professional position from this Legislature. This is an area where "volunteer effort" won't work and will be an open check-book of expenses for the State. He answered numerous questions, i.e., the way he reads the bill it will allow the same legal authority and representation for volunteers as for the ombudsman.

Marilyn Bradt, Kansans for Improvement of Nursing Homes, (See Attachment No.6) noting concerns, i.e., especially to extend the title of "Ombudsman" to volunteer staff in Sec. 8 (a), and Sec. (h) making volunteers representatives of the office of long-term care ombudsman. It appears the office of ombudsman is already strained to the breaking point with all their responsibilities, therefore is not realistic to think they could monitor and train and oversee a volunteer staff. She noted volunteers should be used as a last resort. She answered questions, yes, it seems better results would come from fines going into the General Fund, then

be allocated back to the Department.

HEARINGS CLOSED ON HB 3003.

HEARINGS BEGAN ON HB 2745.

Representataive Ellen Samuelson, (Attachment No. 7) explained rationale for HB 2745, then introduced people from her District and the Mennonite Church that would present their point of view in regard to the bill.

Kenneth Dyck, Newton, (Attachment No. 8) explained their people from the Mennonite Community do not believe in sending their people for a formal education beyond grade 8, only under specific circumstances, i.e. nursing, technical skills. Their Church operates two nursing homes very effectively/efficiently. He detailed the Moundridge Manor Costs sheet he had provided. Noted their people abide by Biblical teachings and believe there are persons who are given the natural talents and abilities and the gift to be able to be an Administrator of their Nursing Home. He thanked Rep. Samuelson for her explanation of the legislation before committee.

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 26, 1990

HEARINGS CONTINUED ON HB 2745. They try to live as clean, upright, citizens. He explained their belief in not pursuing a formal education past grade 8, unless to follow a medical field, i.e., nursing. It is felt by Church membership that our nursing homes be Administered by a member of our Church, and as these persons apply their God-given abilities, they are able to fill the position of administrator in a way that has proven to be an asset to the communities. He answered questions, i.e., yes, a person from any faith may be a resident of our care facilities; yes, this is a not for profit home; yes, we do not pay any interest on our loans, because of dedication from our people which allows us to operate our homes charging less; yes, we pay scale for our employees.

Marion Decker, Administrator of Bethel Home of Montezuma gave verbal testimony. He outlined his background as an Administrator, noting his calling was in this field. He has made a strong committment to this field. He noted the qualifications should be, i.e., concerned with quality care, have accounting skills and common sense, have adequate quality staff, abide by State rules and regulations, have a good dietary program, be open to the public at any time. He quoted figures, i.e., National average costs are $82. a day, $60, a day in this area of the country, and their daily costs are only $44. He answered numerous questions, i.e., half of their clients are private pay; yes, paying no interest is a big help to them, and that is thanks to sincere concerted efforts of their people. He noted, he does currently attend seminars, this year has 100 hours of required class/conference hours, and only 60 is required.

Joe Kroll, Department of Health/Environment, (Attachment No. 9) noted current statutes require candidates for licensure to Administer an Adult Care Home must possess a baccalaureate degree. HB 2745 would amend the statutes by exempting persons who are members of a recognized church whose religious teaching prohibit acquisition of formal education from having to complete formal educational requirements. Their Board approves of this legislation. (It was noted Joe Kroll spoke for the Chair of Board of Adult Care Home Administrators, Nadine Burch.)

Marilyn Bradt, Kansans/Improvement of Nursing Homes, (Attachment No.10) noted they are convinced the business of nursing home administration has become very complex and a strong program of education/training is essential. However, they understand the other important factors involved, especially in regard to HB 2745, and recognize the abilities already demonstrated by those requesting this legislation. It might be said, she noted, these administrators have earned special consideration. Our Association isn't terribly enthusiastic about HB 2745, but does not oppose it. She answered questions.

John Grace, Kansas Association/Homes for Aging stated their full support of HB 2745. If every home operated the way the Mennonite Homes operate in Kansas, there would be no need for **any** laws or regulations for our adult care homes. They have a long/consistent record of quality care.

It was noted at this time, perhaps it would help other Adult Care Homes, if they could share in the manner in which Care Homes are run by the Mennonite Church in such a cost effective manor.

HEARINGS CLOSED ON HB 2745.

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 26, 1990

HEARINGS BEGAN ON HB 3022.

Pat Johnson, Acting Director, Kansas Board of Nursing, (Attachment No.11) detailed the proposed provisions in HB 3022 section by section. After this comprehensive detail of the bill, she noted their Board requests these changes in order to strengthen the statutes with regard to providers of continuing nursing education and grounds for disciplinary action. Hopefully expanding the time frame for those who need temporary permits, and changing to annual and five year report for continuing education will assist potential licensees and the providers of continuing education. She sees no big economic impact as a result of this request. She urged for favorable consideration. She answered questions.

Martha Sanders, President of Kansas Assn. for Nursing Continuing Education Providers, (KANCEP), (Attachment No. 12) drew attention to three specific areas of concern, i.e., fees being tripled; renewal period interpretation; unannounced survey of providers of continuing education. She detailed each of these concerns.

Faith Ball, Great Plains Health Alliance, (Attachment No. 13) commended the State Board of Nursing and the Continuing Education Committee for their diligent work and long hours of labor represented in HB 3022. However, she noted concerns in regard to language, and some of issues they request in the bill. She noted the Board did not use all of its income last year, so they question the need to raise fees as proposed. In regard to providership approval expiring every 5 years, they recommend the statutes specify the annual report include statistical information only so as to not increase the paper work-load. She noted several concerns on Page 6, line 6, i.e., who pays for the survey, what is the costs of the survey, how often are these surveys conducted. They recommended (2) on Page 6 be deleted. Further, they are concerned with granting the Board the authority of determining either gross or ordinary negligence. She asked for favorable consideration on their concerns, and to keep in mind the nurses in rural Kansas.

Linda Sebastian, Associate Director of Nursing at Menninger Clinic and is responsible for nursing education. (See Attachment No. 14). She spoke in opposition to HB 3022, especially the surveys of continuing nursing education providers. She detailed unauthorized visits by Mrs. Johnson preceeded their receipt of criteria for visits. She noted other concerns, i.e., Mrs. Johnson requirement that nursing references be listed to all bibliographies. She noted in respect to onsite visits the following should be required, i.e., notice of date of visit, and purpose, and what criteria will be used. She suggested Section 4 (e) (2) be stricken and disallow site visits except when clearly indicated. She noted letters in hand-out to the Board of Nursing in regard to their concerns.

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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 a.m./p.m. on February 26, 1990

HEARINGS CONTINUED ON HB 3022

John Holmlish, Director of Continuing Education at Menningers, (Attachment No. 15) noted concerns they have in HB 3022. Section 4 (e) (2) the survey of continuing nursing education providers. He is here today at the request of Linda Sebastian, and because of correspondence to the State Board of Nursing responding negatively in regard to unannounced site visits. He is in support of quality control in matters related to professional education, particularly as related to re-licensure and re-certification. He noted annual reports should be for the purpose of helping providers assess the quality of their programs and allow the certifying organization to review compliance and to suggest changes if warranted. He stated no accredited organization he knows of uses unannounced site visits as a method for assuring compliance. Section 4 (e), (2) lends itself to distrust, spying; Paragraph (2) is vague, establishing no clear criteria for site visits. He is opposed to language that will permit unannounced visits. He noted the need for mutual professional respect between the accrediting bodies to work toward a common goal of quality health care education.

Chair thanked all conferees and members for their cooperation this date. He asked those conferees who did not have time today to present their testimony to please return tomorrow and he would continue hearings for those who were had placed their names on the list for conferees.

Meeting adjourned 3:31 p.m.

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

Date 2-26-1990

Name	Organization	Address
Diane Glynn Asst. Dir.	KSNA 700 Jackson, #601, Topeka 66603	
Martha Sanders President	KANCEP 103 E. 22nd	Hays KS 67601
John S. Homlish	Menninger	Topeka, KS
Pat Johnson	Board of Nursing	Topeka, KS
Linda Sebastian	Menninger	Topeka
Harold C. Pitts	Topeka KCOA	Topeka
Keith R Landis	Christian Science Committee on Pub for KS	"
Marion I Becker	Bethel Home Inc.	Montezuma, KS.
Jerry Nikel	Moundridge KS	Buhler KS
Kenneth Dyck	Newton Ks	Newton Ks.
Edwin Classen	Montezuma Ks.	
M Gatewood KAC	Topeka	
Joan Strickler	Manhattan KNPS	
PR Dismuke	KDH&E	Topeka
Joseph F Kroll	KDHE	Topeka
[illegible]	KDNE	Topeka
Tom Bell	KHA	"

Approved 2-28-89
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

10:00 a.m./p.m. on February 22, 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:
Richard Gannon, Executive Secretary, Kansas Board of Healing Arts
Helen Stephens, Kansas Academy of Physicians' Assistants
Larry R. Poliner, M.D., Nuclear Cardiology & Angiology, Galichia Cardiovascular Group, P.A., Wichita, KS
Larry Buening, General Counsel, Kansas Board of Healing Arts

Richard Gannon, Board of Healing Arts, appeared before the committee and presented written testimony on SB-181. Mr. Gannon stated that the purpose of this bill was to provide greater authority to the Board to insure that the physicians responsible for physicians' assistants provide adequate supervision and direction. Following a review of protocols filed with the Board of Healing Arts it was concluded that the protocols were less than acceptable and did not meet the intent of either the legislature or the Board's rules and regulations. He further stated he had, within the last few months, seen cases of considerable abuse and it was the board's intent to bring these issues before the legislature so that the citizens of the state can be assured of quality medical care. (Attachment 1)

In answer to questions concerning supervision, charges and medical malpractice insurance, Larry Buening replied that as far as he was aware, the fees charged were the same whether the patient saw a P. A. or the physician and the fees paid by a third party were paid to the supervising physician. Some P. A.s are salaried and in some cases may receive a percentage. Insurance concerns would, ultimately rest with the physician and be his responsibility.

Staff questioned Mr. Buening on the continuing or re-education areas of another bill. Mr. Buening stated that due to the fact that the half-life of medical knowledge was thought to be 5 to 7 years, re-education was felt to be necessary, especially when some wanted to return to the field after being away from it for a period of 20 years. Mr. Buening also stated the board had the ability to require submission of protocols but no authority to reject them or to refuse registration. Mr. Gannon stated they were trying to put the burden of proper protocols, etc. on the supervising physician.

Senator Salisbury inquired how many PAs have been turned in to the board. Mr. Gannon stated continual complaints come in and the ones validated are handled by sending letters to the supervising physician and the P. A.

Senator Anderson questioned whether there was any record of doctors who were involved in malpractice cases and Mr. Gannon stated he was not aware of any concerned with malpractice. However, he commented that several of the doctors also seemed to have complaints in other areas of their practice.

The committee requested a full report on the meeting with the PAs and the Board of Healing Arts to be held Friday, February 24, 1989 at 10 a.m.

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CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 526-S, Statehouse, at 10:00 a.m./pXX. on February 22, 1989.

Senator Hayden's pages, Joanna McGraw, Bobbie Jo Mitchell and Scott J. Powell from Garden City were introduced to the committee.

