

Approved: 2-23-99  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by the Vice Chairman Larry Salmans at 10:00 a.m. on February 16, 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:

Jim Sperry, Kansas Academy of Physician Assistants  
Harold Riehm, Kansas Association of Osteopathic Medicine  
Larry Buening, Executive Director, Board of Healing Arts  
Jerry Slaughter, Executive Director, Kansas Medical Society  
Senator Lee  
Patricia Maben, Kansas Department of Health and Environment  
Brenda Eldridge, Association of Independent Living

Others attending: See attached list

**Reconsider Action on SB 194 - Actions against licensees under the healing arts act**

The Committee's attention was called to a recommendation by the Revisor for the necessity to reconsider action on **SB 194** that had been amended and passed out favorably by the Committee on February 15th. Staff recommended the Committee strike the word "annual" on page 4, line 41, so that the bill would conform with the language and policy in **SB 190 - Healing Arts licenses expiration date and fees**. Senator Steineger made a motion that the Committee reconsider action on SB 194, seconded by Senator Becker. The motion carried.

Senator Hardenburger made a motion the Committee further amend SB 194 by striking "annual" on page, 4, line 41, seconded by Senator Steineger. The motion carried.

Senator Steineger made a motion that the Committee recommend SB 194 as amended favorably for passage, seconded by Senator Hardenburger. The motion carried.

**Hearing on: SB 193 - Prescribing drugs by physicians assistants**

Jim Sperry, Kansas Academy of Physician Assistants, testified before the Committee in support of **SB 193**. The proposed legislation would allow physicians' assistants to write prescriptions in the course of their professional practice. Mr. Sperry noted that the bill requires the PA to obtain a DEA registration number and written authorization by the responsible physician before utilizing this prescriptive privilege. The bill would also provide the physician assistant the ability to request, receive and sign for professional samples in the absence of their responsible physician. An amendment was offered by Mr. Sperry that would remove the "s apostrophe" from "Physicians' Assistant" used throughout Chapter 65, Sec. 28 of the PA Act and where ever it appears in the statutes as noted in his written testimony. (Attachment 1)

During Committee discussion, Mr. Speery was questioned whether or not he had reviewed the Controlled Substances Act for possible amendments, and staff pointed out that the Act may need to be amended in order to carry out the bill's policy.

Harold Riehm, Executive Director, KAOM, noted that some of the physicians he represents have reservations about the proposed changes in **SB 193** and some are comfortable with the expansion of Physician Assistants prescribing authority. Mr. Riehm offered an amendment that would address concerns relating to permitting PA's to accept and distribute drug samples from pharmaceutical salespersons. His amendment would

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S, Statehouse, at 10:00 a.m. on February 16, 1999.

require that the issue be addressed in each protocol document and agreement as pointed out in his written testimony. (Attachment 2) During Committee discussion, Mr. Riehm noted that a protocol has to be in writing and filed with the Board of Healing Arts.

Larry Buening, Executive Director, Kansas Board of Healing Arts, expressed his support for the bill noting that the Board believes it is in the public's interest and constitutes a protection to the public health, safety and welfare to enable physicians' assistant to prescribe and not just transmit a prescription order. He felt to do so reduces chances of errors that are more likely to occur in the oral transmission of prescription orders, and what physicians' assistants will be allowed to prescribe, will continue to be limited by what is authorized by the responsible physician as noted in his written testimony. (Attachment 3) Mr. Buening also expressed his support for the previous amendment offered by KAOM, as well as the amendment that will be offered next by KMS.

Jerry Slaughter, KMS, noted that he is not opposed to the general concept contained in **SB 193**, but would like to offer amendments for clarification and to ensure that the prescription order contains information about a PA's responsible physician as noted in his written testimony. (Attachment 4) Mr. Slaughter also expressed his support for the amendment offered by KAOM, and that the definition of who prescribes should be in the definition of the practitioner.

### **Hearing on: SB 232 - Establishing a task force on long-term care services**

Senator Lee spoke in support of **SB 232** which would establish a task force on long-term care services. The task force would study long-term care services offered in Kansas, and the laws, rules and regulations relating to those services. Senator Lee provided information to the Committee relating to Medicaid and long-term care, with charts showing U.S. Medicaid enrollment projections from 1998 to 2008, 1999 estimated Medicaid expenditures per enrollee, and the expected life time long-term care cost for males which is approximately \$56, 895, and for females, \$124,370. (Attachment 5) Senator Lee also provided the Committee with statistics on care givers from a teleconference she participated in regarding long-term care and senior aging issues.

Patricia Maben, Kansas Department of Health and Environment, addressed the Committee in support of **SB 232**, (Attachment 6); and Brenda Eldridge, Kansas Association of Independent Living Centers, represented Gina McDonald, President of the Kansas Association of Centers for Independent Living, who submitted written testimony that suggested the task force be broadened to include community based services in addition to facility based care, (Attachment 7).

### **Adjournment**

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

The next meeting is scheduled for February 17, 1999.

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-16-99

NAME	REPRESENTING
Craig Kalen	KS Council on DD
Garnie Ann Brown	KAIHP
Brenda J. Ehrholz	TTTC: Topetra Independent Living
JOSEPH P. Conway	KS ASSOC NURSE ANESTHETISTS
Victoria Qui	KS ASSO. NURSE ANESTHETIST,
Stacy Soldan	Hair + Hair Chd.
Patricia Mabon	KDHE
John Kiehaber	Ics Health Care Assn.
NAROLD RIEHM	KADM
Hayland Ruddle	Ruddle + Assoc.
Rich Jettre	Health Midwest
Shannon Jones	SILCK
Dottie Harder	League of Women Voters
Ann D. Robinson	" " " "
Mary Riley	
Charla Dawson	
Sharon Jones - Dan	Edw. Gustent
KATHIE ARNDT	ESU Student
Peggy Rabe	ESU

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-16-99

NAME	REPRESENTING
Katy Allen	ESU student
Samantha Sabares	ESU student
Marc Slavin	ESU student
Phillip Stedler	ESU student

# **KANSAS ACADEMY OF PHYSICIAN ASSISTANTS**

**TESTIMONY OF JIM SPERRY  
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
SENATE BILL NO. 193  
FEBRUARY 16, 1999**

*Dear Senator Praeger and Honorable Members of the Senate Committee on Public Health and Welfare:*

Thank you for the opportunity to appear before you this morning. My name is Jim Sperry. I am the Immediate Past President of the Kansas Academy of Physician Assistants. I have been a Physician Assistant ("PA"), practicing in rural Kansas for over 14 years, both in family practice and emergency medicine. I rise before you today to ask for your support for passage of Senate Bill No. 193.

Senate Bill No. 193 would permit physician assistants the authority to prescribe controlled medications pursuant to a written protocol authorized by a responsible physician. Since the mid-1980's Kansas law has authorized Physician Assistants to transmit prescription orders pursuant to a written protocol. These protocols allow for written transmittals of non-controlled medications, and verbal transmittal of controlled medications. PA's have a long record of the appropriate use of these medications in the treatment of patients.

The proposed change in language would provide the documentation necessary to create a paper trail of the prescriptive practices and activity which is essential for review by the responsible physician and Board of Pharmacy.

This legislation maintains the supervisory role of the responsible physician, in the delivery of care to the patient. In fact, this legislation would allow for better documentation of the PA's practice and formalizes current practice activity. It also requires the PA to obtain a DEA registration number and written authorization by the responsible physician, before utilizing this prescriptive privilege.

In addition, Senate Bill No. 193 would provide the physician assistant the ability to request, receive, and sign for professional samples in the absence of their responsible physician.

The Kansas Academy of Physician Assistants feels the provisions of Senate Bill No. 193 will improve the care provided to the patients of Kansas and is appropriate for these mid-level providers, given the fact that these medications are within the dependent practice of medicine by PA's.

Senate Public Health & Welfare  
Date: 2-16-99  
Attachment No. 1

K The Academy would ask that your committee consider amending Senate Bill No. 193 by removing the " s' " used throughout chapter 65 Section 28 (the PA Act) and where ever else it appears in statute (when appropriate). When the act was created the wording "Physicians' Assistant" was used to identify that PA's were not physicians. In the past 25 years, since the act was established, the role of a PA is clearly understood in the medical field and we are nationally referred to as a "Physician Assistant".

We would ask that you report Senate Bill No. 193 favorable for passage as amended. Thank you again for this opportunity to appear before you. I stand ready to answer any questions you may have.


# Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director  
1260 SW Topeka Blvd  
Topeka, KS 66614

(785) 234-5563  
(785) 234-5564 fax  
e-mail: kansasdo@aol.com

February 16, 1999

To: Chairman Praeger and Members, Senate Public Health Committee

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

Subject: Suggested Amendment to SB 193

Thank you for this opportunity to suggest an amendment to SB193.

