

MINUTES OF THE HOUSE AGING AND LONG TERM CARE COMMITTEE

The meeting was called to order by Chairman Bob Bethell at 3:30 p.m. on March 12, 2009, in Room 711 of the Docking State Office Building.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes  
Kelly Navinsky-Wenzl, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Judith Holliday, Committee Assistant

Conferees appearing before the Committee:

Bill Sneed, Legal Counsel, America's Health Insurance Plans  
Cindy Luxem, Director of Government and Public Affairs, Kansas Insurance Department  
David Halferty, Director, Nursing Facility and PACE Division, Kansas Department on Aging

Written testimony submitted:

Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment  
Mark Bailey, Vice President, Via Christi Senior Services, Via Christi Medical Center, Wichita

Others attending:

See attached list.

**Hearing on HB 2310 - Long-term care partnership program; exchange of policies.**

Chairman Bethell called the meeting to order and opened the hearing on **HB 2310**. He called on Doug Taylor of the Revisor's office to present a brief overview of the bill.

The bill addresses long-term care insurance and would allow policyholders the option to exchange certain long-term care policies issued on or before February 8, 2006, for coverage intended to qualify under the Kansas Long-Term Care Partnership Program. Several provisions of the amendment include leaving the offer open for a minimum of 45 days from the date of mailing by the insurer; the offer shall be made on a nondiscriminatory basis without regard to age or health status of the insured; and options for the insurers in underwriting policies.

Bill Sneed, Legal Counsel, America's Health Insurance Plans, testified as a proponent of **HB 2310**. (Attachment 1) Mr. Sneed testified that the implementation of the Long-Term Care Partnership Act provides Kansas citizens opportunities to protect their long-term care and save the State money for the care of these individuals.

Mr. Sneed explained that the amendment requires a carrier to offer in writing, on a one-time basis, to all policyholders issued long-term care coverage on or after February 8, 2006, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under the Kansas Long-term Care Partnership Program.

Cindy Hermes, Director off Governmental and Public Affairs, Kansas Insurance Department, testified as a proponent of **HB 2310**. (Attachment 2) Ms. Hermes testified that **HB 2310** was achieved through collaboration with America's Health Insurance Plans, John Hancock, MetLife, and Genworth. She stated that sixteen companies offer these policies and they are a "win-win" for the policyholders and the State.

Ms. Hermes stated the policy must contain specific consumer protection provisions; be a tax-qualified policy; and have inflation protection for certain age classifications.

The policyholder has a minimum of 45 days from the date of the mailing of the option to make a decision. The insurer may underwrite if the policy is amended to provide additional benefits or the exchange would require the issuance of a new policy. Any portion of the policy added because of the exchange may be priced

CONTINUATION SHEET

Minutes of the House Aging and Long Term Care Committee at 3:30 p.m. on March 12, 2009, in Room 711 of the Docking State Office Building.

based on the policyholder's age at the time of the exchange. The consumer will not be able to exchange the policy if the individual is in the elimination period or on claim status.

Chairman Bethell closed the hearing on **HB 2310**.

**Hearing on HB 2366 - All-inclusive care for the elderly (PACE) program.**

Chairman Bethell opened the hearing on **HB 2366**. He called upon Staff to explain the provisions of the bill. The bill would allow qualified staff of a Program for All-Inclusive Care for the Elderly (PACE) to provide services to PACE participants in the participant's homes without a home health agency license.

David Halferty, Director, Nursing Facility and PACE Division, Kansas Department on Aging, testified as a proponent of **HB 2366**. (Attachment 3) At present, there are two PACE providers in Kansas: Via Christi HOPE in Wichita, and Midland Care Connections in Topeka. During February 2009, these two PACE sites provided care for 226 Medicaid-eligible participants. A third program currently being developed in Kansas City will be operational when funded.

An amendment to **HB 2366** will exempt PACE providers from maintaining separate home health licensure. This dual licensure is costly and unnecessary because it requires PACE providers to participate in two redundant provider review processes, plus dual required documentation of case records.

Written testimony was submitted by proponents Joseph Kroll, Director, Bureau of Child Care and Health Facilities, Kansas Department of Health and Environment (Attachment 4); and Mark Bailey, Vice President, Via Christi Senior Services, Via Christi Medical Center, Wichita. (Attachment 5)

The hearing was closed on **HB 2366**.

