

Approved

2-12-92
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 4, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Norman Furse, Revisor's Office
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Robin Lehman, Senator Winter's Intern
Joe Kroll, Kansas Department of Health and Environment
Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc.
Carolyn Middendorf, Kansas State Nurses Association
Joan Strickler, Kansas Advocacy and Protective Services, Inc.
Helen Miller, The Vintage Years
John Grace, Kansas Homes for the Aging
John L. Kiefhaber, Kansas Health Care Association

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

The Chairman stated the minutes of January 28, 29 and 30, 1992, were distributed to the Committee for review and consideration. Senator Burke made the motion to approve the minutes as presented, seconded by Senator Hayden. The motion carried.

The Chairman asked for Committee bill requests. No requests were made.

Staff briefing and hearing for Proponents and Opponents on:

SB 182 - Civil penalties authorized to be assessed against licensees of adult care homes.

Staff briefed the Committee on SB 182, a carry-over bill from the 1991 Session, that would create new legislation authorizing the Secretary of Health and Environment to assess a penalty on an adult care home that was not in compliance with certain standards or rules and regulations.

The Chairman called upon Robin Lehman who submitted written testimony in support of the bill and stated Senator Wint Winter, sponsor of the bill, worked with representatives of Kansans for Improvement of Nursing Homes, and they in turn collaborated with the Department of Health and Environment on amendments which Senator Winter supports. SB 182 would authorize the Secretary of Health and Environment to assess a civil penalty against licensees of an adult care home if a resident of the facility is placed in substantial risk or serious physical harm or has actually suffered physical harm. (Attachment 1)

Joe Kroll, Health and Environment, submitted written testimony and a balloon of SB 182. Mr. Kroll stated the Department supports the intent of the bill, however, their administrative and legal review revealed a number of issues that must be resolved in order for legislation to be an effective and meaningful enhancement of the laws designed to protect the state's nursing home residents. The amendments suggested

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./p.m. on February 4, 1992

referred to "imminent" risk of the resident, civil penalties assessed which would be not less than \$5,000 or more than \$10,000 per day per violation to the licensee, and civil penalties assessed to the licensee due and payable within 10 days after written notice of assessment is served. (Attachment 2)

Marilyn Bradt, Kansans for Improvement of Nursing Homes, Inc., submitted written testimony and appeared before the Committee in support of SB 182 with one suggested change in the amendments from H & E that would refer to the risk of the resident as "substantial" instead of "imminent." KINH believes the amendments recommended by H & E would strengthen the bill and be an important addition to the Kansas statutes in order to deter serious violations of nursing home standards and regulations without closing the facility. (Attachment 3)

Carolyn Middendorf, Kansas State Nurses Association, submitted written testimony and appeared in support of SB 182. The KSNA supports the concept that owners (absent or present) as well as administrators be held accountable in situations where there is substantial risk for individuals and groups. Ms. Middendorf stated that the new language submitted by KDHE more specifically describes the categories of potential harm is less ambiguous as is the proposed clarification of the amount of the fine per violation of not less than \$5,000 or greater than \$10,000. It is also the hope of KSNA that specific criteria be agreed upon by nursing home professionals, providers, licensing bodies and consumers, and that this issue be put in place to alleviate situations in homes that become a risk of health and life for institutionalized adults. (Attachment 4)

Other conferees who appeared before the Committee in support of SB 182 were Joan Strickler, Kansas Advocacy and Protective Services, and Helen Miller of "The Vintage Years." (Attachment 5 and 6)

Speaking in opposition to SB 182 was John Grace, Kansas Association of Homes for the Aging, who submitted written testimony and stated the bill would add an additional form of punishment beyond the current authority of the Department of Health and Environment. He also objected to the broad language and excessive penalties (\$5,000 minimum) provided in the bill and subjective authority placed with KDHE for implementing this type of legislation. (Attachment 7) Committee discussion followed regarding violators and placing the names of abusers on the registry.

John L. Kiefhaber, Kansas Health Care Association, submitted written testimony and spoke in opposition to SB 182, stating the bill would impose heavy, new penalties upon nursing facilities for undefined occurrences, or even the risk of an undefined occurrence of physical or mental harm to a nursing home resident. (Attachment 8)

Review and consideration of carry-over bills:

The Chairman asked for wishes of the Committee on SB 210 - Sublette hospital district expenditures. Senator Hayden moved to report the bill adversely, seconded by Senator Walker. No discussion followed. The motion carried.

