

Approved: March 9, 2005

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:39 P.M. on March 8, 2005, in Room 526-S of the Capitol.

Committee members absent:

Representative Brenda Landwehr- 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:

Gary Daniels, Acting Secretary, Kansas Department of Social and Rehabilitation Services

Mike Donnelly, Director of Policy, Disability Rights Center of Kansas

Kevin Graham, Assistant Attorney General of Kansas

Others attending:

See attached list.

The minutes for Monday, March 7, were approved.

The Chairman opened the hearing on **SB 115** and welcomed Gary Daniels, Acting Secretary, Kansas Department of Social and Rehabilitation Services (SRS), who spoke in support of the bill, which, he said, is designed to amend a specific section of the Adult Protective Services statutes to extend the time from 30 days to 90 days for investigation and evaluation of abuse cases when a criminal investigation is ongoing. (Attachment 1) He explained that the bill only deals with length of time, nothing else. Answering questions, he said that SRS receives 9000 allegations of abuse, 6000 of which involve investigations; less than 10% of the cases involve criminal investigations. He explained that the statute deals only with adult-not child-abuse. He replied that if a criminal investigation is not completed within 90 days, SRS will make a preliminary report and add further findings later.

The hearing was closed on **SB 115**.

The Chair opened the hearing for **SB 116**.

Gary Daniels, Acting Secretary, SRS, spoke as a proponent for the bill. (Attachment 2) He said the bill adds injunctive authority to current law regarding licensure of certain facilities, allowing the agency to act protectively for mentally ill or developmentally disabled individuals under care in a residential facility.

Mike Donnelly, Director of Policy, Disability Rights Center of Kansas, spoke as a proponent. (Attachment 3) He explained the incident prompting such a bill, saying that the owners of group homes in Newton caring

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:39 P.M. on March 8, 2005, in Room 526-S of the Capitol.

for mentally ill individuals had evaded the licensing requirements even though they were known to be abusing those under their care. He suggested amendments to the bill, noting that the amendments addressed concerns brought up in the Senate by cleaning up some of the language and focusing the language to apply only to residential facilities, not schools or hospitals. (Attachment 4) He said the bill gives access authority for SRS to be involved when there is reason to believe abuse exists. He noted that Attachment 5 includes information about the Newton facility.

Kevin Graham, Assistant Attorney General, testified that his office had assisted in the drafting of the amendments suggested above.

Cindy Luxem, Kansas Health Care Association, provided written testimony in support of the bill. (Attachment 6)

Members directed most questions to Mr. Donnelly, who answered thus:

The bill applies only to mentally ill or developmentally disabled adults, not children. Regarding the amendments, he said the Kansas Attorney General believes the amendments are necessary to clarify that the proposed legislation does not apply to schools, hospitals, or geriatric homes, but only those facilities licensed by SRS that care for mentally ill or developmentally disabled individuals.

Lori Nuebel, representing SRS, stated that the bill would also apply to state psychiatric hospitals.

A member expressed concern that the bill does not clearly identify Mr. Donnelly's federally sanctioned agency (Disability Rights Center of Kansas) and might be used by other groups with fewer scruples or parameters.

Mr. Donnelly explained that one section in the language regarding self-direction was eliminated to protect any two individuals who might be receiving services, but who had freely chosen to live in the same residence. Mr. Donnelly agreed with a member who lamented how long the egregious conditions had existed in Newton without anyone being willing to correct them.

The Chair closed the hearing on **SB 116** and opened discussion on **SB 115**.

A motion was made and seconded to recommend **SB 115** favorable for passage and place it on Consent Calendar. The motion passed unanimously.

Staff provided a briefing for the following bills:

SCR 1604 requests that the State Board of Education take the lead in a study to promote healthy eating and physical activity in public elementary and secondary schools. The study is to be carried out in cooperation with other state agencies and private entities and foundations. The Senate adopted the resolution 40-0.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:39 P.M. on March 8, 2005, in Room 526-S of the Capitol.

