Approved 3-16-92
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Carol H. Sader at
Chairperson

1:30 ~~a.m.~~/p.m. on February 25, 1992 in room 423-S of the Capitol.

All members were present except:

Rep. Love, excused

Committee staff present:

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

Conferees appearing before the committee:

Rep. Sluiter (provided written materials)
Rep. Helgerson
Joseph Kroll, Department of Health/Environment, Div. of Adultl/Child Care
Joan Strickler, Kansas Advocacy/Protective Services, Inc.
Reverend Donald Moses, Ks. Colition on Aging
Marilyn Bradt, Kansans for improvement of Nursing Homes
John Grace, Kansas Association of Homes for the Aging
Vickie Foster, District IV V.President, Ks. Health Care Association
Mr. Ron Thornburgh, Asst. Secretary of State (Written testimony only)

Chair called meeting to order drawing attention to Committee minutes of February 11, 1992.

Rep. Bishop moved the minutes of February 11, be accepted as presented, seconded by Rep. Cozine. No discussion. Motion carried.

Chair drew attention to the communication from Rep. Sluiter noting it is in reference to legislation he requested for introduction at the meeting yesterday. (See Attachment No. 1)

Chair announced in reference to **HB 2308**, after the presentation by Dr. Donna Sweet last week, the sponsor of **HB 2308** suggested this legislation not be heard. The Chair complied.

HB 2702

Chair directed attention to **HB 2702** and requested a staff briefing.

Ms. Correll noted Dr. Donna Sweet and one other physician could find no adult care homes in Kansas to admit patients with AIDS. **HB 2702** has been introduced to try to deal with this concern. Ms. Correll explained the bill and gave rationale.

HEARINGS BEGAN ON HB 2702.

Rep. Helgerson stated that as a member of the Joint Committee on Health Care Decisions for the 1990's, he had reviewed information with health care providers and patients alike and it has been made clear that there is a need for proper placement facilities and sufficiently trained staff to care for individuals suffering from AIDS and HIV. **HB 2702** would put teeth in the law providing that an adult care home could lose its license for noncompliance. He answered numerous questions.

HEARINGS CONTINUED ON HB 2702.

Joseph Kroll, Department of Health/Environment, offered hand-out (Attachment No. 2). He noted it is the belief of the Department of Health/Environment that those adult care homes that refuse admission to an individual who has tested positive for HIV or been diagnosed with AIDS should be sanctioned. We do not condone discrimination against any person, but we have concerns that the provisions in the bill are so absolute as to make it unenforceable, and the bill gives no consideration to the fact that all facilities may not be staffed with persons qualified to care for these individuals. Closing a facility because of refusal to admit an AIDS/HIV patient and the effects it would have on other residents, family and staff should be given a lot of study. He offered alternatives for sanctions rather than closing the facility, i.e., a ban on admissions is always very effective; civil penalties with a fine not to exceed $2500. He drew attention to a balloon offered and recommendations therein. He answered numerous questions, i.e., he detailed "suspension"; nearly half of adult care homes do not have 24 hour registered nurses on staff; closures would create a disadvantage for other residents; requirements and regulations for homes caring for persons with communicable diseases.

Joan Strickler, Kansas Advocacy & Protective Services, will provide written testimony later. Ms. Strickler stated that the names of persons with no family, no conservator, and in need of services are sent to their Association by the Department of SRS. 1400 people currently are being served throughout Kansas. The Association of Ks. Advocacy & Protection Services supports the concept of **HB 2702.** Currently they are not aware that they are serving anyone with AIDS/HIV virus, but realize it may only be a matter of time. When this does occur, they would be supportive of the program suggested in **HB 2702.**

Rev. Don Moses, Kansas Coalition on Aging (Attachment No. 3), stated the support for adult care homes to admit or treat AIDS/HIV positive individuals. A full spectrum of long-term care services should be available to all citizens of Kansas. As long as persons can be cared for in their own homes that is preferable, however, when adult care home services become necessary they should be made available. He urged support.

Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc. offered hand-out (Attachment No. 4). She noted it is incumbent upon every nursing home to observe universal precautions with regard to communicable diseases in the care of all residents. Federal regulations prohibit discrimination against qualified handicapped persons in programs receiving federal financial assistance. They feel a more suitable penalty for failure to comply with respect to admission of a patient with AIDS/HIV could be imposed through current civil penalty procedures, and by prohibiting all new admissions until the violation is corrected. This action would be equally effective and better suited to the magnitude of the violation. With a change in the penalty provision, as recommended, they could be in support of **HB 2702.**

John Grace, President/CEO of Kansas Association of Homes for the Aging, (Attachment No. 5) stated it is the belief of those in his agency, there are laws currently in place with respect to discrimination that in the admission of persons with HIV/AIDS to nursing homes. He cited several statutes. He noted federal law provides for penalties against those nursing homes that discriminate against these individuals as well and he cited the penalties.

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on February 25, 1992

HEARINGS CONTINUED ON HB 2702.

John Grace continued: in addition to current laws, a person who believes that he/she has been discriminated against in nursing home admission has several options to pursue, i.e., he or she can make a complaint to the nursing home ombudsman; report the facility to the Department of Health/Environment; report complaints to the office of Civil Rights, or the Kansas Human Rights Commission which have the authority to assess fines. He then drew attention to those nursing homes that may not have the required staff to meet the physical needs of these particular individuals. He stated in view of current state/federal laws related to penalties, he believes **HB 2702** is an unnecessary duplication and he urged its defeat. He answered numerous questions.

