

Approved: February 13, 2006
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 P.M. on February 9, 2006, in Room 526-S of the Capitol.

All members were present except Representatives Kelley, Kiegerl, Colloton, Landwehr, Hill, and Bethell, all of whom were excused.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Mary Galligan, Kansas Legislative Research Department
Renaë Jefferies, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Ellen Carson, President, Kansas State Nurses Association
Debra Zehr, Executive Vice President, Kansas Association of Homes and Services for the Aging
Douglas Smith, Executive Director, Kansas Academy of Physicians Assistants
Jerry Slaughter, Executive Director, Kansas Medical Society
Margaret Farley, Attorney, Lawrence

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2342**.

Ellen Carson, President, Kansas State Nurses Association, spoke as a proponent. (Attachment 1) She said that in most instances when a resident of a long-term-care facility dies, a Registered Nurse (RN) or an Advanced Registered Nurse Practitioner (ARNP) is present, but a physician rarely is, causing needless delay in making arrangements in caring for the body. She noted that 18 states presently allow RNs or ARNPs to pronounce death. She recommended two minor changes in the bill and spoke favorably regarding the exceptions for other-than-natural cause of death or for organ-donor death.

Debra Zehr, Executive Vice President, Kansas Association of Homes and Services for the Aging, testified as a proponent. (Attachment 2) She noted an inconsistency in language between line 14 ("ARNP *and* RN") and line 26 ("ARNP *or* RN"), suggesting making the wording for both *or*.

Douglas Smith, Executive Director, Kansas Academy of Physicians Assistants, provided testimony as a proponent, (Attachment 3) suggesting that Physicians Assistants be included as one of the health-care providers who could make a determination and pronouncement of death. (Attachment 4)

Jerry Slaughter, Executive Director, Kansas Medical Society, also testified as a proponent, (Attachment 5) suggesting two amendments: one, to add physicians assistants to RNs and ARNPs, and the other to reference K.S.A. 77-205, the statutory definition of death, to show that the definition is not altered with this bill. (Attachment 6)

Margaret Farley, Attorney, Lawrence, spoke as an opponent to the bill, noting that her concerns were not with hospice care, but with adult-care facilities whose employees, given the authority to pronounce death, might cover up an employee's negligence. (Attachment 7) To improve protection to Kansas citizens, she recommended strengthening the statute either to require an on-site determination by a physician or at least a coroner's examination or review. She referenced Deanne Bacco's testimony below regarding suggestions by the Sedgwick County Coroner.

Three written testimonies were accepted by the committee: Cindy Luxem, President, Kansas Health Care Association, a proponent; (Attachment 8) Deanne Bacco, Executive Director, Kansas Advocates for Better Care, (Attachment 9) and Jo Scott, Olathe, a former board member of Kansas Advocates for Better Care, (Attachment 10) both opponents.

Members posed several questions. Ms. Farley said it was important that the person making the pronouncement of death not be an employee of the facility in which the person died. She replied that the problem is that the bill ignores the small percentage of individuals who die because of negligence or abuse by employees of a facility. Ms. Zehr acknowledged that most adult-care residents who die have written DNR (Do Not Resuscitate) orders. Ms. Carson replied that the usual procedure when a resident dies is that a nurse calls the attending physician, who pronounces death over the phone. From her experience as a nurse, she could not recall a doctor ever coming to the facility to make the pronouncement.

A fiscal note was provided for members. (Attachment 11)

The Chair closed the hearing.

Staff Mary Galligan gave a briefing on HB 2715 regarding state radiation control fees. She said the bill amends the statute to add a new fee (\$25 per machine) for independent portable gauges, commenting that because it is a set fee, there is no need to adopt rules and regulations. The Chairman added that the intent of the bill is to correlate the fee to the number of machines rather than to a county, since some counties have several machines and others few. Answering a question, Ms. Galligan said the bill applies only to the portable gauges, not to other devices that give off radiation.

The minutes for February 8, 2006, were approved.

A motion was made and seconded to recommend **HB 2678** favorably for passage and place it on the consent calendar. The motion passed.