The meeting was adjourned at 11:00 a.m. The next meeting of the Committee is scheduled for February 5, 1992, 10:00 a.m., Room 526-S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-4-92

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
George Goebel	AARP-SIC-CCTF
Jack Kroe	KOHK
Peter Cef	KINH
Delen K Miller	Vintage years
Marie Halt	Lebanon Student Observer
Robin Lehman	Senator Vint Winter's office
Roger D. Kirkwood	AARP-CCTF - Topeka
John L. Kieffhaber, Topeka	Ks. Health Care Assn.
John Grace Tyrella	Ks Home for Aging
Marilyn Bratt	KINH
Carolyn Mendenhoff ed	KSWA
Dorcas G. West	Genesee County
Linda D. W.	KDOA
Bonnie Bridgman	KDOA
Betty Poppe	Wichita
DEGGS	SRS

Senate Public Health and Welfare Committee
Senate Bill 182 Hearing
February 4, 1992 - 10:00 a.m.

Thank you, Mr. Chairman and members of the committee. My name is Robin Lehman and I am Senator Wint Winter's intern. He is out of town and unable to be here today, so I am testifying on his behalf.

Senate Bill 182 authorizes the Secretary of Health and Environment to assess a civil penalty against licensees of an adult care home if a resident of the facility is placed in substantial risk of serious physical harm or has actually suffered physical harm. This bill closes a loophole in Kansas law that has existed for some time. The Department of Health and Environment should have the ability to assess fines against nursing homes if, by reason of their willful or reckless conduct, they create a situation where a resident is caused serious physical harm or is placed at risk of such harm.

This bill will send another message that Kansans insist on quality and humane care in our nursing homes and that we will not tolerate reckless or intentional disregard for the physical well being of residents.

Senator Winter worked with Kansans for Improvement of Nursing Homes on this bill. The KINH collaborated with the Dept. of Health and Environment on amendments to the bill, which we support. The representative from Health and Environment will discuss in more detail the specific amendments, and Marilyn Bradt of KINH will also give testimony.

Thank you for allowing me the opportunity to testify.



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

Reply to:

Testimony presented to the
Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment
Senate Bill 182

Background

Authority for civil penalties to be assessed against adult care homes was first established by 1978 legislation as recommended by a special gubernatorial task force. Such civil penalties are perceived as "intermediate sanctions," that is, sanctions or penalties levied against a facility for violations that are more than routine but do not meet criteria for denial or revocation of license. The effectiveness of intermediate sanctions such as civil penalties is a key recommendation of the Institute of Medicine study entitled "Improving the Quality of Care in Nursing Homes" and a mandate of the Nursing Home Reform Act of 1987, commonly referred to as OBRA.

To streamline the process, and enhance the use of such sanctions, the Department supported 1988 SB 585, that eliminated a procedural step prior to civil penalty assessment and increased the amount of civil penalty that could be assessed. This same bill also authorized the Secretary to ban admissions when violations are documented that are deemed significant and adverse. SB 182 would further improve these sanctions by closing what many consider a problem in the use of intermediate sanctions, the opportunity for a facility to escape penalty by correcting the violation, even after harm has occurred.

There is general agreement among regulators, consumer groups, and the nursing home industry that alternative sanctions should relate in severity to severity of deficiency. Senate Bill 182 would refine this concept and address this problem by authorizing the secretary to assess a civil penalty without first giving the facility an opportunity to correct the violation. The Department of Health and Environment supports the concept apparently intended by SB 182, but raise concerns with the bill as proposed.

Current Law

To understand what Senate Bill 182 is attempting to address and to understand the concerns that the Department of Health and Environment has with the proposal, one must first review the current authority of the Secretary to issue civil penalties. K.S.A. 39-945 authorizes the Secretary to issue a correction order to an adult care home when noncompliance with regulations exist that affect significantly and adversely the health, safety, nutrition, or sanitation of the adult care home residents.

Public H & W
Attachment #2

This law requires that the correction order state the deficiency, cite the specific statutory provision or rule violated, and specify the time allowed for correction. This law also requires that the adult care home be reinspected within 14 days from receipt of the correction order.

