

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Representative Eber Phelps at 1:30 p.m. on February 17, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative Brenda Landwehr- excused  
Representative Cindy Neighbor- excused  
Representative Don Hill- excused  
Representative Tom Holland- excused  
Representative Joe McLeland - excused

Committee staff present:

Dr. William Wolff, Legislative Research Department  
Renaee Jefferies, Office of Revisor of Statutes  
Gary Deeter, Secretary

Conferees appearing before the committee:

Doug Bowman, staff, Kansas Coordinating Council on Early Childhood Developmental Services  
Dr. Chet Johnson, Professor of Pediatrics, University of Kansas School of Medicine  
Linda Kenney, Director, Bureau for Children, Youth and Families, Kansas Department of Health and Environment  
Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association  
Annice Davis White, CEO, The Caring Heart  
Linda Berndt, Executive Vice-President, Kansas Health Care Association  
Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging  
Pamela Johnson-Betts, Secretary, Kansas Department on Aging  
Guen Easley, Assistant Attorney General, Office of the State Fire Marshal  
Greg Wright, Kansas Trial Lawyers Association

Others attending:

See Attached List.

Staff Bill Wolff gave a briefing on **HB 2350**, screening for newborn infants. He said the bill creates statutory requirements for the Kansas Department of Health and Environment to monitor low-birth-weight-infant information and offer assistance to parents, noting that the bill makes it unlawful, with certain exceptions, for those who handle vital statistical data to disclose the information.

Representative Eber Phelps chaired the hearing for **HB 2350**.

Doug Bowman, staff for the Kansas Coordinating Council on Early Childhood Developmental Services, spoke as a proponent, saying that correlation between low-birth-weight babies and developmental disabilities is clear, and that early intervention for these children can be a great benefit. ([Attachment 1](#)) He said after the babies are identified, a single letter is sent to parents informing them of the services

## CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on February 17, 2004, in Room 526-S of the Capitol.

available, noting that any response on the part of parents is voluntary. He stated that this bill will identify those who might be otherwise missed, since most of them would not have been in a neo-natal intensive care unit. Answering questions, Mr. Bowman said a full range of services is available statewide, provided free to parents under federal mandates. He noted that **SB 418** has similar provisions.

Dr. Chet Johnson, Professor of Pediatrics, University of Kansas School of Medicine, spoke in favor of the bill. (Attachment 2) He said that countless studies have shown that children at risk for developmental disabilities progress much more if there are early intervention procedures provided for them, noting that many older children he sees have never had a diagnosis for their problems, something that this bill would help obviate.

Linda Kenney, Director, Bureau for Children, Youth and Families, Kansas Department of Health and Environment, spoke in support of the bill. (Attachment 3) She said the agency will review the birth weight of all newborns and send a notice to parents whose children meet the low-birth-weight criteria, informing them of services available. Answering a question, Dr. Johnson said the response of parents is determined by the way the letter is crafted, noting that the simple letter indicated by the bill is not ideal for screening, but expresses respect for privacy.

Not appearing before the Committee, but providing written testimony:

- Ethel Peterson, former Representative, a proponent. (Attachment 4)
- Katherine Kersenbrock-Ostmeyer, Director for Special Education, Northwest Kansas Educational Service Center, a proponent. (Attachment 5)
- The Chair closed the hearing on **HB 2350**.

Chairman Morrison suggested that, if there were no objections, the Committee work the bill. A motion was made and seconded to pass the bill out of the Committee favorably. Representative Mast suggested holding the bill on General Orders below the line until the Committee had a chance to see the comparable Senate bill. The motion passed.

Bill Wolff commented on the features of **HB 2658**, a bill to establish an independent panel to resolve disputes by administrators of adult care homes when they disagreed with an inspection report. He said that the bill will become a part of the Adult Care Licensing Act. He noted the language: that an administrator *may request* a review panel; when the request is made, the Secretary of the Department of Aging *shall provide* an independent panel to resolve the dispute, noting that no panel member may be an employee of the Department.

Representative Doug Patterson opened the hearing on **HB 2658**.

Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association said that the

## CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on February 17, 2004, in Room 526-S of the Capitol.

proposed legislation will strengthen the credibility and fairness of the adult care home informal dispute resolution (IDR) process, noting that by employing an independent panel, the agency cannot be accused of bias. (Attachment 6) She observed that other state regulatory agencies use an independent review panel when inspection and compliance issues are disputed, and that sometimes federal laws require such a panel, quoting a Centers for Medicare and Medicaid Services (CMS) letter stating that third-party IDRs are permissible. She suggested that costs could be reduced by asking panel members to volunteer their time. Answering questions, she said that the present two-tier process first involves a regional manager, then, if the dispute is not resolved, the dispute is taken to the Kansas Department on Aging, where staff conduct the review. She said the present system is perceived to make administrators vulnerable to retaliation by survey inspectors.

Annice Davis White, CEO, The Caring Heart, a professional geriatric care management practice in Overland Park, also spoke in support of the bill, saying that the agency usually upholds its own decisions and is considered less than fair, therefore the need for an independent review process. (Attachment 7) She said that an agency that has control over the care homes can levy fines or close the facility, further indicating the need for an outside panel. She noted that many administrators leave because of the system that makes them lose confidence in having a fair hearing. Answering questions, Ms. White said the panel would serve without pay and that the agency would pay only mileage and per diem expenses.

