Approved: April 7, 2004
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on March 17, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:
Ms. Emalene Correll, Legislative Research
Mr. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:
Mr. Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts
Mr. Chad Austin, Senior Director of Health Policy and Data, Kansas Hospital Association
Mr. Chris Tilden, PhD, Interim Director, Office of Local and Rural Health, Kansas Department of Health and Environment

Others attending:
Please See Attached List.

Hearing on HB2657 - an act concerning mortuary arts; relating to removal of dead bodies

Upon calling the meeting to order, the Chair announced there would be a hearing on **HB2657**, an act concerning mortuary arts; relating to removal of dead bodies, and asked Ms. Emalene Correll to give a brief overview of the bill. Highlights included:

1) Creates some new sections and amends some of the existing statutes;
2) New Sec. 1 would provide that a dead human body could be removed from the location of death and transported only to a licensed funeral establishment, a licensed branch funeral establishment containing an embalming preparation room or holding facility, a licensed crematory containing a holding facility, a hospital, a cemetery, coroner or medical examiner facility, or other location of final interment, and University of Kansas medical center; (we have some existing statutes that relate to permits for moving bodies out of state and into the state and questions whether or not this is an appropriate statute in this context as it does not seem to fall under the jurisdiction of the Board of Mortuary Arts);
3) New Sec. 2 would basically authorize the Board or the Board's agent to issue subpoenas to compel the attendance of witnesses, compel the production of physical evidence, and the taking of depositions in instances in which the Board has had complaints or good reason to believe that an action will be taken against such person; the new language would allow the person to whom the subpoena had been issued, to petition the Board to revoke, modify or modify the subpoena and would require that the Board do so if in its opinion, the evidence required doesn't relate to practices that may be grounds for disciplinary action and is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity, the physical evidence which is required to be produced; (note that this particular statute apparently relates to all of the groups that the Board licenses0; also, upon application by the Board, the district court will have jurisdiction to issue an order requiring a person to appear or revoking, limiting or modifying the subpoena that was issued by or in behalf of the Board; (essentially, new subpoena power for the Board of Mortuary Arts; note - since this is not part of any existing act, the statute needs to have some identification of the term "Board", right now this statute is a new statute and simply refers to "Board");
4) Sec. 3 is an amendment to an existing law and the changes on lines 12, 13, and 19 are primarily technical relating to the beginning of the time set for the application of licensure; (this particular statute relates to embalmers' licenses and would delete the language):
A) On lines 22 and 23 it would require that in addition too after July 1, 1991 an applicant for an embalmer license has to have graduated from a community college, college, or university with at least an a degree in mortuary science and approved by the Board, and

B) Has accumulated, during this training, at least 30 hours of mortuary science. (This is presumably a policy issue.)

5) The language in lines 30 and 31, page 2, which sets a statutory score for the examination for licensure as an embalmer, is deleted and later on, the Board is given authority to establish that by rule and regulation;

6) The new language, beginning with lines 39 and 40, requires an applicant for license successfully pass a written examination established by the rules and regs of the Board and successfully serve full time apprenticeship, which is the current law;

7) Note on line 43, page 2, the score would be set by rules and regulations of the Board rather than the 75% that is currently statutory;

8) Sec. 4 amends the statute that relates to licensed: embalmers, funeral directors, assistant funeral directors, funeral or branch establishments, and crematories (so it's all inclusive) and here this is the statute that extensively authorizes the Board to take disciplinary action against any of the above licensees;

9) On line 20, page 3, it would add authority for the Board to condition a license or to limit the license in addition to the authority it already has;

10) In line 21, page 3, it would also authorize a fine of not to exceed $1,000 per violation, this would be the first time the Board would have the authority to issue a civil penalty (this is a new policy decision);

11) In line 27, conviction of a felony has been changed to simple conviction of a crime, which is a policy issue (which the legislature wrestles with from time to time), and it also takes out the language "has been convicted of any offense involving moral turpitude (also language the legislature has wrestled with);

12) The change in lines 33 through 36, page 3, is a little confusing, it would be grounds for taking disciplinary action if the licensee is rendered unfit or incapacitated to practice embalming or as a funeral director by reason of illness, alcohol, chemicals, or other types of substances, or as a result of any mental or physical condition and currently that would have to be certified by a physician; it is not clear who makes this determination under the new language, (she doesn't know if intended to refer to a finding of incapacitation by a court or if just that the Board finds that the person is incapacitated; does not think that the Board has the authority to require certain kinds of examinations);

13) On line 40, a minor amendment, currently one of the grounds for disciplinary action, if the person has had a license suspended, censured, or revoked in another jurisdiction, this would take out the language that provides for "a certified copy of the record of the other jurisdiction."

