

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 3:20 P.M. on March 22, 2006 in Room RAILS of the Capitol.

All members were present except:
Pete Brungardt- excused

Committee staff present:
Norm Furse, Office of Revisor of Statutes
Morgan Dreyer, Committee Secretary

Conferees appearing before the committee:

Others attending:
See attached list.

Action on HB 2825—An act providing for establishment of a voluntary data bank of available interpreters for certain purposes and development of qualifications for interpreters

Upon calling the meeting to order, Chairman Barnett asked Norm Furse to review **HB 2825** and read the new balloons that were attached and handed out to the Committee. A copy of the balloons are (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Questions came from Senator Haley regarding if a significant change would effect the fiscal note.

Chairman Barnett provided a information about “Limited English Proficiency and the Americans with Disabilities Act” that was handed out to the Committee. He stated that there was a concern because already in existence is Former President Clinton’s Executive Order in 2000 which is intended to improve access to services for person with limited English proficiency. A copy of this testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair recognized Vice Chair V. Schmidt who stated that actually President Bush had re-enforced in 2004 the same Executive Order, but thinks that this should be given thought out of respect for their colleague House Representative Garcia who had done a great deal of work on this bill.

The motion was made by Senator Haley to amend and move out the bill favorably. It was seconded by Senator V. Schmidt.

The substitute motion was made by Senator Wagle to table the bill. It was seconded by Senator Palmer and the motion carries.

Action on HB 2649—An act concerning heath care; relating to a pain patient’s bill of rights

Chairman Barnett called upon Norm Furse to review the proposed substitute for **HB 2649** that was handed out to the Committee. A copy of the proposed substitute for **HB 2649** is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

Questions came from Senators V Schmidt, Palmer, Barnett, and Wagle regarding page 2 part D, what changes will occur in bill, selling prescriptions, better language, what it allows physicians to prescribe, and guidelines.

The motion was made by Senator V. Schmidt to amend to change “shall” to “may” on part (d) section 4. It was seconded by Senator Haley.

The Chair recognized Dan Mortin with the Kansas Medical Society who stated that there are guidelines that the Board of Healing Arts has right now, but they are looking into further revision of them based on the interest of this issue, it is a complicated issue. Now that the awareness has been raised with this bill, The Board of Healing Arts is going to retake the issue up and maybe revise some existing guidelines regarding the treatment of pain.

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 3:20 P.M. on March 22, 2006 in Room RAILS of the Capitol.

The motion was made by Senator V. Schmidt to withdraw her previous motion.

The motion was made by Senator V. Schmidt to move the amendment offered by Norm Furse. It was seconded by Senator Wagle and the motion carried.

The motion was made by Senator V. Schmidt to move the bill out favorably as a substitute bill. It was seconded by Senator Wagle and the motion carried.

The Chair recognized Senator Haley who would like his no vote to be recorded.

Adjournment

As there was no further business, the meeting was adjourned at 3:40 p.m.

No Attendance Sheet
was returned to Committee Secretary for
Senate Public Health and Welfare Committee

March 22, 2006

Substitute for HOUSE BILL No. 2825

By Committee on Health and Human Services

2-22

9 AN ACT providing for establishment of a voluntary data bank of available
10 interpreters for certain purposes and development of qualifications for
11 interpreters.

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

14 Section 1. (a) As used in this section:

15 (1) "Available interpreter" means a person 18 or more years of age
16 who reports possessing the experience, skills or other qualifications to
17 fulfill the role of interpreter.

18 (2) "Interpreter" means a person who translates orally, in writing or
19 by signing for parties requiring translation to facilitate communication
20 when they do not share a language.

21 (3) "Interpreter data bank" means a directory listing the names of
22 individual interpreters by each of the following: Language spoken, loca-
23 tion and surname.

24 (4) "Secretary" means the secretary of health and environment.

25 (5) "Services, programs and facilities" means adult care homes, hos-
26 pitals, local health departments, community mental health centers and
27 other programs or facilities which provide medical, health care or mental
28 health care services.

