

Approved _____ Date 3-12-90

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

12:10 a/m/p.m. on March 2, 1990 in room 423-S of the Capitol.

All members were present except:

- Rep. Foster, Excused
- Rep. Cribbs, Excused

Committee staff present:

- Emalene Correll, Research
- Bill Wolff, Research
- Norman Furse, Revisor
- Sue Hill, Committee Secretary

Conferees appearing before the committee:

Dick Morrissey, Deputy Director, Department of Health/Environment
(offered balloon copy of HB 2757)

Chair called meeting to order when quorum was present. He made announcements in regard to bill action. If bill action is not completed today, this committee will meet again on March 5th, at noon recess of the House.

Chair drew attention to a request from Developmental Disabilities asking for a House Concurrent Resolution to designate March, 1990 as Developmental Disabilities Awareness Month. He stated with committee's permission he would have this Resolution introduced.

Chair drew attention to bill action for this date.

HB 2878. It has been requested this bill be withdrawn from our bill discussion/action agenda. There had been a number of problems in regard to this bill that had not been resolved.

HB 2594 (Also HB 2830 and HB 2803) addressed in sub-committee.

Chair drew attention to balloon copy of HB 2594, and recognized Rep. Shallenburger, Chairman of sub-committee on this bill to explain proposed changes.

Rep. Shallenburger explained that HB 2012 last year had been passed to allow for personal care attendants to help those in need of care, but legislation in that bill did not cover children. Language they have worked on in sub-committee will solve that concern. (See Attachment No. 1)

He noted HB 2803 and HB 2830 concerns are all addressed now in one bill, HB 2594. He explained changes, noting exemptions, i.e., those persons working for home health agencies. Proposed amendments should answer concerns in all three bills mentioned. There was discussion in regard to further concerns in regard to minors. Chair stated it might be wise to have further concerns corrected in Senate since we are limited on time in this committee today.

Rep. Shallenburger moved to amend HB 2594 as proposed in balloon, seconded by Rep. Scott. No discussion, vote taken, motion carried.

On the bill as a whole, Rep. Shallenburger moved to pass HB 2594 out favorably as amended, seconded by Rep. Hochhauser, motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 12:10 a.m. on March 2, 1990

HB 2594. (Exemption for Administrators in Mennonite Nursing Homes.)

Rep. Reinert moved to report HB 2745 favorably for passage, seconded by Rep. Branson, no discussion. Vote taken, motion carried.

HB 2802, (Receivership related to Nursing Home Facilities).

Chair drew attention to Attorney General's Opinion, 89-86, (Attachment No. 2). A copy of this opinion has been distributed to each member this date.

Discussion began on HB 2802. Rep. Sader moved to report HB 2802 adversely, seconded by Rep. Branson. Discussion continued, i.e., some felt there had not been enough information given to committee in order for them to make a sound decision; there is a problem that needs to be resolved; perhaps bankruptcy is not an issue that should be dealt with in Public Health/Welfare Committee; if the bill is passed in its current form it is advocating a landlord does not need to take any responsibility; this issue needs to be resolved, it won't go away. Vote taken, motion failed.

Rep. Shallenburger moved to send HB 2802 to an exempt committee to be protected, then have it referred to the Judiciary Committee where it could be better addressed, seconded by Rep. Wells. No further discussion, vote taken, motion carried.

Chair drew attention to committee minutes. Rep. Amos moved to approve committee minutes for February 20, 21, 22, 26th, seconded by Rep. Shallenburger, motion carried.

HB 2824, Concerning audit of SRS bills for health care services. Rep. Amos moved to amend HB 2824 on Page 4, line 23, by changing "may" to "shall", motion seconded by Rep. Green, motion carried.

Discussion ensued, i.e., SRS already has auditors for the bills they pay; no, this does not require an audit of every bill, the auditing firm would make the decision on what is to be audited.

On the bill as a whole, Rep. Shallenburger moved to pass HB 2824 favorably as amended, seconded by Rep. Sader. Discussion, Vote taken, motion carried. Recorded as NO votes were Rep. Buehler and Rep. Scott.

Chair drew attention to HB 2757. (Definition of ambulatory surgical centers).

Chair recognized Dick Morrissey, Department of Health/Environment who had provided a balloon copy of HB 2757 for recommended changes that Department of Health/Environment had agreed on with Kansas Medical Society. He explained the amended language defines "ambulatory surgical center", (Attachment No.3). Discussion ensued.

Rep. Weimer moved to adopt the proposed amendment sub. (f). bottom of page 1 and top of page 2 in HB 2757, seconded by Rep. Branson, motion carried.

On HB 2757 as a whole, Rep. Scott moved to pass out favorably as amended, seconded by Rep. Weimer. Discussion continued. Vote taken, division requested, show of hands indicated 9 in favor, 7 against., motion carried. Recorded as NO votes are Rep. Flower, Rep. Reinert, Rep. Shallenburger, Rep. Shumway, Rep. Amos.