Helen Stephens, Kansas Academy of Physician Assistants, presented written testimony and told the committee they would like to see PAs included in HB-2255 regarding scholarships for those who will practice in underserved areas. (Attachment 2) Another incentive would be to change the Medicare/Medicaid payment structure, which would give the senior citizens of Kansas greater access to physician assistants. Ms. Stephens commented on rules and regulations that went into effect May, 1988 and stated it was felt that the elapsed period of time was not sufficient to see whether or not they were working. A meeting is scheduled between the P A Advisory Committee, the PA represenatives, Mr. Gannon and Mr. Buening on Friday, February 25, 1989 at 10:00 a.m. The question was asked whether or not a sponsoring physician would be in attendance since it would be difficult for a physician's assistant to carry the message back to them. The chairman said he would anxiously await the outcome of Friday's meeting.

Larry R. Poliner, M.D., presented testimony, stating that physicians assistants make up an important part of a health-care team that care for patients. The PA extends the role of the physician by keeping track of data, documentation, problems that patients have, their progress, in fact they act as a communicator both for patients and physicians.

Senator Ehrlich questioned whether or not the physicians in Kansas utilize a nurse practioner over and above a PA. Dr. Poliner replied that the nurse practioner has selected a field in which to work and usually worked specifically in that field.

Senator Strick questioned how it could be known whether or not PAs were providing diagnostic and other services which were not in their practice scope. Dr. Poliner said it was the physian assistant's role to do those tasks which are exactly described in their title and are not trained in the areas of diagnostics and carrying on a treatment program.

The meeting adjourned at 11:05 a.m. and will convene at 10:00 a.m. on Thursday, February 23, 1989 in room 526-S.

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Mike Clarkin, Youth Services, Department of Social and Rehabilitation Services
Mary Ann Gabel, Behavioral Sciences Regulatory Board
Mike Groy, Kansas Auto Dealers Legislative Coalition
Jeanette Pucci, Board of Nursing
Joleen Zvnuska, Kansas Alliance of Advanced Nurse Practitioners
Debbie Wendt, Kansas Alliance of Advanced Nurse Practitioners
Jim Yonally, Association of Supplemental Health Care Providers
Karen DeViney, Budget Unit, Department of Social and Rehabilitation Services
Linda Perrier, Personnel, Department of Social and Rehabilitation Services
Marilyn Bradt, Kansans for Improvement of Nursing Homes
Alan Cobb, St. Francis Hospital, Wichita
Terri Roberts, Kansas State Nurses Association
Lyndon Drew, Kansas Department on Aging
George Goebel, Capital City Task Force Chairman, American Association of Retired Persons
Tom Bell, Kansas Hospital Association

November 27, 1989
Morning Session

Chairman Ehrlich called the meeting to order at 10:00 a.m.

The minutes of the November 8, 1989, meeting were presented for approval or correction. Approval of the minutes was moved and seconded. The motion carried.

Proposal No. 45 – Physicians' Assistants

Staff called the Committee's attention to the motion which was made in the October 19-20 meeting and reported in the minutes "to support the responsible physician premise" rather than the creation of a PA practice act. It was further noted that the Committee affirmed staff's understanding that the Committee wished to reaffirm the original concept of the physicians' assistant, that the physician's assistant being an extension of the person licensed to practice medicine and surgery, rather than someone practicing under a separate practice act.

Staff presented a preliminary markup of K.S.A. 65-2896 et seq., and a copy of K.S.A. 65-2872 concerning persons not engaged in the practice of the healing arts (Attachment 1) noting the following issues were addressed:

1. the Board of Healing Arts supervises the physician and the physician supervises the physician's assistant;

2. to insure oversight of the physician's assistant by the physician;

3. physician's assistant charges should be less than those of the physician for the same services;

4. a closed formulary approach was suggested concerning prescription medications; and

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Proposal No. 43 – Alzheimers and Related Disease Care System

Staff presented the Committee report draft on Proposal No. 43, noting the first three pages were taken from the issue paper presented earlier (Attachment 6).

Staff noted that following the recommendations of the task force, the paragraph headings set out the various areas of the charge, including information received by the Committee.

In the "Conclusions and Recommendations" section, staff called attention to the bracketed material.

It was the consensus of the Committee to leave the bracketed material on pages 10 through 13 in the report.

Representative Wilbert made a motion to adopt the Committee report, with a second by Senator Walker. The motion carried.

Proposal No. 45 – Role of Physicians' Assistants

Staff pointed out to the Committee that everything in the draft report (Attachment No. 7) had been taken from the study or issue papers except the last paragraph on pages 11 and 12 which calls attention to the Tennessee statute which defines "physicians' assistant" to mean an individual who renders services, whether diagnostic or therapeutic, which are acts constituting the practice of medicine and, but for the provisions of the act, could only be performed by a licensed physician.

Staff reviewed the background leading to Proposal No. 45 pointing out that the Committee bill establishes that the Kansas Act on Credentialing and sets out the role of the Board of Healing Arts as regulating the physician who assumes the responsibility of supervising a physicians' assistant. The bill further allows the Legislature, rather than an agency of the state, to determine what constitutes appropriate relationships between a physicians' assistant and a responsible physician.

Concern was expressed by one member about the narrow scope of the physicians' assistant's authority. Staff noted state regulation has been clarified and simplified by stating that there is a responsible physician who agrees to be responsible for everything that is delegated to the physicians' assistant. The physicians' assistant can do only what is delegated to him or her. The closed formulary and the restriction on the physicians' assistant in treating a new patient or a patient with a new illness except in an emergency situation are the two changes which would take place under the new bill.

It was further noted that if, in the area of physicians' assistant, the Legislature set the principle that the physician would be responsible. Over the years testimony from the physicians' assistants and the Board was presented to the Legislature, stating the need for control to regulate physicians' assistants. The Committee bill is a return to the physician being responsible for the physicians' assistant's actions.

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Staff asked if Committee members needed any additional information on Proposal No. 44 and noted that the comparison of state statutes would be completed. Staff suggested an effort would be made to compare other agencies provisions for renewal, inactive licensure provisions, etc.

Proposal No. 45 -- Role of Physicians' Assistants

Staff presented a memorandum on Proposal No. 45 -- Role of Physicians' Assistants which included a copy of minutes of the Senate Committee on Public Health and Welfare from February 22, 1989, a copy of testimony from the Executive Director, Board of Healing Arts, presented at the February 22, 1989, meeting as well as a list of physicians' assistants, on the back page of which is a copy of a "protocol" that governs the relationship between a physician's assistant and the physician (Attachment 13).

Staff noted that it was important to remember that Kansas is one of three states that gives persons practicing the healing arts virtually unlimited authority to delegate. The example was given that a person licensed to practice medicine and surgery in Kansas, under the Kansas Healing Arts Act, may delegate to another person, whether trained or not, the responsibility for carrying out practices that make up the practice of medicine and surgery. Good judgement, concern for the opinion of one's peers,and the possibility of liability for delegation obviously control the individual's delegation to persons who are not licensed to practice medicine and surgery. This brings about a very interesting situation when it comes to a physician's assistant. It would not be impossible for one functioning as a physician's assistant under Kansas law to lose the authority to so function and take off the label of physician's assistant and continue to do all of the same things with the exception of transmittal of prescription orders and function under delegated authority.

It was further noted that there is a tendency to talk about advanced registered nurse practitioners and physicians' assistants as though they are the same people. Legally they have a totally different status. A physicians' assistant is assisting a physician in the practice of medicine and surgery. The legal delegatory authority in the statute prevents that person from practicing medicine unlawfully. The nurse practitioner is not practicing medicine. Nurses have been licensed and credentialed and have existed as a separate profession virtually as long as have doctors. Nurses who are practicing as advanced registered nurse practitioners, in spite of the perceptions, are lawfully practicing nursing, not medicine and surgery. Therefore, the two should not be confused when discussing legal issues. Advanced registered nurse practitioners are regulated under the nursing statutes while physicians' assistants are regulated under the statues that relate generally to physicians.

Staff noted they were asked to clarify why the proposal was assigned. This proposal arose from testimony presented to the Senate Committee on Public Health and Welfare in the 1989 Session and meetings relating to the practice of physicians and physicians' assistants. It was suggested that the attachments provided to the Senate Committee be read to better understand where the interim study arose and why it was assigned.

Staff told the Committee that if they wanted to continue the original concept of physicians' assistants, i.e., that they had no separate professional identity, but exist because they have an employing, responsible physician who retains the legal

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responsibility for their practice, the State of Tennessee appears to have dealt with this concept. The .Tennessee statutes are a part of Attachment 13.

The definition in the Tennessee statutes clearly sets out that, were it not for the law, PAs would be unlawfully practicing medicine. This would not appear to conflict with the Kansas legislation except for possible language related to the responsible physician. Staff referred to Tennessee statute 69-19-108, noting it was significant due to the fact that it simply states that any physician's assistant rendering professional services inconsistent with this chapter shall be considered to be practicing medicine without a license and subject to appropriate legal action by the Board of Medical Examiners. This simplifies the scheme as it would mean that in Kansas the Board of Healing Arts or the Attorney General or the appropriate county attorney would ask the courts to enjoin that individual from unlawfully practicing medicine. This approach would eliminate the Register or the need to remove names and confirms that this is a person who assists a person who practices medicine and surgery and is doing that lawfully as long as he or she is doing so as set out by the law. This approach avoids setting out the grounds for disciplining the physicians' assistant and is also consistent with Tennessee's definition of physicians' assistant.

Staff further reviewed Tennessee's statute, 63-19-106 setting out requirements of active and continuous supervision as well as review of data on patients and their conditions. Evaluation of a new or previously untreated condition would be by the supervising physician. Follow-up care, hospital visits, nursing home visits, and attending chronically ill at home would be carried out under the written regimen or protocol. Guidelines would be established for delivery of emergency medical service and the physicians' assistant would function only under the control ana responsibility of a licensed physician.

There was some discussion concerning the manner in which a physicians' assistant could deal with a new patient or evaluation or a previously untreated condition. Staff noted that Tennessee had set out, in their statute, minimum standards they felt should be followed thereby removing interpretation from the arena of compromise and putting it into law.

Staff was asked why Tennessee had been chosen and it was noted that it was purely happenstance. Tennessee patterned their original physicians assistant laws on those of Kansas. A Committee member asked about the wording in (2) "exception of a clearly minor problem" and it was suggested that such a distinction could be made by those practicing and could be made by a practice board. A Committee member questioned whether a physicians' assistant could really work other than taking down information and staff noted that if it were a new patient or a new condition it would depend on the relationship between the physician and the physicians' assistant as to what constitutes the physician's initial evaluation.

Afternoon Session

Staff continued with review of the Tennessee statutes. The question was asked as to what constitutes a physician who does not normally provide patient care (69-19-107 (4)) and it was noted this could be someone who does not normally practice except in research or other settings. This could mean the physician's assistant should not provide any care that the supervising physician does not provide. A comment was

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made by a Committee member that the Tennessee law appeared to carry out the concept initiated in Kansas, and it was suggested that Tennessee statutes could provide a pattern for changes and amendments in the Kansas law. The alternative would be to go to a complete practice act for the physicians' assistants.

A Committee member expressed concern that the medical doctors who appeared before the Committee seemed to have little knowledge about the Kansas laws and questioned how such individuals could be familiarized with what their duties are and what the physicians' assistants duties are. Staff replied that Tennessee wrote the relationship between the physician and the PA into their act. Another suggestion was to write some statutory requirement that a physician would sign a statement to show his or her understanding of the relationship prior to hiring a physicians' assistant. A member stated that it appeared from testimony that neither the physician nor the physicians' assistant was knowledgeable concerning the laws. Concern was also expressed that the physicians' assistant was not aware of the drug laws under which she was practicing. A member noted that one physicians' assistant had stated in Wichita that she changes the physician's medication orders when she does not agree with them.