If the deficiency or deficiencies cited in the correction order have been corrected, then no civil penalty can be assessed regardless of the harm caused or possible by the deficiency cited. Attached to this testimony is a summary for the last three years showing the number of correction orders issued and the number of civil penalties assessed. This shows that approximately four out of five correction orders do not result in a civil penalty even though the deficiency causing the correction order would indicate to many people that some penalty or sanction should have been assessed against the adult care home, without the opportunity to correct required by current law.

For example, KDHE investigated an allegation of abuse occurring at an adult care home. The abuse was confirmed and a correction order issued. Upon re-inspection within 14 days, as required by law, it was determined that the abuse had been stopped and the alleged guilty perpetrator terminated from employment. Although harm had already occurred, the Department was unable to assess a civil penalty against the home because corrective action had been taken.

Another example is that of a nursing home resident who was severely burned because they were left unattended in water exceeding the temperature allowed by regulation. A correction order was issued, and after revisit as required, the water temperature was within limits.

The abuse in the first example was intentional, the neglect in the second not justifiable. We believe most people would think additional sanction is justified in cases like this.

Authority such as proposed in SB 182 would have resulted in the Secretary assessing a civil penalty when the deficiency was first documented.

Concerns

For the reasons noted above, the Department supports the concept of Senate Bill 182. However, a number of issues must be resolved for the Department to have effective and meaningful new authority.

1. As written, the bill provides for assessment of a civil penalty whenever a rule or regulation is violated that places a resident in substantial risk of serious physical harm or has resulted in actual physical harm. We believe the occurrence of significant mental harm should be addressed as well.
2. The proposed criteria of "substantial risk" is substantively no different than existing authority which provides for a correction order to be issued whenever a violation exist which is deemed significant and adverse. More direction and distinction must be provided in the statute in order for the Department to meet legislative intent in implementing the bill.

3. The penalty of \$5,000 per day should be assessed on both a per day and per violation occurrence. Texas provides for a penalty of up to \$10,000 per day for each violation; Missouri, \$10,000 per day for each violation; California, \$25,000 for each violation. We believe the civil penalty should also have a maximum cap.
4. Contrary to the civil penalty provisions of KSA 39-946, Senate Bill 182 does not require the adult care home to pay the assessment until proceeding under the Kansas Administrative Procedures Act are exhausted. Six months can easily pass before the facility would have to pay the assessment, which we think removes the immediate impact of the penalty. We recommend that language similar to that found in 39-946 be substituted, requiring payment within 10 days.

Recommendation

The Department of Health and Environment supports the intent of Senate Bill 182. However, our administrative and legal review reveals a number of issues that must be resolved in order for the legislation to be an effective and meaningful enhancement of the laws designed to protect our state's nursing home residents. Accordingly, we offer for committee consideration the attached amendments that would resolve our concerns.

Thank you for your consideration.

Presented by: Joseph F. Kroll, Director, Bureau of Adult and Child Care
Kansas Department of Health and Environment
February 4, 1992

**ENFORCEMENT STATISTICS FOR
INTERMEDIATE, SKILLED & ICH/MR FACILITIES
1989-1991**

1989

Number of Correction Orders Issued	206
Number of Civil Penalties	46
Range of Civil Penalties	\$200 to \$5000
Total Amount of Civil Penalties	\$60,100

1990

Number of Correction Orders Issued	201
Number of Civil Penalties	35
Range of Civil Penalties	\$100 to \$5000
Total Amount of Civil Penalties	\$46,700

1991

Number of Correction Orders Issued	246
Number of Civil Penalties Issued	52
Range of Civil Penalties	\$100 to \$4,000
Total Amount of Civil Penalties	\$44,300

SENATE BILL No. 182

By Senator Winter

2-12

8 AN ACT concerning adult care homes; authorizing the secretary of
9 health and environment to assess civil penalties against licensees
10 of such homes for certain violations.

11

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

13 Section 1. (a) If the secretary of health and environment deter-
14 mines that an adult care home is in violation of or has violated any
15 requirements, standards or rules and regulations established under
16 the adult care home licensure act which violation ~~placed a resident~~
17 ~~of the adult care home in substantial risk of serious physical harm~~
18 ~~or resulted in actual physical harm to a resident~~, the secretary ~~in~~
19 ~~accordance with proceedings under the Kansas administrative pro-~~
20 ~~cedure act~~, may assess a civil penalty against the licensee of such
21 adult care home in an amount of not less than \$5,000 ~~per day, for~~
22 each day the secretary finds that the adult care home was not in
23 compliance with such requirements, standards or rules and
24 regulations.

can reasonably be determined to have resulted in, caused, or posed imminent risk of serious physical or mental harm.

