Approved: March 14, 1995

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans at 1:30 p.m. on March 13, 1995 in Room 423-S of the State Capitol.

All members were present.

Committee staff present: Norman Furse, Revisor of Statutes
Emalene Correll, Legislative Research Department
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Joseph Kroll, Director, KDHE Bureau of Adult and Child Care
Candace Shively, Director, SRS Division of Income Maintenance
Tim Buchanan, Chief Executive Officer, Sterling House Corporation
John Grace, President, Kansas Association of Homes and Services for the Aging
Sandra Strand, Legislative and Community Liaison, Kansans for the Improvement of Nursing Homes
Carolyn Middendorf, President, Kansas State Nurses' Association
Anne Kimmel, Capitol City Task Force, American Association of Retired Persons
John Kiefhaber, Executive Vice President, Kansas Health Care Association

Others attending: See Guest List, Attachment 1.

The minutes of the committee meetings held on March 7 and March 9, 1995, were approved.

SB 8 - Definition of adult care homes

Joseph Kroll, presented KDHE's support of the bill, stating it is a significant change in state policy--changing the focus of defining levels of care and types of facilities from a resident "capacity" to an "outcome" evaluation. He offered "balloon" amendments to clarify the definitions of apartment, individual living units, operator, activities of daily living, personal care and functional impairment to bring consistency to the legislation (see Attachment 2).

Candace Shively presented SRS's support of **SB 8** and support of the revisions made by the Senate committee to ensure consistent licensure practices for facilities serving the elderly and not jeopardizing SRS's authority to license residential homes serving the mentally ill, mentally retarded, or individuals with developmental disabilities. Ms. Shively expressed concerns on two issues related to the bill: (1) availability of 24-hour skilled nursing care in Assisted Living facilities, and (2) Medicaid reimbursement for those in Assisted Living. On the first concern, she testified that skilled nursing care needs to be clearly defined through regulation and outlined that the regulation is needed to ensure that Assisted Living does not mirror a Nursing facility. On the second concern, she indicated that Medicaid reimbursement is not available for those in Assisted Living. If Medicaid reimbursement is not available, the concept of "aging in place" is lost. (See full testimony, Attachment 3.)

Tim Buchanan, of Sterling House, testified in support of the bill, delineating the reasons for the bill and the philosophy of Assisted Living. He urged adoption of the bill. (See Attachment 4.)

John Grace, speaking in behalf of the Kansas Association of Homes and Services for the Aging, testified in support of the bill, stating that the association members feel it is appropriate to allow for some intermittent or temporary skilled nursing care services to be provided by a registered nurse or under the guidance of a licensed nurse for individuals who are in rehabilitative, recuperative, or "hospice" care. They do not believe that a residential health care facility or an Assisted Living facility should be able to provide for around the clock nursing care services for an unlimited time period as now provided in Kansas licensed nursing facilities. If this is allowed to occur, the association asks that a level playing field for nursing facilities and assisted living facilities be provided. "Balloon" amendments were offered to define "intermittent" and "temporary" as shown on pages 2 and 4 of the copy of the bill attached to his testimony (Attachment 5).

Sandra Strand, on behalf of Kansans for the Improvement of Nursing Homes, supported the bill but recommended amendments to (1) add a definition of "principles of assisted living," (2) add a section on preventing, detecting and reporting abuse, neglect and exploitation of residents, and (3) require minimum standards for training, competency and screening of operators. KINH does not support the Senate Committee's amendments to permit assisted living and residential health care facilities to provide routine skilled nursing care and stated, if enacted, would require new and different regulations to be drafted. KINH requests the removal of the provision for skilled nursing care from the definitions of assisted living and residential care facility (see testimony, Attachment 6).

Carolyn Middendorf, testifying in behalf of the Kansas State Nurses' Association, stated KSNA supports the move towards definitions more closely aligned with functional impairment and away from the medical model concepts previously embodied in the definitions. KSNA recommends the addition of the word "the" in two places relating to the definition of "supervised nursing care" and a new definition of "home plus." (See testimony, Attachment 7.)

Anne Kimmel presented AARP's support for development of a full continuum of long term care services, including assisted living, and listing the organization's guiding principles for state regulation which authorizes assisted living programs (see Attachment 8).

John Kiefhaber presented the Kansas Health Care Association's opposition to **SB 8**, stating that its members are also developing new services for the aging. Because of the problems and questions about the bill's definitions of nursing care, the Association raises additional questions about the provisions of the bill. Mr. Kiefhaber testified that if it is decided to pass **SB 8**, that the committee consider the six amendments the association offers to the bill (see testimony, Attachment 9).

The hearing was then opened to questions to the conferees. Chairperson Mayans asked Mr. Buchanan what happens to the resident in an assisted living facility who runs out of money? Mr. Buchanan stated that less than 10% of those in Sterling House facilities pay in excess of $2600 per month; the average rate is $1500; the lowest rate is in the $1200 range. In Kansas, there is no Medicaid assistance for those individuals in assisted living facilities who spend down their finances and cannot continue to pay for their care. There is some Part B Medicare for some elements of their care, but nothing to pay the rent.

Chairperson Mayans questioned the quota set at 60 for an assisted living facility. Mr. Buchanan answered that in Topeka (for example) there are 37 apartments and 40-some residents. The quota relates to the number of residents in a facility.

Representative Merritt complimented those present who participated in the development of **SB 8** and endorsed the assisted living concept and need for the legislation. He chastised Ms. Strand as to her changeover from opposing the bill during the Senate hearing to supporting the bill, with provisos, during this hearing.

Representative Geringer stated his support of the concept of assisted living and noted that in the United States, some $2 million is paid out per day in health care costs. Any provision for economical care should be brought forth.

Representative Haley echoed support and questioned Mr. Grace on the dispensing of pharmaceuticals and the provisions for nursing care on which he had testified. Mr. Grace replied that the amendment offered to define "intermittent" would allow an individual to receive a skilled nursing service that is limited in scope such as an insulin shot over an indefinite period of time.

Representative Wells noted the responses to Chairperson Mayans' inquiry about residents having their money run out, Sandra Strand's testimony on the Oregon experience with respect to developing and funding resources for assisted living and adult foster care, and Ms. Kimmel's statement that assisted living should be available for all persons regardless of age or income. He asked what would be the effect on low income residents if this bill is enacted? Mr. Buchanan replied that assisted living encourages families to financially support a family member who is in need of long term care and in that way achieves savings in the amount of state financing for such care. He stated his belief that if assisted living is able to expand, the operators will be able to take a proactive role in finding the dollars needed to provide care. The Veterans' Administration has established criteria that permits such assistance for veterans in some Sterling House residences. When money runs short, many residents will move from three rooms into smaller quarters and be able to maintain themselves with limited money. There is no way Sterling House would throw these people out into the street.

Emalene Correll noted that an individual who resides in an assisted living facility or other type of residential

setting and who needs services *may* become eligible for Medicaid because Kansas includes a "medical only" component in the state-operated Medicaid program. Those individuals who require extensive or expensive health care services may spend their income down to a "protected income level" for health care and become eligible for Medicaid to pay for covered services even though they are not eligible for cash assistance. Medicaid cannot pay for the costs of board and room so such individuals would have to have adequate income to pay for that portion of assisted living or other residential living. If an individual is in a nursing facility (nursing home), the room and food costs of the home are covered by Medicaid as a part of the daily rate.

Representative Freeborn questioned if a financial assessment is discussed with someone interested in entering long term care. Mr. Buchanan answered that prior to admission to Sterling House, it is required that an assessment be done to determine the medical needs and associated costs. Representative Freeborn asked if the Area Aging assessment is followed. Mr. Buchanan answered that probably 80% of it is followed. Representative Freeborn asked if there is a certain protocol to determine if a resident needs to move. Mr. Buchanan replied they do. It is established now by the restrictive KDHE regulations, but it could be expanded by **SB 8**. Currently there are cases where residents need to be discharged to more institutionalized settings. We do not want assisted living to replace skilled nursing facilities in the state.

Chairperson Mayans stated that in reviewing the many concerns and recommendations for amendments to the bill, he felt it was in the best interests of the legislation to assign the bill to a subcommittee. He appointed the following to the Subcommittee on **SB 8** and asked for an early report so the committee may act on it this week: Chairperson - Representative Jim Morrison, and Members - Representatives Nancy Kirk, Kay O'Connor, Gary Merritt, and David Haley.

Chairperson Mayans reminded the members that the committee will hear **SB 286** (cosmetologists licensure requirements and fees) and **SB 267** (continuing education for cosmetologist licensees) at tomorrow's meeting.

The meeting was adjourned at 3:00 p.m.

The next meeting is scheduled for March 14, 1995.

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES COMMITTEE GUEST LIST MARCH 13, 1995

NAME	REPRESENTING
John Federico	Pete McGill + Assoc
Steven Vick	Sterling House Corp.
Tim Buchanan	Sterling House Corp.
Helen Shearer	KU Nsg student
Jim Spencer	Ks. Athletic Trainers Society
Linda Gilliland	RCIL
Stan Teasley	KCVA
Pat Johnson	Board of Nsg
Joyce Keeler	KDHE
Carolyn Middendorf	KSNA
Dona Bone	SRS
Candy Shively	SRS
Gina McDonald	KACIL
Glen Grace	KAHSA
Martha Hedgecock	KARF
KEITH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Patricia Mahen	KDHE
Kevin McFarland	Ks. Homes + Services for Aging
Brad Fisher	KHCA

HOUSE H&HS COMMITTEE
3 - 13 - 1995
Attachment 1 - 1

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST
MARCH 13, 1995

NAME	REPRESENTING
Donna L Travis	AARP SLC
Rick Heim	Schowalter Villa
Marty Kennedy	DOB
[signature]	KHA
[signature]	KHCA
Carla Byrne	Menninger
Anne Kimmel	AARP
Ray Menendez	Aging -
Sandy Strand	KINH

State of Kansas

Bill Graves *Governor*

Department of Health and Environment

James J. O'Connell, Secretary

TESTIMONY PRESENTED TO

THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

BY

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

SENATE BILL 8 AS AMENDED BY

THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

This bill was originated by the Long-term Care Action Committee to accommodate, by updating terminology and definitions, increased housing options for frail elders and disabled persons in Kansas. After consideration of related assisted living issues in November, the Special Committee on Public Health and Welfare moved to introduce it.

