

Approved: 4-3-98
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 30, 1998 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department
Robin Kempf, Legislative Research Department
Norman Furse, Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

John Kiefhaber, Kansas Health Care Association
Martha Hodgesmith, Attorney General's office

Others attending: See attached list

Hearing on HB 2969 - Quality enhancement wage pass-through program for nursing facilities

John Kiefhaber, Kansas Health Care Association, testified before the Committee in support of **HB 2969** which would allow nursing facilities electing to participate in a pass-through payment option, of up to \$4.00 per day, designed to increase salaries and/or benefits only for those employees providing direct care and support services to elderly Kansans. (See Attachment 1) During Committee discussion it was noted that there is a significant fiscal note involved. The total cost of additional nursing facility reimbursement for the three categories of residents covered by Medicaid is estimated to be as much as \$18.9 million, of which \$7.6 million would be State General Fund money or as little as \$5.9 million of which \$2.4 million would be State General Fund costs.

Written support of the bill was provided by Debra Zehr, Kansas Association of Homes and Services for the Aging. (Attachment 2)

Discussion on HB 2609 - Certain cosmetologists exempted from continuing education

Staff briefed the Committee on amendments to **HB 2609** that would add license requirements for permanent color technicians, tattoo artists and body piercers to the bill. (See Attachment 3) During Committee discussion relating to continuing education and renewal of licenses of cosmetologists, it was suggested by the Chair that license renewals be conducted as an "open book test" much like a driver's license renewal. Other suggestions were also made as to when this type of test would be effective and the amount of continuing education hours required. The Chair pointed out that staff will draft a balloon of the bill with all of the proposed amendments for the Committee's consideration when action is taken on the bill. An explanation of the fiscal note was distributed to the Committee showing funding involved if the duties of the Board of Cosmetology were transferred to the Kansas Department of Health and Environment. (See Attachment 4)

Discussion on SB 375 - Abuse, neglect and exploitation of certain persons

Martha Hodgesmith, Attorney General's office, briefed the Committee on **SB 375** and expressed her support for the bill, along with representatives from Kansas Home Care Association, SRS, and Cottonwood, Inc. The Chair noted that provisions in this bill would be considered when the Committee takes action on **HB 2969**.

Approval of Minutes

Senator Becker made a motion to approve the Committee minutes of March 16, 17, 18, 20, 23, 24 and 25, 1998, as written, seconded by Senator Langworthy. The motion carried.

Adjournment

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

No meeting date has been set for the next Committee meeting.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
 GUEST LIST

DATE: 3-30-98

NAME	REPRESENTING
LINDA LUKENSKY	KS Home Care Assoc
Sheryl C. Diehl	KS Advocacy & Protective Services, Inc.
Leo Hagner	Legislative Post Audit
RANDY TADGIBER	POST AUDIT
Vern Ahung	HB 2609
Linda Hodgson	HB 2609
John Peterson	KS Governmental Consultng
Tom Bell	KHA
Ann Koci	SRS
Florida Capen	Cosmetology Board
Martha Hoggesmith	Attorney General
Sharon Spratt	Cottonwood, Inc.
Tom Paine	InterHab
John Kiefhaber	KS Health Care Assn.
Jack Kuhn	KS G-ship Prog
Debra Zehr	NATASA
Lassie Jay	Bd. of Cosmetology
Mc Davis	"



Issue

February 1998

KANSAS HEALTH CARE ASSOCIATION PROPOSED

Quality Enhancement/Wage Pass-through

Most Kansas nursing facilities operate under a continually growing pressure to provide more and better quality nursing services at a time when skilled nursing and nurse aide personnel are more and more difficult to find and retain. While this problem is not new in Kansas or anywhere in the nation, greater pressures for federal and state regulatory compliance -- as well as greater competition from alternative home and community-based services and home health care providers have raised the staffing problem to crisis proportions in some communities. Because staff turnover has been identified as the most critical impediment to continually increasing quality of care, and because of continued concern in the public and the Kansas Legislature about the quality of care in Kansas nursing facilities, the Kansas Health Care Association is proposing a Quality Enhancement/Wage Pass-through program for direct care staff and other support staff working in Kansas Medicaid certified nursing facilities.