25 (c) ~~(b)~~ The authority to assess civil penalties granted to the secretary
26 of health and environment under this section is in addition to any
27 other statutory authority of the secretary relating to the licensure
28 and operation of adult care homes and is not to be construed to
29 limit any of the powers and duties of the secretary under the adult
30 care home licensure act.

or more than \$10,000 per violation

31 (d) ~~(c)~~ This section shall be part of and supplemental to the adult
32 care home licensure act.

(b) All civil penalties assessed shall be due and payable in accordance with K.S.A. 39-947 and within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of health and environment may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgement of the district court.

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



Kansans for Improvement of Nursing Homes, Inc.

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

TESTIMONY PRESENTED TO THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE CONCERNING SB 182

February 4, 1992

Mr. Chairman and Members of the Senate Public Health and Welfare Committee:

The intent of SB 182 is to close a gap in Kansas statutes that permits a nursing home owner to go unpenalized in some instances for even the most serious violations of state and federal regulations. The civil penalties statute, enacted in 1988 greatly improved the enforcement capabilities of the Department of Health and Environment. However, the current law goes into effect only after the nursing home has been given an opportunity to correct the violations and has failed to do so. No matter how grossly violated is the standard of care and human decency, the nursing home may "correct" the violation without penalty.

The Government Accounting Office identified the problem in their 1987 report to the U.S. Senate Special Committee on Aging, entitled MEDICARE AND MEDICAID: Stronger Enforcement of Nursing Home Requirements Needed. In that report, which included Kansas among the five states evaluated, the GAO refers repeatedly to the issue:

"Under Medicare and Medicaid regulations and guidelines, nursing homes that have serious deficiencies -- those that jeopardize patient health and safety or seriously limit the facility's ability to provide adequate care -- are able to remain in the Medicare or Medicaid program without incurring any penalty if the deficiencies are adequately corrected ..."

"An effective enforcement program should both deter noncompliance and achieve lasting corrective action where such noncompliance does occur. The current nursing home enforcement program, however, does neither. It is directed primarily towards achieving corrective action after a deficiency has been identified, rather than deterring noncompliance from the outset. Nursing homes that correct deficiencies incur no penalty. ...nursing homes have little incentive to maintain compliance with nursing home requirements."

The Nursing Home Reform Amendments of OBRA '87 say specifically that a state may provide for a civil money penalty, even though the facility has corrected its violation or violations, for the period of time in which it was not in compliance. There are other states that have enacted statutes with such provisions.

Kansas' current statute, K.S.A 39-946, goes far toward providing a sound enforcement procedure, particularly in its ability to deal with repeated violations. However, KINH believes that there are some violations so grave in their harm or which present so substantial a jeopardy to the health, safety and welfare of the resident or residents that it is not enough to prevent their

repetition. They should simply never happen. As a deterrent measure, there should be noteworthy consequences for the licensee on first occurrence. SB 182 provides for such a consequence.

The problem came into sharp focus a little over a year ago when some highly publicized incidents of abuse and neglect were found to have occurred in a Kansas nursing home. In one incident, a woman was allegedly found hanging from a restraint and died several hours later. It was not the first occasion upon which this resident's restraint had caused a problem. In another incident a resident's leg was amputated due to complications from a pressure ulcer which had developed in the nursing facility. There were other examples of neglect and outright abuse as well. And problems of this kind are not unique to this one Kansas nursing home.

Disciplinary action was initiated by the Department of Health and Environment through the Board of Adult Care Home Administrators against the licenses of both the nursing home administrator and the administrator-consultant for the nursing home chain, and the two nurses involved were referred to the Kansas State Board of Nursing for possible action.

Those actions, however, in no way penalize the nursing home's ownership. KINH believes that the owner, who profits from the business, has an obligation to assure that the care provided in the home complies with state and federal statutes and regulations.