The current definitions for adult care home categories do not reflect the terminology used by the public or industry. This has led to confusion among consumers and providers as to types of services provided by the facilities. In addition, the definitions include language which are restrictive to the development of facilities to meet the increasing need for housing for frail elders and the physically disabled in the least restrictive setting. Some of the resulting limitations on services may cause premature admission of persons to nursing facilities.

Definitions for each type of facility have been renamed and/or rewritten to reflect current terminology. The use of the terminology referring to age, illness, disease or physical or mental infirmity has been deleted and replaced with "functional impairment" to compensate for activities of daily living limitations. This change reflects common definitions in use both in the public and private sector.

The bill proposes the term "intermediate personal care home" be deleted. Intermediate personal care home is not a term generally recognized by consumers. In the current definition, care in this type of facility is limited to "domiciliary care and simple nursing care". This definition limits the services which could be provided at this level of care to the scope of practice of a nurse aide. This limitation on the level of care prevents persons from being admitted or retained at this level of care who may need intermittent care from a licensed nurse and thus are unnecessarily admitted to a nursing facility.

Bureau of Adult and Child Care, 900 SW Jackson, Suite 1001 *(913) 296-1240*
Landon State Office Building, Topeka, Kansas 66612-1290 *FAX: (913) 296-1266*

The bill proposes the terms "assisted living facility" and "residential health care facility" be substituted for intermediate personal care home. Assisted living and residential health care are terms used in literature, by the industry and the public. There are facilities in Kansas who present themselves as assisted living facilities and residential health care facilities. The care and services provided by these facilities vary from providing a room or apartment with housekeeping services to facilities who provide a wide range of services including nursing care. Statutory definitions consistent with contemporary practice would resolve confusion and bring organization and logic to the development of these types of non-institutional facilities.

The term "home plus" is recommended to replace the term "one-to-five bed home". We believe "home plus" is a more positive term and reflects the purpose of these facilities. A "home plus" would provide care for up to five individuals in a home-like setting. In addition to providing a home and meals the home plus could provide supervision and provision of personal care with appropriate nursing services based on the preparation of the operator. Skilled nursing could be provided by a licensed nurse employed by the facility or by a home health agency.

Adult day care is a service which can delay the admission of frail elders and the disabled to care facilities. Public input received by the Long Term Care Action Committee identified that lack of licensure has been a deterrent in the development of this service. Adding this definition to the adult care home section would allow the department to write minimal licensure requirements which could serve as an incentive for the development of this needed service.

The proposed definitions for skilled and supervised nursing care update this act with nurse practice issues. Skilled nursing care in the existing definition is limited to nursing facilities and one-to-five bed homes. This proposed change in the definitions identifies skilled nursing care as a function which can occur in any setting. Persons in assisted living facilities, resident health care facilities and homes plus should be able to receive skilled nursing care. An example would be a resident of an assisted living facility who cannot administer an insulin injection due to poor eyesight. This is the only skilled service this person requires during a 24 hour period. It does not seem appropriate that this individual be admitted to a nursing facility when they only require limited licensed nursing services.

The definition for "supervised nursing services" is expanded to provide for delegation of nursing tasks to unlicensed staff by a licensed nurse. The application of the nurse delegation statute would allow a licensed nurse to delegate to a nurse aide specific tasks for a specific resident. The nurse would be required to assure that the nurse aide could perform the task safely by testing the aide's competence prior to the delegation and by periodic supervision. This change would also help delay the admission of individuals to nursing facilities.

For the purposes of this act, we are recommending definitions for apartment, individual living units, operator, activities of daily living, personal care and functional impairment. These definitions define the terminology found in the definitions for the various facilities.

Passage of this bill will allow the department to write new regulations which reflect the changing needs of frail elders and the disabled and support the concept of providing care to persons in the least restrictive setting.

We have attached "balloon" amendments which we think bring consistency to certain issues and further clarify definitions.

Finally, in closing, it is important to understand that beyond the legislative wording of this bill, we are talking about changing the focus of defining levels of care and types of facilities from a resident "capacity" evaluation to an "outcome" evaluation. If a person's needs are being met in an assisted living facility, it will not be necessary for them to move to a nursing facility, even if they meet traditional definitions of skilled care. This is *the* significant change in policy this bill proposes. We recommend passage, but this clearly is a significant policy decision.

The Department recommends passage of this bill.

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

Date: March 13, 1995

SENATE BILL No. 8

By Special Committee on Public Health and Welfare

12-16

AN ACT concerning ~~adult care homes~~ ***certain care facilities***; defining certain terms; amending K.S.A. ***19-4601,*** 39-1501, 40-2,116 ~~and,~~ 65-3501 ***and 75-3307b*** and K.S.A. 1994 Supp. 39-923 and repealing the existing sections.

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

Section 1. K.S.A. 1994 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, *nursing facility for mental health,* intermediate ~~personal care home, one to five bed adult care home and any~~ *care facility for the mentally retarded, assisted living facility, residential health care facility, home plus,* boarding care home *and adult day care facility*, all of which classifications of adult care homes are required to be licensed by the secretary of health and environment. ~~Adult care home does not mean adult family home.~~

(2) "Nursing facility" means any place or facility operating ~~for not less than~~ 24 hours ~~in any week and~~ *a day, seven days a week,* caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who ~~by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves, and for whom reception, accommodation, board and skilled nursing care and treatment is provided, and which place or facility is staffed to provide 24 hours a day licensed nursing personnel plus additional staff, and is maintained and equipped primarily for the accommodation of individuals who are not acutely ill and are not in need of hospital care but who require skilled nursing care,~~ *due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.*

~~(3) "Intermediate personal care home" means any place or facility operating for not less than 24 hours in any week and caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation,~~

2-4

~~board, personal care and treatment or simple nursing care is provided, and which place or facility is staffed, maintained and equipped primarily for the accommodation of individuals not acutely ill or in need of hospital care, nursing facility care or moderate nursing care but who require domiciliary care and simple nursing care.~~

~~(4) "One to five bed adult care home" means any place or facility which place or facility may be a private residence and which place or facility is operating for not less than 24 hours in any week and caring for not more than five individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation, board, personal care and treatment and skilled nursing care, supervised nursing care or simple nursing care is provided by the adult care home, and which place or facility is staffed, maintained and equipped primarily for the accommodation of individuals not acutely ill or in need of hospital care but who require domiciliary care and skilled nursing care, supervised nursing care or simple nursing care provided by the adult care home. When the home's capabilities are questioned in writing, the licensing agency shall determine according to its rules and regulations if any restriction will be placed on the care the home will give residents.~~

*(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need special mental health services to compensate for activities of daily living limitations.*

*(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by ~~developmental disabilities~~ **mental retardation or related conditions** need services to compensate for activities of daily living limitations.*

*(5) "Assisted living facility" means any place or facility caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, **by choice or** due to functional impairments, **may** need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services **including personal care, supervised or skilled nursing care** available*

or skilled nursing care

24 hours a day, seven days a week for the support of resident independence.

(6) "Residential health care facility" means any place or facility caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates ~~a range of~~ personal care and supervised or skilled nursing care services available on a 24-hour, seven-day-a-week basis for the support of resident independence.

or skilled nursing care

a range of services including

(7) "Home plus" means any residence or facility caring for not more than five individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the operator and rules and regulations developed by the department of health and environment.

or skilled nursing care

~~(5)~~ *(8)* "Boarding care home" means any place or facility operating ~~for not less than~~ 24 hours ~~in any week and~~ *a day, seven days a week,* caring for ~~three or~~ *not* more *than 10* individuals not related within the third degree of relationship to the ~~administrator~~ *operator* or owner by blood or marriage and ~~who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation, board and supervision is provided and which place or facility is staffed, maintained and equipped primarily to provide shelter to residents who require some supervision, but~~ who, *due to functional impairment, need supervision of activities of daily living but who* are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

~~(6)~~ *(10)* "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

~~(7)~~ *(11)* "Skilled nursing care" means services ~~commonly~~ performed by or under the immediate supervision of a registered ~~professional~~ *pro-*

2-6

fessional nurse and additional licensed nursing personnel ~~for individuals requiring 24 hour a day care by licensed nursing personnel including: Acts of observation, care and counsel of the ill, injured or infirm; the~~ *Skilled nursing includes* administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions ~~requiring~~ *which require* substantial ~~specialized~~ *nursing* judgment and skill based on the knowledge and application of scientific principles.

~~(8)~~ *(12)* "Supervised nursing care" means services ~~commonly performed by or under the immediate *onsite* supervision of licensed nursing personnel at least eight hours a day for at least five days a week including: Acts of observation, care and counsel of the ill, injured or infirm; the *a licensed nurse or through delegation by a licensed nurse, including but not limited to,*~~ ***provided by or under the guidance of a licensed nurse with initial direction for nursing ~~task~~ and periodic inspection of its actual act of accomplishing the ~~task~~;*** administration of medications and treatments as prescribed by a licensed physician or dentist; and ~~other selected functions requiring specialized judgment and certain skills based on the knowledge of scientific principles~~ *assistance of residents with the performance of activities of daily living.*

~~(9) "Simple nursing care" means selected acts in the care of the ill, injured or infirm requiring certain knowledge and specialized skills but not requiring the substantial specialized skills, judgment and knowledge of licensed nursing personnel.~~

~~(10)~~ *(13)* "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

~~(11)~~ *(14)* "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

~~(12)~~ *(15)* "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

~~(13)~~ *(16)* "Licensing agency" means the secretary of health and environment.

~~(14) "Skilled nursing home" means a nursing facility.~~

~~(15) "Intermediate nursing care home" means a nursing facility.~~

(17) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(18) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and

storage area and a lockable door.

(19) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than ~~*45 beds*~~ ***61 residents****, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living* ***and has successfully passed an examination approved by the licensing agency on principles of assisted living****.*

(20) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting ~~*and other activities such as meal preparation, shopping and management of personal finances*~~.

(21) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

(22) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(23) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.

(c) Facilities licensed under K.S.A. 39-1501 et seq. and amendments thereto or K.S.A. 75-3307b and amendments thereto or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.