The Quality Enhancement/Wage Pass-through proposal for Kansas nursing facilities is designed to do the following:

- * promote increased investment in training for direct care staff and other support staff;
- * create a joint industry/state government investment in wage and/or benefit increases for direct care staff and other support staff, or to hire additional direct care staff and other support staff, of up to \$4.00 per day;
- * provide for savings to the Medicaid program through a reduction in the use of expensive temporary agency nursing staff and a reduction of the use of Medicaid instead of private health care insurance by single mothers working in nursing facilities; and
- * improve the quality of care and the quality of life for Kansas' 24,000 nursing facility residents by reducing direct care staff turnover and attracting and retaining quality health care staff.

The Quality Enhancement/Wage Pass-through proposal has been received favorably in concept by the Kansas Association of Homes and Services for the Aging, Kansas Advocates for Better Care, the Kansas Long Term Care Ombudsman, and legislative leaders.



Kansas Health Care Assn

221 S.W. 33rd Street, Topeka, KS 66611 913-

Ask Us... About Our Care

Senate Public Health & Welfare

Date: 3-30-98

Attachment No. 1

Providing Quality Care in Nursing Facilities

Labor costs currently comprise between 60 and 70 percent of all costs associated with the day-to-day operations of a nursing facility in Kansas. A professional labor force is therefore the key component in the delivery of quality nursing services to the 24,000 elderly Kansans residing in nursing facilities. Quality of care in Kansas nursing facilities requires highly trained and skilled staff who are continuously monitoring and providing continuity of care within the facility. As the quality of care demanded by consumers and the public increases so must the skill level of the persons providing these services. With this in mind, facilities will need to invest in and focus on new management techniques, best practices, and quality indicators.

However, it would be impossible for most facilities to increase resources adequately enough to have an impact on the quality of care in Kansas because of a lack of capital and cash flow. This is essentially due to the design of the Medicaid payment system, which provides over 50 percent of facilities' revenues. The Medicaid payment system also creates significant cash flow problems for facilities and prevents the accumulation of reinvestment capital. Therefore, for a facility to increase its investment in quality care at the beginning of a cost reporting period, it would need to be reimbursed for the Medicaid portion at the time of the investment.

✓ The new proposed Quality Enhancement/Wage Pass-through program will allow nursing facilities electing to participate in a pass-through payment option, of up to \$4.00 per day, designed to increase salaries and/or benefits only for those employees providing direct care and support services to elderly Kansans. The categories of individuals that could receive the pass-through would be limited to the following.

Direct Care Staff

- Nurse Aide, Medication Aide, or Restorative/Rehab Aide
- Licensed Mental Health Technician
- Plant Operating/Maintenance
- Dietary-Non Supervisory
- Laundry
- Housekeeping
- Activity Director

A pass-through payment system is designed to reimburse facilities in the current period for costs at the time of the expense. In most pass-through systems payments are received up front. Once the period has ended an audit process is used to determine the amount of the expense. The Quality Enhancement/Wage Pass-through program would provide facilities and their management with the means to provide quality care and compete in a tight labor market for qualified, skilled individuals and to retain these employees for a longer period of time. This could not contribute to an increased bottom-line for facility or for higher wages to management or higher supervisory salaries.

A 1991 study reported in Nursing Management estimates that the cost of staff turnover for nurse aides is over \$2,200 per nurse aide for advertising, agency service, and applicant expenses alone. This does not include any additional costs for training. Therefore, staff turnover in Kansas could be costing the Medicaid program as much as \$11.9 million for the over 10,000 nurse aides at turnover rates shown below.

Kansas Health Care Association
 Analysis of Selected Staffing and Employee Turnover Rates
 Kansas Nursing Facilities

	1993	1994	1995	1996
Nurse Aides	113.0%	115.0%	117.2%	118.3%
Dietary	91.4%	102.5%	99.4%	95.8%
Plant				
Operating	46.3%	61.0%	54.9%	51.9%
Laundry	72.0%	70.2%	79.5%	81.9%
Housekeeping	85.0%	83.8%	87.4%	82.3%
All Employees	82.2%	85.9%	87.4%	88.2%

Source: State audited cost reports (MS 2004)

If an upfront investment by the nursing home industry and the state is applied to higher wages or additional staff, quality of care improvements can be expected to carry through into future years.

