

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 2:00 p.m. on March 13, 2002 in Room 210 Memorial Hall

All members were present except: Representative Peggy Palmer, Excused  
Representative Dale Swenson, Excused  
Representative Jonathan Wells, Excused

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Renea Jefferies, Revisor of Statute's Office  
June Evans, Secretary

Conferees appearing before the committee: Lawrence Buening, Executive Director, Kansas Board of Healing Arts  
Chip Wheelen, Executive Director, Kansas Association of Osteopathic Medicine  
Chris Collins, Director of Government Affairs, Kansas Medical Society  
Richard Morrissey, Director, Office of Local and Rural Health, Kansas Department of Health and Environment  
Tom Sipe, Director of Regulatory Activities, Kansas Hospital Association  
Joye Huston, Kansas State Nurses Association

Others attending: See Attached Sheet

The Chairperson opened the hearing on **SB 447 - Compensation of review members appointed by the state board of healing arts.**

Dr. Bill Wolff gave a briefing on **SB 447.**

Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, a proponent to **SB 447**, stated the bill was requested by the State Board of Healing Arts and the Board is a strong proponent for the bill.

Sections 1 and 2 would enable but not require the Board to compensate healing arts and podiatry review committee members for time expended reviewing investigative records and reports in preparation of attendance at review committee meetings. Section 3 of the bill would exempt the Board from competitive bids when obtaining experts to render opinions and testimony on matters which may result in a disciplinary action. Review committees in the three branches of the healing arts were created by the 1984 Legislature to investigate and make recommendations to the Board, when in the judgment of the review committee, a violation of the healing arts act had occurred. The review committee for the practice of podiatry was created by the 1992 legislature. The Board has 6 three-member review committees—one each for osteopathic medicine and surgery, chiropractic and podiatry and three for medicine and surgery.

The Board recognized the increasing number of investigative cases being presented and the amount of time expended by each of the members in reviewing investigative materials and preparing for the committee meetings. In FY85 the Board received a total of 190 complaints, not all of which were made into investigative cases. In FY2000, the Board opened 372 investigative cases.

**SB 447** does not change the amount of compensation review committee members would

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MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210,  
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receive for attending the meeting themselves. The review committee members will still be required to spend their day off or to take a day away from their practice and receive \$35 for attending the meeting. This additional compensation would be paid for time spent in reviewing records sent to the committee members. This also exempts the Board of the Kansas Healing Arts Act from competitive bids or approval of the Director of Purchases when securing experts to provide reports, testimony, and opinions on disciplinary matters that are before the Board (Attachment 1).

Charles L. Wheelen, Kansas Association of Osteopathic Medicine, testified in support of **SB 447** which would allow the State Board of Healing Arts to resume the practice of compensating members of committees who review medical charts and related information in order to render a professional opinion whether a licensee adhered to appropriate standards of care. It is believed that because of the importance of their role in the regulatory process, only the most respected physicians should be appointed to serve on review committees. It is also believed that qualified professionals should receive reasonable compensation for their work. The amount of compensation to be paid review committee members would be a function of the budget process (Attachment 2).

Chris Collins, Director of Government Affairs, Kansas Medical Society, testified in support of **SB 447** as it allows the Board of Healing Arts to compensate health care professionals fairly for the time that they spend reviewing medical records or otherwise preparing to review disciplinary proceedings before the Board of Healing Arts. The Board currently solicits volunteers and compensates them \$35 for attending meetings, plus their mileage expenses. Review members must review medical charts and occasionally request additional information or request to interview the licensee under investigation. This is time consuming and the lack of compensation makes it very difficult for the Board of Healing Arts to attract talented physician reviewers willing to take on this vital task (Attachment 3).

The Chairperson closed the hearing on **SB 447**.

The Chairperson opened the hearing on **SB 417**.

