Approved: 3-13-00
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 March 8, 2000 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Norman Furse, Revisor of Statutes
Lisa Montgomery, Revisor of Statutes
Hank Avila, Legislative Research Department
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging
Joseph F. Kroll, Director, Bureau of Health Facilities, KDHE
Bill Henry, representing the Kansas Area Agencies on Aging
Anne Spiess, representing the Alzheimer's Association
Kerrie Ruhlman, Executive Director, Kansas Professional Nursing Home Administrators Assn.
Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities
Linda Lubensky, Kansas Home Care Association
Jolene Grabill, representing the Kansas Advocates for Better Care

Others attending: See attached list

Hearing on HB 2780 - Establishing a task force on long-term care services

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, testified before the Committee in support of **HB 2780** which would establish a task force on long-term care services. Ms. Zehr offered amendments that would delete language relating to the study of the implementation and operation of recent statutory changes relating to adult care home licensure and the ombudsman program that had been studied in depth by a 1998 task force, add language that would examine the relationship between state agencies and long-term care providers, expand the number of provider representatives from three to four, and increase the life of the task force to at least two years in order to ensure adequate time to study complete issues and develop sound recommendations. (Attachment 1) Ms. Zehr also distributed a letter to the Committee from Randy Fitzgerald, Chairman of KAHSA and Chairman of the 1998 Task Force on Long-term Care in support of the bill and the amendments offered by Ms. Zehr. (Attachment 2)

Other conferees who appeared before the Committee in support of **HB 2780** were: Joseph F. Kroll, Director, Bureau of Health Facilities, KDHE, who expressed his support for the bill and the inclusion of the Department of Health and Environment designee as a member of the task force, (Attachment 3); Bill Henry, representing the Kansas Area Agencies on Aging requested that a representative of AAA be included as a member of the task force, (Attachment 4); Anne Spiess, representing the Alzheimer's Association, requested that issues relating to Alzheimer's disease be studied by the task force along with a representative of the Alzheimer's Association be a member of the task force, and that the task force be extended for a longer period of time than one year, (Attachment 5); Kerrie Ruhlman, Executive Director, Kansas Professional Nursing Home Administrators Association, expressed her membership's support for the implementation of the task force, (Attachment 6); Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, expressed her support for the bill and task force that would study developmentally disabled concerns, (Attachment 7); Linda Lubensky, Kansas Home Care Association, expressed her support for an on-going task force to look at issues relating to the escalating number of individuals who quality for and seek long-term care services while monetary and physical resources decline, (Attachment 8); and Jolene Grabill, representing the Kansas Advocates for Better Care, expressed her support for the task force which would include at least three consumers or consumer representatives. (Attachment 9) It was suggested during Committee discussion that the long-term care task force be in existence for more than one year, and that they explore creative and common sense ideas beneficial to the problems relating to long-term care.

There were no opponents to **HB 2780**.

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S, Statehouse, at 10:00 a.m. on March 8, 2000.

Briefing on Expedited Service Delivery

Catherine Walberg, Deputy Secretary, Kansas Department on Aging, briefed the Committee on Expedited Service Delivery and further explanation of issues that arose during hearings on **SB 372**. (Attachment 10) Concern was expressed by a member of the Committee regarding the waiting period for services for the elderly and contradictory information provided by the University of Kansas School of Social Welfare and the Department on Aging. The Chair noted that SRS would be asked to provide the Committee with the process to determine financial eligibility.

Adjournment

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

The next meeting is scheduled for March 9, 2000.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 3-8-00

NAME	REPRESENTING
Anne Spiess	Peterson Public Affairs Group
Jennifer Haller	Alz Assoc - Topeka Chapter
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Debra Zehr	KAHSA
Kevin Barone	Hein/Weir chtd
Kerrie Kuhlman	KS Nursing Home Administrators ASSN
Joe Kroll	KDHE
[illegible]	KABC
Bill Henry	Ks Area Agencies on Aging

KAHSA
KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

Testimony in Support of House Bill 2780

To: Senator Sandy Praeger, Chair, and Members,
Senate Public Health and Welfare Committee
From: Debra Zehr, Vice President
Date: March 8, 2000

Thank you, Madam Chair, and Members of the Committee, for this opportunity to offer support for House Bill 2780. The Kansas Association of Homes and Services for the Aging represents more than 160 not-for-profit long-term health care, housing and community service providers through the state.

The challenges and opportunities associated with our aging population is a growing concern for Kansas citizens and policymakers. A long-term care task force will focus concentrated attention on these issues and improve our likelihood of pursuing policy that ensures accessible, high quality long-term care services with a sustainable financing mix.

We respectfully submit the following recommendations to improve House Bill 2780:

- Delete page 1, lines 27-29. This is a relic from SCR1613, which was introduced in 1997 and passed in 1998, at a time when significant changes were being implemented in adult care home licensure and the ombudsman program. The 1998 Long Term Care Task Force studied these specific topics in depth. The new task force should not be obligated to study these narrowly defined topics in depth unless they deem it appropriate.

- Amend Section 1(a) to include a charge to "examine the effectiveness of partnering activities between state agencies and long term care providers" in order to strengthen this essential principle as articulated in the preamble, page 1 lines 18-19.

- Expand the number of provider representatives from three to four in order to get adequate representation of the provider community.

- Increase the life of the task force to at least two years to ensure adequate time to study complex issues and develop sound recommendations.

Thank you. I would be happy to answer questions.

Senate Public Health and Welfare
Date: 3-8-00
Attachment No. 1

217 SE EIGHTH STREET
TOPEKA, KANSAS 66603-3906

As Amended by House Committee

Session of 2000

HOUSE BILL No. 2780

By Committee on Health and Human Services

2-1

AN ACT establishing a task force on long-term care services to study services provided by the public and private sector to citizens of the state and laws and rules and regulations relating to such services.