SB 183 concerns federally active licenses under the Kansas healing arts act; the bill amends the act to allow a practitioner to engage in professional practice for compensation outside federal employment, enabling him or her to perform administrative functions, peer review, disability determination, utilization review, or render an expert opinion. Under the bill a licensee could also serve as a charitable health-care provider, provide direct professional services, or supervise professional services without compensation. Current law allows such a licensee to perform only charitable health care. The bill passed the Senate 39-0.

The meeting was adjourned at 2:45 p.m. The next meeting is scheduled for Wednesday, March 9, 2005.

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

DATE: MARCH 8 2005

NAME	REPRESENTING
Ron Seiber	Hewlett Packard
Clay Dancy	SRS
Lon Nuebel	SRS
Deann Priest	SRS
Zach Cobb	Intern Rep. Shorff
James Rutherford	Little Gov't rep.
Michael Donnell	DRG KS
John Peterson	KS Govt Consulting
Mary Ellen O'Leary	Via Christi Health System
Matt Fletcher	INTERLAB
Teresa Schwab	Oral Health Kansas
Cindy Luxem	KHCA
Dan Morrison	Intern Rep Rike
Kyle Kessler	SRS
Stuart Little	Assoc. of CMHCs

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

House Health and Human Services Committee
March 8, 2005

SB 115 - Investigation of Abuse, Neglect or Exploitation on Certain Persons

Mr. Chairman and members of the committee, my name is Gary Daniels, Acting Secretary of SRS. Thank you for the opportunity to testify regarding SB 115 which proposes to amend a specific section of the Adult Protective Services statute, K.S.A. 39-1433 (3), relating to the time frame for conducting and completing an investigation and evaluation.

This proposal extends the time frame from 30 to 90 working days for SRS Adult Protective Services investigations in which law enforcement is conducting an ongoing criminal investigation. Current statutes mandate that SRS conclude the investigation within 30 working days.

The proposal requires SRS to conclude its investigation at the end of 90 working days and make a finding. However, it also would allow SRS to reopen the case and submit a new finding based upon additional evidence provided as a result of the criminal investigation. The alleged perpetrator still would be notified, in writing, of the new finding and of the right to appeal. If the alleged perpetrator is licensed, registered or regulated by a state agency, that agency also will be notified of the change in finding.

Over 6,000 reports of abuse, neglect, exploitation and fiduciary abuse were investigated by SRS during FY 2004. Less than 10 percent of these investigations involved criminal investigations.

This proposal provides a more reasonable time frame for SRS to complete its investigation and ensures the SRS investigation does not interfere with a criminal investigation. It also provides the opportunity for increased collaboration between SRS and law enforcement and ensures at risk adults are protected during criminal investigations.

I will be glad to respond to questions.

*Attachment 1
HHS 3-8-05*

**Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary**

House Health and Human Services Committee
March 8, 2005

SB 116 - Injunctive Authority to Cease Operations

Chairperson Morrison, and members of the Health and Human Services Committee, I am Gary Daniels, Acting Secretary of the Kansas Department of Social and Rehabilitation Services. I appreciate the opportunity to testify today in support of Senate Bill 116 as amended by the Senate, which is one of SRS' legislative proposals.

Senate Bill 116 would add the authority to take injunctive action to current law governing the licensure of these facilities. The addition of this language to the current law will allow the Secretary to seek the closure of facilities and/or providers who do not meet or seek to meet established minimum standards of care and treatment through licensure. This type of authority is similar to the authority bestowed upon other state agencies with facility licensing responsibilities such as Kansas Department of Health and Environment and the Kansas Department on Aging.

The Secretary of SRS has statutory authority per KSA 75-3307b for setting of standards, inspection, and licensing of facilities for persons with mental illness, mental retardation, or developmental disabilities. It is implied through this statute that SRS has responsibility for ensuring the health and safety of the populations that reside in these facilities through the creation of regulations that set out requirements for minimum standards. While existing law does allow for the creation of regulations and inspection of facilities, it does not currently enable the Secretary to take action against facilities which refuse to obtain or to maintain an appropriate license. The absence of enforcement authority hampers the Secretary's ability to ensure the health and safety of individuals residing in facilities or who are receiving services from facilities which refuse to obtain a license or refuse to maintain a license in good standing.

