

Approved: 4-11-97
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 12:00 Noon on April 9, 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:

Others attending: See attached list

Briefing on HB 2278 - Restrictions on persons operating, working or volunteering in adult care homes

The Chair requested staff brief the Committee on a balloon of HB 2278 that addressed some of the concerns relating to restrictions and background checks of employees in adult care homes and changes in the bill that were recommended by the subcommittee (See Balloon Attachment 1). Staff also briefed the Committee on proposed language on page 11 in SB 375 that would allow SRS to make available to other entities confirmed findings of abusers in adult care homes for the purpose of determining future employment (See Balloon Attachment 2). The Committee discussed the proposed amendments in the two bills, the implementation of the act on an incremental basis, establishment of a statewide register of confirmed findings of abuse in adult care homes, and the fiscal impact of HB 2278. Representatives from the Kansas Department of Health and Environment, SRS, Aging, Attorney General's office and long-term care entities provided comments to the Committee on the proposed amendments.

Written information relating to concerns of long-term care providers regarding the time between submission of the background check and the clearance being granted by KDHE was received from the Kansas Department on Aging. (Attachment 3)

The Chair pointed out that since HB 2278 was referred to the Committee late in the 1997 legislative session, the Committee would only consider adopting language in SB 375 that would give authority to establish a registry of abusers and provide that information to other entities. The remaining language in SB 375 was recommended for study during the interim. It was also suggested by the Chair that the Committee review an updated fiscal note on HB 2278 as well as the proposed amendments in the balloon of the bill and SB 375 before any action is taken.

Adjournment

The meeting was adjourned at 12:35 p.m.

HOUSE BILL No. 2278

By Representatives Toelkes, Adkins, Alldritt, Ballard, Ballou, Beggs, Benlon, Burroughs, Correll, Crow, Dean, Empson, Feuerborn, Findley, Flaharty, Flora, Franklin, Geringer, Gilbert, Grant, Hayzlett, Henderson, Henry, Horst, Howell, Kirk, Krehbiel, Kuether, Landwehr, Larkin, J. Long, Mason, Mayans, Mays, McClure, McKinney, Minor, Nichols, E. Peterson, Phelps, Pottorff, Reardon, Ruff, Sawyer, Sharp, Showalter, Shriver, Sloan, Spangler, Stone, Storm, Thimesch, Tomlinson, Toplikar, Wagle, Weiland, Welshimer and Wempe

2-10

19 AN ACT concerning the department of health and environment; restric-
20 tions on persons operating adult care homes and home health agencies
21 or [and on certain persons] working for [or regularly volunteering to
22 assist] such homes or agencies.

23
24 *Be it enacted by the Legislature of the State of Kansas:*

25 Section 1. (a) ~~[(N)]~~ person shall knowingly operate an adult care home
26 if, in the adult care home, there works ~~[or]~~, if the operator of the adult
27 care home has elected to make persons who regularly volunteer
28 in the adult care home subject to the requirements of this section,
29 there] regularly volunteers] any person who:

30 (1) (A) Has a felony conviction for a crime ~~[against persons, (B)]~~ has
31 a felony conviction under the uniform controlled substances act, ~~(G)]~~ has
32 [a conviction of any act] which is described in articles 34, 35 or 36 of chapter
33 21 of the Kansas Statutes Annotated and acts amendatory thereof or sup-
34 plemental thereto, except K.S.A. 21-3605 and amendments
35 thereto,] or a conviction of an attempt under K.S.A. 21-3301 and amend-
36 ments thereto to commit any such act, or ~~(D)]~~ [(C)] has been convicted
37 of any act which is described in K.S.A. 21-4301 or 21-4301a and amend-
38 ments thereto or similar statutes of other states or the federal govern-
39 ment;

40 (2) has been adjudicated a juvenile offender because of having com-
41 mitted an act which if done by an adult would constitute the commission
42 of a felony and which is a crime against persons, is any act described in
articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and

