

Approved: 2-22-95
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 15, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Sandra Strand, Kansans for Improvement of Nursing Homes, Inc.
John R. Grace, Kansas Association of Homes and Services for the Aging
Linda McGill
Tim Buchanan, CEO, Sterling House Corporation
Joseph F. Kroll, Kansas Department of Health and Environment
Tom Reddy, Kansas Health Care Association
Kathy Speaker, Operator of Kelly Houses in Topeka

Others attending: See attached list

Hearing on: SB 8-Definitions of adult care homes

Sandra Strand, KINH, addressed the Committee in support of **SB 8** with suggested amendments as noted in her written testimony. (Attachment 1)

John Grace, KAHSa, appeared before the Committee and noted that several other provider groups and the Kansas Department of Health and Environment have been working together to reach a consensus on a variety of issues and submitted a balloon of the bill showing these proposed changes. (Attachment 2)

Linda McGill addressed the Committee and told of her aunt's experience living in Sterling House in Topeka, an assisted living facility, (Attachment 3) and introduced Tim Buchanan, CEO of Sterling House Corporation. Mr. Sterling also presented a balloon of the bill with suggested changes. (Attachment 4)

Joseph Kroll, KDHE, also submitted a balloon of **SB 8** showing proposed amendments, and noted that passage of this bill would allow the department to write new regulations which reflect the changing needs of frail elders and the disabled. (Attachment 5)

Tom Reddy, KHCA, addressed the Committee with concern that **SB 8** goes much further than simply defining the new service area of assisted living. He noted that the bill also changes the language which describes the needs of nursing home residents. (Attachment 6)

Kathy Speaker, founder and operator of the Kelly Houses in Topeka which are residential congregate living facilities for those with Alzheimer's Disease expressed concern that the special needs of Alzheimer patients are not met in assisted living facilities. (Attachment 7)

Written testimony concerning the **SB 8** was received from Terri Roberts, KSNA, (Attachment 8); Janet Schalansky, SRS, (Attachment 9); Thelma Hunter Gordon, Department on Aging, (Attachment 10); Paula German, The Meadows, (Attachment 11); Thomas Gallegos, Washburn University, (Attachment 12); Anne Kimmel, AARP, (Attachment 13); Allison Nauertc, LeRoy, Kansas, (Attachment 14); Kim Springer, Topeka, (Attachment 15); and Mike Swenson, (Attachment 16).

The Chair noted that because of the many concerns and suggested amendments to **SB 8** appointed a subcommittee made up of the Chair, Senator Jones and Senator Papay. Such subcommittee will meet at 4:30 p.m. in Room 220-S, February 16, 1995.

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 16, 1995.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 2-15-95

NAME	REPRESENTING
Myron Dunavan	KD of Aging
Sandy Strand	KINHA
Martha Hodgsmill	KARF
Vernell R Davis	Family Boarding Care Home ^{Atchison, Ks.}
Tom Bruno	Allen + Assoc.
Linda McGill	STERLING House
Pat Johnson	Board of Nsg
Phil Gottlieb	Health Midwest
Ray Mendez	Ks Dept Aging
CRAIG KABERLINE	SRS ADULT SERVICES
Joseph Keese	KOOR
Kay Cook	Sterling Management
Don Eby	Eby Management Co.
Steven Vick	Sterling House
Tim Buchanan	Sterling House
Terri Roberts	KSNA
Linda Lubewsky	KS Home Care Assoc
Candy Shively	SRS
Mark Pierson	Kelly House

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-15-95

NAME	REPRESENTING
Mike Pearson	Kelly House
Tom REDDY	KNCA
Tom Burgess	KHCA
Mike Meahan	Nat'l Cosmetology Assn - KS
Jane Ford	Ks. Hosp. Assn.
Bruce Fischer	KHCA
Kathy Speaks	Kelly House, Alzheimer's Assoc
Carolyn Muddendong	KSNPA
John Gave	KAKSA
Annette Sieber	KANSA
TK Shively	Ks Legal Services
John Federico	Pate McMill + Assoc
Stacey Simpson	Hein, Ebert & Weir, chld.
Carl C Schmitthener	Kansas Dental Assn.
Anne Kimmel	AARP.



TESTIMONY PRESENTED TO
THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE
CONCERNING SB 8

February 15, 1995

Madam Chair 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 range of long term care options, it is critically important to implement a system that is both safe and cost-effective. 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. In most instances, there simply is nowhere else to take one's long term care business, and few residents are lucky enough to have someone actively looking out for their interests.

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, and the existing supply of board and care homes and adult foster homes does not meet current demands. Such a lack of affordable resources forces consumers into nursing homes, and drives up private and government costs.

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, an investigation of some of Oregon's 9,140 adult foster home beds revealed wide-spread problems of abuse, neglect, exploitation and even deaths of residents. For example:

- Oregon allows operators with no medical background and no experience with the elderly to open a foster care business almost overnight....Oregon requires only an 18-hour course for adult foster care operators. There is no test.
 - Background checks, required by law, are neither fast nor comprehensive. That has left the frail elderly in the care of people with records of burglary, assault and arson.
 - Some foster care homes are run by people who are emotionally ill-equipped to care for elderly or disabled adults. Investigators frequently come across instances of caregivers pushing, slapping or intimidating residents.
 - Medical care is often mismanaged or bungled. The system favors not moving residents as they age and their health deteriorates. But that means caregivers perform nursing tasks they have not been trained to do. One resident of a Portland home was left overnight in an illegal restraint not prescribed by his doctor. During the night, he fell from the bed and strangled.
 - Resident operators say relief workers are difficult to find. Desperate, they hire employees who can't find jobs anywhere else. Residents are left in the care of criminals, children, or caregivers who don't speak English.
 - Once bad operators get into the system, regulators often don't do enough to get rid of them. State officials promote the same system they regulate, and are often reluctant to close a problem home and displace its residents.
- (The Oregonian, Portland, October 9, 1994.)
 (Also see attached editorial from October 14, 1994.)

KINH does not mean to imply that all providers of adult foster care or assisted living are unscrupulous or unqualified. We realize there are many dedicated providers who are motivated by genuine concern for their clients. We do, however, mean to convey the critical importance of establishing solid minimum standards and providing vigorous enforcement of licensed care settings for vulnerable people.

We hope the Kansas long term care system and its residents can profit from the mistakes the Oregon system has made. In particular, we ask the committee to include more specific training and certification requirements to the definition of "Operator," on page 4, and to add boarding care home to the definition. We provide sample language in our attached amendment. This amendment would create minimum basic requirements for training and proficiency for operators of all levels of adult care homes. We also ask that individuals with histories of crimes of violence, abuse, or theft, or persons who have administrative findings of abuse, neglect, or exploitation be barred from receiving adult care home licenses.

We also have concerns about the 45-bed designation for the definition of operator, and believe that in the interests of the health and safety of its residents, a facility of more than 16 beds should be managed by a more highly trained individual, an "Operator II," for example, who is not required to be a licensed adult care home administrator, but who has more training than an "Operator I".

A final concern related to the definition of Operator is that there is no current requirement for an operator to report abuse, neglect or exploitation of residents. KINH believes that all operators of licensed adult care homes should be mandated to report suspected abuse, neglect, or exploitation of residents to the licensing agency. Changes would need to be made to 39-1402 (a) to include "Operator" as a mandatory reporter.

Concerning the definition of "Home plus," on page 3, we ask that the last sentence, on lines 12 through 14, be eliminated. The level of care provided to residents has already been defined based on functional impairment and need for personal care or supervised nursing care. If all operators of "Home plus" settings are required to meet the basic qualifications we have suggested, this language is not needed.

Our final point concerns the definition of "Adult family home" on page 6 of the bill. This placement setting is currently regulated by SRS. In the interests of eliminating duplication of services and responsibilities of state agencies, KINH suggests this definition be eliminated. Current operators of Adult family homes could be relicensed by the Department of Health and Environment as a "Home plus" or "Boarding care home." Such consolidation of licensure in one agency would be more economical for the state and would be less confusing to consumers.

With our suggested amendments, KINH supports this bill.

Respectfully submitted,



Sandra Strand
Legislative and Community Liaison

The Oregonian

Founded Dec. 4, 1850. Established as a daily Feb. 4, 1861. The Sunday Oregonian established Dec. 4, 1881. Published daily and Sunday by the Oregonian Publishing Co., 1320 S.W. Broadway, Portland, Oregon 97201

FRED A. STICKEL, Publisher

PATRICK F. STICKEL, President

SANDRA M. ROWE, Editor

DENNIS L. ATKIN, Advertising Director
PATRICK L. MARLTON, Circulation Director

PETER K. BHATIA, Managing Editor
ROBERT M. LANDAUER, Editorial Page Editor

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.

1-4

1 and who, due to functional impairments, need personal care and may
2 need supervised nursing care to compensate for activities of daily living
3 limitations and in which the place or facility includes individual living
4 units and provides or coordinates a range of services available on a 24-
5 hour, seven-day-a-week basis for the support of resident independence.

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

15 ~~(5)~~ (8) "Boarding care home" means any place or facility operating
16 for not less than 24 hours in any week and a day, seven days a week,
17 caring for ~~three or~~ not more than 10 individuals not related within the
18 third degree of relationship to the ~~administrator~~ operator or owner by
19 blood or marriage and who by reason of aging, illness, disease or physical
20 or mental infirmity are unable to sufficiently or properly care for them-
21 selves and for whom reception, accommodation, board and supervision
22 is provided and which place or facility is staffed, maintained and equipped
23 primarily to provide shelter to residents who require some supervision,
24 but who, due to functional impairment, need supervision of activities of
25 daily living but who are ambulatory and essentially capable of managing
26 their own care and affairs.

27 (9) "Adult day care" means any place or facility operating less than
28 24 hours a day caring for individuals not related within the third degree
29 of relationship to the operator or owner by blood or marriage and who,
30 due to functional impairment need supervision or assistance with activi-
31 ties of daily living.

32 ~~(6)~~ (10) "Place or facility" means a building or any one or more com-
33 plete floors of a building, or any one or more complete wings of a building,
34 or any one or more complete wings and one or more complete floors of
35 a building, and the term "place or facility" may include multiple buildings.

36 ~~(7)~~ (11) "Skilled nursing care" means services ~~commonly~~ performed
37 by or under the immediate supervision of a registered ~~professional~~ nurse
38 and additional licensed nursing personnel for individuals requiring 24
39 hour a day care by licensed nursing personnel including: Acts of obser-
40 vation; care and counsel of the ill, injured or infirm; the. Skilled nursing
41 includes administration of medications and treatments as prescribed by a
42 licensed physician or dentist; and other nursing functions requiring which
43 require substantial specialized nursing judgment and skill based on the

1 knowledge and application of scientific principles.

2 (8) (12) "Supervised nursing care" means services commonly per-
3 formed by or under the immediate onsite supervision of licensed nursing
4 personnel at least eight hours a day for at least five days a week including:
5 Acts of observation, care and counsel of the ill, injured or infirm; the
6 licensed nurse or through delegation by a licensed nurse, including but
7 not limited to, administration of medications and treatments as prescribed
8 by a licensed physician or dentist; and other selected functions requiring
9 specialized judgment and certain skills based on the knowledge of sci-
10 entific principles assistance of residents with the performance of activities
11 of daily living.

