

Approved: March 21, 2005

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:35 P.M. on March 14, 2005, in Room 526-S of the Capitol.

Committee members absent:

Representative Peggy Mast- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Mary Galligan, Kansas Legislative Research Department

Rena Jefferies, Revisor of Statutes' Office

Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Tuck Duncan, Kansas Occupational Therapy Association

Ernie Kutzley, Kansas Alliance for Caregivers

Alyce Brown, Regional Volunteer Director, AARP

Others attending:

See attached list.

The minutes for the March 10, 2005, meeting were approved.

The chair opened the hearing on **HB 2496**.

Tuck Duncan, Kansas Occupational Therapy Association, spoke in favor of the bill. (Attachment 1) He said occupational therapy was one of the allied health professions involved in the rehabilitation process. He traced a brief history of the bill, saying that previous legislation had given physical therapists licensure and that last year they were allowed to accept referrals from physician assistants, advanced nurse practitioners, and chiropractors. He said this bill gives occupational therapists the same rights of referral.

Answering a question, he said that in the past physical therapists had been given licensure (previously registration) and referral rights, but not direct access, noting that the occupational therapists are requesting the same status to receive referrals. He commented that increasingly allied professionals (such as physician assistants and nurse practitioners) rather than the physicians are making referrals. He replied to a question that physical therapists and occupational therapists may use similar modalities, but accomplish different ends.

Tom Litney, President, Kansas Occupational Therapy Association, explained that chiropractors are part of a health-care team, but that an occupational therapist provides services different from a chiropractor, such as visiting a patient's work site to ascertain what kinds of treatments might be appropriate. He commented that occupational therapists often refer a patient back to a chiropractor for further treatment.

Mr. Duncan replied to another question that occupational therapists provide treatment based on referrals, but

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:35 P.M. on March 14, 2005, in Room 526-S of the Capitol.

they do not make diagnoses. He said the bill does not change an occupational therapist's scope of practice.

The Chair closed the hearing closed on **HB 2496** and opened the hearing on **HCR 5011**.

Ernie Kutzley, Kansas Alliance for Caregivers, testified as a proponent. (Attachment 2) He outlined the services and emphases provided by his organization and expressed appreciation to the committee for their interest in hearing a resolution that honors caregivers, which in 2003 numbered 445,900 adult Kansans.

Alyce Brown, Regional Volunteer Director, AARP, spoke in support of the resolution. (Attachment 3) She related some of her own care-giving experiences and encouraged members to support the resolution.

Deanne Bacco, Kansas Advocates for Better Care, provided written testimony as a proponent. (Attachment 4)

The Chair closed the hearing on **HCR 5011**.

Discussion on **HB 2496** was opened.

A motion was made and seconded to pass favorably HB 2496. After brief discussion, the motion passed.

The Chair opened discussion on **HCR 5011**.

A motion was made and seconded to recommend as favorable for passage HCR 5011. Members commented on implications of the bill, with some observing that the bill may set in motion certain expectations or establish a precedent that could later create a drain on the State General Fund. One member suggested referring the bill to the House Appropriations Committee.

The motion passed. Representatives Landwehr, Kelley, Miller, and Watkins were recorded as voting against the motion.

The Chair suggested that the committee consider **SB 116**.

A motion was made and seconded to accept the balloon amendment to SB 116. (Attachment 5)

Discussion centered around whether all interested parties had signed off on the amendment. Staff reminded the committee that the amendment had been stricken in the Senate. Other discussion raised the question of whether the bill would address problems such as the Kaufman House, a group home noted for abuse of residents. Mike Donnelly, Policy Director, Disability Rights Center of Kansas, said the bill would obviate problems such as the Kaufman House, requiring such facilities to be licensed and monitored. (Attachment 6) Kyle Kessler, Deputy Secretary, Kansas Social and Rehabilitation Services, said he was comfortable with the new language. Mr. Donnelly replied that the term "self-directed" was defined by statute and was

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applicable only within the context of the statute.