14) On page 5, line three, the language would be changed, adding "cremation" establishment (to be included under the disciplinary action) and new grounds for disciplinary action set out in lines five through 11, having to do with being found guilty of negligence, incompetence, fraud, etc. in connection with services rendered or providing misleading, fraudulent, or deceptive statements to the Board or providing misleading, fraudulent, or deceptive information when filing a death certificate;

15) Note on line 20, a "crematory license" is also added to the statute so that the disciplinary action would affect all of the establishments and persons that the Board currently license;

16) Sec. 5 is an existing statute, the changes begin on line one, page 6, having to do with complying with subpoenas issued by the Board and is deleted from this statute because it is covered by the administrative procedure's act, (so it is not necessary here.)

The Chair asked if there were questions of Ms. Correll. Senators Journey, Steineger asked: would you interpret this as, for example, not permitting a law enforcement officer or emergency medical technicians from being able to dispose of body parts from a car accident; when we talk about the legislative policy set by having been convicted of a crime as opposed to a felony, would that include any misdemeanor (no proof of insurance); how does it apply to native Americans as they sometimes they have different feelings and practices about death?

The Chair then called the only proponent conferee to testify before the Committee, Mr. Mac Smith, Executive Secretary to the Kansas State Board of Mortuary Arts, who stated:

1) There is no current law that specifically defines where a dead human body can be transported to following death, but in Sec. 1 this issued is addressed;

2) At the suggestion of the board's legal counsel, new Sec. 2 is being added and would assist with the investigative process when unlicensed parties are involved. (Examples where having investigative subpoena authority would be helpful include: complaints involving casket stores, third-party preneed sellers and parties not licensed by the board.)

3) If this bill became law, some of the information currently contained in the statute would be placed into regulation to simplify the process when the agency that writes and administers the national embalmer examination. (Sec. 3)

4) The amendments in Sec. 4 would allow the board a wider range of actions by adding authority to condition or limit a license as well as impose a fine.

5) Regarding Sec. 5, issuance of a hearing subpoena is covered in the Kansas Administrative Procedure Act and enforcement of a hearing subpoena is covered in the Kansas Act for Judicial Review and Enforcement of Agency Actions.

And lastly, he stated that the only known areas of economic impact would be the cost to the Mortuary Arts Board involving subpoenas and costs to the individuals found guilty. A copy of his testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Mr. Smith then stood before the Committee for questions that came from Senators Brungardt and Journey and Ms. Correll including: referring to Sec. 2 (subpoena power), most of these licensing agencies have control over their licensees and their action, assuming that your Board investigation uncovers what would appear to be people acting in unlicensed fashion in this area, but you don't have actual control over them, do you refer them to the district attorney; you can't really mandate what these unlicensed people do can you; regarding cultural practices, what happens if you want to transport a body to a reservation for temporary purposes, but is not going to be the place of final internment, is it saying in Sec. 1 you cannot do this; re: out-of-state transfer permits, would pieces of bodies fall under the "dead human body" definition or use in Sec. 1; is it the Boards support to modifying this to any crime on page 3, line 27, instead of a felony to keep someone from having a license; what types of crimes are you talking about; and if convicted of a crime in Kansas, it does not necessarily mean they loose their license?

As there was no further discussion, the Chair closed the hearing and stated that agencies bring bills before the Committee from their legal council and after Mr. Furse gets a chance to see it, he makes technical changes that we need to clean up the bill and asked Mr. Furse to fly spec it for the Committee.

