

Approved: February 2, 2005

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:33 P.M. on February 1, 2005, in Room 526-S of the Capitol.

Committee members absent:

Representative Patricia Kilpatrick- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Mary Galligan, Kansas Legislative Research Department

Renae Jefferies, Revisor of Statutes' Office

Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Bill Halvorsen, Kansas Bureau of Investigation

Michelle Ruebke, President, Kansas Midwife Association

Linda Lubensky, Executive Director, Kansas Home Care Association

Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment

Others attending:

See attached list.

A motion was made, seconded, and passed to approve the committee minutes for January 27, 2005.

The Chair invited bill requests from members or guests. Representative Nancy Kirk requested the committee sponsor a bill requiring inspection of certain medical facilities. A motion was made, seconded and passed to sponsor such a bill.

The Chairman announced that he would ask the committee to request a Post Audit of the Board of Healing Arts, suggesting that members be thinking of concerns and questions they would want included in the audit.

Andy Sanchez, Executive Director, Kansas Association of Public Employees, requested the committee sponsor a bill to raise the standards of health care regarding nurse-to-patient ratios in acute-care hospitals. A motion was made, seconded and passed to introduce the proposed legislation as a committee bill.

Terri Roberts, Executive Director, Kansas State Nurses Association, requested the committee sponsor a bill to modify the Kansas Nurse Practice Act (**K.S.A. 65-1130**); she said the bill would remove the prescriptive authority of physicians. The Chair commented that the January 31, 2005, issue of *US News and World Report* featured the same concept. A motion was made, seconded and passed to sponsor the bill.

The Chairman asked Ernie Kuntzler, AARP, to explain a joint resolution memorializing the legislature's recognition of and appreciation for family care-givers throughout the state. A motion was made, seconded

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on February 1, 2005 in Room 526-S of the Capitol.

and passed to make the memorial a committee resolution.

The Chairman asked the committee to sponsor proposed legislation that would prohibit a health-care insurance company from denying an extension of inpatient insurance coverage if the attending physician decided such a stay was medically necessary. A motion was made, seconded and passed to make the bill a committee bill.

Staff provided a briefing on **HB 2088**, stating that the proposed legislation was a new law amending the criminal code to penalize a mother who intentionally refused to seek medical assistance after giving birth to a fetus that died within 12 hours or who failed to report such a death. A fiscal note stated that there would be minimal fiscal impact on the State General Fund.

The Chair opened the hearing on **HB 2088**

Bill Halvorsen, an agent with the Kansas Bureau of Investigation, provided background information on the bill. He also introduced Lyon County Sheriff Gary Eichorn. Mr. Halvorsen said the bill originated because of two cases: The first, in Lyon County, reported (April 1, 2002) a new-born baby which was being dragged around by dogs. The mother had delivered the baby six months prior; the baby had either died or was killed by the mother, who put the baby out with the trash. Mr. Halvorsen said that with the lapse of time it was impossible to determine a cause of death, and the burden under current law must prove the baby was alive post-delivery. In the second case, the baby either died or was killed by the mother, who buried the baby in a shallow grave in her back yard; her other children dug up the baby and displayed it around town. The mother recovered the body and put it in a septic tank. Again, he said, there was no proof that the child had survived the birth. He said the proposed legislation gives a fall-back position to prosecutors if the passage of time makes it impossible to prove the baby was alive post-delivery.

Mr. Halvorsen answered members' questions:

- If a child under one year old dies, state law requires an autopsy; however, if the remains are recovered only after a period of time, they are so decomposed that it is impossible to determine a cause of death or to determine if the child was alive at birth. He said the 12-hour time limit was chosen because a pathologist can determine certain physiological changes that occur during the first 12 hours and ascertain that the child was alive at birth.
- The bill is intended to deter a mother who intends to murder her child, noting that a mother who delivers a baby at home and then discards it makes such intention credible.
- The only duty created by the bill is the requirement to notify authorities if the baby dies within 12 hours of birth. After 12 hours the bill has no application.
- Prosecutors are able to distinguish between intentional and unintentional death of a baby and protect innocent mothers whose babies die from unfortunate circumstances or ignorance.

