

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

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 20, 2003 in Room 231-N of the Capitol.

All members were present except: Senator Chris Steineger

Committee staff present: Mr. Norm Furse, Revisor of Statutes  
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Mr. Terry Lambert, Chief Executive Officer of Newman Memorial Hospital  
Mr. Rick Tidwell, member of Board of Trustees at Newman Memorial County Hospital, Emporia, KS.  
Mr. Thomas Bell, Executive Vice President, Kansas Hospital Association  
Mr. H. Philip Elwood, Lobbyist, Goodell, Edmonds & Palmer  
Ms. Heidi Daley, Educational Audiologist/VP Audiology KS Speech-Language-Hearing Association  
Ms. Evie Curtis, Board Member representing KS Board of Hearing Aid Examiners  
Ms. Julie Hein, Legislative Counsel for KS Hearing Aid Association  
Ms. Marla Rhoden, Dir. of Health Occupation Credentialing, Department of Health and Environment

Others attending: See attached guest list

**Action on SB106 - an act relating to the public health and welfare of all Kansans; identifying major health care issues and establishing objectives and priorities.**

Upon calling the meeting to order, Chairperson Wagle stated she wanted to act on SB106, an act relating to the public health and welfare of all Kansas; identifying major health care issues and establishing objectives and priorities, and asked if the Committee wanted to address. Senator Barnett wanted to make the Committee aware that Mr. Norm Furse, Revisor of Statutes, had suggested a balloon to combine Sections 1, 2, 3 and four into one section and when the bill was initially drafted, it had language that was going to appear as a resolution, then was changed to a bill form so some capitalizations were changed for this bill. A copy of the balloon handed out by Senator Barnett is (Attachment 1) attached hereto and incorporated into the Minutes as reference Senator Barnett said he would like to move to amend the bill as outlined by the balloon. This was seconded by Senator Jordan and the motion carried. Senator Barnett then asked to move to advance the bill out favorably. It was seconded by Senator Brungardt and the motion carried.

**Hearing on SB151 - an act concerning county hospitals**

The Chair announced the next order of business would be a hearing on SB151 - an act concerning county hospitals and asked Mr. Furse to give a brief overview of the bill. Mr. Furse stated the bill, which was introduced by this Committee at the request of Senator Barnett, relates with his hospital in Emporia. Mr. Furse went on to state that the hospital had the opportunity to enter into a joint enterprise with other persons and was not able to because of the way the statute was written. As introduced, Mr. Furse stated

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that the bill would add to the definition of "hospital" in lines 23 and 24, to read "any joint enterprises for the provision of health care services", making it applicable to the county hospital statutes in Article 46, Chapter 19. He also offered the balloon he had prepared from a number of suggestions. A copy of his balloon is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

As there were no questions asked of Mr. Furse, the Chair called upon the first proponent conferee, Mr. Terry Lambert, Chief Executive Office of Newman Memorial County Hospital, d/b/a Newman Regional Health in Emporia, Kansas who stated the reason he was testifying was to support this bill which would allow County Hospitals to enter into joint ventures with physicians or other investors in for-profit investment opportunities. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes by reference.

The second proponent was Mr. Rick Tidwell, a member of the Board of Trustees at Newman Memorial County Hospital who stated that even though a number of occasions have arisen in which the Hospital had a possible opportunity to invest in for-profit ventures, at the advice of counsel, they have not been able to further explore these opportunities due to the current language in the status. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes by reference.

The third proponent to testify was Mr. Thomas Bell, Executive Vice President, Kansas Hospital Association who stated that county hospitals tend to be largely dependent on reimbursement from the Medicare program. He also pointed out that the bill can be considered to be a clarification, if appropriate for county hospitals then appropriate for district hospitals, and it has been fifteen years since governmental health laws have been reviewed in any detail. A copy of his testimony is (Attachment 5) attached hereto and incorporated into the Minutes as reference.

The final proponent testimony came from Mr. H. Philip Elwood from Goodell, Stratton, Edmonds & Palmer who stated that the proposed amendments are intended to level the playing field for county and district hospitals and the proposed language adds to the concept that the county or district hospital is to control the joint enterprise. A copy of his testimony is (Attachment 6) attached hereto and incorporated into the Minutes as reference.

As there was no opponent or neutral testimony, the Chair referred to the written testimony provided by the County Commission, Lyon County Courthouse stating their county hospital is not on their tax rolls and passage of this bill may help maintain that status while expanding needed healthcare services. A copy of their written testimony is (Attachment 7) attached hereto and incorporated into the Minutes as reference.

Chairperson Wagle thanked the conferees and asked the Committee for questions or comments. Senators Brownlee, Brungardt, Barnett, Wagle, and Harrington offered questions ranging from what percentage of the operating fund is provided by the county, what could happen in a worse case scenario if the bill did not pass, what is a service not being provided that isn't allowed currently, clarification of for-profit versus nonprofit, outpatient and ambulatory, to where is the accountability (are meetings and records open to the public?)

As there was no further discussion on the bill, Chairperson Wagle closed the hearing and asked the Committee members to review the material in front of them concerning this bill, especially the language, to make sure it does what the Committee needs it to do. The Chair said that she would like to act on this either next Monday or Tuesday (February 25 or 26<sup>th</sup>).