Another concern was expressed related to billing, that is, charging the same amount whether one sees the physician or his physicians' assistant, also that the patient should be advised whether he will be seeing the doctor or the physicians' assistant.

A Committee member stated that from the outset of adopting laws relating to the use of physicians' assistants one of the underlying reasons was to provide medical care to rural areas, and noted that this has not happened. Staff expressed concern that attempts by the Board of Healing Arts to adopt a regulation that requires physicians' assistants to be utilized only in underserved areas has no basis at all in statutory authority. It was suggested that the Board could, by statute, be given authority to formulate regulations or to review the circumstances under which medically underserved areas are designated for purposes of using a PA. Staff noted there are two kinds of medically underserved areas, those that are geographically underserved wherein there are not physicians in a geographic radius. The other type of medically underserved may, in fact, exist in a highly urbanized area when there are people who may, geographically, reside within the county or city, which has an adequate number of physicians, but still may lack access to physicians. The original intent was to serve underserved areas, but that was not written into the law.

Staff asked whether Committee members wished to reaffirm the original concept of the physicians' assistants and the responsibility of the physician or recommend the act be amended to turn it into a full practice act.

Representative Branson made a motion that the Committee continue to support the responsible physician premise rather than the creation of a PA practice act.

In discussion, a Committee member stated that, at its inception, the law made physicians responsible for the physicians' assistant. The physician's assistant would seek employment from a physician who would supervise and set up a protocol under which the physician's assistant would operate. Original requirements were only a high school diploma, and health care experience was not necessary, but was acceptable. The original concept was not intended to make full-blown physicians out of these people or to give them the authority to usurp the authority of a physician. They were supposed to be "the handmaiden" of a physician. At one time there was an argument as to whether supervision had to be carried out with a physician on the

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premises. Eventually "over the shoulder supervision" was rejected. The member noted that the Tennessee statutes contain valuable concepts and the Committee should incorporate some areas that Tennessee has refined. Originally, the Legislature acted quickly due to a real shortage of doctors and possibly allowed too much latitude. The member noted he had been involved with hospitals since 1968, had been in contact with physicians' assistants and advanced registered nurse practitioners, and had experienced the fact that not all physicians' assistants readily acknowledge they are not physicians. The Legislature, over the years has seemed to give the physicians' assistants whatever was requested. He also felt that the doctors have not taken proper responsibility. The request was made that the Kansas laws and the Tennessee laws be compared, item by item.

Vice-Chairperson Littlejohn seconded the motion.

Staff requested clarification of the motion noting that their understanding was that the direction was to go back to the original concept of the physicians' assistant, that of a physicians' assistant being an extension of the person licensed to practice medicine and surgery rather than someone practicing under a separate practice act. This interpretation was acknowledged as being correct.

The question was posed as to what would happen to the physicians' assistants in Wichita, and staff replied they did not know. It is a policy decision, but whatever it is it would not be retroactive.

Staff noted that along with previous comments, the motion would appear to suggest a number of oversight requirements that the Board of Healing Arts has had given to them by the Legislature over the years in both requirements for registration and being able to revoke a registration. If the Committee wants to look at the physician as having more responsibility, one is necessarily looking at, statutorily, the Board having less. The motion appears to suggest doing away with grounds for deleting names from the Register and making it clear in statutory terms that the physician is responsible for hiring and firing. The Committee seems to be looking at structure in terms of the duties of the physician and the Board and adjusting that toward the original act which placed responsibility with the physician, i.e., the Board supervises that physician, not the physicians' assistant. The issue of forcing physicians' assistants into underserved areas is one of a number of points that could be addressed in amendments, but the motion before the Committee is a separate issue. Once the decision is made about regulating the physician versus regulating the physicians' assistant, then the Committee will need to come to grips with other policies that would follow that decision.

The Chairperson noted that if the motion were passed it would give the Board of Healing Arts the authority sought to deal with the physicians' assistant through the physician.

Staff noted the law does not speak now, nor does it appear the motion speaks, to where a physician who utilizes an assistant may practice. The Board of Healing Arts has adopted a rule and regulation effective May 1, 1988, previously read. The Legislature can amend the law in the way considered appropriate and adopt whatever policy it believes to be appropriate in regard to the location of practice and not leave it up to rules and regulations. It was noted that some members appear to also be leading into writing into the law those policies that are believed to be important in supervision, etc.

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Permission was requested by a Committee member for Richard Gannon, Executive Director, Board of Healing Arts, to speak to the Committee.

Mr. Gannon told the Committee that at the time he assumed the position of Executive Director of the Board of Healing Arts he found that the Board and the physicians' assistants were in adversarial positions. Some changes in personnel have occurred and, through Senate Bill No. 183, an advisory committee has been developed. The Board has two problems, possibly the same two that the Committee appears to have, supervision and protocols. The advisory council has been meeting and trying to come to terms with what adequate supervision really is. The Board is not comfortable with what they have now. Protocols are poor and that issue is to be resolved. The issue of getting physicians' assistants to rural Kansas is another issue. It was suggested that education might be the key. A Committee member referred to the premise of the Tennessee law relating to a physician seeing a new patient before turning the patient over to the assistant. Mr. Gannon stated the Board's concern relates to the basic intent of the law and the best way to serve people in satellite clinics.

A Committee member stated that it appeared the motion and second would make the physician accountable and give the Board more authority to hold the physician accountable, and Mr. Gannon noted that when one looks at the doctors there is more language relating to the doctor and the PA than the advanced registered nurse practitioner. Staff reminded the Committee that the two groups are not analogous; one is practicing and regulated under the Kansas Nurse Practice Act, not under the direction of the physician, and one is an extension of the physician and has an existence only if there is a responsible physician. The Board of Healing Arts has no jurisdiction over advanced registered nurse practitioners.

The question was called, and the motion carried.

Staff told the Committee that it might be effective to work up a comparison between what would be a logical conclusion from the motion and other positions, providing options. Costs, underserved areas, prescription formularies could be included. The wish was expressed to see some sections of the Tennessee law in the policy options covering supervision, etc. Staff asked if the Committee wished to look at the concept of regulating the physicians' assistants through being unlawfully engaged in the practice of medicine rather than in terms of registration or credentialing. The consensus of the Committee was that staff should proceed in this direction.

Staff reminded the Committee the time is short and direction is needed for Committee reports.

Proposal No. 43 – Alzheimers and Related Disease Care System

Staff reviewed the memorandum dealing with Proposal No. 43 giving background and information resulting from the June Committee meeting and outlining issues for Committee consideration (Attachment 14).

Another issue is whether the Committee wishes to recommend any tax-related initiatives to the Legislature and if so, what type and should they be applied generically or only to those who provide care for Alzheimers and related disease victims. Other recommendations by conferees are listed in Attachment 14. Staff also noted that in information provided to the Committee the suggestion was made to create incentives

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for the purchase of long-term care insurance and reminded members that Kansas has adopted legislation requiring that long-term care insurance be comprehensive insurance, that it not be disease or condition exclusive, and that it cover the whole range of long-term care and not be limited to institutional care. To the extent that long-term care insurance purchase can be encouraged, the ability of individuals to provide for such long-term care would be enhanced. Colorado has enacted legislation that allows a tax credit for premiums paid for long-term care insurance. A Committee member inquired whether a fiscal note is available and staff noted they would inquire but due to the short period of time the law had been in effect there might not be a great deal of information available. A member of the Committee stated she had introduced a similar bill several years ago and the Research Department had estimated a $1.3 million figure assuming a certain percentage of people take advantage of the tax credit. Staff added that, according to various materials, read long-term care insurance has not been a very successful initiative in any part of the country.

A member of the Committee who served on an ad hoc committee of the Insurance Committee noted that at the time Kansas passed the legislation, the number of companies offering insurance dropped dramatically but at present there are at least seven companies offering the insurance in the state and the numbers are slowly growing with Kansas guidelines being used by many other states at the present time. It was further noted that the cost is becoming affordable. Another Committee member mentioned a related article in "Consumers Report" which suggested interested parties make inquiries through their state insurance offices.

Staff noted another possibility would be in the area of a tax credit allowance for those who care for an individual in the home who would otherwise be institutionalized. A number of variations of the idea have been offered over the years, basically coming from the Silver Haired Legislature. No method of computing a fiscal note has been developed because no one has been able to determine how many people in the state might be served in their own home thereby making their family or caregiver eligible for a tax credit.

Staff concluded that the issue confronting the Committee would be whether they wish to recommend any tax related initiatives and if so, what type and should they be applied generically or again only for those who provide relief for Alzheimers and other related disease victims.

Other recommendations made by one or more conferees were noted.

A representative of the Department on Aging provided the Committee with a tally of requests addressed to the Alzheimer's Helpline, noting it did not include workshops, in-service training, conferences (Attachment 15). The Help Hotline answers calls from nursing homes and home caregivers desiring information about available services.

It was suggested that a registry of facilities would be helpful for consumers, and Ms. Davis noted the Department tries to do this with the Hotline.

Staff noted that the Department of Health and Environment regulates adult care homes and visits them twice a year. The Committee could request or direct the Department to identify those units that hold themselves out to have a special care unit without making any special claims as to whether it is or is not adequate. A Committee member noted that this might presently be underway due to the nature of the annual licensure forms that must be completed. A subsequent suggestion was made that the

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Testimony for HB 3003

Esther Valladolid Wolf, Secretary

Kansas Department on Aging

Mr. Chairman and members of the committee, thank you for the opportunity to present comment regarding HB 3003. I am Esther Wolf, Secretary of the Department on Aging. The department's mission is to advocate for and support the interests of more than 400,000 Kansans aged 60 and above. That number includes the 27,000 who live in the state's 600 nursing homes, room and board homes, hospital long-term care units and other care institutions.

Our department supports HB 3003 because it brings the Long-term Care Ombudsman program into compliance with 1987 amendments to the federal Older Americans Act. Ombudsmen respond to complaints on behalf of long-term care residents or consumers who may be too ill, or too frail, or too frightened to advocate for themselves. The proposed new and amended Kansas statute improves the Ombudsman Program in three areas: complaint investigation, training and designation of ombudsmen, and protection against retaliation.

Complaint Investigation

The current state statute does not include investigation as an ombudsman responsibility. This is clearly inconsistent with the Older Americans Act, which requires the Department on Aging to assure that ombudsmen "investigate and resolve complaints."

Although SRS and KDHE have investigatory rules, the ombudsmen receive complaints which neither of the other departments investigate. In FY 1988, the ombudsmen investigated 178 cases.

Training and Designation of Ombudsmen

The bill outlines the duties of the ombudsman, including the training of staff and designees, whether paid or volunteer, to be ombudsmen (Sec. 10). There are very few states remaining that have

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not adopted a volunteer ombudsman program. The bill would prohibit the use of complaint investigators unless they have undergone training and meet qualifications approved by the state ombudsman (Sec. 4). In this regard, state law can be more stringent than federal law. Kansas's requisite policy and procedure will assure that no local or volunteer programs will be designated without providing professional support, supervision, screening and specialized training.