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

16 (10) (13) "Resident" means all individuals kept, cared for, treated,
17 boarded or otherwise accommodated in any adult care home.

18 (11) (14) "Person" means any individual, firm, partnership, corpora-
19 tion, company, association or joint-stock association, and the legal suc-
20 cessor thereof.

21 (12) (15) "Operate an adult care home" means to own, lease, estab-
22 lish, maintain, conduct the affairs of or manage an adult care home, except
23 that for the purposes of this definition the word "own" and the word
24 "lease" shall not include hospital districts, cities and counties which hold
25 title to an adult care home purchased or constructed through the sale of
26 bonds.

27 (13) (16) "Licensing agency" means the secretary of health and en-
28 vironment.

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

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

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

34 (18) "Individual living unit" means a private unit which includes, but
35 is not limited to, a toilet room with bathing facilities, sleeping, living and
36 storage area and a lockable door.

37 (19) "Operator" means an individual who operates an assisted living
38 facility or residential health care facility with fewer than 45 beds, a home
39 plus, or adult day care facility and has completed a course approved by
40 the secretary of health and environment on principles of assisted living.

41 (20) "Activities of daily living" means those personal, functional ac-
42 tivities required by an individual for continued well-being, including but
43 not limited to eating, nutrition, dressing, personal hygiene, mobility, to-

successfully completed a minimum of 60 hours of training and an examination on the training content. The standard curriculum shall include, but not be limited to the following: Resident rights; Hands-on care of the elderly and people with disabilities; Nutrition and food preparation; Caring for confused individuals; Pharmacology of medications commonly prescribed for adults; Care plan development; Fire safety; Business practices and record-keeping.

The operator and appropriate staff of an adult care home shall maintain current certification in approved first aid training and cardiopulmonary resuscitation. The operator shall successfully complete a minimum of six hours of approved continuing education each year and shall submit proof of completion with his or her yearly application for license renewal.

16

boarding care home,

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

4 Sec. 3. K.S.A. 39-1501 is hereby amended to read as follows: 39-
5 1501. As used in this act:

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

15 (b) "Skilled nursing care," "supervised nursing care" and "simple
16 nursing care" have the meanings respectively ascribed thereto in K.S.A.
17 39-923, and amendments thereof thereto.

18 (c) "Physician" means any person licensed by the state board of heal-
19 ing arts to practice medicine and surgery.

20 (d) "Secretary" means the secretary of social and rehabilitation serv-
21 ices.

22 Sec. 4. K.S.A. 40-2,116 is hereby amended to read as follows: 40-
23 2,116. As used in this act:

24 (a) "Contracting facility" means a health facility which has entered
25 into a contract with a service corporation to provide services to subscrib-
26 ers of the service corporation.

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

30 (c) "Health facility" means a medical care facility as defined in K.S.A.
31 65-425 and amendments thereto; psychiatric hospital licensed under
32 K.S.A. 75-3307b and amendments thereto; adult care home, which term
33 shall be limited to nursing facility and ~~intermediate personal care home,~~
34 *assisted living facility and residential health care facility* as such terms
35 are defined in K.S.A. 39-923 and amendments thereto; and kidney disease
36 treatment center, including centers not located in a medical care facility.

37 (d) "Professional provider" means a provider, other than a contract-
38 ing facility, of services for which benefits are provided under contracts
39 issued by a service corporation.

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



KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

To: Senate Public Health and Welfare

From: John R. Grace
President/CEO

Date: February 15, 1995

RE: Senate Bill 8

Thank you for the opportunity to testify regarding 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 9,600 nursing facility beds, over 3,900 senior duplexes and apartments and a wide range of community services such as assisted living/personal care, home health care, congregate meals, and adult and intergenerational day care.

We support expansion of and medicaid funding for assisted living as an alternative to nursing facility care. We believe that SB 8 is a good starting point for defining this developing service. We have been working very hard with several other provider groups and the Kansas Department of Health and Environment to reach consensus on a variety of issues. As a result, we are offering several balloons to resolve and clarify several issues.

1. The first issue centers around the lowest level of services that can be provided without requiring licensure.

KAHSA supports regulatory oversight of assisted living but wants to ensure that it does not include senior housing with hospitality services. There are many retirement communities that offer transportation, emergency call systems, meals and other services that could be categorized as hospitality services, but do not offer personal care or health care services. Therefore, we suggest deleting from the definition of "Activities of Daily Living" (on page 5) the phrase, "other activities such as meal preparation, shopping and management of personal finances." To further clarify the distinction between senior housing and assisted living we suggest deleting the words "a range of" and adding the phrase "personal care and supervised nursing care." This will ensure that only facilities that provide or coordinate a range of personal care and supervised nursing care will require licensure. Assisted living facilities are of course, not limited to offering personal care and supervised nursing care, it is simply those services that will require licensure.

2. The second issue is the definition of assisted living and our proposed amendments are:

* line 36 - add the words "by choice or" due to functional impairments "may" need personal care and may need supervised nursing care. This will allow individuals without functional impairments to reside in an assisted living facility, such as a spouse who wants to accompany an ill spouse to an assisted living facility.

* line 38 - add "and in which the delivery of services is structured to promote dignity, independence, individuality and autonomy for each resident." The purpose of this balloon is to support the intent of assisted living.

The same balloons from lines 36 and 38 are also offered for the definition of "residential health care facility."

3. The third issue is to determine the level of care available in assisted living and residential health care facilities. We offer an amendment to the definition of "Supervised nursing care" on page 4, line 2 to include the words provided "by or " under the guidance of a licensed nurse to clarify that the licensed nurse can both delegate the task or perform it him or herself.

It is our intent to support the provision of some skilled nursing services in assisted living and residential health care facilities. Persons with predictable skilled nursing needs that can be successfully met with positive outcomes should be able to receive those services in assisted living and residential health care settings.

4. We offer an amendment to the definition of operator to be a facility with fewer than 45 "units" instead of beds. This change in terminology will reinforce the residential as opposed to medical model as well as provide clarity. Assisted living and residential health care facilities are more likely to be designed to house a varying number of persons, such as married couples for a one-bedroom unit, or a single person in a two-bedroom unit. Therefore, it will provide more consistency to use the term units instead of beds.

5. To provide clarity, we offer a balloon on page 5 to define what will be included in a kitchen.

6. The balloon on page 5 is offered to address those facilities that are currently licensed as intermediate personal care homes or have applications pending for licensure. Since the only difference between assisted living and residential health care facilities in SB 8 is the physical plant, we suggest that facilities that are currently licensed or with pending licensure applications be given the choice of becoming assisted living or residential health care facilities. We do not want to force a particular category of licensure on facilities that were innovators in providing assisted living.

We also recognize that long term care services are changing and the need for nursing

facility beds is declining. Therefore, we want to encourage diversification and use of these facilities and to allow them to convert to residential health care facilities without requiring the expense of providing private bathing facilities in all units.

We have also included balloons to cover changes suggested by KDHE. These are on lines 22, 29, 31 and 34 of page 2.

One final issue is the terminology "residential health care." One of our members brought to our attention the fact that current long term care insurance may not cover services called residential health care. We are examining the issue because it is our intent to continue to allow coverage of this level of care.

Thank you for the opportunity to testify.

SENATE BILL No. 8

By Special Committee on Public Health and Welfare

12-16

AN ACT concerning adult care homes; defining certain terms; amending K.S.A. 39-1501, 40-2,116 and 65-3501 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, board, personal care and treatment or simple nursing care is provided, and which place or facility is staffed, maintained and equipped primarily

2-4

2-5

1 for the accommodation of individuals not acutely ill or in need of hospital
2 care, nursing facility care or moderate nursing care but who require domiciliary care and simple nursing care.

3
4 (4) "One-to-five-bed adult care home" means any place or facility
5 which place or facility may be a private residence and which place or
6 facility is operating for not less than 24 hours in any week and caring for
7 not more than five individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who
8 by reason of aging, illness, disease or physical or mental infirmity are
9 unable to sufficiently or properly care for themselves and for whom reception, accommodation, board, personal care and treatment and skilled
10 nursing care, supervised nursing care or simple nursing care is provided
11 by the adult care home, and which place or facility is staffed, maintained
12 and equipped primarily for the accommodation of individuals not acutely
13 ill or in need of hospital care but who require domiciliary care and skilled
14 nursing care, supervised nursing care or simple nursing care provided by
15 the adult care home. When the home's capabilities are questioned in
16 writing, the licensing agency shall determine according to its rules and
17 regulations if any restriction will be placed on the care the home will give
18 residents.
19 residents.

20
21 (3) "Nursing facility for mental health" means any place or facility
22 operating 24 hours a day, seven days a week caring for ~~three~~ six or more
23 individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional
24 impairments, need special mental health services to compensate for activities of daily living limitations.

25
26
27 (4) "Intermediate care facility for the mentally retarded" means any
28 place or facility operating 24 hours a day, seven days a week caring for
29 ~~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
30 to functional impairments caused by developmental disabilities, need services to compensate for activities of daily living limitations.

31
32
33 (5) "Assisted living facility" means any place or facility caring for
34 ~~three~~ six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and
35 who, due to functional impairments, need personal care and may need
36 supervised nursing care to compensate for activities of daily living limitations, and in which the place or facility includes apartments for residents
37 and provides or coordinates a range of services available 24 hours a day, seven days a week for the support of resident independence.

38
39
40
41 (6) "Residential health care facility" means any place or facility caring
42 for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage
43

six

six

mental retardation or related conditions

six

by choice or

may

and in which the delivery of services is structured to promote dignity, independence, individuality and autonomy for each resident,

personal care and supervised nursing care

1 ~~and who, due to functional impairments, need personal care and may~~
 2 ~~need supervised nursing care to compensate for activities of daily living~~
 3 ~~limitations, and in which the place or facility includes individual living~~
 4 ~~units and provides or coordinates a range of services available on a 24-~~
 5 ~~hour, seven-day-a-week basis for the support of resident independence.~~

by choice or
 may

and in which the delivery of services is structured to
 promote dignity, independence, individuality and
 autonomy for each resident,

personal care and supervised nursing care

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

15 (5) (8) "Boarding care home" means any place or facility operating
 16 for not less than 24 hours in any week and a day, seven days a week,
 17 caring for three or not more than 10 individuals not related within the
 18 third degree of relationship to the administrator operator or owner by
 19 blood or marriage and who by reason of aging, illness, disease or physical
 20 or mental infirmity are unable to sufficiently or properly care for them-
 21 selves and for whom reception, accommodation, board and supervision
 22 is provided and which place or facility is staffed, maintained and equipped
 23 primarily to provide shelter to residents who require some supervision,
 24 but who, due to functional impairment, need supervision of activities of
 25 daily living but who are ambulatory and essentially capable of managing
 26 their own care and affairs.