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### **Hearing on SB199 - an act concerning the fitness and dispensing of hearing aids**

The next order of business was the hearing of **SB199** - an act concerning the fitness and dispensing of hearing aids and again, Chairperson Wagle asked Mr. Furse to give a brief overview of this bill. Mr. Furse stated that for such a short bill, it does contain three changes to the law.

1) The current law language relates to entities or persons that the fitting and dispensing of hearing aids do not apply to, so this is basically the exception section in the fitting and dispensing of hearing aids licensure act. Currently the person who is engaged in practicing the fitting of hearing aids would not be subject to the act (if that persons practice is part of the academic curriculum of an accredited institution of higher education or a program conducted by a public charitable institution or nonprofit organization, which is primarily supported by voluntary contributions. As long as the organization does not sell hearing aids or accessories thereto, this bill adds the exception with language found in lines 21 & 22, "and such persons performing the fitting does not specifically charge the person being fitted, a fee for such service."

2.) The second change in the law is found on lines 23 to 28, creating a second exception and provides that if the licensed audiologist is employed by a publically funded school district or education property or education service center, that person is not subject to this act so long as the organization does not sell hearing aids and accessories and such person performing the fitting does not charge a fee.

3.) The third change to this section is in Sub B and relates to a situation where a license of another state agency (ex. Board of Healing Arts) conducts the fitting and dispensing procedures and a complaint is filed against such person with the agency, this language would require that agency to consult with the Board of Examiners of Fitting and Dispensing Hearing Aids (lines 29 thru 33).

The Chair asked if there were questions of Mr. Furse. As there were none, the Chair recognized the first proponent conferee, Ms. Hedi Daley, Educational Audiologist/VP Audiology, Kansas Speech-Language-Hearing Association, who stated the issue for their association and its members is clarifying who is "specifically exempted" from the licensing requirements stated in 74-6810. A copy of her testimony is (Attachment 8) attached hereto and incorporated into the Minutes as referenced.

The second proponent conferee recognized was Ms. Evie Curtis, Board Member of Kansas Board of Hearing Aid Examiners, who stated that this bill originated due to an opinion by the Attorney General in May, 2002, and while the Board is not opposing the amendment to 74-5810, they do want to clarify a few points for the record. A copy of her testimony is (Attachment 9) attached hereto and incorporated into the Minutes as referenced.

The third proponent conferee was Ms. Julie Hein who offered testimony for Mr. Ron Hein, Lobbyist for Kansas Hearing Aid Association. Ms Hein stated that this legislation was proposed by the Kansas Speech Language and Hearing Association, and the proposal for exemption for certain audiologists under certain conditions from licensure act of hearing aid dispensers is not one that they would have sought on their own. A copy of Mr. Hein's testimony is (Attachment 10) attached hereto and incorporated into the Minutes as referenced.

The final proponent conferee was Ms. Marla Rhoden, Director, Health Occupations Credentialing, who stated this proposed legislation would exempt licensed audiologists in public school settings from the requirement to hold a license as a hearing aid dispenser to fit and/or adjust hearing aids for students in public schools and that the Speech-Language Pathology and Audiology Advisory Board, which serves in an advisory capacity to KDHE as the licensing agency for audiologists, supports the passage of this bill. A copy of her testimony is (Attachment 11) attached hereto and incorporated into the Minutes as referenced.

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As there were no opponent or neutral conferees, the Chair asked the Committee for questions or comments. Senator Jordan did ask for clarification regarding lines 32 and 33.(Are we talking about the Kansas Board of Hearing Aid Examiners or is there a different group, the Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids, or are the two the same?) Mr. Furse answered that the statutory name is in line 32.

The Chair then closed the hearing as there were no more questions, She then said she would also like to work this bill on Monday or Tuesday of next week.

**Adjournment**

As it was going on 2:30 p.m., Senate session time, the meeting was adjourned. The time was 2:31 p.m.

The next meeting is scheduled for February 24, 2003.



# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

22

## GUEST LIST

DATE: Thursday, February 20, 2003

NAME	REPRESENTING
Amber Kishkus	Sen. Brungardt
M. D. BY KAMPMANN	Ks HEARING AID ASSOC.
Jennifer Schwartz	ASSISTIVE TECHNOLOGY FOR KANSAS
Marla Rhoden	KDHE/HOC
Claudia Shannon	Kansas Speech-Hearing Assoc.
Dee Heinrich	KSHA
Elise Miller	Asst. to Senator Salmons
Jim Byrnes	Sen Salmons
Elvira	Ks Board of Hearing Aid Examiners
Geri Summers	Ks Assn. for the Medically Underpr.
Heidi Daley	KSHA
Terry R. Lambert	Newman Mem. Cty. Hospital
Ricid Tidwell	Newman mem. County Hospital
Karen Seale	KDHE
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Tom Bell	Ks Hosp. Assn.
Mike Heim	Heim Law Firm

SENATE BILL No. 106

By Committee on Public Health and Welfare

9 AN ACT relating to the public health and welfare of all Kansans; iden-  
10 tifying major health care issues and establishing objectives and  
11 priorities.  
12

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

14 Section 1. This act is intended to build on the efforts and activities  
15 of the many Kansans who were involved in the project Healthy Kansans  
16 2000 and to work within the parameters of the national initiative, Healthy  
17 People 2010, to (1) establish a limited number of major health care issues  
18 which are most pertinent to the citizens of Kansas and (2) to establish  
19 objectives and priorities intended to ameliorate the adverse effects of such  
20 conditions and to develop action plans to accomplish such goals.