Linda Berndt, Executive Vice-President, Kansas Health Care Association spoke as a proponent, repeating the concern that the present process is perceived as unfair. (Attachment 8) Answering questions, she said administrators are afraid to challenge survey results because of a fear of retaliation at the next inspection. She said Iowa has a pilot project using a third-party review panel, a process that CMS approved, indicating that the federal government's regulations should not be a problem for the bill.

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, said she represented 160 not-for-profit care homes in the state and appeared as a proponent. She commented on the third-party decisions, agreeing that CMS allows such procedures as long as the agency signs off on the decision. (Attachment 9) Answering a question, she said that she had no solid evidence that the present system was unfair, but noted that 20% of IDRs result in a change in the reports. She declined to give any numbers to support the 20% figure. Answering another question, she reviewed the survey grid, which measured the scope and severity of deficiencies, stating that the grid assessed levels of harm on one side and the number of individuals affected on the other side, noting that the inspection reports are open to public scrutiny and are the basis for certain insurance rates.

Pamela Johnson-Betts, Secretary, Kansas Department on Aging, testified as an opponent to the bill. (Attachment 10) She reviewed the present informal dispute process, which she said was adequate for resolving disputes, noting that the agency also provides a formal appeals procedure, which follows federal guidelines. She listed three objections to the bill:

1. CMS regulations allow an outside entity to conduct an ADR, but the third-party group can serve only in an advisory capacity. **HB 2658** would clash with federal regulation.

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2. The estimated cost of \$245,000 to provide an external review process is beyond the scope of the current department budget without an infusion of additional funds.
3. The present system provides both an informal and a formal avenue to resolve disputes. Adding another level is unnecessary.

Answering questions, Ms. Johnson-Betts agreed that the CMS allows third-party reviews, but they cannot be binding on the agency. She said the goal of an IDR is a collaborative resolution. Greg Reser, KDOA staff, said an administrator is free to pursue either or both an IDR and the appeals process. Ms. Johnson-Betts said the agency has a contract with the University of Kansas to evaluate the survey process.

Guen Easley, Assistant Attorney General, Office of the State Fire Marshal, spoke in opposition to the bill, saying that the Fire Marshal contracts with the Department on Aging for a specific area of inspection of care homes. ([Attachment 11](#)) She said the inspectors must be certified by CMS, and that the panel the bill envisions would likely not be trained to properly evaluate an inspection report.

Greg Wright, an attorney from Overland Park, representing the Kansas Trial Lawyers Association, testified as an opponent. He said it is unclear how the proposed independent panel will fit into the existing process, noting that the nursing home industry often disputes the findings of the agency that regulates it and that it appears that the concern for fairness has little basis in logic. ([Attachment 12](#)) He also noted that in order to perform adequately, the panel would need to review an inspection report in depth, a complexity that would require much time and knowledge, not an easy or simple process. He said that if the Committee sees fit to advance the bill, he would suggest changes: besides having a physician on the panel, he would suggest adding a consumer representative and a registered nurse with a geriatric background, then provide extensive training for the panel. He also suggested adding safeguards in the bill to keep a facility from filing frivolous appeals.

Written testimony only was provided by Deanne Bacco, Executive Director, Kansas Advocates for Better Care, who opposed the bill. ([Attachment 13](#))

The Chair closed the hearing on **HB 2658**.

Chairman Morrison thanked the Committee for their work. The meeting was adjourned at 3:05 p.m. The next meeting is scheduled for Wednesday, February 18, 2004.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE  
GUEST LIST**

DATE: FEBRUARY 17 2004

NAME	REPRESENTING
Dave Ranney	Lawrence Journal-World
Frida Kenney	KDHE
Matt Glassman	Intern
Jane Siegf	Keamy & Associates
Heather Drea	Diamond Associates
Megan Dunn	Hein Law Firm
Ernest Fogge	AA RP
Mary Hillebrandt	Conley Consulting Inc.
Phyllis Kelly	Kansas Adult Care Exp.
Joyce Davis White	Kansas Adult Care Exp.
Dreg Koper	Kansas Department on Aging
Mark Boromysak	" " " "
Mike Wh	KS Dept. on Aging
Kathy Greenlee	
Chet Johnson	American Academy of Pediatrics
Doug Bowman	Coordinating Council on Early Childhood
Dan McLaughlin	Ks. State Fire Marshal
Buen Eastby	" " "
Brenda McLaughlin	" " "

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE  
GUEST LIST

DATE: February 17 2004

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NAME	REPRESENTING
<i>Steve K... [Signature]</i>	KTLA
<i>Guy [Signature]</i>	KTLA
<i>Bob [Signature]</i>	KTLA

**TESTIMONY BEFORE HOUSE HEALTH & HUMAN SERVICES COMMITTEE**

**2/17/04**

Thank you, Mr. Chairman and members of the Committee. My name is Doug Bowman, and I serve as staff to the Kansas Coordinating Council on Early Childhood Developmental Services. Our mission is to advise on matters pertaining to children with (or at risk of) developmental delay/disabilities.

HB 2350 was introduced by Representative Ethel Peterson, at our request. This bill will enable the Secretary of Health and Environment to review the data base created from birth certificates on a routine basis. Parents (or guardians) of newborns whose birthweight was below 1200 grams or who had low APGAR scores will receive a single letter. The letter will simply inform them that their child's condition has been shown to sometimes correspond with later developmental delays. If they choose to investigate further, free evaluations are available in their own community. There will be no subsequent phone calls or contacts of any kind, unless the family requests it.