(d) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(e) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the ~~***expiration***~~ ***of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.***

K.S.A. 39-923 as an intermediate personal care home or

annual renewal date

2-8

~~(e)~~ *(f)* The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 2. K.S.A. 65-3501 is hereby amended to read as follows: 65-3501. As used in this act, or the act of which this section is amendatory, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Adult care home" means nursing facility ~~and intermediate personal care home as the terms nursing facility and intermediate personal care home are~~, *nursing facilities for mental health, intermediate care facilities for the mentally retarded, assisted living facility licensed for more than ~~45 beds~~ 60 residents*, and residential health care facility licensed for more than ~~45 beds~~ *60 residents as* defined by K.S.A. 39-923 and amendments thereto or by the rules and regulations of the licensing agency adopted pursuant to such section for which a license is required under article 9 of chapter 39 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, except that the term "adult care home" shall not include a facility that is operated exclusively for the care and treatment of the mentally retarded and is licensed for ~~15~~ *16* or fewer beds.

(b) "Board" means the board of adult care home administrators established by K.S.A. 65-3506 and amendments thereto.

(c) "Administrator" means the individual directly responsible for planning, organizing, directing and controlling the operation of an adult care home.

(d) "Person" means an individual and does not include the term firm, corporation, association, partnership, institution, public body, joint stock association or any group of individuals.

Sec. 3. K.S.A. 39-1501 is hereby amended to read as follows: 39-1501. As used in this act:

(a) "Adult family home" means a private residence in which care is provided for not less than 24 hours in any week for one or two adult clients who (1) are not related within the third degree of relationship to the owner or provider by blood or marriage, (2) by reason of aging, illness, disease or physical or mental infirmity are unable to live independently but are essentially capable of managing their own care and affairs. The home does not furnish skilled nursing care, supervised nursing care or ~~simple nursing~~ *personal* care. Adult family home does not mean adult

2-9

care home.

(b) "Skilled nursing care," "supervised nursing care" and "~~simple nursing~~ ***personal*** care" have the meanings respectively ascribed thereto in K.S.A. 39-923, and amendments ~~thereof~~ *thereto*.

(c) "Physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

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

Sec. 4. K.S.A. 40-2,116 is hereby amended to read as follows: 40-2,116. As used in this act:

(a) "Contracting facility" means a health facility which has entered into a contract with a service corporation to provide services to subscribers of the service corporation.

(b) "Contracting professional provider" means a professional provider who has entered into a contract with a service corporation to provide services to subscribers of the service corporation.

(c) "Health facility" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto; psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; adult care home, which term shall be limited to nursing facility ~~and intermediate personal care home~~, *assisted living facility and residential health care facility* as such terms are defined in K.S.A. 39-923 and amendments thereto; and kidney disease treatment center, including centers not located in a medical care facility.

(d) "Professional provider" means a provider, other than a contracting facility, of services for which benefits are provided under contracts issued by a service corporation.

(e) "Service corporation" means a mutual nonprofit hospital service corporation organized under the provisions of K.S.A. 40-1801 *et seq.*, and amendments thereto, a nonprofit medical service corporation organized under the provisions of K.S.A. 40-1901 *et seq.*, and amendments thereto or a nonprofit medical and hospital service corporation organized under the provisions of K.S.A. 40-19c01 *et seq.*, and amendments thereto.

Sec. 5. K.S.A. 19-4601 is hereby amended to read as follows: 19-4601. As used in this act:

(a) "Board" means a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of a county hospital;

(b) "commission" means the board of county commissioners of any county;

(c) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, school of nursing, long-term care facility, *limited care residential facility* ***and child-care facility operated in connection with***

2-10

the operation of the medical care facility.

(d) "hospital moneys" means, but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital.

(e) As used in this section, a "limited care residential facility" means a facility, other than an adult care home, in which there are separate apartment-style living areas, bedrooms, bathrooms and individual utilities and in which some health related services are available.

Sec. 6. K.S.A. 75-3307b is hereby amended to read as follows: 75-3307b. (a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for the mentally ill, mentally retarded or other handicapped persons is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities for the mentally ill, mentally retarded or other ~~handicapped~~ *developmentally disabled persons receiving assistance through the department of social and rehabilitation services which receive or have received after June 30, 1967, any state or federal funds, or facilities where mentally ill, mentally retarded or other* ~~handicapped~~ *developmentally disabled persons reside who require supervision or require limited assistance with the taking of medication, and the withdrawal of licenses granted for causes shown. The secretary may adopt rules and regulations that allow the facility to assist a resident with the taking of medication when the medication is in a labeled container dispensed by a pharmacist. No license for a residential facility for eight or more persons may be issued under this*

2-11

paragraph unless the secretary of health and environment has approved the facility as meeting the licensing standards for a lodging establishment under the food service and lodging act. No license for a residential facility for the elderly or for a residential facility for persons with disabilities not related to mental illness or mental retardation, or both, or related conditions shall be issued under this paragraph;

(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for the mentally retarded and facilities serving other handicapped persons receiving assistance through the department of social and rehabilitation services.

(b) An entity holding a license as a community mental health center under paragraph (4) of subsection (a) on the day immediately preceding the effective date of this act, but which does not meet the definition of a community mental health center set forth in this act, shall continue to be licensed as a community mental health center as long as the entity remains affiliated with a licensed community mental health center and continues to meet the licensing standards established by the secretary.

Sec. ~~5~~ 7. K.S.A. 39-1501, 40-2,116 ~~and~~, 65-3501 *and 75-3307b* and K.S.A. 1994 Supp. 39-923 are hereby repealed.

Sec. ~~6~~ 8. This act shall take effect and be in force from and after its publication in the statute book.

2-12

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Janet K. Schalansky, Acting Secretary

House Committee on Health and Human Services
Testimony on Senate Bill 8
Licensure and Definition of LTC Housing Options
March 13, 1995

Members of the committee, I appreciate the opportunity to provide you with this testimony regarding Senate Bill (SB) 8.

SRS continues to support SB 8. Creating alternative housing options for the elderly and persons with disabilities is critical to preventing and delaying institutional placements. SB 8 provides clear definitions of housing options and licensure requirements administered through a single state agency. Without this bill, potential housing developers will continue to see the licensure process for elderly housing as a barrier, leaving nursing homes as the only available option for care in many communities.

SRS is pleased with the revisions to SB 8 which clarify K.S.A. 75-3307(a)5 and (b). These changes ensure consistent licensure practices for facilities serving the elderly and do not jeopardize SRS' authority to license residential homes serving the mentally ill, mentally retarded, or individuals with developmental disabilities.

We are concerned with two issues related to SB 8:

- **Availability of 24 hour skilled nursing care in Assisted Living**
- **Medicaid Reimbursement for Assisted Living**

These two issues impact one another. SRS recommends the option for 24 hour skilled nursing care in Assisted Living be clearly defined through regulation. SRS supports the concept of "aging in place" but also identifies the potential for misuse of this option. Regulation must include direction regarding discharge planning when individuals routinely require 24 hour skilled nursing care on a long term basis. Regulation should ensure the population appropriately placed in Assisted Living does not mirror the Nursing Facility population. Without appropriate regulation, nursing facilities making minor physical plant modifications could transfer licensure to Assisted Living and no longer be required to meet necessary nursing facility survey and certification regulations. We believe there is potential for abuse of the intent of Assisted Living definitions and the consumers who choose this care option.

Currently, Medicaid reimbursement is not available for Assisted Living and so SB 8 has no direct fiscal impact on SRS. We would like to include Assisted Living as a Home and Community Based Service (HCBS) option in the future. If regulation does not clarify the intent of 24 hour skilled nursing care in Assisted Living as a temporary or intermittent service, it is likely that Medicaid will not be able to demonstrate this option as cost-effective. Private

paying residents choosing Assisted Living do spend down resources. If Medicaid reimbursement is not available, the concept of "aging in place" is lost. If 24 hour skilled nursing care is provided on a routine basis, costs for care in Assisted Living will increase and Medicaid will not be able to participate.

SRS will work cooperatively with KDHE to ensure appropriate implementation of housing definitions and regulations to ensure necessary guidance regarding 24 hour skilled nursing care in Assisted Living to providers and consumers.

Again, thank you for this opportunity to discuss SRS issues related to SB 8.

TESTIMONY OF

TIM BUCHANAN
CEO -- STERLING HOUSE

PRESENTED
TO THE

HOUSE
HEALTH AND HUMAN SERVICES
COMMITTEE

ON

SB 8

MARCH 13, 1995

Chairman Mayans, members of the Committee, my name is Tim Buchanan, CEO of the Sterling House Corporation. Sterling House operates 19 Assisted Living residences across Kansas and Oklahoma representing approximately 500 residents. We currently operate 18 locations in Kansas either currently licensed or in the licensing process at the Department of Health and Environment as Intermediate Personal Care Faciltities.

I must say at the outset that as a newcomer to the legislative process I have been nothing but impressed by both legislators and agency personnel in their efforts in advancing this "most needed" piece of legislation.

SB 8 in its original form was sponsored by the Long Term Care Action Committee and, in consideration of the varied interests of numerous entities, has been amended accordingly as it made its way through an interim study, a Senate Public Health and Welfare Subcommittee and finally out of the Senate by a vote of 40 - 0. As one of the participants in helping to shape SB 8, I was proud to work with individuals from SRS, KDHE, the Department on Aging, the nursing home industry, the Nurses Association and others. All worked in a collaborative effort to produce what I think is a nearly flawless bill as it relates to the needs of the different segments of the industry.

Why Senate Bill 8

SB 8 collapses old categories of Adult Care Homes and nursing services into new categories more relevant to today's marketplace. Realizing that there will be a variety of long term care settings to choose from, it is important to provide the consumer with a clear idea of what a facility that offers an assisted living model of care should be. For that reason SB 8 sets certain parameters by which an assisted living facility must operate and sets out to define them. (Examples include definitions for apartments, kitchens, services offered, etc.). The common goal of all assisted living is to provide a safe environment in which one can receive quality services that are supportive of choice and independence, a concept we like to call "aging in place!"

Philosophy

Assisted Living is a model of care that supports each resident's privacy, independence, dignity, choice, and individuality. The model of care assumes that residents should have the freedom to choose the type and amount of services and care they receive, as well as some control over the level of risks accompanying those services. However, because the long term care industry serves a more frail and vulnerable segment of our society, we understand that **some** form of limited regulation and accountability are necessary. Having said that, we feel that SB 8, as currently drafted, would support the concept that the consumer, either independently or when needed, with the guidance of family, counselor, or personal physician, should have the opportunity to structure their long-term care in a manner they choose.