21 [Sec. 2.] The state is concerned with the health of all Kansans, includ-  
22 ing issues relating to care and staffing (particularly in underserved areas  
23 of the state), financing, insurance (including the problems of the unin-  
24 sured and underinsured), the role of the state and local government in  
25 the development and delivery of health services, and the role of education  
26 and technology in health care. The term health care includes mental  
27 health care.

28 [Sec. 3.] The Kansas Department of Health and Environment is com-  
29 plemented on its role in the planning and implementation of the project  
30 Healthy Kansas 2000. There is a need to continue such efforts. The Kan-  
31 sas Department of Health and Environment is tasked to follow through  
32 with its earlier activities in light of the new national initiative, Healthy  
33 People 2010, to identify major health issues pertinent to this decade and  
34 to formulate needed objectives and priorities. Such efforts should be the  
35 collective actions of government agencies, professional and nonprofit  
36 health organizations and the rendering health care community, integrated  
37 with local communities, under the direction of the Secretary of the Kansas  
38 Department of Health and Environment.

39 [Sec. 4.] These endeavors are to be undertaken subject to available  
40 appropriations. The Secretary of the Kansas Department of Health and  
41 Environment is encouraged to seek out alternative funding resources.

42 [Sec. 5.] The Secretary of the Kansas Department of Health and En-  
43 vironment is to report to the governor and legislature the actions taken

- (a)
- (b)
- (c)
- '
- (d)
- (e)

department of health and environment

secretary of health and environment

secretary of health and environment

*Senate Public Health and Welfare Committee  
Date: February 20, 2003  
Attachment 1-1*

1 pursuant to this act prior to the commencement of the 2007 legislative  
2 session.  
3 Sec. ~~6~~ This act shall take effect and be in force from and after its  
4 publication in the statute book.

2

21

# SENATE BILL No. 151

By Committee on Public Health and Welfare

2-5

and district

9 AN ACT concerning county hospitals; amending K.S.A. 19-4601 and re-  
10 pealing the existing section

, 19-4608, 80-2501 and 80-2518 and repealing  
the existing sections

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 19-4601 is hereby amended to read as follows: 19-  
14 4601. As used in this act:

15 (a) "Board" means a hospital board which is selected in accordance  
16 with the provisions of this act and which is vested with the management  
17 and control of a county hospital;

18 (b) "commission" means the board of county commissioners of any  
19 county;

20 (c) "hospital" means a medical care facility as defined in K.S.A. 65-  
21 425 and amendments thereto and includes within its meaning any clinic,  
22 school of nursing, long-term care facility, limited care residential facility  
23 and, child-care facility and joint enterprises for the provision of health  
24 care services operated in connection with the operation of the medical  
25 care facility;

26 (d) "hospital moneys" means, but is not limited to, moneys acquired  
27 through the issuance of bonds, the levy of taxes, the receipt of grants,  
28 donations, gifts, bequests, interest earned on investments authorized by  
29 this act and state or federal aid and from fees and charges for use of and  
30 services provided by the hospital;

31 (e) [As used in this section, a] "limited care residential facility" means  
32 a facility, other than an adult care home, in which there are separate  
33 apartment-style living areas, bedrooms, bathrooms and individual utilities  
34 and in which some health related services are available;

35 Sec. 2. K.S.A. 19-4601 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its  
37 publication in the statute book.

;

;

;

(f) "joint enterprises" means a business undertaking by a hospital and one or more public or private entities for the provision of health care services in which the hospital exercises majority control of the joint enterprise.

See Attached

, 19-4608, 80-2501 and 80-2518 are hereby repealed

Senate Public Health & Welfare Committee  
Date: February 20, 2003  
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Sec. 2. K.S.A. 19-4608 is hereby amended to read as follows: 19-4608. (a) All hospital moneys, except moneys acquired through the issuance of revenue bonds, shall be paid to the treasurer of the board, shall be allocated to and accounted for in separate funds or accounts of the hospital, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 10-801 to 10-806, inclusive, and K.S.A. 12-105a and 12-105b, and amendments to these statutes. The board may designate a person or persons to sign such claims and warrants or warrant checks.

(b) The board may accept any grants, donations, bequests or gifts to be used for hospital purposes and may accept federal and state aid. Such moneys shall be used in accordance with the terms of the grant, donation, bequest, gift or aid and if no terms are imposed in connection therewith such moneys may be used to provide additional funds for any improvement for which bonds have been issued or taxes levied.

(c) Hospital moneys shall be deemed public moneys and hospital moneys not immediately required for the purposes for which acquired may be invested in accordance with the provisions of K.S.A. 12-1675 and amendments thereto. Hospital moneys acquired through the receipt of grants, donations, bequests or gifts and deposited pursuant to the provisions of K.S.A. 12-1675 and amendments thereto need not be secured as required under K.S.A. 9-1402 and amendments thereto.

In addition, hospital moneys may be invested in joint enterprises for the provision of health care services as and to the extent permitted by subsection (c) of K.S.A. 19-4601 and amendments thereto.