Chairman Bethell discussed **HB 2323**, the bill dealing with criminal history of persons working in care homes which was heard at the previous Committee meeting. Because of concerns with the title of the bill, a technical amendment may be necessary. He directed Staff to work on the amendment and bring to the Committee so the bill can be worked.

Chairman Bethell asked for action on **SB 148**, the silver alert plan heard at the previous Committee meeting. **Representative Hill moved to pass SB 148 favorably and request that it be added to the Consent Calendar. Representative Schwab seconded the motion. The motion carried.**

Chairman Bethell called on Representative Schwab to give the report of the Subcommittee on Fiduciary Abuse. (Attachment 6) Representative Schwab reported that the Subcommittee held three meetings in which they looked at how other states handled the issue. The Subcommittee recommends:

1. amending the statutes by inserting language relating to the authority granted by durable power of attorney; and,
2. forming an interim committee on fiduciary abuse to conduct a more in-depth analysis of the laws concerning dependent adults and fiduciary abuse.

Chairman Bethell asked for action on the report. **Representative Schwab made a motion to move the report, seconded by Representative Hill.** There was discussion as to whether this bill needs a vehicle to change this statute. Chairman Bethell told the Committee that he will find a bill in which to insert the language of the report and will finalize the bill at a meeting next week. **The motion carried.**

The meeting adjourned at 4:15 p.m.

The next meeting is scheduled for March 17, 2009.

# HOUSE AGING & LONG TERM CARE COMMITTEE

DATE: 3/2/09

NAME	REPRESENTING
Nick Jordan	Capitol Strategies.
IRVING HOFFMAN	KSHL
JIM SNYDER	KSHL
DAVE SCHROEDER	KBI
Ed Kump	KACP KPOA
Cory Abbott	KCDD
DAVE HALPERIN	KDOA
JOANN GOLDBERGER	KDOA
Marty Kennedy	KDOA
Walt Black	Federico.
Sue Ewert	KHSA
Deb Merrill	KHPA
Bill Sneed	ANIP

**Please use black ink**

**TO:** THE HONORABLE BOB BETHEL, CHAIRMAN  
HOUSE AGING AND LONG-TERM CARE COMMITTEE

**FROM:** WILLIAM W. SNEED, LEGISLATIVE COUNSEL  
AMERICA'S HEALTH INSURANCE PLANS

**RE:** H.B. 2310

**DATE:** MARCH 12, 2009

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for America's Health Insurance Plans ("AHIP"). AHIP is a trade association representing nearly 1,300 member companies providing health insurance coverage to more than two million Americans. Our member companies offer medical expense insurance, long-term care insurance, disability income insurance, dental insurance, supplemental insurance, stop-loss insurance and reinsurance to consumers, employers and public purchasers. Please accept this memorandum as our support for H.B. 2310.

My client has been working with the Kansas Insurance Department regarding the implementation of long-term care coverages that qualify under the Long-term Care Partnership Act. As I am sure the Kansas Insurance Department will present an explanation of that Act, I will not do the same in my testimony, except to say that implementation of the Long-term Care Partnership Act does provide Kansas citizens with opportunities to protect their long-term care, and ultimately to save the State of Kansas money for the care of these individuals.

The amendment provided in H.B. 2310 requires a carrier to offer, on a one-time basis, in writing, to all existing policyholders that were issued long-term care coverage on or after February 8, 2006, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under the Kansas long-term care partnership program.

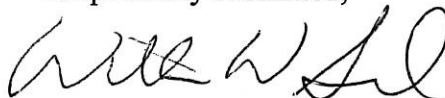
When my client and the Kansas Insurance Department worked on the creation of K.S.A. 2008 Supp. 40-2136, it was our hope to provide the "exchange" of long-term care policies to be handled through rules and regulations. After meeting with both the Attorney General and various attorneys on the matter, it became clear late in 2008 that we were going to be unable to implement the exchange through rules and regulations, and thus, that is why we have come before the Legislature requesting this amendment.

We believe these exchanges provide every Kansan the opportunity to make the choice as to whether they wish to procure a long-term care health policy that in fact will qualify for the partnership program.

On behalf of my client, we appreciate the opportunity to present this information, and we respectfully request that the Committee act favorably on H.B. 2310.

I am available for questions at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William W. Sneed". The signature is fluid and cursive, with the first name "William" and last name "Sneed" clearly distinguishable.

William W. Sneed

WWS:kjb



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

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## TESTIMONY ON HB 2310

### HOUSE AGING AND LONG-TERM CARE COMMITTEE March 12, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address the committee on House Bill 2310.