There were some problems with the bill as originally drafted. We appreciate the opportunity provided us by the Chairman of this Committee to consult with the Department of Health and Environment and to work through those problems. The Department is today presenting to you a balloon version of SB 182 that is largely the result of our joint efforts.

There remains only one point of difference between us. KINH would prefer the bill to read, in line 16, "...which violation can reasonably be determined to have resulted in, caused, or posed substantial risk of serious physical or mental harm." In our opinion, "imminent" refers more to the element of time, "substantial" to the seriousness of the violation and the likelihood that it will lead to harm. We believe that this legislation properly addresses only the most serious of violations and that by virtue of the gravity of the violation implies that danger to the resident is imminent in time as well. In other words, we believe that "substantial" encompasses "imminent", and would prefer that language.

KINH believes that SB 182, with the amendments recommended, is an important addition to Kansas statute, filling out the full range of enforcement tools that the state may use to deter serious violations of nursing home standards and regulations without closing the facility. We ask your support.

Marilyn Bradt
Legislative Coordinator

For Further Information Contact:

TERRI ROBERTS J.D., R.N.
KANSAS STATE NURSES' ASSOCIATION
700 JACKSON, SUITE 601
TOPEKA, KANSAS 66603
913-233-8638

FEBRUARY 4, 1992

S.B. 182 ASSESSMENT OF CIVIL PENALTIES AGAINST LICENSEES OF ADULT CARE HOMES

Senator Ehrlich and members of the Senate Public Health and Welfare Committee. My name is **Carolyn Middendorf**, and I am a registered professional nurse licensed to practice in the state of Kansas. Presently I am an Assistant Professor of Nursing at Washburn University and I serve as the Legislative Chairperson for the **Kansas State Nurses' Association (KSNA)**. Thank you for letting me offer this support for S.B. 182 concerning penalties for violations of nursing home standards.

From time to time there occurs those situations in which violations of standards in adult care facilities are so extreme that physical harm and threat to life may occur. **The Kansas State Nurses' Association supports the concept that owners (absent or present) as well as administrators be held accountable in situations in which there is substantial risk for individuals and groups.** It should be the concern of all that owners may continue to profit when such risks exist for residents. Financial penalties may be a value that is significant to owners to motivate them to address the violation.

The new language submitted by KDHE that more specifically describes the categories of potential harm is less ambiguous as is the proposed clarification of the amount of the fine per violation of not less than \$5000 or greater than \$10,000.

It is our hope that specific criteria be agreed upon by nursing home professionals, providers, licensing bodies, and consumers and put into place to alleviate situations in those homes which become a risk of health and life for institutionalized adults.

Thank you for your attention.

Public H &W
Attachment #4

2-4-92

Kansas State Nurses' Association Constituent of The American Nurses Association

Kansas Advocacy & Protective Services, Inc.



513 Leavenworth, Manhattan, KS 66502 (913) 776-1541

Kansas City Area
6700 Squibb Rd.
Suite 104
Mission, KS 66202
(913) 236-5207

Wichita Area
255 N. Hydraulic
Wichita, KS 67214
(316) 269-2525

Chairperson
R.C. (Pete) Loux
Wichita

Vice Chairperson
Robert Anderson
Ottawa

Secretary
James Maag
Topeka

Treasurer
W. Patrick Russell
Topeka

Rep. Rochelle Chronister
Neodesha

Sen. Norma Daniels
Valley Center

Sen. Ross O. Doyen
Concordia

Harold James
Liberal

Jack Shriver
Topeka

Raymond L. Spring
Topeka

Rep. George Teagarden
LaCygne

W.H. Weber
Topeka

Liaison to the Governor
Becky Matin

Executive Director
Joan Strickler

TO: The Senate Committee on Public Health and Welfare
Senator Roy Ehrlich, Chairperson

FROM: Kansas Advocacy and Protective Services, Inc.
R.C. Loux, Chairperson

RE: S.B. 182

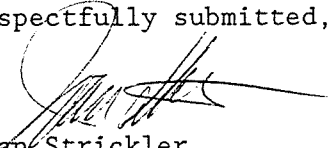
DATE: February 3, 1992

S.B. 182 addresses only those violations of requirements, standards, or rules or regulations under the Adult Care Home Licensure Act which place the resident in substantial risk of serious physical harm or result in actual physical harm to a resident. It is not unreasonable to assess strong, civil penalties against the licensure of such a facility in these situations.

