

Approved: 2-20-01
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on January 17, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Jordan

Committee staff present: Mr. Hank Avila, Legislative Research Department
Ms. Renee Jefferies, Revisor of Statutes
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Rebecca Zapick, Intern for Senator Barnett
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee: Dr. Mike Moser, Director of Health, Kansas Department of Health & Environment.

Others attending: See attached guest list.

After Chairperson Susan Wagle announced that the day was Physical Therapy Day, the Chair and the Committee members acknowledged and welcomed the presence of the physical therapists attending the Public Health & Welfare meeting.

Overview of Kansas Department of Health and Environment

Chairperson Wagle then introduced Dr. Mike Moser, Director, Director of Health. Kansas Department of Health & Environment. Dr. Moser presented an overview on the Division of Health and the programs it administers for the people of Kansas. A written copy of the overview is (Attachment #1) attached hereto and incorporated into the Minutes by reference.

Following Dr. Moser's presentation, Chairman Wagle requested comments or questions from the Committee. Questions were asked by Senators, Salmans, Haley, and Praeger. The questions ranged from what recommendations are being done to decrease amounts of paper work, stringency of state investment as opposed to federal, flu vaccine availability, to government budget recommendations.

Chairperson Wagle announced that the Committee was scheduled to attend a tour of KDHE on Thursday, January 18, 2001.

Introduction of bills

The next order of business was bill presentation. The Chairperson recognized Dr. Moser.

Dr. Moser asked the Committee's allowance to introduce a few key legislative proposals which have been identified as important to enable the Division of Health to continue its work in service of the people of Kansas. A copy of the five proposals and his summary are (Attachments #2, 3, 4, 5, 6 and 7) attached hereto and incorporated into the Minutes by reference. The subject matters dealt with:

1. HIV Named - Reporting Sunset Repealer - an act relating to public health; concerning the reporting of AIDS and HIV; amending K.S.A. 2000 Supp. 65-6002 and 65-6011 and repealing the existing sections. (Attachment #3)
2. Confidentiality of Child Care Information - an act concerning children in need of care; technical amendment; amending K.S.A. 38-1507 and repealing the existing section. (Attachment #4)

CONTINUATION SHEET

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE, Room 231-N,
Statehouse, at 1:30 p.m. on January 17, 2001

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3. Increase in Ceiling on License Fees for Food Service Establishments - the initial application and annual renewal fees for the licenses required of restaurants and other food services establishments in Kansas are limited by K.S.A. 36-503 to \$100.00. Since these fees are the sole support for the statewide food service establishment safety and inspection program, KDHE will request amendment of K.S.A. 36-503 to increase the limit on these fees to \$200.00 (Attachment #5)
4. Technical amendment to K.S.A. 38-1507(c)(12) - the Review of Statutes has recommended to the Department that an incorrect citation in this statute be corrected. Specifically, K.S.A. 59-512 is cited when the correct citation is K.S.A. 65-512. (Attachment #6)
5. Improvements to the Criminal Background Check Program - KDHE staff has worked with representatives of the regulated community to identify program changes to address the concerns reflected in **HB2700** and now wishes to request legislation to authorize (Attachment #7)
 - A. Expansion of the information reported by KDHE to prospective employers;
 - B. Add procedures to collect conviction data from contiguous states;
 - C. Adding a registry of non-certified employees similar to the Kansas Nurse Aide Registry.
 - D. Require a report of background check status to requesters within 10 business days of receipt of KBI information.

The proposed bills (amendments) were placed before the Committee. Senator Praeger made the motion to hear the proposed bills, Senator Salmans seconded the motion and the motion carried.

Adjournment

Request was made for further bills or business, and with none coming forth, the meeting was adjourned. The time was 2:20 p.m.

The next meeting is scheduled for January 22, 2001.

