

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans, at 1:30 p.m. on February 18, 1997 in Room 423-S-of the State Capitol.

All members were present except: Representative Judy Showalter

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

Conferees appearing before the committee:

Representative Nancy Kirk
Representative Dixie Toelkes
Charles Sexson, Assistant Director, Kansas Bureau of Investigation
Estel Landreth, DDS, Wichita
Daniel Gronniger, Chief Legal Counsel, Kansas Department on Aging
Sandra Strand, Executive Director, Kansas Advocates for Better Care
Brian Powers, Administrator, Creative Care, Wichita
Linda Lubensky, Director, Kansas Home Care Association
Paul Garvin, Assistant Secretary/General Counsel, Kansas Department of Health and Environment

Others attending: See Guest List (Exhibit 1).

The committee's minutes of February 4, 5, and 6, 1997 were approved.

Chairperson Mayans opened the hearing on **HB 2278 - restrictions on persons operating, working or volunteering in adult care homes.**

Representative Nancy Kirk testified in support of the bill, explaining that it prohibits (1) the owner or operator of an adult care home or of a home health agency from employing certain persons as either paid employees or volunteers or, (2) a disabled person, in need of a guardian or a conservator, from operating an adult care home or home health agency. The bill requires the Kansas Department of Health and Environment be given access to any court order, Kansas Bureau of Investigation criminal record, and Social and Rehabilitation Services records to attain criminal history required to conduct background searches for all such potential employees or volunteers. (See testimony, Exhibit 2). Representative Kirk expressed concern that background checks as quick a process as practicable.

Representative Dixie Toelkes testified in support of the bill. She described her daughter's situation for care after an auto accident and the ultimate harm that came to her after she was placed in a care home. Representative Toelkes described her family's pursuance of the perpetrator of the crime, which caused his return to prison (see Exhibit 3). Representative Toelkes stated that this bill establishes the same kinds of restrictions as is found in protective child care.

Charles Sexson, Kansas Bureau of Investigation, testifying in support of **HB 2278**, described the role KBI would have in researching criminal history record information. He suggested the bill include juvenile offender record information. He pointed out that a major policy question arises if, as the bill is written, it gives an employment agency authority to certify employees as not being prohibited to work in adult care homes. Mr. Sexson outlined administrative concerns about fee assessments for record checks, and impending additional requirements on KBI for personnel and office equipment. He offered a suggestion for a cooperative computer interface to automate the initial screening. (See testimony, Exhibit 4.)

Estel Landreth, DDS, Wichita, requested consideration of an amendment to **HB 2278** to require a visual dental examination of every care home patient (see Exhibit 5).

Daniel Gronniger, Kansas Department on Aging, testified in support of **HB 2278**, but described several suggestions to strengthen the legislation, some of which were to (1) clarify collection of background material, and specify what entity has the right to the information; (2) delineate responsibility to determine compliance; and (3) consider penalties for certain acts prohibited by the bill to include the "bad acts" listed in sections 1(a) and 2(a), 1996 Supp. 21-4619(b), to the bill's list and broaden the prohibitions relating to crimes against property. (See testimony, Exhibit 6.)

Sandra Strand, Kansas Advocates for Better Care, supported the bill and urged its passage (see Exhibit 7).

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MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 423-S of the State Capitol, at 1:30 p.m. on February 18, 1997.

Brian Powers, Creative Care, expressed strong support of the bill and suggested consideration be given to include what entities will have access to background reports (and include privately-owned entities) and consider the cost factors (see Exhibit 8).

Linda Lubensky, Kansas Home Care Association, expressed opposition to the bill, stating the bill is very limited in scope and does not address important implementation issues, which she listed in written testimony (see Exhibit 9).

Paul Garvin, Kansas Department of Health and Environment, presented testimony requesting consideration be given to policy implementation and cost benefit issues. They are spelled out in his testimony (Exhibit 10).

Chairperson Mayans stated he understood the frustrations with the implementation of **HB 2278**, but that the committee is looking at the barriers and has determined that the legislation will move forward and, in so doing, determine solutions to the expressed problems. He said this bill will not solve all of these issues, as no legislation can solve all of the problems addressed; but with the cooperative work of all interested parties, the legislation will move forward.

Norman Furse pointed out, that in response to the question of whether this legislation pertains to homes for children, this bill includes a section identical to K.S.A. 65-516 (which has been on the books for eight to ten years) that includes such homes.