Mr. Kroll also answered questions at this time.

John Kiefhaber, Executive Vice President of Kansas Health Care Association, commends the Committee and members of the Senate Public Health and Welfare Committee for the legislation proposed to help AIDS patients, however, the Association is in opposition to **HB 2702.** He then introduced Ms. Foster who provided testimony.

Vickie Foster, Vice President of District IV for Kanss Health Care Association, offered hand-out (Attachment No. 6). She cited reasons for the Association's opposition to **HB 2702, i.e.,** there are already federal regulations prohibiting discrimination for admission to adult care homes; mandating admission of HIV positive/Aids patients would be a disservice to all concerned, unless the following is considered: Professional nurses must be trained to provide special skills for treatment of patients with acute symptoms of HIV/AIDS. A mandated law may create a situation in which a facility does not have qualified staff to meet the physical/psychosocial needs of the AIDS patient. Further concerns are financial, i.e., labor, medication, IV feedings, other costs. She stated opposition to **HB 2702.** She answered numerous questions.

Recorded this date is (Attachment No. 7), Ms. Strickler's hand-out.

HEARING CLOSED ON HB 2702.

Chair drew attention to **HB 2762.**

DISCUSSION BEGAN ON HB 2762.

It was noted a SubCommittee had been appointed on **HB 2762** , with Rep. Love, and Rep. Carmody serving. Rep. Carmody detailed a balloon on **HB 2762** that was provided for members. (Attachment No. 8).

Rep. Carmody gave a detailed explanation of balloon on **HB 2762,** and provided background information and concerns expressed by conferees. He explained the intent of proposed changes formulated by the SubCommittee that would address those concerns. He answered numerous questions.

Rep. Carmody moved to adopt the amendment per balloon in Attachment No. 8 on **HB 2762** with the change in (d) on page 2 of balloon by deleting "funeral establishment" and inserting "Insurance carrier". Rep. Bishop seconded the motion. No discussion. Vote taken. Motion carried.

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S, Statehouse, at 1:30 a.m./p.m. on February 25, 1992

DISCUSSION CONTINUED ON HB 2762. Rep. Amos recorded as abstaining from voting.

Rep. Carmody moved to pass **HB 2762** out favorably as amended, seconded by Rep. Bishop. No discussion. Motion carried.

Rep. Amos recorded as abstaining from voting.

Rep. Carmody agreed to carry **HB 2762** on the floor of the House.

Chair drew attention to **HB 2761.**

Rep. Bishop made a conceptional motion to amend **HB 2761** by changing "may" to "shall" on page 1, line 15; authority to "collect such expenses as assessed by the Secretary of State as related to a field audit", and fees to stay with the office of the Secretary of State; the authority to audit to stay with the Secretary of State's office. Motion seconded by Rep. Lynch.

Discussion began i.e., some felt a set figure of $100 per audit is unrealistic as some audits will take longer than others; the Secretary of State's office has asked for clarification, so Committee should comply; try current procedures for another year and see if it works; clarification for audit fees and where fee fund will be held; Secretary of State's office has stated they are not able to recover costs of audit expenses.

Vote taken, Chair in doubt. Show of hands indicated 8 in favor, 8 against, with Chair then casting deciding vote. Motion carried.

Rep. Amos recorded as abstaining from voting.

Further discussion.

Rep. Wiard moved to recommend **HB 2761** favorably as amended, seconded by Rep. Bishop.

Discussion continued, i.e., some stated this is a senseless bill since the Secretary of State currently has the authority for the audit, and duplicative language isn't necessary. Some think a message should be sent to the office of the Secretary of State with language, "to audit when they deem necessary" would not change current law; to change "may" to "shall" does send a message to the office of Secretary of State; recovery of audit costs should far exceed the cost of printing of the bill.

Vote taken, Chair in doubt. Show of hands indicated 8 in favor, 8 against, with Chair casting deciding vote. Motion carried.

Rep. Amos recorded as abstaining from voting.

Chair adjourned the meeting at 3:10 p.m.

Note: Written testimony from Ron Thornburgh, Office of Secretary of State was provided after meeting. (see Attachment No. 9).

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-25-92

NAME	ORGANIZATION	ADDRESS
JOHN BAUGHMAN	KANSAS PHARMACISTS ASSOC.	2432 ATCHESON LAWRENCE KS 66047
Stacey Shelden	"	1723 N. Athenian Wichita KS 67203
Debbie Hemmen	"	Rt. 1 Conway Spgs KS 67031
Hugh Snell	"	2186 Bella Vista Wichita 67203
[illegible]	KOMK	Topeka
Jim McBride	observer	Topeka
Joan Stucky	KAPS	Manhattan
Marilyn Bradt	KINH	Lawrence
[illegible]	KOHE	Topeka
Andrew Pellett	KS HE	Topeka
Rosie Day	Bd. of Cosmetology	Hays
Ava Frenie	Bd. of Cosmetology	Wichita
JOHN KIEFHABER	Ks. Health Care Assn.	Topeka
Vickey L. Foster	Ks. Health Care Assn.	Topeka
Annette Siebert	KAHA	Topeka
Steve Burghart	Ks. Pharmacists Assoc.	Topeka
Jane S. Henry	Ks Pharmacists Assn.	Olathe
Carol J. Morgan	" "	Topeka
Dale Smith	Ks Pharmacists Assn	Derby
Robert R Jones	" " "	Lenexa
Amy C Bixler	N.O.W.	Topeka
Maureen Callen	Planned Parenthood	Topeka
George Goebel	AARP-SLC.-CCTF	
Lee Ann Bohm	observer	Topeka
Tonya McClure	self	Glen Elder
Harold Heidrick	Ks. Prof N.H. Adm. Assoc.	Beloit
Bill Peterson	Ks. prof NH Adm. Assoc.	Hays

