

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:36 P.M. on February 2, 2006 in Room 527-S of the Capitol.

All members were present except:

- Representative Eric Carter- excused
- Representative Ray Cox- excused
- Representative Joe McLeland- excused
- Representative Scott Schwab- excused

Committee staff present:

- Melissa Calderwood, Kansas Legislative Research Department
- Terri Weber, Kansas Legislative Research Department
- Ken Wilke, Revisor of Statutes Office
- Sue Fowler, Committee Secretary

Conferees appearing before the committee:

- Dick Cook, Kansas Insurance Department, Topeka, KS
- Kevin McFarland, Kansas Association of Homes and Services, Topeka, KS
- Marlin Johnson, Bethany Home Association, Lindsborg, KS
- Margaret Farley, Kansas Trial Lawyers Association, Topeka, KS
- Larry McGill, Kansas Association of Independent Insurance Agents, Topeka, KS

Others attending:

See attached list.

Introduction of Bills:

Representative Kenny Wilk requested introduction of a bill prohibiting insurance companies from not using accepted standards of care in determining what is medically necessary. Representative Dillmore moved for introduction of the bill. Seconded by Representative Bonnie Sharp. Motion carried.

Representative Mitch Holmes moved for introduction of a committee bill regarding service contracts. Seconded by Representative Faber. Motion carried.

Hearing on:

HB 2567 **Enacting the adult care home group-funded pool act**

Representative Bethell, District 113, and Emalene Correll, Kansas Legislative Research Department, gave an overview an explanation of **HB 2567**.

Proponents:

Dick Cook, Kansas Insurance Department, (Attachment #1), gave testimony in support of **HB 2567**.

Kevin McFarland, Kansas Association of Homes and Services, (Attachment #2), presented testimony in support of **HB 2567**.

Marlin Johnson, Bethany Home Association, (Attachment #3), appeared before the committee in support of **HB 2567**.

Cindy Luxem, Kansas Healthcare Association, (Attachment #4), presented written testimony in support of **HB 2567**.

Opponents:

Margaret Farley, Kansas Trial Lawyers Association, (Attachment #5), gave testimony in opposition of

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on February 2, 2006 in Room 527-S of the Capitol.

HB 2567.

Larry McGill, Kansas Association of Independent Insurance Agents, (Attachment #6), presented testimony in opposition of **HB 2567.**

Hearing closed on **HB 2567.**

Representative Dillmore moved to approve the committee minutes of January 31, 2006. Seconded by Representative Faber. Motion carried.

Meeting adjourned at 4:54 P.M.

Next meeting will be Tuesday, February 7, 2006, at 3:30 P.M., in Room 527-S.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
HB 2567—ADULT CARE HOME GROUP-FUNDED POOL ACT
HOUSE COMMITTEE ON INSURANCE
February 2, 2006

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. House Bill 2567 would enact the adult care home group-funded pool act.

Currently there is only one company licensed in Kansas that is willing to write the liability coverage for adult care homes. As a result, many care homes have been forced to look to the "excess lines" market which is a group of companies that are not regulated by our department. As a result, the care homes are finding the rates offered by these excess lines companies to be cost prohibitive.

The bill you have before you is an attempt by the adult care home industry to solve an availability problem and we are supportive of their goal. It is worth noting that our support is based on two critical factors; (1) the fact that we recognize a serious availability problem in this particular marketplace, and (2) that the adult care home industry is willing to secure re-insurance for their pool. It is because of these two factors that we recommend the committee report HB 2567 favorable for passage.

Thank for the opportunity to speak today I would be happy to stand for any questions the committee may have.

Dick Cook
Supervisor
Property and Casualty Division

House Insurance
Date: 2-2-06
Attachment # 1



Date: February 2, 2006

To: Chairman Clark Shultz
Members of the House Insurance Committee

From: Kevin D. McFarland, Executive Vice President
Kansas Association of Homes and Services for the Aging

Testimony in Support of House Bill 2567

Chairman Shultz and members of the committee; thank you for the opportunity to appear before you in favor of House Bill 2567.

The Kansas Association of Homes and Services for the Aging (KAHSA) represents 160 not-for-profit nursing homes, retirement communities, senior housing facilities, hospital based long term care units and community service providers serving over 20,000 older Kansans every day. Our members' sole mission is to provide caring services to elder Kansans.

Over the past seven years adult care home providers in Kansas and the nation have experienced an insurance crisis. Prior to this, some of our members paid as little as \$35 premium per licensed bed for general and professional liability insurance. Today premiums range from \$200 to over \$1,500 per licensed bed for the same coverage or less. This has resulted in increased cost to the State. Medicaid paid \$5.7 million in 1999 for liability insurance and a \$15.8 million tab last year, or an increase of 277%. It is for this reason that the Medicaid Reform Committee asked for introduction of this bill.

During this market cycle KAHSA has explored and pursued a number of options for our members. We have worked with individual carriers, conducted a feasibility study on the formation of a captive insurance company, attempted to create a new specialty insurance product, and developed and promoted a membership-wide risk management initiative and risk management toolkit.

