

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Representative Nancy Kirk at 1:30 p.m. on February 18, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative McLeland - excused

Committee staff present:

Dr. William Wolff, Legislative Research Department

Rena Jefferies, Office of Revisor of Statutes

Gary Deeter, Secretary

Conferees appearing before the committee:

Doug Smith, Kansas Academy of Physician Assistants

Mark Stafford, Board Attorney, Kansas Board of Healing Arts

Kevin Fowler, Kansas Health Care Association

Will Larson, Kansas Association of Insurance Agents

Larry Magill, Kansas Association of Insurance Agents

Tom Murry, ICI Insurance Center, El Dorado

Jerry Wells, Director of Government Affairs, Kansas Insurance Commission

Pedro Irigonegaray, Kansas Trial Lawyers Association

Kirk Lowry, Kansas Advocacy and Protective Services

Kevin Siek, disability rights advocate, Kansas ADAPT

Others attending:

See Attached List.

Representatives Bob Bethell and Nancy Kirk chaired the hearings on two bills. The Chair opened the hearing on **HB 2770** - an act relating to the supervision of physician assistants.

Doug Smith, Executive Director, Kansas Academy of Physician Assistants, said the bill corrects some terminology and removes the number of physician assistants that a physician may supervise, noting that presently a physician is allowed to supervise only two; the bill removes a specific number and places the supervision number under the regulation of the Board of Healing Arts. (Attachment 1) He said that physician assistants have moved from registered to licensed and are now allowed independent practice under the supervision of a physician, stating that the bill will allow flexibility for a physician and will improve a patient's access the medical care

Mark Stafford, Board Attorney, Kansas Board of Healing Arts, testified in support of the bill, saying the Board had reviewed and approved the bill (Attachment 2)

The Chair closed the Hearing on **HB 2770**.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on February 18, 2004, in Room 526-S of the Capitol.

A motion and second were offered to amend the bill in the three places that require technical changes and pass out the bill favorably.

Representative DeCastro read a document from her local medical society indicating their concern that allowing a physician to supervise a larger number of physician assistants would not be in the best interest of patients under their care.

The motion was passed with one dissent.

Staff Bill Wolff briefed the Committee on **HB 2306**, stating that adult care homes are inspected by the Department of Aging, by the State Fire Marshal, and by the local health departments. He said the bill prohibits these inspection reports from being used in judicial proceedings.

The Chair opened the hearing on **HB 2306**

Kevin Fowler, Kansas Health Care Association, speaking as a proponent for the bill, listed other professions where there are statutory prohibitions for using certain documents as evidence in judicial proceedings, noting that the bill gives adult care homes the same protection afforded to other groups. (Attachment 3) He said the inspection reports are not intended to generate evidence for clients, noting that medical records of care home residents are available for judicial proceedings, further noting that results of inspection reports are posted on the Internet and are therefore in the public domain, obviating any need to include the reports as available for evidence. Answering questions, Mr. Fowler said in some states exorbitant judgments against insurance companies have driven up rates significantly, stating that by eliminating the reports as available for evidence, insurance underwriters will automatically lower rates. He commented that the purpose of exclusions is to encourage candor in the inspection process. If the reports can be used in a lawsuit, an administrator may be less cooperative. Answering another question, he said Ohio has a similar statute, but that the concept of exclusions is a relatively recent occurrence. He replied that the bill will not reduce insurance premiums, but will minimize future increases.

Will Larson, Kansas Association of Insurance Agents, speaking as a proponent, said insurance companies hire his firm to defend themselves against lawsuits. (Attachment 4) He stated that a few years ago, the state had five companies that sold nursing home insurance; now, because of excessive claims, only one company does so, and all the others have withdrawn from the market. He said from a practical standpoint, the inspection surveys create a significant problem for attorneys defending nursing homes, since nearly every survey has some deficiencies. He said whenever he defends a nursing home, he always hires a consultant to go through the reports, even though they usually do not help the lawsuit.

Because of the shortage of time, Larry Magill, Kansas Association of Insurance Agents, deferred to the following conferee, but submitted his supporting testimony for the bill. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on February 18, 2004, in Room 526-S of the Capitol.

Tom Murry, ICI Insurance Center, El Dorado, testified in support of the bill. (Attachment 6) He said that he is not opposed to surveys, but he is opposed to using them as supporting documents in a lawsuit, stating that they contribute to an insurance crisis in Kansas. He related that a few years ago a 100-bed facility could purchase \$1 million of liability insurance for \$2500 per year with no deductible. The same facility now pays \$75,000 with a \$50,000 deductible and additionally often hires a risk-management consultant owned by the insurer to reduce long-term risk. He noted that in case of a lawsuit, the mere possibility of the survey being included in a lawsuit will motivate a care home to settle without a trial. He commented that even homes with exemplary surveys are faced with continually increasing insurance rates.

Jerry Wells, Director of Government Affairs, Kansas Insurance Commission, spoke as a proponent. (Attachment 7) He said there is a clear connection between the use of surveys for legal proceedings and the lack of available liability insurance for care homes, noting that there were many carriers a few years ago, and now there is only one local carrier. He stated that since 2000, the per-bed price for nursing homes has increased 95%, surmising that if surveys were excluded, liability insurance rates would come down and Kansas might be more attractive to other carriers.

Pedro Irigonegaray, Kansas Trial Lawyers Association, spoke in opposition to the bill, stating that it is not the survey that causes liability; the survey only reflects the quality of care given to residents and must be available to assure that residents are given the right to protection when harm is done. (Attachment 8) He said judicial review before a trial determines whether the survey is probative or prejudicial and whether it is relevant or not. He said to prohibit such surveys is to deny the rights of those who often cannot speak or act for themselves, noting that transparency is a virtue, but suppressing evidence is not. He commented that insurance premiums have risen in part because the insurance companies have recently lost money in the stock market and are making it up by boosting premiums. Answering a question, Mr. Irigonegaray said he did not know how many judges admit surveys as evidence.

Kirk Lowry, Kansas Advocacy and Protective Services, spoke in opposition to the bill. (Attachment 9) He said KAPS is the federally mandated protection and advocacy agency to protect people with disabilities, noting that the agency investigates claims of harm to residents in care homes, saying that surveys are indicators of whether or not a particular home is complying with applicable laws and regulations. He cited a 1998 Kansas Supreme Court decision (Adams vs. St. Francis) which held that a plaintiff has the right of access to all relevant facts in a lawsuit against a health-care provider, noting that the bill would deny care home residents the right to defend themselves in a court of law. He said better care would drive down insurance premiums. Answering questions, Mr. Lowry agreed that the court makes a distinction between factual information and conclusions and that a plaintiff had a constitutional right to factual information but not necessarily to conclusions.

Kevin Siek, disability rights advocate, Kansas ADAPT, testified in opposition to the bill. He said that this legislation seeks to eliminate one of the few tools citizens can use to protect themselves from abuse. (Attachment 10) A member commented that Mr. Siek's testimony sounded like an indictment of the industry in general. Mr. Siek replied that Kansas ranks 6th in the nation on the percentage of nursing home

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:30 p.m. on February 18, 2004, in Room 526-S of the Capitol.

facilities with citations for substandard quality of care. He said the best way to deal with the problem of increasing insurance premiums is to close down sub-standard homes.

Not attending, but providing written testimony where the following :

- Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, a proponent (Attachment 11)
- Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association, a proponent (Attachment 12)
- Garen Cox, Medicalodges, representing the Kansas Health Care Association, a proponent (Attachment 13)
- Lee Eaton, Executive Director, Pioneer Ridge Retirement Community, Lawrence, a proponent (Attachment 14)
- Ernest Kutzley, Advocacy Director, AARP, an opponent (Attachment 15)
- Ami Hyten, Topeka Independent Living Resource Center, an opponent (Attachment 16)
- Deanne Bacco, Kansas Advocates for Better Care, an opponent (Attachment 17)

The Chair closed the hearing on **HB 2306**

Chairman Morrison adjourned the meeting at 3:00 p.m. The next meeting is scheduled for Thursday, February 19, 2004.

