

Approved: 3-26-97  
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 March 18, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

John Grace, President, Kansas Association of Homes and Services for the Aging  
John Kiefhaber, Executive Vice President, Kansas Health Care Association  
James O'Connell, Secretary, Kansas Department of Health and Environment  
Sandra Strand, Executive Director, Kansas Advocates for Better Care

Others attending: See attached list

**Approval of Minutes**

Senator Becker made a motion to approve the Committee minutes of March 11, 12 and 13, 1997, seconded by Senator Jones. The motion carried.

**Hearing on HB 2185 - Adult care home administrators continuing education sponsors**

Staff briefed the Committee on HB 2185 as amended by the House Committee of the Whole which would: (1) delete the requirement that an adult care home that is an assisted living facility licensed for more than 60 residents employ a licensed adult care home administrator; (2) allow one licensed adult care home administrator to be directly responsible for planning, organizing, directing and controlling the operation of two adult care homes as long as the total licensed beds do not exceed 100 and the adult care homes are within a 60-mile radius of each other; and (3) allow nursing facilities having less than 60 beds that are converting a portion of the facility to residential health care the option of licensing to care for less than six individuals within a contiguous portion of the facility. The original bill related to continuing education sponsorship for adult care home administrators.

John Grace, Kansas Association of Homes and Services for the Aging, testified in support of the original intent of HB 2185, but opposes the House amendments relating to language that would permit an assisted living facility of more than 60 beds to be operated by someone other than an adult care home administrator, allow an administrator to oversee two adult care homes with no more than 100 total residents in a 60 mile radius, and allow nursing facilities with less than 60 beds to convert less than 6 beds to residential health care. The following proposed amendments were recommended by KAHSA: (1) a facility may designate a contiguous section of a wing or floor of an existing facility as residential health care in counties with less than 75,000 population or in communities of less than 7,500 in counties with over 75,000 population and (2) the operator must be a licensed nursing home administrator or have 60 hours of college credit and complete a 40 hour placement as noted in his written testimony. (See Attachment 1)

John L. Kiefhaber, Kansas Health Care Association, also expressed support for the original intent of the bill as well as the proposed amendments offered by the Kansas Association of Homes and Services for the Aging. Mr. Kiefhaber requested language in the bill relating to 20 percent of all converted units offer private bathing facilities be stricken from the bill. (Attachment 2)

James J. O'Connell, Secretary, Kansas Department of Health and Environment, expressed his support for the original intent of the bill, but testified in opposition to the amendments of the House Committee of the Whole. Secretary O'Connell noted that he could not support those portions of the bill which risk compromise of the quality of care provided the state's nursing home residents and assisted living residents, or unnecessarily disrupts

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on March 18, 1997.

the positive progress made in the growth of residential health care facilities since passage of **1995 SB 8** as noted in his written testimony. (Attachment 3)

Sandra Strand, Kansas Advocates for Better Care, also testified in opposition to the amendments of the House Committee of the Whole. Ms. Strand stated that she is willing to support KAHSAs amendment to the definition of "residential health care facility" provided the contiguous portion of the facility is licensed for four or more individuals and provided this provision carries a two-year sunset review. She also supports KAHSAs proposed recommendations regarding requirements for an "operator" of an assisted living facility or residential health care facility. She noted that her organization is unable to support the regulatory changes proposed by KDHE which would waive many nursing facility requirements for "light care" residents. Ms. Strand stated that her organization's first preference was for these complicated issues to be studied more carefully by an interim committee. (Attachment 4)

The Chair announced that the hearing on **HB 2185** will continue at the Committee meeting March 24th.