The current liability insurance market is reminiscent of the workers compensation insurance crisis in the late 1980's when the traditional market abandoned adult care homes to the state assigned risk plan. Because enabling legislation was already in place, KAHSA was able to move quickly to form a group funded workers compensation pool. Now KING has been in operation for nearly 16 years. Members have seen premium rates drop over 50% with nearly \$5 Million in unused premium returned to them. Safe working practices have been the cornerstone of KING's success. In fact, our members are leaders in adopting safer lifting and transferring practices – the major cause of workplace accidents and injury in adult care homes.

House Insurance
Date: 2-2-06
Attachment # 2

HB 2567 provides enabling legislation for adult care homes to form a group-funded liability pool patterned after the group-funded workers compensation pool act. We have worked closely with the Kansas Insurance Department on the language of the bill and have addressed any concern raised by the Department.

Main components of the Bill:

- Five or more adult care homes who are members of the same bona fide trade association may enter into agreements to pool their liabilities for general and professional liability.
- The combined net worth of all members applying for coverage on the inception date of the pool is in an amount not less than \$1,000,000.
- The gross annual premium of the pool will be not less than \$250,000.
- Each member must sign an indemnification agreement jointly and severally binding the group and each member.
- Requires excess insurance at levels or amounts approved by the Commissioner of Insurance.
- Premium contributions must be developed on rates based upon an actuary study and submitted to the Commissioner of Insurance for approval.
- Trustees of the fund may declare a refund of any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations as approved by the Commissioner of Insurance.

At the request of the Kansas Insurance Department, and with our agreement, we would like to offer some brief amendments to the bill. If you would like to follow along with me on the attached document, I will go over these amendments briefly. (See attachment.)

The Adult Care Home Group-Funded Pool Act provides a credible alternative for liability insurance coverage. When funded and underwritten correctly, a pool structure can provide a stable market for members. With a strong emphasis on risk management, the pool can help bring down insurance costs to Kansas adult care homes and the State.

Thank you for your favorable consideration of House Bill 2567. I would be happy to answer questions.

HOUSE BILL No. 2567

By Special Committee on Medicaid Reform

1-5

9 AN ACT enacting the adult care home group-funded pool act; author-
10 izing adult care homes to pool liabilities; providing certificate of au-
11 thority to operate pools and providing for the regulation thereof.
12

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

14 Section 1. (a) Five or more adult care homes, regardless of domicile,
15 who are members of the same bona fide trade, merchant or professional
16 association, regardless of domicile, which has been in existence for not
17 less than five years and who are engaged in the same, similar or closely
18 related type of business may enter into agreements to pool their liabilities
19 for general liability and professional liability.

20 (b) All such arrangements shall be known as adult care home group-
21 funded liability pools, which shall not be deemed to be insurance or in-
22 surance companies and shall not be subject to the provisions of chapter
23 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

24 (c) For purposes of this section:

25 (1) Adult care home means an entity licensed under K.S.A. 39-923
26 (a)(1), and amendments thereto, and contiguous independent living units
27 owned by the adult care home licensee.

28 Sec. 2. Application for certificate of authority to operate an adult care
29 home group-funded liability pool shall be made to the commissioner of
30 insurance not less than 60 days prior to the proposed inception date of
31 the pool. The application shall include the following:

32 (a) A copy of the bylaws of the proposed pool, a copy of the articles
33 of incorporation, if any, and a copy of all agreements and rules of the
34 proposed pool. If any of the bylaws, articles of incorporation, agreements
35 or rules are changed, the pool shall notify the commissioner within 30
36 days after such change;

37 (b) a copy of the trust agreement indemnifying general liability and
38 professional liability coverage. If the trust agreement is changed, the pool
39 shall notify the commissioner within 30 days after such change;

40 (c) designation of the initial board of trustees and administrator.
41 When there is a change in the membership of the board of trustees or
42 change of administrator, the pool shall notify the commissioner within 30
43 days after such change;