GUEST REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-25-92

NAME	ORGANIZATION	ADDRESS
Christine Smoller	SELF	
Lyndon Dunn	KDOA	Topeka
Wendell STROM	AARP-CCTF	TopeKA

STATE OF KANSAS

JACK SLUITER
REPRESENTATIVE, 100TH DISTRICT
SEDGWICK COUNTY
STATE CAPITOL, ROOM 182-W
TOPEKA, KANSAS 66612
(913) 296-7571

728 VALLEYVIEW
WICHITA, KANSAS 67212
(316) 722-2563

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ECONOMIC DEVELOPMENT
LABOR AND INDUSTRY
LOCAL GOVERNMENT

mobile #

February 25, 1992

To: Representative Sader and Public Health and Welfare Committee members.

The bill being requested is an outgrowth of information presented this summer during the SRS Task Force meetings on finance.

It seems that Congress has become concerned about how doctors invest money in medical facilities and equipment; and how these investments may effect medical costs.

As a result Congress directed HICFA to request doctors to provide medical financial investment information to the goverment. Also Congress directed doctors to disclose these investments to Medicare patients.

What this requested bill does is require doctors to disclose these investments to all classes of patients.

Mind you this bill is only disclosure! There are no prohibitions or restrictions. Several states have legislation that does restrict some forms of medical investments by doctors.

The bill is modeled after the existing Florida Statute and follows the AMA recommended guidelines for voluntary disclosure.

Basically this is a consumer information act, not unlike truth in lending or disclosure of used car mileage and condition.

Sincerely,

H&W
2-25-92
attm #1.

Jack Sluiter
Representative, 100th District
JS:dr

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N – Statehouse

Phone 296-3181

February 4, 1992

TO: Representative Jack Sluiter Office No. 182-W

RE: Physician Reporting of Income to Health Care Financing Administration

It appears likely that the concerns that you have heard in regard to physicians being required to report all sources of income to the Health Care Financing Administration (HCFA) arise indirectly from two pieces of federal legislation that date to 1986 and 1989.

In 1986 the Congress, through committees of the House of Representatives, investigated allegations of physician conflict of interest in the Medicare program in the form of referral for laboratory and other types of services to facilities or providers in which the referring physician has a financial interest. In 1986, the primary Congressional interest was centered on clinical laboratories. The Congress did enact the Clinical Laboratory Improvement Act (CLIA) in that year, and although the bill that was finally enacted did not bar physician referrals to laboratories in which the physician had a financial interest, at one point this type of provision was in the bill. At the time CLIA was enacted, there was agreement that physician referrals under the Medicare program should be monitored.

The 1989 federal Omnibus Budget Reconciliation Act (OBRA 1989), the fiscal 1990 budget reconciliation bill, also contained substantive legislation barring Medicare payments to clinical laboratories when the referring physician has an ownership interest or other financial arrangement with the laboratory. The federal legislation permits a number of exceptions to the prohibition on payments to laboratories, including laboratory services provided directly by the physician or his or her employees or by an employee under the direct supervision of the physician (in-office laboratories); services provided as a part of a group practice; services within prepaid group health plans; and services provided in rural laboratories. In addition, investments in a corporation listed on a major stock exchange with total assets exceeding $100 million are also exempt if the corporation owns clinical laboratories. The ban became effective January 1, 1992.

Although the 1989 OBRA legislation prohibited Medicare referrals only to clinical laboratories, there was consideration in 1989 and continuing through 1990 and 1991 of banning all Medicare referrals to services or facilities and provider groups in which the referring physician had a financial interest. Congressman Stark has played a dominant role in promoting legislation of this type. In part, the monitoring is to gather data on referrals for CAT scans and MRI procedures when the referring physician has a financial interest or ownership of the diagnostic equipment. The

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monitoring has taken the form of looking at the broad referral patterns of physicians who participate in Medicare. In order to monitor referrals effectively, HCFA has requested data from physicians who participate as Medicare providers on their health-related financial interests.

Two recent requests from HCFA have apparently triggered anxiety among some physicians. Ownership-investment surveys were sent to laboratories and physicians last fall and were due back on November 1, 1991. Additional surveys were anticipated to be requested through the Medicare carrier in each state in December for other health care entities.

In summary, although the federal legislation banning Medicare referrals by physicians having a financial interest in the service to which a referral is made currently extends only to clinical laboratories, there is broad based monitoring taking place that extends beyond laboratory referrals. According to several sources, this monitoring has led some physician providers to be apprehensive as to the use to which such data will be put and the potential for additional regulation of referrals for diagnostic purposes.