Some of the physicians I represent are have reservations about the changes made in SB 193. Some are comfortable with this expansion of Physician Assistant prescribing authority; some are not.

Any expansion of PA practice prerogatives calls to question the overall view of how mid-level practitioners fit into the scheme of health care delivery in Kansas. While mid-levels provide valuable health care and many of the physicians I represent welcome them into their practice; there are long range development questions. Two, we suggest, are the impact this has on full service physicians locating in rural Kansas, and, the question of how far we are prepared to proceed toward making mid-level practitioners independent practitioners of medicine. We hope these questions will be periodically addressed within the legislative process.

We appear to day, however, to address one part of SB 193, in Section 2 (c), on Page 6 of the Bill—the part permitting PA's to accept and "distribute" drug samples from pharmaceutical salespersons.

We are concerned with the lack of accountability to the responsible physicians, in the absence of any required reporting by the PA to the physician. Perhaps this would be included in the protocol arrangements between the two: perhaps not. The amendment we suggest would require that it be addressed in each protocol document and agreement.

I will be pleased to respond to questions.

Senate Public Health & Welfare  
Date: 2-16-99  
Attachment No. 2

*2-2*

**Amendment requested by the Kansas  
Association of Osteopathic Medicine**

1 vision of a physician, acts which constitute the practice of medicine and  
2 surgery to the extent and in the manner authorized by the physician re-  
3 sponsible for the physician's assistant and only to the extent such acts are  
4 consistent with rules and regulations adopted by the board which relate  
5 to acts performed by a physician's assistant under the responsible physi-  
6 cian's direction and supervision. A physician's assistant may ~~not~~ prescribe  
7 drugs ~~but may transmit a prescription order for drugs~~ pursuant to a writ-  
8 ten protocol as authorized by the responsible physician. Before a physi-  
9 cian's assistant shall perform under the direction and supervision of a  
10 physician, such physician's assistant shall be identified to the patient and  
11 others involved in providing the patient services as a physician's assistant  
12 to the responsible physician. A physician's assistant may not perform any  
13 act or procedure performed in the practice of optometry except as pro-  
14 vided in K.S.A. 65-1508 and 65-2887 and amendments thereto.

15 (b) The board shall adopt rules and regulations governing the ~~trans-~~  
16 ~~mitting of prescription orders for prescribing of~~ drugs by physicians' as-  
17 sistants and the responsibilities of the responsible physician with respect  
18 thereto. Such rules and regulations shall establish such conditions and  
19 limitations as the board determines to be necessary to protect the public  
20 health and safety. In developing rules and regulations relating to the ~~trans-~~  
21 ~~mitting of prescription orders for prescribing of~~ drugs by physicians' as-  
22 sistants, the board shall take into consideration the amount of training  
23 and capabilities of physicians' assistants, the different practice settings in  
24 which physicians' assistants and responsible physicians practice, the de-  
25 gree of direction and supervision to be provided by a responsible physi-  
26 cian and the needs of the geographic area of the state in which the phy-  
27 sician's assistant and the responsible physician practice. In all cases in  
28 which a physician's assistant is authorized to ~~transmit prescription orders~~  
29 ~~for prescribe~~ drugs by a responsible physician, a written protocol between  
30 the responsible physician and the physician's assistant containing the es-  
31 sential terms of such authorization shall be in effect. In no case shall the  
32 scope of the authority of the physician's assistant to ~~transmit prescription~~  
33 ~~orders for prescribe~~ drugs exceed the normal and customary practice of  
34 the responsible physician in the prescribing of drugs.

35 (c) *The physician's assistant may not dispense drugs, but may request,*  
36 *receive and sign for professional samples and may distribute professional*  
37 *samples to patients. In order to prescribe controlled substances, the phy-*  
38 *sician's assistant shall register with the federal drug enforcement*  
39 *administration.*

40 (d) *As used in this section, "drug" means those articles and substances*  
41 *defined as drugs in K.S.A. 65-1626 and 65-4101 and amendments thereto.*

42 Sec. 3. K.S.A. 1998 Supp. 65-4101 is hereby amended to read as  
43 follows: 65-4101. As used in this act: (a) "Administer" means the direct

pursuant to a written protocol as  
authorized by the responsible physician.



# KANSAS BOARD OF HEALING ARTS

**BILL GRAVES**  
Governor



235 S. Topeka Blvd.  
Topeka, KS 66603-3068  
(785) 296-7413  
FAX # (785) 296-0852  
(785) 368-7102

## MEMORANDUM

TO: Senate Committee on Public Health and Welfare

FROM: Lawrence T. Buening, Jr. *LTB*  
Executive Director

DATE: February 16, 1999

RE: **Senate Bill No. 193**

Senator Praeger and members of the Committee, thank you for the opportunity to appear before you on behalf of the Kansas State Board of Healing Arts in support of Senate Bill No. 193. Senate Bill No. 193 was requested for introduction by the Kansas Academy of Physician Assistants. However, the language for the bill was developed after several meetings among Pat Johnson, Executive Administrator of the Kansas State Board of Nursing, Larry Froelich, Executive Director of the Kansas State Board of Pharmacy and myself.

In 1987, the Legislature amended K.S.A. 65-2896e to provide that physicians' assistants could not prescribe drugs but could transmit a prescription order for drugs pursuant to a written protocol as authorized by the responsible physician for the PA. The Board was also directed to adopt rules and regulations governing the transmitting of prescription orders by physicians' assistants and the responsibilities of the responsible physician. After numerous meetings with the Pharmacy Board and representatives of the physician's assistant profession, rules and regulations were adopted effective May 1, 1988.

While the current language of K.S.A. 65-2896e does not preclude physicians' assistants from transmitting a written prescription order for a controlled substance, the language of the statutes in the pharmacy law and the controlled substance law do not permit a pharmacist to accept and fill such a written transmission. The result is that, under the rules and regulations adopted by the Board, physicians' assistants may only orally transmit a prescription order for a controlled substance. In 1997, the Board considered amending K.A.R. 100-60-13 to permit physicians' assistants to transmit

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD  
RONALD J. ZOELLER, D.C., PRESIDENT  
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DONALD B. BLETZ, M.D., VICE-PRESIDENT  
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JOHN P. GRAVINO, D.O., LAWRENCE  
JANA D. JONES, M.D., LANSING  
LANCE MALMSTROM, D.C., TOPEKA

LAUREL H. RICKARD, MEDICINE LODGE  
CHRISTOPHER P. RODGERS, M.D., HUTCHINSON  
HAROLD J. SAUDER, D.P.M., INDEPENDENCE  
EMILY TAYLOR, LAWRENCE

Senate Public Health & Welfare  
Date: 2-16-99  
Attachment No. 3

a prescription for a controlled substance in writing. The Joint Committee on Administrative Rules and Regulations suggested that the Board delay amending the regulation until such time as the Legislature has addressed the issue of writing and transmitting drug prescriptions for physicians' assistants(See Exhibit 1).

In early 1998, the Board sought the opinion of the Drug Enforcement Administration on this issue. On June 8, 1998, an opinion was rendered by the DEA stating that the DEA would not issue registrations to physician's assistants in Kansas(See Exhibit 2). Even though the DEA amended its regulations in 1993 to establish a category of "mid-level practitioner", physicians' assistants in Kansas cannot receive a DEA registration because it is not consistent with the authority granted physicians' assistants under state law.

The Board believes that it is in the public interest and constitutes a protection to the public health, safety and welfare to enact the provisions of S.B. No. 193 and enable physicians' assistants to prescribe and not just transmit a prescription order. To do so reduces that chances of errors that are more likely to occur in the oral transmission of prescription orders. What the physicians' assistants will be allowed to prescribe will continue to be limited by what is authorized by the responsible physician.

The Board is aware that both the Kansas Medical Society and the Kansas Association of Osteopathic Medicine may be offering amendments to this bill. The Board has reviewed these proposed amendments and believes both are appropriate and will enhance the purposes of the bill.

Thank you for the opportunity to appear before you in support of S.B. No. 193. I would be happy to respond to any questions you might have.