(d) Hospital moneys which are deposited to the credit of funds and accounts which are not restricted to expenditure for specified purposes may be transferred to the general fund of the hospital and used for operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.



(e) The board shall keep and maintain complete financial records in a form consistent with generally accepted accounting principles, and such records shall be available for public inspection at any reasonable time.

(f) Notwithstanding subsections (a) to (e), inclusive, the board may transfer any moneys or property a hospital receives by donation, contribution, gift, devise or bequest to a Kansas not-for-profit corporation which meets each of the following requirements:

(1) The corporation is exempt from federal income taxation under the provisions of section 501(a) by reason of section 501(c)(3) of the internal revenue code of 1954, as amended;

(2) the corporation has been determined not to be a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1954, as amended; and

(3) the corporation has been organized for the purpose of the charitable support of health care, hospital and related services, including the support of ambulance, emergency medical care, first responder systems, medical and hospital staff recruitment, health education and training of the public and other related purposes.

(g) The board may transfer gifts under subsection (f) in such amounts and subject to such terms, conditions, restrictions and limitations as the board determines but only if the terms of the gift do not otherwise restrict the transfer. Before making any such transfer, the board shall determine that the amount of money or the property to be transferred is not required by the hospital to maintain its operations and meet its obligations. In addition, the board shall determine that the transfer is in the best interests of the hospital and the residents within the county the hospital has been organized to serve.

Sec. 3. K.S.A. 80-2501 is hereby amended to read as follows: 80-2501. As used in this act:

(a) "Board" means a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of an existing hospital or a hospital established under the provisions of this act;

(b) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, long-term care facility, limited care residential retirement facility, child-care facility [and] emergency medical or ambulance service operated in connection with the operation of the medical care facility;

,

(c) "hospital moneys" means, but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital;

and joint enterprises for the provision of health care services operated in connection with the operation of the medical care facility

(d) "existing hospital" means a hospital established under the provisions of article 21 of chapter 80 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto prior to the effective date of this act and being maintained and operated on the effective date of this act;

(e) "political subdivision" means a township, a city or a hospital district established under the provisions of article 21 of chapter 80 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto prior to the effective date of this act or established under this act;

(f) "qualified elector" means any person who has been a bona fide resident within the territory included in the taxing district of a hospital for 30 days prior to the date of

any annual meeting or election provided for in this act and who possesses the qualifications of an elector provided for in the laws governing general elections;

(g) As used in this section, a "limited care residential retirement facility" means a facility, other than an adult care home, in which there are separate apartment-style living areas, bedrooms, bathrooms and individual utilities; which facility is available only to individuals 55 years of age or older; and which facility has at least the following characteristics: (1) A common recreational and dining area; (2) planned recreation and social gatherings; (3) laundry facilities or services and housecleaning services; (4) special dietary programs providing at least one meal per day; (5) organized wellness programs; (6) a 24-hour emergency call system in each unit staffed by the hospital district; (7) a nursing staff from the hospital district on 24-hour call for residents; and (8) availability of additional health related services, laundry services, housekeeping, means for individuals with special or additional needs.

(h) "joint enterprise" means a business undertaking by a hospital and one or more public or private entities for the provision of health care services in which the hospital exercises majority control of the joint enterprise.

Sec. 4. K.S.A. 80-2518 is hereby amended to read as follows: 80-2518. (a) All hospital moneys, except moneys acquired through the issuance of revenue bonds, shall be paid to the treasurer of the board, shall be allocated to and accounted for in separate funds or accounts of the hospital, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 10-801 to 10-806, inclusive, and K.S.A. 12-105a and 12-105b, and amendments to these statutes. The board may designate a person or persons to sign such claims and warrants or warrant checks.

(b) The board may accept any grants, donations, bequests or gifts to be used for hospital purposes and may accept federal and state aid. Such moneys shall be used in accordance with the terms of the grant,

donation, bequest, gift or aid and if no terms are imposed in connection therewith such moneys may be used to provide additional funds for any improvement for which bonds have been issued or taxes levied.

(c) Hospital moneys shall be deemed public moneys and hospital moneys not immediately required for the purposes for which acquired may be invested in accordance with the provisions of K.S.A. 12-1675 and amendments thereto. Hospital moneys acquired through the receipt of grants, donations, bequests or gifts and deposited pursuant to the provisions of K.S.A. 12-1675 and amendments thereto need not be secured as required under K.S.A. 9-1402 and amendments thereto.

(d) Hospital moneys which are deposited to the credit of funds and accounts which are not restricted to expenditure for specified purposes may be transferred to the general fund of the hospital and used for operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.

(e) The board shall keep and maintain complete financial records in a form consistent with generally accepted accounting principles, and such records shall be available for public inspection at any reasonable time.

(f) Notwithstanding subsections (a) to (e), inclusive, the board may transfer any moneys or property a hospital receives by donation, contribution, gift, devise or bequest to a Kansas not-for-profit corporation which meets each of the following requirements:

(1) The corporation is exempt from federal income taxation under the provisions of section 501(a) by reason of section 501(c)(3) of the internal revenue code of 1954, as amended;

(2) the corporation has been determined not to be a private foundation within the

In addition, hospital moneys may be invested in joint enterprises for the provision of health care services as and to the extent permitted by subsection (b) of K.S.A. 80-2501 and amendments thereto.

meaning of section 509(a)(1) of the internal revenue code of 1954, as amended; and

(3) the corporation has been organized for the purpose of the charitable support of health care, hospital and related services, including the support of ambulance, emergency medical care, first responder systems, medical and hospital staff recruitment, health education and training of the public and other related purposes.