Hearing on HB2760 - an act concerning critical access hospitals

The Chair announced the next hearing is on **HB2760** and again, called on Ms. Correll to give a brief explanation of the bill. Her highlights included:

1) This relates to what is now called critical access hospitals when federal law was changed;

2) Currently critical access hospitals are defined, beginning on line 41, as a member of the rural health network which makes 24-hour emergency care services available and provides not more than 15 acute care inpatient beds or in the case of swing-beds a combined total of acute or extended care beds that do not exceed 25 beds; assumes that since this legislation has been introduced, the federal regulation has been changed and that now any critical access hospital may have up to 25 acute care in patient beds or a total of 25 beds if there is a swing-bed agreement;

3) Note - new language added on page 2, lines 18 through 22, which would allow the critical care hospital, in addition to the 25-acute and/or swing-beds, to have a psychiatric unit or rehabilitation unit or both, each in itself shall not exceed 10 beds, neither will count toward the 25-bed limit, which is apparently current on being a critical access hospital, nor would the specialties' unit, the psychiatric and rehab units be limited to the 96-hour length of stay that currently critical access hospitals are limited to;

(finds this interesting and suggests that the Committee might want to ask if there are any critical access hospitals in Kansas that have these units of this kind of size;

4) Feels the bill was introduced to allow the Kansas hospitals that have been designated federally as critical access hospitals, allowing them to have more beds in compliance with changes in the federal regulations;

5) The critical access hospital is usually a small rural hospital that has very few acute care patients, some as small as 10 beds and this legislation allows these hospitals to continue to operate and provide essentially, emergency care (that's why the hourly limitation is there and why there is a limitation on the number of beds); they also have an affiliation agreement with larger hospitals so that a patient who may be brought to the critical access hospitals, stabilized there, will be transferred under that agreement to the larger hospital with whom they have an agreement, who would then be able to provide the level of acute care.

As there were no questions of Ms. Correll, the Chair called upon the first of two proponent conferees, Mr. Chad Austin, Senior Director of Health Policy and Data, Kansas Hospital Association who stated that the bill:

1) Amends the current law concerning the requirements for critical care access hospital designation;

2) Brings it up to date with the recently passed Medicare Prescription Drug Improvement and Modernization Act of 2003 signed into law last year;

3) Adopts the federal changes on the sate level, assuring those facilities that are eligible to take advantage of the program have the ability to do so.; and

4) Will allow additional hospitals to pursue critical access hospital designation and allow them to continue providing quality, accessible care to Kansans and their communities.

A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The second proponent conferee called upon was Mr. Chris Tilden, Ph.D., Interim Director, Office of Local and Rural Health, Kansas Department of Health and Environment, who stated the bill:

1) Amends the Kansas Critical Access Hospital/Rural Health Network Statute to reflect recent changes in the federal Medicare Conditions of Participation for Critical Access Hospitals; AND,
2) Makes the state statute consistent with Medicare Conditions of Participation that were amended by the Medicare Prescription Drug Improvement and Modernization Act of 2003 signed into law late last year.

He also stated that:

1) Kansas has 71 designated Critical Access Hospitals (CAH) that are part of the 18 designated health care networks that work together to enhance efficiency and improve health care quality;

2) The primary benefit of concerting to CAH status is that these facilities receive cost-based payments (rather than prospective payments) from Medicare;

3) They expect the number of conversions of rural hospitals to critical access status to decline in Kansas, given that the 71 designated facilities already represent a clear majority of the state's 93 rural hospitals; and

4) In 2006, provisions in the federal CAH statute will eliminate state flexibility in determining eligibility for the program. (At that time, no hospital within 35 miles of another hospital facility will be eligible for conversion to critical access status.

A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there were no opponents, neutral, or written testimonies, the Chair asked for questions or comments from the Committee, which came from Senators Journey and Brungardt including: regarding the hospitals affected by this, are they determined to be speciality hospitals; you said that the increase in bed numbers is due to the Medicaid Reform Act, it that the one that also included the drug benefits; are you aware there appears to be some substantial momentum for repeal of that vote in Washington at this time?