The Quality Enhancement/Wage Pass-through program will prospectively reimburse participating nursing facilities for up to \$4.00 per Medicaid day for a period of one to three years due to Medicaid rate setting time frames and facility budget cycles. The enhancement moneys would be paid to facilities outside of cost center limits or occupancy penalties as a pass-through labor cost reimbursement. As the pass-through costs are included in the cost report base the amount of the Quality Enhancement/Wage Pass-through payment would decline.

Some facilities may not elect to participate since staff turnover rates in some facilities may already be under control. Some facilities may also have higher than average wages in their community, which would already be built into their Medicaid cost structure. KHCA estimates that 35 percent of the facilities will benefit from the Quality Enhancement/Wage Pass-through program in the first year, resulting in an increased Medicaid expenditure of \$5.7 million all funds (\$2.4 million State General Funds). If all facilities were to eventually volunteer for the program total fiscal impact could be a maximum of \$16.3 million all funds (6.9 million SGF).

One important feature of the new Quality Enhancement/Wage Pass-through program will be a Quarterly Wage Audit. The Quarterly Wage Audits will require facilities to submit cost information within 45 days of the end of each quarter quantifying the wage pass-through payment was utilized according to policy set out in this proposal. The Quarterly Wage Audit process will be used to assure that the Quality Enhancement/Wage Pass-through payment is used to increase salaries and benefits to current direct care staff and other support staff or to hire additional staff that fall into the outlined categories. The audit process will assure that no portion of the Quality Enhancement/Wage Pass-through is allowed to increase management wages or facility profits. Failure to file Quarterly Enhancement Audit reports would result in recoupment of 100% of the Quality Enhancement/Wage Pass-through payments.



KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

TESTIMONY IN SUPPORT OF HOUSE BILL 2969

To: Senator Sandy Praeger, Chair, and Members,
Senate Public Health and Welfare Committee
From: Debra Harmon Zehr, RN, MA, Vice President, Policy/Education
Re: House Bill 2969
Date: Monday, March 30, 1998

Thank you, Madam Chair, and Members of the Committee, for this opportunity to testify in support of House Bill 2969. The Kansas Association of Homes and Services for the Aging represents more than 150 not-for-profit long-term health care, housing, and community service providers throughout the state.

We believe that the wage pass-through program as outlined in House Bill 2969 will assist in stabilizing the frontline workforce in Kansas nursing facilities, which will, in turn, enhance the quality of care for the frailest elderly of our state.

Adequate and consistent staffing is at the crux of providing high quality care to Kansas nursing facility residents. KAHSA members struggle daily with staffing shortages and high turnover. Right now, Catholic Care Center in Wichita has twenty vacancies in their nursing department. Last month The Cedars in McPherson spent \$30,000 for temporary agency help to fill the gaps created by their staffing shortage. Villa St. Joseph and our other Kansas City members report that they are in the midst of their worst staffing crisis ever. Parkside Homes in Hillsboro is fearful of a major exodus of frontline staff with the opening of a new factory in their town. According to SRS reports, annual turnover rates among nursing home aides in some Kansas counties is as high as 200%. A facility with less than 50% turnover is envied by its peers.

The problem of turnover appears to cut across rural/urban and ownership lines, negatively impacting the quality of care for nursing home residents throughout the state. According to the Kansas Department of Human Resource *Kansas Occupational Outlook 2005*, there were 17, 830 nurse aides employed in 1993. It is projected that there will be need for 23,290 nurse aides by 2005. This represents an expected growth of 30.6%. We have a major concern that problems with recruitment and retention will be exacerbated in the coming decade, severely compromising our ability to care our frailest citizens.

Our members are working to increase recruitment and retention of frontline staff. Many have made changes in job structure, created career laddering opportunities, formally involve CNAs in resident care planning, get frontline staff input into quality improvement initiatives, offer enhanced orientation/mentoring programs, and have increased supervisory training. KAHSA, in conjunction with Wichita State University, is currently engaged in a study to determine turnover contributors and possible interventions. We offer workshops which focus on increasing employee recruitment and retention.

We believe that House Bill 2969 offers an excellent tool to supplement these efforts to improve quality of care through increased staff recruitment and retention.