Dr. Bill Wolff gave a briefing on **SB 417**, stating this amends a statute that is a part of an act that authorizes the establishment and operation of rural health networks. Under the new definition, a critical care hospital is a member of a rural health network that has 24-hour emergency services available, provides acute inpatient care for a period that does not exceed 96 hours per patient on an annual average.

Richard Morrissey, Director, Office of Local and Rural Health, Kansas Department of Health and Environment, testified as a proponent to **SB 417**, stating changes in the Medicare Conditions of Participation implemented upon enactment of the Balanced Budget Reconciliation Act on November 29, 1999 have eased the length-of-stay restrictions on Critical Access Hospitals under the federal program, allowing for an annual *average* length of stay of no more than 96 hours.

Modifying K.S.A. 65-468 would enhance access to care in rural areas without any administrative or fiscal impact to the state government (Attachment 4).

Tom Sipe, Director of Regulatory Activities, Kansas Hospital Association, a proponent to **SB 417**, testified in accordance with the flexibility alluded to in the program title, the Balanced Budget Reconciliation Act of 1999 eased the length of stay requirement to an annual average 96 hour acute care patient length of stay. This is a significant expansion of program eligibility for the small rural hospitals which are most in need of the federal financial assistance provided by cost based reimbursement for their Medicare patients (Attachment 5).

Joye Huston, R.N., Kansas State Nurses Association, and administrator of Jefferson County Memorial Hospital and Geriatric Center, testified as a proponent for **SB 417**. The bill as proposed would extend the maximum amount of time a patient may be kept in critical access

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MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES, Room 210,  
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hospitals. The current 96 hour limit in statute is more restrictive than the federal requirement. The language is being modified to emulate the federal standard and is as follows: "provides acute inpatient care for a period that does not exceed on an annual average basis, 96 hours per patient" (Attachment 6).

The Chairperson closed the hearing on **SB 417**.

The Chairperson announced that time has come to an end and the committee would meet on Thursday, March 14 in Room 423-S at 2:00 p.m. and have a hearing on **HB 2892 - Adoption; reimbursement of state moneys paid for birthing.**

The meeting adjourned at 3:00 p. m. and the next meeting will be March 14.



# KANSAS BOARD OF HEALING ARTS


**BILL GRAVES**  
Governor



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## MEMORANDUM

TO: House Committee on Health and Human Services

FROM: Lawrence T. Buening, Jr.   
Executive Director

DATE: March 12, 2002

RE: **SENATE BILL NO. 447**

Chairman Boston and members of the Committee, I appear before you today as a proponent of Senate Bill No. 447. This bill was requested for introduction by the State Board of Healing Arts and the Board is a strong proponent for the bill.

As introduced, there are two parts to S.B. No. 447. Sections 1 and 2 would enable but not require the Board to compensate healing arts and podiatry review committee members for time expended reviewing investigative records and reports in preparation of attendance at review committee meetings. Section 3 of the bill would exempt the Board from competitive bids when obtaining experts to render opinions and testimony on matters which may result in a disciplinary action.

Review committees in the three branches of the healing arts were created by the 1984 Legislature to provide assistance to the Board in the analysis of investigative information and to make recommendations to the Board when, in the judgment of the review committee, a violation of the healing arts act had occurred. The review committee for the practice of podiatry was created by the 1992 Legislature. Currently, the Board has 6 three-member review committees—one each for osteopathic medicine and surgery, chiropractic and podiatry and three for medicine and surgery.

Several years ago, the Board recognized the increasing number of investigative cases being presented to the review committees and the amount of time expended by each of the members in reviewing investigative materials and preparing for the committee meetings. For instance, in FY1985 the Board received a total of 190 complaints, not all of which were made into investigative cases. In FY2000, the Board opened 372 investigative cases. This dramatic increase has occurred even though complaints are carefully screened and only the more serious cases are opened for investigation.