Our intent is to inform parents of free services for which they might qualify. These intervention services are voluntary, and quite user-friendly. More importantly, these services have proven to prevent later complications in the lives of young children.

Our system of early intervention providers have done a tremendous job with limited resources of identifying young children who are in need of assistance. Babies who end up in Neonatal Intensive Care Units (NICU) are routinely referred. This bill will help us with those children who may have experienced a troubling delivery, and who may not be aware of possible ramifications.

Just last week I spoke with a mother who had to ask to see the medical records in order to find out that her baby had been resuscitated in the delivery room. She told me that if anyone had told her, she might have been more vigilant when her child missed later developmental milestones.

Thank you for your consideration of this bill. I will gladly stand for questions.

Attachment 1  
HHS 2-17-04

**TESTIMONY BEFORE HOUSE HEALTH & HUMAN SERVICES COMMITTEE**  
**- 2/17/04**

Thank you, Mr. Chairman and members of the Committee. My name is Dr. Chet Johnson. I am Professor of Pediatrics at the University of Kansas School of Medicine and Director of the Developmental Disabilities Center, a diagnostic center for children with a wide variety of developmental problems. I am a member of the Kansas Coordinating Council on Early Childhood Developmental Services and the American Academy of Pediatrics. I currently serve as the Chair of the AAP National Committee on Early Childhood. My specialty is child development and children with special needs. I have been committed to this population of children and their families for the last 20 years.

Young children with developmental delays often go on to have permanent developmental disabilities, including mental retardation, cerebral palsy, speech disorders, autism, and learning disabilities. There is evidence that early identification and treatment of children with developmental problems can help prevent behavioral problems and improve their abilities in later years.

In addition to teaching and administration, I care for children with disabilities on a daily basis. As part of my work, I regularly see young children with very significant delays who are not receiving any services, and whose parents have no knowledge of the services available to their child and themselves.

Kansas hospitals and physicians generally do a satisfactory job of referring very premature babies to early intervention programs. This, however, depends to a large degree on the relationship of the hospital to local programs. There is no system that makes sure that all babies who should be referred are connected to available services. Babies who live in rural areas or sites some distance from the hospital are also less likely to be reliably referred.

HB 2350 was introduced by Representative Ethel Peterson, at the request of the Kansas Coordinating Council on Early Childhood Developmental Services. This bill will enable the Secretary of Health and Environment to review the data base created from birth certificates on a routine basis. Parents (or guardians) of newborns whose birthweight was below 1200 grams or who had low APGAR scores or have certain genetic or neurologic conditions will receive a single letter. The letter will simply inform them that their child's condition has been shown to sometimes correspond with later developmental delays. If they choose to investigate further, free evaluations are available in their own community. There will be no subsequent phone calls or contacts of any kind, unless the family requests it.

The intent of HB 23550 is to inform parents of free services for which they might qualify. These intervention services are voluntary, and quite user-friendly. More importantly, these services have been proven to prevent or ameliorate later complications (health, educational, and behavioral) in the lives of young children.

Attachment 2  
HHS 2-17-04



Thank you for your consideration of this bill. I will gladly stand for questions.



# K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on Infant Developmental Screening, HB 2350  
to  
House Health and Human Services Committee

by Linda Kenney  
Director, Bureau for Children, Youth and Families  
Kansas Department of Health and Environment

February 17, 2004

Thank you, Mr. Chairman and members of the committee for this opportunity to provide testimony on HB 2350. This bill authorizes the Secretary of Health and Environment to review each month the vital statistics records to identify infants at risk of developmental delay or disability. For those with low birth weight, low APGAR score or congenital anomaly noted on the certificate of live birth, a letter would be sent to the parents informing them of the availability of community early intervention services. The bill makes it unlawful to disclose any data in a manner other than as specified in the law and assures that the services available to the family are voluntary.

While KDHE supports the purpose of this bill, another bill introduced this session will provide the same benefits to the family while assuring comprehensive components for a statewide system on birth defects information. In addition to facilitating access to early intervention and treatment, SB 418 includes use of an information system: 1) to identify and describe congenital anomalies, stillbirths and abnormal conditions of newborns; 2) to detect trends and epidemics in congenital anomalies, stillbirths and abnormal conditions of newborns; 3) to quantify morbidity and mortality of congenital anomalies and abnormal conditions of newborns; 4) to stimulate epidemiological research regarding congenital anomalies, stillbirths and abnormal conditions of newborns; 5) to identify risk factors for congenital anomalies, stillbirths and abnormal conditions of newborns; 6) to facilitate intervention in and prevention of congenital anomalies, stillbirths and abnormal conditions of newborns; and 7) to inform and educate the public about congenital anomalies, stillbirths and abnormal conditions of newborns.

We respectfully ask that support be given to SB 418 creating a birth defects information system in lieu of HB 2350.

Thank you for your consideration.