Should you need additional information, please contact me.

Emalene Correll
Research Associate

92-0131/EC

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2-25-92
Attm #1
Pg 3 of 4.

LEGAL/LABOR

'States lag in regulating self referrals'

By David Burda

Physician ownership still is a largely unregulated activity at the state level, according to a study obtained exclusively by MODERN HEALTHCARE.

Even in the handful of states with laws dealing with physician ownership issues, enforcement of the statutes has been lacking.

The study, by McDermott, Will & Emery, a leading healthcare law firm, supports the contention that most of the enforcement activity affecting physician ownership is occurring at the national level.

Examples of the national activity include HHS' "safe harbor" rules, which define provider business arrangements that won't be considered illegal under the anti-kickback provisions of the Medicare and Medicaid fraud and abuse statutes (MH, Aug. 5, p. 24).

The Internal Revenue Service also jumped into the fray by issuing a legal opinion concluding that certain types of hospital-physician joint ventures would place a not-for-profit hospital's tax status at risk (MH, Dec. 9, p. 2).

HHS, the IRS and other policymakers are concerned that physicians who own medical facilities may unnecessarily refer patients to those facilities to increase the return on their investment.

State actions. Mirroring federal concerns, five states have placed strict restrictions on self-referring physicians. Two of those states—Michigan and New Jersey—prohibit physicians from owning any medical facility to which they refer patients.

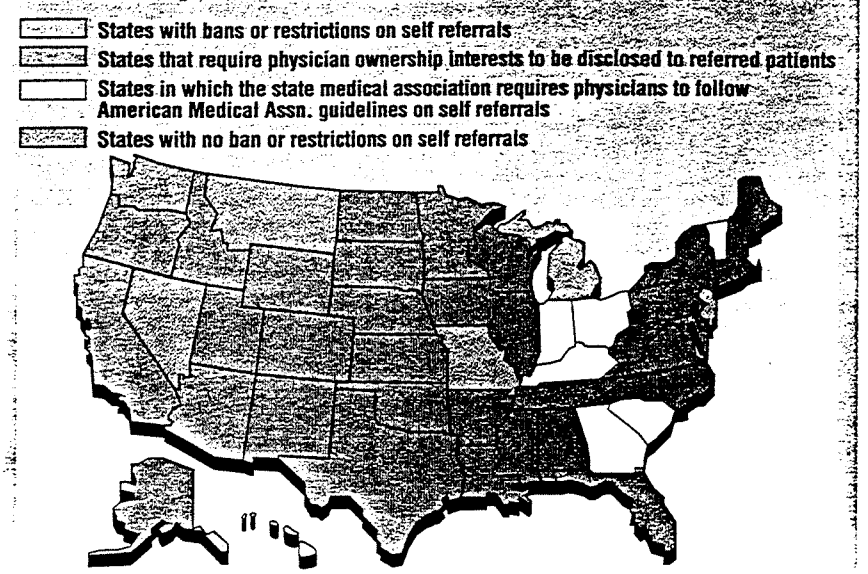
The study also found that 14 states require physicians to tell patients if they have an ownership interest in a facility to which they are being referred. Seven states and the District of Columbia have no restrictions, but their medical societies require members to adhere to the American Medical Assn.'s ethical guidelines on self referrals.

The study was conducted before the AMA strengthened its guidelines at its interim annual meeting earlier this month in Las Vegas, Nev. (MH, Dec. 16, p. 4). The AMA now says physicians should own facilities only if there's a need in the community and no other financing mechanisms are available.

In the other 24 states, the study found no state or professional restrictions on physician self referrals.

State-by-state review of self-referral laws

Half the states place at least minor restrictions on self-referring physicians.



Source: McDermott, Will & Emery; Modern Healthcare

Graphic by Cynthia Watson

Bans. Michigan's physician licensing law defines "unprofessional conduct" to include "directing or requiring an individual to purchase or secure a drug, device, treatment, procedure or service from another person, place, facility or business in which the licensee has a financial interest."

"This broad statute appears to prohibit any referral of a patient to a facility in which the physician has any financial interest," said Douglas Mancino, an attorney with McDermott, Will & Emery's Los Angeles office.

By law, physicians who violate the Michigan law could lose their licenses to practice or suffer other lesser sanctions. However, what constitutes a violation is a matter of interpretation.

Legislative, regulatory and judicial attempts to clarify the language of the law have failed since the law was enacted in 1978, said Nancy Fiedler, a spokeswoman for the Michigan Hospital Assn. Specifically, the issue is whether the statute's wording about "directing or requiring" means "referring."

Because the law's terms haven't been defined, the state has never enforced the statute, she said. "We don't think the statute has slowed joint ventures between hospitals and physicians. They've gone ahead on their own with this club over their heads," Ms. Fiedler said.

In New Jersey, a law that took effect on July 1 prohibits physicians from referring patients to medical facilities in which the physicians have a "significant beneficial interest."

The law defines "significant beneficial interest" as any financial interest except that in publicly traded companies. The prohibition doesn't apply to certain services, including any provided at a physician's office, radiation therapy, lithotripsy and renal dialysis. Also, the law doesn't apply to ownership arrangements that predate enactment of the statute as long as the physicians disclosed their ownership interest to patients.