The meeting was adjourned at 2:21 p.m. The next meeting is scheduled for Monday, February 13, 2006.

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

DATE: February 9 2006

NAME	REPRESENTING
<i>Arnon Stutzman</i>	KSNA
<i>Steve Edger</i>	KSRN
<i>Patty Brown</i>	KSRN
<i>Jenny Eschbrenner</i>	KHPCO
<i>Louise White</i>	KSNA
<i>Orle Ann Lambert</i>	
<i>Mary Jennings</i>	
<i>Go Scott</i>	
<i>Jamie Epstein</i>	Rep. Storm
<i>Tom Conley</i>	KDHE
<i>Rochelle Thompson</i>	WU
<i>Denae Williams</i>	WU
<i>Chip Wheeler</i>	As'n of Osteopathic Med.
<i>Ellen Carson</i>	KSNA
<i>Sarah Tidwell</i>	KSNA
<i>David Whitfill</i>	KDHE
<i>Doug Smith</i>	Ks Academy of Physician Assistants
<i>Lindsey Douglas</i>	KHPCO
<i>Lindsey Douglas</i>	Hein Law Firm



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ELLEN CARSON, PH.D., A.R.N.P., B.C.
 RESIDENT

THE VOICE AND VISION OF NURSING IN KANSAS

TERRI ROBERTS, J.D., R.N.
 EXECUTIVE DIRECTOR

H.B. 2342--Pronouncement of Death by R.N.s and ARNPs



Chairman Morrison and members of the House Health and Human Services Committee, I am Ellen Carson, PhD, A.R.N.P., the President of the KANSAS STATE NURSES ASSOCIATION. We appreciate the opportunity to address the committee on this legislation. In most instances in long-term-care facilities and hospice-care situations, RN's and ARNP's are physically present and available when a patient dies. In reality, physicians are rarely present, and usually available by telephone or pager only.

There are over 28,000 Registered Nurses licensed in Kansas, 649 long-term-care facilities, and 27 licensed hospices in Kansas. Registered Nurses are educated, highly-trained professionals, who have the skills to pronounce death in the long-term-care and hospice settings. There are 18 states (plus the District of Columbia and Guam) that permit either RN's or ARNP's, or both, to pronounce death in a variety of settings and circumstances. (See list below.)

Currently, when a patient dies in a hospice or long-term-care setting, the R.N. or A.R.N.P. must make an assessment of the patient's status, including vital signs, and call or page a physician, who then, over the telephone, pronounces the patient deceased. In situations where there is a delay between the time of death and the time of the return communication by the physician, an unnecessary and avoidable element of stress could be prevented for staff, and family of the deceased, by allowing the R.N. or A.R.N.P. to expeditiously pronounce death and initiate the processing of the body. In certain religions, there are strict requirements for prompt and timely preparation of the body for the funeral ritual.

We are recommending that this bill be amended slightly by removing the following phrases:

“and employed by such adult care home at the time of apparent death of such patient, in the absence of a physician,” from lines 15-16;

“and employed by such hospice at the time of apparent death of such patient, in the absence of an attending physician,” from lines 27-29.

Attachment 1
 HHS 2-9-06

“employment status” of an ARNP and/or LPN is irrelevant to making a clinical assessment. The intent of the bill is to permit the pronouncement by either an R.N. or an ARNP in the two settings, it would be more straightforward to limit just the settings (hospice and long-term care facilities), and not impose an employment status. In some hospice settings, volunteer RN’s may be used to attend deaths.

In situations involving organ donation, or death from other than natural causes, which we anticipate will probably not come into play in the hospice setting, but which may occur in the long-term-care setting, we support the physician pronouncing death, as stated in the bill. This sometimes involves maintaining life support to meet organ harvesting requirements, and can be complex.