On and after July 1, 1998, no

(B)

Senate Public Health and Welfare
Date: 4-9-97
Attachment No. 1

acts amendatory thereof or supplemental thereto [except K.S.A. 21-3605 and amendments thereto], or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 38-1523 and amendments thereto and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et seq.* and amendments thereto, or pursuant to K.S.A. 38-1635 and amendments thereto involving a charge of child abuse or a sexual offense;

(7) has been found by the department of health and environment or the department of social and rehabilitation services under K.S.A. 39-1401 *et seq.* and amendments thereto to have committed an act of abuse, neglect or exploitation of a resident; or

(8) has been found by the department of social and rehabilitation services under K.S.A. 39-1430 *et seq.* and amendments thereto to have committed an act of abuse, neglect or exploitation of an adult.

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) In accordance with the provisions of this subsection (c), the secretary of health and environment shall have access to any [court orders or adjudications of any court of record, any records of such orders or adjudications,] criminal history record information in the possession of the Kansas bureau of investigation and any report of investigations as authorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in the possession of the department of social and rehabilitation services or court of this state, or any reports of investigations, findings or assessments as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-1433 and amendments thereto and 39-1434 and amendments thereto, in the possession of the department of health and environment or the department

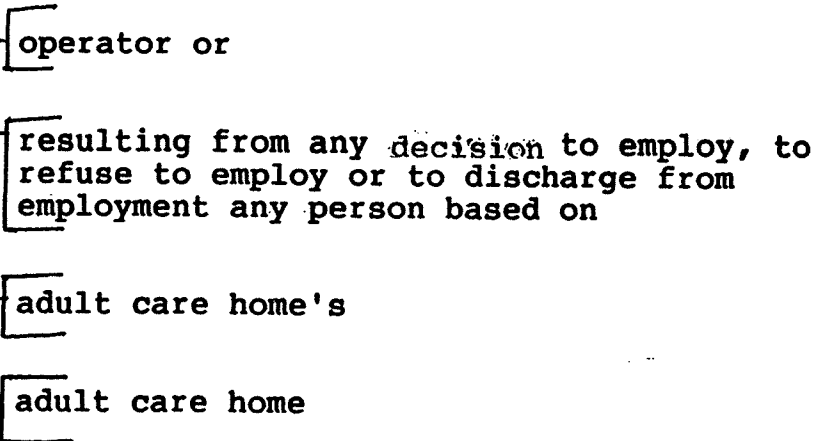
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3-1

1 of social and rehabilitation services [or court of this state] concerning per-
2 sons working [or regularly volunteering] in an adult care home. The sec-
3 retary shall have access to these records for the purpose of determining
4 whether or not the adult care home meets the requirements of this sec-
5 tion. The Kansas bureau of investigation may charge to the department
6 of health and environment a reasonable fee for providing criminal history
7 record information under this subsection.

8 (d) For the purpose of complying with this section, the operator of
9 an adult care home shall request from the department of health and
10 environment information obtained by the secretary of health and envi-
11 ronment under subsection (c) and information available under subsection
12 ~~(e)(5)~~ [(c)(4)] of K.S.A. 39-936 and amendments thereto, if any, which
13 relates to a person who works [or, if the operator has elected to make
14 persons who regularly volunteer in the adult care home subject to
15 the requirements of this section,] regularly volunteers] in the adult care
16 home, or is being considered for employment [or, if the operator has
17 elected to make persons who regularly volunteer in the adult care
18 home subject to the requirements of this section,] as a volunteer] by
19 the adult care home, for the purpose of determining whether such person
20 is subject to the provision of this section. ~~The operator may rely on verbal~~
21 ~~information from the department of health and environment to be fol-~~
22 ~~lowed by written confirmation of the verbal report.~~ For the purpose of
23 complying with this section, the operator of an adult care home shall
24 receive from any employment agency which provides employees of the
25 employment agency to work in the adult care home written certification
26 that such employees are not prohibited from working in the adult care
27 home under this section. [For the purpose of complying with this
28 section, information relating to convictions and adjudications by
29 the federal government or to convictions and adjudications in
30 states other than Kansas shall not be required until such time as
31 the secretary of health and environment determines the search for
32 such information could reasonably be performed and the infor-
33 mation obtained within a two-week period.] No [operator of an] adult
34 care home or, the employees of an adult care home or an employment
35 agency, or the operator or employees of an employment agency,
36 shall be liable for civil damages [to any person refused employment or
37 discharged from employment by reason of] such [operator's] compliance
38 with the provisions of this section if such [operator] or employment
39 agency acts in good faith to comply with this section.