Florida is expected to consider legislation next year that would ban self referrals to physician-owned clinical laboratories, diagnostic imaging centers, radiation therapy centers and physical therapy centers.

Other strict laws. Three states don't ban physician ownership, but they place restrictions on self-referring physicians, the study found.

- In Missouri, physicians can lose their licenses if they require their patients to use medical facilities, drug suppliers or device suppliers that they own.
- In Montana, physicians are prohibited from owning financial interests in drug companies unless the interests are shares in publicly traded companies.
- In Nevada, physicians can't refer patients to laboratories in which they have an interest unless they're operated solely for the diagnosis and treatment of the physicians' own patients. Physicians also can't own a controlling interest or more than 10% of the available stock in any entity with a pharmacy license.

While some states, such as Florida, may be favoring bans on physician ownership, others, such as Alaska, don't want any part of it.

"The state has really benefited from physician ownership," said Jennifer Christian, M.D., president of the Alaska State Medical Assn. "In physician shortage areas or frontier areas, it's the entrepreneurial activity by some physicians that has put in the medical infrastructure." ■

PHRW 2-25-92 attm #1 99484

State of Kansas
Joan Finney, *Governor*

Department of Health and Environment
Azzie Young, Ph.D., *Secretary*

Reply to:

Testimony presented to

The House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2702

The Kansas Department of Health and Environment (KDHE) believes that adult care homes who refuse admission to an individual who has tested positive for a HIV infection or has been diagnosed with AIDS should be sanctioned. We also appreciate that although there are existing state and federal laws that prohibit such discrimination, enforcement of such prohibitions may be enhanced by placing certain authority within the licensing agency.

Current federal and state laws which provide protection to individuals who have tested positive for the infection, or have been diagnosed with AIDS are:

K.S.A. 44-1001 - Kansas Act Against Discrimination. Prohibits discrimination in public accomodations on basis of disablity.

K.S.A. 65-6002 (d) - Prohibits the use of information concerning HIV status to lead to discrimination in the provision of medical care or acceptance into any facilities or institutions for medical care, housing, etc.

45 CFR 84.52 - Prohibits agencies which receive federal financial assistance from denying services to qualified handicapped persons.

36 CFR 36.104 - Americans with Disabilities Act. Specifically includes persons with HIV infection in the definition related to disability.

Although we do not condone discrimination against any person, we have concerns that the provision in this bill is so absolute as to make it unenforceable. The bill also gives no consideration that a particular facility may not be appropriate for a person who is HIV positive.

We believe consideration must be given to the impact a denial or revocation can have on the facility and its residents. An order suspending or revoking a license should not be initiated unless the state is willing to deal with the facility closing. Closure of a facility is a traumatic experience for the residents, family, and staff. Because of relatively high occupancy rates, residents may have to move miles away, and terminate long standing relationships. Closure of a facility should be the last resort in seeking compliance, not an initial act.

An individual requiring total parenteral nutrition could not be cared for safely in a facility which did not have registered nurses on duty twenty-four hours a day. Only 52% of nursing facilities in Kansas

PH/WW
2-25-92
Attm# 2

have registered nurses twenty-four hours each day. Persons with AIDS can develop a form of dementia in which their behavior can be dangerous to other residents. All nursing facilities will not be able to provide the services needed to serve the individual and other persons within the facility.

K.A.R. 28-39-83 specifies a facility can only admit persons whose nursing care and physical needs can be met. Other regulations allow a facility to transfer/discharge a resident with proper notice if the resident develops a condition the facility cannot provide appropriate care for. This concept of allowing admission and discharge because of medical conditions protects the care of all residents and could be compromised by this bill.

To address these concerns, we suggest the alternative of authorizing a civil penalty whenever a person has been denied admission based upon any discrimination protected by law. Supplementing existing laws with civil penalty authority will be an effective means to meet the intent of this bill without threatening the security of existing residents.

To our testimony we have attached proposed balloon amendments be believe would enhance protection against all inappropriate discriminations.

The Kansas Department of Health and Environment respectfully requests that the committee favorably report House Bill 2702 as proposed to be amended by this agency.

Presented by: Joseph F. Kroll, Director
Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 25, 1992

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2-25-92
Attm #2
Pg 1 of 3

PHED
2-25-92
Attach #7
HB 2702

Session of 1992

HOUSE BILL No. 2702

By Joint Committee on Health Care Decisions for the 1990s

1-15

AN ACT concerning health care; relating to licensed adult care homes admitting individuals who have tested positive for HIV infection or have been diagnosed with AIDS; amending K.S.A. 39-931 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) "AIDS" means the disease acquired immune deficiency syndrome.

(2) "HIV" means the human immunodeficiency virus.

(b) Licensed adult care homes, as defined in K.S.A. 39-923, and amendments thereto, ~~who receive federal or state money from any federal or state agency~~ shall not refuse to admit or treat individuals who have tested positive for HIV infection or ~~are suffering from~~ have been diagnosed as having AIDS, solely on the basis that individual has tested positive for HIV infection or has been diagnosed as having AIDS. No adult care home shall refuse to admit or treat any individual on the basis of any discrimination prohibited by state or federal law.

