

Approved: February 5, 2008

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Brenda Landwehr at 1:30 P.M. on February 4, 2008 in Room 526-S of the Capitol.

All members were present except:
Representative Ward

Committee staff present:
Dianne Rosell, Revisor of Statutes Office
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Chris Haug, Committee Assistant

Conferees appearing before the committee:
Kevin Robertson, Kansas Dental Association
Marty Martin Kennedy, Department on Aging
Representative Bob Bethell
Joseph Kroll, Director of Bureau of Childcare & Health Facilities, KDHE

Others Attending:
See Attached List.

The minutes for the January 28th and January 29th meetings were forwarded by e-mail for review. Representative Mast made the motion to approved the minutes. Representative Storm seconded. The motion carried.

Kevin Robertson, Kansas Dental Association introduced a bill that will amend the Dental Practice Act to allow and encourage more recent dental graduates to relocate to more rural locations, using satellite offices. (Attachment 1). Representative Morrison moved to allow the draft of this bill, Representative Mast seconded. The motion carried.

Chairperson Landwehr opened the hearing on **HB 2672 - Long-term care units, inspection by department on aging.** Dianne Roselle with the Revisor of Statutes office gave a staff briefing of **HB2672.** Sections 1 and 2 of this bill are just updates because the health care governing board was abolished previously and was replaced by the health policy authority. The remaining sections are carving out the inspection authority for long-term care units in whatever type of medical facility they are in, moving that from the KDHE to the Department of Aging. Sections 4, 5, 6 & 7 are amending those sections that are in Article 4 of Chapter 65 that deal with licensing of other types of medical facilities in general and this is just carving out a section for long-term care units.

Proponents:

Martin Kennedy, Commissioner of Licensing, Certification and Evaluation with the Department on Aging gave testimony in favor. (Attachment 2) Commissioner Kennedy would like section 3-7 deleted. Part of section 6 (paragraph A) could stay as a clean up piece. He stated in his testimony to delete section 6, paragraph B. Commissioner Kennedy stated he would like to see that paragraph deleted. Representative Flaharty asked if he could briefly say what the facility inspections included. Commissioner Kennedy said anything having to do with health care and the quality of life. This would included the actual health care delivery in the home, as well as activity therapy, social work and anything contributing to quality of life.

Representative Bethell stated he was pleased to hear what Commissioner Kennedy had to say about the bill, having worked this through both the Health and Environment and Aging memorandum of understanding. He wanted to clarify what needed to be done with the bill. Sections 1 & 2 need to be left in. Section 6 needs to be remain with sub-paragraph A staying. It refers to the Kansas Hospital Authority in that paragraph and the word "Authority" should be changed to "Association". He felt this would bring continuity with the survey process for those people in long-term care units. Representative Rhoades wondered if there was a fiscal note or whether it was a transference. Representative Bethell said there would not be much of a fiscal note, they are transferring the position over to the Department on Aging. It would be a transfer out of KDHE to the Department on Aging. Representative Bethell had no written testimony.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:30 P.M. on February 4, 2008 in Room 526-S of the Capitol.

Joseph Kroll, Director of Bureau of Childcare & Health Facilities, KDHE gave testimony and endorsed what Commissioner Kennedy and Representative Bethell had said. (Attachment 3) Mr. Kroll mentioned that Mr. Kennedy suggested deleting sections 3-7. If sections 3-7 are retained there are a couple of flaws that would bring to your attention that would need to be corrected. Representative Bethell pointed out one regarding Kansas Hospital Authority needing to be changed to Association. On page 5, line 6-10, the proposed definition does not meet the federal definition and we recommend that be changed to match the federal definition. Page 7 line 5 only authorizes the Department on Aging to conduct inspections on units that are not accredited. Federal law requires that all units be inspected, regardless of their accreditation status, so that correction would need to be made as well. In summary, Mr. Kroll stated that they support the intent of this bill. They recommend the changes be made.

Written Testimony in support was submitted by:
Chad Austin, Kansas Hospital Association (Attachment 4)

Written Testimony against:
Kansas Advocates for Better Care (Attachment 5)

No one else wished to provide testimony. The hearing on **HB2672** was closed.

The meeting adjourned at 1:53 p.m. The next meeting will be February 5, 2008.