(g) The board may transfer gifts under subsection (f) in such amounts and subject to such terms, conditions, restrictions and limitations as the board determines but only if the terms of the gift do not otherwise restrict such transfer. Before making any such transfer, the board shall determine that the amount of money or the property to be transferred is not required by the hospital to maintain its operations and meet its obligations. In addition, the board shall determine that the transfer is in the best interests of the hospital and the residents within the district the hospital has been organized to serve.





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TESTIMONY  
FOR  
SENATE BILL 151

PUBLIC HEALTH AND WELFARE  
COMMITTEE

SENATOR SUSAN WAGLE, CHAIR

Madame Chair and members of the Committee, thank you for allowing me the opportunity to address you regarding S.B. 151.

My name is Terry R. Lambert and I am the Chief Executive Officer of Newman Memorial County Hospital, d/b/a Newman Regional Health in Emporia, Kansas.

I am here to encourage support for Senate Bill 151, which would allow County Hospitals to enter into joint ventures with physicians or other investors in for-profit investment opportunities.

I feel that it is important for County hospitals to have the same opportunity as other private hospitals to invest and form partnerships and relationships in order to carry out our mission to provide a continuum of quality healthcare services. By being able to enter into such arrangements, Kansas citizens in rural areas would be afforded better access to needed healthcare services. In addition, some of these investments may prove to help fund the most basic healthcare services that we are trying to provide, while keeping some of us off the tax rolls.

By being able to joint venture with some physicians, better relationships may be forged and trust may be gained between the groups, which would only enhance healthcare. Physician incomes, just like hospital revenues, are being squeezed due to decreased reimbursement from the State Medicaid program, Medicare, and many managed care organizations. As a result, physicians are looking for ways to make up the difference. This legislation would allow our County hospital the opportunity to joint venture with physicians in these circumstances, if it made good business sense.

Newman Regional Health has faced several situations over the years where it would have been nice to have had the choice to joint venture or not. For example, several years ago a group practice wanted to work with the hospital to provide radiology services in their office. If the hospital could have joint ventured, a strong relationship may have been formed and that business may not have been completely lost by the hospital. In another situation, a surgical hospital was built. Newman may or may not have invested if asked,

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*Senate Public Health & Welfare Committee  
Date: February 20, 2003  
Attachment 3-1*

but we should have the ability to make that decision. More recently, a physician practice asked us to joint venture with them to install and operate a nuclear medicine system. We were forced to decline due to statutory restrictions and as a result, the hospital is losing approximately \$1.1M in revenue.

In these examples, Newman Regional Health was informed by legal counsel that statutory requirements did not even give us the opportunity to consider making a business decision whether to participate.

In closing, I want to say that by approving S.B. 151, County hospitals will be on a more even playing field to compete in the healthcare arena and access to needed healthcare can be enhanced.

A handwritten signature in cursive script, appearing to read "Terry R. Lambert".

Terry R. Lambert  
1510 W. 20<sup>th</sup> Park Place  
Emporia, Kansas 66801  
620/343-6800 ext 2601 (work)



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**TESTIMONY  
FOR  
SENATE BILL 151**

**PUBLIC HEALTH AND WELFARE  
COMMITTEE**

**SENATOR SUSAN WAGLE, CHAIR**

My name is Rick Tidwell. I am a resident of Lyon County, Kansas and am a member of the Board of Trustees at Newman Memorial County Hospital located in Emporia. I have served my capacity of Board Trustee for seven years. Our Hospital is County owned but is self-funding. No tax support is provided. Our primary service area is Lyon County and surrounding counties.

My role and responsibility as a Trustee, is to see that Newman provides quality healthcare to the citizens that we serve and to be a good steward of the Hospital's finances.

Over the years, a number of occasions have arisen in which the Hospital had a possible opportunity to invest in for-profit ventures with physicians and other health care providers. Unfortunately, at the advice of our legal counsel, we have not been able to further explore any of the opportunities due to the current language in the statutes.

The proposed changes in S.B. 151 will give a County Hospital clarity as to the intent of the Statute.

With the constant changes in our world today and in healthcare in particular, the proposed amendment simply makes sense. The proposed amendment would allow hospitals such as ours the ability to explore possible joint business ventures or other relationships to determine if they are in the best interest of the hospital and the public. As with any other business decision, each hospital would have to address each and every opportunity on it's own merits.

Thank you for your time today.

A handwritten signature in cursive script, appearing to read "Rick Tidwell".

Rick Tidwell

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*Senate Public Health & Welfare Committee  
Date: February 20, 2003  
Attachment 41*

## Memorandum



Donald A. Wilson  
President

To: Senate Public Health and Welfare Committee  
From: Kansas Hospital Association  
Thomas L. Bell, Executive Vice President  
Re: **SB 151**  
Date: February 20, 2003

The Kansas Hospital Association appreciates the opportunity to comment in support of SB 151. This bill would clarify Kansas law to state that county hospitals are allowed to participate in joint enterprises.