House Bill 2310 was achieved through collaboration with America's Health Insurance Plans (AHIP), John Hancock, MetLife and Genworth.

House Bill 2310 requires long-term care companies offer in writing on a one-time basis to qualified policyholders the option to exchange their existing long-term care coverage for a Kansas long-term care partnership policy.

The offer of an exchange applies only to policies issued by the insurance company, on or after February 8, 2006, that are comparable and on the policy series that the company has certified as partnership qualified. President George W. Bush signed into law the Deficit Reduction Act on February 8, 2006, allowing all interested states participation in the long-term care partnership program.

The policy must contain specific consumer protection provisions, be a tax-qualified policy and have inflation protection. If the policy is sold to an individual:

- who has not attained age 61 as of the date of purchase, the policy must provide compound inflation.
- who has not attained age 76, the policy must provide some level of inflation – either simple or compound.
- who has attained age 76, the policy may have inflation protection but not required.

The policyholder will have a minimum of 45 days from the date of the mailing of the option to make a decision.

The insurer may underwrite if the policy is amended to provide additional benefits or the exchange would require the issuance of a new policy. Any portion of the policy that is added because of the exchange may be priced based on the policyholder's age at the time of the exchange. The consumer will not be able to exchange the policy if the individual is in the elimination period or on claim status.

Thank you for this opportunity, and I will stand for questions.

HOUSE AGING & LONG TERM CARE  
DATE: 3/12/09  
ATTACHMENT: 2

**House Aging and Long Term Care Committee  
March 12, 2009**

**HB 2366/PACE**

**Dave Halferty, Director  
Nursing Facility and PACE Division**

Chairman Bethell and members of the House Aging and Long Term Care Committee, thank you for the opportunity to appear before you today in support of HB 2366, amending home health care licensure requirements for PACE providers.

There are currently two PACE providers in the state of Kansas. Via Christi HOPE is located in Wichita and serves Sedgwick County. Midland Care Connections is located in Topeka, and serves Shawnee and the surrounding counties. During the month of February, 2009 these two PACE sites provided care for 226 Medicaid eligible participants.

A third program is being developed in Kansas City and, when funded, will serve parts of Wyandotte and Johnson counties.

Both of state's current PACE programs provide home health services themselves as well as contracting for home health services with other providers. HB 2366 contains an amendment to K.S.A. 65-5112 that would exempt PACE providers from maintaining separate home health licensure.

This requirement is duplicative because it requires the PACE provider to participate in two redundant provider review processes. PACE providers must pass an initial certification and then be recertified for Medicare and Medicaid at least every two years, by a joint federal and state review team. To maintain a home health license, PACE providers must also acquire an initial license and then be re-licensed every three years by the Kansas Department of Health and Environment. The additional requirement for a home health license is unnecessary since the PACE provider must already meet the Medicaid and Medicare certification requirements, which includes a review of their home health care provision.

An example of the duplication this requirement creates involves documentation of care. PACE providers are required to maintain comprehensive care records for each enrollee. As home health providers, PACE organizations are also required to maintain a separate home health care specific record. This amendment would eliminate redundant requirements that are only necessary for a PACE provider to maintain a separate home health license.

The KDOA encourages your support of HB 2366. Thank you again for the opportunity to appear before you.



*Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary*

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Health

**House Bill 2366  
Written Testimony**

**Presented to  
Aging and Long Term Care Committee**

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

**March 12, 2009**

Chairman Bethell and members of the committee, my name is Joseph Kroll and I am the Director of the Bureau of Child Care and Health Facilities. This is the bureau in the department which regulates home health agencies. Thank you for the opportunity to provide written testimony in support of House Bill 2366.

HB 2366 would exempt PACE programs (program for all inclusive care for the elderly) from the provisions of the home health agency licensing act. To be exempt the program must provide services only to PACE participants.

PACE was authorized by the balanced budget act of 1997 and enables states to provide services to Medicaid beneficiaries as a state option. Participants must be 55 years of age and eligible for nursing home care. The PACE program becomes the sole source of services which are provided in a nursing home, personal home or inpatient setting.

Licensing as a home health agency is not required by federal law and is not necessary to assure quality of care or services. Exempting such programs from licensing removes a requirement that is not necessary. There are only a small number of such programs and KDHE supports HB 2366.

Thank you for the opportunity to provide comment in support of HB 2366.

