Approved: 4/1/09
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:30 p.m. on March 18, 2009, in Room 136-N of the Capitol.

All members were present except Senator Kelsey who was excused and Senator Haley who was absent.

Committee staff present:
Nobuko Folmsbee, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Kelly Navinsky-Wenzl, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Jan Lunn, Committee Assistant

Conferees appearing before the Committee:
Cathy Harding, Kansas Association for the Medically Underserved
Melissa Ness, St. Francis Community Service
Dan Gronniger, KVC Behavioral Healthcare
Walt Hill, High Plains Community Health Center
Robert Stiles, Primary Care
Callie Hartle, Kansas Association for Justice

Nobuko Folmsbee briefed those on the **SB 305 - Kansas tort claims act; charitable health care providers** which amends the definition of "charitable health provider."

Senator Barnett opened the hearing on **SB 305** by recognizing Cathy Harding, Kansas Association for Medically Underserved, who stood in support on **SB 305**. Ms. Harding stated that amending the definition of "charitable health care provider" to include mental health practitioners licensed by the Behavioral Sciences Regulatory Board would allow retired mental health professionals to volunteer their time in safety net clinics (Attachment 1).

Melissa Ness, St. Francis Community Services (Attachment 2), in collaboration with Dan Gronniger, KVC Behavioral Healthcare (Attachment 3), proposed an amendment to **SB 305.** These agencies provide mental health services to children and families. The intent of their amendment is to extend tort claims coverage to child welfare providers who are under contract with the State to provide services the State would otherwise provide by including them under the definition of charitable health care providers. They further offered that extending tort claims coverage to these providers would afford protection and would ensure operations that have been crucial to assisting troubled children and families in Kansas

Questions from senators included licensure for volunteers, privatizing of child welfare case management services, claims history related to practice issues, the possible inclusion others who provide services through agreements with the State of Kansas, etc.

Walt Hill, High Plains Community Health Center in Hays, spoke in support of **SB 305**, with the request to amend KSA 75-6102, section (4) (g) to include the definition of an "indigent health care clinic" as an outpatient ~~medical care~~ clinic operated on a not-for-profit basis which has a contractual agreement with the secretary of health and environment to provide health care services to medically indigent persons. Mr. Hill added that with the inclusion of community mental health centers under the Kansas Tort Claims Act will guarantee continued access to care and treatment for Kansans with mental illness (Attachment 4).

Robert Stiles, primary care director at the Kansas Department of Health and Environment, spoke from a neutral position (Attachment 5) indicating the passage of **SB 305** as amended could hold potential benefits for medically indigent Kansans through facilitating the provision of mental health services. It would allow enrolled mental health practitioners to enter into agreement with KDHE to receive coverage under the Tort Claims Act when providing care to medically indigent persons.

Considerable discussion was heard related to providers, professional counselors, licensed social workers, psychologists, etc., referrals to sub-specialty providers, pharmacists who provide medications to medically indigent individuals, numbers of private practitioners who have agreements with KDHE, liability caps,

and remuneration for providing care by the private practitioner and the clinic from where the care is provided. Several senators expressed concern related to the amendments proposed.

Callie Hartle, Kansas Association for Justice, speaking from a neutral position on the bill (Attachment 6), but opposing any amendments indicated that any expansion of the Tort Claims Act must be thoroughly vetted, and the Legislature presented with information from all stakeholders following full discussion and evaluation of the proposal's merits.

Chip Wheelan , executive director of the Health Care Stabilization Fund, commented briefly on the original intention of the act (no written testimony). He suggested a technical amendment to replace the Department of Social and Rehabilitation Services with the Kansas Health Policy Authority as the agency that operates programs for persons receiving medical assistance.

Senator Schmidt moved to adopt the amendment expanding tort immunity to providers of child welfare services under contract with the state, to adopt the technical amendment discussed, and to report **SB 305** favorably for passage; Senator Brungardt seconded the motion. The motion passed.

Senator Barnett called members' attention to **SB 220 -Emergency medical services; authority of the board of emergency medical services.** Robert Waller, executive director of the Kansas Emergency Services Board, commented that the current proposed bill includes all suggestions discussed at previous meetings.

Senator Wysong moved to pass out favorably substitute for **SB 220**; Senator Kelly seconded the motion. The motion passed.

