

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Edward Pugh (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Kevin Fowler, Kansas Healthcare Association
Tom Murray, Insurance Center, Inc., El Dorado
Larry Magill, Kansas Association of Insurance Agents
Jerry Wells, Kansas Insurance Department
Garen Cox, Medicalodges, Inc.
Debra Zehr, RN, MA, Vice President, Kansas Association of Home and Services for Aging
Kirk Lowry, Kansas Advocacy and Protective Services
Deanne Bacco, Kansas Advocates for Better Care
Ami Hyten, Topeka Independent Resource Center
Pedro Irigonegaray, Kansas Trial Lawyers Association
Kevin Siek, Kansas ADAPT
Dr. Ernest Pogge, Chair of the AARP Kansas Topeka Advocacy Satellite Group

Others attending: See attached list.

Chairman Vratil announced the Committee had five bills to work final action, and one bill scheduled for hearing with 12 conferees.

Final Action:

SB 422 - Capital murder, if sentence of death not imposed, imprisonment for life without the possibility of parole

Chairman Vratil called for discussion and final action on **SB 422**. The Chair explained the bill and stated the Committee needed to decide how they wanted to deal with juveniles in this bill. He said currently juveniles would be subject to the provisions of the bill which provides for life imprisonment without the possibility of parole. He reviewed with the members information received from Donna Lyons, NCSL, regarding what other states are doing in this matter. (Attachment 1)

Senator Goodwin made a motion to amend **SB 422** to eliminate juveniles from being eligible for the death sentence or life without parole because she thought juveniles sometimes can not really use all their faculties before the age of 18. She believed they could be rehabilitated.

Senator Goodwin made a motion to delete Section 2, which would leave it as current law stating that juveniles are not subject to the death penalty but are subject to a "hard 50", and renumber subsequent sections. The motion was seconded by Senator Allen, and the motion carried.

Chairman Vratil stated that the Committee needed to decide whether adults should have the possibility of a death sentence, life imprisonment without parole, and a "hard 50". He recounted the Committee's previous discussion on the bill. If the choice was made to leave in the "hard 50", it would diminish the bargaining leverage prosecutors have. It would also diminish part of the purpose of the bill which is to give juries the option of life imprisonment without parole. The Chair reiterated the bill would give the juries the option of the death penalty or life imprisonment without parole. It would not include the "hard 50" for capital murder. He asked if anyone wanted to offer an amendment to add the "hard 50" as a third option.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

Senator Donovan said there was a place for the "hard 50" for a 19 or 20 year old. It would be a more appropriate and goes along with eliminating the under 18 sentence. If that is taken away, the state is defeating part of the reason that Kansas doesn't execute juveniles. The "hard 50" was a tough sentence, and Kansas does not consider it unless it is a very bad crime.

Senator Donovan made a motion to offer the third option, and not receiving a second, the motion failed.

Chairman Vratil said he had an amendment to submit on behalf of Senator Schmidt, who was not present. It was a clarifying amendment inserted at the beginning of line 21, Page 1, of the bill, adding the following additional language : "A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the his natural life incarcerated and in the custody of the secretary of corrections." (Attachment 2)

Chairman Vratil made a motion to offer the amendment for discussion purposes, and seconded by Senator Allen.

Senator Haley inquired if there was any other gender specific language in the amendment or bill since it referred to "his" natural life. The Chairman said he had also noted that, and suggested that the amendment be changed to "shall spend the remainder of the defendant's natural life....", and that will be the motion to exclude the gender specific language.

Senator Goodwin stated that the Legislature had passed a law which said if an inmate was terminally ill, the inmate can be released to somewhere outside the Department of Corrections. She believed that **SB 422** would conflict with the bill covering terminally ill inmates. The Chairman agreed that **SB 422** would conflict.

The Revisor, Jill Wolters, explained that as originally drafted she thought that this statute controlled 2237, but Senator Schmidt's amendment would make it appear to be contradictory. She suggested that the Committee add language to the amendment saying "except as provided by K.S.A. 22-3728. The Chairman stated with the permission of the second, he would add that change to the language of the amendment. As the second, Senator Allen agreed.

Chairman Vratil called for a vote on the motion. The motion carried to amend SB 422.

Senator Goodwin made a motion to recommend SB 422 favorably as amended for passage, seconded by Senator Schmidt, and the motion carried. Senator Donovan requested his "no" vote be recorded.

SB 423 - Wage garnishment, assignment of account

Chairman Vratil called for discussion and final action on **SB 423**. The Chair explained the bill and noted there was a technical amendment on Page 2, line 40, changing sub-section (g) to sub-section (f). Senator O'Connor made a motion to adopt the technical amendment, seconded by Senator Donovan, and the motion carried.

Senator Schmidt made a motion to recommend SB 423 favorably for passage as amended, seconded by Senator Donovan, and the motion carried. Senator Haley requested his "no" vote be recorded.

SB 424 - Transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause

Chairman Vratil called for discussion and final action on **SB 424**. The Chair explained the bill and three proposed amendments. He said the first amendment was language suggested by Columbia National Title Insurance Company which would make the bill acceptable to that industry. The second amendment would strike language relating to other forms of insurance, and the third amendment borrowed language in federal law that "prohibits exercise of due on sale clauses when residential property is transferred into a trust." (Attachment 3) The Chair announced that since the Committee had not had a chance to study the amendments, he was going to suspend the hearing until tomorrow in order to give the Committee members a chance to study the offered amendments.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Wednesday, February 18, 2004, in Room 123-S of the Capitol.

SB 430 - Results of a survey or inspection report of an adult care home used only for determining compliance with state law; not admissible as evidence in a civil proceeding

Chairman Vratil opened the hearing on **SB 430**. Kevin Fowler testified in support of the proposed bill on behalf of the Kansas Healthcare Association. Mr. Fowler said the proposed legislation is modeled after a law in Ohio. He explained that the Kansas Department of Aging and other entities conduct quality inspections of nursing facilities and other long-term care provider facilities. These inspections are documented and include objective and subjective results. Mr. Fowler explained that nursing facilities are highly regulated, and strive for quality care through volunteer quality improvement programs and procedures. He stated that documented deficiencies are considered a "peer review", and a resident's medical record is the best record of a facility's practices and outcome. He concluded that the justification for this bill was cost since liability insurance premiums are escalating. (Attachment 4)

Tom Murray, Insurance Center, Inc., spoke in favor of **SB 430**, and explained that the state surveys have become a real issue in the underwriting and pricing of insurance coverage. He stated he believed 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. (Attachment 5)

Larry Magill, Kansas Association of Insurance Agents, testified in support of **SB 430**. He explained that the reports were being used as an underwriting tool because they are used in the courts. (No written testimony submitted)

Jerry Wells, Kansas Insurance Department, talked about the lack of insurance availability for adult care homes due to poor inspection report ratings; consequently, care homes were forced to find coverage in the non-admitted market where the Insurance Department does not have authority. He stated that currently there is only one admitted carrier providing such coverage in Kansas and only to not-for-profit facilities. (Attachment 6)

Garen Cox, Medicalodges, Inc., submitted written testimony in favor of **SB 430**. (Attachment 7)

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, submitted written testimony in support of **SB 430**. (Attachment 8)

Committee questions and discussion followed the testimony of the proponents.