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

DATE: February 18 2004

NAME	REPRESENTING
Heather Shore	Damron & Associates
Hill Bennett	University of Kansas BSU student
DEBORAH STERN	KHA
SUSAN BUNSTED	Ks State Nurses Assoc
Kevin Fowler	KHCA
Linda Berndt	KHCA
Cindy Luxem	KHCA
Mack Smith	Mortuary Arts Board
Dennis Priest	SR5
Jerry Wells	KID
Michelle Peterson	Ks Governmental Consulting
MARK BORANYAK	Ks. Dept. On Aging
Dusti Hardison	Little Government Relations
Sharon Joseph	ADAPT
Kevin Siek	ICS ADAPT
Pedro Inogencary	KTZA
Barb Covert	KTZA

Kansas Academy of Physician Assistants
Remarks Concerning House Bill No.2770
House Health and Human Services Committee
February 18, 2004

Chairman Morrison and Members of r the House Health and Human Services Committee:

Thank you for the opportunity to present testimony in favor of HB 2770. I am Doug Smith and I serve as the Executive Director for the Kansas Academy of Physician Assistants.

House Bill No. 2770 addresses some old terminology, "physician's assistants" and incorporates the correct name of the profession, physician assistants. But the primary focus of the bill is to remove the limitation of number of physician assistants (PAs) that a physician may supervise. The current statute states in part, "No responsible physician shall have under such physician's direction and supervision more than two physician assistants." This language would be deleted and authority will be given to the individual practice and the Board of Healing Arts to regulate the number of PAs that a physician may supervise.

Historically, the concept of the physician assistant was born during WWII when there was a significant shortage of physicians and Dr. Eugene Stead developed a fast track program for training physicians. Dr. Stead refined the concept and founded the first physician assistant program at Duke University from which 3 PAs graduated on October 6, 1967. Since that time the physician profession has flourished and today, in Kansas, there are nearly 600 PAs licensed by the Board of Healing Arts. The first legislation for PAs in Kansas was passed in 1973. Though we've grown from being registered to licensed, and rules and regulations have changed over the past 30 years, Kansas PAs (and the American Academy of Physician Assistants) have remained committed to quality patient care and dependent practice with physicians.

It's time to remove the statute which limits the physician's utilization of PAs. The American Medical Association Council on Medical Service stated in their 1998 report that "Supervising physicians are the most knowledgeable of their own supervisory abilities and practice style, as well as the training and experience of physician extenders in their practice...Specified ratios of supervisory physicians to physician extenders might restrict appropriate provision of care and could reduce access to care." Removing the two PA limit will allow for flexibility and appropriate utilization of PAs in Kansas and improve patient access to care.

We appreciate your consideration and encourage your favorable action on House Bill No. 2770.

*Attachment 1
HHS 2-18-04*

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS, GOVERNOR

MEMO

TO: House Committee on Health and Human Services

FROM: Lawrence T. Buening, Jr.
Executive Director

DATE: February 18, 2004

RE: **House Bill No. 2770**

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts in support of House Bill No. 2770. The only substantive change to the laws pertaining to physician assistants is in Section 6 at page 6, lines 40-43. The current law states that no responsible physician can have more than two physician assistants under their direction and supervision. The proposed change would allow the Board to limit by rules and regulations the number of physician of physician assistants a responsible physician may supervise at any one time. The remaining sections of the bill merely delete the apostrophe "s" in the title used by physician assistants which was deleted in the physician assistant laws when those were amended effective February 1, 2001.

The provisions of Section 6 have been reviewed and approved by the Physician Assistant Council and the Board's Legislative Committee. Further, the Board as a whole considered and approved this amendment at its meeting January 31, 2004. There have been instances brought to the Board's attention in which a physician assistant works only one or two days a week or only portions of a day. However, the current statutory language has prevented the responsible physician from having more than two physician assistants under their direction and supervision even though only one physician assistant may be working under the responsible physician at any point in time. The Board believes that a regulation can be adopted that will provide more flexibility than the current statutory language, but still provide assurance that adequate and appropriate supervision will be provided.

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SUE ICE, PUBLIC MEMBER, Newton
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JOHN P. WHITE, D.O., Pittsburg

235 S. Topeka Boulevard, Topeka, Kansas 66603-3068
Voice 785-296-7413 Fax 785-296-0852 www.ksbha.org

Attachment 2
HHS 2-18-04

K.S.A. 65-2836(bb) makes it a violation of the healing arts act for a licensee who is the responsible physician for a physician assistant to fail to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act. You will also note that in Section 5 of the bill, K.S.A. 65-28,127 imposes a number of requirements on physicians who serve as a responsible physician for a physician assistant. These statutory requirements are unaffected by the change being proposed in Section 6 and will continue to remain in effect should H.B. No. 2770 be enacted.

Thank you for the opportunity to provide testimony in support of this bill.

A background image of a pair of scales of justice, with the pans hanging from a central beam. The scales are positioned on the right side of the page, with the pans extending towards the center.

Committees on Health & Human Services and Senate Judiciary

Present

HB 2306/SB 430

An amendment to K.S.A. 39-935,
relating to inspection reports of adult
care homes.

Attachment 3
HHS 2-18-04

A Matter of Record

- Utilizing the right record
- For the right reason
- At the right time

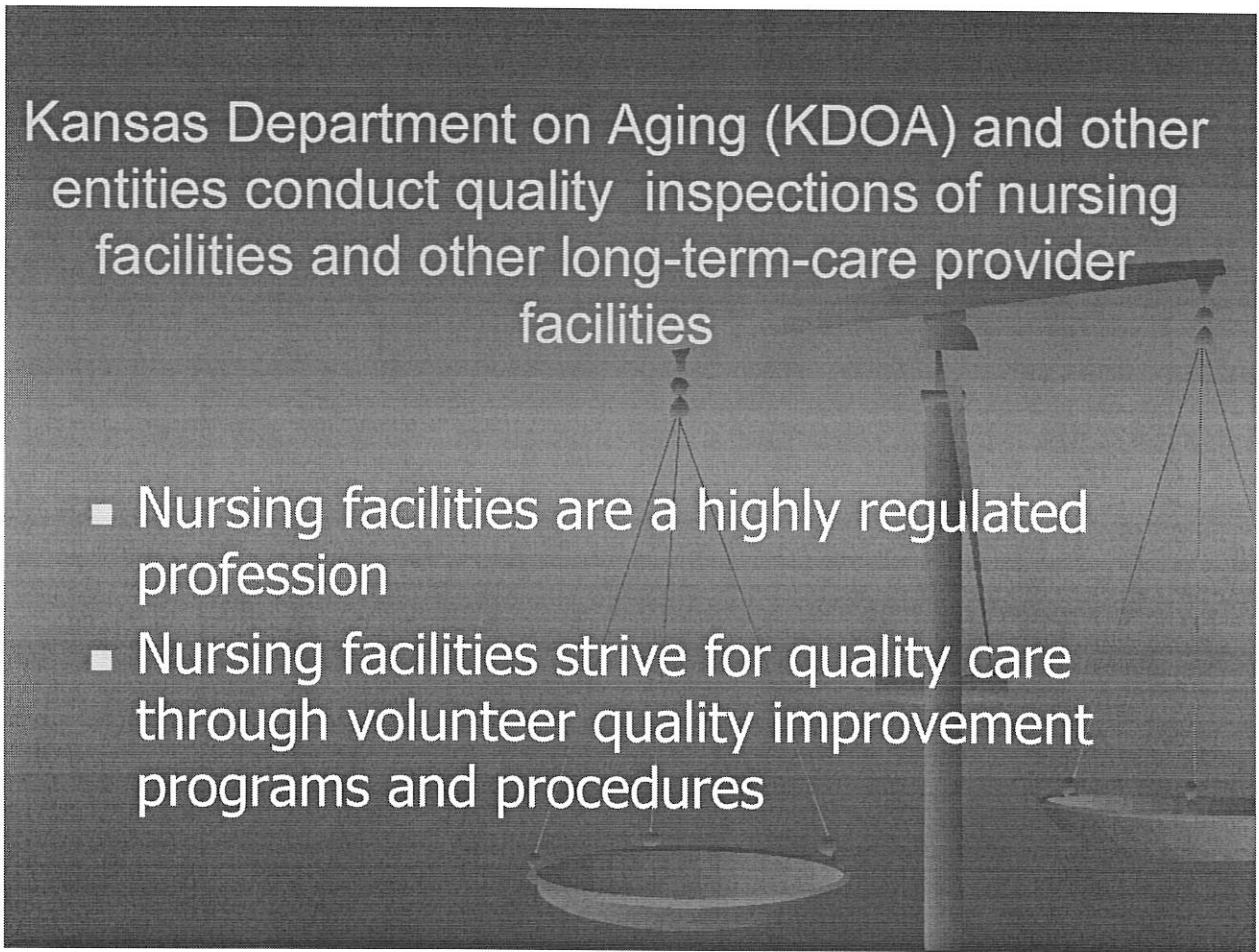


Introduction

- Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities
- Inspections are documented and include objective and subjective results
- Documented deficiencies are considered a 'peer review'