27 (9) "Adult day care" means any place or facility operating less than
 28 24 hours a day caring for individuals not related within the third degree
 29 of relationship to the operator or owner by blood or marriage and who,
 30 due to functional impairment need supervision or assistance with activi-
 31 ties of daily living.

32 (6) (10) "Place or facility" means a building or any one or more com-
 33 plete floors of a building, or any one or more complete wings of a building,
 34 or any one or more complete wings and one or more complete floors of
 35 a building, and the term "place or facility" may include multiple buildings.

36 (7) (11) "Skilled nursing care" means services commonly performed
 37 by or under the immediate supervision of a registered professional nurse
 38 and additional licensed nursing personnel for individuals requiring 24
 39 hour a day care by licensed nursing personnel including: Acts of obser-
 40 vation, care and counsel of the ill, injured or infirm; the. Skilled nursing
 41 includes administration of medications and treatments as prescribed by a
 42 licensed physician or dentist; and other nursing functions requiring which
 43 require substantial specialized nursing judgment and skill based on the

do not delete

1 knowledge and application of scientific principles.

2 ~~(8)~~ (12) "Supervised nursing care" means services commonly per-
 3 formed by or under the immediate onsite supervision of licensed nursing
 4 personnel at least eight hours a day for at least five days a week including:
 5 Acts of observation; care and counsel of the ill, injured or infirm; the a
 6 licensed nurse or through delegation by a licensed nurse, including but
 7 not limited to, administration of medications and treatments as prescribed
 8 by a licensed physician or dentist; and other selected functions requiring
 9 specialized judgment and certain skills based on the knowledge of sci-
 10 entific principles assistance of residents with the performance of activities
 11 of daily living.

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

16 ~~(10)~~ (13) "Resident" means all individuals kept, cared for, treated,
 17 boarded or otherwise accommodated in any adult care home.

18 ~~(11)~~ (14) "Person" means any individual, firm, partnership, corpora-
 19 tion, company, association or joint-stock association, and the legal suc-
 20 cessor thereof.

21 ~~(12)~~ (15) "Operate an adult care home" means to own, lease, estab-
 22 lish, maintain, conduct the affairs of or manage an adult care home, except
 23 that for the purposes of this definition the word "own" and the word
 24 "lease" shall not include hospital districts, cities and counties which hold
 25 title to an adult care home purchased or constructed through the sale of
 26 bonds.

27 ~~(13)~~ (16) "Licensing agency" means the secretary of health and en-
 28 vironment.

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

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

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

34 (18) "Individual living unit" means a private unit which includes, but
 35 is not limited to, a toilet room with bathing facilities, sleeping, living and
 36 storage area and a lockable door.

37 (19) "Operator" means an individual who operates an assisted living
 38 facility or residential health care facility with fewer than 45 beds, a home
 39 plus or adult day care facility and has completed a course approved by
 40 the secretary of health and environment on principles of assisted living.

41 (20) "Activities of daily living" means those personal, functional ac-
 42 tivities required by an individual for continued well-being, including but
 43 not limited to eating, nutrition, dressing, personal hygiene, mobility, 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;

units

2-8

1 ~~iletting and other activities such as meal preparation, shopping and man-~~
2 ~~agement of personal finances.~~

3 (21) "Personal care" means care provided by staff to assist an indi-
4 vidual with, or to perform activities of daily living.

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

8 (b) The term "adult care home" shall not include institutions oper-
9 ated by federal or state governments, hospitals or institutions for the treat-
10 ment and care of psychiatric patients, child care facilities, maternity cen-
11 ters, hotels, offices of physicians or hospices which are certified to
12 participate in the medicare program under 42 code of federal regulations,
13 chapter IV, section 418.1 et seq. and amendments thereto and which
14 provide services only to hospice patients.

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

23 Sec. 2. K.S.A. 65-3501 is hereby amended to read as follows: 65-
24 3501. As used in this act, or the act of which this section is amendatory,
25 the following words and phrases shall have the meanings respectively
26 ascribed to them in this section:

27 (a) "Adult care home" means nursing facility and intermediate per-
28 sonal care home as the terms nursing facility and intermediate personal
29 care home are, nursing facilities for mental health, intermediate care fa-
30 cilities for the mentally retarded, assisted living facility licensed for more
31 than 45 beds, and residential health care facility licensed for more than
32 45 beds as defined by K.S.A. 39-923 and amendments thereto or by the
33 rules and regulations of the licensing agency adopted pursuant to such
34 section for which a license is required under article 9 of chapter 39 of
35 the Kansas Statutes Annotated, or acts amendatory thereof or supple-
36 mental thereto, except that the term "adult care home" shall not include
37 a facility that is operated exclusively for the care and treatment of the
38 mentally retarded and is licensed for 15 16 or fewer beds.

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

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

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

(c) Facilities licensed or with license applications on file with the Kansas Department of Health and Environment 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.

(d) Nursing facilities 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.

units

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

4 Sec. 3. K.S.A. 39-1501 is hereby amended to read as follows: 39-
5 1501. As used in this act:

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

15 (b) "Skilled nursing care," "supervised nursing care" and "simple
16 nursing care" have the meanings respectively ascribed thereto in K.S.A.
17 39-923, and amendments thereof *thereto*.

18 (c) "Physician" means any person licensed by the state board of heal-
19 ing arts to practice medicine and surgery.

20 (d) "Secretary" means the secretary of social and rehabilitation serv-
21 ices.

22 Sec. 4. K.S.A. 40-2,116 is hereby amended to read as follows: 40-
23 2,116. As used in this act:

24 (a) "Contracting facility" means a health facility which has entered
25 into a contract with a service corporation to provide services to subscrib-
26 ers of the service corporation.

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

30 (c) "Health facility" means a medical care facility as defined in K.S.A.
31 65-425 and amendments thereto; psychiatric hospital licensed under
32 K.S.A. 75-3307b and amendments thereto; adult care home, which term
33 shall be limited to nursing facility and intermediate personal care home,
34 *assisted living facility and residential health care facility* as such terms
35 are defined in K.S.A. 39-923 and amendments thereto; and kidney disease
36 treatment center, including centers not located in a medical care facility.

37 (d) "Professional provider" means a provider, other than a contract-
38 ing facility, of services for which benefits are provided under contracts
39 issued by a service corporation.

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

2-9

- 1 or a nonprofit medical and hospital service corporation organized under
- 2 the provisions of K.S.A. 40-19c01 *et seq.*, and amendments thereto.
- 3 Sec. 5. K.S.A. 39-1501, 40-2,116 and 65-3501 and K.S.A. 1994 Supp.
- 4 39-923 are hereby repealed.
- 5 Sec. 6. This act shall take effect and be in force from and after its
- 6 publication in the statute book.

**TESTIMONY OF
LINDA MCGILL
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
STERLING HOUSE**

**TO THE
SENATE
HEALTH AND WELFARE
COMMITTEE**

SB 8

FEBRUARY 15, 1995

Thank you Madam Chairman and members of the committee.

I am Linda McGill of Pete McGill and Associates. Before I introduce Mr. Buchanan of Sterling House I would like to share with you a personal experience that I believe is very relative to the discussion here today.

In February of 1994, my aunt, who was 87 at the time, had major surgery and was diagnosed with terminal cancer. She was given six months to a year to live. She recovered from the surgery and continued to live in her own home until August. At that time she began not eating and consequently losing weight. When I asked her about eating her comment was "by the time I get something fixed, I'm just too worn out to eat."

Since she had no children of her own she asked if I would be her power of attorney. It was at this time we heard of Sterling House, long before they were a client. Pete and I called and went to visit on Sunday afternoon in early August and were extremely impressed.

When we drove up, what we saw did not resemble a business, but instead a large, lovely home. The interior was beautifully decorated, clean and the employees were cheerful and most willing to assist us. The smell was wonderful because it was homemade pastries being baked. We were told that all their food was made from scratch right there and that the cookie jar was always full of homemade cookies.

The next day we invited my aunt to go with us to see Sterling House. She had her choice of apartment sizes and views. She was told that they would prepare all of her meals, do her laundry, clean her apartment and change her bed, thus leaving her time and energy to do the things she enjoyed.

Aunt Cissy had a living room, bedroom, large bath and a kitchenette. Her apartment was her domain with all of her personal belongings. She could shut and lock her door at any time.

She truly loved her life and her new friends at Sterling House. I guess unbeknownst to me, I had become a skeptic. Because I really didn't know there were people left that were so loving and caring as the staff at Sterling House. And that includes everyone from Susan Bullock, the Director, to the cooks!

My aunt passed away a week and a half ago. She died very peacefully in her own apartment -- in her own bed, surrounded by things that she treasured.

The last week she had to have around-the-clock coverage and we managed this by using Sterling House staff, Hospice and Interim Health Care employees. She retained her dignity, her right to choose and her independence until her last breath.

**TESTIMONY OF
TIM BUCHANAN
STERLING HOUSE**

TO THE

**SENATE
PUBLIC HEALTH AND WELFARE
COMMITTEE**

SB 8

FEBRUARY 15, 1995



For more information contact:
Tim Buchanan CEO
453 S. Webb Rd. Suite 500
Wichita, KS 67206
(316) 684-8300 Fax 681-1517

February 15, 1995

Senate Bill 8

Senator Preager and members of the Senate Public Health and Welfare Committee, my name is Tim Buchanan, CEO of Sterling House Corporation. Sterling House operates 19 assisted living facilities across Kansas and Oklahoma. We currently have 18 locations in Kansas either licensed or licenses in process with the Department of Health and Environment as Intermediate Personal Care facilities.

As you know, Senate Bill 8 makes a number of major changes regarding adult care homes.

We have been involved over the past months, in many discussions with the Department of Health and Environment, the Kansas Association of Homes and Services for the Aging, the Kansas Health Care Association as well as other providers and agencies that participated. We are thankful for that process and are appreciative to be a part, everyone worked hard in a very conciliatory manner to reach agreement. For this reason, the balloon we have presented today is very much the same as that from KAHSA, and perhaps other speakers, however, there are some differences which I will address.

Skilled Services

One major area of concern to all parties of this debate is how much skilled nursing care can be provided in Assisted Living. All the participants I spoke of have encouraged Sterling House to rely on the rule and regulation process to come up with the boundaries of skilled services rather than establishing by definition that Assisted Living provide skilled services. We have accepted that in an effort to unify the support.

However, we feel strongly that the definition of "Skilled Nursing Care" as defined by Senate Bill 8 could be a conflict, and would unduly restrict the ability to draft rules for *any* skilled care in assisted living. At line 18 on page 5 of this bill the licensing agency is charged with developing rules and regulations consistent with the definitions contained within the bill, therefore we think it is very important for this committee and for this bill to provide a clear intent

453 S. WEBB ROAD, SUITE 500 • WICHITA, KANSAS 67207 • (316) 684-8300 • FAX (316) 681-1517

to be used in the rule writing process. In paragraph 11 on "Skilled Nursing Care", the currently used distinction of applying this definition to persons requiring 24 hour a day licensed nursing care has been omitted and thus according to this statute anyone that needed skilled nursing on any frequency, even once, would qualify as a "skilled patient". We submit that to provide the rule making process the ability to accommodate a range of skilled nursing services based on outcome criteria in the assisted living setting, that the definition be amended as per our balloon to distinguish some outside boundary and then rely the rule and regulation process to further define the parameters. There are efforts by many parties and some state agencies to continue to further restrict the ability of licensed nurses to practice freely and we feel it is important that Senate Bill 8 and this committee establish a clear intent to allow a range of skilled nursing in Assisted Living.