Choice

SB 8 currently includes the words "choice" and "support of resident independence," which will require rules be promulgated that do not erode a consumer's choice and independent decision control when referring to assisted living or residential health care facilities. The bill also allows for skilled nursing procedures to be performed in Assisted Living facilities which will again allow consumers to bring services to themselves in a setting of their choice without being forced to move to an institutional setting, as is currently happening. Providing consumers the ability to hire private skilled nursing in assisted living, just like they can do in their own home, is a right that we think should be protected when considering any changes in the bill.

The concerns of those that think that the allowance of skilled nursing in assisted living facilities will turn them into mini-nursing homes is unfounded given the successes of other states utilizing this concept. If Kansas is truly going to foster and encourage the growth of community based care in an effort to meet the rising numbers of seniors, as well as the rising cost of health care, we must be able to break free of traditional boundaries that say skilled care delivery can only be done in traditional nursing facilities!

There are efforts by many parties and some state agencies to further restrict the ability of licensed nurses to practice freely, and it is with that knowledge that we respectfully request that the committee support the language in the bill and establish a clear intent that supports the concept that allowing a range of skilled nursing in assisted living as the best way to preserve a consumer's right to choice and best supports the concept behind this "new" model of care for seniors.

Cost

Assisted living is an appealing alternative adult care delivery system for several reasons, including the fact that it is currently all "private pay" and there is no state money involved! (REFER TO ATTACHED GRAPH) This alternative model of care for seniors who are not in need of, or choose not to reside in, a nursing home results in less cost to both the resident and the state. For that reason it is imperitive that assisted living be free from over-regulation and be allowed to deliver to the consumer at least the same levels of care they can receive in their own homes, concepts currently protected in SB 8. Without this freedom, many people will stay at home, spending more and more of their income on home health services to avoid moving to a skilled nursing facility and wind up spending down their assets much faster than if they had been able to receive those same services in assisted living.

Conclusion

We believe that Kansas residents should have the freedom to choose which setting they live in and which services they receive with as little regulatory intrusion as possible. The expansion of the assisted living concept is currently stifled due to restrictive and outdated regulations that KDHE has no choice but to follow. Certain long term care settings are somewhat protected by and reliant on heavy regulation. They resist the creation of less restrictive rules and a more open market place!

The absence or failure of SB 8 would unfortunately result in the continued enforcement of the current restrictive regulations. As it is currently amended, SB 8 is much less restrictive and goes a long way towards allowing assisted living to deliver a model of care which preserves a senior's individuality and, more importantly, their dignity!

We strongly support the passage of SB 8 in its current form and look forward to participating in the process.

MR. CHAIRMAN, I WILL BE HAPPY TO STAND FOR QUESTIONS.

Tim Buchanan
CEO - Sterling House Corporation
(316) 684 - 8300

HISTORY OF SENATE BILL 8

1. Introduced last session as HB 3049. After an in-depth study of the issue, the Long Term Care Action Committee offered suggestions and recommendations for a new definition of adult care home known as Assisted Living. The bill was assigned to an Interim Committee for further consideration.

2. The Interim Committee had a full day of hearings last fall and recommended that the bill be re-introduced this session, resulting in Senate Bill 8. The Committee concurred with the recommendations of a number of conferees that "the regulation of Assisted Living facilities should be sufficient to protect the residents, but should not result in overregulation." (see attachment)

3. Hearings were held in Senate Public Health and Welfare on February 15 whereupon it was studied even further in a PH+W Subcommittee.

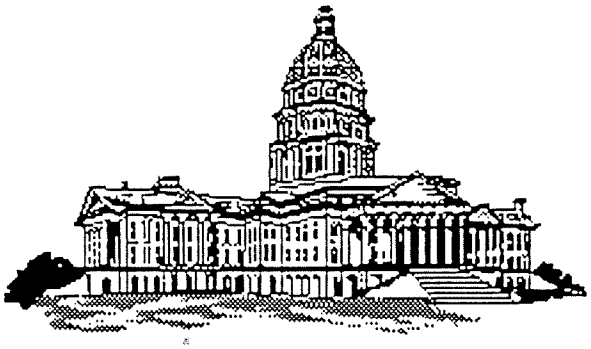
4. The Subcommittee sought input from all interested parties and through the collaborative effort, a bill with amendments that appeared somewhat agreeable to all was passed out of Committee unanimously.

5. Those providing input included: the Department on Aging, SRS, the Department of Health and Environment (KDHE), Kansas State Nurses Association (KSNA), Kansas Hospital Association (KHA), Kansas Association of Homes and Services for the Aging (KASHA), Sterling House Corporation, and Kansans For The Improvement of Nursing Homes (KINH).

6. SB 8 passed the Senate on March 1st, 40 - 0.

Kansas Legislature

Reports of Special Committees Legislative Budget Committee and Legislative Educational Planning Committee to the 1995 Kansas Legislature



Legislative Research Department
December, 1994

4 - 6

Assisted Living

The Special Committee on Public Health and Welfare, after discussion of the issues and recommendations brought to the Committee by the individuals who educated the members and responded thoughtfully and completely to the questions posed by members, has concluded legislation should be introduced to define a level of care to be known as assisted living. The Committee concurs with the recommendations of a number of conferees that the regulation of such facilities should be sufficient to protect the residents, but should not result in overregulation. The Committee is pleased the very state agencies that play a regulatory role in long-term care and that advocate for the elderly have taken a public position agreeing that regulation should be done with the safety of residents as a primary concern, but with as little regulatory oversight as will accomplish that end. In light of the agreement of those agencies that comprise the Long Term Care Action Committee and the agreement of a number of the other conferees, the Special Committee concluded a bill substantially in the form of that proposed in 1994 and again for introduction in the 1995 Session by the Long Term Care Action Committee should be drafted and introduced as a Committee bill.

The Special Committee on Pubic Health and Welfare has drafted a bill that would amend several of the statutes under which adult care homes are licensed and regulated to create the new definitions proposed by the Long Term Care Action Committee, including a definition of assisted living, and including the other amendments proposed in 1994 H.B. 3049. The Committee bill incorporates amendments to several additional statutes that were identified during drafting of the bill in order to conform with the substantive amendments noted earlier. In addition, the Committee bill incorporates the amendments to the act under which adult care home administrators are licensed in the bill rather than in a separate bill.

The Special Committee on Public Health and Welfare recommends the appropriate committees of the 1995 Legislature give careful consideration to the bill introduced by the Committee and the enactment of legislation in substantially the form of the Committee bill.

Background

S.B. 8 is the work product of a number of different long-term care advocates and providers who have worked with the Long-Term Care Action Committee composed of representatives of the Departments on Aging, Health and Environment, Social and Rehabilitation Services, Commerce and Housing, and Education and the University of Kansas School of Social Welfare. The issue of assisted living and the concept of "aging in place" was assigned to the Special Committee on Public Health and Welfare during the 1994 interim, and the Special Committee introduced S.B. 8 as a result of its deliberations. The Special Committee, in its report to the 1995 Legislature, endorsed the concept of regulatory oversight sufficient to protect the residents of long-term care facilities, but with as little regulatory oversight as will accomplish that goal. (See Report of the Special Committee on Public Health and Welfare, pages 69-82, *Reports of Special Committees, Legislative Budget Committee, and Legislative Educational Planning Committee to the 1995 Legislature.*) S.B. 8 provides choice for those in need of long-term care resulting from functional disabilities arising from aging or handicapping conditions by allowing the provision or coordination of a range of services in different types of residential settings rather than requiring that residents move to another type of facility as their needs change. A number of conferees supported the bill during Committee hearings on S.B. 8, and a number of persons representing varied interests collaborated in the development of the Senate Committee amendments.

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*The Long Term Care Action Committee would like to take this opportunity to give a special thanks to Dr. Lyndon Drew for his support and participation in the committee. Dr. Drew has resigned from the committee effective November 4, 1994. Bill Cutler will replace Dr. Drew.

Long Term Care Action Committee Background

In 1991 the Long Term Care Action Committee (LTCAC) was established to coordinate the efforts of agencies working on long term care (LTC) issues. Key staff in the Department of Health and Environment (KDHE), Department of Social and Rehabilitation Services (SRS), and the Department on Aging (KDOA) united to reduce reliance on institutional long term care and coordinate the efforts of agencies working on these issues. Since that time two new members have joined the committee, the Department of Commerce & Housing (KDOC&H) and the University of Kansas School of Social Welfare (KU-SW). The committee continues to meet to seek better methods of serving Kansans in need of long term care.

For four consecutive years, the LTCAC has submitted recommendations to the Kansas Legislature. Our intent is to provide lawmakers and other stakeholders with timely and useful proposals which improve the LTC service delivery system in Kansas. The mission of the LTCAC is

> **To achieve a quality of life for Kansans with long term care needs in an environment of choice that maximizes independent living capabilities and recognizes diversity by providing them with a wide array of quality, cost-effective and affordable long term care choices.**

Building on this mission, these 1995 Recommendations were developed with the input and support of consumers, advocacy organizations, professional associations, service providers and management staff through subcommittees of the LTCAC. The efforts of these volunteers in developing constructive and achievable goals will go far in achieving the mission. Each subcommittee was organized to address specific concerns identified by state and national evaluations of Kansas' LTC service delivery systems.

The LTCAC will continue its efforts on behalf of all Kansas citizens. Success in adequately caring for those in need of LTC depends heavily on the cooperation of all parties involved. A progress report for each recommendation of the LTCAC is enclosed. *(See Attachment A)* Please review our ideas and recommendations. We welcome your comments and ideas. Together we can build a model for LTC in Kansas that will work for generations to come.

THE ASSISTED LIVING CONCEPT

SB 8 is a piece of legislation sponsored by the Long Term Care Action Committee, that allows the State of Kansas, through the Department of Health and Environment, to license another type of adult care facility known as **Assisted Living.**

PHILOSOPHY

Assisted Living is a model of care that supports each resident's privacy, independence, dignity, choice, and individuality. The model of care assumes that residents should have the freedom to choose the type and amount of services and care they receive as well as some control over the level of risks accompanying those services. The consumer either independently or when needed, with the guidance of family, counselor, or personal physician, should have the opportunity to structure their long-term care in a manner they choose.