Senator Brungardt asked that the Minutes reflect that the conferees today were particularly well organized and presented a concise clear fashion which I am sure our Committee appreciates.

As there was no further discussion, the Chair asked the will of the Committee regarding this bill. With regards to the first bill, she stated, although she feels the Committee supports conceptually, she would like for Mr. Furse to look at all of the technical changes.

Action on HB2760 - an act concerning critical access hospitals

Senator Brungardt made a motion to pass the bill favorably. It was seconded by Senator Jordan and the motion carried.

Adjournment

The Chair reminded the Committee that there would not be a Committee meeting tomorrow as they would be attending a presentation given by Kansas Health Institute regarding "The Medicare Reform Act: What Are the Consequences for Kansas," but would meet Monday for a hearing on two bills.

The meeting was adjourned. The time was 2:25.

The next scheduled meeting is Monday, March 22, 2004.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Wednesday, March 17, 2004

NAME	REPRESENTING
Mark Stafford	Healing Arts
LARRY BUENING	BOHA.
Camille Nohe	AG
Mack Smith	KS ST Bd of Mortuary Arts
Doug Smith	Ks. Academy of Physician Assistants
Robert Alley	Heim Law Firm
Dick Morrissey	KDHE
Tom Bell	KHA
Chad Austin	KHA
Chris Tilden	KDHE
Katie Edwards	
Melanie Rogers	

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The Kansas State Board of Mortuary Arts

Created August 1, 1907

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Wednesday, March 17, 2004

Chairperson Senator Susan Wagle
Senate Public Health and Welfare Committee
Room 231-N, State Capitol
Topeka, Kansas

Chairperson Wagle and Members of the Committee:

Thank you for the opportunity to appear before your committee today. My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. I appear before you to request your support of House **Bill 2657.**

Section one defines where a dead human body may be taken to upon removal from the place of death–something previously not specifically defined. Currently, KSA 65-1713a defines a funeral establishment as a business premise where a funeral service, visitation or lying in-state of a dead human body is arranged and conducted, or dead human bodies are embalmed or otherwise prepared for a funeral service, visitation, lying in-state, burial, cremation or transportation . . . There is currently no law that specifically defines where a dead human body can be transported to following death. This section addresses that issue.

Section two would provide the Mortuary Arts Board with investigative subpoena authority. This section is being added at the suggestion of the board's legal counsel and would assist with the investigative process when unlicensed parties are involved. Examples where having investigative subpoena authority would be helpful include complaints involving casket stores, third-party pre-need sellers and parties not licensed by the board.

Section three amendments would allow for changes relating to the embalmer examination. If this bill was to become law, some of the information currently contained in the statute would be placed into regulation to simplify the process when the agency

Senate Public Health & Welfare Committee
Attachment 1
Date: March 17, 2004

that writes and administers the national embalmer examination (The International Conference of Funeral Service Examining Boards) endorsed by the Mortuary Arts Board makes changes in the manner in which the examination is constructed, administered and graded.

Section four amendments to the statute (KSA 65-1751) that allows the board to take disciplinary action. The amendments would allow the board a wider range of actions by adding authority to condition or limit a license as well as to impose a maximum $1,000 fine per violation.

Section five eliminates the provision that currently relates to the issuance and enforcement of subpoenas issued in the course of a hearing. Issuance of a hearing subpoena is covered in the Kansas Administrative Procedure Act; and enforcement of a hearing subpoena is covered in the Kansas Act for Judicial Review and Enforcement of Agency Actions.

Economic Impact Statement

The only known areas of economic impact would be the cost to the Mortuary Arts Board involving subpoenas and costs to the individuals found guilty (following the guidelines of the Kansas Administrative Procedure Act) of the provisions outlined in section four in the bill.

Again, thank you for the opportunity to appear before the committee today. I will do my best to answer any questions you may have at this time and request the committee's consideration for passage of this bill with the one amendment requested in section one.