**From:** "cardfan" <cardfan@pld.com>  
**To:** <health@house.state.ks.us>  
**Date:** Mon, Feb 16, 2004 8:55 AM  
**Subject:** HB2350 Newborn Infant Developmental Screening

TO: The Honorable Jim Morrison & Members  
of the Health & Human Services Committee  
FROM: Ethel Peterson

*written only*

Regarding: HB 2350 Newborn Infant Developmental Screening

First of all, thank you for making it possible for me to testify electronically on an item of great concern and interest to me. HB 2350 certainly is that. It was originally introduced at the request of the Interagency Coordinating Council for Early Childhood Developmental Programs. This group is made up of representatives of early childhood programs throughout the state, and includes virtually every type of such program. There are many of these programs in each of your districts.

The bill asks that we aid parents of newborns by informing those parents of what programs are available to help them if their child was born with possibly-handicapping conditions. You will notice that the first words of this bill deal with the absolute assurance of privacy of the information obtained to carry out this directive. It requires that vital statistics records of the division of health be screened once a month to identify those newborn infants who weigh 1200 grams or less, have an APGAR score of three or less, or who have certain genetic exceptionalities. When these conditions exist, it requires the Secretary of Health & Environment to cause a letter to be mailed to the parent or legal guardian of such baby telling them of the screening results and, if needed, giving them more information concerning the availability of voluntary and free child assessments to be found in their local area. (An APGAR score is simply the name given to an infant assessment instrument named after a child researcher named Virginia Apgar. It is the standard and most commonly-used statistical designation.)

Workers in early childhood programs often heard from parents that, in the excitement of the baby's birth, they did not realize the significance of various terms or actions that had happened. Or perhaps they had not understood the far-reaching effects of the baby having been without necessary oxygen for such a short time, etc. Afterwards, they were puzzled and frightened concerning what appeared to be delays in the infant's development. Sometimes they were in denial, wanting to believe that everything was really ok. When they finally decided to do something, they didn't know what to do and then learned they had lost valuable early time in taking action or making adjustments.

Therefore, the early childhood workers believed this was the ideal way to help: Screen the statistics and, after the parents have the child at home and are ready to deal with all aspects of their baby, send the letter explaining and offering advice and assistance. But, they also believed deeply in the need for privacy of such an important matter, which they addressed early in the bill. They considered this a cost-effective solution since it had the capacity to reduce scholastic problems as the child reached school age.

At the time of the bill's introduction last year the budget director indicated the cost to implement the process would be less than \$10,000. I believe this would make it one of the lowest cost investments possible for

*Attachment 4  
HHS 2-17-04*

a truly money-saving and compassionate act. I urge your positive recommendation for passage of HB 2350 out of this committee and your support of it in the full House debate and action.

Thanks very much for your consideration.

Respectfully,  
Ethel

**From:** KathyKO <kko@nkesc.org>  
**To:** <health@house.state.ks.us>  
**Date:** Mon, Feb 16, 2004 10:26 AM  
**Subject:** newborn screening testimony

TESTIMONY BEFORE HOUSE HEALTH & HUMAN SERVICES COMMITTEE - 2/17/04

Thank you, Mr. Chairman and members of the Committee. My name is Katherine Kersenbrock-Ostmeyer, and I serve as the Director of special education and tiny k services for the Northwest Kansas Educational Service Center.

HB 2350 is a bill I very much support. This bill will enable the Secretary of Health and Environment to review the database created from birth certificates on a routine basis. Parents (or guardians) of newborns whose birth weight was below 1200 grams or who had low APGAR scores will receive a single letter. The letter will simply inform them that their child's condition has been shown to sometimes correspond with later developmental delays. If they choose to investigate further, free evaluations are available in their respective community. There will be no subsequent phone calls or contacts of any kind, unless the family requests it.

Having contact with new parents concerning the issues of follow-up to complicated births, many have indicated they are overwhelmed, confused, and sometimes in denial. This leads to grave concerns as to what should be done next to support their babies. This bill would provide a subtle and confidential reminder of where and how they can proceed for services. The services are available based on parent permission and are free of charge. More importantly services provided early generally have the greatest impact not only with the child's development but also in terms of cost associated with education later in life.

Currently we receive referrals from a variety of sources including parents, physicians, and Newborn Intensive Care Units; unfortunately not all babies in need are referred. This bill will help with those babies who may have experienced a troubling delivery, and whose parents may not be aware of possible ramifications.

Thank you for considering this bill and don't hesitate to contact me if I can be of future help concerning this issue or other early childhood issues.

**CC:** Katherine Kersenbrock-Ostmeyer <kko@nkesc.org>

*Attachment 5*  
*HHS 2-17-04*

Tuesday, February 17, 2004

(Oral and Written Testimony – Proponent)

Testimony before the House Health and Human Services Committee on HB 2658. An Act concerning adult care homes; relating to informal dispute resolution; providing for an independent review panel.

Chairperson Morrison and Members of the Committee:

I am Phyllis Kelly, Executive Director of the Kansas Adult Care Executives Association (KACE). Our association represents over 250 adult care home executives in nursing homes and assisted living facilities throughout Kansas. I appear before you today in support of HB 2658.

The KACE Board of Directors and the KACE Legislative Committee have reviewed the components of HB 2658. Both of these entities concur that the proposed legislation will strengthen the intent, credibility, and fairness of the adult care home informal dispute resolution (IDR) process. Key to the proposed legislation is the use of an independent review panel, selected by the secretary of aging, to conduct the IDR. As stated in HB 2658:

- The IDR panels will be conducted in a timely fashion so as not to delay any correction of deficiencies not overturned by the panel;
- Only one request for an informal dispute resolution per inspection may be requested by the administrator;
- A facility may not seek a delay of any enforcement action on the grounds that the informal dispute resolution process has not been completed; and
- All other deficiencies not in dispute must be corrected in the required timelines prescribed by the regulatory agency.