- 1 (d) the address where the books and records of the pool will be main-
 - 2 tained at all times. If this address is changed, the pool shall notify the
 - 3 commissioner within 30 days after such change;
 - 4 (e) an individual application for each initial member of the pool. Each
 - 5 individual application shall include a current certified financial statement
 - 6 on a form approved by the commissioner;
 - 7 (f) a current certified financial statement on a form approved by the
 - 8 commissioner showing that the combined net worth of all members ap-
 - 9 plying for coverage on the inception date of the pool is in an amount not
 - 10 less than \$1,000,000;
 - 11 (g) a current certified financial statement on a form approved by the
 - 12 commissioner showing the financial ability of the pool to meet its
 - 13 obligations;
 - 14 (h) evidence that the annual Kansas gross premium of the pool will
 - 15 be not less than \$250,000;
 - 16 (i) an indemnity agreement jointly and severally binding the group
 - 17 and each member thereof to comply with the provisions of the trust agree-
 - 18 ment. The indemnity agreement shall be in a form acceptable to the
 - 19 commissioner;
 - 20 (j) proof of payment by each member of a pool of not less than 25%
 - 21 of the estimated annual premium into a designated depository;
 - 22 (k) a copy of the procedures adopted by the pool to provide services
 - 23 with respect to underwriting matters and risk management;
 - 24 (l) a copy of the procedures adopted by the pool to provide claims
 - 25 adjusting and reporting of loss data;
 - 26 (m) a confirmation of ~~specific and aggregate~~ excess insurance; and
 - 27 (n) any other relevant factors the commissioner may deem necessary.
- 28 Sec. 3. Every adult care home group-funded liability pool applying
- 29 for authority to operate a pool in this state, as a condition precedent to
- 30 obtaining such authority, shall file in the insurance department a written
- 31 irrevocable consent, that any action may be commenced against such pool
- 32 in the proper court of any county in this state in which the cause of action
- 33 shall arise or in which the plaintiff may reside by the service of process
- 34 on the commissioner of insurance of this state and stipulating and agree-
- 35 ing that such service shall be taken and held in all courts to be as valid
- 36 and binding as if due service had been made upon the trustees or the
- 37 administrator of such pool. The consent shall be executed by the board
- 38 of trustees and shall be accompanied by a duly certified copy of the res-
- 39 olution passed by the trustees to execute such consent.
- 40 Sec. 4. (a) The application for a new certificate shall be signed by
- 41 the trustees of the trust fund created by the pool. After evaluating the
- 42 application the commissioner shall notify the applicant that the plan sub-
- 43 mitted is approved or conversely, if the plan submitted is inadequate, the

in amounts approved
by the Commissioner
of Insurance

1 commissioner shall then fully explain to the applicant what additional
2 requirements must be met. If the application is denied, the applicant shall
3 have 15 days to make an application for hearing by the commissioner
4 after service of the denial notice. The hearing shall be conducted in ac-
5 cordance with the provisions of the Kansas administrative procedure act.

6 (b) An approved certificate of authority shall remain in full force and
7 effect until such certificate is suspended or revoked by the commissioner.
8 An existing pool operating under an approved certificate of authority must
9 file with the commissioner, within 120 days following the close of the
10 pool's fiscal year, a current financial statement on a form approved by the
11 commissioner showing the financial ability of the pool to meet its obli-
12 gations and confirmation of ~~specific and aggregate~~ excess insurance as
13 required by law for the pool. If an existing pool's certificate of authority
14 is suspended or revoked, such pool shall have the same rights to a hearing
15 by the commissioner as for applicants for new certificates of authority as
16 set forth in subsection (a) above.

17 (c) Whenever the commissioner shall deem it necessary the commis-
18 sioner may make, or direct to be made, an examination of the affairs and
19 financial condition of any pool in accordance with K.S.A. 40-222 and 40-
20 223, and amendments thereto, except that once every five years the com-
21 missioner shall conduct an examination of the affairs and financial con-
22 dition of each pool. Each pool shall submit a certified independent
23 audited financial statement no later than 90 days after the end of the
24 pool's fiscal year. The financial statement shall include outstanding re-
25 serves for claims and for claims incurred but not reported. Each pool
26 shall file such reports and statements at such times and in such manner
27 as the commissioner shall require. Whenever it appears to the commis-
28 sioner from such examination or other satisfactory evidence that the sol-
29 vency of any such pool is impaired, or that it is doing business in violation
30 of any of the laws of this state, or that its affairs are in an unsound con-
31 dition so as to endanger its ability to pay or cause to be paid, the com-
32 missioner shall, before filing such report or making the same public, grant
33 such pool upon reasonable notice a hearing in accordance with the pro-
34 visions of the Kansas administrative procedure act, and, if on such hearing
35 the report be confirmed, the commissioner shall suspend the certificate
36 of authority for such pool until its solvency shall have been fully restored
37 and the laws of the state fully complied with. The commissioner may, if
38 there is an unreasonable delay in restoring the solvency of such pool and
39 in complying with the law, revoke the certificate of authority of such pool
40 to do business in this state. Upon revoking any such certificate the com-
41 missioner shall communicate the fact to the attorney general, whose duty
42 it shall be to commence and prosecute an action in the proper court to
43 dissolve such pool or to enjoin the same from doing or transacting busi-

1 ness in this state. The commissioner of insurance may call a hearing under
2 K.S.A. 40-222b, and amendments thereto, and the provisions shall apply
3 to adult care home group-funded liability pools.

4 Sec. 5. (a) Premium contributions to the pool shall be based upon
5 appropriate rates, plus or minus applicable experience credits or debits.
6 The pool must develop rates based upon an actuarial study and submit
7 both to the commissioner for approval prior to use. Such rates shall in-
8 clude expenses necessary to administer the pool.

9 (b) At least 70% of the annual premium shall be placed into a des-
10 ignated depository for the sole purpose of paying claims. If so approved
11 by the commissioner of insurance, the annual premium to be designated
12 to such depository may be determined to be the net amount of premium
13 after all or a portion of the ~~specific and aggregate~~ excess insurance pre-
14 mium costs have been paid. This shall be called the claims fund account.
15 The remaining annual premium shall be placed into a designated deposi-
16 tory for the payment of taxes, fees and administrative costs. This shall be
17 called the administrative fund account. If a pool has been in operation
18 for more than five years, the commissioner may authorize allocation of a
19 different amount to the claims fund account, if solvency of the pool would
20 not be endangered.