DESIGN

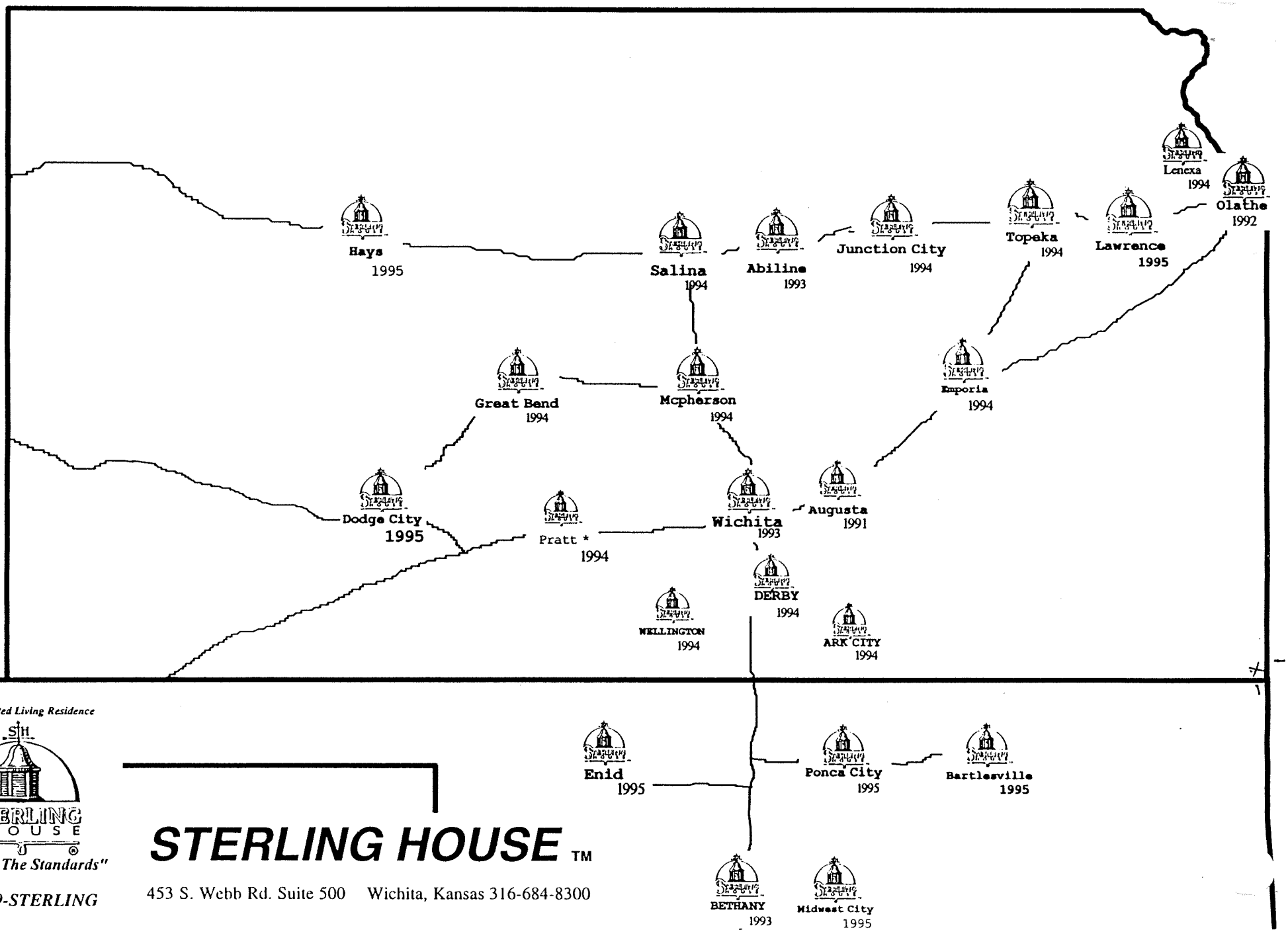
With features such as private apartments with locking doors, living area, bedroom area, private bath, individual temperature controls, and kitchens, Assisted Living is viewed as the resident's **home** , in which they receive services.

SERVICES

Assisted living residents require four major types of services: hospitality services, personal care, nursing care, and special care. The residents should have the freedom to choose the types and frequency of services provided to them. Residents should also be able to choose services provided by outside agencies that are coordinated by the assisted living provider. These services should include support for the resident to "age in place" by having a full range of services available including such services as Hospice.

CHOICE

The Assisted Living concept is based on "choice" in that the resident has control over how to satisfy their long-term care needs. Assisted Living facilities should create a home-like atmosphere where a resident can have services come to them when possible, instead of having to move from place to place in search of those same services that can be coordinated by trained staff. This alternative model of care for seniors who are not in need of, or who choose not to, reside in a nursing home results in less cost to both the resident and the State, while maintaining the individuality, autonomy, and dignity of each resident.



An Assisted Living Residence

"Setting The Standards"

1-800-*9-STERLING*

STERLING HOUSE ™

453 S. Webb Rd. Suite 500 Wichita, Kansas 316-684-8300

Findings submitted by the National Long Term Resource Center to the

The Department of Social and Rehabilitation Services and the Department of Aging April 1994

- Kansas ranks 11th in the percent of the population over 65 and fifth in the percent of people over 85 which is the age group most likely to use long term care services.
- The number of people with impairments in 1-2 Activities of Daily Living (ADL) is projected to rise 23.7 percent this decade.
- The number with 3 or more ADL impairments will increase 36.2 percent this decade.
- Data showing that up to 20% of nursing home residents have no impairment in daily functioning (ADL) and have a high level of cognitive functioning. In rural areas the percentage is 25% an if 1 ADL residents are included , fully 30% of all residents entered a nursing home because there was simply no other housing and service option available.
- In public hearings two nursing home administrators testified that 15% and 33%, respectively, of their residents did not need to be in a nursing home if assisted living were available
- Data showing as high as 30% of nursing home residents have 1-3 ADL's
- Kansas' 1992 overall nursing home occupancy rate was 90.8%

In FY 1993 Kansas' long term care services cost $196.6 million	
Future Policy Direction	**Cost By year 2000**
Hold current supply constant, no expansion to meet rising need	$371.7 million
Meet rising need by maintaining current supply mix	$405.7 million
Hold NH supply constant and expand community services to meet rising need	$378.8 million
Reduce NH supply by 500 beds and expand community services	$345.0 million

KAHSA
KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

PUBLIC TESTIMONY

TO: House Health and Human Services Committee
Chairman Carlos Mayans

FROM: John R. Grace, President

RE: Senate Bill 8

DATE: March 13, 1995

Thank you, Mr. Chairman, and members of the committee for the opportunity to testify on Senate Bill 8.

The Kansas Association of Homes and Services for the Aging is a trade association representing over 150 not-for-profit retirement, nursing and community service providers throughout Kansas. KAHSA members provide diverse services to individuals in a variety of settings including over 10,000 nursing facility beds, over 4,000 apartments and duplexes, and a wide range of community services such as assisted living/personal care, home health care, congregate meals, and adult and intergenerational daycare.

We support Senate Bill 8 with the attached amendment.

The amendment would provide for a limitation on the amount of skilled nursing care that could be provided in assisted living and residential health care facilities. Our members feel strongly that it is appropriate to allow for some intermittent or temporary skilled nursing care services provided by a registered nurse or under the guidance of a licensed nurse, for individuals who are in rehabilitative, recuperative or "hospice care."

We do not believe that a residential health care facility or an assisted living facility should be able to provide for the full range of around the clock nursing care services for a number of individuals for an unlimited time period as is now provided in Kansas licensed nursing facilities. If you were to allow this to occur, we would then ask that you provide for a level playing field for nursing facilities and assisted living facilities to serve their residents.

We have defined the word "intermittent" as being "those skilled nursing services that can be provided to an individual with a medically predictable recurring need for skilled nursing services." This definition is from the Medicare Home Health definition and we believe it would allow for an individual to receive a skilled nursing service that is limited in scope such as an insulin shot over an indefinite period of time.

700 SW HARRISON, SUITE 1106
TOPEKA, KANSAS 66603-3759

913-233-7443
FAX: 913-233-9471

The definition of "temporary" from Webster's Dictionary is "for a time only, not permanent." There are situations where individuals might need intensive skilled nursing care for a limited time period, such as in the final stages of their life under hospice care. We believe as long as those services are provided under the immediate supervision of a registered nurse and are for a short and defined period of time, it is acceptable.

There are other provisions in this bill that allow for grandfathering in facilities that are currently licensed, and we support those other provisions. We believe that passage of this bill with amendments, will provide older persons more choices for meeting their housing and support needs in later life. If this committee and the House decide to pass this bill, then we would work with Health and Environment to see that the regulations that are promulgated are reasonable and clear, further defining this important and growing area of service.

Thank you, Mr. Chairman, and members of the committee.

Amendments propos' by KAHSA and supported by Kansas State Nurses Association (KSNA)

As Amended by Senate Committee

Session of 1995

SENATE BILL No. 8

By Special Committee on Public Health and Welfare

12-16

AN ACT concerning ~~adult care homes~~ ***certain care facilities***; defining certain terms; amending K.S.A. ***19-4601,*** 39-1501, 40-2,116 ~~and~~, 65-3501 ***and 75-3307b*** and K.S.A. 1994 Supp. 39-923 and repealing the existing sections.