Committee members posed questions relating to the provisions on collection of background data; whether expunged information (especially juvenile records) is available to the KBI; and whether criminal information from other states is available and how complete it is. Chairperson Mayans advised that in order to have the time to address the issues raised in the testimonies and to insure action on the bill this session, he will ask that the bill be "blessed" and the committee will continue its work on the bill.

The hearing on **HB 2278** was closed.

The meeting was adjourned at 3:10 p.m.

The next meeting is scheduled for February 19, 1997.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
FEBRUARY 18, 1997

NAME	REPRESENTING
LINDA LUBENSKY	Ks Home Care Assoc
BRIAN J. POWERS	CREATIVE CARE CORP.
ESTEL LANDETH	SELF
CHARLES SEXSON	KBT
John Kiefhaber	Ks. Health Care Assn.
Rose Walker	
Michelle Peterson	Peterson Public Affairs
HAROLD PITTS	KCOA
Rich Pittman	Health Midwest
Endre W. Cernick	SBS
Dan Gronniger	Kan Dept on Aging
Dick Saffee	KDOA
Josh Kose	KOLK
DAVE SIM	KBT
David Gaudin	KDHE
Sandy Strand	Ks Advocates for Better Care
D. Zeln	KAHSA
Stacie Jacobs	St. Joseph
Summer Haskett	Baker University School of Nrsng.

HOUSE COMMITTEE ON HEALTH AND HUMAN
SERVICES COMMITTEE GUEST LIST
FEBRUARY 18, 1997

NAME	REPRESENTING
Preston Barton	DD Council
John Federico	Pete McGill + Assoc
Aurelio Sinto	Ray Potterff
Jim Byer	KHCA
Tom Bell	KHA

NANCY A. KIRK
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 RANKING MINORITY MEMBER
 INSURANCE
 MEMBER
 JUDICIARY
 TAXATION

TESTIMONY ON HOUSE BILL 2278
 HEALTH AND HUMAN SERVICES COMMITTEE
 February 18, 1997

Chairman Mayans and Committee Members, thank you for so readily accommodating my committee schedule. I am here today in support of HB 2278 which provides nursing homes with additional assistance in assuring their residents are free from abuse and neglect. The bill before you requires the Department of Health and Environment to conduct a background check on each employee and volunteer who provides services in a nursing home. It is believed this process will eliminate from hire, those persons who are known to have a history of violence against persons.

The nursing home industry supports this bill, but we do have one caution. The length of time required to provide a background clearance has the potential of being a very serious barrier to quality care.

As most of you are very much aware, the nursing home industry experiences a very high turnover in staff each year. We operate under federal and state regulations which require certain staffing levels. Failure to maintain adequate staff can place the care and well-being of residents at risk. Failure to maintain these staffing ratios can also result in deficiencies and fines. It is essential that requests for employee clearances be obtainable within 48 hours to avoid compromising the care of residents.

Currently the Department provides facilities immediate oral information on each certified nurses aide to assure they have current certificates and that they have not been convicted of abuse or neglect. The oral report is followed by a written report which is maintained in our records. This system has worked very well and we do not experience a delay in hiring staff because of this requirement. It is essential that this new requirement for background checks works as quickly and as efficiently.

This bill does provide more protection for our elderly residing in nursing homes and I am hopeful the one area I identified can be accommodated.

HOUSE HEALTH/HUMAN SERVICES

Attachment 2
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DIXIE E. TOELKES
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COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
SELECT COMMITTEE ON
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HOUSE OF
REPRESENTATIVES

TESTIMONY - COMMITTEE ON HEALTH AND ENVIRONMENT
February 18, 1997

Good afternoon. Thank you, Mr. Chairman and members of the Committee, for allowing me to speak with you about HB 2278.

This bill makes it illegal to hire a convicted sex offender or a convicted batterer to work in an adult care home, or for home health agencies or employment agencies that provide overload employees for adult care facilities.

Since October, 1978, I have become painfully aware of the situations occurring in care facilities of all types. Prior to that time, I read newspaper articles, experienced shock and anger - then forgot about it. When it includes a loved one, it gets your attention and keeps it.

Our daughter Julie was severely injured in an automobile accident on October 8, 1978. We worked for our daughter from day one. The hospital experience was just the beginning. Julie was there for four and one-half months until we insisted on bringing her home. We managed to handle the situation for 26 months. When our energy and health ran out we were forced to turn to a nursing home situation. We looked into as many areas as possible and finally settled on a home at Rossville. It felt like "Home" and had all the points recommended by advocates.

As time went on, the quality level lowered. We were there three times a week and kept a close watch. We corrected anything we saw wrong and worked to keep Julie well taken care of and as happy as possible.