57 in attendance

GUEST LIST

DATE: Jan. 17th

NAME	REPRESENTING
Ken Barr	Helm/Weir ch. KS
Julie Newman	Kansas Physical Therapy Assoc
Carol Keller	KS Physical Therapy Assoc.
Debi Hatfield	
Nancy Brox	Kansas Physical Therapy Association
Valerie Scott	KS Physical Therapy Assoc.
J. De Kelle	KPTA
Lon Keller	KPTA
Paul McLeod	KPTA
Tom Laughlin	KPTA
Mark Dwyer	Kansas Physical Therapy Association
Angela Schaefer	KPTA
Patty Doyle	KPTA
Scott Hohmann	Kansas Physical Therapy Association
Paul S. Sorenson	Kansas Physical Therapy Assoc.
Les Durst	KPTA
Cindy Johnson	KPTA
Amy Claycamp	KPTA
Heather Watson	KPTA

GUEST LIST

DATE: 1-17-00

NAME	REPRESENTING
Amber Davis	KPTA
Cheryl Walter, PT	Kansas Physical Therapy Assn
Ann Joseph	KPTA
Linda Gray	ALFA-KAN
Jammy Shantz	KPTA
RICHARD M. SMITH	KPTA
Pic Baird, PT	KPTA
Jessica Moss SPTA	KPTA
Valerie Minton SPTA	KPTA
Mary Glassburner	KDHE BCH
David K Ross MD	Dr. for the day - KAFP
Jeff Dodd, SPTA	KPTA
Melinda Buttrick SPTA	KPTA
Amy Lebbey SPTA	KPTA
Alia Karasick, SPTA	KPTA
Sara Buessing, SPTA	KPTA
Sara Strathman SPTA	KPTA
Dawn M Wilms, PTA	KPTA
Dale E. Walker, PT.	KPTA

GUEST LIST

DATE: 1-17-01

NAME	REPRESENTING
Andy Shaw	Kearney Law Office
Emmendinger, PT	Kansas Physical Therapy Association
Susan Willey PT	"
Nancy Wilson, PT	"
Susan Grace, PT	"
Pam Palmer PT	Kansas Physical Therapy Assoc.
Candy Bahner, PT	Kansas Physical Therapy Assoc
Jess Winkler, PT	Ks Physical Therapy Assn.
GIANFRANCO PERZINO	KDHE
Rebecca Zepich	Sen. Barnett
Charlotta Kieck	KDHE
Michelle Peterson	Peterson Public Affairs Group
Steve Fange	KDHE
Chris Ross Bare	KDHE
Kelly Pruett	KPTA
Trish Kiniec	KPTA
Joy Hunter	KPTA
Keith Farwell	KPTA
Renee Daniels	KPTA



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

Testimony presented to
Senate Public Health and Welfare Committee
by
Dr. Michael Moser, Director, Division of Health

January 17, 2001

Senator Wagle and members of the Public Health and Welfare Committee. I am Dr. Michael Moser, Director of the Division of Health at the Kansas Department of Health and Environment. I was asked to come before you today to provide an overview of the Division of Health and the programs it administers for the people of Kansas. I understand that your time is precious and that you are inundated with information, so I have kept this presentation brief and limited the detail to that which seemed critical to a broad understanding of the division's role and programs. If I do not address a part of the Division's activities which are of interest to you, please feel free, either today or in the future, to ask for further information.

As portrayed in the first chart accompanying this written testimony, the Division of Health is one of the four major operating units of the Department of Health and Environment. During the 2000 state fiscal year, the Division expended \$87.7 million in the delivery of program services. Of those funds, approximately 1/3 were transferred as direct aid to local government, approximately 1/3 were devoted to nutrition grants and benefits, and approximately 1/3 were used to support state operations. Under the state operations heading, between one third and one half of those expenditures were used to purchase drugs, vaccines, medical supplies, and other health care services. On the funding side of the equation, in FY 2000, approximately 17.5 percent of total Division operations were funded from state general funds, with the remainder funded from a array of federal grants, fees, foundation grants, and other sources.

KDHE is designated as the lead public health agency for Kansas and the Division of Health implements the state role in a majority of the services which our citizens typically think of as "public health". Having said that, public health in Kansas is very much a collaborative activity, with critical roles played by other agencies, both state and local. The most important group of partners for the Division of Health are the 99 local health departments which deliver public health services to residents in our 105 counties. Because local health departments in Kansas are not part of state government, the relationship between the Division and local health

departments relies on cooperation and shared goals. Support for these local agencies is a crucial aspect of the Division of Health's role. In addition to substantial cash transfers to local health departments, Division of Health staff support local public health with training programs, consultative services, advocacy, and performance of administrative functions that are essential to maintain the flow of federal funds to these local agencies.

On a second handout accompanying the written testimony before you is an outline that lists many of the public health services delivered to Kansas residents through the Division of Health. The list is not exhaustive, but I hope it provides you with a sense of the scope and content of the Division's programs.