A range of skilled nursing care should be provided in the assisted living setting, on an outcome based approach, and we feel this can be accomplished in a way to prevent assisted living form becoming mini-nursing homes. Many states have gone before us and there are examples both good and bad. Some states provide skilled care in assisted living in support of their regulations on Aging in place. Yet their facilities have not become mini-nursing homes, nor have their nursing home industries greatly suffered. New Jersey though advocates 24 hour a day skilled care in assisted living with very little distinction from a nursing facility. We do not support that today and do not think that should be the goal of Senate Bill 8.

Staff Certification

On page 4, line 40 we have inserted language providing for the certification of staff. In an effort to promote the concepts of care provided for in Assisted Living we recommend the adoption of new training certification requirements for staff of these facilities. Current requirements are for Certified Nurse Aids and Certified Medication Aids, curriculum traditional adopted in nursing facilities and more clinical settings. While we think the current curriculum is valuable and should not be eliminated completely, it should be balanced with Assisted Living principles and practical applications of the definitions used in Assisted Living.

Facility Size

On page 4 line 38 and again on page 5 line 31 reference is made to the size of a facility and the Operator requirements. Although Sterling House does not operate facilities larger than 45 apartments, we feel, given the size of other existing facilities in Kansas as well as what has been successful elsewhere that the assisted living "Operator" be allowed to operate up to 60 units before being required to be a licensed nursing facility administrator.

Grandfathering

On page 5, line 15 two amendments are offered regarding currently licensed facilities. It is important that existing licensed facilities be allowed to continue to operate without making renovations and disrupting the lives of their residents. However, we feel it is also very important that as the state fosters and clarifies the concept of Assisted Living, recognizing the consumer acceptance of this concept of facility, that the state doesn't confuse the public by licensing older facilities as assisted living that don't come close to the definition, when those facilities could continue uninterrupted operation if grandfathered as residential health care. This would meet the needs of current facilities not able to make renovations while providing the public with a more consistent message on what Assisted Living is.

If Kansas is going to truly 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 care, we must be able to break free of the traditional boundaries that say skilled care delivery can only be done in traditional nursing facilities. We must be ready to provide them with a clear model of what this concept is, realizing that some facilities may operate under a different classification. We have to be able to provide for people in community based care such as Assisted Living, the freedom to have delivered to them at least the same levels of care they can receive in their own homes. Without these options available, many people will stay 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 services in assisted living. 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, a process we support called "Aging in Place". Most residents want and expect a safe, quality environment to receive quality services, but the most important issue to most is the ability to exercise control over their life in making these choices.

We support the passage of Senate Bill 8 as amended in the attached balloon, and look forward to participating in the process that follows.

Thank you.

4-5

SENATE BILL No. 8

By Special Committee on Public Health and Welfare

12-16

AN ACT concerning adult care homes; defining certain terms; amending K.S.A. 39-1501, 40-2,116 and 65-3501 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, board, personal care and treatment or simple nursing care is provided, and which place or facility is staffed, maintained and equipped primarily

4-6

1 for the accommodation of individuals not acutely ill or in need of hospital
2 care; nursing facility care or moderate nursing care but who require dom-
3 iciliary care and simple nursing care.

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

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

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

33 (5) "Assisted living facility" means any place or facility caring for
34 ~~three or more~~ **six**
35 individuals not related within the third degree of relation-
36 ship to the administrator, operator or owner by blood or marriage and
37 who, **by choice or**
38 ~~due to functional impairments, need personal care and may need~~ **may**
39 supervised nursing care ~~to compensate for activities of daily living limi-~~
40 ~~tations~~ and in which the place or facility includes apartments for residents
41 and provides or coordinates a range of services available 24 hours a day,
42 seven days a week for the support of resident independence.

41 (6) "Residential health care facility" means any place or facility caring
42 for six or more individuals not related within the third degree or rela-
43 tionship to the administrator, operator or owner by blood or marriage
and in which the delivery of services is structured to promote dignity, independence, individuality, choice, and autonomy for each resident,
including personal care and supervised nursing care

4-7

1 and who, due to functional impairments, need personal care and may
2 need supervised nursing care to compensate for activities of daily living
3 limitations and in which the place or facility includes individual living
4 units and provides or coordinates a range of services available on a 24-
5 hour, seven-day-a-week basis for the support of resident independence.

may
by choice

including personal care and supervised nursing care

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

15 (5) (8) "Boarding care home" means any place or facility operating
16 for not less than 24 hours in any week and a day, seven days a week,
17 caring for three or not more than 10 individuals not related within the
18 third degree of relationship to the administrator operator or owner by
19 blood or marriage and who by reason of aging, illness, disease or physical
20 or mental infirmity are unable to sufficiently or properly care for them-
21 selves and for whom reception, accommodation, board and supervision
22 is provided and which place or facility is staffed, maintained and equipped
23 primarily to provide shelter to residents who require some supervision,
24 but who, due to functional impairment, need supervision of activities of
25 daily living but who are ambulatory and essentially capable of managing
26 their own care and affairs.

27 (9) "Adult day care" means any place or facility operating less than
28 24 hours a day caring for individuals not related within the third degree
29 of relationship to the operator or owner by blood or marriage and who,
30 due to functional impairment need supervision or assistance with activi-
31 ties of daily living.

32 (6) (10) "Place or facility" means a building or any one or more com-
33 plete floors of a building, or any one or more complete wings of a building,
34 or any one or more complete wings and one or more complete floors of
35 a building, and the term "place or facility" may include multiple buildings.

36 (7) (11) "Skilled nursing care" means services commonly performed
37 by or under the immediate supervision of a registered professional nurse
38 and additional licensed nursing personnel for individuals requiring 24
39 hour a day care by licensed nursing personnel including: Acts of obser-
40 vation; care and counsel of the ill; injured or infirm; the. Skilled nursing
41 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

for individuals requiring 24 hour a day care by licensed
nursing personnel for indefinite periods of time.

8-7

1 knowledge and application of scientific principles.

2 (8) (12) "Supervised nursing care" means services commonly per-
3 formed by or under the immediate onsite supervision of licensed nursing
4 personnel at least eight hours a day for at least five days a week including:
5 Acts of observation, care and counsel of the ill, injured or infirm; the a
6 licensed nurse or through delegation by a licensed nurse, including but
7 not limited to, administration of medications and treatments as prescribed
8 by a licensed physician or dentist; and other selected functions requiring
9 specialized judgment and certain skills based on the knowledge of sci-
10 entific principles assistance of residents with the performance of activities
11 of daily living.

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

16 (10) (13) "Resident" means all individuals kept, cared for, treated,
17 boarded or otherwise accommodated in any adult care home.

18 (11) (14) "Person" means any individual, firm, partnership, corpora-
19 tion, company, association or joint-stock association, and the legal suc-
20 cessor thereof.

21 (12) (15) "Operate an adult care home" means to own, lease, estab-
22 lish, maintain, conduct the affairs of or manage an adult care home, except
23 that for the purposes of this definition the word "own" and the word
24 "lease" shall not include hospital districts, cities and counties which hold
25 title to an adult care home purchased or constructed through the sale of
26 bonds.

27 (13) (16) "Licensing agency" means the secretary of health and en-
28 vironment.

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

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

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

34 (18) "Individual living unit" means a private unit which includes, but
35 is not limited to, a toilet room with bathing facilities, sleeping, living and
36 storage area and a lockable door.

37 (19) "Operator" means an individual who operates an assisted living
38 facility or residential health care facility with fewer than 45 beds, a home
39 plus or adult day care facility and has completed a course approved by
40 the secretary of health and environment on principles of assisted living.

41 (20) "Activities of daily living" means those personal, functional ac-
42 tivities required by an individual for continued well-being, including but
43 limited to eating, nutrition, dressing, personal hygiene, mobility, 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.

units or apartments

61

(20) "Assisted Living Aid" means an unlicensed individual who provides supervised nursing care in an Assisted Living Facility and has completed a course approved by the Secretary of Health and Environment on the principles of assisted living.

(21)

4-9

1 letting and other activities such as meal preparation, shopping and man-
2 agement of personal finances.

(22)

3 ~~(21)~~ "Personal care" means care provided by staff to assist an indi-
4 vidual with, or to perform activities of daily living.

(23)

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

(24)

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

8 (b) The term "adult care home" shall not include institutions oper-
9 ated by federal or state governments, hospitals or institutions for the treat-
10 ment and care of psychiatric patients, child care facilities, maternity cen-
11 ters, hotels, offices of physicians or hospices which are certified to
12 participate in the medicare program under 42 code of federal regulations,
13 chapter IV, section 418.1 et seq. and amendments thereto and which
14 provide services only to hospice patients.

(c)

Facilities licensed or with license applications on file with the Kansas Department of Health and Environment as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as a residential health care facility.

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

(d)

Nursing facilities 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.

23 Sec. 2. K.S.A. 65-3501 is hereby amended to read as follows: 65-
24 3501. As used in this act, or the act of which this section is amendatory,
25 the following words and phrases shall have the meanings respectively
26 ascribed to them in this section:

(e)

27 (a) "Adult care home" means nursing facility and intermediate per-
28 sonal care home as the terms nursing facility and intermediate personal
29 care home are, nursing facilities for mental health, intermediate care fa-
30 cilities for the mentally retarded, assisted living facility licensed for more
31 than 45 beds, and residential health care facility licensed for more than
32 45 beds as defined by K.S.A. 39-923 and amendments thereto or by the
33 rules and regulations of the licensing agency adopted pursuant to such
34 section for which a license is required under article 9 of chapter 39 of
35 the Kansas Statutes Annotated, or acts amendatory thereof or supple-
36 mental thereto, except that the term "adult care home" shall not include
37 a facility that is operated exclusively for the care and treatment of the
38 mentally retarded and is licensed for 15 16 or fewer beds.

60 units or apartments

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

41 (c) "Administrator" means the individual directly responsible for
42 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 care home.

(b) "Skilled nursing care," "supervised nursing care" and "simple nursing 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. 40-1801 *et seq.*, and amendments thereto

4-10

or a nonprofit medical and hospital service corporation organized under the provisions of K.S.A. 40-19c01 *et seq.*, and amendments thereto.

3 Sec. 5. K.S.A. 39-1501, 40-2,116 and 65-3501 and K.S.A. 1994 Supp.
4 39-923 are hereby repealed.

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

4-11

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

TESTIMONY PRESENTED TO
THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE
BY
THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
SENATE BILL 8

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.

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 on an intermittent basis. 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 intermittent licensed nursing services.

The definition for "supervised nursing services" is expanded (see balloon amendment) 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 nurse practice act issues and further clarify definitions.