Chairman Vratil called upon the first opponent of **SB 430** to testify. Kirk Lowry, Kansas Advocacy and Protective Services, testified against the proposed legislation because of its content and the principals on which it was proposed. He explained that adult care home inspection reports, Health and Human Services compliance reports, and other required reports are indicators of whether or not a particular care home is complying with applicable laws and regulations required for cleanliness, quality of food, recreation activities for residents, and, most importantly, they are reports that address the quality of care and treatment of the individuals who live there. He said the passage of **SB 430** 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. (Attachment 9)

Deanne Bacco, Kansas Advocates for Better Care, testified in opposition to **SB 430**. She related that nursing home inspection reports and related documents are public information according to state law. She said that the federal government's website for the Centers for Medicare and Medicaid Services (CMS) provides the information for anyone to view and download. Ms. Bacco stated that the proposed change in **SB 430** is counter and contrary to the intent of the federal law. (Attachment 10)

Ami Hyten, Topeka Independent Resource Center, testified in opposition to **SB 430**. She stated that the bill was a thinly veiled attempt to undermine the constitutional right to civil trial by jury for some of the most vulnerable and valuable citizens, elderly Kansans. She said the effect of this bill would be to insulate the most egregious violators, those being the facilities demonstrating a pattern and practice of neglect and abuse, from accountability. Ms. Hyten attached information she had copied from the U.S.

CONTINUATION SHEET

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Government's website for people with Medicare. (Attachment 11)

Margaret Farley appeared in place of Pedro Irigonegaray, representing the Kansas Trial Lawyers Association, but submitted written testimony in strong opposition to **SB 430**. (Attachment 12)

Kevin Siek, Kansas ADAPT, testified in opposition to **SB 430**. He said that the proposed bill 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. He stated that it was this kind of legislation that keeps Kansas ranked among the top ten states that provide a substandard quality of care in their nursing homes. (Attachment 13)

Dr. Ernest Pogge, Chair of the AARP Kansas Topeka Advocacy Satellite Group, spoke in opposition to **SB 430**. Dr. Pogge stated during his testimony that AARP believes there is a need for effective oversight of nursing homes, combined with strong sanctions for health and safety violations. He said that AARP opposes efforts to deregulate the nursing home industry, and supports strong federal nursing home quality standards. (Attachment 14)

Following a brief discussion period, the Chairman adjourned the meeting at 10:30 a.m.

The next scheduled meeting is February 19, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds, Feb. 18, 2004

NAME	REPRESENTING
JULIA BUTER	KSC
DENNIS SCHNEIDER CSJ	Amnesty Internat'l
Bill Luss	Murder Victims' Families for Reconciliation
Dusti Harelisa	Little Government Relations
Jerry Wells	Ks. INS. Dept.
Kevin Sisk	KS ADAPT
Doug Smith	Pinegar, Smith & Associates
Ami Plyten	Topelca Independent Living Resource Center
Becca Vaughn	" "
Jim Chisak	KBA
Cindy Luxem	KHCA
Kevin Fowler	KHCA
Linda Berndt	KHCA
MARK BORANYAK	Ks. Dept. on Aging
TOM MURRY	Ins. Center Eldorado KS
LARRY MAGILL	Ks. ASSN OF INS AGENTS
MJ Wiloughby	ATA
KEVIN GRAHAM	A-G
Sara Hammond	AARP

SENATE JUDICIARY COMMITTEE GUEST LIST Pg. 2

DATE: Weds, Feb. 18, 2004

NAME	REPRESENTING
Robert C Taylor	AARP
Georgia Taylor	AARP
Walter Spencer	AARP
Kevin E. Gardner	AARP
Mary Snowberger	AARP
Maryann Farlay	KTLA & KABC
PEDRO IRIBONEGARY	KTLA
Barb Coxart	KTLA
David Corotto	KTLA
Charles Allen	AARP
Tom Taylor	"
W. Kay Lett	AAPP
Betty J. Gregg	AARP Dodge City
Van E. Lett	AARP " "
Shirley Blake	AARP Dodge City
Mary Jane Stramel	AAPP Dodge City
Betty Allen	AARP " Dodge City
Vernon Everhart	AARP Dodge City
Alma Basso	KABC & AARP

SENATE JUDICIARY COMMITTEE GUEST LIST pg. 3

DATE: Weds., Feb 18, 2004

NAME	REPRESENTING
Ernie Fogge	AARP
Lorraine Gardner	AARP
Henry Gardner	AARP
Laura M. Schlotzko	AARP
Nancy Pierce	KHCA
Jean Taylor	AARP

2/13/04

Mike:

This is in response to your question on sentence options for a juvenile convicted of a capital crime in a state in which there is a statutory exclusion from the death penalty.

See attached, compiled by the Texas Senate Research Center a couple years ago. It is as close as I can get to answering your question.

In any of the death penalty states in which a juvenile is statutorily excluded from a death sentence, the sentencing authority would have the discretion to impose the capital murder sentencing options which are indicated in this chart.

You'll notice that Texas is the only other state that both allows death penalty of one who committed the crime as a juvenile; and has a sentence option that does not include life without parole. (Texas is 40 years to life, at the discretion of the sentencing jury.)

I checked juvenile justice and juvenile transfer information of the National Center for Juvenile Justice. They included discussion of states which exclude juveniles from death sentences, but I find no indication that any state statutes make other exclusions as to what the alternate sentence is for a juvenile tried as an adult and convicted of a capital crime. That is, other than the statutory exclusion of no death penalty for a juvenile, once tried and convicted as an adult the other sentence options may apply.

I hope this is helpful.

Donna Lyons
NCSL
303-364-7700 x 1532

Senate Judiciary

2-18-04
Attachment 1



SENATE RESEARCH CENTER

March 14, 2001

TO: Molly Burton, NCSL

FROM: Rita C. Aguilar, Policy Specialist

SUBJECT: FIRST DEGREE MURDER/CAPITAL PUNISHMENT SENTENCING OPTIONS (Death Penalty, Life without Parole, or some relevant equivalent) - 50 State Survey

The following chart is part of the death penalty project I have been working on. If there is any confusion, please don't hesitate to contact me at (512) 463-0087.

Circled states Prohibit Death Penalty for Juveniles

Death Penalty or Life Without Parole Only (LWOP); Sentencing Authority	Death Penalty, Life Without Parole (LWOP), or Other Life Sentence; Sentencing Authority	Death Penalty or Other Life Sentence <i>not</i> Life Without Parole (LWOP); Sentencing Authority	No Death Penalty: Life Without Parole (LWOP) or Other Life Sentence; Sentencing Authority
Alabama; Judge			
			Alaska ; 3 judge panel (Sentences vary, may be for the rest of the defendant's life)
	Arizona; Judge (LWOP or 25-35 years to life)		
Arkansas; Jury			
	California; Jury (LWOP or 25 years to life)		
Colorado; 3 judge panel (Recently removed 40 to life and jury sentencing)			
Connecticut; Jury			
Delaware; Judge			
Florida; Judge			
	Georgia; Jury (LWOP or life sentences vary)		
			Hawaii; Judge (LWOP)