We ask for your support of House Bill 2969.

Cosmetologist

call Norm for explanation

PROPOSED AMENDMENT TO Substitute HB 2609
(As Amended by House Committee of the Whole)

Be amended:

On page 19, following line 35, by inserting the following:

"Sec. 16. K.S.A. 1997 Supp. 65-1940 is hereby amended to read as follows: 65-1940. As used in this act, unless the context otherwise requires:

(a) "Board" means the Kansas state board of cosmetology.

~~(b) "Director" means the executive director of the board.~~

~~(c) "Department" means the department of health and environment.~~

~~(d) "Secretary" means the secretary of health and environment.~~

(e) (b) "Licensed permanent color technician and tattoo artist" means a person licensed under this act to practice tattooing or permanent color technology, or both.

(f) (c) "Permanent color technician and tattoo artist" means a person who practices tattooing or permanent color technology, or both pursuant to this act.

(g) (d) "Body piercing" means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body, except puncturing the external part of the human ear earlobe shall not be included in this definition.

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

(i) (f) "Tattoo" means the indelible mark, figure or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.

(j) (g) "Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into

or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

~~(k)~~ (h) "Facility" means any room or space or any part thereof where tattooing ~~is~~ or body piercing, or both, are practiced or where the business of tattooing ~~is~~ or body piercing, or both, are conducted.

~~(i)~~ "Body-piercing-facility" ~~means any room-space, or any part thereof, where body-piercing is practiced or where the business of body-piercing is conducted.~~

~~(m)~~ (i) "Permanent color technology" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

(j) "Dentist" means a person licensed to practice dentistry by the Kansas dental board.

(k) "Licensed body piercer" means a person licensed under this act to practice body piercing.

Sec. 17. K.S.A. 1997 Supp. 65-1941 is hereby amended to read as follows: 65-1941. (a) No person, including a permanent color technician and tattoo artist, shall perform tattooing, display a sign or in any other way advertise or purport to be a permanent color technician and tattoo artist unless that person holds a valid license issued by the board. No person shall perform body piercing, display a sign or in any other way advertise or purport to be in the business of body piercing unless that person holds a valid license issued by the board. No person shall operate a facility where permanent color technology, tattooing or body piercing is practiced unless that person holds a valid facility license issued by the board. No person shall knowingly employ an individual to engage in permanent color technology, tattooing or body piercing unless such individual holds a currently valid license issued by the board. This act does not prevent or affect the use of tattooing, permanent color technology or body piercing by a physician, a person under the control and supervision of a

physician, a dentist, a person under the control and supervision of a dentist, or an individual performing tattooing, permanent color technology or body piercing solely on such individual's own body ~~or---any---other---person---specifically---permitted---to---use electrolysis-or-tattooing-by-law.~~

(b) Violation of subsection (a) is a class A, nonperson misdemeanor.

(c) The board may bring an action to enjoin any person from practicing permanent color technology, tattooing or body piercing if such person does not hold a currently valid license. The board may bring an action to enjoin any person from operating a facility where permanent color technology, tattooing or body piercing is practiced if such person does not hold a currently valid facility license.

Sec. 18. K.S.A. 1997 Supp. 65-1942 is hereby amended to read as follows: 65-1942. (a) No person shall:

~~(a)~~ (1) Sell, barter or offer to sell or barter a license;

~~(b)~~ (2) purchase or procure by barter a license with intent to use it as evidence of the person's qualification to practice tattooing, permanent color technology or body piercing;

~~(c)~~ (3) alter materially a license with fraudulent intent; or

~~(d)~~ (4) use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited or materially altered, ~~or.~~

~~(e)---willfully---make---a---false,---material---statement---in---an application-for-licensure-or-for-renewal-of-a-license.~~

(b) Violation of subsection (a)(1), (a)(2), (a)(3) or (a)(4) is a class A, nonperson misdemeanor.