To summarize, RN’s and ARNP’s have both the knowledge and skills to pronounce death in hospice and long-term-care settings, and we support the physical presence of an R.N. or ARNP pronouncing, rather than the telephoned verbal-order method of pronouncement of death currently in place. *Thank you.*

States With Statutes Giving Nurses the Authority to Pronounce Death

- Alaska
- Arkansas
- Connecticut – Nurse midwife
- Connecticut – Registered nurse
- Connecticut – Advanced practice nurse
- Delaware – Registered nurse
- Delaware
- District of Columbia
- Georgia – registered nurse, nursing home
- Georgia – registered nurse, hospice
- Guam
- Hawaii - APRN
- Iowa – Licensed practical nurse and registered nurse
- Kentucky – Registered nurse, ambulance
- Kentucky – Registered nurse, hospice
- Maine – APRN to sign death certificate
- Massachusetts
- Nevada
- Nevada
- New Hampshire
- New Hampshire
- New Jersey – Registered nurse
- New Jersey
- Oregon – APRN to sign death certificate
- Pennsylvania – Professional nurse
- Tennessee
- Tennessee
- Washington
- Wisconsin



To: Representative Jim Morrison, Chair, and Members
House Health and Human Services Committee
From: Debra Zehr, Executive Vice President
Date: February 9, 2006

Testimony in support of House Bill 2342

Thank you Chairman Morrison, and Members of the Committee, for this opportunity to testify in support of House Bill 2342.

The Kansas Association of Homes and Services for the Aging (KAHSA) represents 160 not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living facilities, senior housing and community service providers serving over 20,000 older Kansans every day.

House Bill 2342 would permit an advanced registered nurse practitioner and a licensed professional nurse to pronounce the death of an adult care home resident or hospice patient in certain instances. We support this measure. It will be especially useful in sparsely populated areas of the state, where physicians are very few and far between.

Thank you for your consideration of this bill. I would be happy to answer questions.

785.233.7443 fax 785.233.9471 217 S.E. 8th Avenue, Topeka, KS 66603-3906 kahsa.org kahsainfo.org

A state affiliate of the American Association of Homes & Services for the Aging

Attachment 2
HHS 2-9-06

Kansas Academy of Physician Assistants

Post Office Box 597 • Topeka • Kansas • 66601-0597 • 785-235-5065

TESTIMONY TO THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ON HOUSE BILL NO. 2342

February 9, 2006

Chairman Morrison and Members of the Health and Human Services Committee:

Thank you for the opportunity to present testimony House Bill No. 2342. I am Doug Smith and I serve as the Executive Director for the Kansas Academy of Physician Assistants (KAPA).

KAPA serves as the official representative voice for the Physician Assistants (PA) in Kansas. Our purpose is to enhance the quality of medical care of the citizens of Kansas by providing medical education to physician assistants, other health professionals, the legislature, governing bodies and to the public. In Kansas, there are more than 660 Physician Assistants licensed by the State Board of Healing Arts. The Kansas Academy of Physician Assistants membership includes 325+ licensed and practicing PAs and student members.

A Physician Assistant serves as an integral part in the practice of medicine by providing needed health care services across this state. Without the use of Physician Assistant the accessibility to medical care can be limited, particularly in rural areas.

In many of our communities, Physician Assistants are providing many medical services and are qualified to evaluate, diagnose and treat many illnesses and conditions, as well as performing urgent lifesaving procedures. Physician Assistants also offer patient education and counseling.

The Kansas Academy of Physician Assistants appears today to request consideration of the following amendments to House Bill No. 2342. We believe this to be a friendly amendment and would be supported by the sponsors of the bill.

We ask that you add the attached wording to House Bill No. 2342 and include a physician assistant to the healthcare providers identified in this legislation. (The language would be inserted on page 1, lines 13 and 25.)

We ask for your favorable action on this request as you consider this legislation.

Thank you for your time today and consideration.