WHEREAS, The legislature is vitally interested in the welfare of the citizens of this state who are consumers of long-term care services; and

WHEREAS, Services provided for citizens who are consumers of long-term care by state agencies and private vendors should be provided efficiently, economically and sensitively in a supportive state regulatory environment that partners with long-term care providers to promote continuous quality improvement; and

WHEREAS, Over the past several legislative sessions major statutory changes have been enacted relating to adult care homes and the responsibility for the administration of long-term care programs: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) A task force on long-term care services is hereby established to study ~~the implementation and operation of recent statutory changes relating to adult care homes, the long-term care ombudsman program,~~ state and federal laws and rules and regulations which impact on the services provided by government and the private sector to citizens who are consumers of long-term care services ~~in skilled nursing facilities, assisted living facilities or community-based services,~~ the financing of these services, both public and private, and such other matters relating thereto as the task force deems appropriate.

examine the effectiveness of partnering activities between state agencies and long-term care providers,

(b) The task force shall consist of ~~10~~ 20 members appointed as follows:

(1) ~~Six~~ Seven members appointed by the legislative coordinating council, three of whom shall be consumers of long-term care services ~~which may include representatives of groups interested in improvement of the quality of long-term care, dementia, Alzheimer's disease and long-term care for persons with disabling conditions~~ and ~~three~~ four of whom shall be providers of long-term care services ~~which may include a representative of for profit adult care homes, nonprofit adult care homes, free-standing assisted living~~

~~facilities and adult day care—home health care agencies~~;

(2) two members appointed by the president of the senate and the speaker of the house of representatives, one of whom shall be a member of the senate committee on ways and means and one of whom shall be a member of the house committee on appropriations and both of whom shall be from different political parties;

(3) two members appointed by the president of the senate, one of whom shall be a member of the senate committee on public health and welfare and one of whom shall be a member of the senate committee on financial institutions and insurance;

(4) two members appointed by the minority leader of the senate, one of whom shall be a member of the senate committee on public health and welfare and one of whom shall be a member of the senate committee on financial institutions and insurance;

(5) two members appointed by the speaker of the house of representatives, one of whom shall be a member of the house committee on health and human services and one of whom shall be a member of the house committee on insurance;

(6) two members appointed by the minority leader of the house of representatives, one of whom shall be a member of the house committee on health and human services and one of whom shall be a member of the house committee on insurance. Of the ~~eight~~ ~~six~~ Seven members appointed by the legislative coordinating council, no more than two members shall reside in any one congressional district;

(7) one member shall be the secretary of social and rehabilitation services or the secretary's designee;

(8) one member shall be the secretary of health and environment or the secretary's designee; and

(9) one member shall be the secretary of aging or the secretary's designee.

(c) The legislative coordinating council shall appoint the chairperson and vice-chairperson from among the membership of the task force, the chairperson to be appointed from among the legislator members of the task force. Staffing for the task force shall be available from the legislative research department ~~and~~, the revisor of statutes office **and the division of legislative administrative services** if authorized by the legislative coordinating council.

(d) The members of the task force shall receive reimbursement for attending meetings of the task force as authorized by the legislative coordinating council consistent with the provisions of K.S.A. 46-1209 and amendments thereto.

(e) The task force shall prepare and submit a report and recommendations to the governor and to the legislature on or before January 8,

~~2001~~. 2002

(f) The provisions of this section shall expire on July 1, ~~2001~~. 2002

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

KAHSA
KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

March 8, 2000

Senator Sandy Praeger, Chair, and
Members of the Senate Public Health and Welfare Committee
Statehouse
Topeka, Kansas 66612

Dear Senator Praeger and Members of the Committee:

As Chair of the Legislative Task Force on Long-Term Care Services that was created by SCR 1613 in 1999, I am pleased to see that long-term care continues to be a concern of the Legislature. You clearly understand the demographic imperative and pressing social and economic realities of an aging society. Shifting trends in health care continue to have a significant impact on private and public expenditures in long-term care. As Regional Director of the Good Samaritan Society that owns and operates 21 not-for-profit nursing homes, assisted living and independent living campuses in Kansas, I appreciate your taking the initiative to re-create the Long-Term Care Services Task Force.

Two years ago, the Legislative Task Force on Long-Term Care Services was established with the charge of studying the implementation and operation of recent statutory changes relating to adult care homes, the long-term care ombudsman program, and state and federal laws and rules and regulations relating to long-term care. Our Task Force met six days, heard from 25 conferees, and visited a long-term care facility in Topeka. We developed a variety of recommendations, including support for an ongoing legislative long-term care committee to address the needs of elderly Kansans. (See attached conclusions and recommendations of the 1998 Long-term care Task Force.)

One major issue area that our Task Force identified but did not have jurisdiction or time to address was the financing of long-term care. I strongly support your focus on this issue as a priority in the reconstitution of the group. It is my hope that the new task force examine current as well as possible future financing avenues both for today's older generations and younger ones.

Continued attention to quality of care, training and cost-effective measures in long-term care is appropriate and desirable. The willingness of state agencies and long-term care providers to work in partnership to achieve mutually sought goals is an asset that we can build upon to improve older Kansans' lives far into the future. The 1998 task force heard from numerous conferees about the problems and challenges besetting providers, regulators and consumers under the federally imposed nursing home survey and enforcement process. We recommended that KDHE and providers and consumers work together to achieve the common goal of quality long-term

217 SE EIGHTH STREET
TOPEKA, KANSAS 66603-3906

Senate Public Health & Welfare
Date: 3-8-00
Attachment No. 2

care services. In this light, I strongly support House Bill 2780 language recognizing the importance of a "supportive state regulatory environment that partners with long-term care providers to promote continuous quality improvement." It is my hope that the new task force will encourage and examine such partnering activities.

Thank you for this opportunity to lend support for House Bill 2780.