Sec. 19. K.S.A. 1997 Supp. 65-1943 is hereby amended to read as follows: 65-1943. An applicant for licensure as a permanent color technician and tattoo artist or as a body piercer shall pay a fee established by rules and regulations adopted by the board and shall show to the satisfaction of the board that the

applicant:

(a) Has complied with the provisions of this act and the applicable rules and regulations of the secretary board, including rules and regulations which address an applicant's health and vision;

(b) is not less than 18 years of age;

(c) has a high school diploma or equivalent education;

(d) has submitted evidence of completion of education ~~or~~ and training prescribed and approved by the board as follows:

(1) (A) If the application is for a permanent color technician and tattoo artist, a training program under the direct supervision of:

(i) A person licensed as a permanent color technician and tattoo artist in a state approved by the board~~er;~~

(ii) a person or school in this state designated by the board~~, if the application is for a permanent color technician and tattoo artist license;~~ or

(B) If the application is for a license to practice body piercing, a training program under the direct supervision of:

(i) A person licensed to practice body piercing in a state approved by the board~~;~~ or

(ii) a person or school in this state designated by the board ~~if the application is for a license to perform body piercing~~~~and.~~

(2) If the license is applied for under either subpart (A) or (B), has passed an examination approved, administered or recognized by the board.

(e) Notwithstanding the provisions in subsection (d), an applicant for licensure may have completed all or part of the prescribed education and training under the supervision of a person who is subsequently licensed.

New Sec. 20. (a) Any person who teaches and trains the profession of tattooing, permanent color technology or body piercing shall be required to obtain a trainer's license from the

board. To qualify for a trainer's license, the applicant shall submit an application on forms approved by the board and pay the trainer license application fee. To qualify as a permanent color technician and tattoo artist trainer, the applicant shall be currently licensed as a permanent color technician and tattoo artist and have five years of full-time active practice. To qualify as a body piercing trainer for the seven basic piercing procedures, the applicant shall be currently licensed as a body piercer and have two years of full-time active practice. To qualify as a body piercing trainer for advanced piercing, the applicant shall be currently licensed as a body piercer and have four years of full-time active practice.

(b) The trainer license shall expire one year following its issuance and may be renewed upon application accompanied by the instructor license renewal fee made to the board before the license expires. An instructor license may be renewed by the applicant within six months after the date of expiration of the license upon payment of the renewal fee and payment of a delinquent renewal fee. An applicant whose instructor's license has expired for more than six months may obtain an instructor's license in the same manner and on payment of the same fees as provided for an applicant for an original license.

New Sec. 21. (a) Any person desiring to practice tattooing, permanent color technology or body piercing while completing a training program shall be required to obtain an apprentice license. The applicant shall pay the apprentice license fee and submit an application on a form approved by the board which indicates the name of the licensed trainer under whose supervision the apprentice will practice and the name and address and telephone number of the licensed facility in which the apprentice will practice. The applicant shall also comply with applicable rules and regulations of the board including rules and regulations which address the applicant's health and vision. The application for an apprentice license shall be submitted to the

board before the person begins the training program. The person shall not practice tattooing, permanent color technology or body piercing until the apprentice license has been issued. An apprentice shall practice tattooing, permanent color technology or body piercing under the supervision of the licensed trainer who is indicated on the application form. An apprentice shall notify the board at least seven calendar days before changing the apprentice's trainer by submitting a written statement with the name of the new trainer and the addresses and telephone number of the licensed facility in which the apprentice will practice. An apprentice shall keep the apprentice license conspicuously posted in the licensed facility where the apprentice practices.

(b) An apprentice license issued by the board shall expire at such time as final action on the application for licensure as a permanent color technician and tattoo artist or body piercer is completed or two years after the date of issuance of the apprentice license.

Sec. 22. K.S.A. 1997 Supp. 65-1944 is hereby amended to read as follows: 65-1944. (a) A person who holds a license as a permanent color technician and tattoo artist or as a body piercer shall notify the board in writing of the regular address and telephone number of the place-or-places facility where the person performs or intends to perform permanent color technology, tattooing or body piercing and shall keep the license conspicuously posted in the-place-of-business such facility at all times. Such person shall also keep the board notified in writing of the person's home address and telephone number.

(b) The board shall keep a record of the place-or-places-of business-of facility or facilities where each person who holds a license performs permanent color technology, tattooing or body piercing.

(c) Any notice required to be given by the board to a person who holds a license may be given by mailing the notice to the address of the last place of business practice of which the

person has notified the board.