We noticed on a visit in September, 1988, that something was wrong - - I

thought it was probably a health problem and reported it -- three days later, the same situation existed. In a matter of days we got a call from the nursing home administrator saying Julie had been fondled.

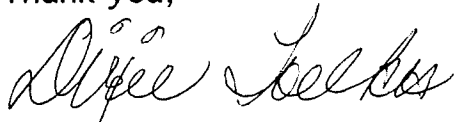
We had to contact the law enforcement agency -- the bottom line was -- Rape -- the man was a temporary employee sent by a medical employment pool and was on parole. He had served two years for a sex crime against a seven year old and was on parole. No one had checked him out. We managed to get him sent back to Lansing and took the home and medical pool to court. Time passed, things settled down and we continued to monitor Julie's care.

In 1996 we got an anonymous call telling us the home had once again hired a sex offender, another pedophile. He had just been released from an Alabama prison after serving six years for assaulting a child. We achieved his release.

In 1996, Health and Environment chose to reduce on-site investigation by 25%. They also decided to allow homes to do self-reporting and self-investigative incidents within their facilities.

The denial of protection for care home residents is inhumane and must be stopped. I ask for your support.

Thank you,

A handwritten signature in cursive script that reads "Dixie Toelkes".

Dixie Toelkes
Representative



Kansas Bureau of Investigation

Larry Welch
Director

TESTIMONY
CHARLES SEXSON, ASSISTANT DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE HEALTH & HUMAN SERVICES COMMITTEE
IN SUPPORT OF HOUSE BILL 2278
FEBRUARY 18, 1997

Carla J. Stovall
Attorney General

Mr. Chairman and Members of the Committee:

On behalf of Director Larry Welch and the Kansas Bureau of Investigation, I am pleased to be here today in support of HB 2278. This legislation seeks to provide protections for those Kansas citizens who are residents of adult care homes, and those who are confined to their homes for health reasons. The legislation prohibits persons from working or volunteering in adult care homes or home health agencies if they have any of a number of disqualifications involving illegal or abusive activities.

The KBI, as the central record repository of criminal history record information, would have a significant role in implementing this legislation. We have one suggested amendment and two areas of concern for the committee's consideration.

As to the amendment, sections 1(a)(2) and 2(a)(2) specify that juvenile adjudications for equivalent felony crimes against persons and promoting obscenity are disqualifying convictions. However, in sections 1(c) and 2(c), the specific authority for access to KBI records only refers to criminal history record information. To clarify the perceived legislative intent that juvenile adjudication records also be available, we would suggest that a specific reference to "juvenile offender record information" be inserted in both these sections.

One of our concerns is ultimately a public policy decision that deals with the language in section 1(d), page 3, lines 11-15, authorizing employment agencies to certify employees as not being prohibited from working in adult care homes. For a private employment agency to make this certification, it would have to access adult criminal history record information, juvenile offender record information, and possibly SRS record information. Making such records available to a private employment agency would be a major change in policy.

Currently, juvenile offender information for licensing purposes is only made available to the Kansas Department of Health and Environment (KDHE). KDHE receives this juvenile offender information for oversight of child care providers. In this case, the offender information remains at KDHE and is not disseminated to the provider. If juvenile records are provided to private employment agencies it might be construed as a precedent for other private individuals or organizations to access juvenile offender information.

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Our second concern relates to the fee that would be assessed for the record checks. The legislation provides that the KBI may charge KDHE a reasonable fee for providing criminal history record information. KDHE has estimated that there would be about 72,000 record checks per year under the provisions of this bill. Since the KBI currently conducts over 200,000 record checks per year, the adult care checks under this bill would represent a 35% increase in the KBI's workload. While the generated fees would, in theory, be available to offset costs associated with personnel and other operating expenditures, there are three practical issues that should be considered.

First, the record check fees generated by the KBI are placed in a no-limit fee fund for use by the agency. The Bureau's budget requires that the record check fees be used to help fund the agency's other operating expenditures (OOE). As the fee fund increases, so does the amount required to fund OOE. This requirement has increased annually from \$177,461 in FY 1991, to \$440,081 in FY 1997. Therefore, the fees generated from record checks do not translate to additional funds available to enhance operations in the central record repository. An additional 72,000 record checks as contemplated in this legislation, plus the potential for record checks under HB 2091 (teacher's certification), SB 21 (concealed weapons), and SB 269 (attorney licensing), will have a severe impact on the KBI if usable resources do not increase commensurate with the increased demand for records. The KBI would like to have a cap placed on the amount of record check fees used to fund the agency's OOE. Fees generated above the cap would be used by the central record repository to reduce backlogs, maintain and replace equipment, automate records, and generally improve service to agencies, such as KDHE.