Click to add title

- Documents include but are not limited to Form Health Care Financing Administration) HCFA-2567, quality indicators and other quality assurance documents
- Significant variations are evident in enforcement of rules and regulations, within regions of State and between Kansas and other States and within types of nursing facilities
- Residents medical records are best record of facility's practices and outcome



Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities

- Nursing facilities are a highly regulated profession
- Nursing facilities strive for quality care through volunteer quality improvement programs and procedures

Kansas Department on Aging (KDOA) and other entities conduct quality inspections of nursing facilities and other long-term-care provider facilities

- KDOA surveys nursing facilities to assure compliance with Federal Regulations (42 CFR Part 483, Subpart B) in order that they may receive payment under Medicare and Medicaid programs
- Survey results are for nursing facility to obtain licensure and payments; never intended for use in civil cases to determine liability

Inspections are documented and include objective and subjective results

- Focus of KDOA surveys varies from survey to survey, looking at many aspects of quality
- According to Legislative Post Audit, (12-01), "Some Department practices may contribute to inconsistencies (in classifying deficiencies correctly)...."

Inspections are documented and include objective and subjective results

- Inspections look at “many aspects ...resident care, processes, staff/resident interaction and environment. There are over 150 regulatory standards that nursing homes must meet at all times.” (Quote from Medicare.gov)

Inspections are documented and include objective and subjective results

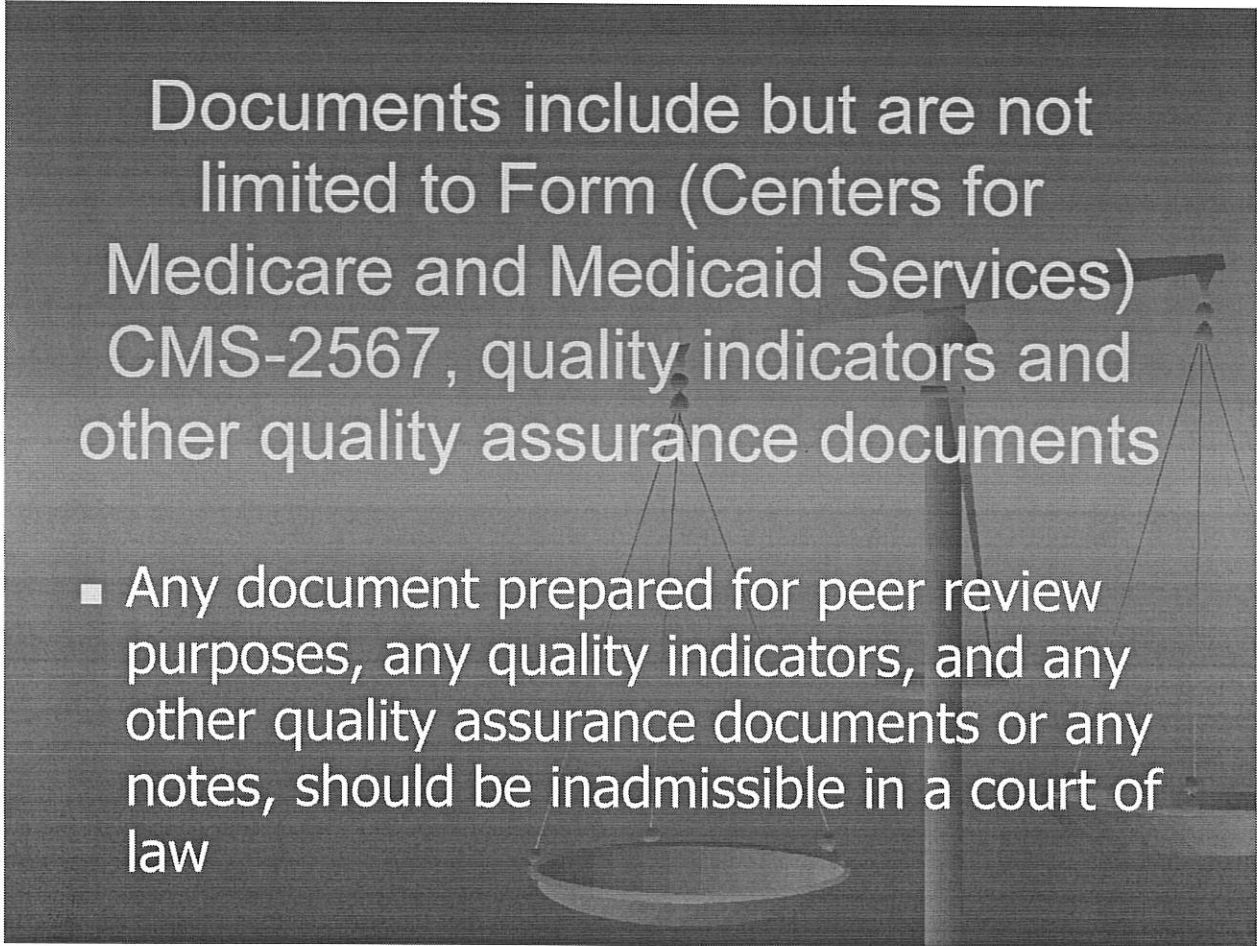
- "Because nursing home inspectors must exercise considerable judgment in evaluating...care, or how serious a violation may be, it's not realistic to expect absolute consistency among inspectors."
(Legislative Post Audit, 12-01)

Documented deficiencies are considered a 'peer review'

- Survey results indicate scope and severity yet the definitions of 'deficiency, harm and scope and severity are subjective. Regardless of scope and severity levels, documentation essentially the same
- Surveyors reference thousands of pages of regulations and standards to determine deficiencies, the potential for error is significant

Documented deficiencies are considered a 'peer review'

- The CMS-2567 has not been challenged for objective accuracy or clear definition
- Surveys and survey documents not designed to provide accurate third-party review of an individual resident's quality of care

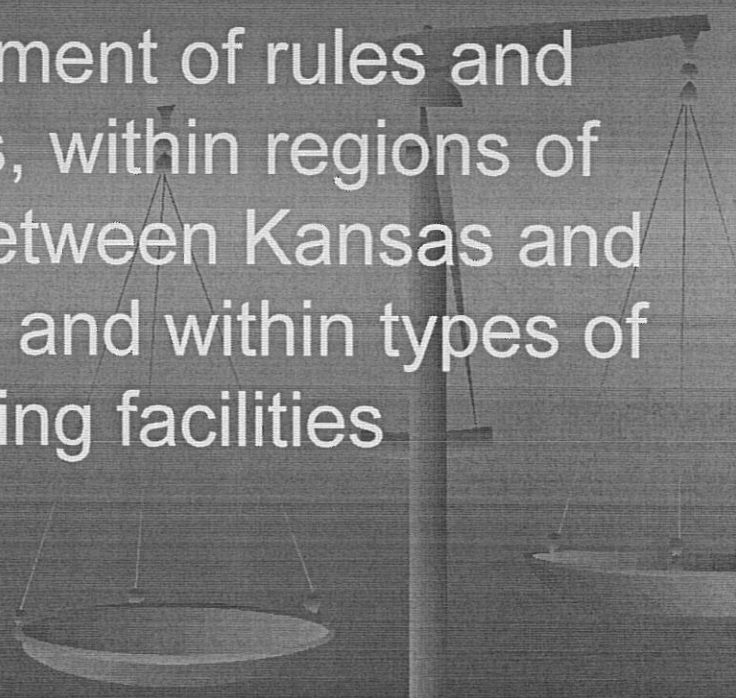


Documents include but are not limited to Form (Centers for Medicare and Medicaid Services) CMS-2567, quality indicators and other quality assurance documents