KDHE also recommends the Committee give consideration to amending KSA 75-3307b to make it clear that its provisions apply only to the mentally ill or the mentally retarded. The inclusion of the term "other handicapped" persons has resulted in a number of facilities providing care to the aged being licensed by SRS as "non-medical residential facilities." This is a dual or parallel licensure process that has confused consumers, providers and agencies.

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: February 15, 1995

SENATE BILL No. 8

By Special Committee on Public Health and Welfare

12-16

9 AN ACT concerning adult care homes; defining certain terms; amending
10 K.S.A. 39-1501, 40-2,116 and 65-3501 and K.S.A. 1994 Supp. 39-923
11 and repealing the existing sections.
12

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

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

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

23 (2) "Nursing facility" means any place or facility operating for not less
24 than 24 hours in any week and a day, seven days a week, caring for six
25 or more individuals not related within the third degree of relationship to
26 the administrator or owner by blood or marriage and who by reason of
27 aging, illness, disease or physical or mental infirmity are unable to suffi-
28 ciently or properly care for themselves, and for whom reception, accom-
29 modation, board and skilled nursing care and treatment is provided, and
30 which place or facility is staffed to provide 24 hours a day licensed nursing
31 personnel plus additional staff, and is maintained and equipped primarily
32 for the accommodation of individuals who are not acutely ill and are not
33 in need of hospital care but who require skilled nursing care, due to
34 functional impairments, need skilled nursing care to compensate for ac-
35 tivities of daily living limitations.

36 (3) "Intermediate personal care home" means any place or facility
37 operating for not less than 24 hours in any week and caring for six or
38 more individuals not related within the third degree of relationship to the
39 administrator or owner by blood or marriage and who by reason of aging,
40 illness, disease or physical or mental infirmity are unable to sufficiently
41 or properly care for themselves and for whom reception, accommodation,
42 board, personal care and treatment or simple nursing care is provided,
43 and which place or facility is staffed, maintained and equipped primarily

5-4

1 for the accommodation of individuals not acutely ill or in need of hospital
2 care, nursing facility care or moderate nursing care but who require dom-
3 iciliary care and simple nursing care.

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

21 (3) "Nursing facility for mental health" means any place or facility
22 operating 24 hours a day, seven days a week caring for ~~three~~ or more
23 individuals not related within the third degree of relationship to the ad- } six
24 ministrator or owner by blood or marriage and who, due to functional
25 impairments, need special mental health services to compensate for activ-
26 ities of daily living limitations.

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

33 (5) "Assisted living facility" means any place or facility caring for
34 ~~three~~ or more individuals not related within the third degree of relation- } six
35 ship to the administrator, operator or owner by blood or marriage and
36 who, due to functional impairments, need personal care and may need
37 supervised nursing care to compensate for activities of daily living limi-
38 tations and in which the place or facility includes apartments for residents
39 and provides or coordinates a range of services available 24 hours a day,
40 seven days a week for the support of resident independence.

41 (6) "Residential health care facility" means any place or facility caring
42 for six or more individuals not related within the third degree or rela-
43 tionship to the administrator, operator or owner by blood or marriage

5-5

1 and who, due to functional impairments, need personal care and may
2 need supervised nursing care to compensate for activities of daily living
3 limitations and in which the place or facility includes individual living
4 units and provides or coordinates a range of services available on a 24-
5 hour, seven-day-a-week basis for the support of resident independence.

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

15 (5) (8) "Boarding care home" means any place or facility operating
16 for not less than 24 hours in any week and a day, seven days a week,
17 caring for three or not more than 10 individuals not related within the
18 third degree of relationship to the ~~administrator~~ operator or owner by
19 blood or marriage and who by reason of aging, illness, disease or physical
20 or mental infirmity are unable to sufficiently or properly care for them-
21 selves and for whom reception, accommodation, board and supervision
22 is provided and which place or facility is staffed, maintained and equipped
23 primarily to provide shelter to residents who require some supervision,
24 but who, due to functional impairment, need supervision of activities of
25 daily living but who are ambulatory and essentially capable of managing
26 their own care and affairs.

27 (9) "Adult day care" means any place or facility operating less than
28 24 hours a day caring for individuals not related within the third degree
29 of relationship to the operator or owner by blood or marriage and who,
30 due to functional impairment need supervision, or assistance with activi-
31 ties of daily living.

of

32 (6) (10) "Place or facility" means a building or any one or more com-
33 plete floors of a building, or any one or more complete wings of a building,
34 or any one or more complete wings and one or more complete floors of
35 a building, and the term "place or facility" may include multiple buildings.

36 (7) (11) "Skilled nursing care" means services commonly performed
37 by or under the immediate supervision of a registered professional nurse
38 and additional licensed nursing personnel for individuals requiring 24
39 hour a day care by licensed nursing personnel including: Acts of obser-
40 vation, care and counsel of the ill, injured or infirm; the. Skilled nursing
41 includes administration of medications and treatments as prescribed by a
42 licensed physician or dentist; and other nursing functions requiring which
43 require substantial specialized nursing judgment and skill based on the

professional



5-6
4-2

1 knowledge and application of scientific principles.

2 ~~(8) (12) "Supervised nursing care" means services commonly per-~~
~~3 formed by or under the immediate onsite supervision of licensed nursing~~
~~4 personnel at least eight hours a day for at least five days a week including:~~
~~5 Acts of observation, care and counsel of the ill, injured or infirm; the a~~
~~6 licensed nurse or through delegation by a licensed nurse, including but~~
~~7 not limited to, administration of medications and treatments as prescribed~~
~~8 by a licensed physician or dentist; and other selected functions requiring~~
~~9 specialized judgment and certain skills based on the knowledge of sci-~~
~~10 entific principles assistance of residents with the performance of activities~~
~~11 of daily living.~~

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

16 (10) (13) "Resident" means all individuals kept, cared for, treated,
 17 boarded or otherwise accommodated in any adult care home.

18 (11) (14) "Person" means any individual, firm, partnership, corpora-
 19 tion, company, association or joint-stock association, and the legal suc-
 20 cessor thereof.

21 (12) (15) "Operate an adult care home" means to own, lease, estab-
 22 lish, maintain, conduct the affairs of or manage an adult care home, except
 23 that for the purposes of this definition the word "own" and the word
 24 "lease" shall not include hospital districts, cities and counties which hold
 25 title to an adult care home purchased or constructed through the sale of
 26 bonds.

27 (13) (16) "Licensing agency" means the secretary of health and en-
 28 vironment.

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

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

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

34 (18) "Individual living unit" means a private unit which includes, but
 35 is not limited to, a toilet room with bathing facilities, sleeping, living and
 36 storage area and a lockable door.

37 (19) "Operator" means an individual who operates an assisted living
 38 facility or residential health care facility with fewer than 45 beds, a home
 39 plus or adult day care facility and has completed a course approved by
 40 the secretary of health and environment on principles of assisted living.

41 (20) "Activities of daily living" means those personal, functional ac-
 42 tivities required by an individual for continued well-being, including but
 43 not limited to eating, nutrition, dressing, personal hygiene, mobility, to-

provided

guidance

with initial direction for nursing task and periodic inspection of its actual act of accomplishing the task

5-7

1 *leting and other activities such as meal preparation, shopping and man-*
2 *agement of personal finances.*

3 (21) *"Personal care" means care provided by staff to assist an indi-*
4 *vidual with, or to perform activities of daily living.*

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

8 (b) The term "adult care home" shall not include institutions oper-
9 ated by federal or state governments, hospitals or institutions for the treat-
10 ment and care of psychiatric patients, child care facilities, maternity cen-
11 ters, hotels, offices of physicians or hospices which are certified to
12 participate in the medicare program under 42 code of federal regulations,
13 chapter IV, section 418.1 *et seq.* and amendments thereto and which
14 provide services only to hospice patients.

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

23 Sec. 2. K.S.A. 65-3501 is hereby amended to read as follows: 65-
24 3501. As used in this act, or the act of which this section is amendatory,
25 the following words and phrases shall have the meanings respectively
26 ascribed to them in this section:

27 (a) "Adult care home" means nursing facility ~~and intermediate per-~~
28 ~~sonal care home as the terms nursing facility and intermediate personal~~
29 ~~care home are, nursing facilities for mental health, intermediate care fa-~~
30 ~~cilities for the mentally retarded, assisted living facility licensed for more~~
31 ~~than 45 beds, and residential health care facility licensed for more than~~
32 ~~45 beds as defined by K.S.A. 39-923 and amendments thereto or by the~~
33 ~~rules and regulations of the licensing agency adopted pursuant to such~~
34 ~~section for which a license is required under article 9 of chapter 39 of~~
35 ~~the Kansas Statutes Annotated, or acts amendatory thereof or supple-~~
36 ~~mental thereto, except that the term "adult care home" shall not include~~
37 ~~a facility that is operated exclusively for the care and treatment of the~~
38 ~~mentally retarded and is licensed for 15 16 or fewer beds.~~

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

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

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

4 Sec. 3. K.S.A. 39-1501 is hereby amended to read as follows: 39-
5 1501. As used in this act:

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

15 (b) "Skilled nursing care," "supervised nursing care" and "~~simple~~
16 ~~nursing care~~" have the meanings respectively ascribed thereto in K.S.A.
17 39-923, and amendments ~~thereof~~ *thereto*. personal

18 (c) "Physician" means any person licensed by the state board of heal-
19 ing arts to practice medicine and surgery.

20 (d) "Secretary" means the secretary of social and rehabilitation serv-
21 ices.

22 Sec. 4. K.S.A. 40-2,116 is hereby amended to read as follows: 40-
23 2,116. As used in this act:

24 (a) "Contracting facility" means a health facility which has entered
25 into a contract with a service corporation to provide services to subscrib-
26 ers of the service corporation.

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

30 (c) "Health facility" means a medical care facility as defined in K.S.A.
31 65-425 and amendments thereto; psychiatric hospital licensed under
32 K.S.A. 75-3307b and amendments thereto; adult care home, which term
33 shall be limited to nursing facility ~~and intermediate personal care home,~~
34 *assisted living facility and residential health care facility* as such terms
35 are defined in K.S.A. 39-923 and amendments thereto; and kidney disease
36 treatment center, including centers not located in a medical care facility.

37 (d) "Professional provider" means a provider, other than a contract-
38 ing facility, of services for which benefits are provided under contracts
39 issued by a service corporation.

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

5-9

1 or a nonprofit medical and hospital service corporation organized under
2 the provisions of K.S.A. 40-19c01 *et seq.*, and amendments thereto.

3 Sec. 5. K.S.A. 39-1501, 40-2,116 and 65-3501 and K.S.A. 1994 Supp.
4 39-923 are hereby repealed.

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

5-10



KHCA

Member of
ahca

Kansas Health Care Association

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

T E S T I M O N Y

before the

Senate Public Health and Welfare Committee

SENATE BILL 8

"AN ACT concerning adult care homes; defining terms ..."

Chairperson Praeger, members of the Committee:

The Kansas Health Care Association, representing over 200 professional nursing facilities throughout the state of Kansas, appreciates the opportunity to comment to the Committee concerning Senate Bill 8 -- which would establish a new category of long term care services called "assisted living".