40 (e) For the purpose of subsection (a)(3), an act of abuse or neglect
41 shall not be considered to have been validated by the department of social
42 and rehabilitation services unless the alleged perpetrator has: (1) Had an
43 opportunity to be interviewed and present information during the inves-



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1 tigation of the alleged act of abuse or neglect; and (2) been given notice
2 of the agency decision and an opportunity to appeal such decision to the
3 secretary and to the courts pursuant to the act for judicial review and civil
4 enforcement of agency actions.

5 (f) The secretary of health and environment shall charge each
6 person requesting information under this section a fee ~~of \$5~~ for
7 each name about which an information request has been submit-
8 ted to the department under this section.

9 [(g) No person who works for an adult care home and who is
10 currently licensed or registered by an agency of this state to pro-
11 vide professional services in the state and who provides such serv-
12 ices as part of the work which such person performs for the adult
13 care home shall be subject to the provisions of this section.]

14 (g) [(h)] A family member who acts as a volunteer in caring for
15 a relative in an adult care home [person who volunteers in an adult
16 care home] shall not be subject to the provisions of this section
17 because of such volunteer activity ~~[unless the operator of the adult
18 care home in which such person volunteers elects by written notice
19 to the secretary of health and environment to make all persons
20 who regularly volunteer in such adult care home subject to the
21 requirements of this section]].~~

22 (A) ~~(h)~~ [(i)] This section shall be part of and supplemental to the adult
23 care home licensure act.

24 Sec. 2. (a) ~~[No] person shall knowingly operate a home health agency
25 if, for the home health agency, there works [or, if the operator of the
26 home health agency has elected to make persons who regularly
27 volunteer to assist the home health agency subject to the require-
28 ments of this section, there] regularly volunteers to assist the home
29 health agency] any person who:~~

30 (1) (A) Has a felony conviction for a crime ~~[against persons, (B)]~~ has
31 a felony conviction under the uniform controlled substances act, (C) ~~[has
32 a conviction of any act]~~ which is described in articles 34, 35 or 36 of chapter
33 21 of the Kansas Statutes Annotated and acts amendatory thereof or sup-
34 plemental thereto, except K.S.A. 21-3605 and amendments
35 thereto,] or a conviction of an attempt under K.S.A. 21-3301 and amend-
36 ments thereto to commit any such act, or (D) ~~[(C)]~~ has been convicted
37 of any act which is described in K.S.A. 21-4301 or 21-4301a and amend-
38 ments thereto or similar statutes of other states or the federal govern-
39 ment;

40 (2) has been adjudicated a juvenile offender because of having com-
41 mitted an act which if done by an adult would constitute the commission
42 of a felony and which is a crime against persons, is any act described in
43 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and

[equal to cost, not to exceed \$10,

(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(j) A person who has had a background check under this section or section 2, and amendments thereto, and who is eligible for employment under this act subsequent to such background check shall not be subject to the provisions of this act for one year immediately following such background check.