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR

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In the early 1990s, the Board authorized payment of hourly compensation to the review committee members for time expended outside of the review committee meetings themselves. In August 1996, a question was raised whether, in the absence of statutory authority, review committee members could receive additional compensation for reviewing files. The Board immediately discontinued the payment of any compensation over and above that authorized by K.S.A. 65-2840c. In FY 1996, the Board had authorized compensation at the rate of \$70 per hour for time expended outside of review committee meetings. The Board paid compensation of \$13,653.50 to 8 review committee members for their preparation time for record review prior to 16 review committee meetings. This was less than 1% of the Board's expenditure limitation for FY 1996. For FY 2003, it is estimated that less than \$22,000 will be expended, if the Legislature allows for outside compensation.

In preparing for review committee meetings, the members may spend between 4-6 hours reviewing investigative material including medical records for a meeting at which an average of 15 cases are reviewed. The investigative materials for an average meeting fill 2 to 3 bank boxes.

Review committee members are appointed by the Board. They operate in relative obscurity as the peer review function they perform is confidential. Review committee members are generally not recognized and they do not have their names on the Board's letterhead. However, the review committees perform a vital function in the manner in which the Board operates. Review committees are utilized not only to review investigative materials following the conclusion of an investigation, but also to review information and complaints received in the Board office to determine whether an investigation should be commenced. The review committees recommend to Board staff whether the treatment that a licensee provided adhered to the applicable standard of care. Occasionally, they request more information or an interview with the physician before reaching their recommendation. For performing these functions, the review committee members currently receive \$35 for attending the meeting plus their mileage expenses.

The Board does not have anyone on staff who is licensed to practice any of these four professions. By necessity, review committees are utilized exclusively when issues relating to standard of care arise. In October 1999, the Board adopted a policy that review committee members should not serve more than three consecutive two-year terms. Although we have included articles in our Newsletter, we have had very few individuals express an interest in serving.

Senate Bill No. 447 does not change the amount of compensation review committee members would receive for attending the meetings themselves. The review committee members will still be required to spend their day off or to take a day away from their practice and receive \$35 for attending the meeting. Further, House Bill No. 2121 **does not require** the Board to compensate review committee members for any of their time expended in preparation for the meetings. It would provide the Board with the authority to compensate them for this outside preparation time. However, whether and if the Board would exercise this authority would depend on the Legislature authorizing these expenditures through the budget process and on whether the Board's fee fund balance could accommodate such additional expenditures.

As to Section 3 of the bill, the Board is subject to the competitive bid law set forth in K.S.A. 75-3739. That law requires, as a general rule, that all contracts for construction and repairs, and all purchases of contracts for supplies, materials, equipment and contractual services to be acquired for state agencies be based on competitive bids. No competitive bids are required if, in the judgment of the director of purchases, no competition exists or when not seeking competitive bids is in the best interest of the state. Competitive bids are also not required when any state statute provides an exemption from the provision of that statute. When no competitive bid is required, agencies are authorized to obtain "sole source" authority from the director of purchases.

Expert witnesses are necessary whenever a disciplinary proceeding involves the standard of care of the practitioner involved. K.S.A. 60-3412 requires that expert witnesses in medical malpractice liability actions spend at least 50% of their professional time devoted to clinical practice. While the Board is not bound by this statute in an administrative proceeding, the Board utilizes only experts who would qualify under this statute. A disciplinary action taken for professional incompetence would not likely withstand judicial scrutiny if there was no expert testimony that there was a deviation from the expected standard of care. Expert witnesses must have impeccable qualifications, experience in the specialty field of the practitioner against whom an action is brought, and no financial or geographic relationship to the licensee involved. Considerable time is expended in selecting experts who have not only the necessary qualifications and experience, but who also are willing to devote time required to review the material, issue a written opinion, be deposed by the opposing party and testify at the hearing. Not all licensees are appropriate to serve as an expert witness. In some cases, there may only be one or two persons in the state with the necessary expertise to render an opinion. When an expert is first contacted, it is impossible to tell exactly how much time will be required. That is one of the reasons that the Legislature has not made expenditures for disciplinary hearings subject to the expenditure limitation imposed on the healing arts fee fund for FY 2002 and FY 2003.