If there is one message I want to bring to you today, it is that public health serves the entire population of Kansas. Every day, in every Kansas county, every Kansas resident is being served by programs administered by the Division of Health. Through prevention of communicable diseases, through assurance that health care is available and that the facilities which provide it conform to standards, through activities to ensure a safe food supply, and through a wide spectrum of services for Kansans of all ages to promote health and prevent disease, the Division of Health is working with its community partners to make healthy and Kansas synonymous. Public health, hopefully, serves the needs of poor people, but it is not just for poor people. Public health and the care you and your family receive from private providers complement each other in helping you and your loved ones and every Kansas resident live without the burden of unnecessary, preventable health problems.

I look forward to working with you over the coming years to advance the health of all Kansans. At this time, I would ask the committee's allowance to introduce a few key legislative proposals which have been identified as important to enable the Division of Health to continue its work in service of the people of Kansas. Thank you for your attention.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

OFFICE OF THE SECRETARY

1-3

Division of Health and Environment Laboratories

Division of Environment

Division of Health

Center for Health and Environmental Statistics

- Chemistry
- Microbiology
- Virology/Serology
- Laboratory Improvement Program
- Neonatal Screening

- Air & Radiation
- Environmental Field Services
- Environmental Remediation
- Waste Management
- Water
- Planning & Prevention

- Children, Youth & Families
- Consumer Health
- Epidemiology & Disease Prevention
- Health Facilities
- Health Promotion
- Local & Rural Health

- Health Care Information
- Vital Statistics

District Offices:

Chanute, Wichita, Salina, Lawrence, Hays, & Dodge City

Attachment 1-3

ACTIVITIES OF THE DIVISION OF HEALTH

COMMUNICABLE DISEASE PREVENTION and CONTROL

- 24 hour per day, 7 day per week consultation available to Kansas health care providers
- Statewide immunization program
- Monitoring and analysis of trends in communicable disease occurrence in Kansas
- Tuberculosis case investigation, monitoring, and provision of drugs
- Partner identification, referral, and counseling for cases of syphilis, gonorrhea, HIV, and AIDS
- Community based prevention programming for HIV and other sexually transmitted diseases
- AIDS Drug Assistance Program (ADAP)
- Bioterrorism response planning and the Health Alert Network
- Outbreak investigation

FOOD SAFETY

- Annual restaurant licensure and inspection
- Complaint investigation
- Grocery and food processor inspections
- Training programs for food service personnel
- Disaster and accident response

SERVICES FOR CHILDREN and FAMILIES

- Nutrition education and food supplements for women and children (WIC)
- Neonatal hearing and metabolic disease screening
- Childhood lead poisoning prevention
- Assurance of access for women to pre- and post-conception preventive and primary care services
- Infant mortality reduction (Healthy Start)
- Services for children with special health care needs (Special Health Services)
- Services for children (ages 0-3) with special developmental needs (Infant-Toddler)
- Child care licensing and regulation

ACTIVITIES OF THE DIVISION OF HEALTH (continued)

DISEASE PREVENTION AND HEALTH PROMOTION

- Breast and cervical cancer screening and referral
- Tobacco use prevention
- Injury and disability prevention
- Diabetes program
- Epidemiologic monitoring of patterns in the leading causes of death and associated risk factors

HEALTH CARE SYSTEM

- Health care facility licensure and certification (including nursing homes and assisted living facilities)
- Rural health (includes the Critical Access Hospital Program)
- Health occupations credentialing
- Criminal Background checks for long term care and home health personnel
- Mental Health and Residential Facility licensure and inspection
- Farmworker and Refugee Health programs
- Community-based primary care programs
- Public health workforce training and development
- Community health assessment



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

OVERVIEW OF 2001 LEGISLATIVE INITIATIVES

Division of Health

1. HIV Named-Reporting Sunset Repealer

K.S.A. 65-6011 was amended in 1999 to add reporting of patient name to the required data accompanying a report to public health authorities of a new diagnosis of HIV infection. A July 1, 2001, sunset provision accompanied this requirement. KDHE requests repeal of this sunset provision.