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE GUEST LIST

DATE: February 4, 2008

NAME	REPRESENTING
Cash Moore	KDMF
Chad R. ...	KHA
Barb Coxant	KDOA
Phyllis Keller	KACE
KEVIN ROBERTSON	KS DENTAL ASSN
Maureen Kennedy	KDOA
Joan ...	KDOA

KANSAS DENTAL ASSOCIATION

Chapter 65.--PUBLIC HEALTH

Article 14.--REGULATION OF DENTISTS AND DENTAL HYGIENISTS

65-1435. Improper use of certain names by dentists; exceptions; unlawful acts; suspension or revocation of license. (a) Except as otherwise provided in this section, it shall be unlawful for any person or persons to practice or offer to practice dentistry under any name except such person's own name, which shall be the name used on the license granted to such person as a dentist as provided in this act.

(b) A licensed dentist may use the name of any association, corporation, clinic, trade name or business name in connection with the practice of dentistry, as defined in this act, except that such name may not misrepresent the dentist to the public as determined by the Kansas dental board.

(c) Nothing herein contained shall be construed to prevent two or more licensed dentists:

(1) From associating together for the practice of dentistry, each in such person's own proper name; or

(2) from associating together for the practice of dentistry, each as owners, in a professional corporation, organized pursuant to the professional corporation law of Kansas, or, each as owners, in a limited liability company organized pursuant to the Kansas revised limited liability company act, and using a name that may or may not contain the proper name of any such person or persons if such name has been approved by the board and from employing nonowning licensees; or

(3) from associating together with persons licensed to practice medicine and surgery in a clinic or professional association under a name that may or may not contain the proper name of any such person or persons and may contain the word "clinic."

(d) It shall be unlawful, and a licensee may have a license suspended or revoked, for any licensee to conduct a dental office in the name of the licensee, or to advertise the licensee's name in connection with any dental office or offices, or to associate together for the practice of dentistry with other licensed dentists in a professional corporation or limited liability company, under a name that may or may not contain the proper name of any such person or persons or to associate together with persons licensed to practice medicine and surgery in a clinic or professional association under a name that may or may not contain the proper name of any such person or persons and may contain the word "clinic," unless such licensee is personally present in the office operating as a dentist or personally overseeing such operations as are performed in the office or each of the offices during a majority of the time the office or each of the offices is being operated.

(e) Nothing in this section shall be construed to permit the franchise practice of dentistry.

f) Notwithstanding the provisions of subsection (d) and (e), a licensee shall be permitted to own one dental office in addition to the licensee's primary office location under the following conditions:

- 1. the licensee's secondary dental office is located within a 75 mile radius of the licensee's primary office, and;***
- 2. the licensee's secondary dental office is located in a county with a population of less than 10,000 according to the 2000 U.S. Census.***

(f) g) The violation of any of the provisions of this section by any dentist shall subject such dentist to suspension or revocation of a license.

House Health and Human Services Committee
2-4-08
Attachment 1

Testimony on HB 2672
to
House Committee on Health and Human Services

by **Martin Kennedy**
Commissioner of Licensing, Certification and Evaluation

February 4, 2008

Madam Chair and members of the Health and Human Services Committee, thank you for the opportunity to appear before you today in support of the transfer of Long Term Care Unit certification survey activities from the Kansas Department of Health and Environment to the Kansas Department on Aging.

Since 2004, when the program was transferred from the Department on Health and Environment, the Kansas Department on Aging has performed state regulatory functions for adult care homes including nursing homes, assisted living facilities, residential health facilities, homes plus, boarding care homes and intermediate care facilities for the mentally disabled. In addition, KDOA provides annual certification surveys for nursing facilities eligible to participate in the federal Medicare and Medicaid programs. Approximately 250 federally certified nursing homes and 350 other state licensed facilities are regulated by KDOA.

Health Facility Surveyors employed by KDOA perform annual surveys to assure adult care homes meet regulatory requirements. Most surveyors are registered nurses with experience in long-term care. Surveyors work out of 6 regional offices located around the state.

In 2004, all long term care facility survey functions were transferred from KDHE to KDOA, except surveys of Long Term Care Units attached to acute hospitals and licensed under KSA 65-425. The state licensure and federal certification activities related to hospital acute care beds and their long term care units remained together under a unified program structure administered by KDHE, while other long term care facilities under the Adult Care Home statutes (KSA 39-923 et seq.) became the responsibility of KDOA.

