

Approved: 2-11-99  
Date

## MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Sandy Praeger at 10:00 a.m. on February 1, 1999 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  
                                      JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

                                      Harold Riehm, Kansas Association of Osteopathic Medicine  
                                      John Kiefhaber, Kansas Health Care Association  
                                      Debra Zehr, Kansas Association of Homes and Services for the Aging  
                                      Sherry Diel, Kansas Advocacy and Protective Services

Others attending: See attached list

### **Introduction of bills**

Harold Riehm, Kansas Association of Osteopathic Medicine, requested introduction of a bill that would permit the Kansas State Board of Healing Arts to compensate members of the Board's Review Committee. (Attachment 1) Senator Langworthy made a motion the Committee introduce the proposed legislation, seconded by Senator Salmans. The motion carried.

Senator Lee made a motion the Committee introduce legislation that would continue the Long-Term Care Task Force, seconded by Senator Hardenburger. The motion carried.

### **Hearing on: SB 126 - Quality enhancement wage pass-through program for nursing facilities**

John Kiefhaber, Executive Vice President, Kansas Health Care Association, testified before the Committee in support of **SB 126** which would create a Quality Enhancement Wage Pass-Through Program for nursing facilities that receive reimbursement through the Medicaid program for treatment of the elderly, developmentally disabled, and mentally ill. The bill would allow facilities that choose to participate in the program to receive a payment option that would provide reimbursement to the facilities up to \$4 per resident day. The reimbursement would be designed to increase either salaries or benefits for the employees of the facilities who provide direct care or support services to the residents of the facilities. The bill would provide that the pass-through funds be used for the payment of salaries and benefits for nurse aides, medication aides, restorative-rehabilitation aides, licensed mental health technicians, hydration and nutrition aides, plant operating and maintenance personnel and nonsupervisory activity staff. The monies could be used to hire additional direct care or support staff or to increase salaries and benefits for existing staff. The bill would not allow pass-through monies to be used to increase management compensation or facility profits. Mr. Kiefhaber noted that the bill would promote increased investment by the industry in training and development of direct care staff and other support staff, and to improve the quality of care and the quality of life for Kansas' 24,000 nursing facility residents by reducing direct care staff turnover, improving hydration and nutrition services and attracting and retaining quality health care staff. (Attachment 2)

Committee discussion related to the fiscal note of the bill, the ratio of Medicaid patients in nursing facilities, nursing home staffing shortages and high turnover rates, low wages of nursing home staff, reimbursement of Medicaid funds to nursing facilities, the lack of full occupancy in various nursing home facilities, and changing the way state reimburses nursing homes.

Debra Zehr, Kansas Association of Homes and Services for the Aging, testified in support of **SB 126**. She noted that KAHSA helped sponsor a Wichita State University study on the underlying factors contributing to staff recruitment and retention problems in Kansas nursing homes. Researchers discovered a clash between the underlying values, beliefs and expectations of various types of employees and the realities of work life in a nursing home. They found no quick fixes or easy answers to this long-standing problem, but did offer some recommendation to address the root cause of turnover, which is low job commitment. KAHSA is

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S, Statehouse, at 10:00 a.m. on February 1, 1999.

committed to forging a combination of sustained public and private interventions to stem the chronic tide of long-term care staff shortages based on the findings of the WSU study as outlined in her written testimony. (Attachment 3)

Written testimony regarding **SB 126** was received from Deanne Lenhart, Executive Director, Kansas Advocates for Better Care, with questions regarding the bill. (Attachment 4)

**Hearing on: SB 105 - Psychosurgery removed**

Sherry Diel, Kansas Advocacy & Protective Services, Inc. testified in opposition to **SB 105** which would amend statutes concerning the rights of patients in mental health or mental retardation treatment facilities. The bill would remove psychosurgery, or lobotomy, from these statutes as a procedure that must be consented to by either the patient or the patient's legal guardian or conservator. (Attachment 5)

Chip Wheelen, Kansas Psychiatric Society, commented that the bill does the opposite than intended.

There were no proponents to the bill.

**Approval of Minutes**

Senator Salmans made a motion to approve the Committee minutes of January 26, 27 and 28, 1999, seconded by Senator Becker. The motion carried.