Protection Against Retaliation

Section 6 of HB 3003 fulfills sections 307 (a) (12) (I) and (J) of the Older Americans Act which protect ombudsman against willful interference during good faith performance of official duties, duties outlined by statute and policy or procedure. This section also prohibits retaliation against anyone for providing an ombudsman with information about complaints. The bill provides for civil penalties for violation of the section, and for hearings to determine whether violations have occurred.

Many people are afraid to complain about nursing home problems. The Department often receives anonymous calls because employees are afraid for their jobs, and families are afraid for the well-being of their relatives.

Every act of retaliation against an employee or a resident has a chilling effect on the regulation of nursing homes. Interference with the complaint mechanisn thwarts the Department's investigations and resulution of the problem. To prevent interference, we must have an effective remedy against retaliation.

Other Changes

HB 3003 requires the Department on Aging to coordinate with the aging network and other state agencies (Sec. 10 (a) and (i)) and to control conflicts-of-interest (Sec. 2). It insures the ombudsman the authority to pursue remedies on behalf of the client (Sec. 10 (a)). And, it provides for adequate legal counsel and

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representation for the ombudsman, should legal action be brought against an ombudsman for performing official duties (Sec. 3). Through these various measures, the bill insures that the ombudsmen can do their job and that the client or the facility employee providing information will not be punished by the institution.

Conclusion

Many of the provisions of this bill are already in place, either by current statute, or through coordination agreements between state agencies. The main thrust of the legislation is to bring current statute up to date, and to provide some strengths and protections for those who act as informal mediators for nursing home and long-term care consumers in Kansas.

I want to thank you for your time. I would be happy to answer any questions from the committee.

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pg. 3.

State of Kansas

Mike Hayden, Governor

Department of Health and Environment

Division of Health

Stanley C. Grant, Ph.D., Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

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Testimony Presented to

The House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 3003

Background

This bill was proposed by the Kansas Department on Aging and amends the statutes relating to the Office of State Long Term Care Ombudsman. Many of the changes bring the Kansas statutes into conformance with 1987 amendments to the Older Americans Act. Three provisions of HB 3003 are not addressed in federal statutes:

1. The apparent authorization for "volunteer" ombudsman to complement paid staff for investigation and enforcement purposes.

2. The establishment of a long-term care ombudsman enforcement fund which would be supported by civil penalties imposed by the Secretary on Aging.

3. The mandate that the state long-term care ombudsman shall have a right to attend exit conferences conducted by the Department of Health and Environment.

Issues

Paragraph (a) of Section 8 provides for the use of volunteers as ombudsman. The work of monitoring facility performance or resolving complaints is too sensitive to allow persons without accountability to perform it. Training is not enough to assure the kind of accountability that only employee/employer relationships can bring.

Establishment of the long-term care ombudsman enforcement fund financed by civil penalties imposed by the Department on Aging, as proposed in new Section 7, will unnecessarily raise conflict of interest questions. While it might be appropriate for the Department on Aging to have civil penalty authority when persons willfully interfere with lawful activity of the ombudsman, money so collected should be deposited in the state general fund. Civil penalties have become a very meaningful intermediate sanction for survey agencies such as our own. The assessing of such

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Charles Konigsberg, Jr., M.D., M.P.H., Director of Health (913) 296-1343

James Power, P.E., Director of Environment (913) 296-1535

Lorne Phillips, Ph.D., Director of Information Systems (913) 296-1415

Roger Carlson, Ph.D., Director of the Kansas Health and Environmental Laboratory (913) 296-1619

civil penalties should never be subject to questioning that they are assessed to support program operation and should be seen solely as the intermediate sanction they are.

Third, and perhaps our most significant concern, is the provision in paragraph (j) of Section 10, which states the long-term care ombudsman shall have the right to attend exit conferences conducted by the Department of Health and Environment. We believe this may be a conflict with the Older Americans Act mandate to keep the ombudsman program separate from the survey process. The responsibility of the ombudsman is to investigate and resolve complaints by or on behalf of older individuals which do not relate to certification or licensure requirements. In this sense, they have fulfilled a very valuable role. To involve long-term care ombudsman in potential violations of certification or licensure standards will confuse consumers, the industry, and the state agencies themselves and represents a reversal of current initiative in this state.

There is also a practical problem in mandating that the long-term care ombudsman has a right to attend exit conferences. There are over 400 adult care homes in this state. Including all types of surveys, there are well over 1,000 exit conferences conducted each year. There is no way that exit conferences can be scheduled to accommodate a mandate to invite the long-term care ombudsman to each and every one.

Recommendations

The Kansas Department of Health and Environment supports the bill except for the provisions in new Section 7, establishing a long-term care ombudsman enforcement fund; the authorization of volunteers to investigate complaints in Sections 8(a) and 10(a); and the new mandate for ombudsmen to attend exit conferences in Section 10(j).

Presented by: Richard J. Morrissey, Deputy Director
Division of Health
Department of Health and Environment
February 26, 1990

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Kansas Association of Homes for the Aging

Enhancing the quality of life of those we serve since 1953.

1990 KAHA
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Lou Esplund
Minneola Nursing Home
Minneola

Chairperson Elect
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Good Samaritan Center
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Victoria

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LeRoy Weddle
The Cedars
McPherson

John Wells
Larksfield Place
Wichita

KAHA Staff

John R. Grace
President/CEO

Kevin McFarland
Chief Operating Officer

MEMORANDUM

Date: February 26, 1990
To: HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE
From: John R. Grace, President
Kansas Association of Homes for the Aging

RE: House Bill No. 3003
House Bill No. 2745

==

Re: House Bill No. 3003

House Bill 3003 would make a number of significant amendments and additions to the current long term care ombudsman program in Kansas. We recognize that Federal law may require some minor alterations in existing statutes to meet new provisions.

However, House Bill 3003 goes far beyond minor revisions of existing law.

A few of the concerns we have with HB 3003 include, duplication of many duties currently conducted by Health and Environment, the use of "volunteers" for the carrying out of duties under the act, the fining provisions, and the fiscal impact of such legislation in times of shrinking state resources.

3003

We believe the current long term care ombudsman system is working fine and fail to see the necessity for such a broad and comprehensive overview of the existing program.

Re: House Bill No. 2745

We are in full support of this bill. If every home operated the way the Mennonite Homes operate in this state, there would be no need for **any** laws or regulations for adult care homes. They have a long and consistent record of quality care in their communities.

2745

Thank you Mr. Chairman and members of the committee.

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attm #4

634 SW Harrison • Topeka, Kansas 66603 • 913-233-7443 • Fax: 913-233-9471

KHCA

Member of ahca

Kansas Health Care Association
221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611 • 913-267-6003

DATE: February 26, 1990

TO: House Public Health and Welfare Committee

FROM: Kansas Health Care Association

SUBJ: POSITION H.B. 3003, DEPARTMENT ON AGING LONG TERM CARE OMBUDSMAN

This association, representing 220 adult care home (nursing facility) providers, both proprietary and not for profit membership, support the long term care ombudsman (LTCO) program and concept, has publicly recognized Kansas' as the best in the nation, and has encouraged it as a model for other states.

Kansas, one of the first states to develop the LTCO program, began as a system of tryanny which matured over time and struggle to an effective, professional system for resolving nursing home complaints. This finally came about only because it was under the jurisdiction of a person who was a professionally trained ombudsman and followed the responsibility of that office, an impartial and fair arbitrator. Now we're moving backward....

WE OPPOSE H.B. 3004 on three counts:

- establishes a lower layer of volunteer ombudsmen with the full power and responsibility of the LTCO, i.e., complaint investigators, access to facility and records. Although authorized by the Older Americans Act (OAA), does Kansas need and can it afford such a new bureaucracy, outreach system?

  New Section 3(a) on line 31 provides legal counsel to each ombudsman. This includes volunteers. This goes beyond the OAA. Imagine the implications of this with minimally-trained deputy-volunteers and the legal expense involved.

  Maintain and utilize volunteers as they are now, as Friendly Visitors for nursing facility residents. This is an area where more help is needed.

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- authorizes sanctions in the form of fines, up to $2500 or $5000, for either interfering with the LTCO or retaliating against a complaint reporter. Fines go into a fund to operate the LTCO Program.

  The OAA authorizes sanctions by the Secretary, nowhere are money fines mentioned. We are open to discussing other types of sanction authority with the Agency as we don't condone obstruction or retaliation. On the first action, we're not aware of any instance in the last seven years when someone thwarted duties of the LTCO.

  Establishing an enforcement fund to operate the LTCO will become a self-fulfilling prophecy and makes as much sense as giving speeding ticket quotas to traffic officers.

- aside from any merits, creates a whole new expansion of a federal program, an outreach system in a time when Kansas is currently cutting back on services.

If the reason for the bill is because the LTCO is over-strapped, we suggest first the Department look at how it now operates the program. Second, if more help is needed, then request another professional LTCO position from the Legislature. This is one area where the "volunteer effort" won't work and will be an open check-book of expenses to the State.

Attached is a copy of H.B. 3003 with our comments in the side bar.

Thank you for this opportunity.

CONTACT: Dick Hummel, Executive Vice President

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HOUSE BILL No. 3003

By Committee on Appropriations

2-14

AN ACT concerning the department on aging; relating to the office of the state long-term care ombudsman; prescribing powers, duties and functions therefor and for the secretary of aging relating thereto; establishing the long-term care ombudsman enforcement fund; amending K.S.A. 75-5916, 75-5917, 75-5918, 75-5920 and 75-5921 and repealing the existing sections.

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

New Section 1. The provisions of sections 1 through 7 and amendments thereto and K.S.A. 75-5916 through 75-5922 and amendments thereto shall be known and may be cited as the Kansas long-term care ombudsman act.

New Sec. 2. (a) No individual involved in the selection or designation of any ombudsman shall have any pecuniary or other interest in any facility. No ombudsman, officer, employee or other representative of the office shall have any pecuniary or other interest in any facility.

(b) The secretary shall administer and enforce the provisions of this section and shall ensure compliance therewith. The secretary shall adopt policies and procedures to identify and remedy all conflicts of interest prohibited by this section.

New Sec. 3. The secretary shall ensure that:

(a) Legal counsel is available to each ombudsman for advice and consultation and that legal representation is provided to any ombudsman against whom suit or other legal action is brought in connection with the performance of the ombudsman's official duties; and

(b) each ombudsman has the resources and authority to pursue administrative, legal and other appropriate remedies on behalf of residents.

New Sec. 4. No individual shall investigate any complaint filed with the office of the state long-term care ombudsman unless the individual has received the training required under subsection (f) of K.S.A. 75-5918 and amendments thereto and has been designated by the state long-term care ombudsman as an ombudsman qualified to investigate such complaints.

NEW
NOT INTENT OF FEDERAL LAW. ONLY FOR STATE LTCO. COST OF LEGAL COUNSEL TO VOL. OMBUDSMEN?

CRITERIA FOR TRAINING OF VOL. MONITORING, ETC. CLEAR GUIDELINES FOR COMPLAINT INVESTIGATION

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New Sec. 5. No ombudsman shall be liable under state law for the good faith performance of official duties in administering the office of the state long-term care ombudsman.

New Sec. 6. (a) No person shall willfully interfere with any lawful action or activity of an ombudsman, including the request for immediate entry into a facility.