The majority of facilities that SRS licenses under this statute receive funding from SRS for the provision of services to individuals with mental illness or a developmental disability. Continued funding from SRS is contingent upon the facility maintaining a license in good standing. However, Residential Care Facilities or group homes for individuals with mental illness usually **do not** receive funding from SRS. Thus the ability to seek closure through an injunction is necessary as other remedial actions related to funding are not an option for SRS with these facilities.

I would ask your support of Senate Bill 116.

*Attachment 2
HAS 3-8-05*

Testimony to the Senate Public Health and Welfare Committee on SB 116

March 8, 2005

Chairman Morrison and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) 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, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system 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 the responsibility to investigate allegations of abuse, neglect and exploitation in adult care homes, residential care facilities and other places where persons with disabilities reside and receive services.

SB 116 is one of several responses to the number of group homes and other residential placement services that serve people with disabilities in Kansas that have allowed licensure to lapse, or who have refused to be licensed. One such case that has gained national attention is the Kaufman case out of Newton Kansas. I have attached four newspaper articles to my testimony as a means of getting you background information on the case. Kansas Attorney General Phill Kline and the DRC have partnered to offer several pieces of legislation that we believe will reduce the likelihood of these kinds of cases in the future. SB 116 and the amendments we are offering today are important in closing the loopholes that made the Kaufman Case possible.

Attachment 3
HHS 3-08-05

In short, the Kaufman House case is a situation where there was an unlicensed group home for persons with mental illness where the owner was providing the residential services, therapy for the residents, medication distribution and, in at least one instance, was the guardian of a resident.

SRS informed the Kaufmans in 1986 that their group homes were required to be licensed and the Kaufmans fought that order up to the Kansas Supreme Court. The Kansas Supreme Court ordered the Kaufman's to become licensed in 1991 and yet they continued operating without a license through most of 2004.

Kansas Attorney General Phill Kline contacted DRC in February 2004 to explore our ability to respond the claims and evidence of abuse at the Kaufman's group homes. General Kline was frustrated that despite all of the evidence that had been collected by multiple state agencies no one had taken action to close them down. He found several loopholes that allowed the Kaufmans to stay in business, and furthermore, found his hands were tied because the statute of limitations had run out on the various allegations of abuse. As a result of his referral DRC investigated the situation in Newton, contacted one "complaintant" who resided there, acted to move her ("Pam") out of the home to a safe place and petitioned to terminate Mr. Kaufman's guardianship over her.

The US Department of Justice then asked "Pam" to be there witness. The result was the execution of arrest and search warrants on October 26, 2004 with DRC attorneys and advocates on hand to protect the rights of the residents of the group homes. Since that time the Kaufmans have been indicted on more than 30 federal counts. The group homes are closed and all of the residents are now living in safe places.

Among the lessons that need to be learned from this very public case is that no person with disabilities should be left without protections just because they live in a group home of fewer than five (5) people. A second lesson is that the state needs to develop a more coordinated investigation and response system to act on reports of abuse neglect and exploitation, including, but not limited to the ability of the state to immediately shut down un-licensed, and un-monitored group homes and residential programs.

If enacted into law, SB 116 closes one loophole and provides the teeth that the state needs to close down unlicensed facilities. The loophole it does not close in its current form is what facilities and programs should be licensed. DRC proposes three amendments to SB 116 (attached) that we believe strengthen the states investigation and response system, and closes the loophole of licensure.

1. SB 116 Page 2, line 25: DRC recommends a new section #7 be added that clearly spells out the state's policy on licensing of group homes and residential programs for people with disabilities. Neither state law, nor regulations have one concise statement of policy that says the state takes seriously it's responsibility to ensure that residents of group homes, regardless of size are not subject to abuse, neglect and exploitation
2. SB 116 Page, Line 40: DRC recommends that it's federal investigatory and access authority to facilities and programs where people with disabilities receive services be placed in state statute. Although the protection and advocacy agency access authority is sprinkled through several other statutes, DRC would like to make it clear in this statute that all facilities serving persons with disabilities as described in K.S.A. 75-3307b are required to allow the protection and advocacy agency (DRC) access to its facilities, residents and records in order to carryout its investigative responsibilities.
3. DRC thanks the Senate Public Health and Welfare Committee for adding some technical clean-ups while addressing the issues above. First, K.S.A. 75-3307b uses antiquated language in referring to persons with disabilities. Secondly, he Committee also allowed DRC to amend the one statute that refers to our organization with it's old name. We request that the legislature modify K.S.A. 65-5603 to refer to the protection and advocacy system for Kansas rather than its old name Kansas Advocacy & Protective Services.