**Adjournment**

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

The next meeting is scheduled for February 2, 1999.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
GUEST LIST

DATE: 2-1-99

NAME	REPRESENTING
Tommy K Riddle	Interhab
Carolyn Mendenhall	Ks STD & Cera
Janis Stuber	KDOA
Dan Gandy	Visitor
Sherry C. Diehl	KS Advocacy & Protective Service
Kathy Damron (Anne)	St Luke's Shawnee Mission, Med.
Debra Zehn	KATSA
Brad Fischer	Kansas Health Care Assoc.
John Kiefhaber	Ks Health Care Assn.
Gary Ingenthron	KDHE
Chip Wheelen	Ks Psychiatric Society
Arrow Ketchum	KADAM
Nancy Scott	KDHE
Garrett Brown	KS Govt Consulting
Stacy Soldan	Weir & Weir Chd.
John	KHCA
Jacqueline Case	Sen. Approx - Interm

# Kansas Association of Osteopathic Medicine

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February 1, 1999

To: Chairperson Praeger and Members Senate Public Health Committee

From: Harold E. Riehm, Executive Director, Kansas Association of Osteopathic Medicine

Subject: Request for Committee Bill Introduction

The Kansas Association of Osteopathic Medicine respectfully requests Committee introduction of the following proposal.

This proposed bill is similar to a Bill introduced in the 1977 Session. It would permit the Kansas State Board of Healing Arts to compensate members of the Board's Review Committee. The previous Bill passed the Senate, but was defeated in the House.

Thank you for your consideration.

Senate Public Health & Welfare  
Date: 2-1-99  
Attachment No. 1



# KHCA

Member of  
**ahca**

## Kansas Health Care Association

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### TESTIMONY

before the

Senate Public Health and Welfare Committee

by

John L. Kiefhaber, Exec. Vice President

KANSAS HEALTH CARE ASSOCIATION

Senator Praeger and members of the Committee:

Most Kansas nursing facilities operate under a continually growing demand 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. A federal government initiative currently underway seeks to focus training resources on improving hydration and nutrition for nursing facility residents who need extra care. Because staff turnover has been identified by government and industry 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 by the industry in training and development of direct care staff and other support staff;

- create the position of Hydration and Nutrition Aide to assist facility staff in the provision of quality care;
- 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 Medicaid day;
- provide for savings to the Medicaid program through a reduction in the use of expensive temporary agency nursing staff (currently costing the Medicaid program over \$3.5 million per year) 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, improving hydration and nutrition services and attracting and retaining quality health care staff.

### 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 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 resident care 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 in Kansas 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.

New attention has been focused nationwide on the difficulties of assuring adequate hydration and nutrition for some nursing facility residents with certain medical conditions which can prevent adequate provision of food and water. During mealtime it is often necessary for certified nurses aides (CNAs) to take extra time to assist certain residents, taking away valuable attention from other residents and other nursing tasks. One of the most important quality improvements nursing facilities' are now talking about is freeing CNAs from extra mealtime delays by beginning to use trained hydration and nutrition aides when appropriate. The new Quality Improvement/Wage Pass-through proposal would establish this new category of direct care staff in Kansas nursing facilities.

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 Medicaid day, designed to increase salaries and/or benefits only for those employees providing direct care and support services to elderly and disabled Kansans. The categories of employees that could receive the pass-through would be limited to the following:

- Nurse Aide, Medication Aide, or Restorative/Rehab Aide
- Hydration and Nutrition Aide
- Plant Operating/Maintenance
- Dietary-Non Supervisory
- Laundry
- Housekeeping
- Activity Staff

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 an extremely tight labor market for qualified skilled individuals and to retain these employees for a longer period of time. These funds could not contribute to an increased bottom-line for the facility or for higher wages to management or higher supervisory salaries. Instead, these funds are directly passed on to Kansas workers throughout the state.

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

	1993	1994	1995	1996	1997
Nurse Aides	113.0%	115.0%	117.2%	118.3%	117.3%
Dietary	91.4%	102.5%	99.4%	95.8%	96.0%
Plant Operating	46.3%	61.0%	54.9%	51.9%	52.4%
Laundry	72.0%	70.2%	79.5%	81.9%	81.3%
Housekeeping	85.0%	83.8%	87.4%	82.3%	82.9%
All Employees	82.2%	85.9%	87.4%	88.2%	84.9%

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 immediately 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 monies would be paid to facilities regardless 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 participate in the Quality Enhancement/Wage Pass-through program in the first year, resulting in a maximum increased Medicaid expenditure of \$5.7 million all funds (\$2.4 million State General Funds).