Members expressed concern about the bill ensnaring poor, ignorant, or uninformed mothers who never seek medical care during pregnancy, commenting that the bill appears overly broad in its sweep.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on February 1, 2005 in Room 526-S of the Capitol.

Michelle Ruebke, President, Kansas Midwife Association, spoke as a proponent of the bill with certain reservations. (Attachment 1) She explained that Certified Professional Midwives have extensive training, are concerned with the health and welfare of children and mothers, and often care for mothers who for various reasons avoid standard medical care during pregnancy. She suggested the bill be amended in some way to protect those who might unintentionally be drawn into the scope of the bill, perhaps putting stronger language in the death certificate laws. Answering questions, she said that midwives routinely call for medical help if a baby is in distress. She said midwives always register births and, if the baby dies, ascertain that death certificates are filled out and filed with the state. She said because midwives are too few to be licensed by the state, if they are Certified Professional Midwives, they are licensed through an international certification that is recognized by many states. She also reported that Kansas still allows a family, if a family member dies, to bury that person on a home plot if the person is buried within 24 hours. She said that typically after a baby is born healthy, she stays with the mother 3-4 hours; she always keeps a written record of each birth event. Randy Rogers, Coffey County Sheriff and President of the Kansas Sheriff's Association, sent written testimony supporting the bill. (Attachment 2)

The Chair closed the hearing on **HB 2088** and opened the hearing on **HB 2086**.

Linda Lubensky, Executive Director, Kansas Home Care Association, spoke as a proponent, saying the bill is simple and offers no cause for alarm. (Attachment 3) She said that the bill would extend home health surveys to a period of at least once every 36 months, noting that in 1996 Medicare instituted new survey requirements for all Medicare-certified agencies, allowing a time of up to 36 months between surveys if the agency had incurred no deficiencies. She stated that the proposed bill would allow Kansas statutes to reflect the federal requirements and conserve inspection resources, noting that the bill gives flexibility for the Kansas Department of Health and Environment (KDHE) to adopt regulations for specific issues that arise.

Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment, said the agency proposed this legislation to bring Kansas in line with federal Medicare requirements. (Attachment 4) He said the process had worked well for Medicare and would allow KDHE to focus on those facilities that need more attention. Answering a question, he said that the agency's resources are stretched thin; however, this bill was not requested to solve budget problems, but rather to make the survey resources more effective in focusing resources where they are needed.

Deanne Bacco, Executive Director, Kansas Advocates for Better Care, provided written testimony opposing the bill. (Attachment 5)

The Chair closed the hearing on **HB 2086**.

A motion was made to pass **HB 2086** favorably out of committee and place it on the Consent Calendar. The motion was seconded and passed unanimously.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on February 1, 2005 in Room 526-S of the Capitol.

Staff gave a briefing on **HB 2137**, saying the bill would create a new statute requiring healthy food choices in vending machines in elementary, middle and high schools. It would prohibit teachers from using candy as an incentive or reward. Staff noted that the term *healthy food* is not defined and that there would be fiscal impact only at the local level.

Members expressed concern regarding the prohibition of sweets as a reward, saying in certain circumstances, especially with special education students, candy is an excellent educational tool.

The committee was adjourned at 3:06 p.m. The next meeting is scheduled for Wednesday, February 2, 2005.