**Adjournment**

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

The next meeting is scheduled for March 19, 1997

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 3-18-97

NAME	REPRESENTING
JASON WILEY	STERLING HOME CORPORATION
John Federico	Pete McGill + Assoc
Nick Guttwill	Health Midwest
S. Ann Meister	301 Health Services
DtZehr	KANSAS
Susan Baker	Hein + Weir
John Kiephaber	KS. Health Care Assn.
KEITH R LANDS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Jina Meyer	KS Gov. Consulting
Danielle Lee	Gov Office
Clint Gottschalk	Logan High School
Tanya Edington	Logan High School
Christopher Whitney	Logan High School
Scott Brown	Logan High School

## MEMORANDUM

TO: Senator Sandy Praeger, Chair, and Members of the  
Senate Public Health and Welfare Committee

FROM: John R. Grace, President/CEO

RE: House Bill 2185

DATE: March 18, 1997

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Thank you Madam Chair, and Members of the Committee. The Kansas Association of Homes and Services for the Aging represents more than 150 not-for-profit long-term care, housing, and community service providers throughout the state.

As part of our mission, KAHSA provides educational programming for a variety of health care professionals, including adult care home administrators. We support the central intent of House Bill 2185, which permits continuing education sponsorship for adult care home administrators. This provision will streamline the application process for education providers and the approval process by the state agency.

Substantial amendments related to the definition of adult care homes were attached to the House Bill 2185 on the Floor of the House.

We oppose the provision on page 1, line 21 and 22 that would permit an assisted living facility of more than 60 beds to be operated by someone other than an adult care home administrator because of the complexity of care, services, and management permitted in assisted living facilities by the statute and regulations,

On page 1, lines 35-39, a provision was added to allow an administrator to oversee two adult care homes with no more than 100 total residents in a 60 mile radius. We estimate that between 20 and 40% of facilities in the state could benefit from the provision. There may be a few instances in rural parts of the state in which this might be appropriate, however, we believe that the language as is currently stands is too broad.

On page 6, line 42 and 43 an amendment was added to provide for more flexibility for smaller facilities by allowing nursing facilities with less than 60 beds to convert less than

6 beds to residential health care. Around 161 facilities are licensed under 60 beds, or roughly 41% of the Medicaid certified facilities in Kansas.

see next pg.  
AM

## KAHSA PROPOSED AMENDMENTS

In 1995 the Kansas Legislature passed Senate Bill 8 which provided for new statutory definitions for assisted living and residential health care and other changes. As a result of changing consumer desires, assisted living facilities have been built in several areas of Kansas. Our members are also providing roughly 1000 units of assisted living in our retirement community campuses.

During the past year the Kansas Department of SRS has developed a special program to help persons with a wide range of home and community based services entitled LIFE. (Living Independence for Everyone). SRS implemented the program January 1 of this year. Under this program, SRS identified 1300 persons who they believe could live outside a nursing facility setting. Many KAHSA member facilities are diversifying their services to include assisted living or residential health care. However, smaller rural based facilities have encountered a major roadblock.

The current statutory language calls for the conversion of an *entire* wing or floor to residential health care (HB 2185 Page 4, line 43, Page 5, lines 1-4.) In a 1996 survey of our membership, 60% of organizations considering conversion to assisted living/residential health care reported that this provision is a major barrier. This is especially true in rural areas where populations are sparse, and many facilities would have to convert one third to one half of their beds. A specific example is the Memorial Home in Moundridge Kansas operated by the Mennonite Church.

This is a facility in which SRS has identified several persons who do not need nursing home care. They are unable to convert an entire wing because of the physical configuration of their building, but could convert 6 rooms in a contiguous section of their building. SRS is urging those persons who no longer need nursing home care to consider moving out to another facility that offers assisted living or residential health care, or back to their own home or apartment.

If the facility could convert six rooms, and if those persons could stay in those rooms and receive payment under the LIFE program, the individual would have a new service residential health care, and the state would save money. )See Attachment.)

During the last year KAHSA has requested that the Department of Health and Environment revisit its regulatory interpretation of the statute so that a facility could designate a wing or floor for conversion over time as the demand for residential health care rises and the need for nursing facility beds decline. In addition, KDHE and SRS came up alternate proposal to waive certain regulatory requirements for Medicaid

certified facilities so that residents appropriate for residential health care could remain in nursing facility beds.