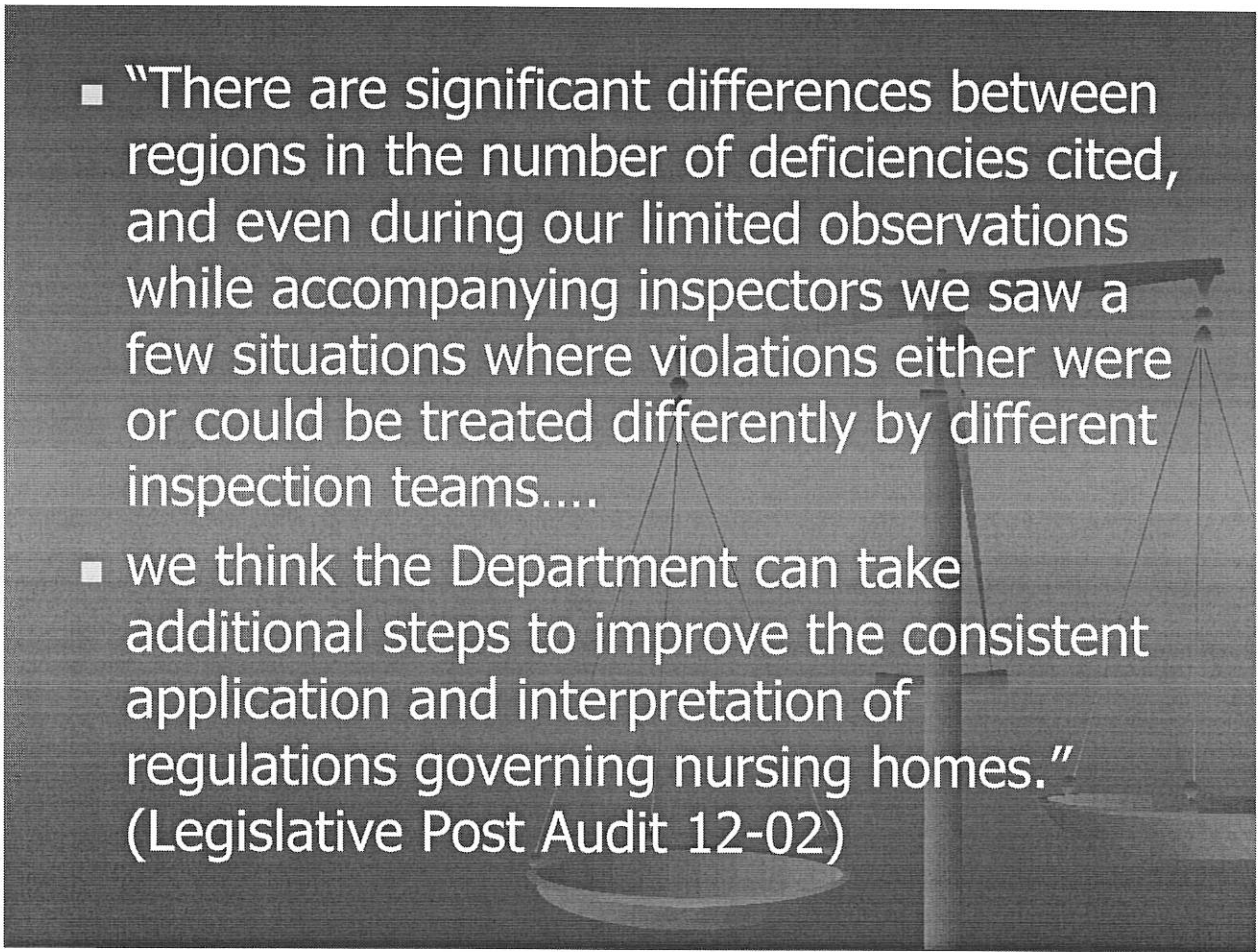
- Any document prepared for peer review purposes, any quality indicators, and any other quality assurance documents or any notes, should be inadmissible in a court of law

Documents include but are not limited to Form (Centers for Medicare and Medicaid Services) CMS-2567, quality indicators and other quality assurance documents

- Any other evidence of the 'general pattern' and practice of the operation should not be admissible
- Federal regulation allows deficiencies to stand even if surveyors do not follow CMS survey procedures. [42 CFR Part 488.318(b)(2)]



Significant variations are evident
in enforcement of rules and
regulations, within regions of
State and between Kansas and
other States and within types of
nursing facilities

- 
- “There are significant differences between regions in the number of deficiencies cited, and even during our limited observations while accompanying inspectors we saw a few situations where violations either were or could be treated differently by different inspection teams....
 - we think the Department can take additional steps to improve the consistent application and interpretation of regulations governing nursing homes.”
(Legislative Post Audit 12-02)

Significant variations are evident

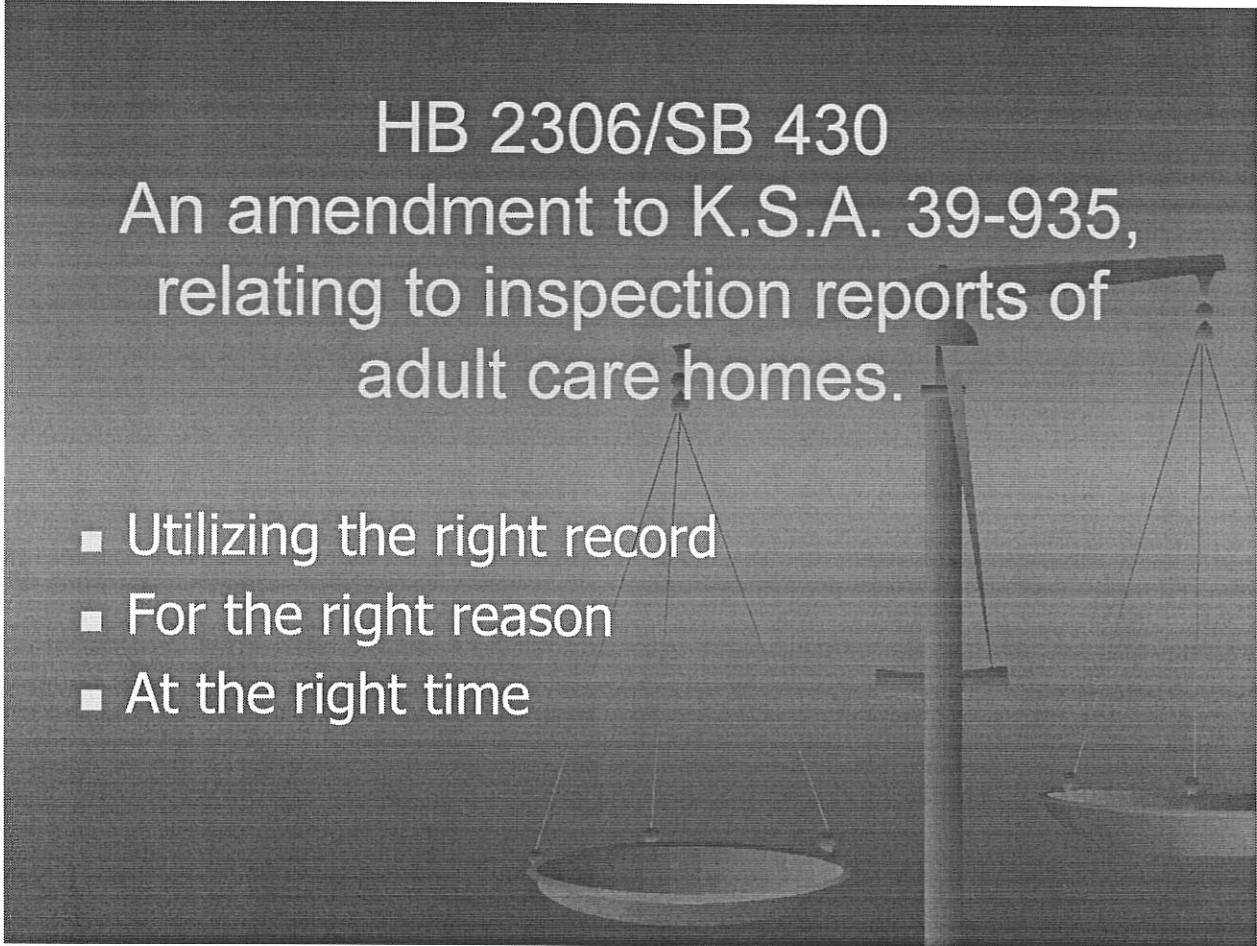
- Centers for Medicare and Medicaid (CMS) issued a memorandum 10-10-02, updating procedures to “make the data obtained through the surveys more useful and relevant to the monitoring process and help to standardize the process among Regions.”