The community services system in Kansas is virtually dependent upon private providers. In this partnership between the private provider and the State, one of the most important responsibilities of the State is that of monitoring for quality of care and for protection from harm of persons served through the system.

If the State is to be able to assure adequately for protection of Kansans who reside in adult care homes, it must have the statutory authority to do so.

Respectfully submitted,


Joan Strickler
Executive Director

Public H &W
Attachment #5
2-4-92



“The Vintage Years” ©

The Vintage Year
Helen R. Miller
P. O. Box 473
Topeka, KS 66647

THANK YOU FOR THE OPPORTUNITY TO SHARE MY THOUGHTS WITH YOU TODAY.

MY NAME IS HELEN MILLER, I LOBBY FOR OLDER ADULTS AND OUR PHYSICALLY AND MENTALLY CHALLENGED.

I SERVED FOR SEVERAL YEARS ON THE NURSING HOME BOARD OF ADMINISTRATORS. I WAS FRUSTRATED OVER AND OVER AGAIN BY THE LACK OF ACTION BY THE DEPT.

OF HEALTH AND ENVIRONMENT FOR THEIR FAILURE TO PENALIZE OFFENDING LICENSEE'S

WHO HAD A HABIT OF PRACTICING OVERT ACTS THAT LED TO PHYSICAL IMPAIRMENT AND INDEED DEATH FOR SOME OF OUR OLDER ADULTS. THE DEPT FINALLY EXPLAINED

TO ME THAT THERE WAS NOT LEGISLATION TO ASSURE THIS KIND OF CENSURE. I RESIGNED FROM THE BOARD, AND SAID, AS I REPEAT TO DAY, I WILL NOT REST UNTIL LEGISLATURE IS INACTED TO PREVENT WHAT HAS HAPPENED IN THE PAST.

NURSING HOME LICENSEES MUST, AND I REPEAT MUST, BE HELD ACCOUNTABLE FOR THEIR ACTIONS AND THAT OF THEIR STAFF IN THESE EXTREME CASES. AT THIS POINT IN TIME, THE LICENSEE PAYS THE FINE FOR THE ADMINISTRATOR, OR THE NURSE OR NURSES, AND THEN LIFE GOES ON AS BEFORE, OFTEN THE PERPETRATOR WILL BE TRANSFERRED TO ANOTHER ONE OF THE FACILITIES OWNED BY THE LICENSEE, AND AND THEY CONTINUE THEIR ADVERSE BEHAVIOUR.

I WHOLEHEARTEDLY SUPPORT S.B. 182, AND I URGE YOU TO PASS THIS MEASURE.

I UNDERSTAND THE DOLLAR FIGURE FOR THIS BILL IS HIGH, I HOPE THAT KANSANS WILL HONOR THE RIGHTS OF THE RESIDENT, AND PUT THAT AHEAD OF THE DOLLAR AMOUNT.

THANK YOU FOR YOUR TIME,

ARE THERE ANY QUESTIONS

Public H & W
Attachment #6
2-4-92

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

MEMORANDUM

Date: February 4, 1992
To: Senator Roy Ehrlich Chairman
Senate Public Health and Welfare
From: John R. Grace, President
Kansas Association of Homes for the Aging
RE: Senate Bill No. 182

=====

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

In 1988 the Legislature amended the nursing home civil penalty statutes increasing the amount of the penalty from \$500 to a maximum of \$5000 and allowing only a "one step opportunity for correction" to occur. We supported the change in the statutes.

Senate Bill No. 182 would add an additional form of punishment beyond the current authority of the Department.

SB No. 182 contains very broad language, excessive penalties (\$5000 minimum), and subjective authority placed with Health and Environment for implementing this bill. For these reasons, we oppose SB No. 182.

Under the present authority, when a complaint is filed or a survey is conducted, a state surveyor visits the facility and if problems are found then:

"in writing shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction." If upon reinspection, it is found the correction has not been made, the facility can then be fined from \$500 to \$5000. Furthermore,

"if there has been a substantial failure to comply ..that conditions exist...which are life threatening or endangering to the residents...the Secretary may...prohibit any new admissions".

Date: February 4, 1992
To: Senator Roy Ehrlich Chairman
From: John R. Grace, President
RE: Senate Bill No. 182
page 2

The "Ban on Admissions" authority of the Secretary is the single most effective intermediate sanction since the public is protected by denying admissions and the facility is extremely motivated to correct whatever problems.