In a February 20 meeting of the KDHE and SRS Advisory Groups, consumer and provider groups expressed strong opposition to the proposal because of concerns about the possible creation of "Medicaid wings", uncertainty about reimbursement issues, and philosophical problems with creating a second set of regulations for nursing facility residents who would otherwise be cared for in assisted living/residential health care.

Based on this input, SRS indicated their intention to no longer pursue this proposed remedy. Bottomline: After a year-long pursuit for flexibility in the regulatory process, we have come up empty-handed. We believe that it is best and easiest to simply change the statute which created the roadblock.

*am*  
*X*

***KAHSA recommended amendment insert on page 4 line 8: A facility may designate a contiguous section of a wing or floor of an existing facility as residential health care in counties with less than 75,000 population, or in communities of less than 7500 in counties with over 75,000 population.***

The counties excluded under this would be Johnson, Leavenworth, Sedgwick, Shawnee, Wyandotte, and Douglas. However, facilities in small communities such as Baldwin and Eudora in Douglas County would be allowed to convert less than an entire wing or floor.

The statute also sets forth minimal requirements for the operators of assisted living (HB 2185 Page 5, lines 41-43, Page 6, lines 1-5.) The Kansas Department of Health and Environment requires completion of a 21 hour course, and a test score of 70% or higher, in addition to a minimum age of 21 and high school diploma or equivalent. Because assisted living/residential health care operators are charged with oversight of care and services for older persons with complex needs, we feel these requirements are too minimal. Also, the American College of Health Care Administrators, and a recent study by the National Academy of Health Policy have recommended higher standards.

*am*  
*X*

***KAHSA recommended amendment insert on page 5 line 43, and page 6 line 4: The operator must be a licensed <sup>new</sup>nursing home administrator, or have 60 hours of college credit and complete a 40 field placement, or have five years of supervisory experience in a hospital or adult care home and a 40 hour field placement, and complete 60 hours of continuing education every two years. In addition, operators will be accountable to the Board of Adult Care Home Administrators.***

Thank you Madam Chair and I'll be glad to answer any questions.

## KAHSA ILLUSTRATION

82 Bed Nursing Facility Converts 6 Beds to Residential Health Care Units.  
Assumption: 6 Medicaid Residents Transfer to Residential Health Care Units

### NF

\$59.22 Medicaid Rate Per Diem  
0.78 Patient Liability

\$46.19 Medicaid Cost Per Diem - All Funds  
30 Days Per Month

\$1,385.70 Medicaid Cost Per Month  
6 Individuals

\$8,314.20 Medicaid Cost Per Month for 6

### HCBS

\$800.00 HCBS Cost Per Month - Average  
6 Individuals

\$4,800.00 HCBS Cost Per Month for 6

**SAVINGS:            \$8314 - \$4800 = \$3514 Savings Per Month for 6 Individuals**

**\$3514 x 12 months = \$42,168 Annual Savings to NF Medicaid Program**



**KHCA**



**Kansas Health Care Association**

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TOPEKA, KANSAS 66611-2263  
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**TESTIMONY**

before the

**Senate Committee on Public Health and Welfare**

by

**John L. Kiefhaber, Exec. Vice President**

**KANSAS HEALTH CARE ASSOCIATION**

Chairperson Praeger and members of the Committee:

The Kansas Health Care Association, representing over 200 professional nursing facilities and assisted living facilities throughout the state, appreciates the opportunity to speak in support of House Bill 2185 as amended, and with further amendments requested.

*(am)*  
*F*

Section 3 of the bill introduces language passed by the 1995 Legislature establishing assisted living and residential health care facilities under the adult care home statute. We would support amendments made by the House at (26)(e) and additional amendments put forth today by the Kansas Association of Homes and Services for the Aging. In addition, we would request deletion of (26)(d) requiring 20 percent of all converted units to offer private bathing facilities.