	Idaho; Judge (Life sentences vary, "fixed life" could be any term, including LWOP)		
Illinois; Jury			
Indiana; Judge			
		Iowa; Judge (LWOP)	
		Kansas; Jury (40-50 years to life mandatory)	
	Kentucky; Jury (LWOP, 25 years to life, or term of 20-50 years)		
Louisiana; Jury			Maine; Jury (Life or a minimum of 25 years to life)
	Maryland; Jury (LWOP or 25 years to life)		
			Massachusetts; Judge (LWOP)
			Michigan; Judge (LWOP)
			Minnesota; Judge (LWOP for "heinous crimes" or 20 years to life for "murder")
Mississippi; Jury (Recently eliminated "life" sentence in capital cases)			
Missouri; Jury			
	Montana; Judge (LWOP or any term 10-100 years)		
	Nebraska; 3 judge panel (Life has no mandatory minimum, can include LWOP)		
	Nevada; Jury (LWOP, 20 years to life, or a set term of 50 years with parole eligibility after 20 years)		
New Hampshire; Jury			
	New Jersey; Jury (LWOP, 30 to life, or a set term of 30 years with no parole eligibility)		
		New Mexico; Jury (30 years to life)	
	New York; Jury (LWOP or other sentence for Class A-1 Felonies, typically 20-25 years to life)		
North Carolina; Jury			

			North Dakota; Judge (Minimum 30 years to life, including LWOP)
	Ohio; Jury (LWOP, 30 years to life, 25 years to life, or 20 years to life)		
	Oklahoma; Jury (LWOP, or must serve at least 1/3 of life sentence, which is typically 45 years)		
	Oregon; Jury (LWOP, or 30 years to life)		
Pennsylvania; Jury			
			Rhode Island; Judge (Minimum 20 years to life, including LWOP)
	South Carolina; Jury (LWOP or a mandatory minimum of 30 years)		
South Dakota; Jury			
	Tennessee; Jury (LWOP or minimum 25 years to life)		
		Texas; Jury (40 years to life)	
	Utah; Jury (LWOP, as of 1992, or life sentences vary and parole board can review on 10 year intervals)		
			Vermont; Jury (Minimum 15-35 years to life, including LWOP)
Virginia; Jury (As of 1995, no parole for any felony offense)			
Washington; Jury			
			West Virginia; Jury (Minimum 15 years to life, including LWOP)
			Wisconsin; Judge (Minimum 20 years to life, including LWOP)
Wyoming; Jury			

cc: Julie Valentine, SRC file

CJ:MISC

1-4

SENATE BILL No. 422

By Committee on Judiciary

2-2

Senate Judiciary
2-18-04
Attachment 2

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to imprisonment for life without the possibility of parole; amending
11 K.S.A. 21-4633 and 21-4634 and K.S.A. 2003 Supp. 21-4635 and 22-
12 3717 and repealing the existing sections.
13

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

15 New Section 1. (a) Except as provided in K.S.A. 21-4634, and
16 amendments thereto, if a defendant is convicted of the crime of capital
17 murder, pursuant to K.S.A. 2003 Supp. 21-3439, and amendments
18 thereto, for crimes committed on and after July 1, 2004, and a sentence
19 of death is not imposed, the court shall sentence the defendant to im-
20 prisonment for life without the possibility of parole.

21 (b) A defendant who is sentenced to imprisonment for life without
22 the possibility of parole shall not be eligible for parole, probation, assign-
23 ment to a community correctional services program, conditional release,
24 postrelease supervision, or suspension, modification or reduction of sen-
25 tence. Upon sentencing a defendant to imprisonment for life without the
26 possibility of parole, the court shall commit the defendant to the custody
27 of the secretary of corrections and the court shall state in the sentencing
28 order of the judgment form or journal entry, whichever is delivered with
29 the defendant to the correctional institution, that the defendant has been
30 sentenced to imprisonment for life without the possibility of parole.

31 (c) This section shall be a part of and supplemental to the Kansas
32 criminal code.

33 Sec. 2. K.S.A. 21-4633 is hereby amended to read as follows: 21-
34 4633. If the court authorizes prosecution as an adult of a juvenile pursuant
35 to K.S.A. 38-1636 and amendments thereto, the county or district attor-
36 ney may proceed pursuant to *section 1, and amendments thereto, or*
37 K.S.A. 21-4634 through 21-4638 and amendments thereto.

38 Sec. 3. K.S.A. 21-4634 is hereby amended to read as follows: 21-
39 4634. (a) If a defendant is convicted of the crime of capital murder and
40 a sentence of death is not imposed, or if a defendant is convicted of the
41 crime of murder in the first degree based upon the finding of premedi-
42 tated murder, the defendant's counsel or the director of the correctional
43 institution or sheriff having custody of the defendant may request a de-

~~(b)~~ A defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of his natural life incarcerated and in the custody of the secretary of corrections.

the defendant's



**KANSAS BAR
ASSOCIATION**

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FAX (785) 234-3813
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February 18, 2004

TO: Members of the Senate Judiciary Committee

FROM: Jim Clark, KBA Legislative Counsel

RE: Proposed Amendments to SB 424

Attached is a proposed amendment to SB 424. The proposal makes three changes to the original bill:

1. It adopts suggested changes made by Leola Foster of the Columbia National Title Insurance Company (attached), which hopefully make the bill acceptable to that industry.
2. It strikes language relating to other forms of insurance.
3. It borrows language in federal law that prohibits exercise of due on sale clauses when residential property is transferred into a trust (also attached).

The Kansas Bar Association remains concerned about the status of property and liability insurance coverage on a residence placed into a revocable trust. Those concerns can best be allayed through negotiations with the appropriate insurance companies and their representatives in the future. The immediate, known threats to residential property placed into trust: loss of title insurance coverage and loss of the homestead exemption, are dealt with in the proposed amendment. The Kansas Bar Association asks that the amendment be adopted and the bill recommended favorably, as amended.

Thank you.

Senate Judiciary

2-18-04
Attachment 3

SENATE BILL No. 424

By Committee on Judiciary

2-2

9 AN ACT concerning trusts; relating to the transfer of property into a
10 trust.

11

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

13 Section 1. (a) The transfer of real or personal property to a trust shall
14 not affect the coverage of any title, liability, comprehensive or other in-
15 surance, and the trustee shall also be deemed to be so insured. Transfer
16 to a trust shall not affect any homestead exemption or redemption rights
17 and shall not cause a due on sale or similar clause to be effective under
18 a mortgage or security interest, if the transferor is the primary income
19 beneficiary of the trust at the time of the transfer.

20 (b) This section shall be a part of and supplemental to the Kansas
21 uniform trust code.

22 Sec. 2. This act shall take effect and be in force from and after its
23 publication in the statute book.

The transfer by warranty deed of real ~~or personal~~ property that qualifies as a homestead, into an *inter vivos* trust in which the settlor is and remains a beneficiary and occupant of the property, shall not affect the coverage of any title, ~~liability,~~ comprehensive or other insurance, and the trustee shall also be deemed to be so insured and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original-named insured. Transfer of such property into a trust shall not affect any homestead exemption or redemption rights, nor shall it cause a due on sale or similar clause to be effective under a mortgage or security interest, if the transferor is a ~~the~~ primary ~~income~~ beneficiary of the trust at the time of the transfer.

Senate Bill No. 424

By Committee on Judiciary

2-2

AN ACT concerning trusts: relating to the transfer of property into a trust.

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

Section 1. (a) The transfer by warranty deed of real or personal property to a trust shall not affect the coverage of any title, liability, comprehensive or other insurance, and the trustee shall also be deemed to be so insured and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original-named insured. Transfer to a trust shall not affect any homestead exemption or redemption rights and shall not cause a due on sale or similar clause to be effective under a mortgage or security interest, if the transferor is the primary income beneficiary of the trust at the time of the transfer.