The Legislature has previously acknowledged that contracting with expert witnesses should not be subject to competitive bids. The 2000 Legislature, in enacting the Professional Services Sunshine Act (K.S.A. 2001 Supp. 75-37,130 *et seq*) specifically stated that professional services "shall not include the services of persons who assist in the preparation of expert testimony for litigation or who act as expert witnesses in litigation".

When an expert is engaged, it is practically impossible to determine whether the amount of fees will exceed the \$2000 threshold established by the Department of Administration and will require "sole source" authority. While the "sole source" authority has been questioned by the Division of Purchases, it has never been denied. However, it is extremely cumbersome and the potential exists for denial of sole source authority. Further, K.S.A. 75-3739 is applicable if the Board utilizes different practitioners as experts within the same group practice such as the Cotton-O'Neil clinic here in Topeka.

In FY 2000, the Board expended \$19,837.25 for 14 different physicians and/or groups. Four of these exceeded \$2000 during the fiscal year. In FY 2001, \$18,221.61 was paid to 13 different physicians and/or groups. Again, four of these exceeded \$2000. To date in FY2002, \$16,581.10 has been paid to 11 physicians and/or groups. So far, two of these have exceeded \$2000 and, therefore, required sole source authority from the Division of Purchases.

Adopting the provisions of Section 3 of the bill will not increase the Board's expenditures or require an increase in the limitation heretofore imposed by the Legislature on the healing arts fee fund for FY 2002 and FY 2003. Passage of this section will serve only to improve the efficiency of both the Division of Purchases and the Board by not requiring needless paperwork.

Section 4 of the bill was added by the Senate Committee. This amendment requires that members of the Board who are licensed by the Board must maintain their primary residence in Kansas and reside in that residence an average of nine months annually. Further, licensed members must remain actively engaged in practice during their term on the Board. The Board has no objection to this amendment and believes it is sound public policy.

In conclusion, on behalf of the State Board of Healing Arts, I urge your favorable consideration of S.B. No. 447, as amended by Senate Committee, and ask that it be approved favorably by this Committee for passage by the entire House. Thank you for your time and I would be happy to respond to any questions.





Testimony on Senate Bill 447  
**House Health and Human Services Committee**  
By Charles L. Wheelen  
March 13, 2002

Thank you for this opportunity to express our support for the provisions of SB447. This bill would allow the State Board of Healing Arts to resume the practice of compensating members of committees who review medical charts and related information in order to render a professional opinion whether a licensee adhered to appropriate standards of care.

You will note that current law allows the Board to accept review committee nominees from professional associations. When we seek out individuals to serve on these review committees we try to recruit members of the profession who are respected by their peers for consistently sound medical judgment. They are being asked to judge their professional peers, and their opinions can possibly determine whether the peer loses or retains his or her license to practice. The kind of people we ask to serve on review committees are typically very busy physicians whose time is extremely valuable.

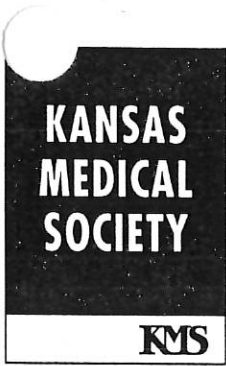
The peer review process is tedious and oftentimes requires detailed reading of numerous medical charts and similar records. It can be very time consuming. In the past the Board of Healing Arts paid review committee members a modest fee for service to compensate them for their time devoted to reviewing charts and records. But this practice was curtailed because of concerns that it may be inconsistent with the provisions of current law which limit the amount that elected and appointed officials may be paid.

K.S.A. 75-3223 is the section of Kansas law that sets out the standard rate for attendance at meetings of boards and subcommittees of boards. Neither this section of law nor any of the other sections referenced in K.S.A. 75-3223 provides for hourly compensation; thus the need to clarify the Board's authority to pay members of review committees. That's what SB447 does.