29 (b) The secretary shall:

30 (1) ~~Establish~~ a data bank of available interpreters to assist clients in
31 communications with providers of services, programs and facilities; and

32 (2) adopt, with the advice of the advisory committee appointed pur-
33 suant to subsection (d), rules and regulations establishing standards for
34 interpreters, including, but not limited to, a code of ethics which would
35 ensure that interpreters provided impartial and unbiased translations
36 which (A) reflect precisely what is said by all parties and (B) place persons
37 with limited proficiency in the English language on an equal footing with
38 persons who understand English.

39 (c) Nothing in this section shall be construed to require any inter-
40 preter to be included in the data bank provided for by this section or to
require any client to use the services of an interpreter who is included in
such data bank.

43 (d) The secretary, pursuant to K.S.A 75-5616, and amendments

and includes, but is not limited to, foreign language interpreters and
sign language interpreters

(3) "Foreign language interpreter" means a person who is
qualified to interpret effectively, accurately and impartially in any
primary language other than English, except for sign language.

(4) "Sign language interpreter" means a person who provides
interpreter services for deaf, hard of hearing and speech impaired
people as provided under K.S.A. 75-5391 et seq. and amendments
thereto.

And by renumbering subsections accordingly

Within the limits of appropriations therefor, establish

foreign language

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1 thereto, shall appoint an advisory committee to consult with and advise
2 the secretary on implementation of this section. The executive director
3 of the commission for the deaf and hard of hearing, or the executive
4 director's designee, shall be a member of the advisory committee.

5 (e) The secretary shall adopt such rules and regulations as necessary
6 to implement the provisions of this section.

7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.

1-2

IV. Limited English Proficiency and the Americans with Disabilities Act

A. Limited English Proficient Persons

Executive Order 13166 was released in August 2000 by President Bill Clinton. The Executive Order was intended to improve access to services for persons with limited English proficiency. The Executive Order arises from Title VI Civil Rights Act of 1964 to prevent discrimination based upon national origin.

Since the release of Executive Order 13166, the Department of Health and Human Services and Department of Justice have issued guidances on the subject. The most recent guidance is, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," as revised November 30, 2003. See the Department of Health and Human Services Office of Civil Right's website at www.hhs.gov/ocr regarding limited English proficient persons.

The Department of Health and Human Services (HHS) regulations, (45 C.F.R. §80.3(b)(2)), require those who receive federal funding, directly or indirectly, to do the following:

1. Provide meaningful access to services to persons who have limited English proficiency.
2. Allow the person to effectively be informed of, or to participate in, the service.

Recipients of federal funding, which include most hospitals and clinics, must take reasonable steps to ensure meaningful access to their services. Recipients should perform an individualized assessment based on four factors:

1. Number of Limited English Proficient (LEP) persons likely to receive services;
2. Frequency of contact with LEP individuals;
3. Nature and importance of the service to people's lives; and,
4. Resources available to the recipient and the costs.

The factor that is most applicable to physicians and hospitals would be the nature and importance of the services. After making an assessment of the four factors, a clinic or hospital may decide language assistance is necessary. This would include providing a translator, free of charge, for patients.

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In some instances, an LEP person may feel more comfortable having a friend or family member translate. However, the clinic or hospital should offer to provide a translator free of charge. Further, the clinic and hospital should consider whether use of a friend or family member would adversely affect patient treatment, including issues of confidentiality, privacy, conflict of interest, and competency to translate medical terminology.

LOSS PREVENTION TIP: The clinic or hospital should obtain a signed confidentiality statement from the translator, a statement that the translator will honestly and accurately translate, and documentation to show that the translator is competent in the language.

Documents vital and critical to patient care should also be provided in regularly encountered languages. A vital and critical document may include:

1. Consent forms;
2. Complaint forms;
3. Notices of privacy rights;
4. Termination of the physician/patient relationship forms; and,
5. Any notice that requires a response from the patient.

B. Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a law that prohibits discrimination against persons with disabilities, including those who are deaf or hearing impaired. Under the ADA, to avoid illegal discrimination, clinics and hospitals must find a method that allows them to effectively communicate with patients who are hearing impaired.

The patient can choose the type of communication. Acceptable methods of communication include: sign/oral interpreter, written notes, lip reading, assistive listening devices, or a combination. An interpreter is not necessary all the time; however, for more complicated, interactive, or vital communications, an interpreter may be preferable.