(b) This section shall be a part of and supplemental to the Kansas uniform trust code.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Without the above changes, the title insurance company is placed in the position of insuring acts suffered and assumed by other parties without our knowledge and which in our opinion would constitute unsound underwriting practices, and a violation of K.S.A. 40-236 (b). Without the above changes the financial soundness of insurance companies would be affected to the detriment of all consumers.

Senate Bill 424 could be misleading to the Kansas consumer. The general consuming public will rely on Senate Bill 424 and draft and record their own deeds to the TRUST believing the TRUST has good title because the TRUST is an insured on a title policy. After the grantor has conveyed to the TRUST and the grantor has died, it is time consuming, expensive and sometimes impossible to correct defects and errors that could have been easily corrected while the grantor was alive.

For the above reasons, we ask the committee to not approve the Senate Bill and allow it out of committee. In the alternative, we request that at least the changes underlined in the above copy of the Senate Bill be used to amend the Senate Bill as presented

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Laws: Cases and Codes : U.S. Code : Title 12 : Section 1701j-3

- United States Code
 - TITLE 12 - BANKS AND BANKING
 - CHAPTER 13 - NATIONAL HOUSING

U.S. Code as of: 01/22/02

Section 1701j-3. Preemption of due-on-sale prohibitions

Related Re

(a) Definitions

For the purpose of this section -

(1) the term "'due-on-sale clause'" means a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent;

(2) the term "'lender'" means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;

(3) the term "'real property loan'" means a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property; and

(4) the term "'residential manufactured home'" means a manufactured home as defined in section 5402(6) of title 42 which is used as a residence; and

(5) the term "'State'" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Loan contract and terms governing execution or enforcement of due-on-sale options and rights and remedies of lenders and borrowers; assumptions of loan rates

(1) Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c) of this section, enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.

(2) Except as otherwise provided in subsection (d) of this section, the exercise by the lender of its option pursuant to such a clause shall be exclusively governed by the terms of the loan

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contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.

(3) In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this section shall be interpreted to prohibit any such assumption.

(c) State prohibitions applicable for prescribed period; subsection

(b) provisions applicable upon expiration of such period; loans subject to State and Federal regulation or subsection (b)

provisions when authorized by State laws or Federal regulations

(1) In the case of a contract involving a real property loan which was made or assumed, including a transfer of the lien property subject to the real property loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such State has rendered a decision (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment if such decision applies State-wide) prohibiting such exercise, and ending on October 15, 1982, the provisions of subsection (b) of this section shall apply only in the case of a transfer which occurs on or after the expiration of 3 years after October 15, 1982, except that -

(A) a State, by a State law enacted by the State legislature prior to the close of such 3-year period, with respect to real property loans originated in the State by lenders other than national banks, Federal savings and loan associations, Federal savings banks, and Federal credit unions, may otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such State law so provides; and

(B) the Comptroller of the Currency with respect to real property loans originated by national banks or the National Credit Union Administration Board with respect to real property loans originated by Federal credit unions may, by regulation prescribed prior to the close of such period, otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such regulation so provides.

(2) (A) For any contract to which subsection (b) of this section does not apply pursuant to this subsection, a lender may require any successor or transferee of the borrower to meet customary credit standards applied to loans secured by similar property, and the lender may declare the loan due and payable pursuant to the terms of the contract upon transfer to any successor or transferee of the borrower who fails to meet such customary credit standards.

(B) A lender may not exercise its option pursuant to a due-on-sale clause in the case of a transfer of a real property loan which is subject to this subsection where the transfer occurred prior to October 15, 1982.

(C) This subsection does not apply to a loan which was originated by a Federal savings and loan association or Federal savings bank.

(d) Exemption of specified transfers or dispositions

With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon -

(1) the creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(2) the creation of a purchase money security interest for household appliances;

(3) a transfer by devise, descent, or operation of law on the

death of a joint tenant or tenant by the entirety;

(4) the granting of a leasehold interest of three years or less not containing an option to purchase;

(5) a transfer to a relative resulting from the death of a borrower;

(6) a transfer where the spouse or children of the borrower become an owner of the property;

(7) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(8) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(9) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.

(e) Rules, regulations, and interpretations; future income bearing loans subject to due-on-sale options

(1) The Federal Home Loan Bank Board, in consultation with the Comptroller of the Currency and the National Credit Union Administration Board, is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(2) Notwithstanding the provisions of subsection (d) of this section, the rules and regulations prescribed under this section may permit a lender to exercise its option pursuant to a due-on-sale clause with respect to a real property loan and any related agreement pursuant to which a borrower obtains the right to receive future income.

(f) Effective date for enforcement of Corporation-owned loans with due-on-sale options

The Federal Home Loan Mortgage Corporation (hereinafter referred to as the "Corporation") shall not, prior to July 1, 1983, implement the change in its policy announced on July 2, 1982, with respect to enforcement of due-on-sale clauses in real property loans which are owned in whole or in part by the Corporation.

(g) Balloon payments

Federal Home Loan Bank Board regulations restricting the use of a balloon payment shall not apply to a loan, mortgage, advance, or credit sale to which this section applies.

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[Code of Federal Regulations]
[Title 12, Volume 5]
[Revised as of January 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 12CFR591.5]

[Page 455-456]

TITLE 12--BANKS AND BANKING

CHAPTER V--OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

PART 591--PREEMPTION OF STATE DUE-ON-SALE LAWS--Table of Contents

Sec. 591.5 Limitation on exercise of due-on-sale clauses.

(a) General. Except as provided in Sec. 591.4 (c) and (d) (4) of this part, due-on-sale practices of Federal savings associations and other lenders shall be governed exclusively by the Office's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) Specific limitations. With respect to any loan on the security of a home occupied or to be occupied by the borrower,

~~(1) A lender shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-on-sale clause upon:~~

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property: Provided, That such lien or encumbrance is not created pursuant to a contract for deed;

(ii) The creation of a purchase-money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase ~~will allow the exercise of a due-on-sale clause~~);

(v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:

(A) A transfer to a relative resulting from the death of the borrower;

(B) A transfer where the spouse or child(ren) becomes an owner of the property; or

(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which ~~the spouse becomes an owner of the property~~; or

(vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.

(2) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender

(i) Declares by written notice that the loan is due pursuant to a due-on-sale clause or

(ii) Commences a judicial or nonjudicial foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such clause.

(3) A lender shall not impose a prepayment penalty or equivalent fee

Committee 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.

Senate Judiciary

8-18-04
Attachment 4

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'

- 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

4-4

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

4-14

- “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.”

91-A

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

4-19

February 18, 2004
Before Senate Judiciary Committee
Re: SB 430

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 Senate Bill 430.

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 Senate Bill 430 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.

Senate Judiciary

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Testimony Before the Senate Judiciary Committee
On SB 430
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 Senate Bill 430. 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 a 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

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 SB 430** 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.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 430— 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 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



TESTIMONY CONCERNING H.B. 2306

I would like to thank the committee for permitting this written testimony concerning our experiences with the usage of state survey deficiency reports in court proceedings and the inherent unfairness of permitting these findings as evidence.

I. MEDICALODGES, INC.

Medicalodges Inc., is a Long-Term Care Provider located in Coffeyville, Kansas. Medicalodges operates in four midwestern states with the majority of its facilities located in the State of Kansas.

Medicalodges has been in existence since 1961 and employs approximately 2400 individuals in 40 locations.

Medicalodges is the only 100% employee-owned nursing home operation in the United States.