*Phase in -  
3 years*

One important fiscal control 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 or improper use of the funds, would result in recoupment of 100% of the Quality Enhancement/Wage Pass-through payments.

The staff and administrators of over 200 KHCA facilities, and many nonmember facilities are asking for state partnership in their investment in improved quality of care.



## TESTIMONY IN SUPPORT OF SENATE BILL 126

To: Senator Sandy Praeger, Chair, and Members,  
Senate Public Health and Welfare Committee  
From: Debra Harmon Zehr, RN, MA, Vice President  
Date: Monday, February 1, 1999

Thank you, Madam Chair, and Members of the Committee, for this opportunity to testify in support of Senate Bill 126. The Kansas Association of Homes and Services for the Aging (KAHSA) represents 160 not-for-profit long-term health care, housing, and community service providers throughout the state.

Adequate staffing is the foundation of high quality nursing home care. KAHSA members struggle daily with staffing shortages and high turnover. According to SRS reports, statewide average annual turnover among Certified Nurses Aides is 116%. This figure is 90% for not-for-profit homes. There are currently 21,000 active CNAs on the Kansas Department of Health and Environment CNA Registry. According to the Kansas Department of Human Resource *Kansas Occupational Outlook 2005*, there will be a need for 23,290 nurse aides by 2005. We are concerned that problems with recruitment and retention will be exacerbated in the coming decade, severely compromising our ability to care our frailest citizens.

Last year KAHSA helped sponsor a Wichita State University study on the underlying factors contributing to staff recruitment and retention problems in Kansas nursing homes. Researchers discovered a clash between the underlying values, beliefs, and expectations of various types of employees and the realities of work life in a nursing home. They found no quick fixes or easy answers to this long-standing problem, but did offer some recommendations to address the root cause of turnover, which is low job commitment.

KAHSA is committed to forging a combination of sustained public and private interventions to stem the chronic tide of long-term care staff shortages, based on the findings of the WSU study. There are four key initiatives. Among these are:

1. Education and training specifically tailored to nurse aides, nurses, frontline managers, and administrators to ameliorate factors that run counter to job commitment.
2. Redoubling of our efforts to address the unfavorable image of nursing homes, by focusing on the valuable interchange between employees and residents.
3. A commitment on the part of policy makers and regulators to uphold in their decision-making the validity and honorableness of nursing homes as a vital part of the care continuum for frail elders.
4. Adequate wages/benefits for frontline staff and timely provider reimbursement for wage/benefit increases.

Senate Bill 126 addresses this last initiative through a legislative avenue. Recently the Kansas Department on Aging initiated dialogue with provider groups about nursing home reimbursement methodology. This dialogue, known as FAIR (Funding Assessment Impartiality Review), will provide an administrative avenue to address the wage initiative.

Thank you for this opportunity to support Senate Bill 126. I would be happy to answer questions

TESTIMONY OF  
DEANNE LENHART, EXECUTIVE DIRECTOR  
KANSAS ADVOCATES FOR BETTER CARE  
BEFORE THE SENATE PUBLIC HEALTH & WELFARE COMMITTEE  
RE: SB 126  
WAGE PASS-THROUGH PROGRAM FOR NURSING FACILITIES  
FEBRUARY 1, 1999

Chairperson Praeger and Members of the Committee:

Thank you for the opportunity to discuss SB 126, legislation that is proposed to increase salaries or benefits for those employees providing direct care and support services to residents of nursing facilities. Kansas Advocates support the general concept of wage pass-through as one way to increase wages and benefits for direct care employees of nursing facilities.

Kansas Advocates has four concerns pertaining to SB 126. **First**, Kansas Advocates question including nutrition and hydration aides (line 23) as a category of employees eligible to receive the wage pass-through. Employees who provide direct care are required by law to have certain training and be certified. Nutrition and hydration aides provide direct care. There is currently no standardized classification/training and certification for nutrition and hydration aides. It would be presumptive to include eligibility for a currently non-existing group of employees.

**Second**, Kansas Advocates question allowing public funds to be used to establish future increased Medicaid reimbursement (using public funds) as proposed (in line 33) for inclusion in the cost report.