LOSS PREVENTION TIP: Should an interpreter be necessary, he or she should be provided by the health care professional at no cost to the patient. The interpreter should sign a confidentiality statement, and a statement agreeing to be honest and accurate in the interpretation, as well as a statement that he or she is competent to interpret. No certification is required. See Attachment #8, "Americans with Disabilities Act and Hearing Interpreters," from American Medical Association (AMA) website; and, Attachment #9, "ADA Business Brief: Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings," from the U.S. Department of Justice website.

**Proposed Substitute for HB 2649
(3.22.06; Revision #5)**

New Section 1. Sections 1 through 3, and amendments thereto, shall be known and may be cited as the "pain patient's quality of care act."

New Section 2. (a) The legislature of the state of Kansas finds and declares that pain is a significant health problem, and that the diagnosis and treatment of pain is complex, and can involve several therapeutic modalities. The treatment of pain may require the use of controlled substances in appropriate circumstances. In order to promote the public health, safety and welfare, the state has a duty to restrict the inappropriate use of controlled substances while supporting a physician's or other health care provider's ability to provide appropriate pain treatment consistent with patient needs and sound clinical judgment.

New Section 3. (a) A person suffering from pain:

- (1) Should be an active participant in decisions about the assessment, diagnosis and treatment of their pain.**
- (2) May accept or reject the use of any or all diagnostic and therapeutic modalities which may be recommended to treat such person's pain.**
- (3) Should accurately, completely, and honestly report all symptoms and concerns to physicians and other health care professionals conducting assessment and treatment of such person's pain.**

(b) Nothing in this act shall be construed to prevent, restrict or limit a physician or other person authorized to prescribe drugs from prescribing, dispensing, administering, or distributing a controlled substance to a patient for the treatment of pain, when it is for a valid medical purpose and based on appropriate clinical indications.

(c) Nothing in this act shall be construed to require a physician or other person authorized to prescribe drugs to prescribe, dispense, administer, or distribute a controlled substance to a patient for the treatment of pain if in the judgment of the prescriber the use of a controlled substance is not clinically indicated or the most appropriate therapeutic modality.

Section 4. K.S.A. 65-2838 is hereby amended to read as follows: 65-2838.

(a) The board shall have jurisdiction of proceedings to take disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a

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stipulation may order any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto for disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board shall adopt guidelines for the use of controlled substances for the treatment of pain.

(e) Upon request of another regulatory or enforcement agency, or a licensee, the board may render a written advisory opinion indicating whether the licensee has prescribed, dispensed, administered or distributed controlled substances in accordance with the treatment of pain guidelines adopted by the board.

Section 5. K.S.A. 60-4403 is hereby amended to read as follows: 65-4403.

(a) A licensed health care professional who administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort, ~~even if the medication or procedure may hasten or increase the risk of death,~~ does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly administered, prescribed or dispensed with the intent to cause death. A mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto who prescribes medications or procedures to relieve another person's pain or discomfort, ~~even if the medication or procedure may hasten or increase the risk of death,~~ does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly prescribed with the intent to cause death.

(b) A licensed health care professional, family member or other legally authorized person who participates in the act of, or the decision making process which results in the withholding or withdrawal of a life-sustaining procedure does not violate K.S.A. 21-3406 and amendments thereto.

(c) Providing spiritual treatment through prayer alone, in lieu of medical treatment, does not violate K.S.A. 21-3406 and amendments thereto.

Section 6. K.S.A. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

(2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.

(b) "Unprofessional conduct" means:

- (1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.
- (2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.
- (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.
- (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.
- (5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.
- (6) Willful betrayal of confidential information.
- (7) Advertising professional superiority or the performance of professional services in a superior manner.
- (8) Advertising to guarantee any professional service or to perform any operation painlessly.
- (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.
- (10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.
- (11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.
- (12) Conduct likely to deceive, defraud or harm the public.
- (13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.
- (14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.
- (15) Allowing another person or organization to use the licensee's license to practice the healing arts.
- (16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.
- (17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
- (18) Obtaining any fee by fraud, deceit or misrepresentation.
- (19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, *or* distributing a prescription drug or substance, including a controlled substance, in an ~~excessive~~, improper or inappropriate manner ~~or quantity~~, *or for other than a valid medical purpose*, or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.

(30) Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

(31) Violating K.S.A. 65-6703 and amendments thereto.

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

(g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.

(h) "Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.