Other state regulatory agencies use an independent review panel when inspection and compliance issues are disputed. Oftentimes, federal law requires an independent entity to be used. A memo released from the Centers for Medicare and Medicaid Services (CMS) on June 12, 2003 reiterated that state agencies can use third parties to conduct the IDR. This memo further provided guidance to the state agencies when independent panels are used.

The use of an independent panel does not mean that the process automatically becomes more formal, less comprehensive, more lenient, or that there will be more conflict. In fact, it usually has the opposite effect because an independent review panel is concerned that its decisions are viewed as fair to all parties and, above all, protects the residents of the facility.

In the days of tight budgets, costs of an independent panel have been advanced by some as an issue. Currently, the members of the Board of Adult Care Home Administrators

Attachment 6  
HAS 2-17-04

voluntarily serve a two-year term. There is no compensation for their time to participate in Board activities. Subsequently, we are confident that there are consumers and professionals who are very knowledgeable about long-term care in Kansas adult care homes who would be more than willing to give their time to serve on one of these panels.

By the use of an independent review panel, and not its own staff, the regulatory agency cannot be accused of any bias if decisions of the inspectors are not reversed. Informal dispute resolution conducted by an independent review panel gives the inspection process more credibility and less controversy. Our Association would be very willing to work with any entity to address any component of this bill which is viewed as detrimental to quality care in our adult care homes.

We urge your support of HB 2658.

February 17, 2004

Testimony before the Health and Human Services  
Committee on HB 2658, Chairman Jim Morrison.

I am Annice Davis White; CEO of The Caring Heart LLC, a Professional Geriatric Care Management Practice located in Overland Park, Kansas. I am also a Gerontologist, a licensed Long Term Care Administrator and have been in the field of aging for thirty years. I serve as co-chair of the legislative committee of Kansas Adult Care Executives (KACE).

I am here today in support of HB 2658 and to also ask that you vote yes on this bill. As the system presently exists, when an administrator submits a request for informal dispute resolution, generally, it results in no changes in the deficiency or deficiencies. The agency in control usually upholds its own ruling. Consequently, nursing homes have no other alternatives or avenues to seek just and fair resolutions. As you can see, this process is significantly less than fair. The process sorely needs the establishment of an independent review panel system.

Please note that requests for informal reviews are not nonchalantly submitted. They are generally submitted after examinations entailing considerable time, thought, passion and energy. An industry that oversees and has total control over whether a nursing home pays capital monetary fines, or even continues to exist, should not be the agency a nursing home appeals to for justice. A system such as this does nothing but harms and weakens the industry. As you know, continuous improvement should be an on-going process for all industries. Continuous improvement should not be limited to nursing homes and staff, but should also include those industries that regulate and influence long term care facilities and associates. That improvement cannot be made when the controlling agency is allowed to be the judge, jury and executioner of its recommendations without concern of being questioned about its judgement or practices.

We have lost many good licensed administrators in our state and each day sees many more becoming discouraged. We cannot afford to lose more good administrators in our good state of Kansas. Administrators do not expect preferential treatment. However, they do expect fair and impartial evaluations of requests they submit for review. It is the growing lack of confidence in the current system that is making very capable administrators leave the profession. They feel trapped in a systems that perpetuates edicts and judgements without being able to question judgements that generated the cause for appeal. Without an independent panel or agency to oversee an agency that renders unquestionable judgement, the net result is often itself questionable.

Attachment 7  
HHS 2-17-04



I believe in most cases that it is too much to expect an agency that determined and approved deficiencies, to admit that a mistake was made. Also, the process is a burden on the integrity of all parties. The informal dispute resolution process should be moved to an independent review panel. In conclusion, we can sum up the need for an independent review panel as follows:

- A fair and impartial process is needed.
- Eliminate the conflict of interest that potentially compromises the system.
- The controlling agency should have an outside review source that analyzes their work
- Current process exacerbates and burdens an already overloaded bureaucracy
- Unlimited and unquestionable power and control can only further weaken the entire profession.

THANK YOU

Please find attached testimony that shall be given February 17, 2004 regarding the subject bill. If you need further information or have questions please feel free to contact me as follows:

E-mail - [adwheart@aol.com](mailto:adwheart@aol.com)

Cell - 816-853-6338

Thank You  
Annice D. White



# KHCA

Member of  
**ahca**

## Kansas Health Care Association

221 SOUTHWEST 33rd STREET  
TOPEKA, KANSAS 66611-2263  
(785) 267-6003 • FAX (785) 267-0833

To: Kansas House Health and Human Services Committee

Re: HB 2658

Date: February 17, 2004

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Chairperson Morrison and members of the Committee thank you for the opportunity to testify before you today about informal dispute resolution process as it relates to adult care homes.

I am Linda Berndt, Executive Vice-President of the Kansas Health Care Association and I will speak in support of HB 2658. KHCA represents nursing homes, nursing facilities for mental health, long-term care units of hospitals, assisted living facilities, senior housing and community service providers serving across the state of Kansas.

Many of our members have voiced concerns that the current IDR process is not an independent, effective or heavily utilized process. For these reasons, our Association supports establishing an independent review panel to review any disputed survey deficiencies.