Respectfully submitted:

Mack Smith

Mack Smith, Executive Secretary
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KANSAS HOSPITAL ASSOCIATION

Donald A. Wilson
President

To: Senate Public Health and Welfare Committee

From: Kansas Hospital Association
Chad Austin, Senior Director of Health Policy and Data

Re: House Bill 2760

Date: March 17, 2004

The Kansas Hospital Association appreciates the opportunity to provide comments in support of House Bill 2760. This bill amends the current law concerning the requirements for critical access hospital designation and brings it up to date with the recently passed Medicare Prescription Drug, Improvement and Modernization Act of 2003.

The federal law currently permits critical access hospitals to operate up to a total of 25 acute care beds or swing beds by removing the requirement that only 15 of 25 beds be used for acute care at any one time. In addition, critical access hospitals are now eligible to operate a psychiatric or rehabilitation unit.

It is essential to update the Kansas law to match the federal law so that critical access hospitals can maximize their value to their communities. The critical access hospital program is designed to assist rural hospitals by providing cost-based reimbursement for services that are appropriate to patient care. Further, the program encourages collaboration with other community health entities and the CAH's supporting hospital to achieve economies of scale. By adopting the federal changes on the state level, we will assure those facilities that are eligible to take advantage of the program have the ability to do so. These changes will allow additional hospitals to pursue critical access hospital designation and will allow them to continue providing quality, accessible care to Kansans and their communities.

Thank you for your consideration of our comments.

Senate Public Health & Welfare Committee
Attachment 2
Date: March 17, 2004

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KANSAS

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on HB2760, concerning Critical Access Hospitals

To

Senate Committee on Public Health and Welfare

By Chris Tilden, Ph.D.
Interim Director, Office of Local and Rural Health

Kansas Department of Health and Environment

March 17, 2004

Chairperson Wagle and members of the Senate Committee on Public Health and Welfare, I am pleased to appear before you today to discuss House Bill 2760. House Bill 2760 amends the Kansas Critical Access Hospital/Rural Health Network Statute (K.S.A. 65-468) to reflect recent changes in the federal Medicare Conditions of Participation for Critical Access Hospitals. Specifically, this legislation would amend K.S.A. 65-468 (f) to allow Critical Access Hospitals to use up to 25 beds in any mix of acute and skilled (or swing) level care, providing more flexibility than the current statute that allows up to 25 beds, but only 15 for acute care. In addition, a Critical Access Hospital now could have a psychiatric unit, a rehabilitation unit or both. These units could not exceed 10 beds and would not count towards the 25-bed limit; nor would these units contribute to the average 96-hour length of stay that applies to acute care beds. This amendment would make state statute consistent with Medicare Conditions of Participation that were amended by the Medicare Prescription Drug Improvement and Modernization Act of 2003 signed into law late last year.

Kansas has 71 designated Critical Access Hospitals that are part of 18 designated health care networks that work together to enhance efficiency and improve health care quality. The 71 Critical Access Hospitals in Kansas are more than any other state in the nation. Conversion to Critical Access status has been crucial in stabilizing the financial viability of many of these facilities. The primary benefit of converting to CAH status is that these facilities receive cost-based payments (rather than prospective payments) from Medicare. Critical Access Hospitals participating in a recent study experienced an average increase of 36% in Medicare inpatient and outpatient payments that resulted in increased annual revenues of approximately $500,000 a year. Even with these improvements in reimbursement, many facilities continue to experience operating losses, but the program has certainly stabilized the financial condition of nearly every hospital that has made the conversion. Ensuring the stability of these rural hospitals is essential to maintaining access to health care services in rural areas in our state.

Senate Public Health & Welfare Committee
Attachment 3
Date: March 17, 2004

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W[illegible]pect the number of conversions of rural hospitals to Critical Access status to decline in Kansas, given that th[illegible] designated facilities already represent a clear majority of the state's 93 rural hospitals. In addition, 2006 provision in the federal Critical Access Hospital statute will eliminate state flexibility in determining eligibility for the program. At that time no hospital within 35 miles of another hospital facility will be eligible for conversion to Critical Access status.

The federal regulation allowing for the changes I have discussed went into effect on January 1 of this year, so we support passage of House Bill 2760 as amended by the House Committee. I thank you for the opportunity to appear before the Senate Public Health and Welfare committee and will gladly stand for questions the committee may have on the topic.