The ban on admissions is in effect, a monetary penalty since the home can not admit new residents, and therefore would encounter the financial loss from empty beds. If for example, the home could not admit 3 residents for a 60 day period at \$45 per day they would suffer the financial loss of around \$8000.

All of these actions of Health and Environment relating to bans on admissions or civil penalties or suspension of license are then released and printed in the local newspapers.

Since January 1989, over \$127,000 has been collected by Health and Environment for fines against nursing homes. In addition, several "bans on admissions" have been utilized by the Department to bring the Home into compliance with state and federal rules and regulations.

In those few instances where "serious physical harm has occurred of a resident", we believe that following an investigation, the Department should utilize the ban on admissions or temporary receivership or close the Home down if circumstances warrant such a drastic action.

Additionally, in the course of the investigation, if it is determined that the serious physical harm could have reasonably been foreseeable or preventable by the facility, then the family or responsible guardian could pursue civil liability actions or criminal actions through the local county attorney for punishing the home and or its employees involved in the actions.

In summary, there are isolated situations that occur in a few facilities that need correction actions from Health and Environment. We are in full support of the Department and local law enforcement authorities actions utilizing their current authority in protecting the care of our frail elderly.

Thank you Mr. Chairman and Committee members.



RHCA

Member of
ahca

Kansas Health Care Association

221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611-2263
(913) 267-6003 • FAX (913) 267-0833

TESTIMONY

before the

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

by

John L. Kiefhaber, Exec. Vice President

KANSAS HEALTH CARE ASSOCIATION

Senate Bill No. 182

"AN ACT concerning adult care homes; authorizing ... civil penalties against licensees ... "

Chairman Ehrlich and Committee Members:

The Kansas Health Care Association, representing 209 nursing facilities throughout the State, appreciates the opportunity to speak in opposition to Senate Bill 182. This bill would impose heavy, new penalties upon our nursing facilities for undefined occurrences, or even the risk of an undefined occurrence of physical or mental harm to a nursing facility resident.

The members of the Kansas Health Care Association work very hard to bring quality health care services to our aged and infirm senior citizens. Our administrators, nurses and other health care professionals spend their whole day working to give medical care and social programs to their residents. They believe that if someone were to abuse or harm a resident that they should be penalized and if the facility management did not do all it could to operate in such a way as to prevent harm from occurring, then it should also be penalized.

But to pass legislation requiring the Secretary of Health and Environment to impose large penalties, beyond current authority, for undefined incidents would not be fair or reasonable.

The bill calls for penalties for "serious physical harm". But that is not defined. When is an accident or incident serious?

The bill calls for penalties for "serious mental harm". But that is not defined. What is "mental harm"?

The bill calls for penalties if an incident "poses imminent risk". But that is not defined. How much risk?

We cannot in all good conscience expect the Department of Health and Environment to try to make something out of these terms.

I would now like to direct the Committee's attention to the fact that the Secretary of Health and Environment already has authority, throughout Chapter 39, Article 9 of the Kansas Statutes Annotated, to impose fines, apply bans on admissions to a facility, or to take a home over in receivership if it is found to be out of compliance with the State's licensing regulations. Why can we not rely on this authority to sanction any facility that is found to have allowed an incident of harm to occur? I think it is because the current requirement of the statute would mean that the case would have to be proved using acceptable legal evidence. Senate Bill 182 would allow the State to avoid the requirements of the established law and impose heavy penalties for undefined incidents.

The penalties envisioned in this bill would be the equivalent to those imposed for Class B to Class E felonies, according to KSA 21-4503. This type of penalty requires specific evidence and proof in a court of law. The offender pays a penalty only after being found guilty. The statutes I have cited require due process of law. But Senate Bill 182, as it is written does not provide for due process in order to impose similar penalties on the nursing home. Any possible appeal of a case would be after the fine was paid, and the appeal would be to the Secretary -- the very person who brought the action in the first place.

The health care professionals of the Kansas Health Care Association believe Senate Bill 182 would be a very unfair law and that there is plenty of civil and criminal authority now to sanction any person or facility that may cause harm to one of our residents.

Thank you for the opportunity to speak in opposition to Senate Bill 182.