21 (c) At the end of a fund year or any time thereafter, the trustees may
22 declare a refund of any surplus moneys for the fund year in excess of the
23 amount necessary to fulfill all obligations. Such refund shall not be dis-
24 tributed, in whole or in part, less than 12 months after the end of the
25 fund year for which the refund was declared. After receipt from the pool
26 of the notice of declared refund and satisfactory evidence that sufficient
27 funds remain on deposit for the payment of all outstanding claims and
28 expenses, including incurred but not reported claims, the commissioner
29 shall approve distribution of the declared refund. Any such refund shall
30 be paid only to those members who remained participants in the pool for
31 an entire year. Payment of previously earned refunds shall not be contin-
32 gent on continued membership in the pool.

33 Sec. 6. The trustees shall not utilize any of the moneys collected as
34 premiums for any purpose unrelated to the provisions of the trust agree-
35 ment. Moneys not needed for current obligations may be invested by the
36 trustees. Unless authorized elsewhere in this act, all funds of a pool shall
37 be invested only in securities or other investments permitted by article
38 2a of chapter 40 of the Kansas Statutes Annotated, or such other securities
39 or investments as the commissioner may permit.

40 Sec. 7. The expense of the administration of adult care home group-
41 funded liability pools shall be financed in the following manner:

42 (a) There is hereby created in the state treasury a fund to be called
43 the adult care home group-funded liability pools fee fund. All amounts

1 which are required to be paid from the adult care home group-funded
 2 liability pools fee fund for the operating expenditures incident to the
 3 administration of adult care home group-funded liability pools shall be
 4 paid from the adult care home group-funded liability fee fund. The com-
 5 missioner of insurance shall be responsible for administering the adult
 6 care home group-funded liability pools fee fund, and all payments from
 7 the fund shall be upon warrants of the director of accounts and reports
 8 issued pursuant to vouchers approved by the commissioner of insurance
 9 or a person or persons designated by the commissioner;

10 (b) the commissioner of insurance shall estimate as soon as practical
 11 after January 1 of each year the expenses necessary for the administration
 12 of the adult care home group-funded liability pools for the fiscal year
 13 beginning on July 1 thereafter. Not later than June 1 of each year, the
 14 commissioner of insurance shall notify all such adult care home group-
 15 funded liability pools of the amount of each assessment imposed under
 16 this subsection on such adult care home group-funded liability pools and
 17 the same shall be due and payable to the commissioner on the July 1
 18 following; and

19 (c) the commissioner of insurance shall remit all moneys received by
 20 or for such commissioner under this section to the state treasurer in ac-
 21 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
 22 Upon receipt of each such remittance, the state treasurer shall deposit
 23 the entire amount in the state treasury to the credit of the adult care
 24 home group-funded liability pools fee fund.

25 ~~Sec. 8. In addition to the fees required to be paid in and as a con-~~
 26 ~~dition precedent to the continuation of the certificate of authority pro-~~
 27 ~~vided in this act adult care home group-funded liability pools shall pay a~~
 28 ~~tax annually upon the annual Kansas gross premium based upon the net~~
 29 ~~pool premiums in effect at the date of renewal at the rate of 1% per~~
 30 ~~annum applied to the collective payroll of the pool for the preceding~~
 31 ~~calendar year. In the computation of the tax, all pools shall be entitled to~~
 32 ~~deduct any annual Kansas gross premiums returned on account of can-~~
 33 ~~cellation or dividends returned to members of such pools or expenditures~~
 34 ~~used for the purchase of specific and aggregate excess insurance.~~

35 Sec. 9. (a) After the inception date of the adult care home group-
 36 funded liability pools prospective new members of the pool shall submit
 37 an application for membership to the board of trustees or its administra-
 38 tor. The trustees may approve the application for membership pursuant
 39 to the bylaws of the pool. The application for membership and approval
 40 shall then be filed with the commissioner. Membership takes effect after
 41 approval.

42 (b) Individual members may elect to terminate their participation in
 43 a pool or be subject to cancellation by the pool pursuant to the bylaws of

Sec. 8. In addition to the fees required to be paid in Sec. 7. and as a condition precedent to the continuation of the certificate of authority provided in this act, adult care home group-funded liability pools shall pay no later than 90 days after the end of each calendar year, a tax upon all premiums received from members at the rate of 1 % per annum. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas premiums returned on account of cancellation and dividends returned to members of such pools and expenditures of such pools for the purchase of excess insurance, incurred in the preceding calendar year.

1 the pool.