(b) No person shall take any discriminatory, disciplinary or retaliatory action against any officer or employee of a facility or government agency or against any resident or any guardian or family member thereof for any communication by any such individual with an ombudsman or for any information given or disclosed by such individual in good faith to aid the office in carrying out its duties and responsibilities.

(c) Any person that violates the provisions of subsection (a) shall be subject to a civil penalty in a sum not exceeding $2,500 per occurrence. Any person that violates the provisions of subsection (b) shall be subject to a civil penalty in a sum not exceeding $5,000 per occurrence.

NEW OAA ALLOWS SANCTIONS DOESN'T SPEAK TO FINES

(d) The secretary may assess and collect a civil penalty under this section, after notice and an opportunity for hearing before a hearing officer designated by the secretary to hear the matter upon a determination that a person violated the provisions of subsection (a) or (b). All hearings conducted pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 7. The long-term care ombudsman enforcement fund is hereby established in the state treasury. The long-term care ombudsman enforcement fund shall be administered by the secretary. All moneys received for civil penalties imposed under section 6 shall be remitted to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the long-term care ombudsman enforcement fund. All expenditures from the long-term care ombudsman enforcement fund shall be for support of the operations and activities of the office of the state long-term care ombudsman. Such expenditures shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee.

FINES GO TO ENFORCEMENT FUND. PROGRAM STATE FUNDED BY FED/STATE FUNDS AND OAA.

Sec. 8. K.S.A. 75-5916 is hereby amended to read as follows 75-5916. As used in ~~this~~ *the Kansas long-term care ombudsman* act.

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1 (a) "Ombudsman" means ~~a person or persons responsible for~~
2 ~~carrying~~ *the state long-term care ombudsman and any regional long-*
3 *term care ombudsman or other individual who has received the*
4 *training required under subsection (f) of K.S.A. 75-5918 and amend-*
5 *ments thereto and who has been designated by the state long-term*
6 *care ombudsman to carry* out the powers, duties and functions of
7 the office of *the state* long-term care ombudsman.
8 (b) "Secretary" means the secretary of aging.
9 (c) "Facility" means an adult care home as such term is defined
10 in K.S.A. 39-923 *and amendments thereto*.
11 (d) "Resident" means an individual kept, cared for, treated,
12 boarded or otherwise accommodated in a facility.
13 *(e) "State long-term care ombudsman" means the individual ap-*
14 *pointed by the secretary to administer the office of the state long-*
15 *term care ombudsman.*
16 *(f) "Regional long-term care ombudsman" means an individual*
17 *appointed by the secretary as a subordinate officer of the office of*
18 *the state long-term care ombudsman.*
19 *(g) "Office" means the office of the state long-term care*
20 *ombudsman.*
21 Sec. 9. K.S.A. 75-5917 is hereby amended to read as follows:
22 75-5917. There is hereby established under the supervision of the
23 secretary of aging within and as a part of the department on aging
24 ~~an~~ *the* office of *the state* long-term care ombudsman, the head of
25 which shall be the *state* long-term care ombudsman. The *state* long-
26 term care ombudsman shall be appointed by the secretary of aging
27 and shall be in the classified service of the Kansas civil service act.
28 The secretary of aging shall appoint *each regional long-term care*
29 *ombudsman and* all subordinate officers and employees of the office
30 of *state* long-term care ombudsman~~,~~ *within the department on aging.*
31 *Each regional long-term care ombudsman* and all such subordinate
32 officers and employees shall be within the classified service under
33 the Kansas civil service act. Under the supervision of the secretary
34 of aging, the *state* long-term care ombudsman shall administer the
35 office of *the state* long-term care ombudsman.
36 Sec. 10. K.S.A. 75-5918 is hereby amended to read as follows:
37 75-5918. The *state* long-term care ombudsman shall:
38 (a) *Investigate and resolve complaints made by or on behalf of*
39 *the residents relating to action, inaction or decisions of facilities,*
40 *the representatives of facilities, other long-term care service pro-*
41 *viders, public agencies, or social service agencies, which may ad-*
42 *versely affect the health, safety, welfare or rights of such residents;*
43 *(b)* develop continuing programs to inform *and assist* residents

WHO IS IN CHARGE? S/B STATE LTCO. CONTROL AND ACCOUNTABILITY.

SHOULDN'T THIS BE BY STATE LTCO? STRUCTURE, CONTROL?

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~~of facilities~~, their family members or other persons responsible for residents ~~of facilities of their~~ *regarding the* rights and responsibilities *of residents and such other persons*;

~~(b)~~ *(c)* provide the legislature, the governor and the secretary with an annual report ~~relating to the needs of residents in facilities, including recommendations for meeting those needs;~~

~~(c) collect data for analysis to inform other agencies, the legislature, the governor, the secretary and the public of the needs of residents in facilities;~~

~~(d) promote cooperation among the various agencies concerned with the regulation of facilities, or providing services to residents therein, and the department on aging;~~

~~(e) provide information to agencies and others as required; and~~ *containing data and findings regarding the types of problems experienced and complaints received by or on behalf of residents and containing policy, regulatory and legislative recommendations to solve such problems, resolve such complaints and improve the quality of care and life in facilities;*

(d) analyze and monitor the development and implementation of federal, state and local government laws, regulations, resolutions, ordinances and policies with respect to facilities and long-term care services provided in this state, and recommend any changes in such laws, regulations, resolutions, ordinances and policies deemed by the office to be appropriate;

(e) provide information to public agencies, legislators and others, as deemed necessary by the office, regarding the problems and concerns of older individuals residing in facilities, including recommendations related thereto;

(f) provide for the training of all individuals who are officers or employees of the office appointed by the secretary under K.S.A. 75-5917 and amendments thereto and other representatives of the office, in (1) federal, state and local laws, regulations, resolutions, ordinances and policies with respect to facilities located in Kansas, (2) investigative techniques, and (3) such other matters as the secretary deems appropriate;

(g) coordinate ombudsman services provided by the office with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the federal developmental disabilities assistance and bill of rights act, 42 U.S.C.A. 6001 et seq., and under the federal protection and advocacy for mentally ill individuals act of 1986, public law 99-316;

(h) consider any representative of an entity providing ombudsman services who has been designated as an ombudsman by the

DUTIES: IMPOSSIBLE TO AD.

NEW OUTREACH FOR D.D.

VOLUNTEERS AS ALL POWERS/DUTIES OF LTCO.

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1 *state long-term care ombudsman, whether an employee or an unpaid*
2 *volunteer of such entity, shall be deemed to be a representative of*
3 *the office for purposes of this section;*
4 *(i) collaborate with the department of health and environment*
5 *and the department of social and rehabilitation services to establish*
6 *a state-wide system to collect and analyze information on complaints*
7 *and conditions in facilities for the purposes of publicizing improve-*
8 *ment and resolving significant problems;*
9 *(j) have the right to attend exit conferences conducted by the*
10 *department of health and environment under K.S.A. 39-935 and*
11 *amendments thereto; and*
12 ~~(f)~~ *(k)* perform such other duties and functions as may be pro-
13 vided by law or as may be directed by the secretary of aging.
14 Sec. 11. K.S.A. 75-5920 is hereby amended to read as follows:
15 75-5920. With the written consent of the resident of the facility,
16 guardian of the resident or next of kin of a deceased resident, an
17 ombudsman shall have access to all records and documents kept for
18 or concerning the resident. In addition, in assisting a resident of a
19 facility, an ombudsman shall have access to all records and documents
20 of the facility which are relevant to such assistance~~. An ombudsman~~
21 ~~shall have access to books, records and other documents main-~~
22 ~~tained by the facility~~ to the extent necessary to carry out the
23 provisions of ~~this~~ *the Kansas long-term care ombudsman* act.
24 Sec. 12. K.S.A. 75-5921 is hereby amended to read as follows:
25 75-5921. All information, records and reports received by or devel-
26 oped by an ombudsman which relate to a resident of a facility,
27 including written material identifying a resident *or other complain-*
28 *ant*, are confidential and not subject to the provisions of K.S.A. 45-
29 201 to 45-203, inclusive, and amendments thereto, and shall not be
30 disclosed or released by an ombudsman*, either by name of the*
31 *resident or other complainant or of facts which allow the identity*
32 *of the resident or other complainant to be inferred,* except upon
33 the order of a court *or unless the resident or the resident's legal*
34 *representative or other complainant consents in writing to such dis-*
35 *closure or release by an ombudsman*, except the *state* long-term care
36 ombudsman shall forward to the secretary of health and environment
37 and the secretary of social and rehabilitation services copies of reports
38 received by the *state* long-term care ombudsman relating to the
39 health and safety of residents. A summary report and findings shall
40 be forwarded to the facility, exclusive of information or material that
41 identifies residents or any other individuals.
42 Sec. 13. K.S.A. 75-5916, 75-5917, 75-5918, 75-5920 and 75-5921
43 are hereby repealed.

Clarification. Vol. are agents of LTCO? Volunteers s/be trained as friendly visitors, not deputies.

Access to all records. Must maintain confidentiality. Volunteers?

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1 Sec. 14. This act shall take effect and be in force from and after
2 its publication in the statute book.

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pg. 8

KINH Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO
THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING HB 3003
THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

February 26, 1990

Mr. Chairman and Members of the Committee:

Kansans for Improvement of Nursing Homes has strongly supported the office of long-term care ombudsman in their efforts to investigate and find solutions to problems and complaints of nursing home residents and their families. We affirm the need for such activities by an agency whose only concern is the best interest of the nursing home resident, supplementing the role of the regulatory agency whose responsibility it is to enforce regulations and standards of care. We support the recent requirements of the Older Americans Act and the Nursing Home Amendments of the Omnibus Budget Reconciliation Act to strengthen the ombudsman's role and to assure that office of the tools needed to fulfill their assigned function. We are in agreement with the intent of HB 3003 to define the responsibilities of the office, and to coordinate the activities of the three state agencies most directly involved in complaint investigation and solution.

We do have some concern about certain parts of the legislation. There is no difficulty, certainly, with the provision of a civil penalty for any interference with the designated functions of the ombudsman. However, Sec. 7 which establishes the long-term care ombudsman enforcement fund into which all such penalties would be paid and which would provide designated funds for the operation of the office of long-term care ombudsman, does not seem to us a good governmental principle. The ombudsman's office should be properly and adequately funded from state and federal funds; it should not be in the position of raising its own funds, even in part, from penalties.

Our greatest concern is with Sec. 8(a) which extends the title of "Ombudsman" to volunteer staff, and Sec. 10(h) which makes those volunteers representatives of the office of long-term care ombudsman. (There appears to be a grammatical problem with Sec. 10(h) as well.) It is true that there is a requirement that the state ombudsman provide training for all representatives of the office. And there are states which have successful programs of community volunteers who are able to mediate some of the less difficult problems of residents and their families and who serve the very useful function of providing regular community contact with the nursing home. Critical to the success of such volunteer programs, however, is the ability of the state ombudsman to provide extensive training, monitoring, oversight, and support. It appears to KINH that the current office of long-term care ombudsman is strained to the breaking point with the responsibilities they have at present to investigate and resolve

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the very difficult and complex problems that are brought before them with the limited staff they now have available; it is not realistic to think they could absorb the additional responsibility of training and oversight. Unless this legislature is willing to fund additional professional staff in the office of long-term care ombudsman, we do not believe they should be given additional responsibilities that they simply cannot carry out.