We believe that because of the importance of their role in the regulatory process, only the most respected physicians should be appointed to serve on review committees. We also believe that qualified professionals should receive reasonable compensation for their work. The amount of compensation to be paid review committee members would be a function of the budget process. And of course the source of revenue would be the Healing Arts Fee Fund. In other words, licensees; *not the State General Fund*, would afford the cost.

Thank you for considering our comments. We urge you to recommend passage of SB447.

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**TO:** House Committee on Health and Human Services  
**FROM:** Chris Collins  
Director of Government Affairs  
**DATE:** March 13, 2002  
**RE:** SB 447: Compensation of Board of Healing Arts Review Committee Members

Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today in support of SB 447. The Kansas Medical Society respectfully urges this committee to recommend the bill favorably for passage.

SB 447 allows the Board of Healing Arts to compensate health care professionals fairly for the time that they spend reviewing medical records or otherwise preparing to review disciplinary proceedings before the Board of Healing Arts. Review committees serve a vital function of the Board of Healing Arts. The Board does not have licensed professionals on staff to review disciplinary cases to determine whether a licensee followed the appropriate standard of care when treating patients. The Board currently solicits volunteers and compensates them \$35 for attending meetings, plus their mileage expenses. The skills involved in participating in these review panels are professional skills and participation on the review panels requires members to exercise their clinical judgment. Review committee members must review medical charts and occasionally request additional information or request to interview the licensee under investigation. Review committee members may be asked to review several bank boxes of materials prior to review committee meetings. Panels are frequently time-consuming and require a physician or other panel member to set aside their other professional duties in order to serve the public good. As a practical matter, this lack of compensation makes it very difficult for the Board of Healing Arts to attract talented physician reviewers willing to take on this vital task. It makes it difficult for the Board of Healing Arts to effectively and efficiently research cases that may fall below the standard of care and may merit disciplinary action.

For the same reasons, KMS supports the provision in the bill enabling the Board of Healing Arts to bypass the competitive bid process when engaging medical experts in its disciplinary cases. It comes as no surprise that the best and most effective trial expert is not usually the one with the lowest fees. The Board is at a distinct disadvantage in the hearing process when faced with financial constraints in retaining medical expert witnesses that the defendant licensee, whose competence is in question,

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does not face.

Likewise, the Kansas Medical Society supports the Senate amendments that impose additional requirements on members of the Board of Healing Arts. The amendment would ensure that those sitting on the board are residents of Kansas and are actively practicing their profession. We feel these are reasonable requirements for those making important health policy decisions in the State of Kansas.

The Kansas Medical Society remains committed to patient safety and quality medical care. For these reasons, KMS respectfully urges this committee to ensure that the Board of Healing Arts has adequate research and enforcement mechanisms to fulfill its charge to protect the safety of the public.



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

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**Testimony on Senate Bill No. 417**

**House Committee on Health and Human Services**  
by  
**Richard Morrissey, Director**  
**Office of Local and Rural Health**

**March 13, 2002**

Chairperson Boston and members of the House Committee on Health and Human Services, I am pleased to appear before you today to discuss Length-of-Stay Provisions for Critical Access Hospitals.

Kansas has been a national leader in the Critical Access Hospital program. With 46 designated Critical Access Hospitals in the state, Kansas has been able to improve the financial position of small, rural hospitals and improve access to health care services in rural areas.

Changes in the Medicare Conditions of Participation implemented upon enactment of the Balanced Budget Reconciliation Act on November 29, 1999 have eased the length-of-stay restrictions on Critical Access Hospitals under the federal program, allowing for an annual *average* length of stay of no more than 96 hours. The Kansas CAH/Rural Health Network Statute (K.S.A. 65-468) was written to reflect Medicare's more restrictive original Conditions of Participation for the Critical Access Hospital Program created through the Balanced Budget Act of 1997. The original Medicare regulations, and the Kansas statute, stipulated that the maximum length of stay for *any patient* admitted to a Critical Access Hospital was to be 96 hours, except under certain exceptional circumstances. K.S.A. 65-468 was also not clear in defining the maximum number of acute care beds stipulated in the Medicare Conditions of Participation, which is 15 beds.