Second, if the KBI received 72,000 record checks on July 1, 1997, the required resources, including additional personnel, would not be in place to process the requests. Likewise, the fees assessed to offset the cost of those additional resources would not be realized until the request for record checks are processed. This situation could be handled by appropriating funds up front for the additional personnel and resources necessary for both KDHE and KBI, and perhaps delaying implementation until January 1, 1998.

Third, the KBI is operating two shifts to deal with the current demand for record checks. HB 2278 will require additional personnel in a work area that is already overcrowded. If other bills requiring record checks are passed during this session, the Bureau will need to consider a third shift to accommodate the increased workload.

The KBI processes approximately 80,000 child care record checks each year for KDHE. Through a cooperative effort, our agencies have established a computer interface to automate the initial record screening. Identified criminal history records are then forwarded to KDHE for review by their legal and licensing staff. This computer interface can easily be adapted to adult care record checks. The Bureau supports the provisions of HB 2278, authorizing KDHE to administer the act and receive criminal history record information from the KBI.

Thank you for your consideration.

ESTEL L. LANDRETH, DDS, P.A.

3000 SOUTHWEST CORNER • SUITE B • WICHITA, KANSAS 67205
PHONE (316) 685-2973

February 18, 1997

PROPOSED AMENDMENT TO HB 2278

Chairman Mayans and Committee Members:

I respectfully ask you to consider the following amendment to HB 2278:

"Within a period not to exceed 60 days before or 60 days after admittance to a nursing home, long term care facility, or an assisted living facility, a patient must have a visual oral examination conducted by a dentist licensed in the state of Kansas. This examination shall include and duly record the following:

1. Missing teeth
2. Decay
3. Broken teeth
4. Oral cancer exam
5. General appearance of gingival (gum) tissue

Recommendation of treatment needed observed during visual examination shall be made and recorded. A copy of examination report and recommendations shall be kept in patient's file. Also, a copy is to be presented to a guardian or responsible family member and duly noted in patient's file."

This proposed amendment to HB 2278 will begin to make dentistry, nursing home staff, and the public aware of dental needs for the aging. It will be important for the care facilities because they will have a dental record that will indicate the general condition of the dental health of the patient upon entry to the facility. It will help family members understand the general dental condition of their parent or loved one. Family members will then be able to make more INFORMED choices about the patients dental needs.

It will also be important to State Agencies for evaluations of conditions and needs of the aging to aid in long term planning and budgeting for future needs. By 2010 1 out of 5 citizens will be over 65 years of age, and most of them will have natural teeth. Not only are the numbers of people over 65 increasing, but their life span is also increasing. Consequently, dental care for the aging is rapidly becoming a major problem.

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How can it be paid for? Approximately half of care facility patients are private pay - family responsibility. Patients on Social Security benefits may receive dental care through the Post Eligibility Treatment of Income (P.E.T.I.) which allows patients to set aside portions of their benefits for health care services not covered by Medicaid.

Who will provide care? Care homes have a dentist on record for each nursing home. Or a patient's family dentist may participate. Hopefully dentistry will step forward and help the truly indigent - some will qualify for Donated Dental Services which already has been funded by the State. Volunteerism is also increasing in dentistry on a community basis.

I would like to stress the importance to the care facilities to have this dental record upon entry. Nursing homes are being blamed for neglecting dental care, but in fact, many patients enter care facilities already in poor dental condition. Having a dental record on file will help them address accusations of dental neglect.

This ammendment will also make all parties aware of obvious problems that exist and may help to prevent future discomfort or infections.

I would ask for your favorable consideration of this amendment. Thank you for your time.

Estel L. Landreth, D.D.S.

Estel L. Landreth, D.D.S.

Estel L. Landreth, D.D.S.

Estel L. Landreth, D.D.S.

Testimony in Support of House Bill 2278
House of Representatives Health and Human Services Committee
February 18, 1997
by
Daniel J. Gronniger
Kansas Department on Aging

Representative Mayans and members of the Committee, thank you for this opportunity to speak in support of House Bill 2278. This bill is laudable for its attempt to decrease the risk of poor treatment of the residents of Kansas adult care homes and of mistreatment of the customers of home health agency services.