KINH has long held the view that the office of long-term care ombudsman is understaffed and underfunded, and that the coordination between that office, the Department of Social and Rehabilitation Services and the Department of Health and Environment is not all that it should be. We would like to see some of those issues addressed before expanding the system to include an additional role using local volunteers.

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p9.2.

STATE OF KANSAS

TOPEKA

HOUSE OF REPRESENTATIVES

ELLEN B. SAMUELSON
REPRESENTATIVE, 99TH DISTRICT
HARVEY, McPHERSON AND
BUTLER COUNTY AREA
RT. 1, BOX 73
NEWTON, KANSAS 67114
(316) 327-4807

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
ECONOMIC DEVELOPMENT
LOCAL GOVERNMENT

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you this afternoon.

One of the things that makes Kansas such a special place to live is its diversities . . . the weather, if you don't like it, just wait a bit; the landscape from the Flint Hills to the flat wheatfields of Western Kansas. Most of us would agree there are more similarities than differences in the people of Kansas--friendly, caring, and a good work ethic. These characteristics are present in a group of people in the area where I live (also in Ron Reinert's district). In addition, this group, Church of God in Christ, Mennonite has teachings that limit formal education. They operate two adult care homes in an excellent manner. I have visited in both. If all our homes had the caring, hard-working staff they have, we might not need all the regulations that are present today. The administrators in both homes are members of this church. It seems appropriate that they should be since most of their residents are also members of this church.

We have proposed in House Bill 2745 that a member of a church, not having the formal education requirement, may take the examination and upon passing, be permitted to be the administrator of a nursing home owned and operated by that particular church.

I'd like to introduce to you at this time two members of the Church of God in Christ, Mennonite, church. Kenneth Dyck of rural Newton is the spokesman for the church. Following his testimony, we will hear from Marion Becker, Administrator of Bethel Home in Montezuma.

Ellen S.

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attm #7

Appeal by the Church of God in Christ, Mennonite for
Passage of House Bill 2745

We, the Church of God in Christ, Mennonite would like to appeal to you as our lawmakers in regard to the passage of House Bill 2745.

We appreciate the laws of our state and enjoy the protection provided by them. As long as we can conscientiously do so, we wish to abide by them.

The two nursing homes owned and operated by the Church of God in Christ, Mennonite in Kansas are: Bethel Home, a licensed intermediate care facility for 60 residents at Montezuma, Kansas; and Moundridge Manor, a licensed intermediate care facility for 67 residents at Moundridge, Kansas. As conference entities, these facilities were built, and are owned and operated by the Church. A board of directors elected from the respective area congregations is responsible for the oversight of the facilities. A majority of the residents as well as most of the staff are members of the Church.

In the selection of administrators, a high priority is placed on the spirituality and natural ability of the applicants. Maturity, and the ability to relate well with people are also considered essential.

The Church of God in Christ, Mennonite, has historically discouraged its members from acquiring higher education. This is clearly illustrated in the lifestyles of our members. Many are self-employed in agriculture or small businesses while others are employed in local industries. Most are educated through eighth grade; a few have completed high school; very few are educated beyond high school.

We feel it is essential and appropriate that our administrators come from our church membership. We believe God gives special gifts or talents to individuals for special work. Our experience has been that as individuals, selected by the board, apply their God-given abilities they are able to fill the position of administrator in a way that has proven to be an asset to the care homes and the communities.

Bethel Home at Montezuma, Kansas has been in operation since 1949 and Moundridge Manor at Moundridge, Kansas has been in operation since 1974. We consider the operations of these facilities a success. We have been well served by able administrators. We are convinced that within our membership there are able individuals who can serve these institutions successfully in future years.

Other than the exemption requested in House Bill 2745, we feel we can conscientiously comply with the existing requirements for administratorship of adult care facilities.

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The Moundridge Manor had its beginning in 1974. The estimated cost was $690,000. The actual cost was $640,000, much of the labor being donated by the ten area churches. Money for this project was raised by various donations and interest-free loans.

Donations from Ten Area Churches	$285,422
Nelson Krehbiel Donation	10,000
Alferd Koehn Donation	10,000
Other Donations from Community	47,743
Gift Day	11,000
Private Loans	136,100
Mennonite Union Aid Loan	75,000
Christian Public Service Loan	10,000
Other Loans	49,800

The Manor has never paid interest, thereby saving Medicaid thousands of dollars.

The staff of our Home consists of 80 to 85 percent members of our faith. Two-thirds of the residents are also our members. Approximately one-half are covered by Medicare. We have been operating at a 98 percent full capacity with a waiting list.

Moundridge Manor has been giving 2.8 hours nursing care per resident. Bethel Home provides 3.3 hours as compared with the state requirement of 1.75 hours.

Our base rate per resident per day in a semi-private room is $34. Private rooms are $36 per day. There are four supplementary charges of $2 each, depending on the amount of care a resident requires. The maximum charge is $42 for a semi-private room, $44 for a private room.

Following is a break-down of Moundridge Manor costs:

	Our Cost	Medicaid Limit
Administration	$ 3.25	$ 5.91
Property	3.00	6.74
Room & Board	10.08	13.07
Health Care	20.80	23.10

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pg. 2.

State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Division of Health

Stanley C. Grant, Ph.D., Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

(913) 296-1343
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TESTIMONY PRESENTED TO

THE HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

BY

THE BOARD OF ADULT CARE HOME ADMINISTRATORS

House Bill 2745

This testimony is being presented on behalf of the Board of Adult Care Home Administrators. The board is the regulatory body responsible for carrying out the provisions of statutes (KSA 65-3501, et. seq.) requiring adult care home administrators to be licensed. The board consists of seven members appointed by the Secretary of Health and Environment. Two members are adult care home administrators, two are consumers, and three are health care professionals. The Kansas Department of Health and Environment provides staff support to the board.

KSA 65-3504 establishes statutory examination standards for licensure as an adult care home administrator. This statute also authorizes the Board to establish, by regulation, educational requirements.

Under existing regulation (KAR 28-38-19) a candidate for licensure must complete 60 college credit semester hours. Effective July 1, 1990, a candidate must possess a baccalaureate degree.

This bill amends KSA 65-3504 by exempting persons who are members of a recognized church whose religious teachings prohibit the acquisition of formal education from having to complete formal education requirements to sit for examination to become a licensed adult care home administrator. Such an administrator may only practice in a home owned and operated by such a recognized church.

The board during a public meeting February 8, 1990, approved a motion to support passage of House Bill 2745.

Presented by: Joseph F. Kroll, Director
Bureau of Adult and Child Care, KDHE
For the Board of Adult Care Home Administrators

Nadine Burch, Chairperson
Board of Adult Care Home Administrators

February 26, 1990

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Charles Konigsberg, Jr., M.D., M.P.H., Director of Health (913) 296-1343

James Power, P.E., Director of Environment (913) 296-1535

Lorne Phillips, Ph.D., Director of Information Systems (913) 296-1415

Roger Carlson, Ph.D., Director of the Kansas Health and Environmental Laboratory (913) 296-1619

KINH Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO
THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING HB 2745
ADMISSION TO ADULT CARE HOME LICENSURE EXAMINATIONS

February 26, 1990

Mr. Chairman and Members of the Committee:

KINH has consistently supported the requirement that candidates to take the examination for licensure as an Adult Care Home administrator have at least a Bachelor of Arts degree. We remain supportive of that concept, as it has been clearly demonstrated that candidates with that educational background are much more likely to pass the examination and to be successful as administrators than those with lesser educational qualifications. We are convinced, also, that the business of nursing home administration has become so complex that a strong program of education and training is essential.

We can agree, however, that there are other important factors involved in operating a nursing home successfully as well, factors of character and values less readily measurable than education. In the case of the religious denomination requesting this legislation, we know that they have demonstrated their ability to maintain conformity with all state and federal standards and regulations with notable success. These administrators might be said to have earned special consideration.

KINH would adamantly oppose any general weakening of the standards and qualifications of nursing home administrators, but will not oppose this very limited exception.

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attm #10

Kansas State Board of Nursing

Landon State Office Building
900 S.W. Jackson, Rm. 551
Topeka, Kansas 66612-1256
913-296-4929

Lois Rich Scibetta, Ph.D., R.N.
Executive Administrator

Janette Pucci, R.N., M.S.N.
Educational Specialist

Patsy L. Johnson, R.N., M.N.
Educational Specialist

Belva J. Chang, R.N., M.N., J.D.
Practice Specialist

TO: The Honorable Representative Marvin Littlejohn, Chairman & Members of the Public Health & Welfare Committee

FROM: Patsy L. Johnson, R.N., M.N.
Acting Executive Administrator
Kansas State Board of Nursing

RE: HB 3022

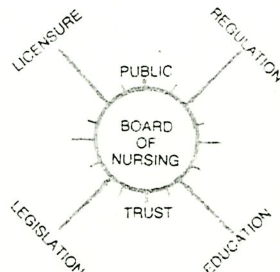
DATE: February 26, 1990

Thank you, Mr. Chairman and Committee Members for introducing HB 3022 and letting me present testimony on behalf of the Board of Nursing with regard to the changes we have proposed. As I mentioned when I brought forward the bill, most of the changes are for clean-up language and would strengthen processing procedures.

Section 1(d), page 2, discusses the temporary permit that is given to the registered nurse who is enrolled in a refresher course which includes 60 hours of theory and 180 hours of clinical. We wish to expand the language to include not only the nurse who is requesting reinstatement but also the nurse who is endorsing from another state and has not worked for five years or more. The prior language did not cover the nurse who is endorsing. At present, a 60 day temporary permit is issued in those cases. Most refresher courses are equivalent to a college semester; however, one refresher course is an independent study model and takes at least nine months to complete. Extending the time limit would assist at least a few nurses completing the refresher course without time difficulty.

Extend

Section 2(d), page 3, is in regard to the licensed practical nurse and the temporary permit for refresher course. The change in this statute would also extend the



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temporary permit to 180 days for the licensed practical nurse attending a refresher course. At present, only a 60 day permit is issued for both those reinstating and endorsing.

Section 3(a), page 3, increases the statute limits for fees:

Application for accreditation - schools of nursing
Biennial renewal of accreditation - schools of nursing
Application for approval of continuing education providers
Annual fee for continuing education providers
Approval of single continuing education offerings
Consultation by request, not to exceed per day on site.

The limits on these fees were established in July 1981. The last regulatory changes in K.A.R. 60-4-103 were completed in May 1982. There have been no increases in any of the fees since that date. It was felt that the fee limits needed to be elevated. There are no specific plans for any increases as of this date. There was also a change from a biennial fee to an annual fee for the continuing education providers. The rationale is explained in the next section.

Section 4(e)(1), page 5, changes the renewal period on reviewing the continuing education providerships. Approved providers would submit an annual report along with an annual fee. Rather than paying a large fee every five years, one-fifth of that cost would be paid on an annual basis. This would assist those from organizations with restricted budgets. Also, a providership could be cancelled during the five year period with no loss of a five year fee. The annual report would primarily contain statistical data, total program evaluation, and any changes in the program. The rationale for utilizing this approach was we would be able to obtain yearly statistics as to the types of offerings, when they were given, and the number of hours offered. The present process for renewals makes such statistical information impossible to collect.

A five year summary would be required and consist of a copy of the master plan of the program. No additional fee would be required at the five year review. The five year report would be a composite of all changes made during that time period. We would then have an updated program plan on file in the Board office. The intent of this change is to minimize the amount of duplicative work that is now being done every two years. A standardized format for the summaries would make it easier and more consistent for all the providers of continuing nursing education.