Modifying this statute will enhance access to care in rural areas without any administrative or fiscal impact to the state government. We urge the committee to recommend modifying K.S.A. 65-468 to read that facilities must maintain an annual average length of stay not to exceed 96 hours for acute care patients, and that CAHs must not exceed 15 beds at any time for acute care inpatient services.

The Kansas Department of Health and Environment respectfully recommends that the Committee report Senate Bill No. 417 favorably for passage.

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Donald A. Wilson  
President

**Testimony on Length-of-Stay Provisions for Critical Access Hospitals  
Testimony in Support of  
SB 417**

**Provided by Tom Sipe  
Director of Regulatory Activities  
Kansas Hospital Association  
March 12, 2002**

Chairman Boston and members of the House Health and Human Services Committee, I appreciate the opportunity to provide testimony in support of the modifications to the K.S.A. 65-468 provisions governing Critical Access Hospitals.

The Medicare Rural Hospital Flexibility Program was enacted by the Balanced Budget Act of 1997 and created the Critical Access Hospital as a distinct Medicare provider for those rural hospitals agreeing to a limit of 15 acute care inpatient beds and a 96 hour length of stay for those acute care inpatients.

In accordance with the flexibility alluded to in the program title, the Balanced Budget Reconciliation Act of 1999 eased the length of stay requirement to an **annual average** 96 hour acute care patient length of stay. This is a significant expansion of program eligibility for our small rural hospitals which are most in need of the federal financial assistance provided by cost based reimbursement for their Medicare patients. Program participation has either improved or stabilized the financial conditions of these hospitals, very often assuring their ability to continue providing health care to their communities.

On behalf of our Critical Access Hospital members and prospective Critical Access Hospitals, I urge the Committee to recommend the adoption of these modifications bringing the state statute into compliance with the federal Medicare Conditions of Participation.

We appreciate the opportunity to submit this testimony.

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**Kansas Hospital Association**

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*March 11, 2002*

## S.B. 417 Critical Access Hospital Length of Stay

Representative Boston, and members of the House Health and Human Services Committee, my name is Joye Huston R.N. and I am the administrator of Jefferson County Memorial Hospital and Geriatric Center. Our Critical Access Hospital is one of 44 (2 more pending) in Kansas, located in Winchester. As a representative of the KANSAS STATE NURSES ASSOCIATION I am here to ask for your support of S.B. 417.

The bill as proposed would extend the maximum amount of time a patient may be kept in a Critical Access Hospital. The current 96 hour limit in statute is more restrictive than the federal requirement. The language is being modified to emulate the federal standard and is as follows: "provides acute inpatient care for a period that does not exceed on an annual average basis, 96 hours per patient."

I thought a patient scenario might assist in understanding the dilemmas faced in trying to comply with the current 96 hour timeline.

*A patient admitted at 2 a.m. to an acute bed in a Critical Access Hospital, according to the absolute 96-hour admission regulation, they could face discharge at 1:59 a.m. Diagnostic testing results usually are returned during day time hours 7 a.m. - 5 p.m. The pending results provide data needed for the provider to know whether discharge or transfer to another facility is appropriate. The change proposed allows for some reasonable flexibility to enable timing of discharge appropriate for care, such as during waking hours for the patient, when transportation can be coordinated, etc. Many of our patients are discharged within 24-72 hours which, when averaged with ones which exceed 96 hours, still would meet the federal regulations.*

Thank you for this opportunity to present before the committee. I hope that it will pass out of this committee favorably and through the House with approval.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

**CONSTITUENT OF THE AMERICAN NURSES ASSOCIATION**

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