The motion to accept the amendment passed.

A motion was made and seconded to recommend **SB 116** as amended to be favorable for passage. The motion passed unanimously.

The Chair opened discussion on **SCR 1604**.

A motion was made and seconded to pass out favorably **SCR 1604**. The motion passed.

Members discussed who would carry certain bills. (**HCR 5011**, Representative Kiegerl; **HB 2496**, Representative Phelps; **SB 116**, Representative Kirk)

Staff provided a briefing on **HB 2503**, which would establish standards for the operation of abortion clinics. Abortion clinics would be required to obtain an annual license from the Kansas Department of Health and Environment (KDHE), which would set the fees, adopt rules and regulations for the operation of clinics, inspect facilities, and have injunctive authority to require compliance. Patient information would remain confidential, and any action taken against a clinic must follow the Kansas Administrative Procedure Act. KDHE estimates that, were the bill to become law, the cost to the State General Fund would be about \$291,118, an amount not included in the Governor's budget. Staff noted that during the previous legislative session an identical bill (**HB 2176**) was passed and was vetoed by the Governor.

Answering a question, staff said the bill would only apply to abortion clinics.

The meeting was adjourned at 2:40 p.m. The next meeting is scheduled for Tuesday, March 15, 2005.

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

DATE: MARCH 14 2005

NAME	REPRESENTING
Ernie Kately	AAC
Clyce Brooker	AARP
Wick Dunbar	KS. O. T. Assn
Chip Wheeler	Asn of Osteopathic Med.
Madysnki Patrick	Helth
Machary Kilpatrick	Helth
Keith Arby	AARP
Marn Turner	AARP
Tom Laing	InterHab
Jenny Davis	Conlee
Lori Nuebel	SRS
John Belger	SRS
Rae Seiber	Gen Lgw Firm
Michelle Peterson	Kansas Governmental Consulting

Kansas Occupational Therapy Association
212 SW 8th Ave., Suite 202
Topeka, Kansas 66603



To: House Health Committee
From: R.E. "Tuck" Duncan
RE: HB 2496

HB2496 amends the definition of the "Practice of occupational therapy" (as shown in the *italics*, as follows) "means the therapeutic use of purposeful and meaningful occupations (goal-directed activities) to evaluate and treat, pursuant to the referral, supervision, order or direction of a physician, a licensed podiatrist, a licensed dentist, *a licensed physician assistant, or an advanced registered nurse practitioner working pursuant to the order or direction of a person licensed to practice medicine and surgery, a licensed chiropractor, or a licensed optometrist,* individuals who have a disease or disorder, impairment, activity limitation or participation restriction that interferes with their ability to function independently in daily life roles and to promote health and wellness."

This is the identical language found in the physical therapy law as passed by the legislature in 2004. This amendment would allow a licensed physician assistant, or an advanced registered nurse practitioner working pursuant to the order or direction of a person licensed to practice medicine and surgery, or a licensed chiropractor in addition to the professionals already authorized to make referrals, to refer patients to an occupational therapist.

Since the enactment of the law affording PTs these referrals we have had many requests for OTs to be able to take these same referrals from a licensed physician assistant, or an advanced registered nurse practitioner working pursuant to the order or direction of a person licensed to practice medicine and surgery, or a licensed chiropractor.

To our knowledge there is no objection to this amendment. *Thank you for your attention to and consideration of this matter.*

Attachment 1
HHS 3-14-05

KAC *Kansas Alliance for Caregivers*

555 S. Kansas, Suite 201, Topeka, KS 66603 785/234-1363 866/448-3619 www.kansasallianceforcaregivers.org

AARP Kansas

March 14, 2005

Aldersgate Village

Center for Practical Bioethics

Good afternoon Chairman Morrison and members of the House Health and Human Services Committee. My name is Ernest Kutzley and I am the Chair of the Kansas Alliance for Caregivers. Thank you for this opportunity to provide comments in support of HCR 5011.