**Third**, Kansas Advocates question including new hires (line 42) as eligible personnel. The current language of the proposed legislation would appear to allow hiring new employees without necessarily enhancing the wages and benefits of existing employees. The terminology "wage pass-through" implies application for existing employees rather than using the funds to increase staff numbers, which is the responsibility of the facility. Consumers frequently identify the problem of inadequate staffing in nursing facilities. By regulation, facilities may have adequate staff. In reality, nursing facilities have high-care-need frail adults, therefore, staffing requirements are no longer adequate, as they were when the regulations were first established. Public money should not be used to provide adequate staffing for nursing facilities.

**Fourth**, Kansas Advocates question lack of clarity concerning use of wage pass-through not being expended to increase management compensation or facility profits (line 1 on page 2). Language should be added to identify that wage pass-through moneys shall not be expended for any administrative costs.

The nursing home industry must take some responsibility for the low wages of their employees. According to company 10-K annual reports, operating profits for the top six nursing home chain corporations (Beverly, Genesis, HHS, Paragon, Sun, Vencor) rose 122 percent from 1996 to 1997. According to company proxy statements, total compensation for the top executives of these companies jumped an average of 300 percent for the period. In 1997, the total compensations for these persons ranged from \$2,867,435 to \$56,514,321.

Senate Public Health & Welfare

Date: 2-1-99

Attachment No. 4



**KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.**

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**James Germer, Executive Director**

Sherry Diel, Deputy Director

Tim Voth, Attorney

Kari Ramos, Advocate

Scott Letts, Deputy Director

Lori A. Davis, Attorney

Michelle Rola', CFO

Michelle Heydon, Advocate

Memo To: Chairperson Praeger and Members of the Senate Public Health and Welfare Committee

From: Sherry C. Diel, Deputy Director

RE: SB-105--An Act Concerning Rights of Persons

Date: February 1, 1999

**What is Kansas Advocacy and Protective Services, Inc.?**

Kansas Advocacy and Protective Services, Inc. ("KAPS") is a federally funded non-profit corporation. Our agency serves as the designated Protection and Agency for persons with disabilities in the state of Kansas. Each state and territory in the United States has a similar type of organization. Our role is to advocate for legal rights and services for persons with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through use of legal, administrative and other appropriate remedies. Because our funding is limited, KAPS utilizes priorities, developed as a result of public input, to advocate for systemic changes in the public and private sector to benefit Kansans with disabilities.

**KAPS Opposes the Amendments Proposed by SB-105.**

SB-105 proposes to make two material changes to current law which will detrimentally impact persons with mental illness. First, the amendment proposes to delete a significant protection for persons who are institutionalized--the deletion of the protection against unwanted and dangerous psychosurgery without court approval. Second, the proposed amendment places the right to consent to psychosurgery on behalf of a ward in the hands of a guardian.

Although KAPS is not aware of the reasons for the Health Care Reform Legislative Oversight Committee's reasons for proposing the amendments, KAPS considers this proposal to be a dangerous precedent. Although psychosurgery has not been practiced in Kansas for many years, the advent of laser surgery may change this picture in the relatively near future. Laser has been utilized successfully recently in the treatment of Parkinson's disease. As medical technology advances, experimental laser surgery for treatment of certain mental illnesses no longer seems an impossibility.

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However, any invasive procedure to the brain carries with it great risks. No institutionalized person should be subjected to a dangerous invasive procedure to the brain without a court's hearing the evidence concerning the institutionalized person's views and the expected benefit and risks of the proposed procedure. Only after weighing the evidence and the court making a determination that the risk is slight and the anticipated benefits derived from the procedure substantially outweigh the risks, should psychosurgery be considered an option.

Moreover, the proposed amendment places the decision whether to consent to such a invasive procedure into the hands of a lay person, the guardian. The potential harm is too great for a simple lay person, who granted may have the best intentions in mind, to consent to a procedure that may result in death or further long-term disability to the ward. That should be a decision of the person with the disability. If the person lacks capacity, the court must substitute its judgment and act in the person's best interests.

If psychosurgery is an outdated term, KAPS respectfully requests the Committee substitute an appropriate term to cover the medical advances described above. Otherwise, KAPS respectfully requests the Committee retain current law and adversely report SB-105.

KAPS wishes to thank Madam Chairperson and members of the committee for the opportunity to testify. I would be happy to address any questions you may have.