TODAY'S AGENDA

Tuesday, February 1, 2005, 1:30 p.m.
House Health and Human Services Committee

Approval of Minutes for January 27

Bill Requests/Introductions

Representative Nancy Kirk, bill request regarding clinic inspections
Chairman, Post Audit for Board of Healing Arts
Andy Sanchez, bill patient safety act
Terri Roberts

Chairman: Ernie Kuntzler, AARP, resolution (on web page)

Staff briefing on **HB 2088** - giving birth without medical assistance

Hearing on **HB 2088** -giving birth without medical assistance

1. Bill Halvorsen, KBI (proponent)
2. Randy Rogers, Coffey County Sheriff, President, Kansas Sheriff's Association
3. Michelle Ruebke, President, Kansas Midwife Association (proponent)

Hearing on **HB 2086** - home health agency surveys

- Linda Lubensky, Executive Director, Kansas Home Care Association (proponent)
- Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment (proponent)
- Written only, Deanne Bacco, Executive Director, Kansas Advocates for Better Care (opponent)
-

Staff briefing on **HB 2137** - healthy food choices in school vending machines

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

DATE: FEBRUARY 1 2005

NAME	REPRESENTING
Laura Lukensky	KS Home Care Assoc.
Charles Moore	KDHE
Joshua Beecher	Intern Rep. Bethell
Susan Blumsted	KS State Nsg. Association
Terri Roberts	KS State Nurses Assn.
DEBORAH STERN	KS. HOSP. ASSN.
Carolyn Muddendong	KS StDs Assn.
Devon Lamaster	Christian Science Comm. Pub.
Gary Eichen	Lyon County Sheriff
Bill Halvorsen	KBI
Savannah Meyer	KNASW Intern
Chip Wheeler	
Sarah Timwell	KSDA
Zach Coble	Rep. Showalter
Nora Whiteman	KS Assn School Boards
Ted Bauer	Rep Dist #81
Josh Koell	KDHE
Ashley Wendler	Intern Rep. Storm
Stacey Radcliff	KMS

To: Committee for Health and Human Services

Subject: House Bill 2088

My name is Michelle Ruebke and I serve on the board of the Kansas Midwives' Association. This organization is comprised of Certified Professional Midwives (CPM) who have been practicing in the state of Kansas for many years. CPMs receive their extensive training for the care of expectant mothers and newborn infants through various avenues including apprenticeships and programs in foreign countries where midwifery is the standard of care. As a Certified Professional Midwife (CPM), I am concerned with the health and well-being of mothers and infants in the state of Kansas.

My concern with HB2088 is not the intent but the current form. I would like to suggest that an amendment be adopted which would prevent the drawing in of those persons whom the bill does not intend to affect. Many people choose to have a birth utilizing professionals which are not outlined in this bill. I understand the goal of the current legislation is to preserve evidence in the event that a criminal investigation is required. I wonder if this goal could be achieved by putting stronger penalization into the already existing law requiring a death certificate for all babies born over a specified weight in grams. A death certificate must be signed by a physician and this would require the involvement of a health care professional as outlined in this bill.

Thank you for your consideration of an amendment that, again, would retain the purpose of this bill without infringing on the rights of parents to give birth with the assistance of health care professionals not currently identified in the bill.

Attachment 1
HHS 2-1-05

Re: HB 2088
Committee: Health and Human Services

Dear Committee Members,

The Kansas Sheriff's Association comes before you in support of HB 2088 and Representative Mast.

Unfortunately tragedy sometimes must occur in order to create law that would impact the future in Kansas. In this case this is what has occurred. This bill would be of great assistance to law enforcement and could possible make a difference in the future.

I would encourage the committee to pass this bill and see that this bill becomes law.

Sincerely,

Randy L. Rogers
Coffey County Sheriff
President Kansas Sheriff's Association

Attachment 2
HHS 2-1-05



Kansas Home Care Association • 1512 B Legend Trail Drive • Lawrence, Kansas 66047
(785) 841-8611 • Fax (785) 749-5414 • khca@kshomecare.org • www.kshomecare.org

To: Health and Human Services Committee
From: Linda Lubensky, Executive Director, Kansas Home Care Association
Date: February 1, 2005
Re: HB 2086, an Act concerning home health agencies, relating to surveys

On behalf of the Kansas Home Care Association, I appreciate this opportunity to comment on HB 2086, an act which would extend the home health survey period to “at least once every 36 months.”