As the shift of functions between agencies was accomplished, it became apparent that the survey of adult care homes and long term care units may be accomplished best under the administration of a single agency. For the past few months we have been working with KDHE to transfer long-term care unit certification survey activities to KDOA. We are currently finalizing a memorandum of understanding to shift positions and financial resources between agencies and intend to request a Governor's Budget Amendment to finalize FY 2009 budget changes. Our intent is to implement the change on March 1, with KDOA activities to be funded by interagency billings through the end of state fiscal year 2008.

House Health + Human Services Committee
2-4-08
Attachment 2

As drafted, HB 2672 contains a number of provisions that would create a new separate licensure category and a new set of regulations for Long Term Care Units. In the draft memorandum of understanding between the agencies, the additional regulations would not be needed. Under the agreement, state licensure activities will remain a part of KDHE's licensure program and KDOA will conduct federal certification surveys and report potential licensure issues at Long Term Care Units as they arise.

In order to implement the agreement transferring the certification of hospital long term care units, we would request that sections 3, 4, 5, 6 and 7 be deleted from HB 2672. The remaining sections of the bill would cleanup provisions of existing law related to the Health Care Data Governing Board and the Health Policy Authority.

Thank you for the opportunity to appear before you to explain the transfer of federal certification activities of hospital long term care units. We support passage of the bill with amendments described above.



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

House Bill 2672

Presented to
House Health and Human Services Committee

By
Joseph F. Kroll
Director Bureau of Child Care and Health Facilities

February 4, 2008

Chairperson Landwehr and members of the committee, thank you for the opportunity to comment on House Bill 2672, which would transfer responsibility for regulating and surveying hospital based long-term care units from KDHE to the Kansas Department on Aging. Our testimony is based on understanding that language to transfer licensing authority and risk management will be amended out, so we make no comment on those provisions.

49 hospitals operate a long-term care facility, 47 of which are certified for Medicaid or Medicare, and thus operate pursuant to federal requirements as "nursing facilities". These facilities are surveyed for compliance with the same regulations and survey protocols used for free standing nursing facilities, which are done by KDOA.

Survey and Certification for Medicare and Medicaid are not conducted pursuant to state law, but rather pursuant to federal law as implemented by contract with the Centers for Medicare and Medicaid (CMS) and the Kansas Health Policy Authority (KHPA). CMS allows the state to designate the survey agency and the single state agency, KHPA contracts for the Medicaid surveys.

KDHE and KDOA have been negotiating the transfer of survey and certification of hospital based long-term care units and have agreed to a March 1, 2008 effective date. This will be done by amendment to the contract with the KHPA. Both agencies pursued this transfer based on the merits of doing so. Negotiations have been for the purpose of resolving administrative, legal and funding implications. Neither agency believes statutory change is necessary to implement the transfer. Because KDHE is the licensing agency for hospitals, no transfer of licensing or risk management was planned.

*House Health & Human Services Committee
2-4-08
Attachment 3*

BUREAU OF CHILD CARE AND HEALTH FACILITIES
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KS 66612-1368

Voice 785-296-1284 Fax 785-296-3075

There are some substantive flaws in the legislation we recommend be corrected. The proposed definition of long-term care unit is not the same as the federal definition to qualify for Medicare or Medicaid, and not all long-term care units are Medicare distinct parts. If adopted as proposed at least 36 of the 49 long-term care units will not be captured by this bill. The bill also only authorizes inspections of non-accredited long-term care units. Federal law requires that all long-term care units be inspected to qualify for Medicare or Medicaid. The bill also references the Kansas Hospital Authority, which is not a known entity.

KDHE and KDOA are intending to implement the transfer of long-term care survey and certification to KDOA effective March 1 and thus support that intent in this bill.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.



Thomas L. Bell
President

February 4, 2008

TO: House Health and Human Services Committee

FROM: Chad Austin
Vice President, Government Relations

RE: House Bill 2672

The Kansas Hospital Association (KHA) appreciates the opportunity to comment on House Bill 2672. The proposed legislation transfers the survey authority for hospital long term care units from the Kansas Department of Health and Environment (KDHE) to the Kansas Department on Aging (KDOA). The legislation also includes several technical changes relating to the Kansas Health Policy Authority.