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attm. #11
pg. 2.

Section 4(e)(2), page 6, has been written in order to conduct surveys of continuing education providers. I have been doing surveys over the past year. Of the 30 site visits I have conducted, there was only one providership that did not meet criteria. That providership was offering institutional specific in-service under the guise of continuing education. On a second site visit, there were subsequent deficiencies with regard to behavioral objectives and nursing bibliography. The Board proposed continued monitoring of the providership. After submitting behavioral objectives and bibliographies for several months and a third site visit, we found no further deficiencies and the monitoring of the providership was discontinued. The intent of doing the survey is primarily an educational process; however, in the possibility that the provider does not meet established criteria, then we need a statute which would support action to remove the providership.

Section 5(a)(1) & (7), page 7, was suggested by the Board of Nursing's legal counsel, Steve Schwarm and Mark Stafford. Suggestions were made to expand on these two areas in order to strengthen these sections in determining grounds for disciplinary action.

Section 5(a)(3), page 7, was a change in language to complement the Risk Management statutes. Section 5(8), (e), (1),(2) and (3), page 8, were additions to also complement Risk Management language. In 1989, we had 240 cases reported to the Board for disciplinary action. There was some difficulty in grounds for action particularly in cases of unlicensed practice.

In summary, I would like to say that the Board of Nursing is asking for these changes in order to strengthen the statutes with regard to providers of continuing nursing education and grounds for disciplinary action. Hopefully, expanding the time frame for those who need temporary permits while attending refresher courses as well as changing to an annual and five year report for continuing education will assist potential licensees and the providers of continuing education. Except for small increases in certain fees within the next few years, there should be no economic impact from the changes in this bill.

Thank you for considering passage of HB 3022. I will gladly answer any questions.

PLJ:bph

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pg. 3.

KANSAS ASSOCIATION OF NURSING CONTINUING EDUCATION PROVIDERS

State Representative, The Honorable Marvin Littlejohn, the House Public Health and Welfare Committee. I am Martha Sanders,RN, President of the Kansas Association for Nursing Continuing Education Providers (KANCEP). KANCEP represent over half of the Providers of Continuing Nursing Education in Kansas. As their President and representative I am here to speak to House Bill 3022.

There are three specific areas to which I wish to speak.

1. **Sec. 3. K.S.A. 65-1118a (a)** which concerns the **COLLECTION OF FEES** and more specifically those items which relate to continuing nursing education.

   You will notice that the fee tripled in amount from $100 for a two year period, or $50 per year, to $150 per year. Or with a five year fee the increase is from $250 to $750.

   It seems to us that this is quite an increase in the poor economic times for the state. This will present an additional hardship on those small hospital Providership, most of which are located in western Kansas. Many of these Providerships are struggling to remain viable. With such an increased fee (triple), the Providership may elect not to renew the long term providership status which would put an additional burden on each individual nurse with added travel costs to attend the continuing education.

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Attm. #12

LEADERS IN PROFESSIONAL EDUCATION

The consultation by request will not be utilized with the fee doubled even when the consultation is needed. This could be harmful to the quality and the quantity of the continuing nursing education providerships.

It is felt that this cap is too great an increase.

2. **Sec. 3. K.S.A. 1989 Supp. 65-1119 (e) (1) Providers of continuing nursing education offerings.** The portion which concerns the **ANNUAL RENEWAL**.

We in KANCEP had been led to believe that the renewal period would be changed from a two year period to a five year period with a report due annually. The present Education Specialist assures us in KANCEP that this is the interpretation that she means. We trust that she will keep her word. Now suppose that she leaves that position and her replacement looks at this statute and interprets it to read annual renewal of all the vast amount of redundant paper work. Where are the Long Term Providers then after we had been promised to decrease the amount of paperwork and time required for the renewal?

3. **Sec. 3 K.S.A. 1989 Supp. 65-1119 (e) (2) <u>Survey of continuing education providers</u>.**

Many Approved Long Term Providers feel that the survey of a providership unannounced caused them difficulty depending on the topic. This is especially true if it is an in-house audience.

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attm. #12
pg 2

We feel that the increased fees may be to fund this practice. What about the out-of-state providers, of which there are a number, how are they surveyed? Would not such a survey be quite costly to Kansas? If they are not surveyed, then is this not discrimination?

Many of the Providers have been surveyed during the past year. There were relatively few difficulties. But many are concerned that "the consultant's fee" could be construed to apply, although the statute states "by request."

Futhermore, if we are approved, then why are we surveyed?

Thank you for allowing me to speak to you on behalf of the Kansas Association of Nursing Continuing Education Providers (KANCEP).

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Attm. #12.
pg. 3.

Faith Ball

February 26, 1990

TO: House Public Health and Welfare Committee

FROM: Great Plains Health Alliance

SUBJECT: **HOUSE BILL 3022**

Honorable Marvin Littlejohn, members of the Committee on Public Health and Welfare, and friends. Thank you for this opportunity to address nursing issues in the State of Kansas.

My name is Faith Ball. I am a past president of Kansas Association of Hospital Education Coordinators (KAHEC), and a member of Kansas Association of Nursing Continuing Education Providers (KANCEP). I am a registered nurse and a nurse consultant for Great Plains Health Alliance, Phillipsburg. This group is comprised of approximately 28 rural hospitals across the state -- 25 of which are situated from Highway 81 and west. This group includes 779 acute hospital beds, plus 396 long-term care beds, for a total of 1,175 hospital beds.

We would like to commend the Kansas State Board of Nursing and the Continuing Education Committee for their diligent work and long, conscientious hours of labor, as represented in HB 3022. However, we continue to have serious concerns about the language and some of the issues.

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attm #13

The concerns are as follows:

1. Page 3, beginning at line 32, dealing with the cap on fees. We understand that the board did not use all of its income the last year. Therefore, we question the need for increasing the fees as proposed.

Application, Schools of Nursing	$700 to $1,500	up 114%
Biannual renewal, Schools of Nursing	300 to 1,000	up 233%
Application, Cont. Education Providers	200 to 400	up 100%
Annual fee, Cont. Education providers	50 to 150	up 200%
Approval Single Offering	25 to 100	up 300%
Consultation by request, per day	300 to 600	up 100%

As the fees go up, the cost is passed on to the nursing licensee. In rural Kansas, it is already difficult to get appropriate programs for nurses, and increasing cost in an environment of low economy makes a difficult situation even worse. We recommend that the fees remain as they are now.

2. Page 5, line 35, states the providership approval shall expire every five years. We support this amendment to the bill. However, we do not support the requirement to submit an annual report, as called for on page 5, line 38. We would like to give you some background information on this issue. The continuing education providers in the state have asked the Board to reduce the amount of paperwork involved with the biannual renewal of a providership. The five-year renewal period seems to accomplish this objective. However, we believe that the proposed annual report might defeat the advantages because the overall reporting requirements are thereby increased. Specifically, we are concerned that the rules and regulations for the annual report might lead to more paperwork. Therefore, we recommend that the statute specify that the annual report include statistical information only.

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p 92.

3. Page 6, line 6, discusses a survey of continuing education providers. We have several concerns with this section.

   A. There is no indication as to who pays for the survey, the provider or the Kansas State Board of Nursing.
   B. There is no indication of cost of the survey. Would it be at $600 per day, as with consultation?
   C. There is concern as to how often these surveys would be conducted, since line 10 states "from time to time as determined by the board." Could this be every year? That would take a major block of time and be costly to nurses in the State of Kansas.
   D. Line 13 states if the board determines that any continuing education provider is not maintaining the standard required by this act ... notice thereof in writing ... to the continuing education Provider. A continuing education provider that fails to correct such conditions to the satisfaction of the board ... shall be removed. This does not seem to include due process, as the only stipulation is "to the satisfaction of the board."

We recommend that the section on page 6, line 6, concerning a survey of continuing education providers be deleted.

4. Page 8, line 26, discusses professional incompetency. Line 28 reads "one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board." This is an area of great concern. The decision can be based on "one incident" and "standard of care which constitutes gross negligence, as determined by the board." Line 32 and 33 talk of "Standard of care to a degree which constitute ordinary negligence, as determined by the board." We remind you that there are eleven members on the Kansas State Board of Nursing, which consist of

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two consumers, two mental health technicians, two licensed practical nurses and five registered nurses -- and they may determine gross negligence of registered nurses, advanced registered nurse practitioners, or registered nurse anesthetists.

In view of the fact that less than one-half of the board is composed of registered nurses, we are concerned with granting the board the authority of determining either gross or ordinary negligence.

We thank you for your consideration on these issues that affect all of Kansas, but especially the nurse in rural Kansas.

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Testimony for HB 3022

Public Health and Welfare Committee

My name is Linda Sebastian. I am Associate Director of Nursing at the Menninger Clinic. I am responsible for nursing education in the adult and children's hospitals at Menningers. We have a long-term providership for continuing education for RN's and LMHT's and I serve as providership coordinator.

I am speaking in opposition to Section 4(e)(2) (Survey of continuing nursing education providers).

Mrs. Pat Johnson, education specialist at the Kansas State Board of Nursing, has visited our facility four times since January 1989.

The first visit was made January 6, 1989, followed by a visit January 20, 1989, as the program she was auditing was a two-part series. I did not know she was coming. In fact, there was no statutory authority for her to be there. She informed me, when I inquired, that the Continuing Education Committee of the Kansas State Board of Nursing had directed her to visit all providerships. This is not in the provisions of the statutes and there was no budgetary allotment. The Appropriations Committee had specifically indicated that they wanted the Board of Nursing to allocate their resources for other more important issues.

So not only was Mrs. Johnson's visit unauthorized, but she did not have the criteria for her visits established. I did not receive the criteria for visits until after her visit.

During the first visit in January, Mrs. Johnson criticized us because she felt our program was specific to our institution. I took her remarks under advisement and have more narrowly defined what we can offer as CE credit.

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attm. #14

The visit in June was to a program offered by our Division of Continuing Education which offers national workshops at least 2-3 times a month. Menninger's Division of Continuing Education is nationally recognized for their excellent educational programs. At this workshop, there was a break in procedures due to a new coordinator and there were not specific objectives for nurses. Never mind the fact that the content was excellent, we were to be subjected to yet another visit. I quote Mrs. Johnson's letter to me of June 21, 1989:

> "I was very impressed with your speaker, Saul Scheidlinger. As a psychotherapy group theorist, he had a lot to offer as to both theory and clinical application."

John Homlish, Director of Division of Continuing Education, wrote to Mrs. Johnson accepting responsibility for the lapse and stated that it is not usual practice.

Yet another issue was raised during this site visit -- the issue of having nursing references on bibliographies. The speaker was a nationally known authority on the subject of group psychotherapy -- he is not a nurse. This is not a field in which nursing has done a lot of writing. Psychiatric practice is multidisciplinary and all disciplines can learn from each other. Not understanding this issue, Mrs. Johnson required that I add nursing references to all bibliographies. I believe this is unethical and unnecessary. We had national speakers who presented that had written many books and journal articles and were the authority on their topics, yet I had to do a literature search and find at least two or three or four nursing references --never mind that they were irrelevant --and provide them for nurses. This was very expensive and time consuming on my part. In fact, I was beginning to consider dropping our CE providership because the requirements were so ridiculous.

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pg. 2.