- ★ Named reporting of HIV infection provides a more accurate and timely description of trends and patterns of HIV infection in Kansas
- ★ Named reporting has allowed more effective Partner Counseling and Referral Services
- ★ Named reporting allows Kansas to qualify for higher levels of federal support
- ★ Testing statistics in the first year of named reporting reveal no adverse effect of the change

2. Confidentiality of Child Care Information

In its 2000 session, the Kansas Legislature amended K.S.A. 65-506 and K.S.A. 65-525 to prohibit the public release of the name, address, or telephone number of child care licensees and registrants. Confusion exists about what is meant by "public release" and who is governed by these statutes. KDHE will request legislation to clarify this confusion and remove unintended impediments to optimal child protection.

- ★ KDHE is no longer able to notify the public when a child care provider has their license revoked or when there is a communicable disease problem or other hazard at a child care facility
- ★ Timely and complete investigation of complaints about child care providers is impeded because other agencies feel unable to share information with KDHE
- ★ Provision of information to parents who are seeking child care providers is being hindered

3. Increase in Ceiling on License Fees for Food Service Establishments

The initial application and annual renewal fees for the licenses required of restaurants and other food service establishments in Kansas are limited by K.S.A. 36-503 to \$100.00. These fees are the sole support for the statewide food service establishment safety and inspection program. KDHE will request amendment of K.S.A. 36-503 to increase the limit on these fees to \$200.

- ★ License and application fees are now established by regulation at the limit of \$100.00
- ★ Projected fee revenues at the current levels will not support the food service inspection program at current service levels nor maintain the inspection frequency specified by K.S.A. 36-508 throughout 2003 or subsequent years.
- ★ A decrease in food service inspection activity will increase the risk of foodborne illness for Kansas residents and visitors
- ★ Any actual fee increase will be no more than required to support the inspection program and will be subject to public and legislative review during the development of implementing regulation

4. Technical amendment to K.S.A. 38-1507(c)(12)

The Revisor of Statutes has recommended to the Department that an incorrect citation in this statute be corrected. Specifically, K.S.A. 59-512 is cited when the correct citation is K.S.A. 65-512.

5. Improvements to the Criminal Background Check Program

The 2000 Kansas Legislature considered legislation (HB 2700) to make changes in the Criminal Background Check Program for adult care home and home health agency staff. Since the 2000 session, KDHE staff have worked with representatives of the regulated community to identify program changes to address the concerns reflected in HB 2700. KDHE now wishes to request legislation to authorize a number of improvements identified in these discussions.

- ★ Expansion of the information reported by KDHE to prospective employers (e.g., reporting that a person **does not** have a criminal record on file with KBI)
- ★ Adding procedures to collect conviction data from contiguous states
- ★ Adding a registry of non-certified employees similar to the Kansas Nurse Aide Registry, thereby reducing industry costs by reducing duplicate or unnecessary background checks
- ★ Require a report of background check status to requesters within 10 business days of receipt of KBI information

*Sen.
Hear.*



2001 LEGISLATIVE INITIATIVE
HIV REPORTING

Issue definition

K.S.A. 65-6011 contains a sunset provision for HIV name reporting that would remove any HIV and AIDS reporting on July 1, 2001. It also contains a requirement for the Secretary of Health and Environment to report to the legislature concerning the impact of HIV reporting. In addition, there is currently no statutory provision requiring hospitals to report HIV or AIDS.

Summary

We propose a legislative initiative for the 2001 session to repeal K.S.A. 65-6011. K.S.A. 65-6002 was amended in 1999 to include a requirement for HIV name reporting for physicians and laboratories. At that time, a sunset provision was adopted (included in K.S.A. 65-6011) requiring reauthorization of HIV name reporting in 2001 and asking the Secretary of Health and Environment to report to the legislature concerning the impact of the changes made to K.S.A. 65-6001.

We are also proposing to amend K.S.A. 65-6002 to include provisions for reporting of HIV and AIDS from hospitals.

Recommendations

HIV name reporting was approved by the 1999 state legislature after years of efforts from our agency. At that time there was a broad support for this requirement. However, concerns and uncertainty remained around how the new requirement could impact HIV testing practices. For those reasons a requirement was introduced for the Secretary of Health and Environment to present a report on the impact of these changes by January 8, 2001 and for the statutes on HIV and AIDS reporting to be repealed on July 1, 2001 (in the absence of a legislative action to reauthorize them).