Sincerely,

Randy Fitzgerald

Randy Fitzgerald
Chairman, Kansas Association of Homes and Services for the Aging
Regional Director, Good Samaritan Society
Chair, 1998 Long Term Care Task Force

TASK FORCE ON LONG-TERM CARE SERVICES

LONG-TERM CARE SERVICES*

CONCLUSIONS AND RECOMMENDATIONS

The Task Force makes several recommendations concerning long-term care services. Recommendations regarding staff retention issues include: additional training funds should be made available for the training of front-line caregivers; a "best practices" clearinghouse should be established under the Department on Aging; consideration be given to adjusting the Medicaid reimbursement rate and methodology; additional testing sites for Certified Nurse Aides (CNAs) examinations should be provided; and increased flexibility be allowed in the qualifications for CNAs. With regard to the nursing facility survey and enforcement process, the Task Force recommends that the parties involved work together to establish a collaborative effort to achieve their common goal of quality long-term care services. The Task Force also supports an agreement reached between the Kansas Department of Health and Environment (KDHE) and the Kansas Bureau of Investigation (KBI) regarding the completion of criminal background check and recommends that KDHE notify facilities in a timely manner when a report shows no criminal history for an employee. The Task Force also addressed the issue of the Long-Term Care Ombudsman and recommends that the 1999 Legislature increase funding to provide for an adequately staffed and funded program. The Task Force also adopts the findings of an assisted living task force appointed by the Secretary of Aging and the Secretary of Health and Environment. Finally, the Task Force supports the establishment of an on-going legislative long-term care committee to address the needs of elderly citizens in Kansas.

BACKGROUND

The 1998 Legislature created the Task Force on Long-Term Care Services. The Task Force was charged with studying "the implementation and operation of recent statutory changes relating to adult care homes, the long-term care ombudsman program, state and federal laws and rules and regulations which impact on the services provided by government and the private sector to citizens who are consumers of long-term care and such other matters relating thereto as the task force deems appropriate." The Task Force was authorized seven days of meetings during the 1998 interim. The Task Force specifically considered the following issues: staff retention in long-term care facilities; nursing facility survey and enforcement issues; criminal background check requirements for employees of long-term care facilities; the Long-Term Care Ombudsman program; and assisted living issues.

TASK FORCE ACTIVITIES

Overview of Long-Term Care. The Task Force received a notebook at the beginning of its deliberations containing copies of enabling legislation and statutes; information about relevant programs and divisions within the Kansas Department on Aging (KDOA), KDHE, and higher education institutions; federal and state regulatory guidelines; information about long-term care in

* Proposed legislation not available at time of publication.

Kansas; recent research on staff retention conducted by Wichita State University; and other relevant federal and state documents.

Linda Redford, RN, Ph.D., Center on Aging, University of Kansas Medical Center, presented demographic profiles of the aging population in Kansas and explained a projected dramatic increase in the percentages of Kansans over the age of 65, especially in the years 2010-2030.

The Task Force toured Aldersgate Village which is a 237-acre campus community in Topeka with facilities and programs to provide all levels of care to the residents.

Staff Retention Issues. The Task Force heard a great deal of testimony on the topic of staffing and staff retention. Joe Birmingham, Assistant Commissioner for Lifelong Learning, Kansas Department of Education (DOE), and Don Richards, Health Occupations Program Consultant, DOE, presented testimony regarding certification requirements of Certified Nurse Aides, Certification Medication Aides, and Home Health Aides. They also noted that the lack of educational admission requirements and the challenging, difficult work add to the high turnover rate among CNAs.

Steve Jack, Manager of Business Finance and Workforce Training, Kansas Department of Commerce and Housing, explained the allocation requirements of Kansas Industrial Training (KIT) and Kansas Industrial Retraining (KIR) funds. He expressed his opinion that nursing homes would be eligible to apply for training funds if some compelling economic benefit to the state could be shown.

The Task Force heard testimony from Ellene Davis, Executive Director, Northwest Kansas Area on Aging, Hays, concerning the changing training and educational needs of personnel in the adult care industry. She feels that, in the future, these positions will require more education and training as well as an increased need for "people skills."

Mary Lescoe-Long, Assistant Professor, Department of Public Health Sciences, Wichita State University, reviewed the report she co-authored entitled *Report and Recommendations on Identifying Behavior Change Intervention Points to Improve Staff Retention in Nursing Homes*. She noted that the research objective was to look at recruitment and retention practices in nursing homes to try to understand the human interactions that generate and reinforce the problems in these two areas. Dr. Long discussed some of the recommendations to come out of this research. One involved improving the aide training program by increasing the required time spent in continuing education and also by making the program more practical and reality based. Some things to include might be information on the aging process, the physical and behavioral challenges of the elderly, and empathy training to sensitize aides to respect the residents' personal identities and the value of cooperation. Dr. Long noted that nurses and managers also need training in organizational and interpersonal skills. Other recommendations include utilizing research institutes, designing an innovative curriculum, using short-term courses (certificate courses or continuing education), reimbursing tuition costs, and establishing a research institute and clearinghouse.

Holly Baylor, Administrator, Ellis Good Samaritan Center, Ellis, discussed the staffing situation at her facility. The facility does many things to enhance the work environment such as improved communication (daily meetings, monthly and quarterly in-service training, employee council, and newsletter), staff appreciation activities and monetary rewards (new benefits for the recruitment process, longevity rewards, and post-employment educational benefits). Ms. Baylor's suggestions to the Task Force included support of wage pass-through legislation so that facilities might be better equipped to recruit and retain staff.

The Task Force also heard testimony concerning CNA training issues from three adult care home directors of nursing: Linda Frey, Meadowlark Hills Retirement Community, Manhattan; Debbie Moman, Valley Vista Good

Samaritan Center, Wamego; and Kathy White, High Plains Retirement Village, Lakin. The three directors all agreed that the training curriculum needs to be updated to include behaviors and care of the elderly, stress, and effective communication. They also believe that more extensive continuing education should be available and encouraged for CNAs but that the individuals would not be able to afford to pay for it themselves.