The meeting was adjourned at 2:33pm

The next meeting is scheduled for March 19, 2009.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: March 18, 2009

NAME	REPRESENTING
Connie Hubbell	KAMU
Cyndi Tregaster	KDHE
M.L. Sims	KanAAMS
Shel Swaney	ACMHCK
Walter Hiebert	High Plains Mental Health
Scott May	Children's Mercy Transport
Dan Gronniger	KVC Behavioral HealthCare, Inc.
Berend Koops	Hein Law Firm
Phyllis Gilmore	BSRB
Bob Williams	Ks Assoc. Osteopathic Med.
Leslie Allen	BSRB
Julia Mowers	KS SHA
Cathy Harding	KAMU
Robert Walk	KBEMS
Robert Stiles	KDHE
Tobi Bitter	Federico Consulting
Rick Smith	SRS
Mike Hammond	Hein Law
Kari Presley	Kearney & Associates
Brad Smoot	CAH

KAMU

Kansas Association
for the
Medically Underserved
The State Primary Care Association

1129 S Kansas Ave., Suite B Topeka, KS 66612 785-233-8483 Fax 785-233-8403 www.kspca.org

Testimony on:
Support of Senate Bill 305

Presented to:
Senate Public Health and Welfare Committee

By:
Cathy Harding
Executive Director

March 18, 2009

For additional information contact:

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Public Health and Welfare
Date: 03/18/09
Attachment: 1

Good afternoon Mr. Chairman and members of the Senate Public Health and Welfare Committee. I am **Cathy Harding, Executive Director of the Kansas Association for the Medically Underserved (KAMU).** I appreciate the opportunity to visit with you this afternoon about SB 305.

Established as a 501(c)(3) non-profit organization in 1989, KAMU was designated the state Primary Care Association by the Bureau of Primary Health Care in 1991 and maintains that designation today. As the PCA, KAMU represents 41 members, including 38 safety net clinics. The 38 Safety Net Clinics along with their 25 satellite sites provide Kansans a total of 63 access points. Membership includes public and private non-profit primary care clinics, Federally Qualified Health Centers (FQHC's), one Federally Qualified Health Center Look-Alike, local health departments and the Statewide Farmworker Health Program.

KAMU's purpose is to grow and strengthen safety net clinics so that all Kansans will have a primary health care "home". This home is a place where people receive comprehensive primary, dental and behavioral health care, which cover the spectrum of preventative, acute and chronic health care needs. In addition, this primary health care home is defined by sustained relationships. Clients of our clinics receive care from people who know them. Together, they create a partnership for healthy lifestyles.

KAMU's mission is "to support and strengthen its member organizations through advocacy education and communication." KAMU members share a mission of providing needed health care services for all people regardless of their ability to pay.

Today our 38 Safety Net Clinics in Kansas provide primary medical care to nearly 170,000 underserved Kansans. Those Kansans, who are uninsured, underinsured, unemployed, and need health care regardless of their ability to pay come to our clinics for their primary health care needs.

SB 305 amends the Kansas tort claims act relating to charitable health care providers. The specific amendment we are requesting your support on is on page 2 of the bill, lines 23 and 24. We are requesting that the definition of "Charitable health care provider" be amended to include the addition of "a mental health practitioner licensed by the behavioral sciences regulatory board". This addition to the definition of who is covered in the Charitable Care Act will allow retired Mental Health professionals to volunteer their time in Safety Net Clinics.

By supporting this amendment, it will support and strengthen the Safety Net Clinics ability to provide services to those most vulnerable using professional volunteers.

I would urge your support of SB 305. Thank you for your time, and I will be glad to answer any questions

Saint Francis Community Services
Serving Children and Families Since 1945

Testimony before the Senate Public Health and Welfare
In Support of SB 305 - March 18, 2009

Saint Francis Community Services has a rich history of serving troubled youths and their families over 60 years. We provide a range of services from family preservation, reintegration/ foster care foster care homes, which we do so under contract with the state, as well as, drug and alcohol services, and residential services and community supports. Through those programs last year we served over 2000 children and families, in 54 rural and frontier counties, with 12 offices and over 600 full and part time employees. In July of this year our Family Preservation Services will extend into Region 3 based on the SRS designation.

2009 POLICY AGENDA~

SERVING A RURAL POPULATION

The needs, perspectives and culture of our rural and frontier population shall be reflected in decisions and policies that shape services to children and families at all levels.

MENTAL HEALTH AND BEHAVIORAL SERVICES

All children in the child welfare system will have access to quality, and timely mental health and behavioral health services designed to sustain and reunite families.

MANAGING POSITIVE SYSTEMS CHANGE

System changes that impact children and families must be adequately funded, accompanied by plans to build system capacity, and have a process for monitoring and evaluating performance against outcomes.

For more information contact
mlness@connections-unlimited.net

The system serving children and families will reflect regional differences, ensure access to critical services and effectively manage change

Today we ask that you consider an amendment to the legislation before you. The intent of the amendment would extend tort claims coverage to child welfare providers who are under contract with the state to provide services the state would otherwise provide by including them under the definition of charitable health care providers.

In 1996 the first privatized child welfare contracts were let. Prior to that time those child welfare services were provided by state employees who were in covered by the Tort Claims Act. That privilege did not transfer to the private agencies although the responsibilities with increased accountability for positive outcomes for a vulnerable population of children and families did.