BEN F. BARRETT  
DIRECTOR  
WILLIAM G. WOLFF  
ASSOCIATE DIRECTOR  
ALAN D. CONROY  
CHIEF FISCAL ANALYST



STAFF  
LEGISLATIVE COORDINATING COUNCIL  
INTERIM COMMITTEES  
STANDING COMMITTEES  
LEGISLATIVE INQUIRIES

THE LEGISLATIVE RESEARCH DEPARTMENT

300 W. TENTH—ROOM 545-N  
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TOPEKA, KANSAS 66612-1504

May 1, 1997

**RECEIVED**

MAY 02 1997

**KANSAS STATE BOARD OF  
HEALING ARTS**

Larry Buening, Executive Director  
Board of Healing Arts  
235 S. Topeka Blvd.  
BUILDING MAIL

Dear Mr. Buening:

At its meeting on April 29, 1997, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general licensure qualifications, renewals, podiatry licenses, and physician assistants—prescription-only drugs. After discussion, the Committee expressed the following comment:

- ▶ K.A.R. 100-6-2. The Committee requests additional information and explanation regarding the change in educational requirements for a person entering a chiropractic college. What is the purpose for raising the educational standard and what impact will the change have on admissions to chiropractic colleges?
- ▶ K.A.R. 100-60-13. The Committee suggests that the Board delay adoption of this regulation until such time as the Legislature has addressed the issue of writing and transmitting drug prescriptions for physicians assistants and advanced registered nurse practitioners. If, or when, the Board adopts this regulation, the Committee suggests that the word "telephonic" in subsections (c) and (d) be changed to "electronic."

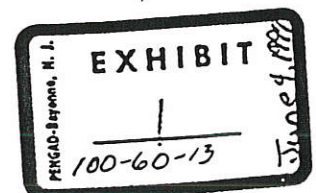
Please make this comment a part of the public record on these regulations. The Committee will review the regulations which the agency ultimately adopts and reserves any expression of legislative concern to that review. To assist in that final review, please inform the Joint Committee in writing, at the time the rules and regulations are adopted and filed with the Secretary of State of any and all changes which have been made following the public hearing.

Sincerely,

*William G. Wolff*  
William G. Wolff  
Associate Director

WGW/aem

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U.S. Department of Justice  
Drug Enforcement Administration

Washington, D.C. 20537

June 8, 1998

Mark W. Stafford  
General Counsel  
Kansas Board of Healing Arts  
235 South Topeka Boulevard  
Topeka, Kansas 66603-3068

Dear Mr. Stafford:

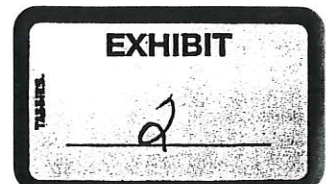
Thank you for your letter asking "whether physician assistants registered with the Kansas Board of Healing Arts may obtain a DEA registration as mid-level practitioners." On behalf of the Drug Enforcement Administration (DEA), I apologize for the delay in responding to your inquiry.

As explained in detail below, DEA is without authority under the Federal Controlled Substances Act (CSA) to issue a DEA registration to a physician assistant (PA) in Kansas because Kansas law does not permit PAs to independently prescribe, administer or dispense controlled substances.

A. DEA Registration of Practitioners Under the CSA

1. Persons who must obtain DEA registration

Pursuant to the CSA, every person who dispenses<sup>1</sup> any controlled substance must obtain a DEA registration in accordance with DEA regulations. 21 U.S.C. § 822(a)(2). In addition, persons registered with DEA to dispense controlled substances may do so only to the extent expressly authorized by their DEA registration. 21 U.S.C. § 822(b).



<sup>1</sup>Under the CSA, the definition of "dispense" includes "prescribing" and "administering." 21 U.S.C. § 802(10).

Mark W. Stafford  
June 8, 1998

Page Two

## 2. DEA Registration of Practitioners

In accordance with 21 U.S.C. § 823(f), DEA must register a practitioner who applies for a DEA registration -- to the extent of the practitioner's state authorization to handle controlled substances -- unless the Deputy Administrator of DEA determines that the particular applicant's proposed registration would be inconsistent with the public interest. "Practitioner," in this context, means a person authorized by the state in which s/he practices to dispense controlled substances in the course of professional practice. *Id.*; 21 U.S.C. § 802(21).

In order to accommodate the changing practices of many states, whereby certain PAs and advance practice nurses have become authorized, to varying degrees, to dispense controlled substances, DEA amended its regulations in 1993 to establish a new category of registration, the "mid-level practitioner" (MLP). See 58 Fed. Reg. 31,171 (1993); 21 C.F.R. § 1300.01(28). The MLP is defined in the DEA regulations as an individual practitioner, *other than a physician, dentist, veterinarian, or podiatrist*, who is licensed by the jurisdiction in which s/he practices to dispense controlled substances in the course of professional practice. *Id.* Such MLPs may receive DEA registrations granting controlled substance privileges consistent with the authority granted them under state law. *Id.*

Kansas PAs, however, do not fit within the foregoing definition of MLPs because, as explained below, Kansas law does not authorize them to independently prescribe, administer or dispense controlled substances. Accordingly, DEA is without statutory authority to issue DEA registrations to Kansas PAs.

### B. Authority of PAs To Handle Controlled Substances Under Kansas Law

As your letter indicates, under Kansas law, a PA "may not prescribe drugs but may transmit a prescription order for drugs pursuant to a written protocol as authorized by the responsible physician." K.S.A. § 65-2896e (Westlaw 1998). Likewise, as your letter also points out, the Kansas Administrative Regulation that implements § 65-2896e provides that a PA "may, by oral or telephonic communication only, transmit a prescription order for a controlled substance listed in schedule III, IV or V ...."

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~~36~~

Mark W. Stafford  
June 8, 1998

Page Three

The foregoing aspect of Kansas law, whereby a PA may communicate, by telephone, an oral prescription for a controlled substance, as authorized by the supervising physician, is consistent with the DEA regulations. As provided in 21 C.F.R. § 1306.03(b): "A prescription issued by an individual practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner." As always, the pharmacist has an obligation to make a reasonable effort to determine that the oral authorization came from a registered supervising physician and was issued for a legitimate medical purpose. See 21 C.F.R. §§ 1306.04(a); 1306.05(a); 1306.11(d)(3); 1306.21(a). Likewise the prescribing supervising physician is responsible for ensuring that the oral prescription communicated by his/her assistant conforms in all essential respects to the law and regulations, including the requirement that the prescription be for a legitimate medical purpose. *Id.*

DEA agrees with the analysis contained in a 1989 Opinion of the of the Attorney General of Kansas, which you co-authored (Kan. Op. Atty. Gen. No. 89-116). In that opinion, the Attorney General stated that although the term "transmit" is not defined in the Kansas Pharmacy Act, the term refers to the "conveyance" of a prescription order -- not the "origination" of such order. The opinion further stated that PAs "may not originate a prescription order, as they are not practitioners within the meaning of the pharmacy act." This 1989 opinion remains an accurate interpretation of Kansas law, according to a separate opinion issued by the Kansas Attorney General in 1994. See Kan. Op. Atty. Gen. No. 94-142.

In sum, under Kansas law, a PA may relay a physician's order to issue a particular controlled substance prescription for a patient, but the PA is without authority under Kansas law to authorize, independently, the issuance of a controlled substance prescription under any circumstances. Accordingly, a Kansas PA does not meet the definition of "practitioner" under the CSA or "MLP" under the DEA regulations. DEA is, therefore, without statutory authority to issue a DEA registration to a PA in Kansas.

Mark W. Stafford  
June 8, 1998

Page Four

If I may be of further assistance to you with this matter,  
please do not hesitate to contact me.

Sincerely yours,

*Daniel Dormont*

Daniel Dormont  
Senior Attorney  
Office of Chief Counsel

cc: James A. Pacella, Acting Chief  
Registration and Program Support Section  
Office of Diversion Control

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# KANSAS MEDICAL SOCIETY

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February 16, 1999

**TO:** Senate Public Health and Welfare committee

**FROM:** Jerry Slaughter  
Executive Director 

**SUBJ:** SB 193: Physician Assistants

The Kansas Medical Society appreciates the opportunity to testify on SB 193, which allows physician assistants (PAs) to write prescriptions for controlled substances and receive drug samples. KMS is not opposed to the general concepts contained in the bill but would like to offer some amendments.

PAs are prohibited from prescribing drugs independently, but they may do so pursuant to a written protocol as authorized by a PA's responsible physician. By signing a PA's protocol, physicians accept legal responsibility for the PA's prescriptions and are required to adequately supervise the prescribing activities of the PA or face disciplinary measures by the board of healing arts. KMS believes that it is absolutely critical that this relationship be preserved to ensure that patients are given the best care possible.