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

Section 1. K.S.A. 1994 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, *nursing facility for mental health,* intermediate ~~personal care home, one to five bed adult care home and any~~ *care facility for the mentally retarded, assisted living facility, residential health care facility, home plus,* boarding care home *and adult day care facility,* all of which classifications of adult care homes are required to be licensed by the secretary of health and environment. ~~Adult care home does not mean adult family home.~~

(2) "Nursing facility" means any place or facility operating ~~for not less than~~ 24 hours ~~in any week and~~ *a day, seven days a week,* caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who ~~by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves, and for whom reception, accommodation, board and skilled nursing care and treatment is provided, and which place or facility is staffed to provide 24 hours a day licensed nursing personnel plus additional staff, and is maintained and equipped primarily for the accommodation of individuals who are not acutely ill and are not in need of hospital care but who require skilled nursing care,~~ *due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.*

~~(3) "Intermediate personal care home" means any place or facility operating for not less than 24 hours in any week and caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation,~~

5 - 3

3/13/95

~~board, personal care and treatment or simple nursing care is provided, and which place or facility is staffed, maintained and equipped primarily for the accommodation of individuals not acutely ill or in need of hospital care, nursing facility care or moderate nursing care but who require domiciliary care and simple nursing care.~~

~~(4) "One-to-five-bed adult care home" means any place or facility which place or facility may be a private residence and which place or facility is operating for not less than 24 hours in any week and caring for not more than five individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation, board, personal care and treatment and skilled nursing care, supervised nursing care or simple nursing care is provided by the adult care home, and which place or facility is staffed, maintained and equipped primarily for the accommodation of individuals not acutely ill or in need of hospital care but who require domiciliary care and skilled nursing care, supervised nursing care or simple nursing care provided by the adult care home. When the home's capabilities are questioned in writing, the licensing agency shall determine according to its rules and regulations if any restriction will be placed on the care the home will give residents.~~

*(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need special mental health services to compensate for activities of daily living limitations.*

*(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by ~~developmental disabilities~~ **mental retardation or related conditions** need services to compensate for activities of daily living limitations.*

*(5) "Assisted living facility" means any place or facility caring for ~~three~~ **six** or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, **by choice or** due to functional impairments, **may** need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services **including personal care, supervised ~~or skilled~~ nursing care** available*

or intermittent or temporary skilled nursing care

24 hours a day, seven days a week for the support of resident independence.

*(6) "Residential health care facility" means any place or facility caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, **by choice or** due to functional impairments, **may** need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates ~~a range of~~ **personal care and supervised or skilled nursing care** services available on a 24-hour, seven-day-a-week basis for the support of resident independence.*

(7) "Home plus" means any residence or facility caring for not more than five individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the operator and rules and regulations developed by the department of health and environment.

~~(5)~~ *(8)* "Boarding care home" means any place or facility operating ~~for not less than~~ 24 hours ~~in any week and~~ *a day, seven days a week,* caring for ~~three or~~ *not* more *than 10* individuals not related within the third degree of relationship to the ~~administrator~~ *operator* or owner by blood or marriage and ~~who by reason of aging, illness, disease or physical or mental infirmity are unable to sufficiently or properly care for themselves and for whom reception, accommodation, board and supervision is provided and which place or facility is staffed, maintained and equipped primarily to provide shelter to residents who require some supervision, but~~ who, *due to functional impairment, need supervision of activities of daily living but who* are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

~~(6)~~ *(10)* "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

~~(7)~~ *(11)* "Skilled nursing care" means services ~~commonly~~ performed by or under the immediate supervision of a registered ~~professional~~ ***pro-***

5 - 5

fessional nurse and additional licensed nursing personnel ~~for individuals requiring 24 hour a day care by licensed nursing personnel including: Acts of observation, care and counsel of the ill, injured or infirm; the~~. *Skilled nursing includes* administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions ~~requiring~~ *which require* substantial ~~specialized~~ *nursing* judgment and skill based on the knowledge and application of scientific principles.

~~(8)~~ *(12)* "Supervised nursing care" means services ~~commonly performed by or under the immediate *onsite* supervision of licensed nursing personnel at least eight hours a day for at least five days a week including: Acts of observation, care and counsel of the ill, injured or infirm; the *a licensed nurse or through delegation by a licensed nurse, including but not limited to,*~~ ***provided by or under the guidance of a licensed nurse with initial direction for nursing task and periodic inspection of its actual act of accomplishing the task;*** administration of medications and treatments as prescribed by a licensed physician or dentist; and ~~other selected functions requiring specialized judgment and certain skills based on the knowledge of scientific principles~~ *assistance of residents with the performance of activities of daily living.*

~~(9) "Simple nursing care" means selected acts in the care of the ill, injured or infirm requiring certain knowledge and specialized skills but not requiring the substantial specialized skills, judgment and knowledge of licensed nursing personnel.~~

~~(10)~~ *(13)* "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

~~(11)~~ *(14)* "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

~~(12)~~ *(15)* "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

~~(13)~~ *(16)* "Licensing agency" means the secretary of health and environment.

~~(14) "Skilled nursing home" means a nursing facility.~~

~~(15) "Intermediate nursing care home" means a nursing facility.~~

(17) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(18) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and

Add new definition (13) "Intermittent skilled nursing care" means providing skilled nursing services to an individual with a medically predictable recurring need for skilled nursing care.

storage area and a lockable door.

*(19) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than ~~45 beds~~ **61 residents**, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living **and has successfully passed an examination approved by the licensing agency on principles of assisted living.***

(20) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting ~~*and other activities such as meal preparation, shopping and management of personal finances*~~.

(21) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

(22) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(23) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.

(c) Facilities licensed under K.S.A. 39-1501 et seq. and amendments thereto or K.S.A. 75-3307b and amendments thereto or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.

(d) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(e) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the expiration of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

~~(e)~~ *(f)* The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 2. K.S.A. 65-3501 is hereby amended to read as follows: 65-3501. As used in this act, or the act of which this section is amendatory, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Adult care home" means nursing facility ~~and intermediate personal care home as the terms nursing facility and intermediate personal care home are~~, *nursing facilities for mental health, intermediate care facilities for the mentally retarded, assisted living facility licensed for more than ~~45 beds~~ 60 residents*, and residential health care facility licensed for more than ~~*45 beds*~~ *60 residents as* defined by K.S.A. 39-923 and amendments thereto or by the rules and regulations of the licensing agency adopted pursuant to such section for which a license is required under article 9 of chapter 39 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, except that the term "adult care home" shall not include a facility that is operated exclusively for the care and treatment of the mentally retarded and is licensed for ~~15~~ *16* or fewer beds.

(b) "Board" means the board of adult care home administrators established by K.S.A. 65-3506 and amendments thereto.

(c) "Administrator" means the individual directly responsible for planning, organizing, directing and controlling the operation of an adult care home.

(d) "Person" means an individual and does not include the term firm, corporation, association, partnership, institution, public body, joint stock association or any group of individuals.

Sec. 3. K.S.A. 39-1501 is hereby amended to read as follows: 39-1501. As used in this act:

(a) "Adult family home" means a private residence in which care is provided for not less than 24 hours in any week for one or two adult clients who (1) are not related within the third degree of relationship to the owner or provider by blood or marriage, (2) by reason of aging, illness, disease or physical or mental infirmity are unable to live independently but are essentially capable of managing their own care and affairs. The home does not furnish skilled nursing care, supervised nursing care or ~~simple nursing~~ *personal* care. Adult family home does not mean adult

5 - 8

care home.

(b) "Skilled nursing care," "supervised nursing care" and "~~simple nursing~~ ***personal*** care" have the meanings respectively ascribed thereto in K.S.A. 39-923, and amendments ~~thereof~~ *thereto*.

(c) "Physician" means any person licensed by the state board of healing arts to practice medicine and surgery.

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

Sec. 4. K.S.A. 40-2,116 is hereby amended to read as follows: 40-2,116. As used in this act:

(a) "Contracting facility" means a health facility which has entered into a contract with a service corporation to provide services to subscribers of the service corporation.

(b) "Contracting professional provider" means a professional provider who has entered into a contract with a service corporation to provide services to subscribers of the service corporation.

(c) "Health facility" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto; psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; adult care home, which term shall be limited to nursing facility ~~and intermediate personal care home~~, *assisted living facility and residential health care facility* as such terms are defined in K.S.A. 39-923 and amendments thereto; and kidney disease treatment center, including centers not located in a medical care facility.

(d) "Professional provider" means a provider, other than a contracting facility, of services for which benefits are provided under contracts issued by a service corporation.

(e) "Service corporation" means a mutual nonprofit hospital service corporation organized under the provisions of K.S.A. 40-1801 *et seq.*, and amendments thereto, a nonprofit medical service corporation organized under the provisions of K.S.A. 40-1901 *et seq.*, and amendments thereto or a nonprofit medical and hospital service corporation organized under the provisions of K.S.A. 40-19c01 *et seq.*, and amendments thereto.

Sec. 5. K.S.A. 19-4601 is hereby amended to read as follows: 19-4601. As used in this act:

(a) "Board" means a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of a county hospital;

(b) "commission" means the board of county commissioners of any county;

(c) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, school of nursing, long-term care facility, limited care residential facility and child-care facility operated in connection with

the operation of the medical care facility.

(d) "hospital moneys" means, but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital.

(e) As used in this section, a "limited care residential facility" means a facility, other than an adult care home, in which there are separate apartment-style living areas, bedrooms, bathrooms and individual utilities and in which some health related services are available.

Sec. 6. K.S.A. 75-3307b is hereby amended to read as follows: 75-3307b. (a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for the mentally ill, mentally retarded or other handicapped persons is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities for the mentally ill, mentally retarded or other ~~handicapped~~ *developmentally disabled persons receiving assistance through the department of social and rehabilitation services which receive or have received after June 30, 1967, any state or federal funds, or facilities where mentally ill, mentally retarded or other* ~~handicapped~~ *developmentally disabled persons reside who require supervision or require limited assistance with the taking of medication, and the withdrawal of licenses granted for causes shown. The secretary may adopt rules and regulations that allow the facility to assist a resident with the taking of medication when the medication is in a labeled container dispensed by a pharmacist. No license for a residential facility for eight or more persons may be issued under this*

paragraph unless the secretary of health and environment has approved the facility as meeting the licensing standards for a lodging establishment under the food service and lodging act. No license for a residential facility for the elderly or for a residential facility for persons with disabilities not related to mental illness or mental retardation, or both, or related conditions shall be issued under this paragraph;

(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for the mentally retarded and facilities serving other handicapped persons receiving assistance through the department of social and rehabilitation services.

(b) An entity holding a license as a community mental health center under paragraph (4) of subsection (a) on the day immediately preceding the effective date of this act, but which does not meet the definition of a community mental health center set forth in this act, shall continue to be licensed as a community mental health center as long as the entity remains affiliated with a licensed community mental health center and continues to meet the licensing standards established by the secretary.

Sec. ~~5~~ *7.* K.S.A. 39-1501, 40-2,116 ~~and~~, 65-3501 *and 75-3307b* and K.S.A. 1994 Supp. 39-923 are hereby repealed.