KHCA believes that the 20 percent bathing requirement is an arbitrary standard that does not necessarily apply to many residential care facilities offering a lower level of care than nursing facility care. In many rural areas facilities wishing to convert to residential health care services find it cost prohibitive to be required to construct new bathing facilities regardless of whether that feature is in demand in their communities. KHCA believes that market forces will set the standard for which residential health care units will be occupied -- and setting an arbitrary standard for some units, whether or not this feature is needed, is only holding back needed conversions in some facilities. If consumers want private bathing facilities in their private pay residential health care units they will demand them. This is where the decision should lie on what features are needed for residential health care facilities.

I would be glad to take any questions the Committee may have.

3/18/97



State of Kansas

Bill Graves



Governor

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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

HOUSE BILL 2185 AS AMENDED

The original purpose of HB 2185 was to allow for long term sponsorship approval for those providing continuing education for Kansas licensed adult care home administrators. This original intent supported the department's mission of optimizing the promotion and protection of Kansans through increased efficiency and effectiveness in regulation and is well supported by both administrators and continuing education sponsors.

The bill was amended by the House to include provisions that KDHE can not support. In 1995 Senate Bill 8 established separate distinct licensure categories for assisted living and residential health care. The intent of the bill, which was the result of many years' work by KDHE, SRS, and KDOA was to establish a philosophy, physical environment, and service delivery system distinctly different from nursing facilities. The goal was to optimize consumer choice and to change the focus of long term care in Kansas from institutional to less restrictive and less expensive approaches.

This change is just beginning to occur. A residential care license can and should communicate an accurate picture of accommodations geared toward a more independent life style than that experiences by residents of a nursing facility who require more intensive care. In order to fulfill the intent of the statute, we believe the physical environment is an essential component. There must be a clear distinction between the area of a building devoted to residential care and the services should be clearly different from those delivered in a nursing facility. This environment of relative independence simply cannot be created if only a small portion of a wing or floor are converted.

In February 1996, 29 nursing facilities had assisted living/residential health care units, increasing to 48 facilities this February and providing 1391 beds. These facilities, that conform to current law have been increasing on an almost weekly basis since the first of the year. In addition 81 free-standing facilities now provide 4190 beds, while nursing facility Medicaid beds have declined by 1057 since July, 1995. A major concern of allowing a facility to license less than a wing or floor as proposed in this bill is th-

momentum which has been building over the last year will halt. It would also be unfair to those facilities who have invested in converting a wing or a floor.

In order to accommodate residents in small nursing facilities who do not need full nursing facility care, we have developed a regulatory approach that would exempt parts of those facilities from requirements that need not apply. This approach addresses any need for a nursing facility to convert only a small portion of their facility to light care equivalent to services in a residential care facility. Doing this accommodates this transitional need without compromising the original intent of assisted living and residential health care facilities, and without diluting the true nature of the physical facilities that the statute contemplates for residential care and the significance of a different license. In either scenario, the beds would have to terminate Medicaid or Medicare participation, but the entire facility would continue to be licensed as a nursing facility. Accordingly, we cannot identify any reason to support the proposal now found in HB 2185 to allow partial wing licensure as a residential health care facility. The regulatory approach also preserves the message to elderly Kansans that a residential care license has a defined meaning.

We are also concerned with eliminating the requirement that an assisted living facility of more than 60 beds be under the supervision of a licensed administrator. Facilities of this size are complex enough to require the skill and consumer protection provided by a licensed administrator.

The provision to allow one administrator to be directly responsible for two adult care homes as long as the total licensed beds do not exceed 100 and the homes are within a 60 mile radius, is not supported by KDHE. We do not believe it is realistic to expect an administrator to be "directly" responsible for facilities that are as much as 60 miles apart. It is well established that in long term care the single, most important ingredient to quality care is the presence of a qualified administrator, followed closely in importance by a qualified Director of Nursing and adequate staffing. To retreat from this premise, particularly at a time when there is so much interest in the quality of Kansas nursing homes seems be inconsistent.

KDHE has not been unreasonable in administrator requirements for facility supervision. When facilities have been located in close proximity to each other, have good records, and are not overly complex in their physical design and size, we have allowed for an administrator to supervise both facilities. Allowing KDHE to continue to use discretion in approving such situations is an appropriate approach.