In Kansas there are a large number of county hospitals. These facilities tend to be smaller and in the more rural areas of the state. These hospitals also tend to be largely dependent on reimbursement from the Medicare program. Because they operate under increasingly difficult circumstances, it is important to provide such hospitals with the tools necessary to compete in the current environment. SB 151 is an attempt to do just that.

Several other points are important here. First, SB 151 can be considered to be a clarification because many assume that county hospitals already have the ability to participate in joint enterprises. Legal rules regarding municipal law may make it necessary to state this specifically in the statutes. Second, if the changes in SB 151 are appropriate for county hospitals they are equally appropriate for the district hospitals in Kansas. Finally, it has been over fifteen years since our governmental hospital laws have been reviewed in any detail. The health care system has changed substantially in that period of time, so a more complete review might be in order.

Thank you for your consideration of our comments.

*Senate Public Health & Welfare Committee  
Date: February 20, 2003  
Attachment 5-1*

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**Kansas Hospital Association**

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**Testimony Presented**  
**by**  
**H. Philip Elwood**  
**of**  
**Goodell, Stratton, Edmonds & Palmer**  
**Re: SB 151**  
**February 20, 2003**

The amendments proposed today are intended to level the playing field for county and district hospitals.

- A hospital operated by a Kansas nonprofit corporation as an income tax exempt entity is permitted to invest and participate in a joint enterprise for health care purposes.
  - - Put simply, a nonprofit corporation can do anything that is not profitable by law, so long as its income tax exemption is not threatened.
  - - A county or district hospital can only do those things it is authorized to do by law or those things implicit in that which is authorized.
  - - This is a very significant difference.
- The amendment set out in SB 151 authorizes participation in a joint enterprise.
- The concept of joint enterprise needs to be defined and is defined in the proposed additions presented today.
- The proposed language also adds the concept that the county or district hospital is to control the joint enterprise.
  - - This is consistent with I.R.S. requirements for a nonprofit income tax exempt hospital under IRC § 501(c)(3) to participate in a joint enterprise as set out in Rev. Rul. 98-15.

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- - This also allows the county or district hospital board to exercise its judgment to protect the public interest in the use of public money invested in the joint enterprise.
- Finally, the proposed language for K.S.A. 19-4908(c) makes clear that public money can be invested in the joint enterprise.
- Participation by any hospital in a joint enterprise for health care purposes is never easy. Beyond the limitations of state law and the tax code, hospitals and other health care providers must comply with the Medicare/Medicaid laws, the Stark laws, the HIPAA laws, etc.
- The point of the proposed Legislation is only to put the county and district hospitals in a position to participate in a joint enterprise which is comparable to that of the hospitals operated by a Kansas nonprofit corporation.

A069786:February 20, 2003



COUNTY COMMISSION  
LYON COUNTY COURTHOUSE  
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February 14, 2003

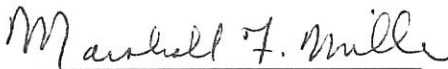
Senator Susan Wagle, Chair  
And Members  
Public Health and Welfare Committee  
Kansas Senate  
State Capital  
Topeka, KS 66612

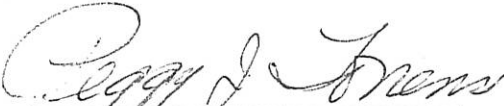
Dear Senator Wagle and Other Members:

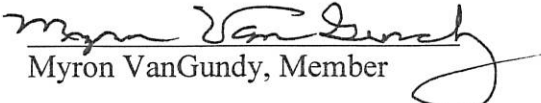
The Lyon County Commissioners want to offer support for S.B. 151. This bill, if approved, will allow our County Hospital to make business decisions regarding possible for-profit joint ventures or partnerships. Our County Hospital is not on our tax rolls and such arrangements may help maintain that status while expanding needed healthcare services.

Thank you for your consideration.

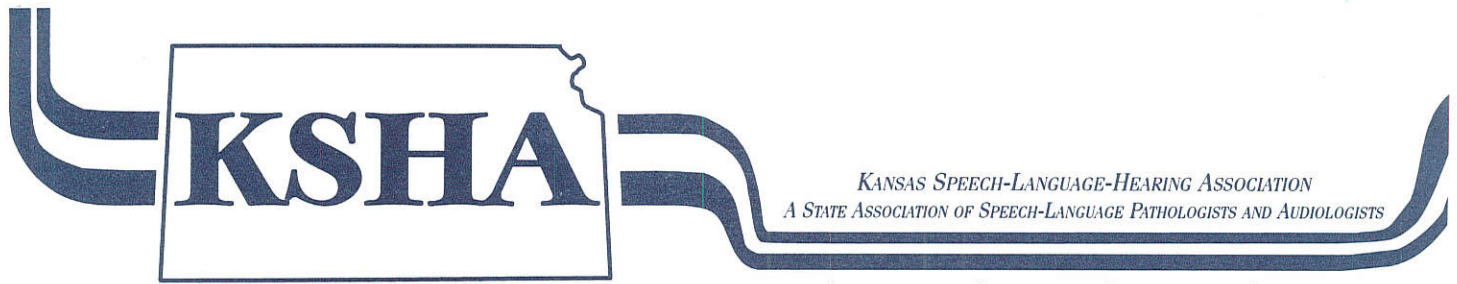
Sincerely,

  
Marshall F. Miller, Chairman

  
Peggy J. Torrens, Vice-Chair

  
Myron VanGundy, Member

Senate Public Health & Welfare Committee  
Date: February 20, 2003  
Attachment 7-1



3900 SEVENTEENTH, GREAT BEND, KS 67530  
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ADVOCATES FOR PEOPLE WITH COMMUNICATION DISABILITIES

I write in support of Senate Bill 199. Successful passage of this legislation will eliminate the concern of the Kansas Speech-Language-Hearing Association and the educational audiology members by clarifying who is "specifically exempted" from the hearing aid dispensing statute.