Again, SB 116 is a giant step in the right direction. It gives the state the authority to close down those facilities who either do not meet licensing requirements or who refuse to become licensed. DRC recommends that the Kansas Legislature provide a clear

statement of which programs and facilities are required to be licensed under SRS regulations. And, that the state clarify the authority of the protection and advocacy system to access the programs and facilities serving Kansans with disabilities in order to carryout its mandates under federal law.

THE HUTCHINSON NEWS

online edition

Possible abuse apparent in 2001 Tapes showing sexual acts used in effort to suspend Newton group home license

By Jason Probst and Jessica Self

State officials knew of possible criminal acts at a Newton group home as early as 2001, when a former assistant with the Kansas Attorney General's office drafted an order to suspend Arlan Kaufman's license to practice social work. Allegations of physical and sexual abuse at the group home, operated by Kaufman, 68, and his wife,

Linda, 61, stemmed from the graphic images found on 30 videotapes seized from the Kaufman home in 2001. Those tapes were used as evidence by the Kansas Behavioral Sciences Regulatory Board, the agency that oversees licensed social workers, to suspend Arlan Kaufman's license in 2001.

According to the agency's emergency order to suspend Kaufman's license:

* While videotaping a client, Kaufman encouraged the client to perform a sexual act that the client said resulted in an infection in his genitalia when he previously performed the act.

* Kaufman "encouraged three of his clients to engage in nude swimming in a farm pond that could possibly contain sewage runoff from pastured cattle.

* "A female client who is diagnosed with Schizophrenia, Disorganized, Chronic, is living in the same home as a male client who is experiencing difficulties in the sexual area, such as public exhibitionism, and approaching males indiscriminately to engage in homosexual activity. (Kaufman) criticized the female client for not wanting to observe the male client urinating," the emergency order stated.

* During a "group therapy session,' a male client shaved the pubic hair from a female client, and then the female client shaved the male client's hair. This was performed in the presence of, and encouraged by, the respondent (Kaufman)."

Upon reviewing the findings, the KBSRB filed an emergency order to suspend Kaufman's license and began proceedings for revocation, investigator Roger Scurlock said. After many continuances and delays by Kaufman's attorney, the agency never had the chance to revoke the license because the order expired on Sept. 30, 2002, before a hearing could be initiated.

However, after the KBSRB suspended Kaufman's license in 2001, Scurlock said the agency notified the Hutchinson office of the Department of Social and Rehabilitation Services and the Office of the Inspector General with the Department of Health and Human Services.

An assistant with the Kansas Attorney General's office, Alan Varner, was working as the litigation counsel for the KBSRB and drafted the emergency order to suspend Kaufman's license. Varner is no longer with the Attorney General's office, spokesman Whitney Watson said.

"I have no idea who he is," Watson said. Attempts to reach Varner, who worked under former Attorney General Carla Stovall, were unsuccessful.

He left no record of his involvement in the case, Watson said. "The only record we have is the investigation given to us this year," he said. "That is when we became involved." The Attorney General's office received information about the case in May 2004 after the Kansas State Board of Nursing suspended Linda Kaufman's nursing license. The office was not able to pursue charges then because the statute of limitations had expired on any possible criminal action stemming from the 2001 investigation that produced the videotapes, Watson said.

Despite the KBSRB's efforts to inform other agencies, officials were left with few options in the investigation of the group home because of a lack of complaints from residents. State officials and advocacy groups said authorities had difficulty balancing the civil rights of the mentally ill with the need to protect them from a potentially dangerous environment.

"We strive for people with disabilities to be treated with respect," said Rocky Nichols, with Kansas Advocacy and Protective Services, an agency that deals with mentally ill Kansans.

"They have a right not to be abused or neglected. But at the same time we have to protect their civil and legal rights."