A report based on the first 12 months of surveillance was completed in December, 2000 (as required by the state legislation). It showed that HIV name reporting resulted in the identification of 99 infected individuals, 11 of which were found as a result of case investigations and partner notification activities. The number of individuals seeking testing at public sites was virtually unchanged compared to the same period of the previous year. All public sites are also offering an anonymous testing option, as required by state law, but the great majority of test requests submitted to our state laboratory contained the name of the individual being tested.

During the implementation of the new reporting requirements it became clear that many reports are being submitted by hospitals on behalf of their physicians, as it is customary for most reportable conditions. However, K.S.A. 65-6002 does not specifically require or authorize

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Attachment 3-1*

hospitals to report cases of HIV or AIDS. For that reason, while these reports are essential for the good functioning of the HIV surveillance system, they are not subject to the same high level of protection granted by state laws to reports submitted by physicians and laboratories. We propose to add hospital administrators to the list of individuals required to report HIV infection.

Legislative implications

In the absence of this legislative initiative HIV and AIDS would no longer be reportable conditions in our state. This would preclude our agency from conducting any surveillance activities, identifying individuals and groups at high risk of infection and disease, and targeting prevention and care programs accordingly. It would also jeopardize federal funding for the HIV/AIDS program, since this funding is linked to demonstrated needs and outcome evaluations that can be defined only through a good surveillance system.

Impact on other agencies

No other agency is going to be impacted by this initiative.

Fiscal impact

No fiscal impact is anticipated, since these changes merely extend and legitimize activities that are already being done.

Proposed legislative amendments

65-6011. Report to legislature; repeal of act. On or before January 8, 2001, the secretary of health and environment shall report to the legislature concerning the impact of the changes made to K.S.A. 65-6001 et seq. by sections 1 to 6, inclusive, of this act[*]. ~~On July 1, 2001, the provisions of K.S.A. 65-6001 to 65-6010, inclusive, and amendments thereto, are hereby repealed.~~

65-6002. Reporting to secretary of health and environment information concerning AIDS; information reported, when; persons reporting; immunity from liability; confidentiality of information; disclosure; use of information to discriminate prohibited.

(a) Whenever any physician has information indicating that a person is suffering from or has died from AIDS, such knowledge or information shall be reported immediately to the secretary, together with the name and address of the person who has AIDS. Any physician or hospital administrator who is in receipt of a report indicating laboratory confirmation of HIV infection resulting from the examination of any specimen provided to a laboratory by such physician or hospital shall report all such information to the secretary. Reports shall be provided within 30 days of testing and shall include the name and address of the person tested, the type of test or tests performed, the date of performance of the test or tests, the results of the test or tests, the sex, date of birth, county of residence, and racial/ethnic group of the person tested.

(b) Whenever any laboratory director has information on laboratory confirmation of HIV infection, this information shall be reported to the secretary. Reports shall be provided within 30 days of testing and shall include the type of test or tests, the results of the test or tests, dates of performance of the test or tests, the name of the physician or facility requesting the test or tests, and any identifying information about the person tested as the laboratory director has access to, such as the name and address of the person tested, the sex, date of birth, county of residence and racial/ethnic group, exposure category and pregnancy status of the person tested.

(c) Any physician, hospital administrator, or laboratory director who reports the information required to be reported under subsection (a) or (b) in good faith and without malice to the secretary shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such physician or laboratory director shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(d) Information required to be reported under subsection (a) or (b) and information obtained through laboratory tests conducted by the department of health and environment relating to HIV or AIDS and persons suffering therefrom or infected therewith shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the disclosure necessary under subsection (a) or (b) or under subsection (a) of K.S.A. 65-6003 and amendments thereto or the usual reporting of laboratory test results to persons specifically designated by the secretary as authorized to obtain such information, except such information may be disclosed:

(1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

Attachment 3-3

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, as specified by rules and regulations of the secretary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat AIDS or HIV infection, except that any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving a minor and the information is disclosed in camera.

(e) Information regarding cases of AIDS or HIV infection reported in accordance with this section shall be used only as authorized under this act. Such information shall not be used in any form or manner which would lead to the discrimination against any individual or group with regard to employment, to provision of medical care or acceptance into any facilities or institutions for medical care, housing, education, transportation, or for the provision of any other goods or services.

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Attachment 3-4

Sec. 5. K.S.A. 1999 Supp. 38-1507 is hereby amended to read as follows: 38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.