Significant variations are evident

- CMS is formally conducting a study on inconsistency in survey process.

Residents medical records are the best record of facility's practices and outcome

- Medical records are specific to resident
- Medical records are accepted court records
- Medical records satisfy 'burden of proof' providing a record of applicable standard of care



HB 2306/SB 430
An amendment to K.S.A. 39-935,
relating to inspection reports of
adult care homes.

- Utilizing the right record
- For the right reason
- At the right time

TESTIMONY ON HOUSE BILL 2306

BY

WILLIAM A. LARSON

My name is Will Larson. I am a lawyer and the senior partner in the law firm of Gehrt and Roberts Chartered. I represent the Kansas Association of Insurance Agents, but more importantly for the purposes of testifying on this Bill, 90% of my practice and 99% of my law firms practice is what's called insurance defense work. In other words insurance companies hire us the defend people and companies that get sued.

Over the course of the years my law firm has defended numerous cases against nursing homes. I personally have handled several of these cases. Currently my firm is defending four nursing home cases. I can attest to the fact that most of the insurance companies we represent either have are in the process of pulling out of the nursing home market because of the pervasive litigation against nursing homes. It is becoming increasingly difficult to find insurance companies that are willing to write nursing homes.

One of the most difficult and costly matters that has arisen in every nursing home case I have defended is having to deal with the prior inspections or surveys of the nursing home. In every case I have defended there have been prior surveys that have noted some deficiencies. In none of the cases that I have defended have any of the deficiencies ever dealt directly with the resident who was bringing the suit or on whose behalf the suit was brought.

My impression is that typically the plaintiff's attorney's strategy in nursing home cases is to try and create the impression that nursing homes are simply out to make money at the expense of resident care. It has been my experience that, in fact, this is not the case but plaintiff's attorney's attempt to use the prior surveys to bolster this argument.

In all the cases I have defended I do not believe that there was virtually anything in the prior surveys that was truly relevant to the plaintiff's case. But even if I am successful in keeping the surveys from coming into evidence it is very expensive and time consuming. In the last few cases I have defended I have actually hired a consultant, in addition to expert witnesses, to do nothing but interpret the prior surveys and to advise us how best to deal with them.

House Bill 2306 would prohibit the use of prior surveys in the types of civil cases I defend. I think this would be of significant help in defending nursing homes. I urge the committee to recommend passage of the Bill.

Attachment 4
HHS 2-18-04

Testimony Before the House Health and Human Services Committee
On H.B. 2306
By Larry W. Magill, Jr.
Kansas Association of Insurance Agents
February 18, 2004

Thank you mister chairman and members of the committee for the opportunity to appear today in support of H.B. 2306. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2500 people. Our members write approximately 70% of the business property and liability insurance in Kansas.

We have been concerned with the alarming increase in rates and lack of availability of nursing home liability insurance for more than three years.

The Task Force on Long Term Care Services held one hearing on the issue of liability insurance for nursing homes on September 4, 2002 where Tom Murry with Insurance Center Inc in El Dorado testified for KAIA. The Task Force's 2003 report contained no recommendations other than to look at the state's survey process and use of HCFA 2567's to prove negligence in lawsuits by residents.

Kansas Has Loss & Insurance Problems

What industry have you ever known, that was unhappy with its insurance availability and cost, that didn't think they were being penalized for losses occurring in other states? And while Kansas has not had the severe problems of some states like California, Texas or Florida, neither have our nursing homes paid the premiums that a Florida nursing home pays.

I can tell you that one of the carriers that use to write nursing homes in Kansas and had, at one time, 55 locations insured with over 3700 beds had a ten-year general liability loss ratio of 179.52% for 1989 to 1998 and a loss ratio in 1998 of 615%.

Nursing homes have experienced a tremendous increase in their liability insurance costs in the last few years from rates of around \$35 per bed four years ago to as much as \$1,000 per bed today. They are being moved from an occurrence form to a claims made where rates will increase over the next 3-4 years as they progress to fully developed claims made rates. And their coverage will often have anywhere from a \$25,000 to \$50,000 liability deductible. In states like Florida, the rate can be as high as \$6,000 per bed. This has put a tremendous strain on nursing homes' budgets and on state Medicaid budgets.

Inspection Reports Are Misused

Nursing homes in Kansas are faced with state surveys that are extremely critical. The results must be posted in prominent display for the public to view and can be introduced as evidence in civil trials. This dramatically reduces, if not eliminates, an insurance

Attachment 5
HHS 2-18-04

company's defense in the event of a claim. Nursing homes should be held accountable if they do not provide proper care of our relatives and friends. But often these reports have little or nothing to do with what led to an injury.

Insurance companies are simply reacting to the increasing pressure of defending claims that may or may not be legitimate. These deficiency reports cause insurability problems for the nursing homes as well. Any level G violations can cause an underwriter to refuse to insure the home. The level G violation may be a simple fall where the home was not negligent at all.

Medicare is aggravating the situation by requiring, before they will process a claim, that the patient file a claim against the nursing home and present a denial to Medicare. This forces people to start thinking about holding the nursing home responsible regardless of whether there has been any negligence.

KAIA **supports HB 2306** closing inspection records for the following reasons:

- Similar to Ohio legislation passed several years ago
- The reports make it too simple for plaintiff attorneys to use the records to prove negligence when the purpose is to inform the public and encourage sound operations
- Insurance companies then must use them as an underwriting tool when they weren't intended for that purpose either. But knowing they will be used by plaintiff's attorneys against the home, they have no choice.
- Minor infractions and "nit picking" by the state inspectors cause huge liability problems and insurance problems for the homes.
- The survey or inspection process for long-term care facilities is substantially analogous to the "peer review" process for other health care providers. "Peer review" documents involving doctors and hospitals are neither admissible as evidence in Kansas courts nor subject to discovery or disclosure in the civil litigation process.
- The survey report is a subjective, ambiguous report used by state agencies to identify alleged noncompliance with the Medicaid program. Form 2567 is not a reliable indicator of quality care and can create false or misleading impressions about a long term care facility.
- There is not necessarily a direct correlation between the survey findings and the injury to the resident yet they are used to show negligence.

We urge the committee to act favorably on SB 430. It is one of the few ways the legislature can bring relief to spiraling nursing home costs, yet still leaves the tort system in place to protect residents from truly negligent homes.

February 18, 2004
Before House Health & Human Services Committee
Re: HB 2306

Good Morning Mr. Chairman, and members of the committee.

My name is Tom Murry, from El Dorado Kansas. I'm here today representing ICI Insurance Center, Inc., of El Dorado, and the many long term care facilities we insure and work with throughout the State of Kansas. We have been providing insurance protection and risk management to these facilities for over 20 years. I am here today to support passage of House Bill 2306.

Approximately three years ago, the nursing home industry was hit with severe rate increases and a very restricted insurance market place. It has worsened each year since. We use to write liability insurance coverage with "traditional", admitted insurance companies like Allied and St. Paul. They have discontinued offering that coverage. The former price for that coverage for a \$1,000,000 limit was approximately \$25 to \$40 per bed. It was written on an occurrence form, with no deductible. Today you will be lucky to buy coverage for \$500 to \$1,200 per bed, with a \$25,000 to \$50,000 deductible, in a program that has an automatic price increase of 100% in 5 years! The price increase is due to the "maturing" of the claims made rates as more and more prior liabilities are covered. We have replaced our local mid-western underwriters with specialty wholesalers in Houston using overseas markets like Lloyd's of London, just to name a few.

The legal industry has targeted nursing homes because they are "easy pickings". Elderly people slip and fall, they choke on food, they require lots of special attention. That's why they're living in these facilities. If you want to make a living suing nursing homes, it's not very difficult. There are multiple opportunities each and every day for someone to make a legal complaint and attempt to get a settlement. In fact, one of our homes just yesterday received a legal request for the medical records of one of its residents. And this is one of the best operated and award winning homes in the state. Lawyers are regularly receiving invitations to attend seminars on how to litigate nursing home claims.