At this time Chair announced there are three bills still in need of discussion/action and committee will meet Monday March 5th, on noon recess of the House Session.

Meeting adjourned 1:25 p.m.

HOUSE BILL No. 2594

By Special Committee on Public Health and Welfare

Re Proposal No. 42

12-21

12 AN ACT concerning in-home care services; providing an exemption
13 from the Kansas nurse practice act; establishing a personal care
14 attendant category of home health agency employed; amending
15 K.S.A. 65-5101 and 65-5115 and K.S.A. 1989 Supp. 65-1124 and
16 repealing the existing sections.
17

relating to individuals in need of in-home care; concern-
ing home health agencies and independent living agencies

39-7,100 and 65-6201

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

19 Section 1. K.S.A. 1989 Supp. 65-1124 is hereby amended to read
20 as follows: 65-1124. No provisions of this law shall be construed as
21 prohibiting:

- 22 (a) Gratuitous nursing by friends or members of the family;
- 23 (b) the incidental care of the sick by domestic servants or persons
24 primarily employed as housekeepers;
- 25 (c) caring for the sick in accordance with tenets and practices of
26 any church or religious denomination which teaches reliance upon
27 spiritual means through prayer for healing;
- 28 (d) nursing assistance in the case of an emergency;
- 29 (e) the practice of nursing by students enrolled in accredited
30 schools of professional or practical nursing nor nursing by graduates
31 of such schools or courses pending the results of the first licensing
32 examination scheduled by the board following such graduation;
- 33 (f) the practice of nursing in this state by legally qualified nurses
34 of any of the other states as long as the engagement of any such
35 nurse requires the nurse to accompany and care for a patient tem-
36 porarily residing in this state during the period of one such en-
37 gagement not to exceed six months in length, and as long as such
38 nurses do not represent or hold themselves out as nurses licensed
39 to practice in this state;
- 40 (g) the practice by any nurse who is employed by the United
States government or any bureau, division or agency thereof, while
in the discharge of official duties;
- 41 (h) auxiliary patient care services performed in medical care ~~fac~~

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ilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse;

(i) the administration of medications to residents of adult care homes or to patients in hospital-based long-term care units by an unlicensed person who has been certified as having satisfactorily completed a training program in medication administration approved by the secretary of health and environment and has completed the program on continuing education adopted by the secretary, or by an unlicensed person while engaged in and as a part of such training program in medication administration;

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

(k) performance in the home setting of selected nursing procedures, as specified by rules and regulations of the board, under the direction of a licensed professional nurse, which procedures are necessary to accomplish activities of daily living and which are routinely performed by the patient or patient's family in the home setting;

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

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

or

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

Section 1.

[Sec. 2.] K.S.A. 65-5101 is hereby amended to read as follows: 65-5101. As used in this act, unless the context otherwise requires:

(a) "Attendant care services" shall have the meaning ascribed to such term under K.S.A. 1989 Supp. 65-6201 and amendments thereto.

(a) "Council" means the home health services advisory council created by this act;

(b)

(b) "home health agency" means a public or private agency or organization or a subdivision or subunit of such agency or organization that provides for a fee one or more home health services at the residence of a patient but does not include local health departments which are not federally certified home health agencies, durable medical equipment companies which provide home health services

(c)

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by use of specialized equipment, the department of social and re- independent living agencies,
habilitation services and the department of health and environment;

(c) "home health services" means any of the following services (d)
provided at the residence of the patient on a full-time, part-time or
intermittent basis: Nursing, physical therapy, speech therapy, nu-
tritional or dietetic consulting, occupational therapy, respiratory ther-
apy, home health aid or medical social service;

(d) "home health aide" means an employee of a home health (e)
agency who is not licensed or professionally registered to provide
home health services but who assists, under supervision, in the
provision of home health services and who provides related health

care to patients; but shall not include employees of a home health agency
providing only attendant care services

(e) "part-time or intermittent basis" means the providing of home (f) see attached
health services in an interrupted interval sequence on the average
of not to exceed three hours in any twenty-four-hour period; (g)

(f) "patient's residence" means the actual place of residence of (h)
the person receiving home health services, including institutional
residences as well as individual dwelling units;

(g) "personal care attendant" means an employee of a home
health agency who is not licensed or professionally registered to
provide home health services but who provides, under supervision,
patient assistance with nutritional and environmental support and
personal hygiene, feeding, dressing and other related tasks but not
health-related care;

(h) "secretary" means secretary of health and environment; (i)
and

(i) "subunit" or "subdivision" means any organizational unit (j)
of a larger organization which can be clearly defined as a separate
entity within the larger structure, which can meet all of the re-
quirements of this act independent of the larger organization, which
can be held accountable for the care of patients it is serving and
which provides to all patients care and services meeting the standards
and requirements of this act.