(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. 1999 Supp. 72-89b03 and amendments thereto.

(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:

- (1) The department of social and rehabilitation services;
- (2) the commissioner of juvenile justice;
- (3) the law enforcement agency receiving such report;
- (4) members of a court appointed multidisciplinary team;
- (5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care;
- (6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;

- (7) a county or district attorney;
- (8) a court services officer who has taken a child into custody pursuant to K.S.A. 38-1527, and amendments thereto;
- (9) a guardian ad litem appointed for a child alleged to be in need of care;
- (10) an intake and assessment worker; and
- (11) any community corrections program which has the child under court ordered supervision;
- (12) the department of health and environment or persons authorized by the department of health and environment pursuant to K.S.A. 5965-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments thereto; and
- (13) members of a duly appointed community services team.

(d) The following persons or entities shall have access to information, records or reports received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities to maintain their personal safety and the personal safety of individuals in their care or to diagnose, treat, care for or protect a child alleged to be in need of care.

- (1) A child named in the report or records.
- (2) A parent or other person responsible for the welfare of a child, or such person's legal representative.
- (3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.
- (4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care. In order to assist a child placed for care by the secretary of social and rehabilitation services in a foster home or child care facility, the secretary shall provide relevant information to the foster parents or child care facility prior to placement and as such information becomes available to the secretary.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) A prospective adoptive parent prior to placing a child in their care.

(9) The department of health and environment or person authorized by the department of health and environment pursuant to K.S.A. 5965-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments thereto.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) The secretary of social and rehabilitation services.

(14) A law enforcement agency.

(15) A juvenile intake and assessment worker.

(16) The commissioner of juvenile justice.

(e) Information from a record or report of a child in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on appropriations, senate committee on ways and means, legislative post audit committee and joint committee on children and families, carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319 and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) Nothing in this section shall be interpreted to prohibit the secretary of social and rehabilitation services from summarizing the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(g) Disclosure of information from reports or records of a child in need of care to the public shall be limited to confirmation of factual details with respect to how the case was handled that do not violate the privacy of the child, if living, or the child's siblings, parents or guardians. Further, confidential information may be released to the public only with the express written permission of the individuals involved or their representatives or upon order of the court having jurisdiction upon a finding by the court that public disclosure of information in the records or reports is necessary for the resolution of an issue before the court.

(h) Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order, the court shall give due consideration to the privacy of the child, if, living, or the child's siblings, parents or guardians.

(i) Information authorized to be disclosed in subsections (d) through (g) shall not contain information which identifies a reporter of a child in need of care.

(j) Records or reports authorized to be disclosed in this section shall not be further disclosed, except that the provisions of this subsection shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A.

1999 Supp. 72-89b03 and amendments thereto.

(k) Anyone who participates in providing or receiving information without malice under the provisions of this section shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from providing or receiving information.

(l) No individual, association, partnership, corporation or other entity shall willfully or knowingly disclose, permit or encourage disclosure of the contents of records or reports concerning a child in need of care received by the department of social and rehabilitation services, a law enforcement agency or a juvenile intake and assessment worker except as provided by this code. Violation of this subsection is a class B misdemeanor.

Chapter 36.--HOTELS, LODGINGHOUSES AND RESTAURANTS
Article 5.--FOOD SERVICE AND LODGING ESTABLISHMENTS

36-503. License for food service establishment required; exceptions; application, form, application and license fees; inspection; denial, hearing; display; duplicate; existing licenses continued in effect. (a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. Nothing in this act shall prevent the secretary of health and environment from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of health and environment or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of health and environment to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of health and environment pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of health and environment. Application fees may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed ~~\$100~~ \$200. Such license fee shall not exceed ~~\$100~~ \$200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

*Senate Public Health & Welfare Committee
Meeting Date 1-17-01
Attachment 5-1*

(c) Every license issued hereunder shall be displayed conspicuously in the food service establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

(d) Any person who, on the effective date of this act, has a valid license to operate a restaurant shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a food service establishment issued under the provisions of this act.

History: L. 1975, ch. 314, § 7; L. 1976, ch. 205, § 1; L. 1978, ch. 154, § 2; L. 1981, ch. 181, § 1; L. 1982, ch. 181, § 1; L. 1984, ch. 313, § 56; L. 1993, ch. 196, § 1; July 1.