2 Sec. 10. To ensure the financial stability of the operations of each
3 adult care home group-funded liability pool, the board of trustees of each
4 pool is responsible for all operations of the pool. The board of trustees
5 shall consist of not less than three nor more than 11 persons selected
6 according to the bylaws of the pool for stated terms of office to direct the
7 administration of a pool, and whose duties include approving applications
8 by new members of the pool. The majority of the trustees must be mem-
9 bers of the pool, but a trustee may not be an owner, officer or employee
10 of any service agent or representative. All trustees must be residents of
11 this state or officers of corporations authorized to do business in this state.
12 The board of trustees of each fund shall take all necessary precautions to
13 safeguard the assets of the fund, including all of the following:

14 (a) Designate an administrator to administer the financial affairs of
15 the pool who shall furnish a fidelity bond to the pool in an amount suf-
16 ficient to protect the pool against the misappropriation or misuse of any
17 moneys or securities. The commissioner shall determine the amount of
18 the bond and the administrator shall file evidence of the bond with the
19 commissioner. The bond is one of the conditions required for approval
20 of the establishment and continued operation of a pool;

21 (b) retain control of all moneys collected or disbursed from the pool
22 and segregate all moneys into a claims fund account and an administrative
23 fund account. The amount allocated to the claims fund account shall be
24 sufficient to cover payment of any ~~aggregate~~ loss fund as defined in the
25 ~~aggregate~~-excess policy. Only disbursements that are credited toward the
26 ~~aggregate~~-loss fund are made from the claims fund account. All admin-
27 istrative costs and other disbursements are made from the administrative
28 fund account. The administrator of the pool shall establish a revolving
29 fund for use by the authorized service agent which is replenished from
30 time to time from the claims fund account. The service agent and its
31 employees shall be covered by a fidelity bond, with the pool as obligee,
32 in an amount sufficient to protect all moneys placed in the revolving fund;

33 (c) audit the accounts and records of the pool annually or at any time
34 as required. The commissioner may prescribe the type of audits and a
35 uniform accounting system for use by pool and service agents to deter-
36 mine the solvency of the pool;

37 (d) the trustees shall not extend credit to individual members for
38 payment of a premium;

39 (e) the board of trustees shall not borrow any moneys from the pool
40 or in the name of the pool without advising the commissioner of the
41 nature and purpose of the loan and obtaining approval from the com-
42 missioner; and

43 (f) the board of trustees may delegate authority for specific functions

1 to the administrator of the pool. The functions which the board may
2 delegate include such matters as contracting with a service agent, deter-
3 mining the premium chargeable to and refunds payable to members,
4 investing surplus moneys and approving applications for membership.
5 The board of trustees shall specifically define all authority it delegates in
6 the written minutes of the trustees' meetings. Any delegation of authority
7 is not effective without a formal resolution passed by the trustees.

8 Sec. 11. Any person soliciting the business of general liability and
9 professional liability insurance for an adult care home group-funded lia-
10 bility pool must be licensed as provided in K.S.A. 40-240 through 40-243,
11 and amendments thereto, except that no such person shall be required
12 to satisfy the certification requirements regarding insurance companies
13 providing reinsurance, secondary insurance or excess coverage.

14 Sec. 12. All records filed with or maintained by the insurance com-
15 missioner which relate to financial information submitted by a member
16 of an adult care home group-funded liability pools or to maintain mem-
17 bership in a pool, or which relate to financial information about any mem-
18 ber of a pool that is submitted by or on behalf of a pool, shall be confi-
19 dential records and shall not be open to the public.

20 Sec. 13. This act shall take effect and be in force from and after its
21 publication in the statute book.



Providing a Community of Christian Love and Concern

**Please Support House Bill 2567
Adult Care Home Liability Insurance Pools**

To: The Honorable Clark Shultz, Chair, and Members,
House Insurance Committee
From: Marlin Johnson, CEO, Bethany Home, Lindsborg
Date: February 2, 2006

Good afternoon to the honorable members of the House Insurance Committee. My name is Marlin Johnson, and I am the CEO of Bethany Home, a 132-bed church-affiliated nursing home in Lindsborg, Kansas. I have been a nursing home administrator for a total of 21 years in two nursing homes.

I am here today to ask for your support of House Bill 2567. Why is this bill a good idea...because it would allow nursing homes to contain costs for our frail elderly residents and the State.

At Bethany Home, our liability insurance premiums went from \$50 a bed to \$300 in the course of a year when the liability insurance crisis hit. At their highest, they were \$350 a bed. This cost is passed on to our residents and to the State of Kansas. If House Bill 2567 is passed it will provide adult care homes like Bethany Home a way to help contain these costs. It will allow more dollars to be spent on what really counts...direct care for our frail elders.

I am also Past Chair of the Kansas Association of Homes and Services for the Aging Insurance Group (aka KING.) Bethany Home has been a member of KING for 14 years. KING was formed in the late 1980's because workers compensation coverage was unavailable or terribly cost prohibitive for nursing homes in Kansas. Over the past 16 years, it has become one of the most successful programs of its type in the country, returning over \$5 million in dividends to its members, including \$132,000 to Bethany Home. The operation of KING has resulted in some of the lowest premiums possible and has created a safer working environment for our workers. In the past two years, we have been able to do things such as provide premium discounts for KING members who implement no-lift policies. This protects our workers health and safety and keeps them on the job caring for residents.

House Bill 2567 can give us a similar opportunity to work together in a pool arrangement to rein in liability insurance costs.