The requirements of nursing references on bibliographies was appealed at

the CE Committee of KSBN. I have written repeatedly, asking for clarification of the appeal process and have never received information on the process, and I note that the proposed changes still do not specify the appeal process for providers.

As a result of our questioning, the CE Committee finally conceded that since psychiatric nursing has such a multidisciplinary focus, perhaps we don't have to do this redundant literature search after all. Evidently I still have to have "some" nursing references, but it is unclear to me what the criteria are.

As a providership coordinator, I have found that the requirements from the site visits are redundant and meaningless and do not insure quality.

Additionally, I find the unannounced aspect of site visits to be unprofessional, demeaning and unacceptable. Other accrediting bodies inform us of their upcoming visits. If site visits are going to occur, I believe the following should be required:

1. Notice of date of visit
2. Purpose of visit - what criteria will be used

The purpose of KSBN is to protect the public. I know that they are behind on disciplinary matters regarding licensees who are a danger to the public. Quite frankly, I question the wisdom of funding site visits to CE providers when the fundamental purpose of the board is not being maintained. I also question the necessity of such intense surveillance, especially when the criteria is vague, inconsistent, and capricious.

I urge you to strike Section 4(e)(2) and disallow site visits except when clearly indicated. They are unnecessary bureaucratic requirements. If the KSBN persists in requiring meaningless busy work for providership coordinators, the cost of CE programs for RN's will increase and the providership will stop offering CE programs because of the unreasonable demands.

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Attm. #14.
pg. 3.

Menninger

December 14, 1989

Pat Johnson
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson
Suite 551 S
Topeka, Ks 66612-1256

Dear Pat:

Pearl Washington shared with me that she had met with The Continuing Education Committee regarding our concern about bibliography requirements. As I understand, there was no resolution. Would you please let me know what the next step will be?

Attached is a memo sent to me from John Homlish, Director of The Division of Continuing Education. I too share his concern regarding your policy of unannounced site visits. Could we discuss this at some point. Perhaps in a continuing education committee or a board meeting? I have told Dr. Homlish I would pursue his concern and would respond to him.

Sincerely,

Linda Sebastian, R.N., M.N.
Associate Director of Nursing

LS/lm

Enclosure

cc Pearl Washington

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The Menninger Clinic
Box 829
Topeka, KS 66601 0829
913 273 7500

NOV. 27 1989

The
Menninger
Clinic

To: Linda Sebastian

From: John S. Homlish, PhD
Division of Continuing Education

Date: November 22, 1989

Subject: Pat Johnson, Kansas State Board of Nursing

Linda,
I have read with interest the material you sent me in regard to the KSBN report on the Menninger Providership - including your own memo.

I am particularly concerned about your reference to Pat Johnsons' attendance at our programs. As Director of Continuing Education, I am particularly concerned about the KSBN's apparent policy that Pat (or any other designated staff) may attend our programs without fee and unannounced.

As a professional courtesy, the KSNB, following the practices of the AMA, the American Psychological Association, the Kansas Behavioral Sciences Regulatory Board, the National Board of Certified Counselors, the American Academy of Family Practitioner's, etc, ought to notify us that an official representative will be attending one of the meetings; that specific issues are to be examined and discussed (usually as part of a broader needs assessment, fact finding survey, etc.); and offer tuition payment.

This arrangement allows us to prepare a packet of conference materials, confirm that space is available and assure that staff is available to answer questions and provide time for discussions.

I cannot support this unilateral KSBN policy without further discussion. Several of our programs require a statement of credentials and approval prior to admission. These are "off-limits" to walk-ins.

Because the majority of our programs are designed for multi-specialty audiences, and because I am responsible for the local quality control of standards for several accrediting bodies, I am reluctant to comply with exceptions to accepted professional practice and policies. If the KSBN has specific concerns about the educational quality of our programs, or organizational details, they should notify you and/or me in writing, allow time for a response; and if their concerns persist, request a site-visit. If it is the function of their delegate to become familiar with how we do things, pursue a needs assessment of topics pertinent to nursing; survey teaching methodologies, etc., then that delegate should register through established procedures, offer tuition payment and accept the appropriate CE credit hours.

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Menninger

File copy - 11-30-89 [initials]

November 30, 1989

Pat Johnson, R.N., M.N.
Educational Specialist
Kansas State Board of Nursing
Landon State Office Building
900 S. W. Jackson, Rm. 551
Topeka, Kansas 66612-1256

Dear Pat:

This letter is in response to your recent correspondence, dated November 2, 1989. As you will note by the photocopy attached, I did not receive the letter in my office until November 22, 1989.

I would like to appeal the decision of Dr. Felts (I assume as member of the Continuing Education Committee, but since you did not specify her role in your letter, I may be in error) to require that I send in materials for workshops prior to the workshops based on her concern about old references on bibliographies. Pearl Washington, R.N., M.S., C.S., Director of Nursing, and I request to meet with either the Education Committee or the Board of Nursing.

We would be emphasizing the following points:

1. The workshops for the Division of Continuing Education are multi-disciplinary and multi-faculty. Many of the faculty come from other facilities across the nation. Other disciplines do not place as much emphasis on objectives, bibliographies and the mechanics of presentation as nursing does. When I met with you previously, Pat, you emphasized that objectives are important. I agree with you that objectives do guide the learning process and are the mechanism for evaluation. I do not think the same emphasis should be placed on bibliographies. When you requested the materials prior to workshops from August to October, I sent you a thick packet that was very time consuming, redundant and meaningless. When I received a request for approval for nursing credit for a workshop from the Division of

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attm. #14.
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The Menninger Clinic
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Continuing Education, I had to do a literature search in order to provide nursing references. Since psychiatric nursing is a field in which the multi-disciplinary perspective is so valuable, there were often few, if any, references for nursing. This requirement is unnecessary to provide a valuable learning experience for nurses. If the nurse desires further information, as a professional, they have access to literature searches.

In addition, I find it demeaning to both the presenter and to nursing to require nursing references on a bibliography. For example, a recent request for nursing continuing education was made for the Assaultive Patient workshop by Dr. Lion. Attached you will find his vitae and list of publications. Quite obviously, the man is qualified and is the authority on this subject. However, I had to do a literature search in order to comply with the requirements of the nursing references with the Kansas State Board of Nursing all to meet a mechanical requirement that will not affect the quality of the program. The time spent in maintaining the mechanics of continuing education programs has increased to the point that a decision will have to be made as to whether the Menninger Clinic can afford to have the continuing education providership. If we were to drop our nursing providership, because of the KSBN's requirements are so stringent, a valuable source of continuing education for psychiatric nurses will no longer be available. That would be a tragedy, not only for psychiatric nurses at Menninger and in Topeka, but we draw psychiatric nurses from across the country. The Nursing Department at Menninger has worked diligently to be considered a viable member of the multi-disciplinary. With these stringent requirements, we may not be able to continue to be a participant in these multi-disciplinary workshops.

I am familiar with the process of how Kansas came to be a leader in mandating continuing education credit for nurses as a means for quality care. However, I believe the recent emphasis on mechanics will increase the cost of continuing education hours and will decrease the availability of programs. I do not believe that such stringent surveillance was the intent of the mandatory continuing education process.

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2. In response to the concern about "old references", I do not believe Dr. Felts understands that psychiatric nursing emphasizes the evolution of a concept as much as the concept itself. Therefore, many of our bibliographies will have old references. In addition, many of the workshops have not had extensive coverage in the psychiatric nursing literature. If we were to only emphasize psychiatric nursing literature, we will not be providing our nurses who attend these programs a quality educational experience.

I will look forward to your response regarding the appeal process. It is my hope that by sharing our perspective with you and with the Continuing Education Committee or the Board, that we can come to some kind of agreement about what will be required. As you stated when you attended the Division of Education program, Pat, the program was excellent. I hope that we can continue to allow nursing credit for the majority of the Division of Continuing Education programs, as these are a source of quality education that is offered nowhere else in this region.

Sincerely,

Linda Sebastian, R.N., M.N.
Associate Director of Nursing
The Menninger Clinic

LS/ah
Enclosures
cc: Pearl Washington, R.N., M.S., C.S.

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Testimony for H B 3022.

Public Health and Welfare Committee.

My Name is John Stephen Hornlich. I am director of Continuing Education at Menninger. I also hold a faculty position in Medical Ethics in the Karl Menninger School of Psychiatry and Mental Health Sciences and also hold the position of Adjunct Professor of Nursing Ethics at St. Mary of the Plains College of Nursing, Stormont-Vail campus.

My testimony in opposition to H.B. 3022, Section 4(e)(2) (Survey of continuing nursing education providers), should in no way be construed or interpreted as officially representing the stated or intended position of Menninger, St. Mary of the Plains, or Stormont-Vail Hospital.

I am here at the request of Linda Sebastian, associate director of Nursing at the Menninger clinic, and because I have reacted negatively - through correspondence - to the KSNB's practice of unannounced site visits.

1). First, I am entirely in support of quality control in matters related to professional education, particularly, in matters pertinent to continuing education as they relate to re-licensure and recertification.

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In my view, the purpose of continuing health care education is the maintenance and improvement of professional knowledge or skills ~~competence~~ toward the goal of competent ~~professional~~ ~~[illegible]~~ care of patients.

2). Second, it is the responsibility of accrediting organization to see to it that providers meet the clear standards established for pertinent educational programs.

Typically, following initial approval as a continuing health care education provider accrediting organizations leave it to the organization's a locally designated director to design and present programs, as well as assure the maintenance of accrediting standards. Frequently, accrediting organizations require an annual report and summary of programs – as in the cases of the American Psychological Association, the Kansas Behavioral Sciences Regulatory Board, the National Board of Certified Counselors and the Kansas Board of Nursing. ~~x~~ Accrediting periods range from 2 ~~years~~ to 6 years.

The annual reports are structured to help ~~the~~ providers assess the quality of their programs and allow the certifying organization to review compliance – and to suggest or even require alterations where compliance is in question.

3). Third, With the exception of the Kansas Board of Nursing, no accrediting organization that

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I am familiar with, uses unannounced site visits as a method for assuring compliance.

If an accrediting organization has concerns about the quality of a provider's program, they express those concerns in writing and conduct an open inquiry to determine that organization's suitability to continue as an approved provider of continuing education — or to make required adjustments.

Except in situations where serious violations are suspected or documented, site visits are used only as a means of furthering research into needs assessments, uses of various teaching methodologies or other educationally related matters.

I know of ~~ho~~ no accrediting body which uses unannounced site visits.

4). The conducting of approved continuing health care education is founded on a tradition of mutual professional respect between accrediting bodies and local providers. An atmosphere of mutual regard and trust allows the accrediting and providing organizations to work toward the common goals of presenting programs for the ultimate improvement of patient care.

~~The~~ H.B. 3022, Section 4, e, paragraph 2

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lends itself to distrust, implied spying and a taint of sneakiness which undermines the tradition of professionalism which those of us in the field hold in high regard.

Paragraph 2 is vague, establishes no clear criteria for site visits and gives the impression that the site visitor is looking for trouble.

I am opposed to any stipulation which allows the continuance of the current practice of unannounced visits.

I also encourage the drafters of ~~the~~ Bill 3022, to make specific the conditions under which announced site visits are permitted. I suggest that the following ~~[illegible]~~ stipulation are included: (A) in circumstances where non-compliance is documented (B) in instances where legitimate research is the issue.

In my opinion, these conditions work toward the professionalism and trust needed to conduct high quality programs.

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