The actual requirement for a full-time administrator at each facility is a KDHE regulation and the effect of this bill will be to nullify that regulation.

→ For the reasons stated, KDHE does not support either the elimination of the requirement for a licensed administrator in assisted living facilities of more than 60 beds and does not support the 60 mile radius single administrator provisions.

KDHE supports House Bill 2185 as it was originally introduced for the purpose of adult care home administrator continuing education. We cannot, however, support those portions of the bill which risk compromise of the quality of care provided our state's nursing home residents and assisted living residents, or unnecessarily disrupts the positive progress made in the growth of residential health care facilities since passage of 1995 SB 8.

Presented by:                   James J. O'Connell  
                                  Secretary of Health and Environment  
                                  March 18, 1997



### TESTIMONY

TO: Senate Committee on Public Health and Welfare  
FROM: Sandra Strand, Executive Director  
DATE: March 18, 1997  
SUBJECT: HB 2185

*am* /  
Kansas Advocates for Better Care appreciates the opportunity to comment today. As originally introduced by the Kansas Department of Health and Environment, we had no problem with this bill. However, we are unable to support it as amended. I will focus my comments on the House amendments and our related recommendations.

1. We ask that the definition of "adult care home" on page one be returned to current statutory language.
2. We are strenuously opposed to the amendment on page 1, lines 35 through 39, which would permit an administrator to be responsible for two adult care homes, and ask that the amended language on lines 35 through 39 be deleted. The effective administration of an adult care home is a full time job. To permit an administrator to supervise two homes would have an extremely negative impact on the quality of care provided to residents.
- 3. Our organization's first preference concerning SB 241 was for these complicated issues to be studied more carefully by an interim committee. Now that portions of SB 241 have been drafted into HB 2185, our position is as follows:

We are willing to support KAHSAs amendment to the definition of "residential health care facility": (a place or facility or a contiguous portion of a place or facility if such facility is located in a county with a population of less than 75,000, or if such facility is located in a city of less than 7,500 in a county of more than 75,000), provided the contiguous portion of the facility is licensed for 4 or more individuals (page 7, line 1), and provided this provision carries a two-year sunset review.

Our concerns about the contiguous portion of a facility are based on quality of life issues for residents. The original concept of assisted living and residential health care facilities was to provide a home-like, non-institutional setting for frail individuals who needed a supportive environment but who did not need nursing facility care.

While we have some sympathy for the providers in rural areas of the state who believe there is insufficient demand for residential health care facilities to justify converting an entire wing of a facility, we are more concerned about the residents who wish to maintain the maximum level of independence possible in a home-like setting.

We are concerned that if presented with the option of a residential health care facility unit in a wing of a nursing facility, many consumers will opt out, because that option will not be any more attractive than living in a nursing facility would be. We believe the two-year sunset would give providers some leeway while not entirely corrupting the concept of independent living for consumers. It is very likely that as consumers become more aware of options to nursing facility care, the demand for these services will justify conversion of entire wings of facilities to residential health care.

We are unable to support the regulatory changes proposed by KDHE which would waive many nursing facility requirements for "light care" residents. Our organization, along with the two provider associations, have objected to these proposed regulations because of their negative impact on resident care. The regulations would create "welfare wings" in facilities and would provide virtually no protection for the "light care" residents. In addition, the regulations are not in keeping with the statutory definitions of licensed adult care homes (assisted living, residential health care, and home plus), which were passed by the Legislature in 1995.

4. We strongly support the KAHSA amendments to the requirements for an "operator" of an assisted living facility or residential health care facility, and ask that these requirements be added to the bill. We have had serious concerns about the adequacy of the education and training requirements contained in existing statutes. We strongly support additional requirements for college hours, a field practicum, and continuing education, and we heartily endorse the requirement for operators to be governed by the board of adult care home administrators.

We believe that our recommended changes represent a reasonable compromise position in these complex issues. We ask for your support for our recommendations.

Thank you. I will be happy to respond to questions.

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