Reimbursement Issues. Bill McDaniel, Director, Long-Term Rate Setting, KDOA, and Terry Glasscock, Deputy Secretary, KDOA, presented information to the Task Force on Medicaid reimbursement schedules. KDOA is required to reimburse nursing facilities using the cost-based, facility-specific, prospective payment system contained in the Department of Social and Rehabilitation Services' (SRS) Medicaid State Plan. The rates are determined annually from calendar year cost report data submitted by the providers. The per diem rates are subject to upper payment limits. These rates and upper payment limits are in effect from July 1 to June 30. The allowance for health care related costs are partially based on the case mix of residents. One aspect of the rate setting involves per diem costs determined by dividing reported allowable costs by resident days. This calculation is often affected by the "85 percent rule," which limits resident days to the greater of actual days reported for the cost report period or 85 percent of the maximum bed availability based on the number of licensed beds.

The Task Force reviewed documents showing that the Kansas Medicaid reimbursement rate is one of the lowest in the nation.

Mr. Glasscock explained the Funding Assessment Impartiality Review (FAIR) process, which is designed to examine and evaluate the Medicaid reimbursement process. He noted that although a pending lawsuit has slowed progress, the participants in the FAIR process were anxious to have resolution to several issues by early spring of 1999 to be ready for the next round of rate-setting which will determine rates effective July 1, 1999. Mr. Glasscock noted that some participants in the FAIR process advocated the elimination of the 85 percent minimum occupancy rule, and stated that while it was not very likely that the rule would change, all aspects of the reimbursement methodology were open to discussion.

Nursing Facility Survey and Enforcement Process. The Task Force heard testimony from Joseph Kroll, Bureau of Adult and Child Care of KDHE and Mary Saparito, a Surveyor and Regional Manager for KDHE, who explained the survey, licensure, and enforcement processes utilized by KDHE in regulating adult care facilities. Thomas Lenz, the Associate Regional Administrator for the federal Health Care Financing Administrator (HCFA) described HCFA's role in working with states to monitor and improve the quality of care in nursing facilities. Mr. Lenz noted that, overall, Kansas is doing a good job in both the survey process and quality of care.

John Grace, President/CEO, Kansas Association of Homes and Services for the Aging, testified that provider relationships with KDHE are strained due to the punitive and rigid approach to surveys and regulatory enforcement. John Kiefhaber, Executive Vice President, Kansas Health Care Association, testified that the current regulatory environment impeded quality. He supported regulatory enforcement that focuses on outcomes and helps facilities improve quality. Deanne Lenhart, Executive Director, Kansas Advocates for Better Care, supported unannounced surveys that focus on the quality of resident care and health outcomes.

Criminal Background Checks. The Task Force heard a report from Dave Sim, a special agent in charge for the KBI and Evelyn Walters, an administrator for the Frankfort Community Care facility, regarding the process required by the Adult Care Home Licensure Act for criminal background checks of all nursing facility employees. Mr. Sim informed the Task Force that a person's prior record of criminal offenses may be checked through two methods: a criminal history records check or a background investigation. A records check involves only the identification of arrest and court disposition data in a database. A background investigation includes the criminal

history records check, a law enforcement officer's research and review of the subject's prior actions, financial history, education, employment history, places of residence, associates, and possibly medical records.

Records checks are categorized in three ways: by the means of identifying the subject; by the status of the requestor; and by the purpose for which the records check will be used. These categorizations determine the database to be used, the fees assessed and the type of data released in the report. Because KDHE is one of the largest customers for non criminal justice record checks, the relationship between the KBI and KDHE is somewhat unique. Child care licensing has required records checks for several years, and the number of checks has been so great that these are now processed by semi-automated batch file transfers. The batch file transfer is now being used for adult care home licensure and in FY 1998, the system accounted for 90,678 records checks. The fee schedule was also adjusted from $10 to $3.75 per name check to reflect the economies of scale and automation. The records check for adult care homes began in July 1998 with the expectation that about 40,000 would be run each year. In the first three months, 8,044 names have been checked, with 801 criminal histories identified. At the present time, 250 names are being checked each working day for adult care home employees.

Ms. Walters explained that her facility submitted all of its current employees for background check in early June and have had no correspondence about any of the employees as of the date of her appearance before the Task Force. When KDHE was contacted, they informed Ms. Walters that it would probably be January of 1999 before results were known and that they would not routinely report results when no criminal background is found.

Long-Term Care Ombudsman Program. The Task Force heard testimony from Matt Hickam, State Long-Term Care Ombudsman. Mr. Hickam discussed the purpose of the Ombudsman program as well as its current structure and funding. He also explained his view of the program's future direction. His first point was that the program should be expanded by increasing the number of volunteer ombudsmen. Secondly, he stated that these ombudsmen should act proactively by visiting long-term care facilities at least once per month to talk with the residents and other interested parties to preempt potential problems. Lastly, customer service should be emphasized by instituting a follow-up program to ensure a resident's satisfaction with the outcome.

The Task Force received additional testimony in a letter from Mr. Hickam. In this letter, the Ombudsman further delineated his goals for the program, and noted a need for increases in both funding and personnel. These increases would allow the program to hire at least four more Regional Ombudsmen, increase the number of volunteer ombudsmen, and institute a follow-up program to ensure adequate conflict resolution.