II. CONCERNS WITH STATE SURVEY REPORTS

I have concerns when the state survey reports, known as the Form 2567's, are introduced into litigation and are relied upon by juries as a showing of "neglect" and/or "abuse."

During the past years, the Long-Term Care Profession, has been barraged with litigation concerning the services provided. This litigation threatens the existence of a very valuable service (the Long-Term Care Profession). Truly, none of us want to face the realities of growing old – but, if unbridled litigation continues, we may not have the resources available such as nursing home facilities.

H.B. 2306, while not affecting the public's availability of information contained in the 2567 (statement of deficiencies), does limit prejudicial effect upon a potential jury.

State surveys are both objective and subjective and the subjective nature of these reports should not be utilized to prove the contentious allegations of plaintiffs.

State surveyors, who monitor long-term care facilities, spend only a limited time in any given facility. These visits are usually from 12 to 14 months from the

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2-18-04
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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.

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.

Garen Cox
President and CEO



**To: Chairman John Vratil and Members,
Senate Judiciary Committee**
From: Debra Zehr, RN, MA, Vice President
Date: February 18, 2004

Testimony in Support of Senate Bill 430

Thank you, Chairman Vratil 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 Senate Bill 430.

House Bill 430 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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KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.

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Testimony to the Senate Judiciary Committee

February 18, 2004

Chairman Vatril 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 SB 430 for both its content and the principals on which it is proposed. Adult care home inspection reports, Health and Human Services 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, recreation activities for residents and, most importantly, they are reports that address the quality of care and treatment of

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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 far too often feel intimidated to where they do not speak out under 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 SB 430 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 SB 430 be rejected in its entirety.



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for
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Promoting Quality Long-term Care since 1975

SB 430
disallowing nursing home inspection reports
as evidence in any judicial proceeding
February 18, 2004

Honorable Chairman John Vratil
and Senate Judiciary Committee Members:

Kansas Advocates for Better Care (KABC) opposes SB 430.

Consumers of licensed adult care homes highly value freedom of information. Information helps consumers make good placement decisions as well as become knowledgeable about deficiencies that occur in 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. Nursing home inspection reports and related documents are public information, according to state law.

SB 430 proposes a change that is counter and contrary to federal and state law. The new language of Section 935 is part (d) that says "The results of a survey... shall be used solely to determine the adult care home's compliance with licensure, certification or program participation requirements with state law.... The results of a survey... shall not be used nor be admissible evidence in any civil action or proceeding that is pending in any court unless such action or proceeding is an appeal of an administrative action involving licensure...."

The federal government website for the Centers for Medicare and Medicaid Services (CMS) provides the information for anyone to view and download. The proposed change in SB 430 is counter and contrary to the intent of the federal law.

KABC urges the Committee to NOT pass SB 430.

Thank you for allowing this testimony.

Deanne Bacco, Executive Director

Senate Judiciary

2-18-04
Attachment 10

Topeka Independent Living Resource Center, Inc.

501 SW Jackson St., Ste.100
Topeka, KS 66603-3300
785/233/4572 (v/tty); 785/233/1561 (fax)
ahyten@tilrc.org

**Testimony
Presented to the Senate Judiciary Committee
February 17, 2004
by Ami Hyten
Topeka Independent Living Resource Center, Inc.**

RE: Opposition to SB 430

Dear Chairperson Vratil 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 (an older person) from the rest of our community is harmful and does not benefit anyone except the nursing home industry. A facility that is upholding the 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.

Senate Judiciary

2-18-04
Attachment 11

SB 430, Page 2
February 17, 2004

Attached you will find reports which outline many areas of deficiencies of many 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 SB 430 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 SB 430.

Thank you for your time and attention to this issue.



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Detailed information for KANSAS CITY PRESBYTERIAN MANOR

Nursing Home Results

Contact Information:

<u>Long Term Care Ombudsman</u>	Long Term Care Ombudsman of Kansas 1-877-662-8362
<u>State Survey Agency</u>	Department of Health and Environment of Kansas - Bureau of Health Facilities 1-800-842-0078
<u>State Quality Improvement Organization</u>	Kansas Foundation for Medical Care 1-800-432-0407

KANSAS CITY PRESBYTERIAN MANOR	As of 01/29/2003
7850 FREEMAN AVE KANSAS CITY, KS 66112 (913) 334-3666 Mapping/Directions	<u>Not located within a Hospital Resident Councils Only</u> <u>134 Certified Beds</u>
<u>Initial Date of Certification: 07/01/1994</u> <u>Type of Ownership: Non profit - Church related</u> <u>A Multi-Nursing home (chain) Ownership</u>	<u>Medicare Certified</u> <u>Medicaid Certified</u>

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

Show All

[Quality Measures](#)

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KANSAS CITY PRESBYTERIAN MANOR 7850 FREEMAN AVE KANSAS CITY, KS 66112 (913) 334-3666							
Date of this inspection: 01/29/2003 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 1 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results							
Quality Care Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
1. Give professional services that meet a professional standard of quality. (01/29/2003)	02/27/2003	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">1</td> <td style="text-align: center; background-color: black; color: white;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> </tr> </table>	1	2	3	4	Some
1	2	3	4				

[Nursing Home Staffing](#)

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

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Detailed information for DELMAR GARDENS OF OVERLAND PAR

Nursing Home Results

Contact Information:

<u>Long Term Care Ombudsman</u>	Long Term Care Ombudsman of Kansas 1-877-662-8362
<u>State Survey Agency</u>	Department of Health and Environment of Kansas - Bureau of Health Facilities 1-800-842-0078
<u>State Quality Improvement Organization</u>	Kansas Foundation for Medical Care 1-800-432-0407

DELMAR GARDENS OF OVERLAND PAR	As of 05/15/2003
12100 W 109TH ST OVERLAND PARK, KS 66210 (913) 469-4210 <u>Mapping/Directions</u>	<u>Not located within a Hospital Resident Councils Only</u> <u>120 Certified Beds</u>
<u>Initial Date of Certification: 03/20/1989</u> <u>Type of Ownership: For profit - Corporation</u> <u>A Multi-Nursing home (chain) Ownership</u>	<u>Medicare Certified</u> <u>Medicaid Certified</u>

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

Show All

Quality Measures

Inspection Results

DELMAR GARDENS OF OVERLAND PAR 12100 W 109TH ST OVERLAND PARK, KS 66210 (913) 469-4210							
Date of this inspection: 05/15/2003 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 16 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results							
Mistreatment Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
1. Keep each resident free from physical restraints, unless needed for medical treatment. (02/12/2003)	03/12/2003	2 = Minimal harm or potential for actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Some
1	2	3	4				
Quality Care Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
2. Give each resident care and services to get or keep the highest quality of life possible. (02/12/2003)	03/12/2003	3 = Actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
3. Give professional services that meet a professional standard of quality. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				

11-6

4. Give proper treatment to residents with feeding tubes to prevent problems (such as aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, nasal-pharyngeal ulcers) and help restore eating skills, if possible. (05/15/2003)	07/16/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few
5. Make sure that residents who cannot care for themselves receive help with eating/drinking, grooming and hygiene. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few
6. Provide activities to meet the needs of each resident. (05/15/2003)	07/16/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few

Resident Assessment Deficiencies

Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
7. Develop a complete care plan that meets all of a resident's needs, with timetables and actions that can be measured. (02/12/2003)	03/12/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Some
8. Do a new assessment after any major change in a resident's physical or mental health. (02/12/2003)	03/12/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few
9. Make sure all assessments are accurate, coordinated by an RN, done by the right professional, and are signed by the person completing them. (02/12/2003)	03/12/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Some