East Central Kansas Area Agency on Aging

The *Kansas Alliance for Caregivers (KAC)*, which includes key stakeholders from state and private entities, was formed in 2003 following a comprehensive home and community based long term care study conducted by the University of Kansas for AARP Kansas.

Jayhawk Area Agency on Aging

Kansas Advocates for Better Care

The study included the recommendation for more comprehensive statewide support for caregivers. The AARP Foundation, which received funding from the Administration on Aging to assist states with forming caregiver coalitions, selected Kansas as its first state to provide the training in building caregiver coalitions.

Kansas Association of Area Agencies on Aging

KAC's mission, to promote public awareness about caregiving and advocate for support and services to enhance access and availability of resources for current and future caregivers, has led the Alliance to develop the following goals:

Kansas Department on Aging

Kansas Foundation for Medical Care

- Identify the needs of caregivers in Kansas and complete an inventory of caregiver services in order to develop a one-stop outreach program and resource guide;
- Create a comprehensive educational campaign around the many facets of caregiving;
- Pursue legislative initiatives that will enhance the availability of caregiver services and supports.

Kansas State University

Midland Day Programs

Midland Hospice

During the past year the *KAC* has created caregiving brochures and a website which showcase member organizations and services they provide. These aids have been designed as a one-stop information center to assist Kansas professionals and caregivers in understanding how best to utilize the resources in their communities.

Office of Aging & Long Term Care, University of Kansas

Dr. Ernie Pogge Caregiver

In another 2003 survey conducted by AARP, an estimated 445,900 adults in Kansas, or 22 percent of the adult population, provide unpaid care to a relative or friend over 18 years of age. Of that group, 74 percent are over 50 years old, and 49 percent are over the age of 75. These findings reflect the growing population of Kansas seniors who require care and the growing population for caregivers who care for them.

KAC Vision-Kansans are recognized, valued, and supported as they fulfill their caregiver role

Attachment 2
HHS 3-14-05

Caregivers assume this role based on a commitment of dedication and an obligation to a loved one. They share one optimal goal – to assure that their loved ones receive the best care while maintaining the best quality of life possible.

During the past several years I have had the opportunity to be both a primary and secondary caregiver for two lovely ladies and close friends. Both Edith and Maude were in their late 80s and lived independently. It was both a privilege and challenge, while working full time, to provide assistance to both of these ladies to insure that they could safely remain in their homes and continue to live independent as long as possible. I am very glad to have had these experiences.

Former First Lady Roselyn Carter stated that there are only four kinds of people in the world: those who have been caregivers, those who are caregivers, those who will be caregivers and those who will need caregivers.

Therefore, on behalf of *KAC* we would like to thank this committee for introducing this resolution and respectfully request that you vote in favor of HCR 5011 as a step in recognizing the efforts of caregivers in Kansas.

Thank you,
Ernie Kutzley



March 14, 2005

Representative Morrison, Chair

House Health and Human Services Committee

Good afternoon Chairman Morrison and Members of the House Health and Human Services Committee. My name is Alyce Brown and I am a volunteer with AARP. I am the Regional Volunteer Director for the Dallas Region of AARP, which covers a ten state area that includes Kansas. As a lifelong Topekan and a caregiver, I am happy to be here to represent the views of our more than 350,000 members here in my state. Thank you for this opportunity to express our support for HCR 5011 and caregivers of Kansas. Long-term care and caregiving are high priority issues for AARP Kansas.

“Family caregivers” refer to people who provide long-term care services and support to family members, friends, relatives and neighbors. “Unpaid caregivers”, which often include family members and friends, refer to people who provide care without pay.

In the 2004 AARP survey “Caregiver in the U.S., Spotlight on Kansas” it was estimated that 445,900 adults in Kansas, 22 % of the total population, provide unpaid care to a relative or friend 18 or older.