I urge you to wholeheartedly support this bill.

Thank you for your time.

321 N. Chestnut • Lindsborg, KS 67456
Phone: (785)-227-2334 • Fax: (785)-227-3138 • Email: info@bethanyhome.com

House Insurance
Date: 2-2-06
Attachment # 3



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kcal

ahca

February 1, 2006

Testimony

Before the
House Insurance Committee

By
Cindy Luxem, President/CEO
KANSAS HEALTH CARE ASSOCIATION

Committee Chairperson Shultz, Vice Chairperson Carter 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 provide testimony in support of HB 2567.

Our profession is charged with caring for Kansas frail and elderly. Never in our history has this been more challenging than the past few years. We continue to be a profession-in-crisis. With Medicare cuts and Medicaid cost shortfalls, with exponential growth of liability insurance premiums, with food and utility costs skyrocketing, our facilities struggle to provide the high level of quality of care.

Nearly 30% of all Kansas nursing facilities faced with skyrocketing liability insurance premiums are going 'bare' or without insurance. That is not good public policy. That is not 'consumer friendly.'

House Bill 2567 provides enabling language for adult care homes to form a group-funded liability pool patterned after the group-funded workers compensation pool act. If funded correctly, a pool structure is far less susceptible to drastic financial and market swings and can provide a stable insurance market for members.

We ask that you support HB 2567.

House Insurance
Date: 2-2-06
Attachment # 4



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Rep. Clark Shultz, Chairman
Members of the House Insurance Committee

From: Margaret Farley
Legislative Executive Vice President
Kansas Trial Lawyers Association

Date: February 2, 2006

Re: HB 2567 Adult Care Home Group-Funded Pool Act

I appear today on behalf of the Kansas Trial Lawyers Association, a state-wide professional organization of over 800 Kansas trial attorneys. KTLA has concerns that HB 2567 does not adequately regulate insurance for adult care homes. In addition, we are concerned that there are no protections against insolvency of the adult care home group-funded pool or protections for those that might be harmed by the insolvency of the pool. We strongly recommend that the Committee closely consider the implications of HB 2567 before allowing it to advance.

Adult care homes must maintain appropriate insurance coverage to protect their oftentimes fragile residents. If insurance coverage is inadequate or nonexistent, and malpractice or negligence occurs, residents of adult care homes might be left with financial losses that cannot be compensated. In particular, an adult care home resident who suffers physical injury because of negligence or malpractice would need compensation for potentially significant health care costs.

KTLA's primary concern with HB 2567 is that it appears to create largely unregulated insurance pools. The bill specifically exempts the pools from the insurance code and states that the pools are not insurance or insurance companies: yet the purpose of the pools would be to provide insurance coverage to the adult care homes participating in the pool. We therefore question whether the regulatory mechanisms (solvency standards, reserve requirements, etc.) that are in place for Kansas insurance companies don't also need to be in place for adult care home group funded pools. To the extent that the bill provides for some oversight by the insurance commissioner, we question whether it is adequate.

House Insurance

Date: 2-2-06

Attachment # 5

Terry Humphrey, Executive Director

Many KTLA members represent Kansas consumers unfortunately injured by nursing home care. Lack of affordable liability insurance for homes was a frequent refrain over the last two years in various legislative hearings; it is our understanding that the burden of premium increases has actually softened within the last year or so. We understand the industry's desire for options that will provide some control over cyclical premium increases, which purportedly the pools will accomplish because the insured corporations will be in charge. We support the general goal, of course, of making sure that premiums are reasonable and affordable.

KTLA advises caution on HB 2567. While we don't object to adult care homes looking for creative ways to control their insurance premium costs, we have strong concerns that perhaps these efforts could go too far, resulting in underinsurance, insolvency, or an operation that is beyond the reach of state regulators. We respectfully request your opposition to HB 2567 until the operation and regulation of the adult care home group-funded pools are fully explained, understood, and demonstrated to be appropriate and adequate.

Testimony Before the House Insurance Committee
On H.B. 2567
By Larry W. Magill, Jr.
Kansas Association of Insurance Agents
February 2, 2006

Thank you Mister Chairman and members of the committee for the opportunity to appear today in opposition to H.B. 2567. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches across the state that employ a total of nearly 2500 people. Our members write approximately 70% of the business property and liability insurance in Kansas and probably 100% of the nursing homes' property and liability insurance.

We too have been concerned with the alarming increase in rates and lack of availability of nursing home liability insurance for more than five years. In 2000, we urged the Kansas Insurance Department to address the issue. The Department had formed a Nursing Home Liability Task Force that, to our knowledge, met twice with the last meeting nearly four years ago. The task force was put together by the long term care industry and met at the Department but, other than myself, included no one from the industry. It never issued a report or came to any conclusions that we are aware of. Attached to my testimony is a KID list of excess lines companies, risk retention groups and risk purchasing groups that have filed to offer professional liability for long term care facilities in Kansas. In other words, there is no study or documentation coming out of the Department that supports such a radical dismantling of the insurance company regulatory process as this bill involves.