Resident Rights Deficiencies

Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
10. Immediately tell the resident,			

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doctor, and a family member if: the resident is injured, there is a major change in resident's physical/mental health, there is a need to alter treatment significantly, or the resident must be transferred or discharged. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few
11. Properly hold, secure and manage each resident's personal money which is deposited with the nursing home. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
Nutrition and Dietary Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
12. 1) Provide 3 meals daily at regular times; or 2) serve breakfast within 14 hours after dinner; or 3) offer a snack at bedtime each day. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
13. Store, cook, and give out food in a safe and clean way. (05/15/2003)	07/16/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Many
Environmental Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
14. Make sure that staff members wash their hands when needed. (05/15/2003)	05/30/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few
Administration Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
15. Keep accurate and		2 = Minimal harm or potential for actual	


11-8

appropriate medical records. (02/12/2003)	03/12/2003	harm 1 2 3 4	Some
16. Follow all laws and professional standards. (05/15/2003)	05/30/2003	1 = Potential for minimal harm 1 2 3 4	Many

⊕ Nursing Home Staffing

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

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Detailed information for CHANUTE HEALTHCARE CENTER

Nursing Home Results

Contact Information:

Long Term Care Ombudsman

Long Term Care Ombudsman of Kansas
1-877-662-8362

State Survey Agency

Department of Health and Environment of Kansas - Bureau of Health Facilities
1-800-842-0078

State Quality Improvement Organization

Kansas Foundation for Medical Care
1-800-432-0407

CHANUTE HEALTHCARE CENTER	As of 06/06/2003
530 W 14TH ST PO BOX 868 CHANUTE, KS 66720 (620) 431-4940 Mapping/Directions	<u>Not located within a Hospital Resident Councils Only</u> <u>77 Certified Beds</u>
<u>Initial Date of Certification: 01/10/1992</u> <u>Type of Ownership: For profit - Corporation</u> <u>A Multi-Nursing home (chain) Ownership</u>	<u>Medicare Certified</u> <u>Medicaid Certified</u>

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

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Quality Measures

Inspection Results

<p>CHANUTE HEALTHCARE CENTER 530 W 14TH ST PO BOX 868 CHANUTE, KS 66720 (620) 431-4940</p>							
<p>Date of this inspection: 06/06/2003 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 27 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results</p>							
Mistreatment Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
1. 1) Hire only people who have no legal history of abusing, neglecting or mistreating residents; or 2) report and investigate any acts or reports of abuse, neglect or mistreatment of residents. (10/21/2002)	11/20/2002	2 = Minimal harm or potential for actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Some
1	2	3	4				
2. Protect residents from mistreatment, neglect, and/or theft of personal property. (10/21/2002)	11/20/2002	2 = Minimal harm or potential for actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
3. 1) Hire only people who have no legal history of abusing, neglecting or mistreating residents; or 2) report and investigate any acts or reports of abuse, neglect or mistreatment of residents.	12/31/2002	2 = Minimal harm or potential for actual harm <table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				

11-11

Quality Care Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
(12/11/2002)			
4. Give each resident care and services to get or keep the highest quality of life possible.	11/20/2002	2 = Minimal harm or potential for actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Few
(10/21/2002)			
5. Make sure each resident is being watched and has assistance devices when needed, to prevent accidents.	11/20/2002	3 = Actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Few
(10/21/2002)			
6. Properly care for residents needing special services, including: injections, colostomy, ureostomy, ileostomy, tracheostomy care, tracheal suctioning, respiratory care, foot care, and prostheses.	11/20/2002	2 = Minimal harm or potential for actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Few
(10/21/2002)			
7. Give professional services that meet a professional standard of quality.	03/14/2003	2 = Minimal harm or potential for actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Few
(06/06/2003)			
8. Make sure that each residents' abilities to take care of themselves does not lessen, unless a change cannot be avoided.	03/14/2003	3 = Actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Few
(06/06/2003)			
9. Provide activities to meet the needs of each resident.	03/14/2003	2 = Minimal harm or potential for actual harm <div style="border: 1px solid black; padding: 2px; display: flex; justify-content: space-around;"> 1 2 3 4 </div>	Some
(06/06/2003)			
Resident Assessment Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)

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<p>10. 1) Develop a complete care plan within 7 days of each resident's admission; 2) prepare a care plan with the care team, including the primary nurse, doctor, resident or resident's family or representative; or 3) check and update the care plan.</p> <p>(10/21/2002)</p>	<p>11/20/2002</p>	<p>2 = Minimal harm or potential for actual harm</p> <p><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Some</p>
<p>11. Develop a complete care plan that meets all of a resident's needs, with timetables and actions that can be measured.</p> <p>(06/06/2003)</p>	<p>03/14/2003</p>	<p>2 = Minimal harm or potential for actual harm</p> <p><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Some</p>
<p>12. Do an assessment of the resident every year.</p> <p>(06/06/2003)</p>	<p>03/14/2003</p>	<p>2 = Minimal harm or potential for actual harm</p> <p><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Few</p>
<p>13. Make a complete assessment that covers all questions for areas that are listed in official regulations.</p> <p>(06/06/2003)</p>	<p>03/14/2003</p>	<p>1 = Potential for minimal harm</p> <p><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Many</p>
<p>14. Make sure all assessments are accurate, coordinated by an RN, done by the right professional, and are signed by the person completing them.</p> <p>(06/06/2003)</p>	<p>03/14/2003</p>	<p>2 = Minimal harm or potential for actual harm</p> <p><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Many</p>
Resident Rights Deficiencies			
<p>Inspectors determined that the nursing home failed to:</p>	<p>Date of Correction</p>	<p>Level of Harm (Least -> Most)</p>	<p>Residents Affected (Few -> Some -> Many)</p>
<p>15. Immediately tell the resident, doctor, and a family member if: the resident is injured, there is a major change in resident's physical/mental health, there is a need to alter treatment significantly, or the resident must be transferred or discharged.</p> <p>(10/21/2002)</p>		<p>2 = Minimal harm or potential for actual harm</p> <p><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4</p>	<p>Few</p>
<p>16. Provide care in a way that keeps or builds each resident's dignity and self respect.</p>	<p>11/20/2002</p>	<p>2 = Minimal harm or potential for actual harm</p>	<p>Some</p>

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(10/21/2002)		1 2 3 4	
17. Properly hold, secure and manage each resident's personal money which is deposited with the nursing home.	03/14/2003	2 = Minimal harm or potential for actual harm	Some
(06/06/2003)		1 2 3 4	
18. Tell each resident who can get Medicaid benefits about 1) which items and services Medicaid covers and which the resident must pay for; or 2) how to apply for Medicaid, along with the names and addresses of State groups that can help.	03/14/2003	2 = Minimal harm or potential for actual harm	Few
(06/06/2003)		1 2 3 4	
Nutrition and Dietary Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
19. Store, cook, and give out food in a safe and clean way.	03/14/2003	2 = Minimal harm or potential for actual harm	Some
(06/06/2003)		1 2 3 4	
Pharmacy Service Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
20. Keep the rate of medication errors (wrong drug, wrong dose, wrong time) to less than 5%.	03/14/2003	2 = Minimal harm or potential for actual harm	Some
(06/06/2003)		1 2 3 4	
21. Make sure that the pharmacist reports anything unusual to the doctor on duty and the director of nursing.	03/14/2003	2 = Minimal harm or potential for actual harm	Few
(06/06/2003)		1 2 3 4	
Environmental Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)