[(k)

[On and after July 1, 1998, no

[(B)

1 acts amendatory thereof or supplemental thereto [except K.S.A. 21-
2 3605 and amendments thereto], or is any act described in K.S.A. 21-
3 4301 or 21-4301a and amendments thereto or similar statutes of other
4 states or the federal government;

5 (3) has committed an act of physical, mental or emotional abuse or
6 neglect or sexual abuse as validated by the department of social and re-
7 habilitation services pursuant to K.S.A. 38-1523 and amendments thereto
8 and (A) the person has failed to successfully complete a corrective action
9 plan which had been deemed appropriate and approved by the depart-
10 ment of social and rehabilitation services, or (B) the record has not been
11 expunged pursuant to rules and regulations adopted by the secretary of
12 social and rehabilitation services;

13 (4) has had a child declared in a court order in this or any other state
14 to be deprived or a child in need of care based on an allegation of physical,
15 mental or emotional abuse or neglect or sexual abuse;

16 (5) has had parental rights terminated pursuant to the Kansas juvenile
17 code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a
18 similar statute of other states;

19 (6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et*
20 *seq.*, and amendments thereto, or pursuant to K.S.A. 38-1635 and amend-
21 ments thereto involving a charge of child abuse or a sexual offense;

22 (7) has been found by the department of health and environment or
23 the department of social and rehabilitation services under K.S.A. 39-1401
24 *et seq.* and amendments thereto to have committed an act of abuse, ne-
25 glect or exploitation of a resident; or

26 (8) has been found by the department of social and rehabilitation
27 services under K.S.A. 39-1430 *et seq.* and amendments thereto to have
28 committed an act of abuse, neglect or exploitation of an adult.

29 (b) No person shall operate a home health agency if such person has
30 been found to be a disabled person in need of a guardian or conservator,
31 or both.

32 (c) In accordance with the provisions of this subsection (c), the sec-
33 retary of health and environment shall have access to any court orders or
34 adjudications of any court of record, any records of such orders or adju-
35 dications] criminal history record information in the possession of the
36 Kansas bureau of investigation and any report of investigations as au-
37 thorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in
38 the possession of the department of social and rehabilitation services[or
39 court of this state], or any reports of investigations, findings or assessments
40 as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and
41 amendments thereto, 39-1411 and amendments thereto, 39-1433 and
amendments thereto and 39-1434 and amendments thereto, in the pos-
session of the department of health and environment or the department

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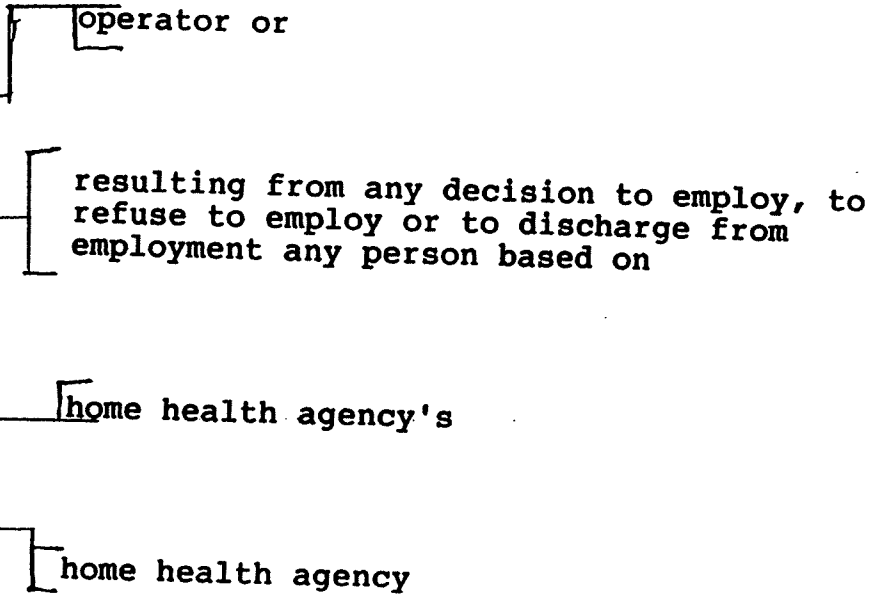
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1 of social and rehabilitation services ~~[or court of this state]~~ concerning persons
 2 working ~~[or regularly volunteering]~~ for a home health agency. The
 3 secretary shall have access to these records for the purpose of determining
 4 whether or not the home health agency meets the requirements of this
 5 section. The Kansas bureau of investigation may charge to the department
 6 of health and environment a reasonable fee for providing criminal history
 7 record information under this subsection.