Research and Practice Aids:

Food (West Key) 4.

C.J.S. Food § 14(1).

H:\Administration\Legislative\2001\Legislative amendment 36-503 .wpd

Attachment 5-2

HOUSE BILL No. [Amends HB 2700 - **Adult care home** licensure act]

AN ACT concerning certain providers of care services; employment of persons by such providers; amending K.S.A. 1999 Supp. 39-970 and repealing the existing sections.

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

Section 1. K.S.A. 1999 Supp. 39-970 is hereby amended to read as follows: 39-970. (a) (1) ~~On and after July 1, 1998, no~~ No person shall knowingly operate an adult care home if, in the adult care home, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3301 and amendments thereto, a conspiracy to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3302 and amendments thereto, or criminal solicitation of any of the crimes enumerated herein pursuant to K.S.A. 21-3303 and amendments thereto, or similar statutes of other states or the federal government. (2) ~~On and after July 1, 1998,~~ A person operating an adult care home may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3301 and amendments thereto; (D) a conspiracy to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3302 and amendments thereto; or (E) similar statutes of other states or the federal government.

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

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining

whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request ~~from that the department of health and environment information obtained by the secretary of health and environment~~ obtain from the Kansas bureau of investigation criminal history record information which relates to a person who works in the adult care home, or is being considered for employment by the adult care home; (2) submit such request within one week of employment; ~~(3), for the purpose of determining whether such person is subject to the provision of this section.~~ For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which ~~provides employees~~ has provided a person to work in the adult care home written certification that such ~~employees are~~ person is not prohibited from working in the adult care home under this section.

(e) The secretary of the department of health and environment shall identify sources of criminal conviction data from the states contiguous to Kansas and the associated costs on or before July 1, 2002. Where administrative agreements can be written for the purpose of determining like conviction information from a contiguous state, the secretary may establish such administrative agreements if the cost of receiving the conviction information is equal to or less than fifteen dollars per request. Such fees shall be assessed, in addition to criminal history records information requested from the Kansas Bureau of Investigation, to the requesting operator of an adult care home or employment agency seeking the out of state conviction information.

(f) ~~For the purpose of complying with this section, information~~ Information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period and at a cost equal to or less than \$15 per request.

(g) ~~For the purpose of complying with this section, a~~ A person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(~~e~~) (h) The secretary of health and environment shall charge each ~~person~~ operator of an adult care home or employment agency requesting information under this section a fee equal to cost, not to exceed ~~\$10~~\$15, for each ~~name~~ person about which an information request has been submitted to the department under this section.

(~~f~~) (i) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(j) The secretary of health and environment shall utilize resources necessary to provide each operator of an adult care home or employment agency requesting information under this section with notice when the criminal history record information indicates that no criminal history record information was found for that person. Such notice shall be provided to the requester within 10 working days of receipt of information determining that no criminal history record information was found.

(k) The secretary of health and environment shall provide each operator of an adult care home or employment agency requesting information under this section, in writing and within 10 working days, whenever the criminal history record information has been determined to document that the subject of the request has been identified as having a prohibited criminal conviction, except when the subject has a criminal history that requires confirmation of final disposition through Kansas courts or the Kansas Department of Corrections. In the case of exception, written notice shall be given, within 10 days after receipt of criminal history record information, that further investigation is required and that the requester will be notified within 10 working days subsequent to a final disposition.

(l) The secretary of health and environment may record and make available the date of the most recent criminal history record information request, and in the event that a criminal history record request results in a determination that the person has been convicted of a prohibited crime, that determination may be made available to inquirers of the registry established pursuant to K.S.A. 39-936(c)(5).

(m) The secretary of health and environment may establish a registry of persons who are not identified on the registry established pursuant to K.S.A. 39-936(c)(5) and for whom an operator of an adult care home or employment agency has requested a criminal history records information search. In the event that a criminal history record request results in determination that the person has been convicted of a prohibited crime, that determination may be made available to the operators of adult care homes and employment agencies and interested parties.

(g) (n) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

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

(i) (p) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home. The operator of an adult care home where the applicant was the subject of such background check may release a copy of such background check to the operator of an adult care home where the applicant is currently applying.

(j) (q) No person who is in the custody of the secretary of corrections and who provides services, under direct supervision in nonpatient areas, on the grounds or other areas designated by the superintendent of the Kansas soldiers' home or the Kansas veterans' home shall be subject to the provisions of this section while providing such services.