~~(c) Violation of subsection (b) shall be grounds for denial, revocation or suspension of the adult care home's license.~~

(c) Upon finding a violation of subsection (b) by the secretary of health and environment, the secretary shall assess a civil penalty not to exceed $2,500. Such civil penalty shall be due and payable within 10 days after written notice of assessment.

Sec. 2. K.S.A. 39-931 is hereby amended to read as follows: 39-931. *(a)* Whenever the licensing agency finds a substantial failure to comply with the requirements, standards or rules and regulations established under this act, ~~*the requirements of section 1,*~~ or that a receiver has been appointed under K.S.A. 39-958, and amendments thereto, ~~it~~ *~~the licensing~~ agency* shall make an order denying, suspending or revoking the license after notice and a hearing in accordance with the provisions of the Kansas administrative procedure act.

(b) Any applicant or licensee who is aggrieved by the order may appeal such order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 3. K.S.A. 39-931 is hereby repealed.

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

Don Moses

KANSAS COALITION ON AGING

1195 S.W. Buchanan, Topeka, KS 66604

Telephone: (913) 235-1367

Testimony Presented to
The House Public Health and Welfare Committee

Concerning HB No. 2702

February 25, 1992

Mr. Chairman and Members of the Committee:

The Kansas Coalition on Aging supports the requirement for adult care homes to admit or treat AIDS/HIV positive individuals. Our first Public Policy Priority states: "KCOA supports the development of a continuum of care which will provide a complete range of long term care services for Kansans with long term care needs, regardless of their age.--"

The full spectrum of long term care services should be available to all Kansas Citizens. As long as a person can be cared for in his own home, that is preferable. However, when adult care home services become necessary, they should be available.

The observance of prescribed preventive care approaches in the care of all patients will protect both staff and other residents from AIDS/HIV as well as other equally dangerous communicable diseases such as Hepatitis B. Requiring the admission of these individuals does not pose any danger to people already in residence and provides for the right for care for a segment of our population.

Thank you for your positive consideration of this piece of legislation.

Faithfully yours,

The Reverend Donald H. Moses, KCOA

PHHW
2-25-92
Attm #3

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 2702

February 25, 1992

Madam Chairperson and Members of the House Public Health and Welfare Committee:

Kansans for Improvement of Nursing Homes believes that all nursing homes must maintain a level of care sufficient to accommodate any person needing subacute nursing care which does not require extraordinary equipment or unusual skills. Persons who have tested positive for HIV infection or have been diagnosed with AIDS are included in this general category until such time as the disease or its manifestations may have progressed to the point of requiring hospitalization. We believe, therefore, that nursing homes should be required to admit and treat such persons.

The infection control precautions required by state and federal nursing home regulations to prevent the spread of communicable diseases are no different for HIV/AIDS patients than for Hepatitis B or any other such infectious disease. It is incumbent upon every nursing home to observe universal precautions with regard to communicable diseases in the care of all residents.

Federal regulation prohibits discrimination against qualified handicapped persons in programs receiving federal financial assistance, including persons who have AIDS or AIDS-related conditions. That means that nursing homes participating in the Medicaid program may not discriminate against those persons. While that could be taken to show that HB 2702 is unnecessary, we believe, to the contrary, that a state statute would provide useful additional emphasis.

HB 2702 would require the Department of Health and Environment to revoke the license of a facility that discriminated against AIDS patients. Revocation of the license of an Adult Care Home is the ultimate penalty -- one that should be reserved for the most serious and flagrant violations of state and federal regulations. A more suitable penalty could be levied through K.S.A. 39-946, the current civil penalty procedure, or K.S.A. 39-953a, which prohibits all new admissions to the nursing home until the violation is corrected. Such action would, we believe, be equally effective in correcting the situation and better suited to the magnitude of the violation.

With a change in the penalty provision as recommended above, KINH would be in full support of HB 2702.

Marilyn Bradt
Legislative Coordinator

PH&W
2-25-92
Attm #4

Kansas Association of Homes for the Aging

To: Representative Carol Sader, Chairperson
House Public Health & Welfare
From: John R. Grace, President/CEO
Kansas Association of Homes for the Aging
Date: February 25, 1992
Re: House Bill 2702

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

The Kansas Association of Homes for the Aging is a trade association of 130 not-for-profit retirement and nursing homes in Kansas.

My testimony today deals with HB 2702, regarding penalties for nursing homes who refuse to admit persons with AIDS or the HIV infection.

Nursing homes are currently admitting persons with AIDS or HIV infection. A member facility in Wichita has admitted three persons with AIDS in the past six months. Additionally, facilities in Junction City, Topeka, and Concordia have admitted persons with AIDS. Facilities are continuing to train staff and educate residents about AIDS. It has only been since 1986 that the Department of Health and Environment regulations were changed to allow admission of persons with infectious diseases. Nursing homes are making great strides in dealing with this very serious health care crisis.

Both federal and state law currently prohibit discrimination of the basis of AIDS or HIV infection.

K.S.A. 65-6002(d) prohibits the use of information regarding cases of AIDS or HIV infection in any manner which would lead to discrimination against any individual with regard to provision of medical care or acceptance into any facilities or institutions for medical care, housing, or for the provision of any other goods or services. Any person violating this law is guilty of a class C misdemeanor.