Our Association feels that a third party independent review would be better utilized by our members.

In past surveys conducted with facilities across the state they have reported:

- Administrators believe it is hard for the Regional Manager to be totally unbiased when the findings of their inspection staff are being questioned.
- Nursing facilities are afraid of retribution from the agency
- Administrators feel the current process is not independent.

We support HB 2658 with one exception. We would like to see the review process be done by the Department of Administration and be funded with the Civil Monetary Penalty fund.

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

Attachment 8  
HHS 2-17-04

## Testimony in Support of House Bill 2658

To: Chairman Jim Morrison and Members,  
House Health and Human Services Committee  
From: Debra Zehr, Vice President  
Date: February 17, 2004

Thank you, Mr. Chairman and Members of the Committee for this opportunity to offer support for House Bill 2658. The Kansas Association of Homes and Services for the Aging represents over 160 not-for-profit long-term health care, housing, and community service providers throughout the state.

House Bill 2658 would address a concern shared by many of our members. It calls for formation of an independent review panel for processing of state adult care home inspection results with which an administrator disagrees.

Under the current system, KDHE staff members, who are themselves responsible for oversight and administration of the survey process, conduct the review of disputed deficiencies. We believe it makes sense to have this informal dispute resolution process handled in a way that is as independent and objective as possible. This bill would mark a constructive step toward that end.

Thank you for your favorable consideration of House Bill 2658. I would be happy to answer questions.

Attachment 9  
HHS 2-17-04



**K A N S A**  
**S**

PAMELA JOHNSON-BETTS, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT ON  
AGING

Testimony on HB 2658  
to

Health and Human Services  
Presented by Secretary Pamela Johnson-Betts  
February 17, 2004

Chairperson Morrison and members of the committee, I am pleased to appear before you today to discuss **HB 2658**. I am opposed to this legislation for reasons that I will explain.

House Bill 2658 would require the Secretary of Aging to appoint a panel of three persons to conduct an independent review of disputes arising from adult care home surveys. Before discussing the details of this proposed legislation, I would like to describe the current administrative review process and the informal dispute resolution process.

Current Administrative Process

When adult care home inspectors conduct a survey, they prepare a final report. This report is commonly referred to as the statement of deficiencies report. Depending on the nature of the deficiencies, the Kansas Department on Aging (KDOA) may impose certain enforcement remedies against the adult care home. Remedies could range from issuing a civil penalty to ordering a ban on new admissions. At the point in which our agency takes action against the adult care home, the facility has the right to file an appeal.

Approximately forty percent of the adult care homes in Kansas are dually certified, meaning they are certified by both Medicare and Medicaid. The appeal rights of each facility are provided through federal administrative appeals procedures and the Kansas Administrative Procedures Act. It is through the administrative appeals process that we ensure all certified and licensed facilities are provided due process of law. The Office of Administrative Hearings in the Kansas Department of Administration conducts all of the KDOA administrative hearings. Federal enforcement actions can be appealed to the US Department of Health and Human Services Departmental Appeals Board.

Current Informal Review Process

The Licensure, Certification and Evaluation Commission (LCE) has used an informal review program since 1991. This process provides an alternative way of resolving disputes arising out of the survey process. The current process involves two steps. The first review is conducted by the regional managers who supervise the survey staff. By working directly with the care home administrators and the survey staff, the regional manager can get an accurate and timely assessment of survey disputes. The regional manager has the authority to make revisions to the

survey report should a facility provide additional information demonstrating a cited deficiency should be changed. If the adult care home administrator is not satisfied with regional manager review, the administrator can request a review by LCE management in Topeka,

#### Proposed External Informal Dispute Resolution Process

The Department on Aging is concerned about HB 2658 in three significant ways.

First, in a letter dated June 12, 2003, CMS advised us that "if any outside entity conducts IDR, the results of the IDR process may serve only as a recommendation to the [Survey Agency] of noncompliance or compliance with the Federal requirements for skilled nursing facilities." See letter attached.

The current KDOA informal review process has been approved by CMS. It is essential that the legislature be aware the process contemplated by HB 2658 would be subject to CMS review and the results of such an outside process could not be binding on the Secretary of Aging.

Second, we are concerned about the fiscal cost. The current internal process is absorbed into the budget of the agency. We conservatively estimate the cost of an external review process to be \$245,000. We cannot guarantee the costs would not increase because we are uncertain as to utilization by the adult care home industry and we cannot predict the exact cost of retaining the panel of experts. The current KDOA budget cannot accommodate the external review process unless the agency is appropriated additional funds.

Lastly, as described in federal regulations and as implemented for a number of years, the intent of the IDR process is to be informal. The IDR process is intended to allow providers and the agency to informally review survey findings to provide an opportunity for changes before the formal appeals processes begin.

#### The Underlying Concern

Adult care homes in Kansas are regulated by the federal and state government. We, in KDOA, are the regulators. Quite naturally, a degree of tension sometimes exists between the regulator and the regulated. Although prior adversarial relationships may have lent themselves to a sense of distrust, I encourage the industry and KDOA staff to build relationships using the current process, which can save the state dollars and objectively offer remedies. We encourage adult care homes to use the process more frequently. We pledge to maintain open dialogue with the industry, not just for the benefit of survey and facility staff, but for the benefit of adult care home residents.