(d) The board shall issue to each qualified applicant a license to operate a tattoo facility or a body-piercing-facility where permanent color technology, tattooing or body piercing is practiced and to advertise permanent color technology, tattooing or body piercing services for which the facility is licensed. Any person desiring to operate a tattoo and permanent color technology facility or a body piercing facility shall make application, on a form provided to the board, accompanied by a facility license fee adjusted on a prorated basis. Upon filing of the application, the board shall inspect the facility and equipment as to safety and sanitary conditions, and if the equipment and facility are found to comply with the provisions of this act and with the rules and regulations of the board, the board shall issue a facility license. The facility license shall expire on March 31 following its issuance and may be renewed upon application accompanied by the facility license renewal fee made to the board before the license expires. A license may be renewed by the applicant within six months after the date of expiration of the last license upon payment of the renewal fee and a delinquent renewal fee. An applicant whose license has expired for more than six months may obtain a facility license in the same manner and on payment of the same fees as provided for an applicant for an original license.

(e) Licensed facilities shall be reinspected in accordance with a schedule determined by the board by rules and regulations or upon a complaint made to the board that such facility is not being maintained in compliance with the provisions of this act or with the rules and regulations of the board.

Sec. 23. K.S.A. 1997 Supp. 65-1945 is hereby amended to read as follows: 65-1945. (a) Except as otherwise provided in this section, a license issued under K.S.A. 1997 Supp. ~~65-1950~~ 65-1943 and amendments thereto expires one year after the date of issue unless renewed by payment of the required renewal fee. The board

may vary the date of license renewal by giving to the applicant written notice of the renewal date being assigned and by making prorated adjustments in the renewal fee. If payment is transmitted by postal service, the envelope must be postmarked on or before the expiration of the license. If the license expires, the license may be renewed within six months of the expiration date on payment of a renewal fee and ~~late-penalty~~ delinquent renewal fee established by the board under this act.

(b) The board may suspend the license of any person who fails to renew. A suspended license may be reactivated upon the payment of a reactivation fee established by the board under this act and all past unpaid renewal fees.

(c) A person applying for reactivation shall not be required to take an examination as a condition of reactivation if the reactivation occurs within three years after the date the license expired.

(d) All licensed permanent color technicians, and tattoo artists and persons who are licensed to perform body piercing ~~must~~ shall be required to participate in continuing education, with guidelines and effective date to be established by rules and regulations of the board.

New Sec. 24. (a) Any person desiring to practice as a permanent color technician and tattoo artist or as a body piercer for no more than 15 continuous days may apply for a temporary license by submitting an application on a form approved by the board and submitting a temporary license fee at least 30 days prior to the date on which the applicant intends to practice in this state. To qualify for a temporary license, a person shall be 18 years of age and shall take and pass the practical examination administered by the board.

(b) Any person desiring to operate a facility, whether mobile or stationary, where permanent color technology, tattooing or body piercing is practiced for no more than 15 continuous days may apply for a temporary facility license by submitting an

application on a form provided by the board which specifies the location and submitting a temporary facility license fee at least 30 days prior to the date on which the applicant intends to operate the facility in this state. Upon filing of the application, the board shall inspect the facility and equipment as to safety and sanitary conditions and if the equipment and facility are found to comply with the provisions of this act and with the rules and regulations of the board, the board shall issue a temporary facility license for the location specified in the application.

Sec. 25. K.S.A. 1997 Supp. 65-1946 is hereby amended to read as follows: 65-1946. Licensed practicing permanent color technicians and tattoo artists and persons who are licensed to perform body piercing shall meet the following standards and any ~~others~~ other standards the board may adopt by rules and regulations:

(a) Tattooing and body piercing instruments shall be sterilized in accordance with methods approved by rules and regulations of the board ~~and such rules and regulations shall be approved by the secretary before adoption or amendment;~~

(b) ~~practicing~~ licensed permanent color technicians and tattoo artists and persons licensed to perform body piercing shall be equipped with appropriate sterilizing equipment, with availability of hot and cold running water and a covered waste receptacle; and

(c) a case history ~~cards~~ record shall be kept for each client for a period of five years.