Douglas E. Smith
Executive Director
Kansas Academy of Physician Assistants

*Attachment 3
HH 5 2-9-06*

HOUSE BILL No. 2342

By Committee on Health and Human Services

2-8

9 AN ACT concerning nurses and nursing; relating to the pronouncement
10 of death.

11

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

13 Section 1. When a patient dies in a licensed adult care home, **a physician assistant or an**
14 advanced registered nurse practitioner **licensed in the state and or** a registered professional nurse
15 who ~~are~~ **is** licensed in this state and employed by such adult care home at
16 the time of apparent death of such patient, in the absence of a physician,
17 may make the determination and pronouncement of the death of such
18 patient; provided, however, that when such patient is a registered organ
19 donor only a physician may make the determination or pronouncement
20 of death; provided further, that when it appears that a patient died from
21 other than natural causes, only a physician may make the determination
22 or pronouncement of death. Such determination shall be made in writing
23 on a form approved by the secretary of health and environment.

24 Sec. 2. When a patient who is terminally ill or whose death is antic-
25 ipated and who is receiving hospice care from a licensed hospice dies, **a physician assistant or an**
26 advanced registered nurse practitioner **licensed in the state and or** a registered professional nurse
27 who ~~are~~ **is** licensed in this state and employed by such hospice at the time
28 of apparent death of such patient, in the absence of an attending physi-
29 cian, may make the determination and pronouncement of the death of
30 such patient; provided, however, that when a hospice patient is a regis-
31 tered organ donor, only a physician may make the determination or pro-
32 nouncement of death. Such determination or pronouncement shall be in
33 writing on a form approved by the secretary of health and environment.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.

Attachment 4
HHS 2-9-06



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To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Subject: HB 2342; concerning the determination of death in certain circumstances

Date: February 9, 2006

The Kansas Medical Society appreciates the opportunity to submit the following comments on HB 2342, which allows nurse practitioners and registered nurses, in the absence of a physician, to make a determination of death of patients in nursing homes and hospices, when such patients died as a result of natural causes.

We have two suggested amendments to HB 2342. The first is to include licensed physician assistants along with nurse practitioners and registered nurses as health professionals authorized to make a determination of death in the circumstances listed in the bill. The second amendment is a reference to K.S.A. 77-205, which is the existing uniform determination of death act, which is found at: <http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=36205>. This amendment is just for consistency, and to clarify that the standard which must be present for a determination of death to occur has not been affected by this legislation. We have attached our suggested amendments.

Thank you for the opportunity to offer these comments.

Attachment 5
HHS 2-9-06

Session of 2005

HOUSE BILL No. 2342

By Committee on Health and Human Services

2-8

9 AN ACT concerning nurses and nursing; relating to the pronouncement
10 of death.

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

13 Section 1. When a patient dies in a licensed adult care home, an
14 advanced registered nurse practitioner and a registered professional nurse
15 who are licensed in this state and employed by such adult care home at
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19 donor only a physician may make the determination or pronouncement
20 of death; provided further, that when it appears that a patient died from
21 other than natural causes, only a physician may make the determination
22 or pronouncement of death. Such determination shall be made in writing
23 on a form approved by the secretary of health and environment.

, a physician assistant, or

as defined by K.S.A.77-205

24 Sec. 2. When a patient who is terminally ill or whose death is antic-
25 ipated and who is receiving hospice care from a licensed hospice dies, an
26 advanced registered nurse practitioner or a registered professional nurse
27 who are licensed in this state and employed by such hospice at the time
28 of apparent death of such patient, in the absence of an attending physi-
29 cian, may make the determination and pronouncement of the death of
30 such patient; provided, however, that when a hospice patient is a regis-
31 tered organ donor, only a physician may make the determination or pro-
32 nouncement of death. Such determination or pronouncement shall be in
33 writing on a form approved by the secretary of health and environment.

, a physician assistant,

as defined by K.S.A.77-205_A

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.

Attachment 6
HHS 2-9-06

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Regarding HB 2342
Allowing nurses employed at adult care homes to pronounce death
February 9, 2006

Honorable Chairman Morrison and Members of the Committee:

My name is Margaret Farley. I represent the Kansas Trial Lawyers Association, an association of attorneys representing Kansas consumers and families. I am a volunteer officer for Kansas Advocates for Better Care, former executive director of KABC, and a former president of the National Citizens' Coalition for Nursing Home Reform. I now represent persons who have been seriously injured or killed by negligent nursing home care.