Section 1 of HB 2278 prohibits adult care home operators from "knowingly" operating their nursing home if a person who has been found to have committed any of a list of bad acts works or volunteers in the adult care home. It permits the Secretary of KDHE to have access to investigatory reports, court orders or adjudications, KDHE or SRS findings or assessments relative to the list of bad acts. It requires the adult care home operator to ask KDHE about the record of an applicant, employee, or volunteer of the adult care home. Section 1 of HB 2278 also permits the adult care home operator to receive an employment agency's written certification that the persons supplied by an employment agency are permitted to work in the adult care home under the act.

What applies to adult care home operators in the discussion of Section 1 of the bill holds true for home health agency operators under Section 2 of the bill, except that Section 2 does not contain any provision about employment agencies like Section 1 does.

Considerations in Shoring Up the Bill. Technically, Section 1 of this Bill does not prohibit a person who has committed any of the listed bad acts from seeking employment in an adult care home or from working in one. The Bill also doesn't specifically require the Secretary of KDHE to go obtain the records to which the bill gives the Secretary access. Nor does the bill describe when or under what circumstances KDHE must determine if an adult care home is in compliance with this act. Section 1 doesn't actually require KDHE to give the adult care home operator the information requested. Also, the Bill doesn't require the adult care home operator to actually ask the employment agency for the certification, nor does it require the employment agency to obtain the information necessary to make the certification. Section 1 doesn't give the employment agency a legal way to obtain the information from any state agency.

The bill specifically prohibits certain acts, but does not create any penalty (or any effect on licensure) for ignoring those prohibitions.

The bill does not prevent persons from expunging convictions for bad acts on the list, so the KBI checks would be fruitful during the first five years after a convicted person satisfies the sentence

or is discharged from probation, but might not be thereafter (if the convicted person has their criminal conviction record expunged). See K.S.A. 1996 Supp. 21-4619(b). For better access to criminal conviction records, it may be necessary to add the bad acts listed in H.B. 2278, Section 1(a) and 2(a) to the list of convictions in K.S.A. 1996 Supp. 21-4619(b) which cannot be expunged.

The bill does not put any outside date for the commissions of the bad act (*e.g.*, “. . . within the last ten years” or “. . . within the past fifteen years”). Therefore record searches might have to cover more than 40 years’ worth of records for an employee or applicant who is more than 58 years old.

The bill may create a loophole for persons who have no criminal histories in Kansas. True, the bill refers to the bad acts committed in some other states. (H.B. 2278, §§ 1(a),(1),(2),(4),(5); §§ 2(a)(1),(2),(4),(5).) However, depending upon what other states’ statutes permit, KDHE may not be legally able to access any of the records of bad acts committed in other states. There may need to be some type of uniform act or multi-state pact relating to free access to criminal records (including juvenile and expunged criminal conviction records) by State agencies licensing adult care homes, home health agencies, hospitals, child day care centers, and similar “people-care” organizations.

Employees of home health agencies enter customers’ homes to render services and thereby have immediate access to the customers’ personal property. Employees of adult care homes enter residents’ rooms and thereby have immediate access to the residents’ personal property. The bill does not include among the list of bad acts some crimes against property -- theft, criminal deprivation of property, forgery, making a false writing, burglary, aggravated burglary, arson, criminal damage to property -- covered under Article 37 of Chapter 21 of the Kansas Statutes Annotated.

There are over 400 licensed adult care homes in Kansas. This bill would require adult care home operators to immediately request information from KDHE (there is no grace period during which operators can bring the operations of their facilities into compliance) for *both* current employees *and* for applicants being considered for employment. KDHE would have to immediately begin checking each data bank for each of the bad acts on the list (which data banks may or may not be electronically accessible or capable of being searched electronically) for each employee and applicant for each of the 400-plus adult care homes. KDHE would most likely need authority to hire additional staffing (either more FTEs or unclassified temporary special project employees) and additional funding to pay for the additional staff. KDHE might also need to rent additional space for the additional staff.

SRS might need to add additional staff to search, or to assist KDHE in searches of, the SRS records of those bad acts on the bill’s list of which SRS keeps track.

The KBI might need to add additional staff to search its Kansas criminal conviction records. It

might need additional equipment -- computers and software -- to permit simultaneous multiple searches of its criminal conviction data bank. In addition, KBI charges about \$10 for a criminal history check. If KDHE is asked to bear the costs of a KBI criminal history check for each of the employees of the 400-plus adult care homes, an appropriation might need to be made for that cost.