HOUSE AGING & LONG TERM CARE  
DATE: 3/12/09  
ATTACHMENT: 4



**Aging and Long Term Care Committee  
Home health Exemption for PACE  
Mark Bailey – Via Christi, Wichita  
March 12, 2009**

Addressed to Madam Chair and Committee Members:

PACE (Program of All-inclusive Care for the Elderly) has been operational in Kansas since September 2002. There are currently two PACE programs, Via Christi HOPE in Wichita and Midland Care in Topeka. The PACE philosophy is to keep older adults in their homes with supportive services. Homemaker, attendant care, nursing services and medical services are provided to ensure participants are supported and safe to live in the community for as long as possible. PACE is an alternative to traditional long-term care placement and operates as a capitated managed care model for acute and non-acute care services. PACE is at full risk for all medically necessary costs approved by the Interdisciplinary Team. As PACE programs in Kansas, we are seeking exemption from the Kansas Home Health requirement.

**Regulatory Duplication:** The PACE requirement provides a robust set of guidelines to ensure program participants receive the highest quality of home care services. In fact, with the interdisciplinary approach to PACE, we believe a PACE program affords the participant greater access to comprehensive healthcare services and oversight than does a home health agency licensed in the state of Kansas. Kansas Home Health regulations create duplication within PACE policies, procedures and medical records. These duplications increase program operating costs and decrease efficiencies. We have developed a regulatory cross-walk to compare the requirements of PACE to those outlined in the Kansas Home Health regulations. This cross-walk was presented to the Kansas Department on Aging, the Kansas Department of Health and Environment, and the Secretary on Aging for review. Dave Halferty, Director of Nursing Facility and PACE Division, has verbalized the support of the KDOA and KDHE.

**Unnecessary Costs:** When a person enrolls in PACE they receive all Medicare, Medicaid and Part D benefits from the PACE program. The PACE program is the payment source and utilizes an interdisciplinary team approach to manage care and deliver services effectively and efficiently. Currently, Kansas PACE providers are contracting Home Health services and/or managing the costs associated with duplicate regulation. Via Christi HOPE could reduce monthly operating costs by nearly \$10,000 by providing these services internally. These savings will be necessary for PACE to balance rising costs of care against state and federal funding cuts. Our goal is to continue to provide Kansans with access to a high-quality healthcare alternative, dedicated to promoting independence and choice for the older adult.

## House Subcommittee on Fiduciary Abuse

### **Recommendation to the House Committee on Aging and Long Term Care**

#### **Brief**

The House Subcommittee on Fiduciary Abuse respectfully makes the following recommendations:

- Amend K.S.A. 21-3437 by inserting language relating to the authority granted by durable power of attorney (see attached)
- Form an interim committee on fiduciary abuse to conduct a more in-depth analysis of the laws concerning dependent adults and fiduciary abuse

#### **Background**

After reviewing the laws concerning fiduciary abuse in other states, it appears that a multitude of jurisdictions utilize an "elder adult abuse" approach. The statutes in these states treat violations of power of attorney as abuse of an elder adult, allowing such violations to be prosecuted criminally. While Kansas currently lacks the ability to prosecute such violations criminally, Kansas statutes do provide criminal penalties for "mistreatment of a dependent adult." This statute, however, does not include power of attorney violations in the conduct that constitutes such mistreatment. Loren Snell of the Kansas Attorney General's Office spoke to the subcommittee and presented additional language amending K.S.A. 21-3437 to include the use of authority granted by power of attorney in the list of actions that could amount to mistreatment of a dependent adult. While this amendment would provide a "quick fix," so to speak, Mr. Snell expressed the opinion that an in-depth investigation and revision of the laws regarding dependent adults and fiduciary abuse would be necessary to ensure that the entirety of the problem is addressed.

\* derlined italics represent proposed amendatory language\*\*\*

**21-3437. Mistreatment of a dependent adult.** (a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense, or by use of authority granted by durable power of attorney or other similar instrument by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(c) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

(2) any adult cared for in a private residence;

(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

(5) any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(d) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony.

(2) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 6, person felony if the aggregate amount of the value of the resources is \$100,000 or more.

(3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is at least \$25,000 but less than \$100,000.

(4) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000.

(5) Mistreatment of a dependent adult as defined in subsection (a)(2) is a class A person misdemeanor if the aggregate amount of the value of the resources is less than \$1,000.

(6) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

(7) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.