Current law allows PAs to transmit controlled substance orders over the telephone or by fax, but does not permit them to reduce these prescriptions to writing. KMS believed that this limitation protected the public by creating accountability, understanding that when a PA phoned or faxed in a prescription, the pharmacist notified the PA's responsible physician and therefore fostered the supervisory relationship between the physician and PA. After discussing this with the Board of Pharmacy over the past year, however, we understand that this rarely happens in practice. Allowing PAs to prescribe controlled substances in writing could improve accountability by creating a "paper trail" of prescription orders.

We would like to offer some amendments, for clarification and to ensure that the prescription order contains information about a PA's responsible physician. The first amendment is to Section 2 of the bill on page 6. This amendment would require that any written prescription order include the name, address and phone number of the PA's responsible physician. We also propose amendments to the definitions of "mid-level practitioner" in Section 1 on page 5, amending the pharmacy act, and Section 3 on page 10, the controlled substances act, for clarification. We have also seen a copy of the amendment prepared by the Kansas Association of Osteopathic Medicine and support their proposed language.

Thank you very much for considering our comments and amendments. I would be happy to respond to questions.



4-2  
13

- 1 (ee) "Professional incompetency" means:
- 2 (1) One or more instances involving failure to adhere to the appli-
- 3 cable standard of pharmaceutical care to a degree which constitutes gross
- 4 negligence, as determined by the board;
- 5 (2) repeated instances involving failure to adhere to the applicable
- 6 standard of pharmaceutical care to a degree which constitutes ordinary
- 7 negligence, as determined by the board; or
- 8 (3) a pattern of pharmacy practice or other behavior which demon-
- 9 strates a manifest incapacity or incompetence to practice pharmacy.
- 10 (ff) "Retail dealer" means a person selling at retail nonprescription
- 11 drugs which are prepackaged, fully prepared by the manufacturer or dis-
- 12 tributor for use by the consumer and labeled in accordance with the
- 13 requirements of the state and federal food, drug and cosmetic acts. Such
- 14 nonprescription drugs shall not include: (1) A controlled substance; (2) a
- 15 drug the label of which is required to bear substantially the statement
- 16 "Caution: Federal law prohibits dispensing without prescription"; or (3)
- 17 a drug intended for human use by hypodermic injection.
- 18 (gg) "Secretary" means the executive secretary of the board.
- 19 (hh) "Unprofessional conduct" means:
- 20 (1) Fraud in securing a registration or permit;
- 21 (2) intentional adulteration or mislabeling of any drug, medicine,
- 22 chemical or poison;
- 23 (3) causing any drug, medicine, chemical or poison to be adulterated
- 24 or mislabeled, knowing the same to be adulterated or mislabeled;
- 25 (4) intentionally falsifying or altering records or prescriptions;
- 26 (5) unlawful possession of drugs and unlawful diversion of drugs to
- 27 others;
- 28 (6) willful betrayal of confidential information under K.S.A. 65-1654
- 29 and amendments thereto;
- 30 (7) conduct likely to deceive, defraud or harm the public;
- 31 (8) making a false or misleading statement regarding the licensee's
- 32 professional practice or the efficacy or value of a drug;
- 33 (9) commission of any act of sexual abuse, misconduct or exploitation
- 34 related to the licensee's professional practice; or
- 35 (10) performing unnecessary tests, examinations or services which
- 36 have no legitimate pharmaceutical purpose.
- 37 (ii) ~~"Mid-level practitioner" means a practitioner other than those~~
- 38 ~~defined in K.S.A. 65-1626 and 65-4101 and amendments thereto who has~~
- 39 ~~authority to prescribe drugs under K.S.A. 65-2896e and amendments~~
- 40 ~~thereto.~~

physician assistant registered pursuant to K.S.A. 65-2896a  
 and amendments thereto,  
 pursuant to a written protocol

41 Sec. 2. K.S.A. 65-2896e is hereby amended to read as follows: 65-  
 42 2896e. (a) A person whose name has been entered on the register of  
 43 physicians' assistants may perform, only under the direction and super-

1 vision of a physician, acts which constitute the practice of medicine and  
 2 surgery to the extent and in the manner authorized by the physician re-  
 3 sponsible for the physician's assistant and only to the extent such acts are  
 4 consistent with rules and regulations adopted by the board which relate  
 5 to acts performed by a physician's assistant under the responsible physi-  
 6 cian's direction and supervision. A physician's assistant may ~~not~~ prescribe  
 7 drugs ~~but may transmit a prescription order for drugs~~ pursuant to a writ-  
 8 ten protocol as authorized by the responsible physician. Before a physi-  
 9 cian's assistant shall perform under the direction and supervision of a  
 10 physician, such physician's assistant shall be identified to the patient and  
 11 others involved in providing the patient services as a physician's assistant  
 12 to the responsible physician. A physician's assistant may not perform any  
 13 act or procedure performed in the practice of optometry except as pro-  
 14 vided in K.S.A. 65-1508 and 65-2887 and amendments thereto.

15 (b) The board shall adopt rules and regulations governing the ~~trans-~~  
 16 ~~mitting of prescription orders for prescribing of~~ drugs by physicians' as-  
 17 sistants and the responsibilities of the responsible physician with respect  
 18 thereto. Such rules and regulations shall establish such conditions and  
 19 limitations as the board determines to be necessary to protect the public  
 20 health and safety. In developing rules and regulations relating to the ~~trans-~~  
 21 ~~mitting of prescription orders for prescribing of~~ drugs by physicians' as-  
 22 sistants, the board shall take into consideration the amount of training  
 23 and capabilities of physicians' assistants, the different practice settings in  
 24 which physicians' assistants and responsible physicians practice, the de-  
 25 gree of direction and supervision to be provided by a responsible physi-  
 26 cian and the needs of the geographic area of the state in which the phy-  
 27 sician's assistant and the responsible physician practice. In all cases in  
 28 which a physician's assistant is authorized to ~~transmit prescription orders~~  
 29 ~~for prescribe~~ drugs by a responsible physician, a written protocol between  
 30 the responsible physician and the physician's assistant containing the es-  
 31 sential terms of such authorization shall be in effect. In no case shall the  
 32 scope of the authority of the physician's assistant to ~~transmit prescription~~  
 33 ~~orders for prescribe~~ drugs exceed the normal and customary practice of  
 34 the responsible physician in the prescribing of drugs.

35 (c) *The physician's assistant may not dispense drugs, but may request,*  
 36 *receive and sign for professional samples and may distribute professional*  
 37 *samples to patients. In order to prescribe controlled substances, the phy-*  
 38 *sician's assistant shall register with the federal drug enforcement*  
 39 *administration.*

40 (d) *As used in this section, "drug" means those articles and substances*  
 41 *defined as drugs in K.S.A. 65-1626 and 65-4101 and amendments thereto.*

42 Sec. 3. K.S.A. 1998 Supp. 65-4101 is hereby amended to read as  
 43 follows: 65-4101. As used in this act: (a) "Administer" means the direct

Any written prescription order shall include the name,  
 address and telephone number of the responsible  
 physician.

4-4

1 or hallucinogenic effect on the central nervous system of a controlled  
2 substance included in the schedules designated in K.S.A. 65-4105 or 65-  
3 4107 and amendments thereto; or

4 (B) with respect to a particular individual, which the individual rep-  
5 resents or intends to have a stimulant, depressant or hallucinogenic effect  
6 on the central nervous system substantially similar to the stimulant, de-  
7 pressant or hallucinogenic effect on the central nervous system of a con-  
8 trolled substance included in the schedules designated in K.S.A. 65-4105  
9 or 65-4107 and amendments thereto.

10 (2) "Controlled substance analog" does not include:

11 (A) A controlled substance;

12 (B) a substance for which there is an approved new drug application;

13 (C) a substance with respect to which an exemption is in effect for  
14 investigational use by a particular person under section 505 of the federal  
15 food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with  
16 respect to the substance is permitted by the exemption; or

17 (D) any substance to the extent not intended for human consumption  
18 before an exemption takes effect with respect to the substance.