Health care entities undergo close inspection from state agencies on a routine basis. The purposes of these inspections are to educate and reinforce appropriate health care standards. KHA and its members believe an environment focused on education and guidance, rather than punishment, should be the goal of any agency conducting inspections.

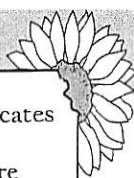
It is our understanding that a memorandum of understanding has been reached between KDHE and KDOA that only transfers the hospital long term care surveys. KHA would caution against any additional transfer of responsibilities, including the licensure and risk management functions. Further, KHA would request that when the transfer of survey responsibilities is complete that KDOA provide as much information as possible to the health care providers and outline any procedural differences that may occur.

KHA also request a technical amendment to House Bill 2672 on page 7, line 29. The entity should be cited as the "Kansas Hospital Association" rather than the "Kansas Hospital Authority". Thank you again for allowing us to share our comments regarding House Bill 2672.

*House Health and Human Services Committee
2-4-08
Attachment 4*

Kansas Hospital Association

215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • www.kha-net.org



Kansas Advocates
for
Better Care

“Advocating for Quality Long-Term Care” since 1975

HOUSE BILL No. 2672

Board of Directors

February 4, 2008

President:

Barbara Braa, *Eudora*
Trust & Investment Officer

The Honorable Brenda Landwehr, Chair
and Members of the House Health and Human Services Committee

Vice-President:

Molly Wood, JD, *Lawrence*
Elder Law Attorney

Kansas Advocates for Better Care would like to voice the following concern resulting from the transfer of responsibility for inspections in long-term care units in hospitals from the Kansas Department of Health and Environment to Kansas Department on Aging:

Treasurer:

Evie Curtis, *Overland Park*
Senior Vice-President/Trust Officer

Secretary:

Margaret Farley, BSN, JD
Lawrence, Attorney

- Funding for surveyors who will conduct inspections in long-term care units will be made available to the Kansas Department on Aging. However, those inspectors will need to be recruited, screened, hired and trained before beginning to fulfill the task of conducting surveys in long term care units.
- On the day the Memorandum of Understanding that covers the transfer from KDHE to KDOA takes affect, KDOA will assume responsibility for approximately 47-48 additional long-term care units in hospitals and the many residents who are convalescing, or who are frail and being cared for in these facilities.
- Kansas Department on Aging currently operates with fewer than the number of inspectors that KDOA has determined are needed to fulfill its obligation to inspect Kansas nursing homes. KDOA maintains less than full staffing of inspectors for nursing homes due to budget constraints.
- The protection and well-being of frail elders residing in nursing homes and long-term care units rest squarely upon the authority vested in the inspection process. For the inspection process to work properly, there must be ample numbers of well-trained inspectors completing timely reviews and requiring quick corrective action when problems are identified and residents are at risk.

Annette Graham, LSCSW, *Wichita*
Executive Director,
Central Plains Area Agency on Aging

Donald R. Janes, MD
Overland Park, Director, Senior Link

Jean Krahn, *Manhattan*
Excc. Director, Kansas Guardianship Program

Eloise Lynch, *Salina*
Retired teacher & Kansas Legislator

Marilyn & Ollie Brashears *Kansas City*
Alverta McField Nursing Home Support Group

Earl Nehring, Ph.D., *Lawrence*
Retired Professor of Political Science

Jeanne Reeder, LMSW MRE
Overland Park
Heart of America Alzheimer's Assn.

Artie Shaw, Ph.D., *Lawrence*
Clinical Psychologist

Jean Wambsganss, *Hutchinson*
*Retired Nursing Home Activities/
Social Service Director*

Honorary Board Member
William Dann, *Lawrence*

Executive Director
Mitzi McFatrigh, *Lawrence*

Kansas Advocates for Better Care requests the committee to act, and incorporate language that would afford greater protection for long-term care residents during the transfer of responsibility for inspections from the Kansas Department of Health and Environment to the Kansas Department on Aging.

Kansas Advocates for Better Care is a non-profit organization whose only interest is to advocate on behalf of frail adult residents for quality in long-term care. We have been fulfilling this mission for 32 years.

Thank you for the opportunity to voice our concern. We urge you to act with the utmost care for those who rely upon the soundness of the inspection process for their protection.

Respectfully,
Mitzi E. McFatrigh
Executive Director

House Health and Human Services Committee
2-4-08
Attachment 5