Sec. ~~6~~ *8.* This act shall take effect and be in force from and after its publication in the statute book.

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 HEALTH AND HUMAN SERVICES
CONCERNING SB 8

March 13, 1995

Mr. Chairman and Members of the Committee:

KINH has long advocated a continuum of care providing a complete range of services from safe and affordable community-based in-home care to high quality nursing home care. Many of our members have first-hand experience with the lack of alternatives to nursing home care in our state. While Kansas has one of the highest rates of nursing home placement in the country, we have lagged far behind other states in developing home and community resources for the elderly and people with disabilities. We therefore welcome the new and modified definitions of long term care settings which are contained in this bill.

Most of the debate about assisted living and other levels of long term care has focused on the issues of cost and regulation. KINH believes that while it is desirable for Kansans to have a wider range of long term care options, it is critically important to implement a system that is both safe and cost-effective.

Kansas consumers care as much about costs as providers and policy-makers do. However, affordable alternatives to nursing home care are scarce, and in many areas, unavailable. Assisted living is currently available primarily to those in upper income brackets. (See attached sheet for comparison of rates for assisted living and nursing facility care.) People with limited incomes must rely on the existing supply of board and care homes and adult foster homes, which does not meet current demands. Such a lack of affordable resources forces consumers into nursing homes, and drives up private and government costs.

Although many providers and government officials are wary of "over-regulation," residents of these evolving settings need to be assured their basic rights and safety will be protected. Of particular concern to KINH is the newly defined "home plus" care setting. If large numbers of these settings are developed without adequate standards for care and without adequate oversight, the vulnerable people living in these scattered settings would be at the mercy of their paid caregivers. The realistic potential for adequate and effective oversight of additional licensed care settings is a concern to KINH. The programs within the Department of Health and Environment which would be responsible for regulatory oversight of these settings are already understaffed, and funding for necessary additional staff has not been approved for FY 96.

Oregon's long term care system is often cited as an example for our state to follow. The Oregon system has dramatically reduced its reliance on nursing home care by developing and funding resources for assisted living and adult foster care. The system has been very successful in providing care options and saving tax dollars, but it has also experienced serious problems. Last fall in Oregon, where over 2,000 adult foster homes provide care (similar to "home plus") for more than 9,000 people who would otherwise be in nursing homes, serious flaws in the system were revealed in the press.

Horrifying incidents of abuse, neglect, and deaths of residents were an unintended by-product of a system in which operators with no medical background and no experience with the elderly were allowed to go into business almost overnight. Oregon requires only an 18-hour course for adult foster care operators, and has no test requirement. Inconsistent background checks for criminal records left the frail elderly in the care of people with records of burglary, assault and arson. As residents "aged in place," they were left in the care of individuals who were not trained to perform more complicated nursing tasks. Some residents died as a result of the improper use of physical or chemical restraints.

In response to the Oregon foster care problems, the attached editorial from the Portland Oregonian calls for a 50-hour training requirement, examination, and licensure for foster care operators. It also recommends a state-supervised apprenticeship and a continuing education requirement for these operators. In addition, the editorial recommends multi-state criminal records checks of those who live or work in adult foster homes. Finally, they suggest that complaints filed against operators or employees should become part of a statewide database. KINH believes that Kansas could profit from the Oregon experience by adopting all of these recommendations for our operators.

Kansas licensing officials claim they do not want to discourage the development of affordable alternatives to nursing home care by over-regulating them, but note what the Oregonian said about the Oregon foster care system:

> Initially the plan for regulating adult foster care was not to regulate it much at all. If people were good enough to allow elderly and disabled people to live in their homes with them, they didn't need a bunch of meddling bureaucrats complicating their lives....The result is that, under state law, a person can open an adult foster home without so much as a basic first-aid course. The 18-hour training classes, required within 90 days of licensure, are administered county by county....a lobbyist for the foster care industry says flatly that the training requirement is "a joke." (October 9, 1994)

In order to prevent problems similar to those encountered in Oregon, KINH recommends that a definition of "principles of assisted living" be added to the bill. We recommend that Kansas establish a minimum training requirement for operators. The training could be based on a curriculum currently used in Arizona to certify managers of similar residential care settings. The Arizona curriculum covers:

1. Resident rights.
2. Hands-on care of elderly, disabled and physically handicapped adults.
3. Nutrition and food preparation.
4. Caring for confused individuals.
5. Pharmacology of medications commonly prescribed for adults.
6. Care plan development.
7. Fire safety.
8. Business practices and record keeping.
9. Approved training in first aid and cardiopulmonary resuscitation.

KINH also recommends a section on preventing, detecting and reporting abuse, neglect, and exploitation of residents.

Operators with equivalent training, such as in nursing or adult care home administration, could be allowed to test out of the training requirement.

While KINH does not believe that smaller assisted living facilities, residential health care facilities, or home plus settings require a licensed adult care home administrator, we do believe that minimum standards for training, competency and screening of operators are essential for the health and safety of the residents of such facilities. If Kansas requires 350 hours of training to become a manicurist, it is not unreasonable to require those who will be providing care for our parents and grandparents to complete a standard training program and to pass a test. KINH believes operators should be at least as well trained as nurse aides, who must complete 40 hours of training prior to providing hands-on care and an additional 50 hours within four months.

While KINH appreciates its intent, we do not support the Senate Committee amendment to permit assisted living facilities and residential health care facilities to provide routine skilled nursing care. Since skilled nursing care is defined as "services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel," a facility would be required to have a registered nurse on duty 24 hours a day, 7 days a week in order to comply with the statute. This 24-hour requirement would defeat one of the primary purposes of these less-regulated settings: to provide affordable home-like alternatives to nursing home care for individuals with moderate impairments and less intensive care needs. In addition, the provision of skilled nursing in these settings would require new and different regulations to be drafted.

KINH also believes it would be inappropriate for assisted living and residential health care facilities to routinely provide skilled nursing care in the absence of a licensed adult care home administrator or any requirements for resident assessment and plans of care. If a resident were to need intermittent skilled nursing care following discharge from the hospital, it would be more consistent with the goals of independent living and aging in place for the facility to arrange for licensed home health care under existing guidelines. KINH asks the committee to remove the provision of skilled nursing care from the definitions of assisted living facility and residential care facility.

With these amendments, KINH supports SB 8.

Respectfully submitted,

Sandy Strand

Sandra Strand
Legislative and Community Liaison

MONTHLY SERVICE LEVELS

Service Levels

for Olathe, Lawrence & Lenexa

	Level I	Level II	Level III
Studio	$1,520	$1,770	$2,015

One Bedroom Suites

Gallery Suite	$1,730	$2,015	$2,300
Chamber Suite	1,730	2,015	2,300
Plaza Suite	1,840	2,140	2,440
Governor's Suite	1,930	2,250	2,565
Spouse	1,185	1,380	1,575
Confusion Management *(at certain locations only)*	2,540	2,950	3,365

Our Director will be happy to describe the Service Levels and assessment process with you.

- Services are individually planned with family involvement and adapted in response to resident's preferences and needs.
- Charges are made on a monthly basis and include apartment rent, basic utilities, routine maintenance, routine housekeeping and laundry as well as care at the appropriate service level.
- All meals and regular snacks are included in the monthly rate.
- Medication assistance is provided based on the service level. The cost of medications is not included.
- Cable TV access is provided to all apartments. Charges are billed directly.
- Access is provided for private telephones in each apartment. Telephone charges billed directly.
- All units are completely electric for safety.

**Prices subject to change*

"Setting the Standards in Assisted Living"

Statewide average rates for nursing facility care:

Medicaid rate: $60.36 per day, $1835.95 per month.

Private pay rate: $67.53 per day, $2,054 per month.

Based on rates for 403 nursing facilities, long term care units, and nursing facilities for mental health.

Source: SRS Division of Medical Services, Nursing Facility Program. Data as of 3/13/95.

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FRIDAY, OCTOBER 14, 1994

Improve adult foster care

Adult foster home workers should be better-trained; Legislature must make care home operators more accountable

Oregon has earned high marks nationally for facilitating adult foster care homes statewide as alternatives to nursing homes. The reality, though, is that there are major problems and abuses in the way some foster homes are operated.

Adult family care homes have saved the state an estimated $98 million since 1981. It was then that Oregon became the first state to gain a federal waiver to use Medicaid money for foster care instead of nursing home care.

Many adult foster care homes have sprung up in recent years because they can make money while staying relatively free of government oversight, rules and regulations.

A recent two-part series by The Oregonian's Dee Lane and Steve Mayes graphically revealed foster-care horror stories. Some of the abuses to elderly residents merited criminal prosecution, not just small fines for the homes' operators.

The 1995 Legislature should order major changes in state regulation and supervision of these homes. This is a delicate assignment because the concept of adult foster care homes is a good one and should be preserved.

Many of the foster homes feature a family-style environment and are operated responsibly by compassionate people who treat their paying residents like friends or family. Bureaucratic reforms aimed at the bad establishments must not strangle the good homes and their dedicated operators.

Here's what the Legislature should do to weed out the bad ones without penalizing the good ones:

• Improve training for operators. An adult foster care home operator only has to attend an 18-hour class with no examination afterward to measure competence. The Legislature should stiffen the course.

At least 50 hours of training, including information on dementia, should be mandatory. Applicants should be required to pass a broad-gauge examination to receive a license.

Care home operators and their personnel also should be required to take refresher courses every three years and pass tests on the material.

Moreover, prospective operators of these care facilities should serve a brief apprenticeship in a home, with state supervision.

• Improve screening of operators and employees. Before licenses are granted, the state Senior and Disabled Services Division or counties should conduct multistate criminal records checks of those who live or work in adult foster care homes. Complaints filed against operators or employees should become part of a statewide database, just as people with poor driving records are tracked.

• Encourage advocates for the elderly. The diligent oversight work of volunteers in the state's long-term-care ombudsman program has uncovered many adult foster home abuses. The Legislature should support increased inspections of adult foster care homes by these volunteers and should reward whistle-blowing.

6 - 6

KSNA

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March 13, 1995

SB 8 ADULT CARE HOMES-DEFINING CERTAIN TERMS

Chairperson Mayans, and members of the House Health and Human Services Committee, my name is Carolyn Middendorf MN, RN, and I am the current president of the Kansas State Nurses Association. I am an Assistant Professor at the Washburn University School of Nursing and teach all the gerontology content for the students.