19 (cc) "Mid-level practitioner" means ~~a practitioner other than those~~  
20 ~~defined in K.S.A. 65-1626 and 65-4101 and amendments thereto, who has~~  
21 ~~authority to prescribe drugs under K.S.A. 65-2896e and amendments~~  
22 ~~thereto.~~

physician assistant registered pursuant to K.S.A. 65-2896a  
and amendments thereto,

pursuant to a written protocol

23 Sec. 4. K.S.A. 65-2896e and K.S.A. 1998 Supp. 65-1626 and 65-4101  
24 are hereby repealed.

25 Sec. 5. This act shall take effect and be in force from and after its  
26 publication in the statute book.

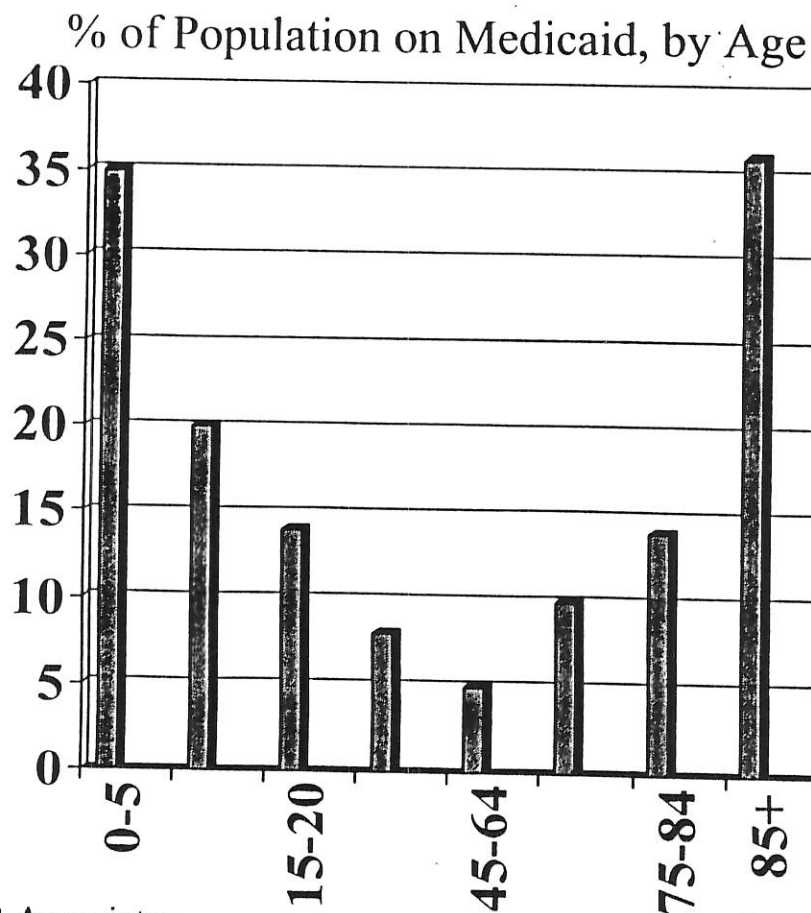
# Medicaid and Long Term Care

- Medicaid is the long term care safety net
- LTC consumes 1/3 of Medicaid spending
- Medicaid is the primary payer for Nursing Home Care--70%
- Home and Community Based Services are covered by Medicaid under “waivers”

# Medicaid Covers Over 1/3 of the Very Young and the Very Old

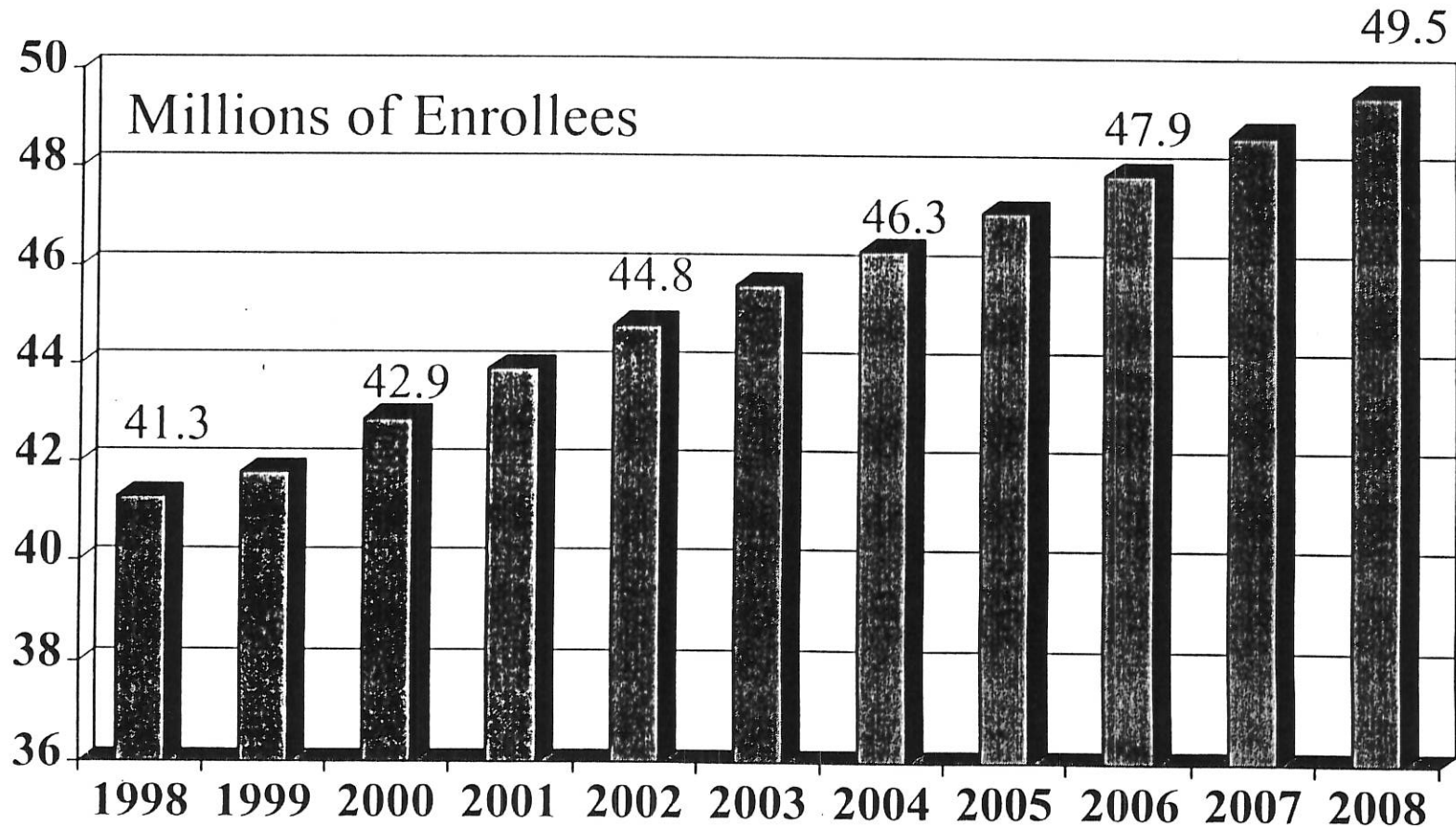
Recipients as % of U.S. Population, by Age

- 0 - 5 35%
- 6 - 14 20%
- 15- 20 14%
- 21 - 44 8%
- 45 - 64 5%
- 65 - 74 10%
- 75 - 84 14%
- 85 & over 36%



Health Management Associates

# U.S. Medicaid Enrollment Projection 1998 to 2008



Health Management Associates

9

Source: Congressional Budget Office, "Economic and Budget Outlook, Fiscal Years 2000-2009," 1/99.

# Medicaid Payments vs. Recipients -1999

Most Recipients are children and families.

– Recipients:

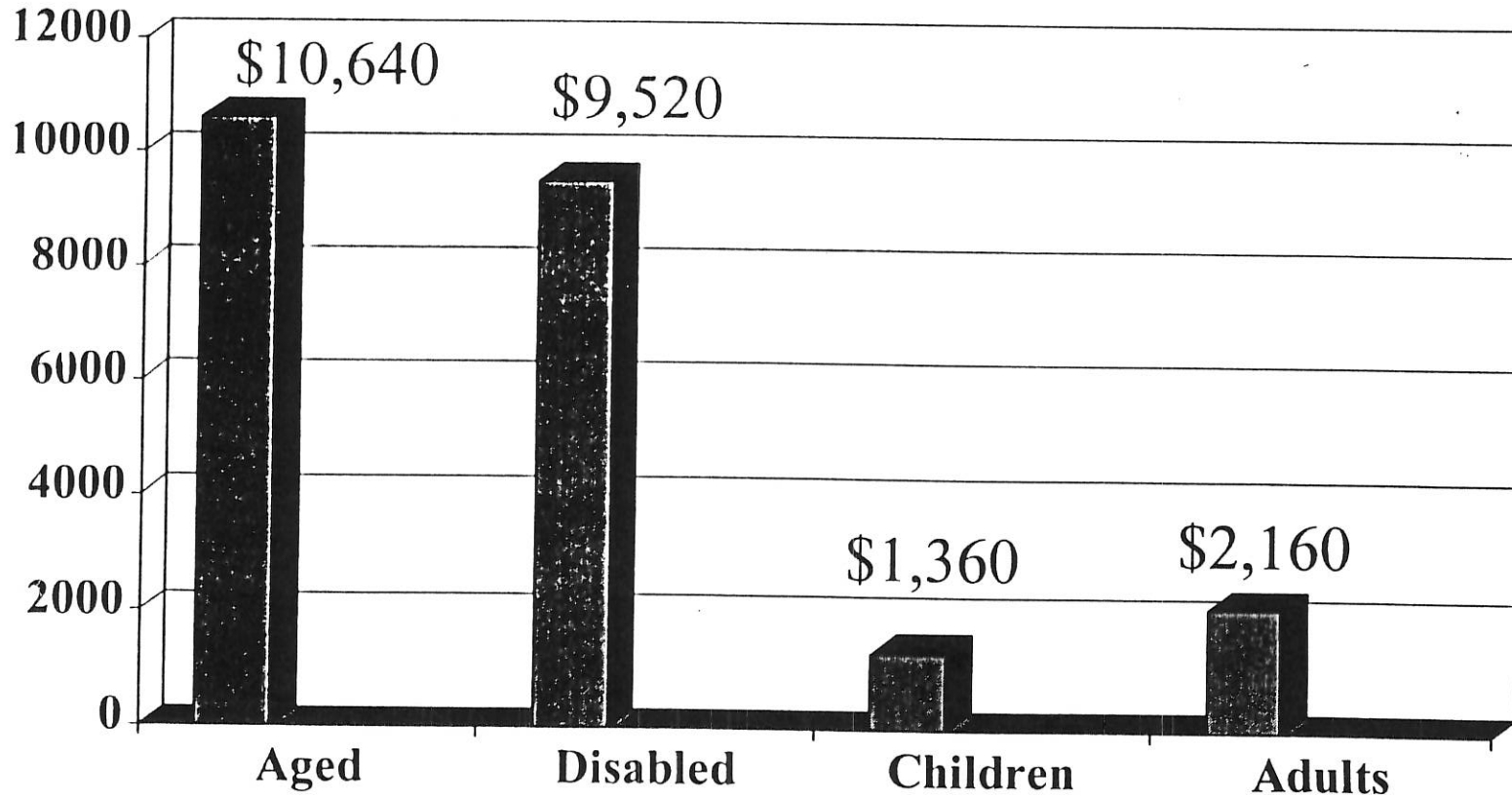
- Disabled 18%
- Elderly 12%
- Children and Families 70%

Most payments are for the disabled and elderly.

– Benefit Payments:

- Disabled 41%
- Elderly 30%
- Children and Families 29%

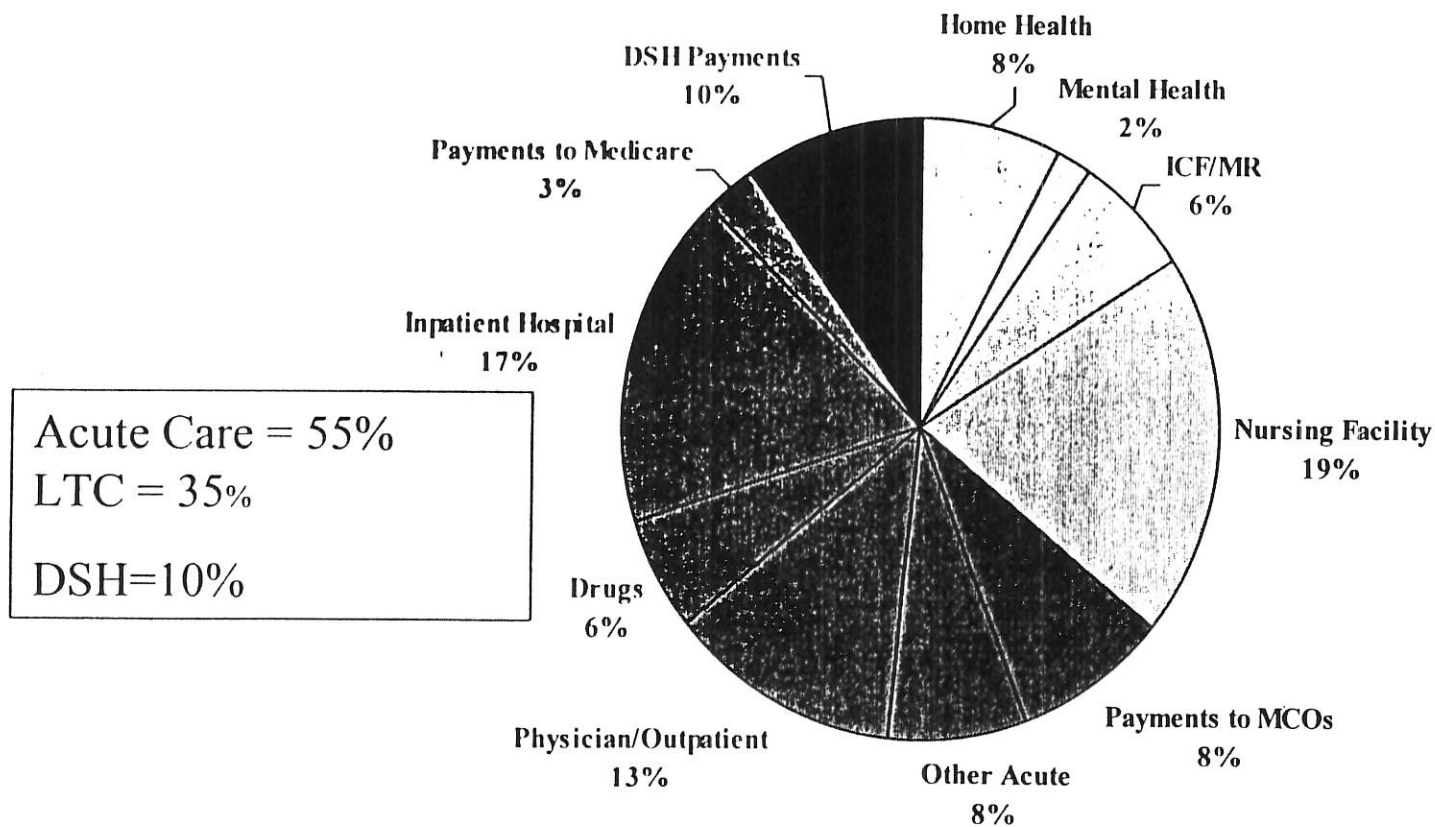
# Estimated Medicaid Expenditures per Enrollee -- 1999



Source: Computed from Congressional Budget Office January 1999 Baseline, 2/1/99.