Officials said that people with mental illnesses, unless deemed incompetent by a court, retain the right of self-determination - meaning they can refuse help from medical, social or law enforcement agencies. Regardless of efforts by several state agencies, the investigation required the cooperation of the alleged victims to be successful, state officials said.

Wichita Eagle

Posted on Thu, Oct. 28, 2004

Timeline

State records obtained by The Eagle show that officials knew that Arlan and Linda Kaufman might have been breaking the law for years before their arrest on Tuesday.

1976: Arlan Kaufman, who has a doctoral degree in social work, and his wife, Linda, a registered nurse, open Kaufman House as housing for college students. It is later turned into residential treatment for adults with short-term or chronic mental or emotional problems.

1986: The Kansas Department of Social and Rehabilitation Services informs the Kaufmans that the two houses they operate must be licensed by the state as a residential care facility. The Kaufmans appeal that ruling.

1991: The Kansas Supreme Court upholds the ruling, stating that Kaufman House must be licensed by SRS. The Kaufmans do not pursue state licensing, and there is no evidence the state tried to make them get one.

Nov. 8, 1999: Butler County sheriff's deputies find people working nude at a farm near Potwin that is owned by Arlan Kaufman. The people are residents of Kaufman House.

Aug. 9, 2001: The Kansas Behavioral Sciences Regulatory Board suspends Arlan Kaufman's license as a clinical social worker, citing graphic videotaped evidence of sexual abuse and endangerment of adults in the couple's care.

Feb. 18, 2004: The Kansas State Board of Nursing suspends the nursing license of Linda Kaufman, citing similar evidence contained on 30 videotapes seized from her bedroom.

May 19, 2004: A Harvey County district judge orders Newton police and Kansas Advocacy and Protective Services to remove a 58-year-old woman from Kaufman House following allegations that her guardian, Arlan Kaufman, sexually abused her.

Oct. 26, 2004: The Kaufmans are arrested by FBI agents, and their two group homes in Newton are closed.

Oct. 27, 2004: Arlan and Linda Kaufman appear in federal court on charges that they forced mentally ill people into involuntary servitude. They are ordered held without bond until a Nov. 3 court hearing.

11/4/2004 http://www.kansas.com/mld/kansas/news/local/crime_courts/10033884.htm?template=cont...

*[As Amended by Senate
Committee of the Whole]*

*As Amended by Senate
Committee*

Session of 2005

SENATE BILL No.

116

By Committee on Public Health

and Welfare

1-26

12. AN ACT *relating to certain facilities;* concerning social and rehabilitation
13. services; providing injunctive authority against unlicensed facilities;
14. ~~*authorizing the state protection and advocacy system access*~~
15. ~~*to certain facilities, individuals receiving care from such facilities*~~
16. ~~*and records of such individuals;*~~ amending K.S.A. 75-3307b
17. *and K.S.A. 2004 Supp. 65-5603* and repealing the existing section
18. *sections.*
19. *Be it enacted by the Legislature of the State of Kansas:*
20. Section 1. K.S.A. 75-3307b is hereby amended to read as follows: 75-
21. 3307b. (a) The enforcement of the laws relating to the hospitalization of
22. mentally ill persons of this state in a psychiatric

Attachment 4
HHS 3-8-05

- hospital and the diagnosis,
23. care, training or treatment of persons in community mental health centers
 24. or facilities for ~~the mentally ill, mentally retarded or other handicapped~~
 - ~~25. persons with mental illness, developmental disabilities or other persons~~
 26. *with disabilities* is entrusted to the secretary of social and rehabilitation
 27. services. The secretary may adopt rules and regulations on the
 28. following matters, so far as the same are not inconsistent with any laws
 29. of this state:
 30. (1) The licensing, certification or accrediting of private hospitals as
 31. suitable for the detention, care or treatment of mentally ill persons, and
 32. the withdrawal of licenses granted for causes shown;
 33. (2) the forms to be observed relating to the hospitalization, admission,
 34. transfer, custody and discharge of patients;
 35. (3) the visitation and inspection of psychiatric hospitals and of all
 36. persons detained therein;
 37. (4) the setting of standards, the inspection and the licensing of all
 38. community mental health centers which receive or have received any
 39. state or federal funds, and the withdrawal of licenses granted for causes
 40. shown;