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22. Have a program to keep infection from spreading. (10/21/2002)	11/20/2002	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few
23. Have a program to keep infection from spreading. (06/06/2003)	03/14/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Many
24. Make sure that the nursing home area is free of dangers that cause accidents. (06/06/2003)	03/14/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
25. Make sure that the nursing home area is safe, easy to use, clean and comfortable. (06/06/2003)	03/14/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
26. Provide needed housekeeping and maintenance. (06/06/2003)	03/14/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
Administration Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
27. Keep accurate and appropriate medical records. (10/21/2002)	11/20/2002	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few

Nursing Home Staffing

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

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Detailed information for GOOD SAMARITAN VILLAGE

Nursing Home Results

Contact Information:

Long Term Care Ombudsman

Long Term Care Ombudsman of Kansas
1-877-662-8362

State Survey Agency

Department of Health and Environment of Kansas - Bureau of Health Facilities
1-800-842-0078

State Quality Improvement Organization

Kansas Foundation for Medical Care
1-800-432-0407

GOOD SAMARITAN VILLAGE	As of 10/28/2002
1320 WHEAT RD WINFIELD, KS 67156 (620) 221-4660 Mapping/Directions	Not located within a Hospital Resident Councils Only 70 Certified Beds
Initial Date of Certification: 02/01/1995 Type of Ownership: Non profit - Corporation A Multi-Nursing home (chain) Ownership	Medicare Certified Medicaid Certified

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

Show All

Quality Measures

Inspection Results

<p>GOOD SAMARITAN VILLAGE 1320 WHEAT RD WINFIELD, KS 67156 (620) 221-4660</p>			
<p>Date of this inspection: 10/28/2002 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 9 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results</p>			
Quality Care Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
1. Give professional services that meet a professional standard of quality. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few
2. Have enough nurses to care for every resident in a way that maximizes the resident's well being. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
3. Make sure that each resident's nutritional needs were met. (10/28/2002)	11/15/2002	3 = Actual harm <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4	Few
4. Make sure that residents who cannot care for themselves receive help with eating/drinking, grooming and hygiene. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few

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5. Make sure that residents with loss of bladder control receive treatment or service to prevent infections and help get normal bladder control. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm 1 2 3 4	Some
Nutrition and Dietary Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
6. Store, cook, and give out food in a safe and clean way. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm 1 2 3 4	Many
Pharmacy Service Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
7. Keep the rate of medication errors (wrong drug, wrong dose, wrong time) to less than 5%. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm 1 2 3 4	Some
Environmental Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
8. Have a program to keep infection from spreading. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm 1 2 3 4	Few
9. Provide needed housekeeping and maintenance. (10/28/2002)	11/15/2002	2 = Minimal harm or potential for actual harm 1 2 3 4	Some


⊕ Nursing Home Staffing

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The

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checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

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Detailed information for DELMAR GARDENS OF LENEXA

Nursing Home Results

Contact Information:

- Long Term Care Ombudsman** Long Term Care Ombudsman of Kansas
1-877-662-8362
- State Survey Agency** Department of Health and Environment of Kansas - Bureau of
Health Facilities
1-800-842-0078
- State Quality Improvement
Organization** Kansas Foundation for Medical Care
1-800-432-0407

DELMAR GARDENS OF LENEXA	As of 09/19/2002
9701 MONROVIA ST LENEXA, KS 66215 (913) 492-1130 Mapping/Directions	Not located within a Hospital Resident Councils Only 250 Certified Beds
Initial Date of Certification: 01/01/1981 Type of Ownership: For profit - Corporation A Multi-Nursing home (chain) Ownership	Medicare Certified Medicaid Certified

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

Show All

Quality Measures

Inspection Results

DELMAR GARDENS OF LENEXA 9701 MONROVIA ST LENEXA, KS 66215 (913) 492-1130							
Date of this inspection: 09/19/2002 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 6 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results							
Mistreatment Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
1. Keep each resident free from physical restraints, unless needed for medical treatment. (09/19/2002)	10/18/2002	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 2px;">1</td> <td style="padding: 2px; background-color: #cccccc;">2</td> <td style="padding: 2px;">3</td> <td style="padding: 2px;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
Quality Care Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
2. Make sure that residents who cannot care for themselves receive help with eating/drinking, grooming and hygiene. (09/19/2002)	10/18/2002	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 2px;">1</td> <td style="padding: 2px; background-color: #cccccc;">2</td> <td style="padding: 2px;">3</td> <td style="padding: 2px;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
3. Provide activities to meet the needs of each resident. (09/19/2002)	12/17/2002	2 = Minimal harm or potential for actual harm	Few				

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Resident Assessment Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
4. Make a complete assessment that covers all questions for areas that are listed in official regulations. (09/19/2002)	10/18/2002	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
Resident Rights Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
5. Provide services to meet the needs and preferences of each resident. (09/19/2002)	10/18/2002	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
Nutrition and Dietary Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
6. Store, cook, and give out food in a safe and clean way. (09/19/2002)	10/18/2002	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> </tr> </table>	1	2	3	4	Some
1	2	3	4				

⊕ Nursing Home Staffing

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

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Detailed information for HEATHERWOOD ESTATES

Nursing Home Results

Contact Information:

Long Term Care Ombudsman

Long Term Care Ombudsman of Kansas
1-877-662-8362

State Survey Agency

Department of Health and Environment of Kansas - Bureau of Health Facilities
1-800-842-0078

State Quality Improvement Organization

Kansas Foundation for Medical Care
1-800-432-0407

HEATHERWOOD ESTATES	As of 06/19/2003
614 S 8TH ST INDEPENDENCE, KS 67301 (620) 331-0511 <u>Mapping/Directions</u>	<u>Not located within a Hospital Resident Councils Only</u> <u>60 Certified Beds</u>
<u>Initial Date of Certification: 10/01/1981</u> <u>Type of Ownership: For profit - Corporation</u> <u>A Multi-Nursing home (chain) Ownership</u>	<u>Not Medicare Certified</u> <u>Medicaid Certified</u>

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet but does not reflect the entire inspection report.

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Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

Show All

Quality Measures

Inspection Results

HEATHERWOOD ESTATES 614 S 8TH ST INDEPENDENCE, KS 67301 (620) 331-0511			
Date of this inspection: 06/19/2003 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 10 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results			
Mistreatment Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
1. 1) Hire only people who have no legal history of abusing, neglecting or mistreating residents; or 2) report and investigate any acts or reports of abuse, neglect or mistreatment of residents. (06/05/2003)	07/18/2003	2 = Minimal harm or potential for actual harm <div style="border: 1px solid black; padding: 2px; display: inline-block;"> 1 2 3 4 </div>	Few
Quality Care Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
2. Make sure each resident is being watched and has assistance devices when needed, to prevent accidents. (06/05/2003)	07/18/2003	3 = Actual harm <div style="border: 1px solid black; padding: 2px; display: inline-block;"> 1 2 3 4 </div>	Few
3. Give each resident care and		2 = Minimal harm or potential for actual	

11-24
~~11-25~~

services to get or keep the highest quality of life possible. (06/19/2003)	07/18/2003	harm 1 2 3 4	Few
4. Give professional services that meet a professional standard of quality. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few
5. Make sure each resident is being watched and has assistance devices when needed, to prevent accidents. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few