Sec. 26. K.S.A. 1997 Supp. 65-1947 is hereby amended to read as follows: 65-1947. The board may revoke, suspend, refuse to issue a license or renewal or place on probation any licensee upon proof that a person or licensee:

(a) Has been convicted of a violation under K.S.A. 1997 Supp. 65-1942 and amendments thereto;

(b) has been convicted in this or any other state of a crime

related to the practice of permanent color technology, tattooing or body piercing;

(c) ~~has knowingly misrepresented, misstated or failed to disclose personal qualifications or other information necessary to practice tattooing or body piercing in any communication to the board or the department~~ made a material false, misleading or deceptive statement or made a material omission in an application for licensure or renewal of a license or in any communication to the board;

(d) has used, caused or promoted the use of any advertising matter, promotional literature, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive;

(e) has knowingly deceived the public by acting in a manner as to mislead clients as to the person's professional status;

(f) has employed directly or indirectly any suspended or unlicensed person to perform any permanent color technology, tattooing or body piercing covered by this act;

(g) has permitted another person to use the license;

(h) has practiced permanent color technology, tattooing or body piercing under a false, misleading or deceptive name;

(i) has failed, if a licensed permanent color technician and tattoo artist or ~~if licensed to perform body piercing,~~ body piercer to maintain a business address and telephone number at which the licensee may be reached during business hours;

(j) has failed, if a nonpracticing permanent color technician and tattoo artist or a person licensed to perform body piercing, to provide the board with a home address and telephone number;

(k) has failed to properly and reasonably accept responsibility for the actions of employees;

(l) has practiced permanent color technology, tattooing or body piercing with a mental or physical illness that affects ability to perform or endangers the public;

(m) has demonstrated gross incompetence or gross negligence in performing permanent color technology, tattooing or body piercing; ~~or~~

(n) has violated any of the provisions of this act or rules and regulations adopted by the board pursuant to this act;

(o) has used alcohol or any controlled substance to an extent and in a manner that affects the ability to perform or endangers the public; or

(p) has been convicted of a felony, and the licensee or applicant for a license is unable to demonstrate to the board's satisfaction that such person has been sufficiently rehabilitated to warrant the public trust.

Sec. 27. K.S.A. 1997 Supp. 65-1948 is hereby amended to read as follows: 65-1948. The powers and duties of the board as related to this act are as follows:

(a) To authorize all disbursements necessary to carry out the provisions of this act;

(b) to determine training, education and experience requirements for taking the examination and to supervise and administer examinations to test the knowledge of applicants for licensure;

(c) to license persons who apply to the board and who have qualified to practice tattooing, permanent color technology, or body piercing, to license persons who apply to the board and who have qualified for a trainer's license, to license persons who apply to the board and who have qualified for an apprentice license;

(d) to rent facilities when necessary to carry out the examination of applicants for licensure;

(e) to renew licenses;

(f) to suspend or revoke licenses or place licensees on probation in the manner provided by this act;

(g) to appoint representatives to conduct or supervise the examination of applicants for licensure;

(h) to designate the time and place for examining applicants for licensure;

(i) to carry out, ~~together with the department or separately,~~ the periodic inspection of facilities of persons who are licensed to ~~practice tattooing or body piercing~~ operate a facility where tattooing, permanent color technology or body piercing is practiced;

(j) to issue a ~~tattoo-facility~~ license to operate a facility where tattooing, permanent color technology or body piercing is practiced to qualified applicants upon compliance with this act;

~~(k) to issue a body piercing facility license to qualified applicants upon compliance with this act;~~ and

~~(l)~~ (k) to appoint or employ subordinate employees.

Sec. 28. K.S.A. 1997 Supp. 65-1949 is hereby amended to read as follows: 65-1949. (a) The board shall adopt rules and regulations to prescribe education, experience and training standards for the practice of permanent color technology, tattooing and ~~separate education and training standards for the licensure of~~ body piercing.

(b) An applicant seeking licensure as a permanent color technician and tattoo artist or ~~to be licensed to perform body piercing~~ body piercer shall be required to demonstrate safety, sanitation and sterilization techniques by means of ~~an inspection~~ a written examination and a practical examination conducted by the board to test the applicant's knowledge of and techniques concerning infection control practices and other requirements.