I would like to provide some background information. Kansas' statute requires periodic hearing evaluations for all Kansas K-12 students in accredited schools. Presently, licensed audiologists providing clinical audiology services to preschool through high school age children enrolled in Kansas public and private schools evaluate the hearing of hundreds of thousands of students every year. Included in those numbers are hundreds of students with significant hearing loss who have been fitted with amplification. Presently, school districts and the licensed audiologists they employ are not selling hearing aids nor do they desire to start such activity. The estimated 2,000 plus children using amplification have obtained their hearing aids from licensed hearing aid dealers.

A small percentage of these students utilize FM amplification systems during the school day. These systems are either personally owned, purchased by the school districts or are leased from the Kansas School for the Deaf (KSD). Since the snap ring earmold for the FM system is usually different from the standard tubing earmold used with the students' personally owned hearing aid(s), a different earmold is needed to use the FM system. If a FM system is specified in a student's Individual Education Plan (IEP), the district provides for the lease or purchase of the system at the districts

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expense. Likewise, they are responsible for the needed snap ring earmold to utilize the system. Prior to the Attorney General's opinion, some licensed audiologists working in the schools were making the earmold impressions and ordering the earmolds with their school district or cooperative paying for the expense. School districts and the licensed audiologists they employ were not engaged in for profit sale of "hearing aids or accessories thereto."

It is the desire of the school districts and educational cooperatives in Kansas who employ licensed audiologists to once again be able to make earmolds when necessary. Additionally, clarification in the statute is needed to eliminate a subsequent potential issue regarding FM amplification systems. That potential issue involves the licensed audiologists working in the schools who evaluate hearing and then make the appropriate setting changes (output and frequency response) on the FM systems that are district owned or leased from KSD. Although this issue was not addressed by the Kansas Attorney General in Opinion 2002-023, the act of making setting changes is technically the "fitting or adapting a hearing aid" even though there is not actually a selection of a particular device or a for profit sale of a hearing aid.

Presently, a majority of the licensed audiologists working for school districts and educational cooperatives do not hold the additional hearing aid dispensing license since their primary employment is with a not for profit, tax supported entity. Presently, nearly no school districts pay for the cost of the employee's audiology license, let alone the cost of an additional license to dispense hearing aids. The small amount of money saved by making a few earmolds would not offset the additional license cost or any additional continuing education fees. The convenience of getting the earmolds made for students

in their home schools is valuable. The need to transport students, especially in rural areas, is eliminated.

The suggested language in SB 199 clarifies what is currently confusing statutory language. Licensed audiologists in the schools are seeking clarification in the statutory language so they can better provide services to the hearing aid wearing students they serve within their primary employment setting.

Respectfully submitted:

Allan White, President  
Kansas Speech-Language-Hearing Association  
February 20, 2003



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## KANSAS BOARD OF HEARING AID EXAMINERS

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### SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

### SENATE BILL No. 199

February 20, 2003

Good afternoon Madam Chair and Committee Members, my name is Evie Curtis and I represent the Kansas Board of Hearing Aid Examiners. I want to thank you for the opportunity to speak to you.

I was appointed to this Board July 1, 2000 as a lay member and have actively served in this position since that time.

While I am relatively new to this agency I have served on several other Board's during my career and have taken a special interest in working with senior citizens in many arenas.

Sherry DuPerier the Executive Officer of the Board had hoped to be able to address the committee today but she is out of the state. She has been very active in the amendment process, however as the Board was not aware of the proposed legislation until late January, adjustment to her schedule was not possible.

First, let me note that this bill originated due to an opinion by the Attorney General in May 2002. The opinion was requested by the Board after concern was raised by educational audiologists in the state regarding the legality of making earmold impressions for hearing impaired children in state school programs. [Reference 74-5807(d)] The Attorney General opined that it was unlawful for non-licensed persons to make earmold impressions.

While the Board is not opposing the amendment to 74-5810, we do want to clarify a few points for the record.

The Kansas Board of Hearing Aid Examiners is a consumer protection agency and as such our concern is with the impact any amendment has in regard to the consumer that could adversely expose the public to possible harm. Our concern

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is consumer driven and does not relate to business issues within our dispensing and non-dispensing practices.

We were aware last spring that an amendment was under consideration. As the Board was not contacted for discussion or to develop wording that was mutually agreeable to both parties, the lateness has created some difficulty as there was very limited time to review the changes prior to the deadline.

We were not contacted directly by KSHA but we do appreciate the fact the Kansas Hearing Aid Association (KHAA) made us aware of the proposed legislation. As a consumer protection agency we do not have a lobbyist representing us. I would further like to note that Ron Hein is a lobbyist for the trade association and not for our agency as was noted in the KSHA newsletter.