The state surveys have become a real issue in the underwriting and pricing of insurance coverage. The surveys are posted in prominent locations in each facility, and they are a part of the public record. If a claim is brought against a nursing home the complaining attorney will use the state survey in front of the jury to prove negligence, even though none of the survey problems have any direct bearing on the injury or incident that gave rise to the person bringing the claim. Because the state surveys play such an important role in "proving" a home's negligence, the insurers have no choice but to determine which homes they insure and for what premium based on the results of the state surveys. We have some homes that have never had a claim, but they've had a few survey problems that can impact their claims dramatically. We have an example of one in south-central Kansas with no losses, but some survey problems, and they received one offer in excess of \$70,000 for a 60 bed facility or \$1167 per bed. Our offer was for \$50,000 (from Lloyd's) with a \$50,000 deductible or \$833 per bedon a home that had never had a claim.

I believe that if the state surveys were not allowed as evidence in lawsuits, long term care facilities would be able to defend themselves against claims of negligence and that pricing and insurance availability would improve. I do not believe that the person bringing the claim would suffer. They would simply have to make their case based on the facts as they relate specifically to them. I urge you to pass HB 2306 out favorably for passage this session. Long term care facilities need immediate relief and this is one of the few measures that offers hope. Thank you.

Attachment 6
HHS 2-18-04

COMMENTS
ON
HB 2306— AN ACT RELATING TO
ADULT CARE HOMES

February 18, 2004

Mr. Chairman and Members of the Committee:

In 2000 we began to see signs that the general/professional liability market for adult care homes was eroding. Various agents and adult care homes expressed concern to the department with regard the use of inspection reports as a pricing or underwriting mechanism. The department reviewed the filed rates of the carriers providing the coverage in Kansas and could not find that the department approved a specific rate or schedule based on inspection report ratings for such carriers; however, we determined that it was likely that the inspection report ratings were given consideration within their schedule rating plans. Under K.A.R. 40-3-12, companies are allowed to give up to a 25% credit/debit based on the individual risk's variations in hazard and characteristics of the risk not reflected in its experience. It was also at this time we became aware that adult care homes were beginning to receive non-renewal notices. Apparently the carriers were reviewing the individual adult care home ratings and were using this information as an underwriting tool to determine whether to renew or non-renew current business and to evaluate prospective business.

The Department was advised by carrier agents that adult care homes were being non-renewed due to poor inspection report ratings and, therefore, were forced to find coverage in the non-admitted market were the department does not have authority. Since the non-admitted market is not required to file their rates with the department, we must assume that the non-admitted carriers use inspection report ratings in determining premium. We feel this is a highly likely assumption.

In 1999 there were approximately 13 admitted carriers providing

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general/professional liability coverage to adult care home facilities. They started to exit the market in late 2001 early 2002. Currently there is only one admitted carrier providing such coverage in Kansas and only to not-for-profit facilities. Prior to this time the carrier provided coverage to both for and not-for-profit facilities; however, they withdrew from the for-profit portion of their business in July of 2001. The following is a schedule reflecting this carrier's past per bed rate and recent increase in per bed rate:

7/1/00	7/1/01	7/1/03
\$110 per bed	\$160 per bed 45% increase	\$310 per bed 95% increase

Those facilities that do not have coverage with this carrier either have their coverage with a non-admitted carrier or have chosen to go "bare."

The following is a schedule of a range of per bed rates that were available in 2000 in the admitted market:

	For Profit	Not-For-Profit
Intermediate Care Facility	\$85-\$385 per bed	\$76-\$345 per bed
Skilled Care Facility	\$103-476 per bed	\$99-476 per bed

The non-admitted per bed rates reported to the department ranged from \$500 to \$1,000. This is range is also reflective of current per bed rates being charged in the non-admitted market.

Jerry Wells
Director of Government Affairs

Feb. 18, 2004

TO: House Health and Human Services

FROM: Pedro Irigonegary
Kansas Trial Lawyers Association

RE: HB 2306

Chairman Morrison and members of the committee, thank you for the opportunity to appear before you today. I am Pedro Irigonegaray, a practicing lawyer from Topeka and a past president of the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers Association strenuously **opposes HB 2306**. The federal and state nursing home inspection/survey system checks the owners' and operators' substantial compliance with, respectively, federal and state certification and licensure laws and regulations. The state licensure system was set up to protect the health, safety and welfare of our frail elders and disabled adults who reside in licensed nursing care facilities (also known as "adult care homes" in Kansas). The federal certification system was set up to do the same, and to assure minimal contractor compliance because Medicaid and Medicare are major payers for nursing facility care. There is only one survey for both purposes. The survey system is the back-bone of the certification and licensure systems. Taxpayers pay for it while also paying for a substantial part of all nursing facility care.

The proposed bill might have some validity if the Legislature has no confidence in the federal- and state-funded certification and licensure survey system for which it authorizes payment. The survey system was the subject of a Legislative Post Audit Study within the last three or four years and found to be reasonably adequate. The nursing facility industry often disputes the validity of the survey system, but a regulated industry is often at odds with its regulatory authority. Further, nursing facilities have the right to contest cited deficiencies through informal dispute resolution and the appeals process.

In any civil case, the trial judge is the arbiter of questions of admissibility of evidence and judicial rulings on such issues are based upon long-established case law and statutes. To suspend that body of law and to legislatively exclude a particular type of evidence from all civil cases should require an overriding state or public interest. No such interest exists with these publicly funded inspection reports. Public survey/inspection reports are clearly distinguishable from, for example, internally-generated quality assurance or peer review documents.

Very often the survey report is the only objective documentation of regulatory compliance and quality of care, and derives from, among other things, surveyor onsite observation, review of medical records and staff, and resident and family interviews. As such it is a unique piece of contemporary evidence, and will be determined by the trial court to be either relevant and admissible or not, for that or other legal bases, on a case by case basis.

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Finally, this information is already in the public domain. JCAHCO documents are not. The survey report is conducted by the government, and the survey results, by federal and state law, are public, posted in every facility in the state. 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. KTLA respectfully urges defeat of this bill.

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Testimony to the House Health and Human Services Committee

KANSAS
ADVOCACY February 18, 2004

&
PROTECTIVE
SERVICES,
INC.

Chairman Morrison and members of the committee, my name is Kirk Lowry. I am the Litigation Director for Kansas Advocacy and Protective Services. KAPS (Kansas Advocacy & Protective Services, Inc.) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, KAPS is the officially designated protection and advocacy organization for Kansans with disabilities. KAPS is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy organization for Kansans with disabilities our task is to assist persons with disabilities, regardless of age or disability, to live in the most integrated setting possible, and to ensure that they receive the appropriate medical care, support services and treatment in a safe and effective manner as promised by federal, state and local laws. That responsibility includes protecting the rights of individuals with disabilities who reside in adult care homes.

One of our core priorities is to “promote positive systems and policy changes that will increase the independence of Kansans with disabilities and enable them to live with dignity, independence and respect in the most integrated setting possible.” The legal and civil rights advocacy that KAPS does is all based in that belief. My comments today are also based in that core principle.

KAPS adamantly opposes HB 2306 for both its content and the principals on which it is proposed. Adult care home inspection reports, Health and Human Services (HHS) compliance reports, and other required reports are indicators of whether or not that particular care home is complying with applicable laws and regulations required for cleanliness, quality of food,

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recreation activities for residents and, most importantly, they are reports that address the quality of care and treatment of the individuals who live there. These reports are generally public information and as such provide adult care home accountability to its residents and the public.

We need to be clear. Many people living in a care facility are our most vulnerable citizens. Many are non-verbal and can not “speak up” when they are being mistreated, many unfortunately have lost the capacity to speak up for themselves when they believe that they are being mistreated, and finally, you must understand that residents are far too often feel intimidated to where they do not speak out because of a perceived fear of retaliation. In these cases the required reports speak on behalf of the residents.

In its 1998 case *Adams vs. St Francis* (264 KAN. 144 (1998)) the Kansas Supreme Court spoke to this very issue of access to compliance and other reports for the purpose of enforcing the rights of patients / residents to enforce an individual’s right to due process for mistreatment, or in this case malpractice. In its ruling, the Court stated “Although the interest in creating statutory peer review privilege is strong, it is outweighed by plaintiff right to have access to all facts relevant to issues raised in malpractice action against a defendant health care provider.” The Kansas legislature can not institute a law that denies a person’s right to full access to the courts and due process under the law. The proposal in HB 2306 would be the ultimate abuse of the people who live in adult care homes, a denial of their right to defend themselves by what is all too often their last line of defense, due process of law.