I am concerned about establishing a process that has no binding authority over the office I hold. Such a process could offer false hope to those who seek external resolution of disputes. I am committed to our current process and am open to suggestions for its continued improvement.

Thank you for the opportunity to appear before this Committee. I will gladly answer any questions.

Before the Committee on Health and Human Services  
Testimony on  
2004 H. B. 2658

Date: February 17, 2004

By: L. Guen Easley, Assistant Attorney General  
Office of the State Fire Marshal

The Office of the State Fire Marshal stands in opposition to 2004 House Bill No. 2658 for the following reasons:

1. The Center for Medicare and Medicaid Services (CMS) sets the standards which the State Fire Marshal uses to determine compliance with fire safety. We must adhere to federal statutory and regulatory requirements and to the State Operations Manual (SOM). Federal regulations, specifically, 42 C.F.R. § 488.331, provides for an informal dispute resolution (IDR) wherein the facility has an opportunity to refute the survey findings. We provide a face to face meeting upon request of a facility. Recommendations from an IDR are not binding on CMS and cannot impede or delay any enforcement proceedings. See attached Memorandum dated June 12, 2003 from the Director, Survey and Certification Group, to Survey and Certification Regional Office Management State Survey Agency Directors.
2. The Independent Review Panel provided for in the Bill appoints a physician and the other two members are to have appropriate knowledge or expertise, but neither of the two members may be employees of the department of aging or any other agency that did the inspection. Federal inspections are conducted by fire inspectors with training and expertise in the complicated web of statutory and regulatory requirements. A person who is knowledgeable about fire safety would not be able to determine how and why a specific standard is breached and results in a deficiency and may cause a federal facility to question other fire safety issues not in dispute.
3. The costs incurred in establishing another panel of review are not cost-effective in an already tight budget.

Thank you for your consideration.

Attachment 11  
HHS 2-17-04

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

Printed: 01/27/2004  
FORM APPROVED  
2567-L

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION A. BUILDING 01 - MAIN BUILDING 01 B. WING _____	(X3) DATE SURVEY COMPLETED KSF 1/27/2004
NAME OF PROVIDER OR SUPPLIER		STREET ADDRESS, CITY, STATE, ZIP CODE FEB 4 - 2004		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
K 000	INITIAL COMMENTS  42 CFR 483.70 (a) The facility must meet the applicable provisions of the 2000 existing edition of the Life Safety Code of the National Fire Protection Association..	K 000	(This plan of correction is being submitted pursuant to the applicable federal and state regulations, nothing contained herein shall be construed as an admission that this facility violated any federal or state regulation or failed to follow any applicable standards.  This facility will provide a complete copy of these alleged deficiencies and plans of corrections to our Quality Assurance Safety Committee for review and appropriate actions.  This facility will insure that all roller latches are removed from all doors in compliance with CMS regulations which prohibits use of roller latches in all health care facilities as of March 13, 2006.  Beginning with the month of February 2004, no less than six roller latches will be removed and replaced with CMS approved latches each month until all thirty four doors are in compliance. Facility Maintenance Director will be responsible for completing work and maintaining a progress log. Administrator will monitor for continuing compliance with this plan of action by visual observation and review of progress log.	
K 018 SS=D	NFPA 101 LIFE SAFETY CODE STANDARD  Doors protecting corridor openings in other than required enclosures of vertical openings, exits, or hazardous areas are substantial doors, such as those constructed of 1 3/4 inch solid-banded core wood, capable of resisting fire for at least 20 minutes. Doors in sprinklered buildings are only required to resist the passage of smoke. There is no impediment to the closing of the doors. Doors are provided with a means suitable for keeping the door closed. Dutch doors meeting 19.3.6.3.3 are permitted. 19.3.6.3  Roller latches are prohibited by CMS regulations in all health care facilities as of March 13, 2006.  This Standard is not met as evidenced by: Based on observation the facility failed to assure that 34 doors that had roller latches on corridors were suitable for keeping the doors closed  FINDINGS INCLUDED ; During the survey on 01/27/04 at approximately between 12:15 PM and 12:40 PM that resident room doors on 1st and 2 ed floors had roller latches that are not approved.	K 018		Substantial compliance by 7-31-04

LABORATORY DIRECTORS OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X5) DATE  
2-3-04

Findings identified during an asterisk (\*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patients. The findings stated above are disclosable whether or not a plan of correction is provided. The findings are disclosable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.



# HCFA SCOPE AND SEVERITY

Final Rule on Survey, Certification and Enforcement (11/94)

4	IMMEDIATE JEOPARDY to resident health or safety	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 3 Optional: Cat. 2 Optional: Cat. 1
3	ACTUAL HARM that is not immediate jeopardy	PoC Required: Cat. 2 Optional: Cat. 1	PoC Required: Cat. 2 Optional: Cat. 1	PoC Required: Cat. 2 Optional: Cat. 1 Optional: Temp. Mgmt.
2	NO ACTUAL HARM with POTENTIAL FOR MORE THAN MINIMAL HARM that is not immediate jeopardy.	PoC Required: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 2 Optional: Cat. 1
1	NO ACTUAL HARM with POTENTIAL FOR MINIMAL HARM	No Plan of Correction No Remedies Commitment to Correct Not on HCFA-2567	PoC	PoC

Substandard Care

Substantial Compliance

ISOLATED

PATTERN

WIDESPREAD

90 days

70 days

23 days

Remedy Category 1  
Directed Plan of Correction;  
State Monitor;  
and/or  
Directed In-service Training