In these various roles I have reviewed too many reports of people who die in nursing homes due to either unknown or unexpected causes or under suspicious or entirely preventable circumstances. Examples include deaths shortly after head injuries, bed rail strangulations, sexual or physical abuse resulting in fractures or massive bruising, septicemia due to massive or multiple bed sores, malnutrition, dehydration, over-medication, diabetic or hypoglycemic coma, hypothermia or hyperthermia, or rib or other major or high risk fractures.

My legal cases are always reviewed by a physician expert; many times the expert is out of state; many times I am asked why the case was never referred to a coroner at the time of death. I never have a good answer, except that Kansas does not provide physician oversight of nursing home deaths. Remember also that this bill deals with a wide array of adult care homes, not just nursing facilities, but also the far less regulated assisted living type facilities, where the risks are even greater due to less regulation.

While many states are following the example of Arkansas and other states and either implementing or considering reforms to strengthen physician and coroner oversight of deaths in nursing homes, this bill turns away from such

Terry Humphrey, Executive Director

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Attachment 7
HHS 2-9-06

reforms. HB 2342 is basically a codification of existing widespread poor practice in the pronouncement of death of adult care home residents.

Many times family members are faced with the sudden or unexpected death of a resident in an adult care home. The question, of course, is not whether the person died, but rather, how and why they died. Providing statutory authority for a nurse practitioner and a nurse employed by the nursing home to pronounce death will not answer these questions satisfactorily, and in questionable circumstances the bill will not provide the necessary checks and balances. Valuable evidence will not be preserved.

The statute may also permit what is not permissible under the nurse practice act. In order to determine that the death occurred from other than natural causes, and thus permit the nurses to pronounce death, the nurses will be required to make a preliminary determination, i.e., a medical diagnosis that the death was from natural causes. In some cases, this would be a difficult call for even a trained coroner. Why turn the duty over to direct care staff. What if there is a conspiracy to cover up an unnatural or a preventable or questionable death? How will this bill guard against such conspiracies or even the mere the lack of training to investigate a death scene?

KTLA opposes this bill as it relates to adult care homes, and strenuously urges the Committee not to report the bill favorably, or to amend the bill to delete section 1 entirely.

Respectfully submitted,

Margaret Farley



February 8, 2006

Testimony

Before the
House Health and Human Services Committee

By
Cindy Luxem, President/CEO
KANSAS HEALTH CARE ASSOCIATION

Chairman Morrison and Members of the Committee:

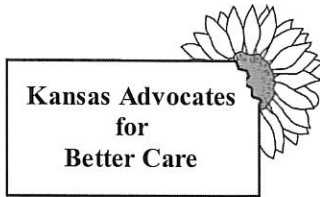
The Kansas Health Care Association, representing approximately 185 long-term-care facilities including nursing homes, assisted living facilities, homes plus, nursing facilities for mental health, residential health care and long-term-care units of hospitals, appreciates the opportunity to testify in support of House Bill 2342.

HB 2342 allows the pronouncement of death by an advanced registered nurse practitioner and a registered professional nurse in the adult care home where they are employed. Even though this might not seem like a big issue to some individuals, when someone has passed, it is very important to have this pronouncement happen in a timely manner. Particularly in rural settings where a delay in reaching a doctor might take time, if the pronouncement could be completed more efficiently with the appropriate staff we believe this would be a kinder, gentler way of handling this difficult event

We ask you support HB 2342.

Thank you.

*Attachment 8
HHS 2-9-06*



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HB 2342
Allowing nurses employed at nursing homes to pronounce death

BOARD OF DIRECTORS

February 9, 2006

Barbara Braa
President
Eudora

Honorable Chairman Morrison
and Committee Members:

Molly Wood
Vice-President
Lawrence

Kansas Advocates for Better Care is opposed to HB 2342.

Margaret Farley
Treasurer
Lawrence

Kansas Advocates for Better Care (KABC) is a statewide non-profit organization of consumers that advocates for quality long-term care. It has been assisting/guiding consumers for more than 30 years as they try to understand and make use of the complex long-term care system of services.