41. (5) the setting of standards, the inspection and licensing of all facilities

42. for ~~the mentally ill, mentally retarded or other developmentally dis~~

SB 116—Am. by SCW

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1. ~~abled~~ persons *with mental illness, developmental disabilities or other*
2. *persons with disabilities* receiving assistance through the department
3. of social and rehabilitation services which receive or have received after
4. June 30, 1967, any state or federal funds, or facilities where ~~mentally ill,~~
5. ~~mentally retarded or other developmentally disabled~~ persons *with mental*
6. *illness or developmental disabilities* reside who require supervision
7. or require limited assistance with the taking of medication, and the withdrawal
8. of licenses granted for causes shown. The secretary may adopt
9. rules and regulations that allow the facility to assist a resident with the
10. taking of medication when the medication is in a labeled container dispensed
11. by a pharmacist. No license for a residential facility for eight or
12. more persons may be issued under this paragraph unless the secretary of
13. health and environment has approved the facility

- as meeting the licensing
14. standards for a lodging establishment under the food service and lodging
 15. act. No license for a residential facility for the elderly or for a residential
 16. facility for persons with disabilities not related to mental illness or ~~mental~~
 17. ~~retardation~~ **developmental disability**, or both, or related conditions
 18. shall be issued under this paragraph;
 19. (6) reports and information to be furnished to the secretary by the
 20. superintendents or other executive officers of all psychiatric hospitals,
 21. community mental health centers or facilities for the mentally retarded
 22. **persons with developmental disabilities** and facilities serving other
 23. ~~handicapped~~ **persons with disabilities** receiving assistance through the
 24. department of social and rehabilitation services.
 25. [] (b) An entity holding a license as a community mental health center
 26. under paragraph (4) of subsection (a) on the day immediately preceding
 27. the effective date of this act, but which does not meet the definition of a
 28. community mental health center set forth in this act, shall continue to be
 29. licensed as a community mental health center as long as the entity remains
 30. affiliated with a licensed community mental health center and continues
 31. to meet the licensing standards established by

- the secretary.
32. *(c) Notwithstanding the existence or pursuit of any other remedy,*
 33. *the secretary of social and rehabilitation services, as the licensing agency,*
 34. *in the manner provided by the act for judicial review and **civil** enforcement*
 35. *of agency actions, may maintain an action in the name of the state*
 36. *of Kansas for injunction against any person or facility to restrain or prevent*
 37. *the operation of a psychiatric hospital, community mental health*
 38. *center or facility for ~~the~~ mentally ill, mentally-retarded or other-handicapped*
 39. *~~persons~~ **persons with mental illness, developmental disabilities***
 40. ***or other persons with disabilities** operating without a license.*
 41. *~~[(d) The state protection and advocacy system shall have reasonable~~*
 42. *~~unaccompanied access to public and private facilities and~~*
 43. *~~programs in the state which render care, treatment or services for~~*
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1. *~~individuals with disabilities, and to those individuals with disabilities~~*
2. *~~who receive care, treatment or services from those facilities~~*
3. *~~and programs, and to the records of individuals with disabilities~~*

4. ~~who receive services from those facilities and programs.~~
5. ~~Sec. 2. K.S.A. 2004 Supp. 65-5603 is hereby amended to read~~
6. ~~as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602~~
7. ~~and amendments thereto shall not extend to:~~
8. ~~(1) Any communication relevant to an issue in proceedings to~~
9. ~~involuntarily commit to treatment a patient for mental illness, alcoholism~~
10. ~~or drug dependency if the treatment personnel in the~~
11. ~~course of diagnosis or treatment has determined that the patient is~~
12. ~~in need of hospitalization;~~
13. ~~(2) an order for examination of the mental, alcoholic, drug dependency~~
14. ~~or emotional condition of the patient which is entered by~~
15. ~~a judge, with respect to the particular purpose for which the examination~~
16. ~~is ordered;~~
17. ~~(3) any proceeding in which the patient relies upon any of the~~
18. ~~forementioned conditions as an element of the patient's claim or~~
19. ~~defense, or, after the patient's death, in any proceeding in which~~
20. ~~any party relies upon any of the patient's conditions as an element~~
21. ~~of a claim or defense;~~
22. ~~(4) any communication which forms the substance of information~~
23. ~~which the treatment~~