The Task Force on Long Term Care Services held one hearing on the issue of liability insurance for nursing homes on September 4, 2002. The Task Force's report contained no recommendations other than to look at the state's survey process and use of HCFA 2567's to prove negligence in lawsuits by residents. Bills were introduced in 2003 and received considerable attention in 2004 dealing with introduction of the highly subjective and often irrelevant inspection reports that are used by plaintiffs attorneys to paint nursing facilities in the worst possible light. Both HB 2306 and SB 430 passed their house of origin in 2004 but in substantially different forms. An interim study looked at them in 2004 but reached no conclusions. Finally in the 2005 session, SB 100 passed giving nursing homes some relief from plaintiff attorney use of the surveys to "prove" negligence. This House Insurance Committee played a key role in passage of that legislation.

We understand that the markets for nursing homes have "loosened up" in the last year. In other words there are more insurers willing to write the coverage at somewhat lower rates. We urged the KID following last session to notify insurers of the passage of SB 100 in the hope that they would loosen up further and to survey them on their plans for Kansas. To our knowledge, the Department has not done that.

All of this is just to say that we believe in being part of the solution, not the problem.

Pooling Is Not the Answer

Pooling is a cash-flow game, played by people who do not want to invest in the net worth of a risky operation. Rather, they hope that they can survive by allocating just 70% , or possibly far less, of their premiums (however those are set!) to a claims fund when the industry has seen loss ratios in the hundreds for years on nursing home liability. Pooling as an answer assumes that this is an insurance problem. That for some inexplicable reason the industry has walked away from a group of customers without good reason. By focusing on pooling, you are ignoring the underlying cause, which is an explosion in nursing home liability claims costs. The real public policy issue that must be addressed is how do you rein in the out-of-control liability costs of nursing homes. SB 100 from last session was an attempt to do that as was the Arbitration proposal.

In HB 2567 you are being asked to authorize the formation of a mutual insurance company outside most of the insurance laws and regulations of Kansas. I would say *assessable* mutual insurance company, but HB 2415 *does not even offer the safety of true joint and several liability* or accessibility. It appears from the language that the pool participants could simply walk away if the liabilities of the pool exceed its assets. Then the claims of each participating nursing home would fall back on them to defend and pay. They would become individually self-insured, which most of them are not even remotely large enough to handle.

The most important point to keep in mind when looking at legislation like this is what is not in the bill. Because it begins by exempting these special pools from all of Kansas' insurance laws and regulations, what is not in the bill can be more important than what is. It makes it extremely difficult to understand what you are being asked to authorize.

The second important point to remember is that whatever you might authorize in this bill will be perceived by nursing homes and their residents as insurance—which it most definitely is not. And if one of these pools fails, they are going to look on this legislature's and the insurance department's approval as the state's "good housekeeping seal of approval". They will have long since forgotten the disclosure they should have been given.

No Other State Has Done This

To our knowledge, no other state has authorized anything other than workers compensation pools or public entity pools. In the case of public entities they can pool for all types of losses but they also have the power to tax to cover their mistakes. This would set a huge precedent that every other industry would, at some time, be tempted to emulate.

Kansas, along with most states, originally allowed assessable mutual insurance companies to be formed. I assume that because of disastrous results, Kansas eliminated the statutory authority for assessable mutual insurance companies around the turn of the last century.

Kansas Has Loss Problems

What industry have you ever known, that was unhappy with its insurance availability and cost, that didn't think they were being penalized for losses occurring in other states? And while Kansas has not had the severe problems of some states, neither have our nursing homes paid the premiums that a Florida nursing home pays, for example.

According to CNA's "Long Term Care Claims Study", "the ultimate average indemnity severity increased 415% from \$25,919 in 1996 to \$107,609 in 2003. The average expenses on these claims rose from \$3,956 to \$34,714, an 878% increase.

I can tell you that one of the carriers that used to write nursing homes in Kansas and had, at one time, 55 locations insured with over 3700 beds had a ten-year general liability loss ratio of 179.52% for 1989 to 1998 and a loss ratio in 1998 of 615%. This bill allows just 5 entities to form a pool if they have enough premium volume. It only requires \$250,000 in premium to qualify by line of insurance—well below where most businesses would feel safe self-insuring a volatile, highly unpredictable and potentially severe liability exposure.

Now just picture how far the 70% loss fund of this proposed pool would stretch to cover a 615% loss ratio. Granted they may have excess insurance but where will the attachment point be and what limit will be provided? The bill doesn't specify. Will the excess carrier even be around when they are needed to pay claims since there is no requirement of a Best's rating, or even that they be admitted and therefore covered by the state's guarantee fund?

Nursing Homes Can Form a Captive

Both under Kansas law as well as other states, the nursing homes could form a captive insurance company. That is a real insurance company licensed to do business in at least one state and subject to all the normal insurance laws and regulations of that state. When the Kansas Medical Society decided it wanted to offer medical malpractice insurance to its members, it did not come to the state and ask to put its members at severe risk by letting them form a pool. It formed the Kansas Medical Mutual Insurance Company as a Kansas domestic and it continues to do well today.