In 1996, CMS created new survey frequency requirements for Medicare certified agencies. The new requirements included a 36-month frequency for those agencies that had received no deficiencies in their previous survey. However, CMS also delineated criteria for determining the need for shorter survey frequencies. It was left to the state survey agency to decide frequency for those agencies that had standard level or other deficiencies, changes in management or ownership, complaints, etc. There were even provisions for random mid-cycle surveys.

That system has worked well for the Medicare certified agencies in Kansas, as well as nationally. Consequently, in light of the ongoing need to conserve resources, KHCA has no objections to applying the 36-month frequency concept to all the agencies in our state. Our only concern might be that this bill is minimal and does not contain any details. We would hope that KDHE would utilize criteria, similar to that established by CMS, to determine when shorter frequencies are necessary to insure client safety and quality of care.

I would be happy to answer any questions that the committee requires.

Attachment 3
HHS 2-1-05



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on Home Health Agency Survey Cycle
House Bill No. 2086
to the
House Health and Human Services Committee**

**by
Joseph Kroll
Director, Bureau of Child Care and Health Facilities**

February 1, 2005

Chairperson Morrison, I am pleased to appear before the House Committee on Health and Human Services to discuss an amendment to K.S.A. 65-5104. The Kansas Department of Health and Environment wishes to amend state law regarding survey frequency for licensed-only home health agencies to be consistent with federal Medicare requirements. This will increase the survey interval for licensed-only home health agency surveys from at least once every fifteen months to at least once every 36 months.

State law has followed federal law regarding survey frequency since enactment of state law in 1984. In 1992, state law was amended to the current 15-month cycle to parallel federal law. Federal law was amended several years ago to provide for a survey frequency of every 36 months.

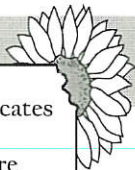
This legislation would make it possible for surveyors' time to be used more efficiently. Survey workloads for licensed-only facilities continue to increase due to the continued growth in the number of facilities. KDHE is not currently able to meet the 15-month survey frequency with existing resources. Amending the law will make the state survey cycle consistent with federal requirements and minimize the need for additional survey staff.

K.S.A. 65-5105 authorizes additional surveys at the discretion of the Secretary. This provides for surveys to be conducted more frequently for agencies whose record suggests a more frequent cycle. KHDE would generally follow guidelines CMS uses for certified agencies to determine actual survey frequency for a specific agency.

Thank you for the opportunity to comment on this bill. I will be happy to answer any questions.

DIVISION OF HEALTH
BUREAU OF CHILD CARE AND HEALTH FACILITIES
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1368
Voice 785-296-1240 Fax 785-296-3075 <http://www.kdhe.state.ks.us/>

*Attachment 4
HHS 2-1-05*



Kansas Advocates
for
Better Care

Celebrating 30 years

1975 - 2005

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Executive Director
Deanne Bacco

HB 2086 Home Health Agency Surveys
Committee on Health and Human Services
January 31, 2005

Honorable Chairman Morrison
and committee Members:

Kansas Advocates for Better Care (KABC) is opposed to **HB 2086**. KABC is a statewide non-profit organization of consumers that promotes quality long-term care. It has been assisting/guiding consumers for 30 years. The January 21, 2005 issue of The Kiplinger Letter, Forecasts for Management Decision-making, Vol. 82, No. 3, says, "A home health care boom is in the works. The aging population and tremendous pressure to trim hospital and nursing home costs spell at least 10% annual growth for the industry for five years or so...Home health care companies can't find enough workers and some states want to trim Medicaid payments."

With home health care being a highly preferred delivery system, the proposed easing of survey frequency from being conducted every 15 months (as is typical for licensed long-term care providers) to being conducted only every 36 months is poorly thought out. The more people rely on home health agencies for provision of their health care needs, the more oversight is needed to assure quality and compliance with regulations.

Please do not advance HB 2086
Thanks for allowing this comment.

Deanne Bacco, Executive Director, KABC

Attachment 5
HHS 2-1-05