- personnel or the patient is required by law*
24. *to report to a public official or to be recorded in a public office,*
 25. *unless the statute requiring the report or record specifically provides*
 26. *that the information shall not be disclosed;*
 27. *(5) any information necessary for the emergency treatment of*
a
 28. *patient or former patient if the head of the treatment facility at*
 29. *which the patient is being treated or was treated states in writing*
 30. *the reasons for disclosure of the communication and makes such*
 31. *statement a part of the treatment or medical record of the patient;*
 32. *(6) information relevant to protect a person who has been*
 33. *threatened with substantial physical harm by a patient during the*
 34. *course of treatment, when such person has been specifically identified*
 35. *by the patient, the treatment personnel believes there is substantial*
 36. *likelihood that the patient will act on such threat in the*
 37. *reasonable foreseeable future and the head of the treatment facility*
 38. *has concluded that notification should be given. The patient shall*
 39. *be notified that such information has been communicated;*
 40. *(7) any information from a state psychiatric hospital to appropriate*

41. *administrative staff of the department of corrections whenever*
 42. *patients have been administratively transferred to a state psychiatric*
 43. *hospital pursuant to the provisions of K.S.A. 75-5209 and*
- SB 116—Am. by SCW

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1. *amendments thereto;*
2. *(8) any information to the patient or former patient, except that*
3. *the head of the treatment facility at which the patient is being*
4. *treated or was treated may refuse to disclose portions of such records*
5. *if the head of the treatment facility states in writing that such*
6. *disclosure will be injurious to the welfare of the patient or former*
7. *patient;*
8. *(9) any information to any state or national accreditation, certification*
9. *or licensing authority, or scholarly investigator, but the*
10. *head of the treatment facility shall require, before such disclosure*
11. *is made, a pledge that the name of any patient or former patient*
12. *shall not be disclosed to any person not otherwise authorized by*
13. *law to receive such information;*
14. *(10) any information to-
Kansas advocacy and-
protective services,*
- ~~15.~~ *the state protection and advocacy system which concerns individuals*
16. *who reside in a*

- treatment facility and which is required by*
17. *federal law and federal rules and regulations to be available pursuant*
 18. *to a federal grant-in-aid program;*
 19. *(11) any information relevant to the collection of a bill for professional*
 20. *services rendered by a treatment facility; or*
 21. *(12) any information sought by a coroner serving under the*
 22. *laws of Kansas when such information is material to an investigation*
 23. *or proceeding conducted by the coroner in the performance of*
 24. *such coroner's official duties. Information obtained by a coroner*
 25. *under this provision shall be used for official purposes only and*
 26. *shall not be made public unless admitted as evidence by a court or*
 27. *for purposes of performing the coroner's statutory duties;*
 28. *(13) any communication and information between or among*
 29. *treatment facilities regarding a proposed patient, patient or former*
 30. *patient for purposes of promoting continuity of care between the*
 31. *state psychiatric hospitals and the community mental health centers;*
 32. *the proposed patient, patient, or former patient's consent shall*
 33. *not be necessary to share evaluation and treatment records between*
 34. *or among treatment facilities regarding a*

- proposed patient, patient*
35. *or former patient; as used in this paragraph (13), "proposed patient"*
 36. *and "patient" shall have the meanings*
 37. *respectively ascribed thereto in K.S.A. 2004 Supp. 59-2946 and amendments thereto;*
 38. *(14) the name, date of birth, date of death, name of any next of*
 39. *kin and place of residence of a deceased former patient when that*
 40. *information is sought as part of a genealogical study; or*
 41. *(15) any information concerning a patient or former patient*
 42. *who is a juvenile offender in the custody of the juvenile justice authority*
 43. *when the commissioner of juvenile justice, or the commis*

SB 116—Am. by SCW

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1. *sioner's designee, requests such information.*
2. *(b) The treatment personnel shall not disclose any information*
3. *subject to subsection (a) (3) unless a judge has entered an order*
4. *finding that the patient has made such patient's condition an issue*
5. *of the patient's claim or defense. The order shall indicate the parties*
6. *to whom otherwise confidential information must be disclosed.*
7. *Sec. 2 3. K.S.A. 75-3307b is and K.S.A. 2004 Supp. 65-5603 are*

8. hereby repealed.
9. Sec. 3 4. This act shall take effect and be in force from and after its
10. publication in the statute book.