(k) (r) This section shall be part of and supplemental to the adult care home licensure act.

HOUSE BILL No. [KDHE Amends HB 2700 - **Home health agency** licensure act]

AN ACT concerning certain providers of care services; employment of persons by such providers; amending K.S.A. 1999 Supp. 65-5117 and repealing the existing sections.

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

Section 1. K.S.A. 1999 Supp. 65-5117 is hereby amended to read as follows: 65-5117. (a) (1) ~~On and after July 1, 1998,~~ No person shall knowingly operate a home health agency if, for the home health agency, there works any person who has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto, mistreatment of a dependent adult, pursuant to K.S.A. 21-3437 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, an attempt to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3301 and amendments thereto, a conspiracy to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3302 and amendments thereto, or criminal solicitation of any of the crimes enumerated herein pursuant to K.S.A. 21-3303 and amendments thereto, or similar statutes of other states or the federal government.

(2) ~~On and after July 1, 1998,~~ A person operating a home health agency may employ an applicant who has been convicted of any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in: (A) article 34 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); (B) articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; (C) an attempt to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3301 and amendments thereto; (D) a conspiracy to commit any of the crimes enumerated herein, pursuant to K.S.A. 21-3302 and amendments thereto; or (E) similar statutes of other states or the federal government.

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

(c) The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation concerning persons working in a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of a home health agency shall: (1) request from that the department of health and environment information obtained by the secretary of health and environment obtain from the Kansas bureau of investigation criminal history record information which relates to a person who works for the home health agency, or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provision of this section; (2) submit such request within two working days of employment; (3) receive within two working days from any employment agency which has provided a person to work for the home health agency written certification that such person is not prohibited from working for the home health agency under this section.

(e) The secretary of the department of health and environment shall identify sources of criminal conviction data from the states contiguous to Kansas and the associated costs on or before July 1, 2002. Where administrative agreements can be written for the purpose of determining like conviction information from a contiguous state, the secretary shall establish such administrative agreements if the cost of receiving the conviction information is equal to or less than ten dollars per request. Such additional fees shall be assessed to the requesting operator of an adult care home or employment agency.

(f) For the purpose of complying with this section, information Information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period and at a cost equal to or less than ten dollars per request.

(g) For the purpose of complying with this section, a A person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) (h) The secretary of health and environment shall charge each person operator of an adult care home or employment agency requesting information under this section a fee equal to cost, not to exceed \$10\$15, for each name person about which an information request has been submitted to the department under this section.

~~(f)~~ (i) No person who works for a home health agency and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

(j) The secretary of health and environment shall utilize resources necessary to provide each operator of a home health agency or employment agency requesting information under this section with notice when the criminal history record information provided by the Kansas bureau of investigation indicates that no criminal history record information was found for that person. Such notice shall be provided to the requester within 10 working days of receipt of information determining that no criminal history record information was found.

(k) The secretary of health and environment shall provide each operator of a home health agency or employment agency requesting information under this section written notice, within 10 working days after receipt of such information, whenever the criminal history record information has been determined to document that the subject of the request has been identified as having a prohibited criminal conviction, except when the subject has a criminal history that requires confirmation of final disposition through Kansas courts or the Kansas Department of Corrections. In the case of exception, written notice shall be given, within 10 working days after receipt of criminal history record information, that further investigation is required and that the requester will be notified within 10 working days subsequent to a final disposition.

(l) The secretary of health and environment shall record and make available the date of the most recent criminal history record information request, and in the event that a criminal history record request results in a determination that the person has been convicted of a prohibited crime, that determination shall be made available to inquirers of the registry established pursuant to K.S.A. 39-936(c)(5).

(m) The secretary of health and environment shall establish a registry of persons who are not identified on the registry established pursuant to K.S.A. 39-936 (c)(5) and for whom an operator of a home health agency or employment agency has requested a criminal history records information search. In the event that a criminal history record request results in a determination that the person has been convicted of a prohibited crime, that determination shall be made available to the operators of home health agencies, employment agencies and interested parties.

~~(g)~~ (n) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

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

~~(i)~~ (p) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency. The operator of a home health agency where the applicant was the subject of such background check may release a copy of such background check to the

operator of a home health agency where the applicant is currently applying.

(j) (q) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.