Resident Assessment Deficiencies

Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
6. 1) Develop a complete care plan within 7 days of each resident's admission; 2) prepare a care plan with the care team, including the primary nurse, doctor, resident or resident's family or representative; or 3) check and update the care plan. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Few

Nutrition and Dietary Deficiencies

Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
7. Make sure that residents are well nourished. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Some
8. Store, cook, and give out food in a safe and clean way. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm 1 2 3 4	Some

Environmental Deficiencies

Inspectors determined that the	Date of	Level of Harm	Residents Affected
--------------------------------	---------	---------------	--------------------


11-25
~~11-26~~

nursing home failed to:	Correction	(Least -> Most)	(Few -> Some -> Many)
9. Make sure that the nursing home area is free of dangers that cause accidents. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Some
Administration Deficiencies			
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)
10. Keep accurate and appropriate medical records. (06/19/2003)	07/18/2003	2 = Minimal harm or potential for actual harm <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	Few

Nursing Home Staffing

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Detailed information for VALLEY VISTA GOOD SAMARITAN CE

Nursing Home Results

Contact Information:

<u>Long Term Care Ombudsman</u>	Long Term Care Ombudsman of Kansas 1-877-662-8362
<u>State Survey Agency</u>	Department of Health and Environment of Kansas - Bureau of Health Facilities 1-800-842-0078
<u>State Quality Improvement Organization</u>	Kansas Foundation for Medical Care 1-800-432-0407

VALLEY VISTA GOOD SAMARITAN CE	As of 08/28/2003
2011 GRANDVIEW WAMEGO, KS 66547 (785) 456-9482 <u>Mapping/Directions</u>	<u>Not located within a Hospital Both Resident and Family Councils</u> <u>50 Certified Beds</u>
<u>Initial Date of Certification: 03/01/1996</u> <u>Type of Ownership: Non profit - Corporation</u> <u>A Multi-Nursing home (chain) Ownership</u>	<u>Medicare Certified</u> <u>Medicaid Certified</u>

Medicare.gov is pleased to provide information about Quality Measures, Inspection Results and Nursing Home Staffing for the nursing home you have selected.

Quality Measures information comes from resident assessment data that nursing homes routinely collect on all residents at specific intervals during their stay. The information collected pertains to the resident's physical, clinical conditions and abilities.

Inspection Results information refers to the regulatory requirement that the nursing home failed to meet

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but does not reflect the entire inspection report.

Nursing Home Staffing information comes from reports that the nursing home reports to its state survey agency. It contains the nursing staff hours for a two-week period prior to the time of the state inspection. CMS receives this data and converts the reported information into the number of staff hours per resident per day.

Click on the links below to view information for these items.

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Quality Measures

Inspection Results

VALLEY VISTA GOOD SAMARITAN CE 2011 GRANDVIEW WAMEGO, KS 66547 (785) 456-9482							
Date of this inspection: 08/28/2003 Complaint Investigations During: 10/01/2002 - 12/31/2003 Total number of health deficiencies for this nursing home: 3 Average number of Health Deficiencies in Kansas: 8 Average number of Health Deficiencies in the United States: 7 Range of Health Deficiencies in Kansas: 0 - 34 View Previous Inspection Results							
Quality Care Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
1. Make sure each resident is being watched and has assistance devices when needed, to prevent accidents. (12/06/2002)	01/04/2003	3 = Actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 2px;">1</td> <td style="padding: 2px;">2</td> <td style="padding: 2px; background-color: black; color: white;">3</td> <td style="padding: 2px;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
2. Make sure that each resident's nutritional needs were met. (08/28/2003)	09/26/2003	2 = Minimal harm or potential for actual harm <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 2px;">1</td> <td style="padding: 2px; background-color: black; color: white;">2</td> <td style="padding: 2px;">3</td> <td style="padding: 2px;">4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				
Environmental Deficiencies							
Inspectors determined that the nursing home failed to:	Date of Correction	Level of Harm (Least -> Most)	Residents Affected (Few -> Some -> Many)				
3. Make sure that the nursing home area is free of dangers that		2 = Minimal harm or potential for actual harm	<div style="text-align: right; font-size: 1.2em; font-weight: bold;">11-28</div> <div style="text-align: right; font-size: 1.2em; font-weight: bold;">HSA</div>				


cause accidents. (08/28/2003)	09/26/2003	<table border="1"> <tr> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table>	1	2	3	4	Few
1	2	3	4				

⊕ Nursing Home Staffing

Please use our **Nursing Home Checklist** for help with narrowing your nursing homes choices. The checklist provides questions and observations that are important to keep in mind as you visit nursing homes and will help you make a good choice for you or your relative.

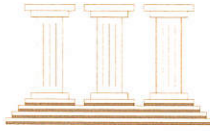
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KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Feb. 18, 2004

TO: Senate Judiciary Committee

FROM: Pedro Irigonegaray

RE: SB 430

Chairman Vratil and members of the Senate Judiciary Committee; thank you for the opportunity to appear before you today. I am Pedro Irigonegaray, a Topeka attorney and a past president of the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers Association strongly opposes SB 430. 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 surveys while also paying for a substantial part of all nursing facility care.**

The survey system was the subject of a Legislative Post Audit Study within the past several 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 already have the right to contest cited deficiencies through informal dispute resolution and can dispute more serious deficiencies which result in enforcement actions through 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 grounds, on a case-by-case basis.**

Terry Humphrey, Executive Director

Senate Judiciary

2-18-04

Attachment 12

This bill is similar in purpose to, yet more detailed than, HB 2306. Section 1(d)(3) of SB 430 has language not present in HB 2306 and is hugely encompassing, and defines the extensive information obtained through, and used by, the federal and state survey process. **Why should the survey information, obtained by tax dollars for public purpose to protect residents, be buried, and therefore invisible to the civil justice system?**

Finally, these **publicly-funded surveys are already in the public domain.** The documents from the 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.

In conclusion, the federal and state licensure and inspection systems protect the health, safety and welfare of our frail elders and disabled adults who reside in licensed adult care facilities. The survey system is the back-bone of these systems. The information gathered through the survey process is paid for with tax dollars and, most importantly, families depend on the information to help them make important decisions. To exclude this information from all civil cases is not in the best interest of the public or our frail elders and disabled adults. For these reasons, **KTLA respectfully urges defeat of this bill.**

Thank you for the opportunity to voice our opposition to SB 430.



KANSAS ADAPT



FREE OUR PEOPLE!!!
835 EAST 800 ROAD – LAWRENCE, KS 66047
785-748-0832

Testimony in Opposition to SB 430
Presented to the Senate Judiciary Committee
February 18, 2004
By Kevin Siek, Kansas ADAPT

Chairman Vratil 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.**

Senate Judiciary

_____ **2-18-04**
Attachment 13

FREE OUR PEOPLE

- **States and the Federal government make it hard for consumers to learn about penalties 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 SB 430.

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



February 18, 2004

Senator Vratil, Chair
Senate Judiciary Committee
Senate Bill 430

Good morning Chairman Vratil and Members of the Senate Judiciary Committee. My name is Dr. Ernest Pogge and I am the Chair of the AARP Kansas Topeka Advocacy Satellite Group. 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 Senate Bill 430.

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 for protection of their rights and providing residents with a private right of action to sue nursing homes for violating state laws and regulations.

Therefore, AARP must oppose SB 430. We respectfully urge this Committee to not approve this proposed legislation.

Respectfully

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Senate Judiciary
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