Members of the Kansas Health Care Association are already involved in providing quality assisted living services to senior Kansas citizens in many areas of the State -- both in connection with nursing facility operations and in independent settings. We view this emerging service area as an important development in long term care that is essentially consumer driven and, at this time, a private pay service. One of the functions of the bill would be to bring this new area of service under the licensing authority of the Department of Health and Environment, a move which we support. This process should also move responsibility for overseeing private pay services of this type from SRS authority, which we also support.

However, Senate Bill 8 goes much further than simply defining the new service area of assisted living. The bill also changes the language which describes the needs of nursing home residents -- where the statute now describes the needs in medical illness terms, the new language would refer to assistance with activities of daily living. The bill also goes on to change the working definitions of skilled nursing care and supervised nursing care as it relates to the provision of professional nursing services in the State's nursing homes.

Finally, we would like to point out that new language describing a "residential health care facility" is not clear and could interfere with the provision of services in unlicensed

Ask Us About Our Care

Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 60

Testimony before the
Senate Public Health and Welfare Committee
SENATE BILL 8
February 13, 1995 - Page 2

apartments and residential facilities. For example, on page 3, line 4 of the bill, new language refers to "providing or coordinating a range of services". We are not sure how the state agency would interpret those terms in apartment or residential care settings where home health or emergency call service is available. Facilities in this situation should not be swept into the assisted living category.

For these reasons, and others, the Kansas Health Care Association is not ready to support the bill. We intend to continue working with the Department of Health and Environment and other representative groups to clarify the language in the bill and to review the substantial new changes that have been presented to the Committee today.

2/15/95

To: Chairperson Praeger and Public Health and Welfare Committee

I speak to you as a family caregiver, founder and operator of the Kelly Houses in Topeka (residential congregate living for those with Alzheimer's Disease), and Vice-President of the Alzheimer's Association. My mom was diagnosed with Alzheimer's Disease nearly 5 years ago. We were very close and it has torn me apart watching her have to go through the slow deterioration of this cruel disease. Alzheimer's lasts from 2 to 20 years. Many of these years the person can continue to have some "Quality of life" in a setting such as the Kelly House. The key to providing the proper care is to understand this disease. Alzheimer's Disease reverses its progression in the same order as a child develops. **Facilities need to have a high enough staff ratio and trained staff to be able to help these people function at their highest levels possible!**

I do support Senate Bill 8 for those who need little assistance and are pretty independent. **But not for those suffering from Alzheimer's Disease!**

I do support that there doesn't need to be a Nursing Home Administrator in the Assisted Living Environment!

There needs to be a "**Special Needs Waiver**" for anyone who provides care to someone meeting the needs of those with Alzheimer's Disease! Recommendations from an "Advisory Committee" through the Alzheimer's Association were added to the **SRS Choice Recommendations (see attached)**. This waiver would increase the reimbursement rates for facilities to provide a higher staff to resident ratio which needs to be at least 1 staff person to 4 residents! Nursing Homes, Special Care Units and Residential Facilities as the Kelly House are crying out that it is impossible to care for someone with Alzheimer's Disease with reimbursements as they are now!

My mom has almost died twice because of medications and last November she was beaten up in a Special Care Unit where the staff to resident ratio was 2 to 37. She was non ambulatory and totally incontinent for 5 months until coming to the Kelly House. Now she gets out of bed and stands in her door saying "it's Peggy"!

I want this committee to give the residents and the families of the Kelly House a "Choice" to stay. Just because they spend down they should not have to move their family member out! Please allow your time and consideration to allow the Kelly House a "Special Waiver" and give the same reimbursement rates as you do the special care units effective July of 1995. Then we can all look at statutes and "proper reimbursements" to any facility meeting the needs of those with Alzheimer's Disease!

We care about our residents and as a not-for profit don't want them to have to go just because they have spent down!



Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 7

To: Senate Public Health and Welfare
From: Rose Gallego, 1324 Plass, Topeka, Kansas 66604
Date: February 15, 1995

My name is Rose Gallego and I am from here in Topeka. My mother, Josephine Flores has been diagnosed with Alzheimer's disease since January of 1986. I have watched my mother deteriorate mentally since that time.

In September of 1993, on the advise of her physician, she was admitted to Stormont-Vail Hospital Senior Center for a complete evaluation and at the conclusion of that stay, the physician, social worker and staff recommended that she not return to her home as she could no longer be left alone for her safety, hygienic and health reasons.

At that time, she no longer knew how to take a shower, run her bath water, slept in her clothes due to not able to dress and undress herself, kept her coat on when inside the house as she did not know when to take off her coat, couldn't cook, drive or know when to take her medication.

She has resided since that time at the Kelly House here in Topeka. The care, supervision, and programming Kelly House provides is the best place for her now and in the future. At the present time the Kelly House is not a Medicaid approved facility so when my mother "spends down" her available funds, she would have to be placed in a Nursing Home which are not as well trained in the care of persons with Alzheimers, nor has the staff ratio to residents that people with Alzheimers require. This would be devastating to her and our entire family due to the change of environment, and the people that have worked with her along the people she has gotten to know.

The type of care she is receiving at Kelly House has given her a better quality of life as well as that of her family members. It is not right or fair for people with Alzheimers to move from a place that gives them such good quality of care due to money.

It is important that people with Alzheimers receive specialized care by trained staff.

Dear Chairperson Prager and Committee Members;

We as family members of a victim of Alzheimers must and I repeat must receive help from our government for our loved ones financial needs. There must be enough funding to allow for there to be more staff members to help each victim to live with this terrible disease. The Kelly House has about three-and-a-half staff members to every 10 residents. That ratio needs to be approved with funding from the government.

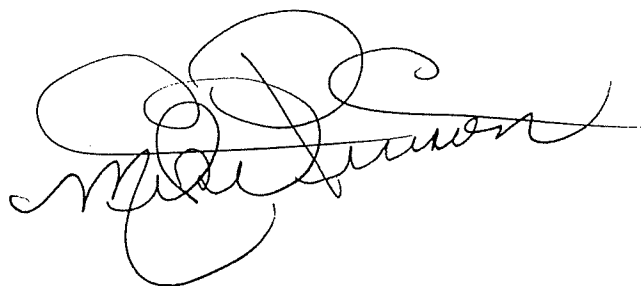
Please understand that this is a terrible disease. This disease can happen to anyone. No one is exempt. You can be old and somewhat healthy and reside in a nursing home. However, imagine being old, having Alzheimers, and being put in a nursing home. Then you would have no idea why you had to live there or why you act the way you do.

My mom was put in a nursing home before we put her in the Kelly House. She was there for eleven months and in those months her condition deteriorated. There were not enough staff there to take sufficient care of my mother. They could not give her the quality care-time she needed to learn how to do anything for herself.

When we took Mom out of the nursing home, she was in a wheelchair. Within seven days of residing at the Kelly House, mom was walking again. This was possible because there were enough staff there to help my mom learn how to walk again.

Once our money runs out, we cannot financially afford to keep her at the Kelly House. The government needs to take care of our older people. These people gave their lives to bettering our communities. But as they age, their money runs out and the government won't help them. It is like the government is saying that once the money runs out all we can do is put our Alzheimer's victims in a nursing home so their loved ones have to just sit back and watch them deteriorate and die.

Today, I'm not sitting back anymore.

A handwritten signature in black ink, appearing to read "M. J. Prager", written in a cursive style.

Dear Chairperson Praeger and Committee Members,

It is hard for me to answer questions about how well someone I know is being taken care of as they age, since I am the son of the woman these questions are about. My mom has Alzheimer's disease and would have no idea how to answer these questions herself. But I can speak for her having known her when she was whole.

Without the financial assistance Mom receives, she would be entirely broke, and probably in a nursing home getting sub-par care for her condition. Hopefully the Kelly Houses will receive medicaid certification soon so I wont have to ever have her in a nursing home.

My mom is as happy as possible where she is. I would worry myself sick if she were anywhere else. The Kelly House founders, Kathy and Randy Speaker, have a concept of how Alzheimers victims should be treated. They base this treatment on dignity and respect. My mom gets both at the Kelly House with the care based upon Kathy's research.

Mom is one of the very few victims of Alzheimers who gets the best quality of life possible.

Please allow a "Special Alzheimer's Waiver" so mom doesn't have to leave the Kelly House!

Sincerely,

Tom Doerr, Family Caregiver

February 15, 1995

TO THE SPECIAL COMMITTEE ON PUBLIC HEALTH AND WELFARE

I am unable to appear before you today in person while you discuss the merits of Senate Bill No. 8, so I am writing this letter in the hope that it will make a difference in the final outcome of this hearing. It is my understanding this hearing may be instrumental in providing better professional care and financial support for those suffering from Alzheimer's Disease or related dementia.

My father suffered a stroke in May, 1987 and had to be moved to a nursing home due to the physical disabilities caused by his stroke. He died in July of 1992 while living in a nursing home. I swore to my mother that I would do everything in my power to try and keep her from having to live in the same conditions that he had endured. In keeping with that promise, I moved her into the assisted living unit of the Hearthstone Retirement Community in March, 1993 at age 67. At that time we knew she was unable to bathe, cook or do rudimentary house cleaning. She was unable to remember if she had eaten or taken her medication. The Hearthstone Retirement Community is an excellent facility, but due to the lack of licensed medical personnel, they were unable by state law to even give her cough medicine. In addition, they did not have the staff to ensure that she performed basic hygiene routines such as taking a shower, brushing her teeth or clipping her nails.

In March of 1994, I moved my mother to the Kelly House which is a special care facility designed for those persons suffering from Alzheimer's Disease. This is an especially hideous disease because it is slowly destroying my mother's mind, while leaving the rest of her body in remarkably good health. I cannot bring myself to commit her to a facility where nearly all of the other residents are bedridden, physically disabled, screaming or crying for someone to help them. Considering my mother's assets, the Kelly House is extremely expensive at \$2200 per month. Yet it is one of the least costly facilities in the Topeka area. At this rate, my mother will be unable to afford to remain in the Kelly House after September, 1995. After this date, I will be forced to move her to a nursing home where medicaid will have to pay for her care.

In September, 1995, every asset my father and mother have accumulated in their lifetime will be exhausted and the state will be paying for her care in a nursing home. I am not concerned with the exhaustion of her assets. I am concerned that she will have to leave a facility where she lives with others with similar disabilities and receives the care and understanding she needs and deserves.

My plea to you is that the state will have to pay for her care eventually, so why not pay for that care in a setting where the

staff is trained and understands the special needs for people with this hideous mind robbing disease?

Thank you for listening to me and for caring enough to consider this plea.

Jerry Serk
5132 NW 52nd Street
Topeka, Kansas 66618

FOR MORE INFORMATION CONTACT:
Terri Roberts JD, RN
Executive Director
700 SW Jackson, Suite 601
Topeka, KS 66603-3731
(913) 233-8638
February 15, 1995

SB 8 ADULT CARE HOMES-DEFINING CERTAIN TERMS

Senator Praeger and members of the Senate Public Health and Welfare Committee, my name is Carolyn Middendorf MN, RN, and I am the current president of the Kansas State Nurses Association.