Sec. 3 K.S.A. 65-5115 is hereby amended to read as follows: (2)
65-5115. (a) The secretary may require, as a condition to continued
employment by a home health agency: (1) Home health aides, who
were employed prior to the effective date of the rules and regulations
authorized by this act, to take and satisfactorily pass an examination
prescribed by the secretary and, upon failure to pass the examination,
to successfully complete an approved course of instruction; and (2)
home health aides, who are employed after the effective date of the
rules and regulations authorized by this act, after 90 days of em-
ployment, to successfully complete an approved course of instruction

that home health aides

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(f) "independent living agency" means a public or private agency or organization or a subunit of such agency or organization whose primary function is to provide at least four independent living services, including independent living skills training, advocacy, peer counseling and information and referral as defined by the rehabilitation act of 1973 title VII, part B, and such agency shall be recognized by the secretary of social and rehabilitation services as an independent living agency. Such agencies include independent living centers and programs which meet the following quality assurances:

(1) Accreditation by a nationally recognized accrediting body such as the commission on accreditation of rehabilitation facilities; or

(2) receipt of grants from the state or the federal government and currently meets standards for independent living under the rehabilitation act of 1973, title VII, part B, sections (a) through (k,) or comparable standards established by the state; or

(3) compliance with requirements established by the federal government under rehabilitation services administration standards for centers for independent living.

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The secretary may not require as a condition to employment or continued employment by a home health agency that persons providing only attendant care services as an employee of a home health agency complete any course of instruction or pass any examination.

for home health aides

1 and [to] take and satisfactorily pass an examination prescribed by the
2 secretary; and (3) personal care attendants employed after June 30,
3 1990, within six months after the date of employment, to successfully
4 complete an approved course of instruction.

5 (b) A course of instruction [may be prepared and administered
6 by any home health agency or by any other qualified person. A
7 course of instruction prepared and administered by a home health
8 agency may be conducted on the premises of the home health agency
9 which prepared and which will administer the course of instruction.
10 The secretary shall not require home health aides [or personal care
11 attendants] to enroll in any particular approved course of instruction,
12 but the secretary shall prepare guidelines for the preparation and
13 administration of courses of instruction and shall approve or dis-
14 approve courses of instruction. [Courses of instruction for personal care
15 attendants shall not exceed 40 hours in length.]

not

16 (c) The secretary may [require that home health aides, but not
17 personal care attendants,] complete the course of instruction and pass
18 the examination established pursuant to subsection (c)(3) of K.S.A.
19 39-936 and amendments thereto before enrolling in an approved
20 course of instruction authorized by this section. Home health aides
21 [and personal care attendants] may enroll in any approved course of
22 instruction.

23 (d) The examination required under this section [for home health
24 aides] shall be prescribed by the secretary and shall be reasonably
25 related to the duties performed by home health aides. The same
26 examination shall be given by the secretary to all home health aides.

27 (e) The secretary shall fix, charge and collect an examination
28 fee to cover all or any part of the cost of the examination required
29 under subsection (a) [for home health aides]. The examination fee shall
30 be fixed by rules and regulations of the secretary. The examination
31 fee shall be deposited in the state treasury and credited to the state
32 general fund.

Sec. 4. K.S.A. 1989 Supp. 39-7,100 see attached

Sec. 5. K.S.A. 1989 Supp. 65-6201 see attached

6
39-7,100 and 65-6201

33 Sec. [4] K.S.A. 65-5101 and 65-5115 and K.S.A. 1989 Supp. [65-
34 1124] are hereby repealed.

7
Kansas register

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

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Sec. 1. K.S.A. 1989 Supp. 39-7,100 is hereby amended to read as follows: 39-7,100.

(a) As used in this section:

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

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

(b) On and after October 1, 1989, the secretary as part of the home and community based services program shall provide that:

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

(2) individuals in need of in-home care who are recipients of attendant care services shall have the right to choose the option to make decisions about, direct the provisions of and control their attendant care services including, but not limited to, selecting, training, managing, paying and dismissing of an attendant;

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

and the parents or guardians of individuals who are minors at least 16 years of age and who are in need of in-home care

the received by such individuals

relates to home-based community services program.

*PKW
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placed in an institution as determined by the secretary;

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

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

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

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

Sec. 2. K.S.A. 1989 Supp. 65-6201 is hereby amended to read as follows: 65-6201. As used in this act:

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

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

- (1) Getting in and out of bed, wheelchair or motor vehicle, or both;
- (2) assistance with routine bodily functions including, but not limited to:
 - (A) Health maintenance activities;
 - (B) bathing and personal hygiene;
 - (C) dressing and grooming; and
 - (D) feeding, including preparation and cleanup.