Evie Curtis
Secretary
Overland Park

One aspect of quality care is the dying process and experience. This bill places a heavy burden on nurses employed at nursing homes. It expects the nurses to be not only responsible for oversight of providing health care but also to use their professional judgment to "make the determination and pronouncement of death", except for registered organ donors and death from "other than natural causes". The heavy burden arises when the nurses are torn between allegiance to the nursing home (and their job) and allegiance to their professional responsibility when death from "other than natural causes" could have various interpretations.

Jean Krahn
Manhattan

Eloise Lynch
Salina

Alversa & Jesse Milan
Kansas City

Earl Nehring
Lawrence

Jeanne Reeder
Overland Park

Steve Reiner
Newton

Artie Shaw
Lawrence

Julia T. Wood
Wichita

There are enough suspicious deaths in nursing homes that some coroners are concerned about the existing process, and would be even more concerned about this proposed change that sets the stage for possible cover-up of suspicious death. For example, I have recently had communications with Dr. Mary Dudley, the Chief Medical Examiner of Sedgwick County, about this topic. Her suggestions are: (1) refer all nursing home deaths to the medical examiner/coroner, (2) educate nursing home personnel that any suspicious deaths involving law enforcement (abuse cases) and any unnatural deaths (suicides/accidents) must be reported to the ME/Coroner, (3) establish a statewide elder death review board, and (4) update the out-dated Kansas coroner laws to require national death investigator certification for all death investigations and follow national standards for reportable deaths and referrals for forensic autopsies.

Honorary Board Member
William A. Dann

Thank you for this opportunity to testify in opposition to HB 2342.
Deanne Bacco, Executive Director

EXECUTIVE DIRECTOR
Deanne Bacco

Attachment 9
HHS 2-9-06

HB 2342

Allowing nurses at nursing homes to pronounce death on nursing home residents

February 9, 2006

Honorable Chairman Morrison and Committee Members:

My family and I are opposed to HB 2342.

Our mother, Martha Bryant, died an untimely, traumatic and suspicious death on Dec. 19, 1998, at a nursing home in Topeka, Kansas. Her body was wedged between the mattress and the bedrail, she had bruises and abrasions on her face and neck, and body fluids were on the floor at the foot of her bed. The scene was cleaned up and we were contacted and told by the nurse in charge that our mother had "stopped breathing," "passed away," and that her "vital signs had ceased." Upon further questioning, we were never told by the nurses in charge that there was anything unusual about our mother's death.

The nurse called the doctor that morning to tell him of our mother's death. They didn't tell him of the true circumstances in which they found her. Those nurses had reason and an obligation to be honest with the doctor, the coroner, the police, and most especially the family, and they were not.

On the day of our mother's funeral, the police department received a tip from an anonymous caller who said that our mother had been abused, and an investigation followed. The day of our mother's funeral was interrupted by the funeral director telling us that an autopsy had been ordered and we would have to proceed with a mock funeral before sending our mother's body back to Topeka for the autopsy. The autopsy determined that our mother died of asphyxiation.

The above information was gathered through a police investigation and depositions of those people involved.

We still don't know the truth about our mother's death. The cover-up by the nurses on duty and the Director of Nursing at that nursing home ensured that we probably will never know.

Thank you for your attention and consideration.

Jo Scott
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913-254-0702
bryantscott@kcnet.com

Attachment 10
HHS 2-9-06

March 7, 2005

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 171-W
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2342 by House Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2342 is respectfully submitted to your committee.

HB 2342 would allow either an advanced registered nurse practitioner or a registered nurse licensed in Kansas and employed by an adult care home or hospice facility to make the determination and pronouncement of the death of a patient in the absence of a physician. The bill would not apply to situations in which the patient is a registered organ donor.

The Board of Nursing and the Board of Healing Arts both indicate that the passage of the bill would have no fiscal effect.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Marty Kennedy, Dept. on Aging
Betty Johnson, Healing Arts
Roberta Kellogg, Board of Nursing

Attachment 11
HHS 2-9-06