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). We recommend that on line 37 the work "professional" which is currently being deleted, be reinserted. This is not a substantive change, but does make the sentence more accurate. 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" (page 4 line 12) that appears in the balloon submitted by the Kansas Department of Health and Environment.

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.

Kansas State Nurses Association Constituent of The American Nurse

700 SW Jackson, Suite 601 * Topeka, Kansas 66603-3731 * (913) 233-8638 *
Carolyn Middendorf, M.N., R.N. -- President * Terri Roberts, J.D., R.N. -- Ex

Senate Public Health and Welfare
Date: 2-15-95
Attachment No. 8

KSNA Testimony
SB 8 Adult Care Homes Definitions
February 15, 1995
Page 2

Because of the implications of the changes being proposed today, KSNA will continue to monitor and examine the professional nursing issues that arise as a result of compromises and amendments made to S.B. 8 as a result of todays testimony, by the other industry representatives.

Thank you for the opportunity to present today.

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

**Senate Public Health and Welfare Committee
Testimony on Senate Bill 8
Licensure and Definitions of LTC Housing Options
February 15, 1995**

Members of the committee, I thank you for the opportunity to present you with this testimony.

Creating alternative housing options has been a recommendation of the interagency Long Term Care Action Committee (LTCAC) in both the 1994 report to the Kansas Legislature and the 1995 proposals. Consistency in licensure responsibility, definitions of housing options, and flexible regulations related to nurse delegation is critical to the expansion and development of affordable long term care (LTC) housing. SRS supports Senate Bill 8 and identification of Kansas Department of Health and Environment (KDHE) as the licensing authority for elderly housing. If any of the fifteen facilities currently licensed by SRS choose to pursue license under one of the new categorical definitions, KDHE and SRS will coordinate licensing activities related to transition to prevent interruptions of consumer services and reimbursement.

To clarify this administrative responsibility, K.S.A. 75-3307b(a)5 should also be clarified to specifically exclude SRS licensure authority for residential care homes for the elderly. K.S.A. 75-3307b provides SRS authority to license "non-medical" adult family homes and residential care facilities for the mentally retarded, mentally ill and other handicapped persons. "Other handicapped persons" should be rewritten as "Other developmentally disabled persons" and clarify the exclusion of elderly and persons with disabilities not related to mental illness/mental retardation or related conditions. SRS will continue to maintain appropriate licensing authority under K.S.A. 75-3307b for residential care homes serving individuals who are mentally ill, mentally retarded or have a related condition.

Senate Bill 8 has no direct fiscal impact on SRS. However, Assisted Living facilities are not currently affordable to all Kansans. SRS has provided reimbursement for the service component of residential personal care through Home and Community Based Services/Nursing Facility (HCBS/NF) waiver since 1982. The room and board portions of residential personal care are not Medicaid reimburseable services. Residential personal care is a package of health care services provided to Medicaid eligible individuals in a board and care setting such as the definitions of Assisted Living and Residential Health Care facilities propose.

The SRS Long Term Care CHOICE (Choosing Home Or Institutional Care Environments) reform proposal calls for a HCBS/NF waiver amendment combining two current residential care services into one service known as Assisted Living. The existing HCBS/NF waiver can be modified to ensure the service package provided through Assisted Living residences is recognized. SRS will use caution in amending the waiver to protect against large scale construction of Assisted Living facilities which could create a system of "mini"-institutions.

If Assisted Living facilities were to be reimbursed by SRS, the estimated new cost in Fiscal Year 1996 would be \$838,103 (\$348,064 State General Funds). This was not recommended by the Governor. It is our plan to clarify the definition of residential personal care and continue to provide reimbursement only to Residential Health Care facilities.

Senate Bill 8 provides needed definitions and consistent but flexible licensing regulations to ensure expansion and development of LTC housing options which adequately address changing demographics in the 85+ population. This population is expected to more than double between 1990 and 2005 to nearly 84,000 persons. If patterns of institutionalization remain the same, then 40,881 Kansans could be in nursing facilities. During the past two years, Kansas Medicaid expenditures for nursing facilities skyrocketed to nearly \$244 million (including ICF/MR). If this spending pattern continues, Kansans can expect to pay \$405.7 million for LTC services in the year 2000. Senate Bill 8 removes the barriers preventing expansion of LTC housing options which will reduce the rate of growth in Medicaid nursing facility expenditures.



DEPARTMENT ON AGING
Docking State Office Building, 150 S
915 S.W. Harrison
Topeka, Kansas 66612-1500
PHONE (913) 296-4986
FAX (913) 296-0256

Bill Graves
Governor

Thelma Hunter Gordon
Secretary of Aging

TESTIMONY ON SENATE BILL 8
Secretary on Aging
THELMA HUNTER GORDON

I am here to share with you our understanding of Senate Bill 8, which deals with living environments and facilities. I am pleased to have this opportunity to share our insights, and I thank the committee for the chance.

Senate Bill 8 has been of significant interest to the Kansas Department on Aging for some time. It runs parallel to House Bill 3049 of the last Legislature. It has been part of the recommendations of the interagency Long Term Care Action Committee for the past two years. We included a copy of the Committee's report in our packet of information which we presented to the Public Health and Welfare Committee on February 1.

We are very excited about the possibilities opened by the bill. Perhaps the greatest amount of attention and interest has been focused on the provisions of the bill which define "Assisted Living" and which permit that mixture of facilities and service to benefit from appropriate regulations, which would protect residents and service providers alike.

Today I want to call your attention to the provisions which flow from Section 7, "Home plus," found on page 3, line 6 and following.

"Home Plus" is part of a critically important segment of the market of services and facilities meeting the needs of the older Kansans. Not every Kansan can afford the necessary costs of an assisted living facility, not every older Kansan enjoys the informal support of family and close

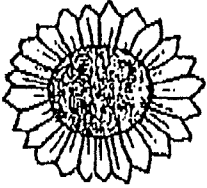
friends; not every Kansan qualifies for assistance to permit residence in a nursing facility. And not every Kansan ought be in such a facility. Important parts of our older population find themselves appropriately served in environments such as those included in the definition of "Homes Plus."

We need these smaller, more intimate, more supportive environments. Places such as these are capable of forming a family-like atmosphere and afford a supportive environment for many Older Kansans. They are less expensive to start up, require less capital since many of these facilities can be established in existing residential structures, and thus are frequently available to clients at lower costs.

Senate Bill 8 permits these facilities to be regulated by the Department of Health and Environment.

We are aware that in some states these smaller homes have been the scene of horror stories and of excesses. We are sure that Health & Environment will be able to establish a regulatory atmosphere which protects residents and yet does not needlessly encumber the operators. This is our goal in every regulatory situation, and we are prepared to work with any other state organization or agency to reach this goal.

It is our opinion at Kansas Department on Aging that Senate Bill 8 represents an advance in the care and assistance afforded Older Kansans, and we respectfully urge its passage.



The Meadows

A Division of Coffey County Hospital

1201 Martindale, Burlington, Kansas 66839

February 8, 1995

Sen. Sandy Praeger
Senator, 2nd District
State Capitol
Office 128 - A
Topeka, KS. 66612-1504

Dear Sen. Praeger:

Thank you for taking the time to speak with me last Friday. I am highly in favor of the proposed categorization of the geriatric care facilities as proposed in Senate Bill No. 8. This will create the guidelines to clarify the roles each type of facility plays in the overall picture.

My concern is not for what is in the bill, but for what is not. Our facility is a Personal Care Home, licensed by KDHF, and has been in operation for approximately 18 months. All of our residents are private pay. As long as these residents are able, I believe they should provide their own financing. However, at the present time, residents needing assistance with paying for their care, are forced to leave the Personal Care Facility and go to a facility with a more restrictive level of care at which state SRS reimbursement is provided. I feel that not only should the licensing agency be named by this bill, but the funding agency be named also. This would allow funding to be made available for all the levels of care categories, which would allow for the least restrictive environment possible for the resident involved.

Sincerely,

Paula German
Administrative Coordinator, The Meadows

Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 11

Thomas Gallegos
2701 Westdale Circle
Lawrence, KS 66049
(913) 843-3967 Home

February 13, 1995

Senator Sandy Praeger, Chair
Special Committee on Public Health & Welfare

RE: SB 8 Adult Care Homes

Dear Sen. Praeger,

Due to my faculty responsibilities at Washburn I am unable to testify at the scheduled Committee meeting on February 15. However, I would like to share some suggestions regarding the proposed redefinitions of residential care facilities in SB 8.

My comments are specifically outlined in the attached letter to Mrs. Pat Maben address the Assisted Living, Residential Health Care Facility, and Home Plus sections. In addition I have shared some thoughts about some sort of certification and training of people who would manage these type settings.

Overall, this is an excellent time for Kansas to move ahead towards implementing a full continuum of choices for long term care. Thank you and feel free to contact me if I can be of any assistance.

Sincerely,


Thomas Gallegos

Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 12

Thomas G. Gallegos
2701 Westdale Circle
Lawrence, KS 66049
(913) 843-3967

February 13, 1995

Patricia Maben
Bureau of Adult and Child Care
Department of Health Environment
Landon State Office Building
Topeka, Kansas

RE: Senate Bill No.8

Dear Mrs. Maben,

It is good to see that SB 8 is now under consideration and it looks like it will be a significant step towards establishing a full continuum of long term care in Kansas. I would like to make some specific comments and suggestions about the portion that has to do with residential facilities.

Prior to moving to Kansas to teach at Washburn University I had about 10 years experience with small group facilities Arizona. I implemented a countywide adult foster care program; served as a certified trainer for managers and caregivers; provided consultation to numerous care home operators; developed two small group homes; and assisted small group providers to establish self help associations as a means of working together to improve their level of service and ability to meet new state licensure requirements.

Comment #1: Assisted Living Facility - P. 2 line 38 - The category looks fine, except it is unclear whether they must include apartments for each resident or only for some residents. It would be important to be very clear if this is the intent of the new law as mandatory individual apartment units for each person may prohibit development of this concept. The "individual living unit" may be an option to be included in this category.

Comment #2: Residential Health Care Facility - P.2 line 41 - It is not clear what is intended with this type facility. There is a requirement for an "individual living unit", which I assume is intended as a bedroom. It appears that each unit or room would require a toilet with bathing facilities, and a living and sleeping area. If the intent is to allow for development of small, family style group homes, then this definition will need revision. With this wording each bedroom would need a full bathroom and 'living area' which is not a standard for residential care homes. Most have private or semi-private rooms, with bathing facilities for every 3 or 4 residents, depending on local building codes for residential construction. The requirement, as worded, would appear to have the effect of limiting the development of small group homes as an affordable option. Perhaps this category might best be included with the assisted living facility category.