Scope of the amendment~
The amendment sets a well defined parameter for services covered and while narrowing the privilege by requiring that an agency must demonstrate they are accredited by a national accrediting body such as the Joint Commission. (Formerly the Joint Commission on the Accreditation of Health Care Organizations). The accreditation process provides does not supplant state oversight but adds an additional dimension in ensuring quality programming. It requires that agencies meet rigorous performance standards with documented, ongoing quality improvement activities during the period of accreditation.

Rationale~
We believe extension of this coverage is consistent with the past practice of coverage for state employees who provided services to these populations. In addition, extending this public policy to organizations and individuals contracting with the state is not without precedence

Protection and support
With the significant reduction in the resources for these new contracts, ($14 M overall) we continue to look at ways to reduce expenditures *without* jeopardizing quality service or our ability to provide needed services for the state. Social service agencies like ours are often charged higher premiums due to working with high risk children and families.

Public Health and Welfare
Date: 03/18/09
Attachment: 2

Extending tort claims coverage to these providers would afford protection and *potentially* reduce insurance rates while encouraging additional carriers to the market. In turn, promoting more competition in insurance carriers and rates could allow us to focus resources on sustaining critical services provide new programming and ensure quality in our service delivery system.

Conclusion

We understand that with every new piece of legislation or amendment questions will arise that represent a variety of perspectives on the value and impact of the legislation. We believe the time is ripe to revisit, acknowledge and then affirm the need for this coverage for the services listed in the amendment. *We ask the committee to take a serious look at this issue as a matter of public policy and accept the amendment as proposed.*

Respectfully submitted,
Melissa L. Ness JD, MSW
Advocacy Coordinator, St. Francis Community Services

Issue - Prior to contracting with private providers in 1996 for child welfare services e.g. foster care, adoption, and family preservation, the state and its employees provided those services. As such they were afforded the protection of tort immunity. This privilege was not extended to child welfare providers once services responsibilities were transferred. We believe this privilege, as a matter of public policy should be extended to providers who under contract and state oversight provide the same services once provided by the state. (It is important to note that this privilege is extended currently to organizations providing juvenile justice services under state contract)

SB 305 - Concerning the Kansas tort claims act; relating to charitable health care providers; amending K.S.A. 2008 Supp. 75-6102

Amendment expanding tort immunity to providers of child welfare services under contract with the state.

Proposal – Include in the definition of charitable health care providers

- Amendment added on page3, line 7 = strike the word "or".
- Amendment added on page 3, line 18= strike the period at the end of, insert semi-colon, and add the word "and"
- Amendment added on page 3, line 19 = (5) *officers, directors, employees, agents of domestic not-for-profit corporations accredited by the joint commission , inc. and licensed by the Kansas department of health and environment to provide child placing, case management, psychiatric residential treatment, and psychiatric hospital services reimbursed through contracts with the state of Kansas; and*

Scope - The extension of this privilege is to those organizations who provide the service under contract with and licensed by the state **and** who must demonstrate they are accredited by a nationally recognized accrediting body.

Testimony from Dan Cronmiller for Kyle Kessler

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Senate Committee on Public Health and Welfare
Testimony in Support of SB 305
March 18, 2009

Chairman Barnett and honorable members of the Committee, I am Kyle Kessler, Vice-President for Administration and Governmental Affairs for KVC Behavioral HealthCare. We appreciate the opportunity to provide testimony in support of SB 305 and respectfully request the amendment of the underlying bill at the appropriate time when the bill is worked by the Committee. The amendment would include many organizations that provide services for populations previously served by the State. The amendment would provide coverage under the Kansas Tort Claims Act for services provided to very vulnerable populations through agreements with the State of Kansas.

KVC Behavioral HealthCare, Inc. (KVC) is a private, not-for-profit organization providing medical and behavioral healthcare, social services and education to children and families. KVC provides a wide array of behavioral healthcare services that include inpatient and outpatient mental health services as well as foster care case management. KVC is proud to have served Kansas families for over 40 years and is fully accredited by The Joint Commission, one of the oldest and most widely respected national accrediting bodies.

When the Kansas Department of Social and Rehabilitation Services (SRS) made the decision to privatize its child welfare case management services in 1996, KVC answered the call to serve as one of the initial providers of these services and continues in that role today. The State and its employees obviously had been covered by the Kansas Tort Claims Act prior to privatization, but unfortunately this coverage was not transferred to the new providers of these services. Similarly in 2007, SRS decided to privatize the children's psychiatric hospital beds in Eastern Kansas which previously had been located at Rainbow Mental Health Facility, a state operated mental health hospital. KVC is proud to have been awarded a grant to provide these services as well, but again without the coverage of the tort claims act.