It is unclear whether H.B. 2278 would increase the costs of doing business for adult care homes and home health agencies. If the bill would cause increased costs to adult care homes and home health agencies, the costs might be reflected in the facility cost reports which are used to compute the Medicaid reimbursement rates. If the bill would cause increased costs to home health agencies providing in-home services under the Medicaid Home- and Community-Based Services Waiver for the Frail Elderly program, the Older American Act programs, or the Senior Care Act, those costs might be reflected in the costs of Medicaid services and of services arranged by Area Agencies on Aging for some programs or in the customer's share of the costs of Senior Care Act services. If there are costs to adult care homes and home health agencies and those organizations are able to pass those costs through, the results could be KDOA requests for increases in the Medicaid and the Senior Care Act appropriations.

Amendment Proposed by Estel Landreth, D.D.S. The Agency supports Dr. Landreth's proposed amendment to House Bill 2278 which would require a dental examination close by the time of admission to a nursing facility. Dental examinations would seem to complement the health assessments made for new admittees. Because the amendment requires an examination and a record of the examination, but no treatment, the amendment would lend itself well to a program in which dentists volunteered their services to make examinations.

TESTIMONY

TO: House Committee on Health and Human Services

FROM: Sandra Strand, Executive Director *SS*

DATE: February 18, 1997

SUBJECT: HB 2278

Kansas Advocates for Better Care appreciates the opportunity to testify in support of this bill, which would require adult care homes and home health agencies to screen all employees and volunteers for criminal convictions, sex offenses, and confirmed histories of abuse or neglect of adults or children.

Current state law and regulations specify that each adult care home resident has a right to be free from verbal, sexual, physical, and mental abuse; corporal punishment, or involuntary seclusion. However, many consumers lack confidence that this right is adequately protected in our state.

We know that abuse of vulnerable adults is a problem in our nation, in both institutional and community settings, but it is largely a hidden problem:

- A 1991 Congressional report indicated that between 1.5 and 2 million older adults are abused each year in the United States.
- One survey found 32 of 1000 older adults reported that they had experienced some form of mistreatment.
- The American Medical Association reported in 1992 that only one in 14 elder mistreatment cases is ever reported to a public agency.
- According to one national study, 60% of nursing home residents have *no visitors at all*, meaning no one outside the facility is looking after their welfare.

There is general agreement that direct caregivers should be carefully screened, because vulnerable clients can literally be at their mercy. Current state regulations require that adult care homes "not employ individuals who have been identified on the state nurse aide registry as having abused, neglected, or exploited residents in an adult care home in the past." [K.A.R. 28-39-150 (d)(2)].

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This current requirement overlooks many other people who could be in a position to abuse, neglect, or exploit vulnerable adults. Adult care home workers, such as housekeepers, maintenance staff, laundry staff, or dietary workers can be hired with no background checks for histories of criminal convictions or abusive behaviors. There are many opportunities for these support staff to have unsupervised contact with residents, sometimes with tragic consequences. In addition, some unscrupulous individuals can use and have used their positions as volunteers to exploit residents, either physically or financially.

During the past two years, I have provided training in preventing abuse, neglect and exploitation to 40 groups of nursing home workers across the state. The majority of these workers are dedicated to the people in their care, and they worry about the safety and well-being of residents. In group after group I talked to, workers expressed their concerns about the lack of screening for support staff and volunteers and identified this lack as a risk to residents.

Further, as increasing numbers of older adults and people with disabilities opt for care in community-based settings, their risk for experiencing abuse, neglect, and exploitation by their home health care providers increases. These consumers are vulnerable because of their physical impairments and their social isolation.

On behalf of people receiving care in institutional and community settings, I urge you to support this legislation. It makes sense to verify the backgrounds of all employees and volunteers in order to protect the safety of vulnerable adults.

Thank you for your consideration. I will be happy to respond to questions.



Mr. Chairman, Distinguished committee members; good afternoon. I would like to thank Representative Mayans for his invitation to address the committee today.

I am Brian Powers, Administrator of Creative Care Corporation. Creative Care is an 11-year-old Wichita-based medical staffing agency. We are Kansas owned and operated, with offices in Wichita and Topeka. We provide supplemental medical staff, including RNs, LPNs, CMAs, and CNAs to adult care homes, hospitals, clinics, and other medical entities. Creative Care is one of four members of the Seneca Healthcare Group, a highly respected and JCAHO accredited healthcare provider. It is the mission of Creative Care to provide the best quality temporary personnel services in our service areas. Our company abides by all federal, state and local laws as well as our company's policies and Code of Ethics. We are actively involved in helping to improve standards of health care as well as in helping to control health care costs.