Sec. 29. K.S.A. 1997 Supp. 65-1950 is hereby amended to read as follows: 65-1950. (a) The board shall assess, by rules and regulations adopted by the board, the following nonrefundable fees and any other nonrefundable fees necessary to carry out the provisions of this act:

(1) Application fee for permanent color technician and tattoo artist license or body piercer license;

(2) examination fees;

- (3) reexamination fees;
- (4) reciprocity fee;
- (5) permanent color technician and tattoo artist or body piercer license fee;
- (6) license renewal fee, ~~active and inactive~~ for permanent color technician and tattoo artist or body piercer;
- (7) late delinquent renewal fee for any personal or facility license;
- (8) reactivation apprentice license fee;
- (9) duplicate license fee;
- (10) demonstration--permit temporary license fee for permanent color technician and tattoo artist or body piercer;
- (11) tattoo, permanent color technology or body piercing facility license fee and renewal fee, ~~active or inactive;~~ and
- (12) body--piercing--facility--fee--renewal--fee. temporary tattoo, permanent color technology or body piercing facility license fee;
- (13) application fee for trainer license; and
- (14) trainer license fee and renewal fee.

(b) The board shall license each applicant, without discrimination, who proves to the satisfaction of the board, fitness for such licensure as required by this act and upon payment of a fee established by the board under this section. ~~Except--as-provided-in-K.S.A.--1997-Supp.--65-1945,--the-board-shall issue-to-the-applicant-a-license-that-expires-one-year-after--the date-of-issuance.~~

(c) An applicant who is employed as a permanent color technician and tattoo artist or body piercer on the day immediately preceding the effective date of this act shall be licensed by the board, even though the applicant does not meet the training requirements of this act, so long as the applicant successfully passes an examination required by the board and by July 1, 1999, meets the training requirements of this act.

(d) The board shall establish all fees under this act. The

fees and charges established under this section shall not exceed the cost of administering the regulatory program under this act pertaining to the purpose for which the fee or charge is established.

Sec. 30. K.S.A. 1997 Supp. 65-1954 is hereby amended to read as follows: 65-1954. (a) The board, in addition to any other penalty prescribed under the act governing body piercers, permanent color technicians and tattoo artists, may assess civil fines and costs, including attorney fees, after proper notice and an opportunity to be heard, against any person or entity for a violation of the statutes, rules and regulations or orders enforceable by the board in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation.

(b) In determining the amount of penalty to be assessed pursuant to this section, the board may consider the following factors among others: (1) Willfulness of the violation; (2) repetitions of the violation; and (3) magnitude of the risk of harm caused by the violation.

(c) In addition to a civil penalty and costs, the board may assess investigation and hearing costs against a licensee or an unlicensed person for proceedings which have resulted in a successful action by the board against the license of the licensee or the unlicensed person under ~~K.S.A.-1997-Supp.-65-1947~~ this act and amendments thereto.

(d) All civil fines assessed and collected under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the state general fund. All costs assessed under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the cosmetology fee fund.";

And by renumbering sections accordingly;

And by amending the repealer and title accordingly;

From: Shannon Cunningham Nichols
To: EmaleneC
Date: 03/25/98 1:38pm
Subject: Board of Cosmetology

The Department of Health and Environment estimates that if the inspection duties were to transferred to them, they would require an additional \$592,123. The funding consists of the following:

1. \$369,173 for an additional 8.8 FTE positions (this includes \$248,701 for salaries and wages; \$46,500 for travel and subsistence; \$16,000 for communication expenditures; and \$57,972 for other operating costs).
2. \$222,950 already budgeted by the Board of Cosmetology and the Board of Barbering during FY 1999 for all costs related to their inspectors (\$195,650 for the Board of Cosmetology and \$27,300 for the Board of Barbering).

I spoke with the agency regarding HB 2609 and which, if any, provisions are essential to the agency's operation and was told that the sections which address the Board's ability to fine noncompliant shops, issue cease and desist orders and raising fees are essential to the agencies future operations.

If there are any further questions, please do not hesitate to let me know. Also, do you have any idea when the Public Health and Welfare Subcommittee will be working HB 2609?

Senate Public Health & Welfare
Date: 3-30-98
Attachment No. 4