Assisted Living. The Task Force heard a report from Thelma Hunter Gordon, Secretary of KDOA and Gary Mitchell, Secretary of KDHE on the activities of the Assisted Living Task Force. The Assisted Living Task Force was created by Secretaries Hunter Gordon and Mitchell to address issues that surfaced during a tour of assisted living facilities earlier in the year. Secretary Hunter Gordon summarized the activities and recommendations of the Assisted Living Task Force. The Assisted Living Task Force concluded that current state regulations for assisted living and residential health care facilities meet the appropriate standard and philosophy as established by the *Guidelines to States on Setting Minimum Standards for Providers of Assisting Living*. The Assisted Living Task Force also reviewed the requirements for the preparation of operators of assisted living and residential health care facilities and recommended that KDHE revise the existing curriculum to increase the number of hours of instruction from the currently required 21 to 32-40 hours. The education site would be responsible for setting up a 40-hour practicum that would be completed before an operator certificate could be issued. According to Secretary Hunter Gordon, the group also agreed that KDHE must have adequate funding to conduct annual surveys of all licensed assisted living and residential health

care facilities. The group also reviewed the current use of residential functional capacity screens to determine admission and retention of residents. The consensus of the group was that since routine surveys have not been completed, the Assisted Living Task Force lacked sufficient information to make any recommendation and recommended that the issue be revisited at a later date.

The Task Force also heard testimony from three assisted living facilities operators: Jan Jenkins, Administrator of Aldersgate Village Health Services in Topeka; Shari McCabe, Administrator of The Cedars in McPherson; and Susan Bullock, Administrator of Sterling House in Topeka. The three administrators reviewed the operations of their facilities, supported increased education for assisted living operators, and urged caution with respect to any substantive changes in the current law regarding assisted living.

Conclusions and Recommendations

Staff Retention Issues. The Task Force makes several recommendations relating to staff retention issues. It is virtually impossible to discuss staff retention without consideration being given to the need for changes in the Medicaid reimbursement formula, the need for additional training funds, changes in curriculum, and other issues reflected below.

- *Training Funds.* The Task Force recommends that the Governor ask his various secretaries to examine existing statutes and regulations in an effort to identify funds which may be available for the training and retraining of long-term care personnel. The Task Force recommends the introduction of a resolution to that effect.
- *Research Institute and Clearinghouse.* The Task Force recommends that the Governor and the 1999 Legislature consider its recommendation that appropriate funding be allocated to KDOA to provide for the establishment of a multi-disciplinary, multi-institutional research institute and information clearinghouse to evaluate and implement the recommendations of the Wichita State University study *Report and Recommendations on Identifying Behavior Change Intervention Points to Improve Staff Retention in Nursing Homes.* These recommendations include improved training for nurse aides, special training for nurses in aide management, and administrative education on the dynamics of turnover in the organization.
- *Medicaid Reimbursement.* The Task Force encourages KDOA and SRS to implement a responsible increase in the Medicaid reimbursement rate to bring Kansas closer to the national average reimbursement rate. This increase could be used to raise the wages of front-line caregivers.

In addition, the Task Force supports the efforts of the Funding Assessment and Impartiality Review (FAIR) process and encourages the participants to continue to examine alternative methods of Medicaid reimbursement. One option recommended to be considered as part of the FAIR process is the possibility of a more immediate reimbursement rate for extraordinary increases above the inflationary factor reflected in the rate-setting process. Currently facilities who wish to provide more than standard inflationary rate raises to front-line caregiving staff must wait up to 18 months for reimbursement. If that period could be adjusted downward to provide faster reimbursement, the Task Force believes that more facilities would consider raising the salaries of the staff. Additionally, the Task Force suggests that consideration be given to whether the 85 percent minimum occupancy rule should apply to variable costs. The Task Force encourages KDOA to make a report to the appropriate committees during the 1999 Legislative Session on the progress made in the FAIR process.

- *CNA Testing.* One of the greatest challenges facing applicants for CNA positions is the geographic distance many have to travel for both training and testing. The Task Force recommends that more testing sites be established for the CNA examination. One possibility is the utilization of the Job Service

offices throughout the state. The Task Force recommends that KDOA and KDHE consider this and other alternatives to provide more flexibility in the examination process.

- *CNA Qualifications.* The Task Force recommends that more flexibility be written into the qualifications for CNAs so that otherwise trained and qualified individuals, such as Licensed Mental Health Technicians, could be attracted to the position without requiring additional education.

Nursing Facility Survey and Enforcement Process. The Task Force recommends that KDHE and providers and consumers of long-term care services work together to establish a more collaborative process to achieve the common goal of quality long-term care services. The focus of this effort should involve preventive aspects of compliance with regulations, issues concerning the survey process, and conflict resolution for perceived problems.

Criminal Background Checks. The Task Force concurs with the contents of a letter from the Secretary of KDHE, to Larry Welch, Director of the KBI, requesting that 500 requests per day on adult care home employees be processed until the backlog is eliminated. In addition, the Task Force requests that KDHE begin notifying the facilities when a report shows no criminal background for an employee.

Long-Term Care Ombudsman Program. The Task Force recommends that the Legislature support the efforts of the Ombudsman (as outlined in his letter to the Task Force) to create an adequately funded and staffed quality program. The Task Force believes that the program needs increases in both funding and personnel in order to hire at least four more Regional Ombudsmen. In addition, the number of volunteer ombudsmen should be increased to provide better coverage of the state's facilities. These regional and volunteer ombudsmen could act more proactively by visiting long-term care facilities on a regular basis to speak with residents and other interested parties to preempt potential problems. Finally, the program should institute follow-up procedures to ensure that any conflicts are resolved to the satisfaction of the residents.

Assisted Living. The Long-Term Care Services Task Force adopts the findings of the Assisted Living Task Force as its conclusions regarding this issue, specifically:

- Current regulations for assisted living and residential health care are sufficient.
- KDHE revise the existing curriculum to increase the number of hours of instruction from the currently required 21 to 32-40 and also add a 40-hour practicum which would need to be completed before an operator certificate could be issued.
- KDHE receive adequate funding to conduct annual surveys of all licensed assisted living and residential health care facilities.
- There is not sufficient historical survey detail available to determine the adequacy of currently used residential functional capacity screens to determine admission and retention of residents.