8 (d) For the purpose of complying with this section, the operator of a
 9 home health agency shall request from the department of health and
 10 environment information obtained by the secretary of health and envi-
 11 ronment under subsection (c), if any, which relates to a person who works
 12 for the home health agency ~~[or, if the operator has elected to make~~
 13 ~~persons who regularly volunteer to assist the home health agency~~
 14 ~~subject to the requirements of this section,]~~ regularly volunteers to
 15 assist the home health agency,] or is being considered for employment
 16 ~~[or, if the operator has elected to make persons who regularly vol-~~
 17 ~~unteer to assist the home health agency subject to the require-~~
 18 ~~ments of this section,]~~ as a volunteer] by the home health agency, for
 19 the purpose of determining whether such person is subject to the pro-
 20 visions of this section. The operator may rely on verbal information from
 21 the department of health and environment to be followed by written
 22 confirmation of the verbal report. **[For the purpose of complying with**
 23 **this section, information relating to convictions and adjudications**
 24 **by the federal government or to convictions and adjudications in**
 25 **states other than Kansas shall not be required until such time as**
 26 **the secretary of health and environment determines the search for**
 27 **such information could reasonably be performed and the infor-**
 28 **mation obtained within a two-week period.]** No [operator of a] home
 29 health agency or, the employees of a home health agency or an em-
 30 ployment agency, or the operator or employees of an employment
 31 agency, which provides employees to work for the home health
 32 agency shall be liable for civil damages ~~[to any person refused employ-~~
 33 ~~ment or discharged from employment by reason of such [operator's]~~ com-
 34 pliance with the provisions of this section if such [operator] or employ-
 35 ment agency acts in good faith to comply with this section.

36 (e) For the purpose of subsection (a)(3), an act of abuse or neglect
 37 shall not be considered to have been validated by the department of social
 38 and rehabilitation services unless the alleged perpetrator has: (1) Had an
 39 opportunity to be interviewed and present information during the inves-
 40 tigation of the alleged act of abuse or neglect; and (2) been given notice
 41 of the agency decision and an opportunity to appeal such decision to the
 42 secretary and to the courts pursuant to the act for judicial review and civil
 43 enforcement of agency actions.

O



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1 (f) The secretary of health and environment shall charge each
2 person requesting information under this section a fee [of \$5] for
3 each name about which an information request has been submit-
4 ted under this section.

equal to cost, not to exceed \$10,

5 [(g) No person who works for a home health agency and who
6 is currently licensed or registered by an agency of this state to
7 provide professional services in this state and who provides such
8 services as part of the work which such person performs for the
9 home health agency shall be subject to the provisions of this sec-
10 tion.]

11 (g) [(h)] A family member who acts as a volunteer in caring for
12 a relative who is receiving home health services [person who vol-
13 unteers to assist a home health agency] shall not be subject to the
14 provisions of this section because of such volunteer activity [unless
15 the operator of the home health agency for which such person
16 volunteers elects by written notice to the secretary of health and
17 environment to make all persons who regularly volunteer to assist
18 such home health agency subject to the requirements of this sec-
19 tion].

(i) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such adult care home.

(j) A person who has had a background check under this section or section 1, and amendments thereto, and who is eligible for employment under this act subsequent to such background check shall not be subject to the provisions of this act for one year immediately following such background check.