I have been asked to relate my company's perspective on House Bill 2278, and its impact, if any, on our company. On behalf of Creative Care Corporation, I consider it a privilege to fulfill this request.

Our position is that we highly support HB2278 with two contingencies: (1) access to information; and, (2) the information has to be offered at no charge/cost to the employer.

Creative Care strongly supports your efforts to provide for the safety of the residents of Adult Care Homes in Kansas. We share your emphasis on exhaustive research into the backgrounds of the employees of those facilities. We believe that caregivers must be held to close scrutiny. In our current employment practices, we review the professional credentials, personal and professional references, and criminal histories of applicants to our company. Importantly, we provide employees to facilities throughout the state. However, the scope of our criminal background checks is limited to the two counties in which we have offices. As an independent staffing agency, not affiliated with any national chain, our competitive edge lies in the quality and competency of our staff. We are eager to enhance our employment practices through this bill: It will only improve the quality of care our employees provide.

My questions to the committee are:

1. Will this information be available to our company through the Department of Health and Environment, the Department of Social and Rehabilitative Services, or other readily accessible channels?
2. If so, at what cost?

We understand this bill empowers the Kansas Bureau of Investigation to forward to the Department of Health and Environment criminal history record information, for a reasonable fee, to be made available to the operator of an Adult Care Home. We would be concerned if these costs were passed on to our company. On a per-applicant basis, with hundreds of applicants processed per year, this could prove to be an excessive financial burden on our company. Just as this legislature has demonstrated its displeasure with unfunded federal mandates, so do we proclaim this implication in HB 2278.

To comply with section 8(d) of this bill, we would be required to furnish our client facilities with written certification that our employees are not prohibited from working in an Adult Care Home. It would certainly benefit our company for this system to be as efficient (and cost-free) as the current Certified Nurse Aide Registry. In accordance with our company's mission statement, we are determined to help control health care costs. Any further costs associated with our employment practices would ultimately be passed on to our clients, who in turn would pass this cost on to their residents or the state, thereby increasing the cost of their care.

We recommend that the language in this section be amended to include, "the operator of an adult care home, or any company or agency that provides temporary employees for the purpose of providing care in that adult care home, shall request from the department ..." This bill allows for the operator of an adult care home to receive information imperative to the employment decisions that determine the quality of care in that home. We, as a provider of supplemental caregivers in these same adult care homes, require access to the very same records available to an operator of an adult care home.

We strongly support the "good faith" language in this section as it relates to civil liabilities for basing employment decisions on the information provided by these state agencies.

This is a commendable bill. We congratulate Representative Mayans, and every member of this committee for demonstrating their commitment to the well being of the residents in adult care homes.

Thank you for allowing me to address you this afternoon. I will be pleased to answer any questions the committee has of me.



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To: House Health and Human Services Committee
From: Linda Lubensky, Kansas Home Care Association
Date: February 18, 1997
Re: HB 2278, Personnel restrictions for adult care homes
and home health agencies

On behalf of the Kansas Home Care Association, I want to thank the Committee for this opportunity to make comments regarding HB 2278.

The home care industry in Kansas has always been a major advocate of those measures to protect the safety and well-being of the public. We are acutely aware of the vulnerability of our clients and work constantly to police our own industry and insure the quality of care provided by our agencies.

It is with regret, therefore, that we find ourselves unable to support HB 2278. This bill addresses the concept of background checks, but is very limited in scope and does not begin to address important implementation issues.

Any effective background-check bill must have broader coverage. National studies show that 70% of abuse is done by family members and only 6% occurs through organized care providers, such as home care agencies. The remaining 24% of abuse comes from other sources such as privately employed caretakers. HB 2278 limits its provisions to adult care homes and home health agencies. It does not in anyway address other providers of in-home care such as hospices, attendant care services, home medical equipment, independent providers, the AAA's, registries, adult day care, etc. Likewise, it does not address the other types of residential care such as assisted living or group homes.

Another major problem is that the bill does little to address some significant implementation issues:

- * how will this initiative be paid for?
- * what will the costs be for KDH&E and providers?
- * will that cost be passed-on to the clients?
- * why isn't there an implementation period provided for KDH&E and providers to comply?
- * will current staff be "grandfathered"?
- * how long will such checks take?
- * is there a provisional employment period during which agencies can use the employee/volunteer while waiting for the check to be completed?

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- * should there be two provisional employment periods: one for the state check, and one for the federal?
- * why doesn't the immunity clause (line 19-24, page 5) address the liability of the company itself?
- * how often must the checks be done in light of employees changing jobs?