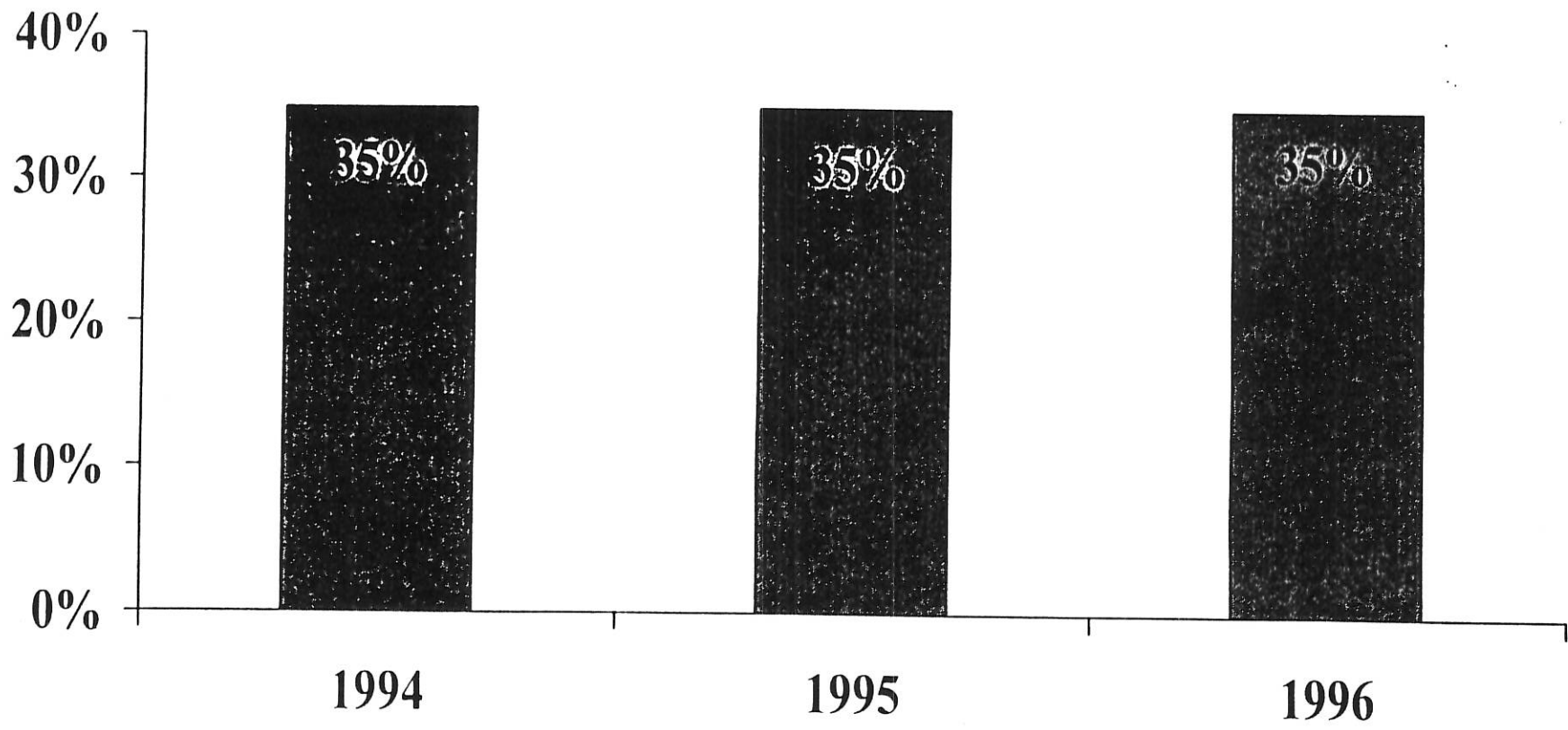


# Medicaid Expenditures by Type of Service, 1996



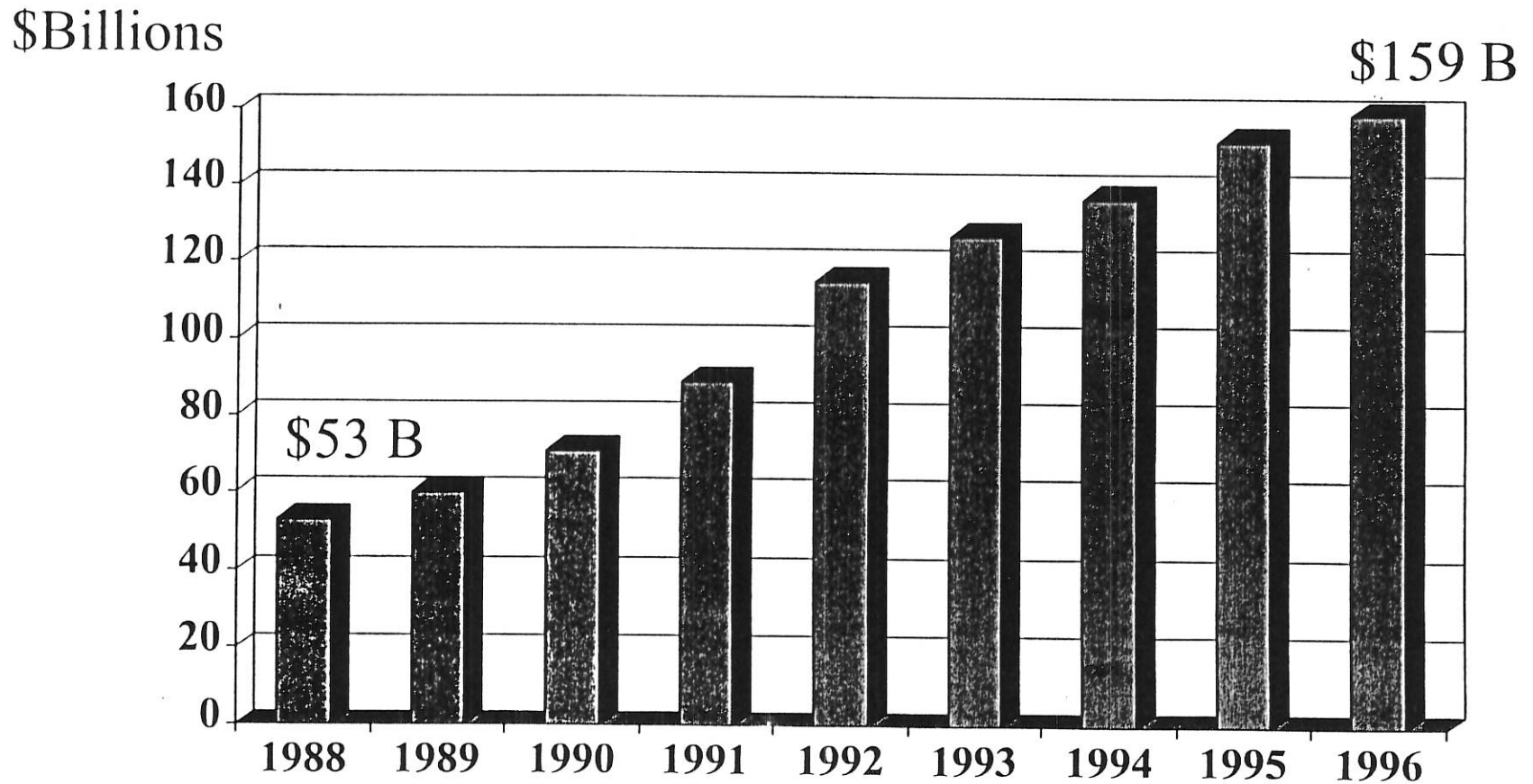
Source: Urban Institute Estimates, 1998

## Long Term Care as Percentage of Total Medicaid Expenditures

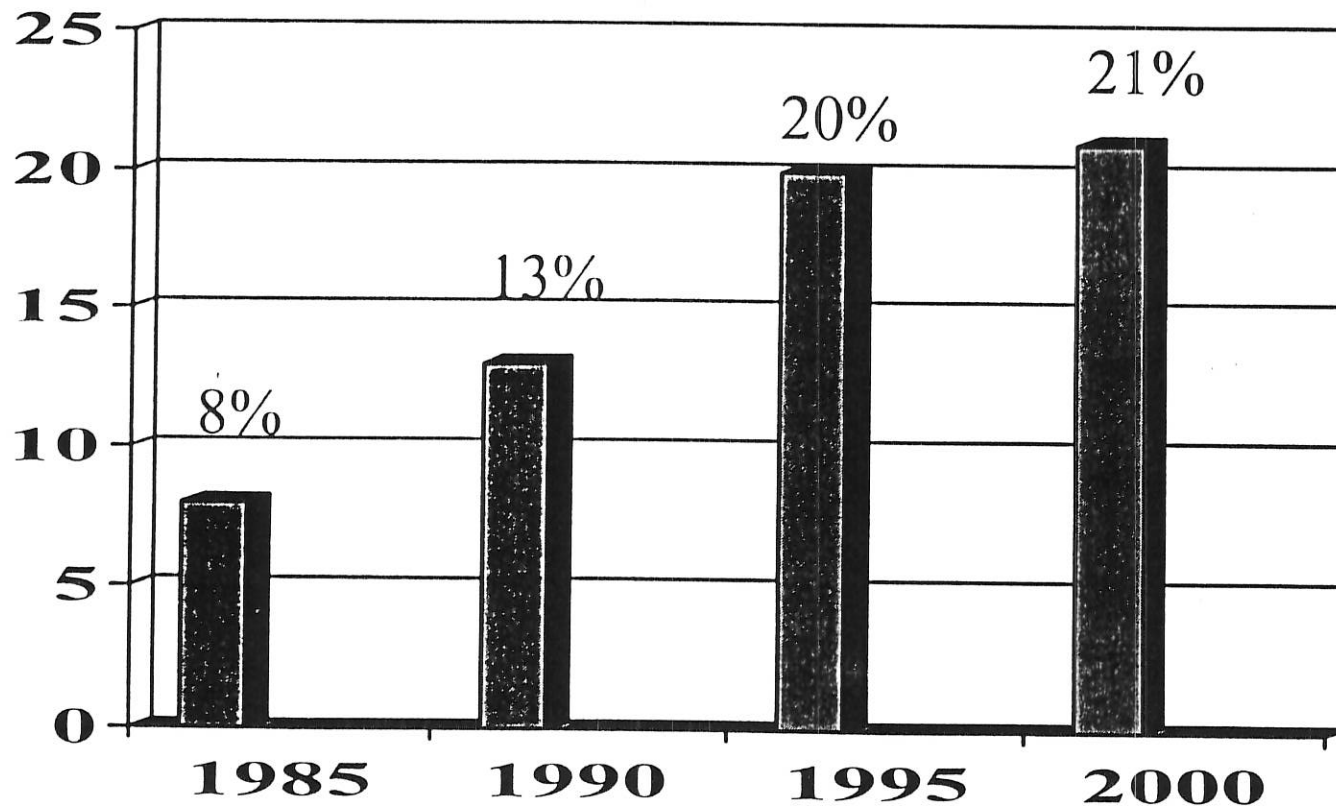


Source: HCFA - 64 Reports

# Medicaid Total Costs Tripled in 8 Years: 1988 to 1996

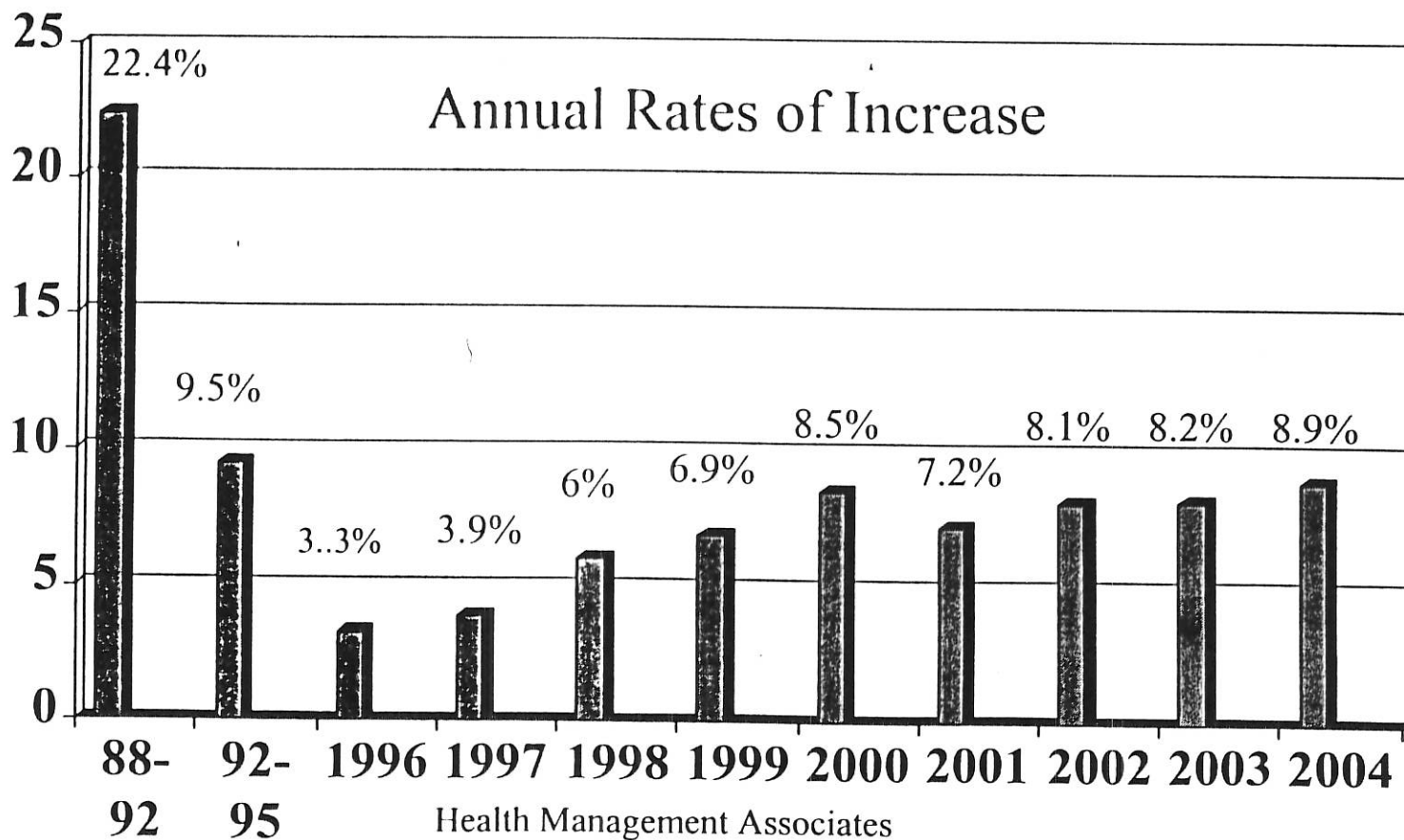


# Medicaid as a Share of State Expenditures -- 1985 to 2000



Source: 1985-1995, National Association of State Budget Officers, State Expenditure Reports; 2000 estimated by Health Management Associates

# Overall Medicaid Cost Growth is Projected to Increase Above Recent Record Low Levels



Health Management Associates  
Source: CBO, "Economic and Budget Outlook: Fiscal Years 1999-2008," 1/99.

# Long Term Care Insurance

*“We must invest in long-term care. I propose a tax credit of \$1,000 for the aged, ailing or disabled and the families who care for them.”*

*--Bill Clinton, State of the Union Address. 1/19/99*

Non-subsidized LTC insurance to be offered to federal employees, retirees and families at group rates.

Insurance industry seeks to create market for LTC insurance, emphasizing risk of cost:

Expected lifetime long term care cost for males is \$56,895 and for females is \$124,370.

Partnership for Long Term Care encourages insurance.



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Acting Secretary

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Testimony Presented to

The Committee on Public Health and Welfare

February 16, 1999

by

Patricia Maben

Senate Bill No. 232

Thank you for the opportunity to testify in support of the appointment of a task force to study long-term care services in Kansas.

A study which was conducted last year looked at statutes and regulations of adult care homes. However, as noted by several members of the task force, consumers of long term care services were not involved in the task force proceedings. It is very important that individuals who are receiving services or will receive services in the future have the opportunity to influence the statutes and regulations which will affect their lives.

The department welcomes the opportunity to work with the public and legislators in reviewing and assessing current statutes and regulations with the intent of improving the long-term care system.

If there are any questions or concerns, I would be happy to stand for questions.

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DIVISION OF HEALTH  
Bureau of Health Facility Regulation

Landon State Office Building  
900 SW Jackson, Suite 1001  
(785) 296-1240

Printed on Recycled Paper

Senate, Public Health & Welfare  
Date: 2-16-99  