20 (A) (h) [(i)] This section shall be part of and supplemental to the
21 provisions of article 51 of chapter 65 of the Kansas Statutes Annotated
22 and acts amandatory thereof or supplemental thereto.

(k)

23 Sec. [3] This act shall take effect and be in force from and after its
24 publication in the statute book.

(Grey 1/1/99)

Sec. 3. The secretary of health and environment shall provide for the implementation of this act on an incremental basis. The implementation of this act shall be completed so that adult care homes and home health agencies may receive information required under this act no later than July 1, 1998.

1 (d) The department of social and rehabilitation services may inform
2 the chief administrative officer and community facilities licensed pursuant
3 to K.S.A. 75-3307b and amendments thereto of substantiated findings of
4 resident abuse, neglect or exploitation.

5 Sec. 7. K.S.A. 39-1434 is hereby amended to read as follows: 39-
6 1434. (a) The secretary of social and rehabilitation services shall maintain
7 a statewide register of ~~the reports, assessments received and the analyses,~~
8 ~~evaluations and the actions and the confirmed findings of the abuse, ne-~~
9 ~~glect and exploitation actions recommended.~~ The register shall be avail-
10 able for inspection by personnel of the department of social and rehabil-
11 itation services ~~[and other agencies or facilities]~~ for the purpose of
12 determining employment. Persons with a confirmed finding of abuse, ne-
13 glect or exploitation of an adult shall have the right to appeal that decision
14 pursuant to K.S.A. 75-3306 and amendments thereto.

15 (b) Neither the report, assessment or the written evaluation analysis
16 shall be deemed a public record or be subject to the provisions of the
17 open records act. The name of the person making the original report or
18 any person mentioned in such report shall not be disclosed unless the
19 person making the original report specifically requests or agrees in writing
20 to such disclosure or unless a judicial proceeding results therefrom. No
21 information contained in the statewide register shall be made available to
22 the public in such a manner as to identify individuals.

23 Sec. 8. K.S.A. 39-1435 is hereby amended to read as follows: 39-
24 1435. In performing the duties set forth in this act, the secretary of social
25 and rehabilitation services may request the assistance of all state depart-
26 ments, agencies and commissions and may utilize any other public or
27 private agencies, groups or individuals who are appropriate and who may
28 be available. Law enforcement shall be contacted to assist the department
29 of social and rehabilitation services when the information received on the
30 report indicates that an adult, residing in such adult's own home or the
31 home of another individual, *an adult family home, a community devel-*
32 *opment disabilities facility or residential facility* is in a life threatening
33 situation.

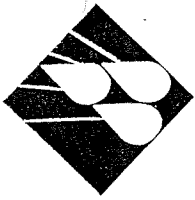
34 Sec. 9. K.S.A. 39-1440 is hereby amended to read as follows: 39-
35 1440. Subsequent to the authorization for the provision of necessary pro-
36 tective services, the secretary shall initiate a review of each case within
37 ~~45~~ 60 days to determine where continuation of, or modification in, the
38 services provided is warranted. A decision to continue the provision of
39 such services shall comply with the consent provisions of this act. Re-
40 evaluations of the need for protective services shall be made not less than
41 every six months thereafter.

42 Sec. 10. K.S.A. 39-1401, 39-1402, 39-1404, 39-1430, 39-1431, 39-
43 1433, 39-1434, 39-1435 and 39-1440 are hereby repealed.