These caregivers are a diverse group. Their caregiving experiences range from those that are relatively easy to those that are burdensome. We know that being a caregiver makes those who carry the heaviest responsibilities vulnerable to risk associated with poorer health, emotional stress and economic hardships.

As the baby boom generation ages over the next 25 years, the ranks of those needing care will increase and the numbers of those available to provide care will decrease. Future caregivers may feel they have even less choice about becoming a caregiver or caregivers may have to provide care for two, three or more recipients. This will greatly increase the caregiver burden.

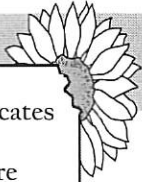
AARP believes that unpaid caregivers deserve our attention and our assistance by:

Ενθουραγινγ φαμιλιεσ ανδ στατεσ το βεγιν το βεγιν to plan for the future regarding needed services for the long-term care population.

As a step in recognizing the efforts of those who carry out the primary role of the unpaid caregiver, we respectfully request that you support Kansas Caregivers by supporting HCR 5011. Thank you for your consideration in this matter.

Respectfully

Attachment 3
HHS 3-14-05



Kansas Advocates
for
Better Care

Celebrating 30 years

1975 - 2005

HCR 5011

Recognition and Appreciation for Caregivers

Board of Directors

Evie Curtis
President
Overland Park

Monday, March 14, 2005

Molly M. Wood
Vice-President
Lawrence

Honorable Chairman Morrison and
House Health and Human Services Committee Members:

Margaret Farley
Treasurer
Lawrence

Kansas Advocates for Better Care (KABC) strongly supports HCR 5011.

Janet Ikenberry
Secretary
Lawrence

While KABC is a statewide non-profit organization of consumers that promotes quality long-term care for persons living in licensed adult care homes, we are very mindful that the care is being provided by not only paid professional caregivers but also volunteer caregivers. There are numerous studies that illustrate the task of caregiver as being very demanding, especially considering many caregivers hold full-time jobs and are attempting to provide hands-on care that will not be provided otherwise. I can imagine that many of you have been in that very situation yourselves.

Barbara Braa
Eudora

Jean Krahn
Manhattan

Eloise Lynch
Salina

Alversa & Jesse Milan
Kansas City

Jeanne Reeder
Overland Park

Steve Reiner
Newton

Ellen Samuelson
Hesston/Newton

Jo Scott
Olathe

Julia Wood
Wichita

Linda Wright
Olathe

I, too, have the experience of providing care; it was for my mother who spent six months on hospice. I was able to take time from work to relieve my father from the caregiving duties. His health was suffering from the 24-hour-a-day needs of my mother. He not only needed words of encouragement but he also needed sleep!

This experience and my work with KABC are the reasons that motivate KABC to be a member of the Kansas Alliance for Caregivers. We hope to be helpful to volunteer caregivers as they need information and encouragement.

KABC encourages the Kansas Legislature to recognize family and volunteer caregivers across our State. KABC encourages the Committee to favorably pass on HCR 5011. Thank you for this opportunity to testify.

Deanne Bacco
Executive Director

Honorary Board Member
William Dann

Executive Director
Deanne Bacco

*Attachment 4
HHS 3-14-05*

[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 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~~

Re-Insert:
*Authorizing the state protection
advocacy system access
to certain facilities, individuals
care from such facilities
and records of such individual*

Attachment 5
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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~~

Insert new #D
 (d)The state protection and
 42 U.S.C. 15041, 42 U.S.C.
 (1) have reasonable unacco
 with disabilities in any facil
 and
 (2) have reasonable unacc
 licensed under this section,
 (3) have access to the recor
 disability when the protecti
 complaint of abuse or negle
 the abuse or neglect of an i
 any facility licensed under t

- ~~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. 3. 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**

Section 2. The Secretary of Services shall license and monitor home and other residential services such services which serve to assist individuals who are not self-directing their services is already licensed.