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

- (1) Homemaker-type services, including but not limited to, shopping, laundry, cleaning and seasonal chores;
- (2) companion-type services including but not limited to, transportation, letter writing, reading mail and escort; and
- (3) assistance with cognitive tasks including, but not limited to, managing finances, planning activities and making decisions.

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

(e) "Individual in need of in-home care" means any functionally disabled adult individual in need of attendant care services because of physical impairment who requires assistance to complete functions of daily

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living, self-care and mobility, including, but not limited to, those functions included in the definition of attendant care services.

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

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 20, 1990

MAIN PHONE: (913) 296-2215
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The Honorable Marvin Littlejohn
Representative, 119th District
State Capitol, Room 426-S
Topeka, Kansas 66612

Dear Representative Littlejohn:

I am writing to you in regard to House Bill No. 2802. I enclose a copy of a legal opinion I issued on July 31, 1989, and numbered 89-96. The opinion was issued to the Honorable William W. Bunten and concluded that the lessor of a building does not have the same liability as the operators of a care home business in an arms length transaction.

Evidently there is continuing controversy as to the intent and meaning of the statute by the Kansas Department of Health and Environment. I would have hoped that my legal opinion would have settled the issued, but instead it has been only partially implemented. It would appear to me that the only way to settle any controversy that exists is to enact appropriate legislation which clearly defines what I believe the law to be. It is inconceivable to me that a court would sustain an obligation imposed by a state legislature that made a party liable outside their contractual relationship.

For the reasons stated, I am in support of House Bill No. 2802.

Sincerely,

A handwritten signature in black ink that reads "Robert T. Stephan".

Robert T. Stephan
Attorney General

RTS:bls

cc: Stephen P. Weir, Attorney at Law
Stanley C. Grant, Secretary of Health and Environment

*P. H. Weir
3-2-90
Attn #2*

HOUSE BILL No. 2757

By Committee on Public Health and Welfare

1-30

9 AN ACT concerning definition of ambulatory surgical center; medical
10 practice; amending K.S.A. 65-425 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 65-425 is hereby amended to read as follows:
15 65-425. As used in this act: (a) "General hospital" means an estab-
16 lishment with an organized medical staff of physicians; with per-
17 manent facilities that include inpatient beds; and with medical
18 services, including physician services, and continuous registered
19 professional nursing services for not less than ~~twenty-four (24)~~ 24
20 hours of every day, to provide diagnosis and treatment for four or
21 more nonrelated patients who have a variety of medical conditions.

22 (b) "Special hospital" means an establishment with an organized
23 medical staff of physicians; with permanent facilities that include
24 inpatient beds; and with medical services, including physician serv-
25 ices, and continuous registered professional nursing services for not
26 less than ~~twenty-four (24)~~ 24 hours of every day, to provide di-
27 agnosis and treatment for four or more nonrelated patients who have
28 specified medical conditions.

29 (c) "Person" means any individual, firm, partnership, corporation,
30 company, association, or joint stock association, and the legal suc-
31 cessor thereof.

32 (d) "Governmental unit" means the state, or any county, mu-
33 nicipality, or other political subdivision thereof; or any department,
34 division, board or other agency of any of the foregoing.

35 (e) "Licensing agency" means the department of health and
36 environment.

37 ~~(f) "Ambulatory surgical center" means an establishment with an
38 organized medical staff of physicians having written medical staff
39 bylaws concerning credentialing and privileging, with at least two
40 or more independent physicians or physician groups, with permanent
41 facilities that are equipped and operated primarily for the purpose
42 of performing surgical procedures, with continuous physician services
43 and registered professional nursing services whenever a patient is~~

(f) "Ambulatory surgical center" means an establishment with an organized medical staff of physicians with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures; with continuous physician services and registered professional nursing services whenever a patient is in the facility; and which does not provide services or other accommodations for patient to stay overnight. A distinct part of a physician's office, which is operated primarily for the purpose of performing surgical procedures shall not be eligible for it unless its medical staff bylaws permit any qualified physician apply to obtain staff membership.

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attm #3*

Att. 3

~~in the facility, and which does not provide services or other accommodations for patient to stay overnight. A distinct part of a physician's office, medical clinic or group physician practice which is operated primarily for the purpose of performing surgical procedures shall not require a license unless it meets all the criteria of this section.~~

(g) "Recuperation center" means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than ~~twenty-four (24)~~ 24 hours of every day, to provide treatment for four or more nonrelated patients who require inpatient care but are not in an acute phase of illness, who currently require primary convalescent or restorative services, and who have a variety of medical conditions.

(h) "Medical care facility" means a hospital, ambulatory surgical center or recuperation center.

(i) "Hospital" means "a general hospital" or "a special hospital."

Sec. 2. K.S.A. 65-425 is hereby repealed.

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

AKW
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Attn #3
pg. 2.

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