Additionally, the federal Americans with Disabilities Act, 42 U.S.C. 12101 et seq, prohibits nursing homes from denying a handicapped individual: benefits or services, provide benefits or services that are not as effective as the benefits or services provided to others, provide benefits or services in a manner that limits or has the effect of limiting the participation of that individual, or providing

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different or separate benefits or services to that individual. 28 CFR 36.104 specifically defines persons with AIDS or HIV infection as disabled individuals, and therefore governed by the Americans with Disabilities Act.

Federal law provides for penalties against nursing homes that discriminate against persons with AIDS or HIV infection. The penalties include loss of medicaid funding (45 C.F.R. 84.4), liability for actual, nominal and/or punitive damages, and/or the prevailing party's attorney's fee (42 U.S.C. 2000a-3).

In addition to the above laws, a person who believes that he/she has been discriminated against in nursing home admission has several other options to pursue. They can make a complaint to the nursing home ombudsman and have the issue resolved in that forum. Also, they can report the facility to the Department of Health and Environment, who has the authority to investigate and to report complaints to the Office of Civil Rights or to the Kansas Human Rights Commission which can assess the nursing home a $2,000 fine for pain and suffering as well as be required to admit the proposed resident.

HB 2707 also conflicts with K.A.R. 28-39-83, which requires nursing homes to admit only those persons whose nursing care and physical needs can be met. There are circumstances when a person should be denied admission to a particular nursing home, whether or not they are a person with AIDS. Persons who require a level of care greater than the nursing home is capable of providing or who need active treatment for a mental condition should be denied admission to a nursing home. Persons with AIDS who require total parenteral nutrition cannot receive appropriate care in facilities that do not have registered nurses on duty 24 hours a day. Additionally, some facilities are not able to care for persons that suffer from severe dementia, which can happen in some AIDS cases. HB 2707 would require a nursing home to admit a person when the facility was clearly incapable of meeting the person's needs.

In view of the current state and federal law and related penalties, we believe that House Bill 2707 is unnecessary duplication and therefore urge that it be defeated.

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KHCA

Member of ahca

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TESTIMONY

before the

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

by

VICKEY L. FOSTER

DISTRICT IV VICE PRESIDENT

KANSAS HEALTH CARE ASSOCIATION

House Bill No. 2702

"AN ACT concerning health care; relating to licensed adult care homes admitting individuals who have tested positive for HIV Infection or have been diagnosed with AIDS; amending K.S.A. 39-931 and repealing the existing section.

Chairperson Sader and Committee Members:

I am currently District IV Vice-President for Kansas Health Care Association (KHCA) and have been Director of Operations for Hillhaven Corporation in Kansas for the last two and one-half years. I have been in long term care for 25 years and currently supervise nine long term care facilities across the State of Kansas.

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I am in opposition of a mandated requirement for several reasons.

1. There are already federal regulations that prohibit discrimination for admission to adult care homes and therefore it is not necessary to duplicate this through state regulations.

2. Mandating admission of HIV positive/AIDS patients would be a disservice to all concerned. Facilities currently utilize Universal Precautions as required. However; in order to meet all of the needs of an AIDS patient you must consider the following: Professional nurses must be trained to provide special skills such as IV's, Hyperalimentation and terminal care. In most cases the AIDS patients are younger in comparison to the average age of 81 currently residing in our long term care facilities. AIDS patients will be admitted to the adult care homes at various stages of their disease process. There would need to be planning within the long term care setting to assure their "quality of life". Activities need to be appropriate for their age group. Psychosocial and spiritual services should be available to assist the patient as well as their family in dealing with their anger as well as the death and dying process. In some cases there may be a need for substance abuse counseling.

If there is to be a bill related to AIDS and long term care facilities, I would suggest that be education of the HIV/AIDS disease in the long term care setting. One of our facilities determined the community need last year and has been working on educating the staff, residents and families through intensive in-services the last four to six months. He began with basic facts of the transmission of the disease and had actual HIV positive people talk to the staff and inform them of their experiences with the disease. The administrator has included his department heads in researching the disease process so they will be better equipped to deal with concerns which may arise in their facility. It is imperative that the management team as well as the staff are committed to the success of this program. The acute treatment needs for AIDS is beyond most of our facilities capabilities. The exception may be where we are actively delivering sub-acute rehabilitation and managed care. In some rural facilities which I supervise, there has been no need for such services at this time.

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A mandated law is going to create a situation whereas facilities and staff may not be qualified to meet the physical and psychosocial needs of the AIDS patient. This will be detrimental to both the AIDS patient as well as the long term care facility. Care issues will arise if facilities are not capable of meeting their needs. It takes specialized training to meet the needs of other diseases such as Alzheimer and therefore we must consider the special needs of the AIDS patient. Remember, LTC facilities have specialized in geriatrics since their inception. Education is the only answer to resolve this problem.

Another concern are the financial costs. In the 1987 National Hospital Survey, 44% of the population were Medicaid recipients and 23% had no health insurance coverage. Private insurance represented 29%. Given the fairly reliable and predictable trends in the demographics in the next ten years expected to develop full blown AIDS, it is unlikely that the increases expected in people with AIDS needing health care services will be dominated by individuals able to pay privately for health care. The percentage of Medicaid recipients and indigent will probably climb. The costs for caring for AIDS patients in the long term care setting will include: Increased labor costs due to physical and emotional needs. The patient condition could change often which would generate a new MDS+ form (assessment) as well as updated care plans. Social work time will increase as increased admission/discharge planning. The need for additional time from Psychologist/Psychiatrist/Pastoral care. The cost for Hyperalimentation (IV feeding) and medication. The current state Medicaid program for adult care homes would not fund AIDS as currently designed.