KAPS strongly recommends that HB 2306 be rejected in it entirety.



KANSAS ADAPT



FREE OUR PEOPLE!!!

**835 EAST 800 Road – LAWRENCE, KS 66047
785-748-0832**

Testimony in **Opposition to HB 2306**

Presented to the House Health and Human Services Committee

February 18, 2004

By Kevin Siek, Kansas ADAPT

Chairman Morrison and members of the committee thank you for the opportunity to appear before you today. My name is Kevin Siek and I am a disability rights advocate with Kansas ADAPT. ADAPT is a national grassroots disability rights group that fights for people with disabilities' right to live in the community with real supports instead of being locked away in nursing homes and other institutions.

When I first had an opportunity to give this bill a close look last week my initial thought was, "What are they trying to hide?" As it turns out it didn't take long to find out. That evening the CBS Evening News ran an expose on the ongoing problem of abuse and neglect in our Nation's nursing homes. In the report CBS cited a recent study by the Consumer's Union entitled, "*How Good are Your State's Nursing Homes?*" Amongst the findings of this study were the following:

- **The number of states in which 10 percent or more of facilities were cited for immediate jeopardy violations nearly doubled from 2001 to 2002.** (Kansas made the 2002 list).
- **From 2001 to 2002, there was a 41 percent increase in the proportion of facilities that had more than 15 percent of their facilities receiving a citation for giving substandard care to residents.** (Kansas made both lists).
- **There appears to be a "yo-yo" pattern of compliance for many facilities that have appeared on the Watch List.** 78 facilities were on our first watch list published in 2000 in the Consumer Reports Complete Guide to Health Services for Seniors and on our latest one published in 2002.

The Consumer's Union Study came to the following conclusions:

- **Some nursing home administrators are doing little to correct deficiencies and problems in their facilities.** Nearly one-fifth of the nursing facilities on our 2002 Watch List have been on all of our Watch Lists, indicating that administrators of those facilities and of those on the list for "yo-yo" compliance appear to be doing little to correct deficiencies and problems found by state inspectors working on behalf of the Centers for Medicare and Medicaid Services.
- **Given the widespread authority among states to fine questionable nursing facilities, many states are not using it to penalize homes with deficiencies in the care they deliver.**
- **States and the Federal government make it hard for consumers to learn about penalties**

Free Our People!

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assessed against nursing homes, thus keeping consumers in the dark about vital information they should know before placing a loved one in a facility.

These findings echo those of a recent GAO report entitled, *“Nursing Homes: More Can Be Done to Protect Residents from Abuse.”* In addition to previous findings, this report found, in part, that “Allegations of physical and sexual abuse of nursing home residents frequently are not reported promptly. Local law enforcement officials indicated that they are seldom summoned to nursing homes to immediately investigate allegations of physical or sexual abuse. Some of these officials indicated that they often receive such reports after evidence has been compromised. Although abuse allegations should be reported to state survey agencies immediately, they often are not. For example, our review of state survey agencies’ physical and sexual abuse case files indicated that about 50 percent of the notifications from nursing homes were submitted 2 or more days after the nursing homes learned of the alleged abuse. These delays compromise the quality of available evidence and hinder investigations. In addition, some residents or family members may be reluctant to report abuse for fear of retribution while others may be uncertain about where to report abuse.”

Further, “Few allegations of abuse are ultimately prosecuted. The state survey agencies we visited followed different policies when determining whether to refer allegations of abuse to law enforcement. As a result, law enforcement agencies were sometimes either not apprised of incidents or received referrals only after long delays. When referrals were made, criminal investigations and, thus, prosecutions were sometimes hampered because witnesses to the alleged abuse were unable or unwilling to testify. Delays in investigations, as well as in trials, reduced the likelihood of successful prosecutions because the memory of witnesses often deteriorated.”

This legislation seeks to eliminate one of the few tools that vulnerable Kansans with disabilities have to defend themselves against the abuse and neglect that is pervasive within the nursing home industry. Rather than make it easier for the state to punish the “bad actors” in the industry, this bill actually benefits the worst offenders by limiting the scrutiny that courts can apply, particularly in cases where there is a pattern and practice of abuse and neglect.

It is this kind of legislation that keeps Kansas ranked among the top ten states that provide a substandard quality of care in their nursing homes (Consumer’s Union ranked Kansas 6th on the percentage of nursing facilities with citations for substandard quality of care). I strongly urge you to oppose HB 2306.

The reports cited in this testimony can be found online at:

How Good Are Your State’s Nursing Homes?

<http://www.consumersunion.org/health/nursing-rpt603.htm>

Nursing Homes: More Can Be Done to Protect Residents from Abuse

http://www.canhr.org/rights/rights_reports/Rights_pdfs/MoreProtection.pdf

**To: Chairman Morrison and Members,
House Health and Human Services Committee**
From: Debra Zehr, RN, MA, Vice President
Date: February 18, 2004

Testimony in Support of House Bill 2306

Thank you, Chairman Morrison and Members of the Committee. The Kansas Association of Homes and Services for the Aging represents 160 not-for-profit long-term care provider organizations throughout the state. Our members serve over 15,300 older people in nursing homes, retirement communities, assisted living, housing and community-based services.

We are here to offer our support for House Bill 2306.

House Bill 2306 does not stop the admission of source documents, such as clinical records, as evidence in judicial proceedings. It would exclude only the state inspection report, or HCFA 2567L, which was not designed to be used as evidence in a court of law, but rather, to communicate information to nursing facilities necessary for them to analyze problems and achieve regulatory compliance.

The *Principles of Documentation* to which surveyors must adhere in completing the HCFA 2567L result in complex, repetitive narratives, containing uniquely defined terms that are not easily comprehended, even by long-term care professionals themselves. Surveyors undergo several hours of orientation, plus on-the-job training and periodic continuing education on this system. It is unreasonable to expect a lay juror to be able to grasp the meaning of a HCFA 2567L.

The HCFA 2567L does not use commonly understood definitions. Each problem is graded on level of harm and any one problem can be cited for multiple deficiencies. The threshold for "actual harm" as used in the HCFA 2567L is set very low for purposes of problem identification and correction. State survey agency officials even concede that some situations classified as "actual harm" by surveyors would not be considered actual harm by laypersons serving as jurors.

The HCFA 2567L does not reflect any appeal efforts of the facility, or any disagreement with "findings". To the extent that a facility wishes to dispute clearly erroneous findings, they cannot do it on this form.

Thank you. I would be glad to answer questions.

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WRITTEN TESTIMONY
ONLY
PROPONENT

Wednesday, February 18, 2004

Testimony before the House Health and Human Services Committee on HB 2306. An Act relating to adult care homes; concerning the use of inspection reports; amending K.S.A. 39-935 and repealing the existing section.

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 2306.

The KACE Board of Directors has reviewed the components of HB 2306. We concur with the proposed amendment which would keep the survey records and inspection reports inadmissible as evidence in any judicial proceeding. Other health care providers already have this protection in civil court, and we are asking for the same protection. These documents will still be a part of the public domain.

We urge your support of HB 2306.

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time in any given facility. These visits are usually from 12 to 14 months from the last visitation. Because of limited time, only approximately 20% of the residents' medical records are scrutinized and, customarily, the visits only last for a few days.

*written
only*

Findings made in these state surveys may not have fully been investigated and been erroneous. Procedures exist to permit the provider to challenge the findings, but as a matter of expediency and cost, the provider may very well choose not to contest the findings.

III. DEFENSE DETRACTS FROM CARE AND INSURANCE
VIRTUALLY IMPOSSIBLE TO OBTAIN

Unfortunately, the plaintiff's bar have used this emotion filled subject to inflame juries to return large verdicts. Threats of lawsuits often cause large settlements as seen in almost every state of the nation causing their legislatures to consider tort reform measures to limit such actions. The defense of these claims often detract from the actual care that should be the focus of every nursing home in the state. Facility personnel are often absent from the facilities for days while depositions are being conducted. Paper production and interrogatories often take months to furnish and care, and the funds for care, are often routed to defense measures.

Plaintiff's lawyers often charge as much as 50% of the recovery plus expenses which often lead to the injured resident or family member receiving a substantially reduced recovery from what actually was received.