Thomas Gallegos P. 2

Comment #3: Home Plus - p. 3, line 6 - The intention for this category seems to promote small, family style care homes. I would suggest that the number of residents permitted be changed to allow from 1 to 8 residents and that the category be renamed Residential Care Home or Adult Group Home. This will allow for some flexibility in the size and style of homes, but also allow for development of homes which can more easily afford to mix private pay and state funded clients. With state licensure, as is proposed here, the costs to provide residential care also rise as there are increased regulations at all levels. It becomes difficult for providers with 3-5 residents to make it financially and they usually have to raise their rates to levels higher than private pay low income persons and their families can afford. With a flexible licensure program, for example, a good small home provider with 4 residents, may wish to increase to 6 or 7 residents by adding more space. Their quality of care will generally still be very good and they are often more able financially to accept state funded residents who would otherwise require nursing home placement earlier than needed. As your program matures and providers gain in expertise, they often wish to expand their services and I suggest a more flexible category of up to 8 persons (some states do allow for up to 10 residents, but I believe this is too large for small, family style care).

Comment #4: "Operator" - P. 4 line 37 - I would suggest that a close look be given at this section and that a category for certification of residential care home managers be developed. Just as each nursing home has a specified, licensed administrator, this new level of care should have clearly specified managers - who may or may not be the owners of the facility or home. Arizona has developed a nice model with these managers being required to apply for certification, complete a 34-hour training program, and pass an examination. Renewal of the certificate and CEU requirements are also included. In Kansas, the Bureau of Occupations and Credentialing could provide this oversight. Persons who are licensed Adult Care Home Administrators could be exempt or deemed to meet the certification. I urge you to consider this suggestion for two reasons. First, it allows for a means to develop a pool of persons able to provide and oversee care in residential settings. Second, it allows for more protection of the public by establishing some specific oversight. It is not uncommon for unprepared and unscrupulous persons to seek to provide elderly care in residential settings. A more closely monitored system, I feel, would help Kansas to establish at the outset that operators of these type facilities must show ability and character.

I hope that these comments are useful to you. Unfortunately my teaching responsibilities will not enable me to appear before the committee, although I will also pass these remarks on to them. I applaud your leadership in advancing the expansion of the formal long term care system in Kansas. Please call me if you have any questions.

Sincerely,

Thomas Gallegos

THE AMERICAN ASSOCIATION OF RETIRED PERSONS
HEARING BEFORE THE KANSAS COMMITTEE ON
PUBLIC HEALTH AND WELFARE - February 15, 1995

The Kansas Public Health & Welfare Committee has issued a report, part of which focuses on assisted living, to the 1995 Kansas Legislature. In November, 1994, the Kansas AARP offered the Special Committee recommendations for the development of an assisted Living program. Many of those recommendations are included in the Special Committee's final report. In general, the report is consistent with AARP policy on assisted living; however, AARP has some comments to make on the report and its recommendations.

****A recommendation that the 1995 Kansas Legislature update and clarify Kansas laws on the regulation of residential care facilities that serve those who need assistance with the activities of daily living, but not nursing home care. By following this recommendation the legislature would create a new separate level of care: assisted living.**

AARP comment: This recommendation is consistent with the AARP policy that assisted living is unique and an increasingly important option in long term care.

****A proposed statutory definition of assisted living requires a facility to include apartments and to provide or coordinate a range of personal care and supervised nursing care. Services must be available 24 hours a day, 7 days a week for the "support of resident independence".**

AARP comment: The definition should include language which reflects the importance of privacy and dignity. Language should require services to be individualized and should clarify the residents' right to participate in the development of service plans.

****Nurse delegation issues are recognized in the report, but no firm recommendations are offered.**

AARP comment: Nurses should be allowed to delegate to specific staff certain nursing procedures under statutory language that also provides adequate consumer protection.

****The report recommends consolidating all licensing of long term care facilities under one agency.**

AARP comment: AARP supports the concept of a single state agency having responsibility for licensing, regulation and enforcement.

This should
Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 13

enable coordination and consistency in the assisted living program.

**The report recognizes the lack of third party reimbursement as a barrier to the development of assisted living facilities.

AARP comment: AARP supports states using the Medicaid Home and Community Services Waiver to finance the cost of providing services to low income individuals. Federal housing and mortgage insurance programs should also be tapped to encourage the development of facilities.

In addition to the issues raised in the Special Committee's report, AARP recommends that the state legislature and single state agency incorporate the philosophy of assisted living, to enable a functionally disabled individual to maintain dignity, privacy, independence and choice, into all aspects of the program. Critical to the implementation of the philosophy is the resident's right to control his/her space, daily activities and care. Residents rights, negotiated risk agreements between the facility and the resident, physical plant standard and staff training requirements must also be a part of any effort to establish an assisted living program.

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.

Anne Kimmel

February 8, 1995

To All This May Concern,

I am writing you this letter in regards to Senate Bill No. 8. I am writing as a concerned citizen and more personally a relative of a 95 year old man, Roy Wright.

Mr. Wright is a resident of The Meadows of Burlington, Kansas. He moved there in August of 1993. Since that time, he has made many new friends and the staff has been very professional and reliable. He is capable of being in any and all activities and yet be as independant as he desires.

Mr. Wright is facing a very difficult and painful decision by August of 1995. He will be forced to leave The Meadows (the place he has called home for nearly 2 years) and move into a nursing home. He would lose his independence and have a complete change in his lifestyle. At any age, espieccally his, this would be a very difficult and devastating time. This decision is not because he is anymore phyiscally disabled merely because his lifetime savings will be gone. It will have a serious affect on him if he has to move because of one word " finances".

I plead with you not just for his sake but for all the elderly, this bill will pass, so they will have a future with a choice. Please take a moment, consider if this was one of your family members facing this very problem. What would you want to happen for them. You have the power to decide! I pray that your decision will be what is in the best interest of The Meadows (other facilities like it), the State, and most importantly the ELDERLY.

I trust you will come to the same conclusion I have and that is to pass this bill and to get it into affect immediately.

Thank you for your consideration in this matter.

Deeply Concerned,

Allison L. Mauerte

Allison L. Mauerte

397 Oxen Rd. SE

LeRoy, Kansas 66857

Senate Public Health & Welfare
Date: 2-15-95
Attachment No. 14

Dear Chairperson Prager and Committee Members;

When my grandmother, Ethel Springer, was diagnosed with Multi Infarct Dementia, homecare was initially attempted. Due to the lack of knowledge and understanding of my grandmother's disease, the situation became intolerable for my entire family. The need for 24-hour quality care became increasingly apparent. No longer could my family put aside their personal schedules to assist with my grandmothers unending need of mental and physical care.

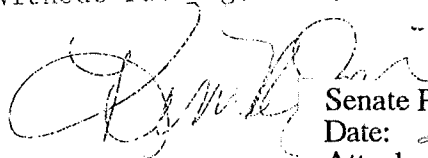
When the actual intensity of this disease was realized, my family attempted to find the best and most appropriate care possible. Though a long search, we finally found a nursing facility that seemed to fit all of our requirements. This facility advertised that they utilized the latest findings in Alzheimer's research. We therefore agreed to pay the exorbitant daily rate, believing this facility would be beneficial. Through visitations it became painfully obvious that the staff to client ratio (1:12) was insufficient. Implementation of beneficial programs and information was and is a ridiculous goal at this ratio. To accommodate for inadequate staffing many patients were sedated so they would demand less attention.

Many of these sedatives desensitized motor skills that had already been effected by the disease causing not only further, but rapid deterioration. This practice of accommodation is unethical and unforgivable, but without funding it is foreseeable.

These medications however, proved to be a two edge sword. The physical demands was increased because they could not function without aid. Unfortunately much too often these physical needs are easier to ignore than mental needs. We were informed my grandmother could not perform several self-preservation tasks; eating, responding to bodily functions, dressing and sleeping are just a few. It was apparent this facility could not fulfill the quality we had believed would be provided, due to inadequate staffing.

A search was started to determine if there were other options in our surrounding area. The homelike atmosphere and staff to patient ratio were the two most appealing factors of The Kelly House. The improvement my grandmother experienced after moving in proved to be nothing less than astounding. Through constant one-on-one staff interaction, she receives the care both mentally and physically that she needs. The proof needed to show the benefits of such a ratio is unending. Through Kelly House, my grandmother has not only slowed the progression of the disease, but has also learned in the process. My grandmother's self preservation skills have greatly improved; she's no longer incontinent, she not only eats on her own, but helps cook meals as well. Through the art and music therapy Kelly House provides, my grandmother learned to play the piano, something she has always wanted to do. Most importantly she was weaned off four sedative drugs and places on memory enhancers. This coupled with staff interaction has not given me back the grandmother I remember, but has given her the ability to enjoy life and live with dignity. To my grandmother, Kelly House is home, she actually enjoys being there.

Though Kelly House's staff ratio exceeds all standards, it is quickly becoming threatened through lack of funding. Without necessary budgeting, Kelly House stands to immediately lose all progress it has made in fighting Alzheimers! Simply because Kelly House cannot afford to keep up this ratio. Kelly House depends on staff to implement programs that exceed any nursing facility. Funding is the life-blood, only through this will Kelly House be able to continue this excellence. Without funding, Kelly House is no more than a nursing home.



Senate Public Health and Welfare

Date: 2-15-95

Attachment No. 15

Dear Chairperson Prager and Committee Members;

We as family members of a victim of Alzheimers must and I repeat must receive help from our government for our loved ones financial needs. There must be enough funding to allow for there to be more staff members to help each victim to live with this terrible disease. The Kelly House has about three-and-a-half staff members to every 10 residents. That ratio needs to be approved with funding from the government.

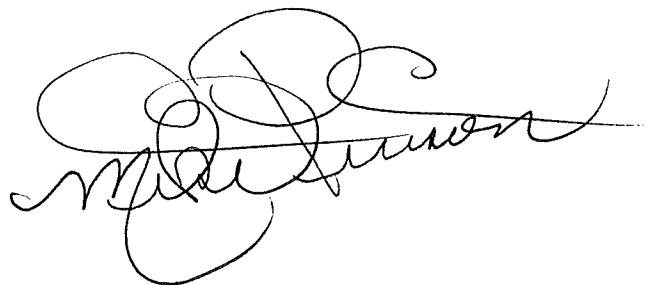
Please understand that this is a terrible disease. This disease can happen to anyone. No one is exempt. You can be old and somewhat healthy and reside in a nursing home. However, imagine being old, having Alzheimers, and being put in a nursing home. Then you would have no idea why you had to live there or why you act the way you do.

My mom was put in a nursing home before we put her in the Kelly House. She was there for eleven months and in those months her condition deteriorated. There were not enough staff there to take sufficient care of my mother. They could not give her the quality care-time she needed to learn how to do anything for herself.

When we took Mom out of the nursing home, she was in a wheelchair. Within seven days of residing at the Kelly House, mom was walking again. This was possible because there were enough staff there to help my mom learn how to walk again.

Once our money runs out, we cannot financially afford to keep her at the Kelly House. The government needs to take care of our older people. These people gave their lives to bettering our communities. But as they age, their money runs out and the government won't help them. It is like the government is saying that once the money runs out all we can do is put our Alzheimer's victims in a nursing home so their loved ones have to just sit back and watch them deteriorate and die.

Today, I'm not sitting back anymore.

A handwritten signature in black ink, appearing to read "Mike Johnson". The signature is written in a cursive, flowing style with large loops and a long horizontal tail.