There are adult care homes in Kansas currently accepting AIDS patients and I'm sure the numbers will increase. I do not feel it is necessary or appropriate to mandate state regulations requiring this.

Thank you for the opportunity to speak this afternoon.

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Kansas Advocacy & Protective Services, Inc.

kaps

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TO: The House Committee on Public Health and Welfare,
Representative Carol Sader, Chairperson

FROM: Kansas Advocacy and Protective Services, Inc.,
Joan Strickler, Executive Director

DATE: February 25, 1992

Re: H.B. 2702

KAPS is the agency designated in Kansas to provide protection and advocacy pursuant to two federal laws - the Developmental Disabilities Act and the Protection and Advocacy for Mentally Ill Individuals Act. We also administer the Kansas Guardianship Program, a program funded by and unique to Kansas.

Through the Guardianship Program, we recruit volunteers to become guardians and conservators for persons who are dependent upon public support and without immediate family members willing or able to assume such responsibilities. All requests come to us from SRS social workers after, presumably, other alternatives have been exhausted. We are currently serving approximately 1400 Kansans, many of whom reside in adult care homes throughout the State.

While we are not presently aware that any of the persons served have tested positive for HIV infection or been diagnosed with AIDS, we have to believe that time will come.

It makes good sense to anticipate these future needs by making it clear to adult care homes that this is a population they must be willing to serve and be prepared to serve.

Respectfully submitted,

Joan Strickler
Executive Director

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Norman Cassidy Love-?

Proposed Amendment to House Bill No. 2762

Be Amended:

On page 1, by striking all of lines 12 to 26, inclusive, and inserting in lieu thereof the following:

"Section 1. K.S.A. 1991 Supp. 16-302 is hereby amended to read as follows: 16-302. (a) Except as authorized by K.S.A. 16-308, and amendments thereto, all ~~such money shall be deposited in such bank, credit union or savings and loan association and shall be~~ funds received pursuant to any agreement, contract or plan governed by K.S.A. 16-301, and amendments thereto, shall be deposited in a bank, credit union or savings and loan association and shall be held by such bank, credit union or savings and loan association in a separate account in the name or names of the purchaser of the merchandise or services and the name of the seller, until released as herein provided.

(b) In addition to the requirements under subsection (a) and except as otherwise provided in subsection (c), a seller which accepts payment under any agreement, contract or plan governed by K.S.A. 16-301, and amendments thereto, shall:

(1) Require such payments to be made in the form of checks, cashiers checks or money orders payable only to the bank, credit union or savings and loan association where deposited; and

(2) deposit such payment in such bank, credit union or savings and loan association within seven business days after

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receipt.

(c) A seller of agreements, contracts or plans governed by K.S.A. 16-301, and amendments thereto, shall be exempt from the requirements of subsection (b) if the seller maintains commercial insurance providing minimum coverage of $100,000 against employee dishonesty. A seller of agreements, contracts or plans governed by K.S.A. 16-301, and amendments thereto, which is exempt from subsection (b) under this subsection and which accepts payment under any such agreement, contract or plan shall deposit such payment in a bank, credit union or savings and loan association within 30 days after receipt. Evidence of the commercial insurance maintained for compliance with this subsection shall be provided to the secretary of state within 10 days of a written request.

(d) Each funeral establishment which accepts payments from a purchaser under an agreement, contract or plan governed by K.S.A.. 16-301, and amendments thereto, and is exempt from subsection (b) under the provisions of subsection (c), shall file with the state board of mortuary arts at the time of each funeral establishment license renewal required under K.S.A. 65-1729, and amendments thereto, evidence of the commercial insurance maintained for compliance with subsection (c). If such insurance lapses, is cancelled or otherwise ceases to be maintained by the funeral establishment, the ~~funeral establishment~~ insurance carrier shall notify immediately the state board of mortuary arts and the secretary of state of such occurrence."

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Ron Thornburgh
Assistant Secretary of State

STATE OF KANSAS

Bill Graves
Secretary of State
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TESTIMONY OF RON THORNBURGH
PUBLIC HEALTH AND WELFARE
FEBRUARY 10, 1992

HOUSE BILL 2761

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today on behalf of Secretary of State Graves.

I appear today neither as an opponent or a proponent of House Bill 2761. I do, however, appear to answer any questions and to affirm the need to audit pre-arranged funeral agreements.

Although the office of the Secretary of State has the discretionary authority to audit pre-arranged funeral agreements, we have not audited any in the last year. By the Rules and Regulations, the Board of Mortuary Arts also has the authority to conduct audits along with a number of other regulatory duties. They are currently conducting audits upon receipt of a complaint.

We do not feel there is a need for this duplicate authority and thus no need for us to also conduct these audits.

If this bill is passed, it will be clear that the Board will have sole authority to conduct the audits. However, if this bill is not passed, we are still faced with the current duplicative authority. New clarifying language would then need to be introduced. If the legislature deletes the Board's authority and gives us a duty to audit, we will do so.

We are asking you to clarify the language and intent of this statute.

Thank you.

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