Nursing home lawsuits have run rampant in recent years, which has led to the withdrawals from many states of the availability of professional liability insurance. Medicalodges has found it virtually impossible to place its insurance and has been forced to self-insure initially the retention levels and in recent years become totally self-insured.

It is our understanding that more and more members of our profession have gone "bare" in their professional liability insurance. This practice will, if continued, adversely impact on the continued existence of nursing facilities.

IV. STATE SURVEYS ARE PEER REVIEW

State Surveys represent "peer review."

Other professions have received protection from peer review. We ask for that same protection.

Thank you for your consideration.

MEDICALODGES, INC.

*Attachment 13
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MEDICALODGES, INC.

**Garen Cox
President and CEO**

I am submitting testimony today in support of House Bill HB 2306.

written only

My name is Lee Eaton I am a Licensed Kansas Nursing Home Administrator and an Attorney admitted to the Kansas Bar. I have served as the Executive Director of Pioneer Ridge Retirement Community, in Lawrence for the last 2 and half years.

The Statement of Deficiencies is a tool used by KDOA to list the results of surveys. The survey process, while based in regulations, is a highly subjective endeavor. A recent study commissioned by KDOA from the University of Kansas listed as preliminary findings the large regional variation in number and severity of deficiencies sited. The study goes on to state that two-thirds of those differences are unexplained.

My colleagues in the Bar will no doubt assert pursuit of the truth as rationale to admit these documents into court. Where is the "truth" in a document in which up to 2/3 of the findings depends on what region the facility is located? A truth based less on quality and more on regional location is no truth at all.

The KDOA has a program (PEAK) designed to recognize the best of Kansas' facilities. A recent meeting regarding the PEAK awards listed in its minutes the following

"There was discussion about the difference between the PEAK award process and the survey process. The survey deficiencies have been taken into account during the review of the applications. However, there have been instances where homes have received the PEAK award and then had bad surveys. The Advisory Committee agreed that the home should keep the award. *The survey has a different focus and isolated incidents at a home can happen.*"

Even the best homes in Kansas receive deficiencies.

Recently the Federal Government introduced a quality improvement initiative. In order to measure the improvements did CMS turn to the 2567 as an accurate gauge of quality? No, in fact they went to great lengths to develop a completely different measure for quality. The simple explanation for this is obvious. Widespread regional differences in interpretation and application of a uniform set of regulations did not lend itself to credible data.

In the end this issue boils down to fairness. The 2567 is a useful tool for surveyors to communicate their concerns to a facility. That is all. To use that document for something more than it was intended is unfair. It is unfair because my colleagues in the Bar will attempt to use it to paint a picture. They will use it to paint a picture that may not even apply to their client. They will use it to paint a picture that is distorted. The incentive is not truth, it is money.

Quite Frankly, the 2567 is required to be in my lobby at all times. It is summarized and put out on the Internet. I am not hiding from the document. However, to use it as evidence seems misleading. Any case that hinges on unrelated events recorded on a 2567

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would seem to be a case that needs to be reconsidered.



February 18, 2004

Representative Morrison, Chair
House Health and Human Services
House Bill 2306

Good afternoon Chairman Morrison and Members of the House Health and Human Services Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our comments and **opposition to House Bill 2306.**

In 1987 Congress responded to widespread concern about poor nursing home quality by enacting the Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987). The Nursing Home Reform Act established state requirements for certifying nursing facilities that participate in the Medicare and Medicaid programs. The act established quality standards for nursing homes nationwide, established resident rights and defined the state survey and certification process needed to enforce the standards.

AARP believes that there is a need for effective oversight of nursing homes, combined with strong sanctions for health and safety violations. AARP opposes efforts to deregulate the nursing home industry and supports strong federal nursing home quality standards. To ensure quality in nursing homes that states should:

- Monitor quality through performance-based outcome measures— States should use a common set of assessment and outcome measures to assess performance quality among all types of providers. Monitoring efforts should intensify as problems are detected in quality outcomes and as the complexity and intensity of services increase;
- Ensure that survey results and other information regarding quality of care, including comparisons with other national standards when possible, are made available to the public in an easily comprehensible format and electronically if feasible—This information should be updated at least annually and the availability of this information should be publicized;
- Collect information about nursing homes regarding quality of care, including staffing levels, and make this information available to consumers.

Therefore, AARP must oppose HB 2306. We respectfully urge this Committee to not approve this proposed legislation.

Respectfully
Ernest Kutzley

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Jim Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

*Attachment 15
HHS 2-@18-04*

Topeka Independent Living Resource Center, Inc.
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written only

Testimony
Presented to the House Health and Human Services Committee
February 16, 2004
by Ami Hyten
Topeka Independent Living Resource Center, Inc.

RE: ~~Opposition to HB 2306~~

Dear Chairperson Morrison and Committee Members;

The Topeka Independent Living Resource Center (TILRC) is a 501(c)(3) not-for-profit civil and human rights organization. Our mission is to advocate for equality, justice and essential services for a fully integrated and accessible society for all people with disabilities. Our center is owned, operated and governed by a majority of people with disabilities. One of our five, federally mandated core areas of service is "Deinstitutionalization," assisting people to move out of institutional settings and live free in a home of their choice.

Our 20 plus years of providing assistance to residents of care homes moving back into the community in a home of their own has provided us with opportunity to become familiar with many facilities. Central to this familiarity is accessing various sources of information and reports which discuss specific deficiencies that directly and most often adversely affect the resident we are assisting.

These facilities take our public dollars and in fact do owe the citizens of Kansas a great degree of accountability. We as a nation trusted them with our most precious members of society for their care and welfare for decades. It has been through various accountability standards and reporting vehicles that we now understand that separating valuable and precious residents (a older person) from the rest of our community is harmful and does not

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benefit anyone except the nursing home industry. A facility that is upholding the
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February 16, 2004

standards of accountability would not be afraid of information contained in this type of report and would have no reasons to fear its use in court. The only effect would be to eliminate one of their only "tools" to provide judicial relief if they are injured or harmed while living at the facility.

This bill is a thinly veiled attempt to undermine the constitutional right to civil trial by jury for some of our most vulnerable and valuable citizens, elderly Kansans.

I would encourage you to use the federal Medicare website, <http://www.medicare.gov/NHCompare/Include/DataSection/Questions/SearchCriteria.asp?version=default&browser=IE%7C6%7CWin2000&language=English&defaultstatus=0&pagelist=Home> to review reports which outline many areas of deficiencies of nursing facilities in our state. Often these conditions indicate level of care, or in this case, the lack of care, of a given facility. The effect of HB 2306 would be to insulate the most egregious violators, those being the facilities demonstrating a pattern and practice of neglect and abuse, from accountability. Insofar as nursing facility care is the presumptive long-term care alternative for elderly Kansans and Kansans with disabilities, the responsibility to maintain safe, healthy, supportive, and dignified care, is not a negotiable obligation.

We strongly oppose the passage of HB 2306.

Thank you for your time and attention to this issue.



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written only

BOARD OF DIRECTORS HB 2306
not allowing nursing home inspection reports to be admissible as evidence
in any judicial proceeding
February 2004

Honorable Chairman Morrison and
Health and Human Services Committee Members:

Kansas Advocates for Better Care (KABC) opposes HB 2306.

KABC continues to promote quality long-term care for all residents of licensed adult care homes. One necessary part of being able to promote quality long-term care is the availability of information about licensed care homes, such as nursing homes. K.S.A. 39-935 currently allows any person to see and get copies of nursing home inspection reports and related documents. This is detailed in part "c". **Nursing home reports and related documents are public information according to federal and state law.**

The purpose of House Bill 2306 appears in a new part, shown as part "d". In general, it says "...no inspection report shall be admissible as evidence in any judicial proceeding....". This proposed change is counter and contrary to the intent of part "c" in the current state law.

The federal government website for the Centers for Medicare and Medicaid Services (CMS) provides the information for any and all consumers to view inspection report results, and even more. It is there for viewing and downloading. The proposed change in HB 2306 is counter and contrary to the intent of the federal law.

KABC urges the Committee to NOT pass this bill. Thank you for allowing this testimony.

Deanne Bacco, Executive Director

Evie Curtis
President
Kansas City

Molly Wood
Vice-President
Lawrence

Margaret Farley
Treasurer
Lawrence

*Attachment # 17
HHS 2-18-04*