Subcommittee Discussion--Sec. 7
Recommended by SRS

; the department on aging; the department of health and environment; community service providers, as defined in K.S.A. 39-1803; community mental health centers; home health agencies; and independent living centers under K.S.A. 65-5101 and amendments thereto

future or continued



K A N S A S
DEPARTMENT ON AGING

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Bill Graves
Governor

Thelma Hunter Gordon
Secretary of Aging

April 8, 1997

The Honorable Sandy Praeger, Chair
Senate Public Health and Welfare Committee
State Capitol, Rm 128 S
Topeka, Kansas 66612

Dear Senator Praeger:

The Kansas Department on Aging is aware of the concerns of providers regarding the time between submission of the background check information and the clearance being granted by KDHE. Initially, the time lapse could be several months. The department would bring to the attention of the committee that many state agencies, including SRS and the KBI, have background check programs which require KBI and Adult Abuse Registry checks. The prospective employees sign a statement in which they state that they have not been convicted or any prohibited crime. At present, those state agencies receive the background check information within 4 to 12 weeks of time the information is submitted. Unlike the situation created by HB 2278, those agencies have discretion to hire persons who have been convicted of a prohibited crime.

The Kansas Department on Aging supports the concept of provisional employment until such time as the background check is completed. As a transition until the time of a fully automated immediate turn around system, the department would recommend the prospective employee sign an affirmative statement of no prohibited convictions, judicial findings, etc. The form could be developed by KDHE. Then, the provisional employment period should last until the background check is returned. The concerns of the providers affected by HB 2278 would be alleviated if the legislature would amend the language regarding the "provisional employment" and address the liability issue for that time period. If the provisional time period is not specified in the statute, it will allow the providers to hire staff when needed and they will not have wait the 4-12 weeks that will be starting time frame for the background check process.

The Kansas Department on Aging is aware that presently the Revisor's office is reworking the language to create the "provisional employment". Therefore, the department suggests language be added to that section which would allow

"the period of provisional employment to continue until the background information is received from KDHE. However nothing in this act shall be construed as creating guarantee of employment for any person for

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Praeger Letter
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the period of provisional employment .”

The purpose of the second sentence is to allow employers to terminate for any other legal reason during the period of provisional employment.

Thank you for allowing me to provide this input to the valuable work of your committee at this time.

Sincerely,



Thelma Hunter Gordon

THG/JHM

Concerning HB 2278 - Restrictions on Persons Working in or Operating Adult Care Homes

Other organizations have addressed exemptions for hiring or firing based on the clearance response but there has been little to address the upfront time that will exist as this vital program starts.

Providers are concerned that liability will attach at the moment of the hiring. When providers interview, there is an immediate need for additional staff. Eventually, and probably within the next four years, there will be an accompanying immediate turn around of clearance information. Presently, the issue remains whether the facilities and providers can hire before there is a clearance response. If the legislature could provide a liability exemption for providers who obtain a sworn statement (perhaps on a form issued by KDHE) from the prospective employee that they have not been convicted of any the enumerated crimes, judicial findings, etc. which would last until the clearance response is received, the providers would be able to hire their staff and provide services without the cloud of potential liability hanging over them.

All new employees of state institutions are subject to a security clearance procedure where their records are checked at the KBI and with the Adult Abuse Registry. KBI has a similar background check program. Institutions wait generally 4 to 12 weeks before receiving the KBI material back. This is consistent with the KBI testimony that if there is criminal history match it can be up to 12 weeks to receive the KBI report.

Prospective employees sign before the interview a security clearance document before they are interviewed which is kept separately from the interview packet. If the applicant is the applicant of choice the security clearance is reviewed and submitted to the KBI.

At all times prior to receiving the KBI/ SRS report, the employees are considered probationary and subject to immediate dismissal. Failure to pass the security clearance may be grounds for dismissal.. In the case of someone answering the security clearance form falsely, the false answer itself can be grounds for dismissal (KBI).

The facility is protected by the employee's sworn statement that they have not been convicted of a prohibited crime and the fact the facility has taken all reasonable steps necessary to determine the truthfulness of the sworn statement. Clearly, liability will attach when the facility knows of the prohibited conviction and takes no action to remove the person as an employee. Additionally, the benefit of potential employees eliminating themselves as employee candidates may occur if the statement is required at the outset.