Other Recommendations—Continuing Oversight. The Task Force supports the formation of an on-going legislative long-term care committee to address the needs of the elderly in the state. The Task Force concurs with those who expressed the need for continuing dialogue and oversight of issues involving care for the elderly.

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

Testimony presented to the

Senate Committee on Public Health and Welfare by

the Kansas Department of Health and Environment

on

House Bill 2780

Thank you for the opportunity to testify as a proponent of House Bill 2780.

This bill is identical to 1999 Senate Bill 232, except this bill adds three members to the task force; the Secretary of Social and Rehabilitation Services or the secretary's designee; the Secretary of Health and Environment or the secretary's designee; and the Secretary of Aging or the secretary's designee. Because each of these agencies have a critical role in the provision of long term care services, KDHE supports this addition.

The Department of Health and Environment welcomes the opportunity to work with the public and legislators in reviewing our state's long term care services. By including the Secretary of the department, the task force is assured of being provided an accurate and complete description of the responsibilities of KDHE as the regulatory agency.

I would be happy to stand for questions.

Presented by: Joseph F. Kroll, Director
Bureau of Health Facilities

Date: March 8, 2000

Senate Public Health & Welfare
Date: 3-8-00
Attachment No. 3

TESTIMONY BEFORE THE
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
MARCH 8, 2000

Madame Chair, members of the Senate Committee on Public Health & Welfare, I am Bill Henry, and I appear on behalf of the Kansas Area Agencies on Aging as a proponent of House Bill 2780.

House Bill 2780 establishes a task force on long term care services which will analyze services provided by the public and private sectors to citizens of the state.

The Area Agencies on Aging support this measure and, as the average age of citizens of Kansas increases, this task force can act with the study to promote continuous quality improvement in this area of care.

The chief purpose of the Area Agencies on Aging is to monitor and analyze ways in which citizens can be maintained in their own homes and to see that home care services can be provided to maintain older Kansans' sense of independence.

The Area Agencies on Aging provide a key service in seeing that public and private sector services are available to Kansas and citizens.

If this Committee should determine to name specific groups that would be represented on the task force, the Area Agencies on Aging ask they be included in that representation.

I would be happy to respond to questions.

ALZHEIMER'S® ASSOCIATION

Someone to Stand by You

TESTIMONY IN SUPPORT OF H.B. 2780

March 8, 2000

From: The Coalition of Alzheimer's Association Chapters in Kansas

As part of the platform of issues we are supporting this year, we included support of proposals for the continued study of aging issues, with an emphasis on long-term care issues that affect the Alzheimer population.

At the time we defined our platform, it was assumed Alzheimer's disease would be one of the specific consumer groups to be included on the Task Force, as it was specifically named in the carryover Senate bill we expected to be considered during this legislative session. While we have some reservations about not being named in H.B. 2780, we are prepared to give our wholehearted support to the bill in the belief that the Alzheimer's population is too big a component of aging consumer groups to ignore on this Task Force. Therefore, we will take our chances on being represented on this important study group to look anew at long-term care issues.

One other reservation we have about H.B. 2780 is its short duration. We do not feel one year is long enough for the study of the myriad problems involved in long-term care, particularly when you are planning to look at so many different diseases and issues. We would strongly urge amendment of H.B. 2780 to give the Task Force a longer duration.

The three Alzheimer Association chapter in Kansas have become increasingly involved over the years in coalitions and partnerships with state agencies, private organizations and providers of long-term care . We feel our representative on this Task Force would bring much expertise to the table on behalf of the 64,000 Kansans aged 65 and over with probable Alzheimer's disease, plus their families and caregivers, plus the increasing number of Baby Boomers who will be affected in the next 25 years (14 million nationwide by 2025).

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Senate Public Health & Welfare
Date: 3-8-00
Attachment No. 5

KANSAS PROFESSIONAL NURSING HOME ADMINISTRATORS ASSOCIATION

3601 West 29th
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Phone: 785—273-4393

Thank you Madam Chairman, Members of the Committee. I am Kerrie Ruhlman, Executive Director of the Kansas Professional Nursing Home Administrators Association (KPNHAA). I appreciate very much that you have allowed me to testify on HB 2780 establishing again a Task Force on Long-Term Care Services. A previous Task Force on Long-Term Care Services met during the 1998 interim session. Our Association is very much in favor of this bill.

This Task Force provides an opportunity for legislative leadership, long-term care providers, and consumers to interact and become better informed about the complexities involved in long-term care services. In addition, this "learning together" opportunity that the Task Force creates is too valuable to not have happen, again. Also, from the point of view of my membership, it is especially important because it encourages those interested in Kansas elders to work together to achieve enhanced quality of life for all elders. We endorse the bill enthusiastically and look forward to working with you on its implementation.

I would be pleased to answer any questions. Thank you.

Kerrie Ruhlman MS, LNHA

Executive Director KPNHAA

Senate Public Health & Welfare
Date: 3-8-08
Attachment No. 6

Kansas Council on Developmental Disabilities

BILL GRAVES, Governor
DAVE HEDERSTEDT, Chairperson
JANE RHYS, Ph. D., Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison
Topeka, KS 66612-1570
Phone (785) 296-2608, FAX (785) 296-2861

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

Public Health and Welfare
March 8, 2000

Testimony in Regard to H. B. 2780, an act relating to establishment of a task force on long-term care services. Mr. Chairman, Members of the Committee, my name is Jane Rhys and I am here today on behalf of the Kansas Council on Developmental Disabilities in support of H.B. 2780 relating to the establishment of a committee to study long-term care services in Kansas.