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. ~~*in*~~ *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 respectively ascribed*
37. *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*

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.~~ 4. *K.S.A. 75-3307b is and K.S.A. 2004 Supp. 65-5603 are*
8. *hereby repealed.*
9. ~~Sec. 3-4.~~ 5. *This act shall take effect and be in force from and after its*
10. *publication in the statute book.*



Disability Rights Center of Kansas

3745 SW Wanamaker Road ♦ Topeka, KS 66610

785.273.9661 ♦ 877.776.1541 (VTDD)

785.273.9414 FAX ♦ www.drckansas.org

info@drckansas.org

DATE: March 11, 2005

TO: Representative Jim Morrison, Chairman
Members of the Committee

FROM: Michael Donnelly, Director of Policy & Outreach

RE: SB 116

I wanted to follow-up on some conversations I have had with members of the Committee in the last few days. As I said in my testimony before the Committee SB 116, with the amendments proposed by Attorney General Kline and DRC, will close gaps in the system designed to protect people with mental illness, developmental or other disabilities that reside in small group homes, residential care facilities or other residential settings from being abused, neglected or exploited. There were concerns raised about the Senate Committee's version that we believe we have addressed all of those concerns, e.g., schools, nursing facilities, DD providers and community mental health centers. DRC believes that the balloon amendment offered on March 11, 2004 to SB 116 has eliminated the last of those concerns.

That being said, there continues to be some confusion with regard to the protection and advocacy system access authority language. Please understand that without DRC's federal access authority the Kaufman houses would still be operating and their residents would still be experiencing their former lives. We are investigating another residential location even now using that same authority.

However, when DRC went to the Kaufman house in the beginning the DRC staff were rejected because the federal authority was not recognized by the facility operators. After convincing the local law enforcement agency of that authority DRC was able to contact the resident referred to us by Attorney general Phill Kline. The facility we are currently investigating needed convincing too. The facilities licensed under SB 116 (K.S.A. 75-3307b) need to be clear that the officially designated protection and advocacy system has the responsibility and right to investigate abuse, neglect and exploitation. I have provided you with language from the federal law (42 USC 15043 and CFR 1386.19) that gives the

*Attachment 6
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same authority to access places where people are served, the people themselves and their records when abuse and / or neglect has occurred or there is reason to believe it has occurred. This is not a new concept.

As you consider SB 116 please remember that the state has several tools available to prevent and investigate abuse, neglect and exploitation of its citizens with disabilities. Regardless of whether it is SRS, the Department on Aging or the designated Protection and Advocacy System (DRC), the state law should empower each of those tools to carry out their responsibilities without un-necessary and false barriers to protecting the most vulnerable of Kansas citizens.

Thank you for your consideration.

See below language from federal law and federal regulations on protection and advocacy system access authority:

US CODE: Title 42,15043

TITLE 42 > CHAPTER 144 > SUBCHAPTER I > Part C > § 15043Prev | Next
§ 15043. System required

Release date: 2003-07-24

(a) System required

In order for a State to receive an allotment under part B of this subchapter or this part—

(1) the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system shall—

(A) have the authority to . . .

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) . . .

(D) . . .

(E) . . .

(F) . . .

(G) . . .

(H) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual, in order to carry out the purpose of this part;

The locations where the Protection and Advocacy System is responsible to investigate abuse, neglect or exploitation is defined in:

C.F.R 1386.19

Subpart B—State System for Protection and Advocacy of the Rights of Individuals with Developmental Disabilities

§ 1386.19 Definitions.

As used in §§ 1386.20, 1386.21, 1386.22 and 1386.25 of this part the following definitions apply:

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

Facility includes any setting that provides care, treatment, services and habilitation, even if only “as needed” or under a contractual arrangement. Facilities include, but are not limited to the following: Community living arrangements (e.g., group homes, board and care homes, individual residences and apartments), day programs, juvenile detention centers, hospitals, nursing homes, homeless shelters, jails and prisons.

Full Investigation means access to facilities, clients and records authorized under these regulations, that is necessary for a protection and advocacy (P&A) system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.