S.B. 8 changes a number of definitions in the statutes that address the regulation of adult care homes. KSNA supports the move towards definitions more closely aligned with functional impairment, and away from the medical model concepts previously embodied in the definitions. The definitions section is being revised to add a new category of "assisted living" to the list of entities that will come under KDHE for purposes of regulation. We recognize that those entities that will now be regulated by KDHE may have some reservations about these dramatic changes.

KSNA has analyzed the changes in definitions that in particular address "registered professional nurses (RN's) and licensed nurses (RN's and LPN's)". KSNA supports the new definition of "Skilled nursing care" that appears on page 3 ((11) beginning on line 36). KSNA supports the deletion of "simple nurse care" on line 12 of page 4. This appears to be a very dated term and unnecessary at this time.

KSNA supports the definition of "Supervised nursing care" that appears in the Senate version, however, we believe that two additional words need to be added, to make the definition read more clearly.(Refer to page 4, Lines 13-14) The two words do not make substantive changes to the definition.

HOUSE H&HS COMMITTEE
3 - 13 - 1995
Attachment 7-1

The definition would now read:

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for **the** nursing task and periodic inspection of ~~its~~ **the** actual act of accomplishing the task; administration of medications and treatments as prescribed by a licensed physician or dentists and assistance of residents with the performance of activities of daily living.

Additionally, you have been given a recommendation from the Kansas Association and Services for the Aging, that adds a new definition of "Intermittent Skilled Nursing Care." KSNA supports this additional language and its usage in the new definition of "Assisted Living Facility" that appears on page two of the bill. This clarification is very important, because it gives clear direction for the distinction between the different types of facilities being defined.

KSNA supports the changes that KDHE have recommended regarding raising the number of residents to six or more, for purposes of defining "Nursing facility for mental health, Intermediate Care for the Mentally Retarded, and Assisted living facility".

Additionally, the addition of a new definition of "Home Plus", that will provide another alternative for individuals is also highly desirable.

Thank you for the opportunity to present today.

THE AMERICAN ASSOCIATION OF RETIRED PERSONS
HEARING BEFORE THE KANSAS STATE COMMITTEE
ON HEALTH AND HUMAN SERVICES
March 13, 1995

AARP commends the Health and Human Services Committee of the State Legislature for conducting this hearing on issues related to assisted living. AARP appreciates the opportunity to offer comments on this growing and important segment of nursing care services.

As you know, AARP represents a large, diverse segment of our nation's elderly. Their need for a comprehensive and coordinated long term care system is one of the most serious issues facing our society. It is crucial that states develop comprehensive long term care systems to provide a continuum of home, community and institutional based services for the ever-increasing elderly and disabled population. The systems need to be adequately funded, efficient, coordinated and accessible to all.

An increasingly important segment of the long term care continuum is assisted living. AARP does not have a detailed position on assisted living issues; however, it has developed guiding principals for state legislation authorizing assisted living programs. A summary of those principals follows:

HOUSE H&HS COMMITTEE
3 - 13 - 1995
Attachment 8-1

* Assisted living is a program approach that combines housing and a range of supportive services. Individualized services are packaged to enable residents to "age in place". Because assisted living emphasizes independence and choice, it is unique from other institutional and residential care and should be a separate licensure category.

* The goal of assisted living is to provide the disabled elderly with 24 hour protective oversight and individualized assistance in a residential setting. The guiding principal of assisted living is the right of the disabled resident to dignity, privacy as well as independence and control over their lives, including schedule, living unit and activities.

*Assistance with the activities of daily living and the instrumental activities of daily living should be the core of an assisted living facility service program. Personal care plans should be developed from functional needs assessments and must include input from the resident and family. Care plans should be tailored to individual needs and preferences. Service packages should be fully portable from one setting to another.

*In addition to the Constitutional and other rights guaranteed to all adults, resident rights should include: the right to free choice regarding providers, freedom from restraints and abuse, privacy, confidentiality, accommodation of needs, and participation

in resident and family groups.

*As in any care setting with disabled individuals, there are risks in assisted living facilities. It is important that facilities not restrict activities solely to minimize hazards. The facility and resident/family should negotiate an agreement specifying acceptable risks. A defined procedure for documenting negotiations between client and facility should be required by the state.

*The assisted living facility is home to those who live there. In addition to being the private legal residence, it should have a homelike atmosphere. Physical standards should require single occupancy units which include a bath, kitchenette, bedroom/sitting area, individual temperature controls, lockable doors, personal emergency call systems, sprinklers and other life safety features. Each facility should also have common areas for activities and entertainment: a dining room, common room, administrative offices and kitchen facilities, if meals are prepared on site.

*Assisted living services should be available to all persons who need them, regardless of age or income. Eligibility should be based on assessed functional needs. There are federal options, such as the Medicaid Home and Community Based Service Waiver, which can assist the state in providing assisted living to low income individuals. States should take advantage of these options.

*An assisted living program is only as good as the care it provides. Staff training is directly related to quality of care and should be mandated. The administrator/manager should be trained both in the philosophy of assisted living as well as the record keeping, care delivery, physical plant and business aspects. Direct care staff training should include the techniques of hands on assistance with the activities of daily living, the philosophy of care and emergency care procedures. Supervisory staff should be required to observe the delivery of care and continuing education should be required.

*Allowing nurses to delegate to specific staff certain nursing procedures under a statute that provides adequate consumer protections is acceptable.

*There should be a single state agency responsible for policy, regulation and enforcement of the assisted living program. There should also be a formal process for consumer input into policy and standards development. The licensure of all facilities providing assisted living should be a priority with the lead agency.

As with any state program, the statutory authority is only the beginning. The regulations promulgated for an assisted living program must reflect the philosophy of assisted living: to enable the resident to maintain dignity, privacy, independence and choice as well as control over their lives and care. The program

standards must require that both the physical plant be built and the direct care staff be trained in accordance with the philosophy of assisted living. The enforcement aspect of assisted living should ensure that all recipients are provided adequate care. In sum, assisted living is unique and should be treated as such.

Because assisted living is a fairly new concept, no uniform or standard state statutory and regulatory approach has been developed. One state, Oregon, has successfully implemented an assisted living program. Because the program has been in effect since the mid to late 1980s, there is some data on the effect it had on other services and the cost. Of course any program would have to be tailored to meet the uniqueness a particular state.

In closing, AARP would like to reiterate its support for the development of a full continuum of long term care services, including assisted living. The growing aged population needs and deserves cost effective alternatives to nursing homes. States must act now to enable service availability, accessibility and to enforce quality of care standards. Again, we commend this committee for taking the time to consider important issues related to assisted living.

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TESTIMONY

before the

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

by

John L. Kiefhaber, Executive Vice President

KANSAS HEALTH CARE ASSOCIATION

Senate Bill 8 - "AN ACT concerning certain care facilities; defining certain terms ..."

Representative Mayans, members of the Committee:

The Kansas Health Care Association, representing 210 professional nursing facilities throughout the State, appreciates the opportunity to speak to you today in opposition to the passage of Senate Bill 8, as amended by the Senate Committee on Public Health and Welfare.

Senate Bill 8 started out innocently enough to establish a new licensing category for the emerging new area of assisted living facilities. This trend toward building facilities for aged citizens who need minor assistance with some activities of daily living, in a relatively unrestricted and private environment, is a nationwide trend -- and an emerging service area that the nursing home industry does not oppose. In fact, members of our industry are themselves developing new services for our growing elderly population in Kansas -- including assisted living units and new assisted living facilities. However, the bill soon began to be loaded up with amendments and additions which have turned it into a confusing mixture of redefinitions for all types of licensed facilities in the state -- nursing facilities for mental health, residential care

facilities and adult day care facilities among them. In fact, one amendment allows for 24-hour professional skilled nursing home care to begin being delivered in these new assisted living facilities -- which would not have a medical director, adequate nursing staff, or supplies and equipment to handle this complex, life-sustaining level of care. The bill then goes on to redefine the medical and physical conditions of nursing facility residents -- which are very different from those of assisted living or home health patients -- and to redefine skilled nursing care and supervised nursing care.

Many interested consumer and industry groups, as well as state agencies, attempted to make changes to this complicated bill while it was in the Senate, but they were often working at cross purposes. Now the bill comes to the House with many problems and questions about the new definitions of nursing care. In fact, it was my observation that members of the Senate committee were not entirely satisfied with the language of the bill or clear on its many new provisions when time ran out on the bill. What the State of Kansas definitely does not want to do is encourage the development of more "mini-nursing homes" throughout the state that are not required to staff for professional 24 hour nursing care. In fact, because SRS is planning to add assisted living as a Medicaid covered service in the future, this bill could conceivably end up increasing the state's Medicaid budget by adding excess capacity to the nursing home industry, or by reducing the private pay mix in certified Medicaid facilities.

If the Committee were to decide to pass Senate Bill 8, KHCA would offer the following amendments:

1. If existing intermediate personal care homes are to be required to offer only private rooms under the new category of residential care facility, reinsert "intermediate personal care" in line 19, page 1 of the bill.

2. Unless assisted living facilities were to be required to maintain staffing, individual care planning, equipment and supplies, a

certified dietitian and fire code provisions of licensed nursing homes in Kansas insert "intermittent or temporary" before "supervised or skilled nursing care" in line 43, page 2 of the bill.

3. Unless residential care facilities were to be required to maintain staffing, individual care planning, equipment and supplies, a certified dietitian, and fire code provisions of licensed nursing homes in Kansas insert "intermittent or temporary" before "supervised or skilled nursing care" in line 10, page 3 of the bill.

4. If existing intermediate personal care homes are to be required to offer only private rooms under the new category of residential care facility, insert "but is not limited to" before "individual living units" on lines 8 and 9, page 3 of the bill.

5. Since the role of regulatory statutes is to provide for health and safety provisions, and not to require arbitrary consumer choice provisions, we would recommend deleting private bath and private kitchen requirements from the bill, as a matter of consumer choice and expense.

6. If there is to be a requirement that an assisted living operator have an administrator's license, the size of the facility should be established back at the 45 unit level throughout the bill.

Thank you for allowing us to speak in opposition to the passage of Senate Bill 8. I would be glad to answer any questions from the Committee.