The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor, include representatives of the major agencies who provide services for individuals with developmental disabilities. At least half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life about where they wish to live, work, and the leisure activities in which they wish to participate.

We have reviewed H.B. 2780 and applaud you for taking this first step. There are a significant number of persons who have physical and/or developmental disabilities (DD) in Kansas. As of January 31, 2000 there were 8,623 persons with DD receiving services in a variety of settings, including at home, in Kansas. Another 400 are on waiting lists. In January we paid for services in the community for approximately 3,100 persons with physical disabilities. The aforementioned individuals are people whose disability occurred at birth or resulted from an accident and not as a part of the aging process. As of December 31, 1999 there were 5,372 approved plans of care people receiving services of the Frail Elderly waiver and 11,487 people in nursing home facilities.

Of the total population of individuals receiving long-term care in Kansas, 11,700 persons (41%) are individuals with disabilities and 16,859 persons (59%) are persons who receive services for the elderly. Therefore, we ask that the Committee require that there be at least one consumer who receives services through a disability program and at least one provider of long-term care for a person with a disability

[page 1, (b)(1)]. This corresponds to the required membership of the Secretaries of Aging, Social and Rehabilitation Services, and Health and Environment.

As always, we appreciate the opportunity of providing testimony and would be happy to respond to any questions. The Council can be reached at the below address.

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KHCA
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To: Senate Public Health & Welfare Committee
From: Linda Lubensky, Kansas Home Care Association
Date: March 8, 2000
Re: H.B. 2780, establishing a task force on long-term care services

On behalf of the Kansas Home Care Association, I appreciate the opportunity to comment on H.B. 2780. We are supportive of this bill and hope that its scope will remain broad and inclusive. The long-term care needs of Kansans are dependent on a continuum of care in which the different elements are interrelated and interdependent. When legislation or regulation impacts one type of service provider, ramifications are frequently felt throughout the continuum. Consequently, we cannot adequately address the problems of our long-term care system without looking at the whole network, rather than trying to "band-aid" the individual parts.

Today, we face enormous challenges that threaten our ability, as a state, to meet the growing need for long-term care. The number of individuals who qualify for, and seek, such services continues to escalate, while monetary and physical resources decline. Unfunded mandates and slashed reimbursement from federal programs have caused major disruption for hospitals, nursing homes, and, certainly, home care. As a largely rural state, access issues become critical as providers close or limit their capability to serve the community due to financial losses. In home care alone, we have lost 63 Medicare home care providers, most of which served the rural areas. Many of these providers had also participated in Medicaid, HCBS waiver programs, Senior Care Act, etc.

Our state-funded programs are also in jeopardy. We have worked diligently over the years to encourage community-based services and reduce our dependence on institutional care. Now, with revenue problems, we are looking for ways to reduce or limit those programs. Many providers simply cannot cover their costs with the reimbursement that these programs provide. For a long time they have accepted those losses and continued to provide these very important services. Unfortunately, we must acknowledge that, in these times, more and more providers may find that they cannot continue to subsidize these state funded long-term care programs. The continued loss of providers will cause significant problems in the short term and long-term.

There is certainly a need to look at these issues and we hope that this proposed task force would begin that endeavor. We ask that you support H.B. 2780 and work to see that it is an effective vehicle to find strategies and solutions.

Senate Public Health & Welfare
Date: 3-8-00
Attachment No. 8

Senate Health and Public Welfare Committee
Testimony of Kansas Advocates for Better Care
By Jolene M. Grabill, Legislative Representative
HB 2780
March 8, 2000

Madame Chair, members of the committee. My name is Jolene Grabill, legislative representative of Kansas Advocates for Better Care. I am pleased to appear before you today to testify in support of HB 2780.

Kansas Advocates for Better Care, is the only independent statewide non-profit organization in Kansas that advocates for quality long-term care for adult care home residents. KABC was founded in 1975 and has a membership base of more than 500 persons. KABC advocates the fundamental right of all residents to be treated with dignity and respect and to receive decent care. A board of directors with broad experience with nursing homes, either as professionals or as family members of residents governs the organization's work.

KABC applauds the authors of this legislation for their interest in the welfare of citizens of this state who are consumer of long-term care services. KABC is pleased to see the composition of the task force includes at least three consumers or consumer representatives. Such consumer representation is essential for any review of long-term care services to be thorough and meaningful to the ultimate consumers, the older citizens of our state.

KABC encourages your favorable action on this bill.

Senate Public Health & Welfare
Date: 3-8-00
Attachment No. 9

REPORT TO THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
BY
CATHERINE WALBERG
DEPUTY SECRETARY
KANSAS DEPARTMENT ON AGING
MARCH 8, 2000

EXPEDITED SERVICE DELIVERY

Madame Chair and Members of the Committee, thank you for this opportunity to provide further explanation to you regarding issues that arose during hearings on Senate Bill 372. As you know, SB 372 proposes to repeal K.S.A 75-5956. The statute has two requirements: 1) it requires services to be available in a "timely manner", and 2) it requires the Kansas Secretary of Aging to adopt an application procedure which presumes the eligibility of persons applying for long-term care services.

The first requirement of K.S.A. 75-5956, requiring services to be made available in a timely manner, is repetitious of other laws and policies that require services to be provided in a timely manner. Therefore, repeal of K.S.A. 75-5956 will not adversely affect customers' ability to receive services in a timely manner.

Specifically, federal law requires Kansas to assure that eligibility will be determined in a manner consistent with the best interests of the customer. 42 U.S.C. 1396a. Similarly, federal regulations require that Kansas establish timelines within which eligibility for Home and Community Based Services for the Frail Elderly (HCBS/FE) must be determined. 42 C.F.R. 435.911(a). For HCBS/FE customers, under federal law, Kansas must determine eligibility within a period that cannot exceed 45 days. Furthermore, under federal law, Kansas must provide services to customers "without any delay" due to administrative procedures. 42 C.F.R. 435.930(a). Kansas is bound to follow these federal laws in operating its HCBS/FE Waiver.