Attachment No. 6



**Gina McDonald**  
**Executive Director**

**Member Agencies:**

**ILC of  
Southcentral Kansas**  
Wichita, KS  
316/942-6300 Voice/TT

**Independence, Inc.**  
Lawrence, KS  
913/841-0333 Voice  
913/841-1046 TT

**Independent Connection**  
Salina, KS  
913/827-9383 Voice/TT

**LINK, Inc.**  
Hays, KS  
913/625-6942 Voice/TT

**The WHOLE PERSON, Inc.**  
Kansas City, MO  
816/561-0304 Voice  
816/531-7749 TT

**Topeka Independent  
Living Resource Center**  
Topeka, KS  
913/233-4572 V/TT

**Southeast Kansas  
Independent Living, Inc.**  
Parsons, KS  
316/421-5502 Voice  
316/421-6551 TT

**Accessing Southwest  
Kansas (ASK), Inc.**  
Dodge City, KS  
316/225-6070 Voice/TT  
1-800/871-0297

Testimony to  
Committee on Public Health and Welfare  
Senator Praeger, Chair  
2-16-99

My name is Gina McDonald. I am the President of the Kansas Association of Centers for Independent Living (KACIL). KACIL's mission is to ensure the rights of people with disabilities in Kansas. We represent all of the thirteen Centers for Independent Living (CIL's) in the state.

Centers for independent living are an alternative to traditional rehabilitation programs. We assist individuals with all types of disabilities and their families in meeting their needs to be as independent as they choose. CIL's have found over the years that if we assist people in getting what they ask for, they tend to succeed. As the old saying goes, we don't give people fish, we teach them to fish so they can eat for a lifetime. Most people with disabilities do not want to become dependent on a system, they want to work and pay taxes, live in their own home and have access to the same dreams as every other Kansan.

KACIL supports SB 232. We believe the long term care needs of the citizens of Kansas must be addressed. Planning for a future where a larger part of the population are older and / or disabled is critical to do now.

**KACIL does recommend that this Task Force be broadened to include community based services in addition to Facility based care.** Funding trends on a national basis are moving to more community based assistance. More progressive nursing facilities are creating assisted living wings where less control and medical care is provided.

As the "baby boomers" look to their future needs, many of us do not want to have to move from our homes to get the assistance we may need in later years.

Please consider this addition to the focus of the Task Force and we will advocate to include representatives from the physically disabled community to be part of the group.

Thank you for allowing me to provide this written testimony. I can be reached for questions at 785-825-2675.

Gina McDonald