Lessons from the Kaufman House Case: Eliminating Conflicts of Interest & Protecting Persons with Disabilities from Abuse, Neglect or Exploitation

The Kaufman House case, in Newton Ks, has brought the wrong kind of national attention to Kansas. Kansas policy makers need to learn from this case and change Kansas law to eliminate conflicts of interests of Guardianship/Conservatorship and better defend persons with disabilities from abuse, neglect and exploitation. Arlan and Linda Kaufman have been arrested and indicted by a federal grand jury with 34 counts of criminal charges, from compelling mentally ill residents of Kaufman House to perform sexually explicit acts to defrauding taxpayers by billing Medicare for therapy sessions never provided. These 34 counts carry a cumulative charge of 325 years in prison and \$8.5 million in damages.

A Kansas State Board of Nursing public report states that videotape evidence, seized from Mr. Kaufman's bedroom, vividly shows Mr. Kaufman sexually touching the genitals of both male and female patients of his, including a woman with mental illness for whom he was court appointed Guardian & Conservator. In addition to this report of sexual abuse, Mr. Kaufman was also a service provider (therapist) for this woman with mental illness, he was her landlord for housing and had other financial conflicts of interest. Mr. Kaufman was the: 1) Guardian/Conservator, 2) therapist, 3) landlord and 4) alleged sexual abuser of the woman for whom he was appointed to protect. These are clear conflicts of interests, but these conflicts are allowed under state law.

DRC & the Kansas Attorney General propose three needed changes to Kansas policy:

Prevent Conflict of Interest with Guardians/Conservators (HB 2307) – DRC and the Kansas Attorney General will be seeking legislation to prevent Guardians/Conservators from having conflicts of interests with persons with disabilities for whom they are Guardian/Conservator, to prevent conflicts like the Kaufman case from ever happening again. The Conflict of Interest standards of the National Guardianship Association will be used as the starting point. The NGA states that Guardians/Conservators should avoid even the appearance of a conflict of interest and should provide no direct service to the ward, so there is no financial, agency or personal conflict of interest.

Attachment 5
AHS 3-8-05

Increase Accountability of Small, Unlicensed Group Homes (Amendment to SB 116) – Accountability of currently unlicensed group homes (like the Kaufman’s group home) that serve persons with disabilities is needed. The lack of accountability delayed justice in the Kaufman house case.

Protection and Advocacy for Kansans with Disabilities (HB 2306) – To better protect the rights of persons with disabilities, Kansas should follow the lead of roughly half of the states that provide state support of the protection and advocacy system. This must include funding abuse, neglect and exploitation investigation and prosecution that is independent of the agency responsible for the disability services. The funds would establish a collaborative abuse, neglect and exploitation unit as a partnership between the Kansas Attorney General’s office and the DRC, enabling perpetrators to be brought to justice through either criminal prosecution (through the Attorney General) or civil remedies (through DRC). Revenues would be obtained through currently unallocated excess court docket fees, which will have no negative effect on the Courts.

SB 116

Kansas Health Care Association Testimony

House Health and Human Services Committee

March 8, 2005

Chairman and Members of the Committee

The members of the Kansas Health Care Association provide long term care services for frail, elderly and disabled Kansans. We support the original intent of the bill to address recent incidences related to unlicensed facilities.

In current law, our geriatric licensed facilities, are protected by many regulations and provide sufficient protections for residents who wish to have access to state protection and advocacy systems. To this end, we encourage relations with the state Ombudsman program.

Licensing oversight is very important. Senate Bill 116 would add the authority to take action to close facilities that do not meet or seek to meet established minimum standards of care and treatment through licensure.

We support SB 116 as it has been amended by the Senate Committee.

Thank you for the opportunity to submit this testimony.

Cindy Luxem
Kansas Health Care Association

Attachment 6
HHS 3-8-05