Kansas complies with these federal laws by specifying a specific time within which services must be performed. Specifically, in the Field Service Manual of the Kansas Department on Aging ("KDOA"), case managers are required to complete an assessment within 6 working days of an applicant applying for HCBS/FE services. (KDOA at Field Service Manuel ("FSM") 2.6.2.K.1). Furthermore, within 7 working days of financial eligibility being determined, case managers must coordinate HCBS/FE services for customers. (KDOA FSM 3.5.3.D.2). Therefore, timely access is addressed in statutes, regulations, and policies other than K.S.A 75-5956. Consequently, the repeal of 75-5956 by SB 372 will not adversely affect the customer's ability to receive services within a timely manner.

Similarly, the repeal of the presumptive eligibility portion of K.S.A. 75-5956 will not adversely affect the customer. The presumptive eligibility portion of the statute is the second, and remaining, requirement in K.S.A. 75-5956. This portion of the statute directed KDOA to establish an application process that would presume the financial eligibility of an applicant for

HCBS/FE services.

To understand the impact of repeal of this portion of the statute, it is necessary to understand the basics of the application process itself. Essentially, before a customer can receive HCBS/FE services, Kansas must determine that he/she is both financially eligible and functionally eligible. The Kansas Department of Social and Rehabilitation Services ("SRS") determines whether an applicant is financially eligible. KDOA determines whether a customer is functionally eligible.

As noted above, KDOA determines functional eligibility within 6 days of a customer's application for HCBS/FE services. SRS must determine whether the customer is financially eligible. To make this determination, SRS must obtain financial information from a customer. The extent to which SRS can make this determination depends on the information provided by a customer. Federal law gives a customer 45 days within which to provide information to SRS and for SRS to determine financial eligibility. On average, SRS determines financial eligibility within 30 days.

Once SRS has determined a customer is financially eligible, case managers coordinate services for customers within 7 working days. A more detailed explanation of the application process is attached to this testimony as Attachment A.

The presumption of eligibility only applies to the financial eligibility portion of the application process. The statute directs KDOA to establish a process by which the financial eligibility of an applicant is presumed.

When K.S.A. 75-5956 was enacted, KDOA established a pilot to determine whether presumptive financial eligibility in Kansas would be effective. Two hundred applicants participated in the pilot. Of the two hundred participants, only 22 ultimately qualified for presumptive, financial eligibility. Others did not qualify for presumptive eligibility for various reasons: some were already financially eligible, some did not want to obtain services until they qualified, others' financial situations were too complex to qualify for the presumptive eligibility process. That is, approximately 10% were able to benefit from the presumptive eligibility process. This benefit was weighed against the cost of presumptive eligibility process. The presumptive eligibility process increased the amount of case management time that needed to be provided to each client. Additionally, for any customer as to whom financial eligibility was being presumed, a potential existed that Kansas would not receive federal funds if the customer ultimately failed to meet the financial prerequisites for HCBS/FE services.

After comparing the costs of the presumptive eligibility process and after acknowledging the financial risk to Kansas of the process, KDOA elected not to implement a presumptive eligibility process statewide. The costs of the system outweighed the benefit that may have been realized by the process. Currently, Kansas does not presume the financial eligibility of any customer. Therefore, repeal of K.S.A. 75-5956 will have no effect on applicants seeking HCBS/FE services.

Home and Community Based Services for the Frail Elderly

Steps in the process, if the customer is not a current Medicaid customer

#1 Customer, who appears to be a potential Medicaid customer, contacts AAA and requests services. A Standard Intake form is completed, and an assessment is completed within 6 working days (KDOA FSM 2.6.2.K.1. - effective 10/1/99).
AAA refers customer to SRS to apply for Medicaid.

#2 Customer visits SRS EES Specialist and requests application for Medicaid.

#3 Customer returns Medicaid application to EES Specialist.
EES Specialist begins processing the application, with a 45-day window for completion.
EES Specialist faxes a 3160 form (referral) to AAA.
AAA receives 3160 form (referral) from EES Specialist.

#4 AAA completes the assessment with the customer. Level of Care (LOC) score is calculated and faxed to EES Specialist via 3160 form.

#5 EES Specialist finalizes Medicaid application. Customer is deemed financially eligible.
EES Specialist faxes 3160 form to AAA with financial eligibility determination. (LOC score from assessment reveals functional eligibility is met.) EES Specialist also notifies customer.
AAA receives 3160 form from EES Specialist with financial determination finalized.
Customer receives notification of eligibility from SRS.

#6 AAA coordinates services within 7 working days of financial determination (KDOA FSM 3.5.3.D.2.).
Notice of Action is sent to customer and providers, and 3160 is sent to EES Specialist with a plan of care start date and cost.
EES Specialist receives 3160 form from AAA with plan of care start date and cost.

#7 Customer begins receiving services.

Steps in the process, if the customer is a current Medicaid customer

#1 Current Medicaid customer (already has a Medical card) contacts AAA and requests services. A Standard Intake form is completed and an assessment is completed within 6 working days (KDOA FSM 2.6.2.K.1. - effective 10/1/99).

#4 AAA completes the assessment with the customer. Level of Care (LOC) score is calculated and faxed to EES Specialist via 3160 form.
EES Specialist receives 3160 from AAA indicating the LOC score on a current Medicaid customer requesting HCBS/FE services. Medical card number is included on the 3160.

#6 AAA coordinates services within 7 working days of functional eligibility determination (KDOA FSM 3.5.3.D.2.).
Notice of Action is sent to customer and providers, and 3160 is sent to EES Specialist with plan of care start date of 2/18 and POC cost.
EES Specialist receives 3160 form from AAA with plan of care start date and cost.

#7 Customer begins receiving services.