As it has been explained to the Board in recent weeks, it is KSHA's intent to amend this exemption for educational audiologists, (a relatively small group), in order to facilitate or simplify impression taking in certain geographic areas.

While this seems admirable on initial review, we must again remember that the Board of Hearing Aid Examiners is a consumer protection agency.

Several concerns have been discussed as this language has evolved regarding the training and competencies of a person performing an earmold impression. The act of taking an impression is covered in the dispensing law and is an integral part of the dispensers practice. When the law was written in 1968 audiologists were prohibited from dispensing hearing aids by the American Speech and Hearing Association (ASHA) as a conflict of interest. This policy was later changed and over the years audiology programs have evolved. Today while hearing instrument training is standard in most programs our concerns still arise as the training for this specific skill would not have been included if the audiologist graduated prior to the policy change (or even afterwards in many cases) nor would this competency have been evaluated if no hearing aid training was in place in the university program.

As a new member to the Board, I have made it a point to become very familiar with each aspect of the examination process and I can honestly say that the exam is extensive in all areas. The earmold portion is dealt with in a careful and complete manner. I bring this up to again point out our obligation as a consumer protection agency. In relation to this issue the Board has asked that certain language be added to the Senate Bill 199 (line 29 through 33) in order to allow the Board to be made aware of related complaints involving persons exempt from the Hearing Aid Dispensing Law. It is felt that the consumers will be better served with this language.

In closing, the Board understands the concerns of the Kansas Speech and Hearing Association. We must at all times remember that when an exception is granted we must be careful to insure that it is not too large and unrestrained and that it is monitored adequately. Training and competency measurement should not be overshadowed for the sake of convenience. We are pleased that even

with the lateness of notification we were able to come to an agreement relative to this exemption.

We do feel that if the exemption is treated today, and in the future, as it has been described in these recent discussions and that if those exempted honor their ethical obligations to insure adequate training and competency the amendment will serve the purpose for which it was intended, that being assistance to the hearing impaired children of Kansas.

If there are any questions I will do my best to answer them at this time.

# HEIN LAW FIRM, CHARTERED

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*Ronald R. Hein*

*Attorney-at-Law*

Email: rhein@heinlaw.com

**Testimony re: SB 199  
Senate Public Health and Welfare Committee  
Presented by Ronald R. Hein  
on behalf of  
Kansas Hearing Aid Association  
February 20, 2003**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Hearing Aid Association. KHAA is the professional association for licensed hearing aid dispensers in the state.

The KHAA support SB 199. This legislation was proposed by the Kansas Speech Language and Hearing Association, and the proposal for exemption for certain audiologists under certain conditions from the licensure act of hearing aid dispensers is not one that we would have sought on our own. However, KSHA did contact us through their lobbyist, John Peterson, and informed us of the suggested change. We had an opportunity to meet with him on several occasions, to discuss revisions to the proposed language, and, as written, we can support SB 199.

We also contacted the state licensure board, the Kansas Board of Hearing Examiners, to insure that the language changes would not adversely impact their obligation to protect the public. They also gave us some input, and those changes have been incorporated into the legislation which you see before you.

A great deal of time and effort was put into the revisions necessary to make this language change acceptable to KSHA, KHAA, and the licensing board. We are hopeful this legislation will not be subject to substantive amendments due to the delicate compromise that was worked out between the entities involved.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

*Senate Public Health & Welfare Committee  
Date: February 20, 2003  
Attachment 10-1*



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Senate Bill No. 199**

**to the  
Senate Committee on Public Health and Welfare**

**by  
Marla Rhoden, Director, Health Occupations Credentialing  
February 20, 2003**

Chairperson Wagle, I am pleased to appear before the Senate Committee on Public Health and Welfare to discuss Senate Bill 199. The Kansas Department of Health and Environment bears responsibility for the administration of K.S.A. 65-6501 *et seq.*, the licensure law for speech-language pathologists and audiologists. This proposed legislation amends K.S.A. 74-5810 related to functions of the Board of Hearing Aid Examiners in Fitting and Dispensing of Hearing Aids, to include an exemption from the licensing requirement for licensed audiologists to also hold a license as a hearing aid dispenser when employed by a publicly funded school district, a special education cooperative or an education service center while serving preschool through high school age students as long as such organization does not sell hearing aids or accessories and the individual performing the fitting of the hearing aids does not charge a fee for fitting services. The bill further provides that KDHE shall consult with the Board regarding complaints filed against audiologists regarding conduct covered by this act.

In May 2002 the Office of the Attorney General issued an opinion that making or taking an earmold impression for the purpose of fitting or adapting a hearing aid is within the purview of a licensed hearing aid dispenser and that licensed audiologists would also be required to hold a license as a hearing aid dispenser to legally perform that function. This proposed legislation would exempt licensed audiologists in public school settings from the requirement to hold a license as a hearing aid dispenser to fit and/or adjust hearing aids for students in public schools. The Speech-Language Pathology and Audiology Advisory Board, which serves in an advisory capacity to KDHE as the licensing agency for audiologists, supports the passage of Senate Bill 199.

Thank you again for the opportunity to comment on Senate Bill No. 199. I would gladly respond to any questions you may have.

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*Senate Public Health & Welfare Committee*  
*Date: February 20, 2003*  
*Attachment 11-10*