Remedy Category 2  
Denial of Payment for New Admissions;  
Denial of Payment for All Individuals;  
imposed by HCFA;  
and/or  
Civil Money Penalties  
\$50-3,000/day

Remedy Category 3  
Temporary Management;  
Termination  
  
Optional:  
Civil Money Penalties  
\$3,050-10,000/day

To: Members of the Senate Commerce Committee  
From: Greg Wright  
Kansas Trial Lawyers Association  
Re: HB 2658  
Date: Feb. 16, 2004

Chairman Morrison and members of the House Health and Human Services Committee; thank you for the opportunity to appear before you today. I am Greg Wright, a practicing attorney from Overland Park. I am here on behalf of the Kansas Trial Lawyers Association in opposition to HB 2658.

The Kansas Trial Lawyers Association opposes HB 2658. The federal and state nursing home inspection/survey system exists to protect the health, safety and welfare of residents of nursing facilities, and to assure contractor compliance with Medicare and Medicaid regulations. Taxpayers already pay for a large part of nursing home care and for the survey system to assure that the care meets minimum standards.

The survey system was the subject of a Legislative Post Audit Study within the past several years and found to be reasonably adequate. Nursing facilities already have the right to contest cited deficiencies through a federally-authorized informal dispute resolution process and the enforcement appeals process.

It is uncertain and unclear as to how the proposed independent panel will fit into the existing system. According to testimony presented by the Kansas Department of Health and Environment last year, the existing IDR process has resulted in approximately a 10 to 20% or higher success rate for facilities challenging cited deficiencies. The nursing home industry often disputes the validity of the survey system, but a regulated industry is often at odds with its regulatory authority. It is unclear why a new level of "appeal" is needed, unless the primary concern of the program is industry satisfaction.

KTLA is concerned about the fiscal note for this bill; facilities will no doubt be eager to utilize any opportunity to dispute citations. In order to perform adequately the panel would need to review in detail surveyor findings and facility evidence, which will take significant time, and add to costs. The bill makes KDOA fund the panel work. According to KDOA some surveyor positions are presently not filled, in part, due to the state's inability to offer competitive salaries

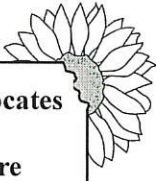
Attachment 12  
HHS 2-17-04

for nurse surveyors. Perhaps the money would be spent better elsewhere.

In addition to the above comments, we have the following concerns about the bill:

- Subsection (d) appears to permit the facility to delay correction of a deficiency simply because it is in dispute. This is not safe for residents and it is probably contrary to federal law;
- The bill does not preclude nursing facility representatives from serving on this “independent” panel;
- Training for the panel members and required minimum qualifications to assure a base of knowledge are absent from the bill;
- Much of the survey content is related to nursing care, yet there is no requirement that the panel include a registered nurse;
- There is no requirement for a consumer representative to serve on the panel;
- Residents do not have an equal opportunity to challenge the surveyor’s failure to cite deficiencies;
- Safeguards to protect against frivolous and unfounded requests for review are lacking; and,
- The panel is permitted to consider information brought to light after the survey, which will open up entirely new lines of inquiry and may necessitate further survey activity to confirm. .

Protection of the interests and rights of consumers of nursing facility care should and must be paramount to the protection of the self-interest of the nursing home industry. Thank you for the opportunity to express KTLA’s concerns about this bill and respectfully urges you to oppose HB 2658. I would be happy to answer any questions that you may have.



**Kansas Advocates  
for  
Better Care**

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William A. Dann

**EXECUTIVE DIRECTOR**  
Deanne Bacco

Promoting Quality Long-term Care since 1975

**House Bill 2658**  
**an act relating to revising the procedure  
for informal dispute resolution (IDR)  
of nursing home inspection deficiency reports;  
providing for an independent review panel.**  
2004

Honorable Chairman Morrison and  
House Health and Human Services Committee Members:

Kansas Advocates for Better Care (KABC) opposes HB 2658, as written.

- The bill fails to improve upon the current system. The proposed committee of three should consist of persons who have knowledge and backgrounds in Federal regulations pertaining to nursing homes, as well as knowledge of professional standards of practice for care delivery in long-term care settings.
- The bill is not clear whether the current system would continue to be in effect. If not, then the concept of "informal" dispute resolution is not being maintained. The proposed independent review panel, by nature, becomes a "formal" dispute resolution, since it would be outside the boundary of the regulating entity.
- The bill is not clear if the appointed panel members remain the same for a certain (unspecified) duration or if the panel members can vary from time to time. If panel members can vary, then consistency will likely vary.
- The bill identifies that none of the panel members shall be employees of KDOA or any agency that does inspections. In a similar manner, the panel members should not be employees or owners of nursing homes.
- The frequency of the review panel meetings is not identified in the bill, which greatly influences the cost to the Department on Aging and the satisfaction of nursing homes desiring speedy decisions. Frequent panel meetings will result in a great financial cost to the Department. Infrequent panel meetings will result in nursing home administrator dissatisfaction.
- The current IDR system has adequately demonstrated that disputes with deficiencies does result in overturn of some deficiencies, without repercussions to the nursing homes seeking the IDR.

Thank you for this opportunity to provide comments on HB 2658.

Deanne Bacco, Executive Director

Attachment 13  
HHS 2-17-04