A nursing home captive could operate on a "non-admitted" basis in Kansas under our excess and surplus lines law, if it wasn't formed here. The biggest single difference is that it would start out with approximately \$750,000 in net worth, which it could not impair with its operations. This would require the nursing homes to have "some skin in the game", which would also make them more attractive to the excess markets. Because captives, like pools, are far too risky without adequate, reliable excess insurance.

Other Concerns With HB 2567

Without taking too much of the Committee's time, here are a few of our other concerns with HB 2567:

- According to the Insurance Department, of the six public entity pools formed to provide health insurance, four of them have failed and are out of business now after assessing their members for their excess losses. Pools fail and there is no Guarantee Fund protection for their participants.
- There is neither specific or aggregate excess attachment points or policy limits required nor a requirement that the excess be from an admitted company covered by the Kansas guaranty fund. One Kansas workers compensation pool today reportedly has an attachment point over 400% for their aggregate excess making a joke out of the protection that the aggregate excess is supposed to provide to the participants. Of course,

- it also keeps the cost of the excess to the pool to a minimum.
- There is no maximum aggregate excess attachment point such as 125% in the case of heterogeneous workers compensation pools or a minimum policy limit. Keep in mind that the claims can exceed the excess coverage limits and they would fall back on the participants either through assessments or pool failure. The excess market may not offer “statutory” limits on the specific excess workers compensation leaving the pool exposed to losses above whatever specific excess limit it is able to purchase.
 - The protection of the 70% claims fund is diminished by the fact that the excess can be purchased from the claims fund, effectively lowering the 70% to considerably less.
 - Excess can be waived with “adequate” surplus funds, defined to mean enough to cover its obligations. But setting reserves trips up insurance companies and causes them to fail every year. So while they may think they have adequate funds to cover claims, they may not even be close.
 - There is no requirement for an annual *actuarial* review of claims reserves and IBNR (incurred but not reported) claims.
 - HB 2567 allows the pools to set their own rates, subject to Department supervision, regardless of their size.
 - Pools should pay the same 2% premium tax that insurance companies pay. Otherwise there should be a fiscal note attached to this for the loss of revenue to the state.
 - There should be a disclosure required for pool participants to explain the risks being assumed. There is no mention of the fact that the Kansas Guaranty Fund would **not** apply. There is no mention that their claims would fall back on them if the pool fails since there is no joint and several liability.

Federal Risk Retention Act

The Federal Risk Retention Act was passed in the mid-80's and expanded in the early 90's to allow Risk Retention Groups to be formed to provide liability insurance countrywide. All a nursing home association has to do today is form a captive insurance company, and they can shop venues to find the state with the lowest requirements, and then they are free to operate without state insurance department control today. But to form a captive, they must contribute capitol to the venture and there's where the rub occurs. But this is a solution that is working for every other industry out there all across the country.

Conclusion

We have supported several bills that would have addressed some of adult care homes' liability issues and helped pass SB 100 last session that improved the situation in regard to nursing home inspections being used inappropriately by plaintiff's counsel. We are willing to work with the Kansas Insurance Department and the affected associations to do whatever we can to entice carriers back into the Kansas market. It is our understanding that the marketplace is already softening both in regard to number of carriers and cost of coverage for nursing homes.

We urge you to kill this bill. Passage of this bill in any form would set a huge precedent that would bring pressure on legislators to expand to other industries. We are opposed to HB 2567. We would be happy, to answer questions or provide any additional information.

Excess Lines Companies/ Risk Purchasing- Retention Groups Offering Professional Liability for Long Term Care Facilities

Excess Lines Companies:

American Casualty Co. of Reading, PA
American Empire Surplus Lines Insurance Company
American Equity Insurance Company
Columbia Casualty Company
Continental Casualty Company
Evanston Insurance Company
Fidelity Excess and Surplus Insurance Company
Illinois Union Insurance Company: Will not write stand alone, only when part of a larger hospital system
Red Mountain Casualty Insurance Co.
Transcontinental Insurance Company
Transportation Insurance Company
United National Insurance Company

Risk Purchasing Groups:

PENDING: ALTC Risk Purchasing Group, coverage afforded by American Alternative Ins. Co, an admitted company.

LTC Risk Purchasing Group Inc, coverage afforded by Columbia Casualty Co. & Red Mountain Casualty Insurance Co., listed Excess Lines insurers.

OmniRisk Purchasing Group, coverage afforded by Lloyd's Underwriters At, London, a listed Excess Lines insurer.

Note: This list may not encompass all markets. Excess lines are intended to be a market of last resort. The policy rates, rule, and forms are not subject to Kansas regulatory oversight, nor participation of state guaranty fund. These companies generally do not deal directly with the public. Contact a licensed surplus lines agents to secure coverage.

Risk Retention Groups: (Registered)

Eldercare Mutual Ins. Co. Risk Retention Group, Inc.
Health Care Industry Liability Reciprocal Ins. Co. A Risk Retention Group, Inc.: *offering both occurrence & claim made form*
Lewis & Clark LTC Risk Retention Group, Inc.
Peace Church RRG Inc.

RRG's Pending Registration:

Continuing Care RRG Inc

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