Realistically, home care agencies are in the business of providing labor and services. Mandates that include implementation costs must be built into our pricing. As our prices increase, home care becomes a less viable option for private and public payors. In addition, home care sees a high turnover among its paraprofessional staff. If agencies must wait, pending a background-check, to re-hire, a labor shortage is being created. In both cases, HB 2278 would be resulting in disincentives for using home care, and, conversely, encouraging the public to use the non-regulated individual caregiver.

The Kansas Home Care Association is working closely with other states and our national organization to encourage congress to create a federally funded background-check law. We believe that a national program will prove more effective in removing those criminal abusers who have become very adept at crossing state lines to avoid discovery. We do not oppose having a state law, but feel strongly that any state law must have broader coverage and specifically address the many operational issues inherent for providers and the state agencies.

KHCA encourages the committee to support further study of the issue, but to deny action on HB 2278. Our association would be happy to work with and assist you in any manner that you might find helpful.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony Presented to

House Health and Human Services Committee

by

The Kansas Department of Health and Environment

House Bill 2278

Thank you for the opportunity to appear before this committee in regard to House Bill 2278. KDHE recognizes that reducing the risks attendant on having adult care home residents and home health care patients exposed to contact by certain adult and juvenile offenders is a worthwhile goal. Our testimony is intended to identify policy, implementation and cost issues that must be explored if HB 2278 is to be the vehicle for achieving that goal.

This bill would prohibit any person from operating an adult care home or home health agency if any person who has been convicted of any of a rather comprehensive list of crimes works or regularly volunteers there. These crimes include offenses which most people would agree bring into question whether a person should work in an adult care home or home health setting. The list, however, is so broad that more study should be considered to determine whether all such convictions or offenses should in fact result in a permanent prohibition on employment.

The bill assumes that conviction of certain crimes makes employment or volunteering in an adult care home or home health agency unsafe. We have no data on the relationship between prior convictions and the likelihood of committing abuse, neglect or exploitation. However, we do know that in the CNA program the existing ratio of known adjudicated cases, including administrative determinations that do not require the same burden of proof as a criminal conviction, is very low. Experience in the CNA background check program has identified just 385 cases with prior offenses versus 80,000 certified aides, or 0.48 percent. Our child care program has experienced similar low percentages concerning criminal convictions.

Additionally, the list of prohibitions in this bill goes beyond information in the possession of the KBI and makes full compliance with the law extraordinarily difficult for adult care homes, home health agencies, and KDHE.

KBI searches reflect criminal records from the state of Kansas only, not including records from other state or federal jurisdictions. Not all court adjudications or diversion agreements are reported to the KBI, meaning KDHE would have to contact every district court

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and prosecuting attorney in the state to fully comply.

The bill has no specific penalty or enforcement provisions, nor does it provide any kind of grace period or other provision for existing employees on the day the bill becomes effective. It also is unclear as to frequency of background checks for personnel employed, and does not address specifically whether new employment must await the initial check or whether an employer can hire, subject to a subsequent clean check. If the employer does so hire and the check is delayed at KDHE or KBI, or elsewhere through no fault of the employer, is the employee or employer granted immunity?

Further, the cost of implementing such a program, and the KBI's capacity to conduct the number of background checks indicated, must be examined. Our best estimate is that at least 71,000 background checks will need to be conducted each year. The adult care home and home health agency industries are faced with additional employment costs in an already expensive system, some of which will be passed on to the Medicaid program. KDHE estimates an initial cost of \$471,313 and an annual FY 99 cost of \$417,820, including a per person reimbursement to KBI, for an automated system.

KDHE believes the legislature should consider providing legal protection to our state's adult care home residents and home health agency patients by developing "hold harmless" protection for former employers who share detailed employment, reference information combined with requiring adult care homes and home health agencies to make and document reference checks prior to employment. Because of concern over liability, there currently is limited sharing of information from provider to provider. Encouraging potential employers and former employers to share information on job performance and information regarding convictions without fear of civil liability would clearly help protect our state's adult care home residents and home health agency clients. Employers are always expected to make prudent hiring decisions, but currently face employment and tort law exposures that raise significant obstacles to those decisions.

In conclusion, there are significant implementation and cost/benefit issues that warrant careful consideration. Since the bill provides no financing mechanisms, we must assume that expenditures for this process would be financed by state general funds. Required staff and costs are not in the Governor's recommended budget for KDHE.

Presented by: Paul M. Garvin
Assistant Secretary/General Counsel
February 18, 1997