KVC now plays many roles which have legitimately and traditionally been played by the state. In this age of regular litigation, one substantial lawsuit could bring substantial damage to our organization and the services it provides. This would be to the detriment of not only KVC but the hundreds of families that are served each day as well as the state itself. No such award has ever been made against KVC, nor do we anticipate it. However, coverage under the tort claims act would help ensure the operations which have been so vital in helping children and families continue to receive services for generations to come.

In conclusion, KVC requests the adoption of the balloon amendment and the passage of SB 305 by the Committee. I would be happy to stand for questions.

CWLA
CHILD WELFARE LEAGUE OF AMERICA

Joint Commission
on Accreditation of Healthcare Organizations

Association of Community Mental Health Centers of Kansas, Inc
720 SW Jackson, Suite 203, Topeka, Kansas 66603
Telephone: 785-234-4773 / Fax: 785-234-3189
Web Site: www.acmhck.org

Testimony to the Senate Public Health and Welfare Committee

Testimony on Senate Bill 305

March 18, 2009

Presented by:

Walt Hill, Executive Director
High Plains Community Mental Health Center, Hays

Mister Chairman and members of the Committee, my name is Walt Hill, Executive Director of the High Plains Community Mental Health Center in Hays. We serve 18 counties in the northwest corner of Kansas. There are 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness.

I stand before you today in support of Senate Bill 305. A Community Mental Health Center is defined in and recognized by K.S.A. 19-4001, et. seq. Community Mental Health Centers (CMHCs) are more than just another group of providers. They are the county's legally delegated authorities to manage mental health care in Kansas. The CMHCs function as the local mental health authorities. As such, the Kansas mental health system is a relationship of shared governance between two governmental entities – the state and the counties.

The primary goal of CMHCs is to provide quality care, treatment and rehabilitation to individuals with mental health problems in the least restrictive environment. The members of the Association provide services to all those needing care, regardless of economic level, age or type of illness. The CMHCs strongly endorse treatment at the community level, in order to allow individuals to keep functioning in their own homes and communities, at a considerably reduced cost to them, third-party payers and/or the taxpayer.

Kansas CMHCs provide care to over 123,000 citizens per year. Patient loads have doubled over the past ten years largely as a result of deinstitutionalization of those with mental illness. A recent study has shown that Kansas, through the efforts of the association's membership, has seen more individuals in its public mental health system, has greater penetration rates, have residents that report doing better for receiving mental health services and for those receiving mental health services, they are living more independently than in neighboring states.[1]

A CMHC is designed to serve as a safety net for those citizens who are in need of mental health services and who have either no ability to pay for such services or limited ability to pay. All of the Kansas CMHCs are specifically obligated by K.S.A. 19-4005 to provide care regardless of a patient's ability to pay. A fourth of those we serve have Medicaid or MediKan coverage, but nearly 75% of those we serve have no health care coverage and are indigent.[2]

In order to provide these services to Kansas residents, our members employ psychiatrists, PHD level psychologists, masters' level psychologists and social workers and a support staff for these professionals in order to carry out our mission. You, of course, can see that we have to compete for the services of these individuals with the private sector and we experience budget

strains like any other organization. We also are currently subject to being sued by current and former patients like any other hospital, mental health center, or psychiatric group practice.

Notwithstanding the mission we have, we find it necessary to pay premiums for professional liability coverage for not only ourselves but our employees as well. Since we so closely resemble a safety net clinic or indigent healthcare clinic, our association believes that affording us the same protection provided by the Kansas Tort Claims Act would relieve us from a significant financial burden and at the same time make us competitive for the professionals we must hire to provide psychotherapy and other mental health services. Community Mental Health Centers serve many of the same indigent population with mental health treatment as are provided primary health care treatment at safety net clinics.

The Community Mental Health Centers (CMHCs) have a state mandate to serve everyone who walks through their doors, regardless of ability to pay. Essential treatment, care and services are delivered through a combination of statutorily authorized state general funds, Medicaid, and local funding. Non-Medicaid consumers make up the largest population segment served by the CMHCs-more than 85,000 of the 122,700[3] total consumers served each year.

Yet the CMHCs have limited resources available to cover the cost of treatment and care for mentally ill Kansans who are uninsured/underinsured. The percentage of Kansans lacking health insurance increased to almost 13 percent in 2006–2007, according to new data from the U.S. Census Bureau.[4] This pushes the state's uninsured rate to its highest point since 2000–2001.

Initially, this law was established for protection of state agencies in Kansas, and has been amended several times since to include other health care providers. The neighboring state of Colorado covers licensed Community Mental Health Centers under the "Colorado Governmental Immunity Act", as it also covers health care providers who do not fall under the Federal Tort Claims Act, to ensure continued services for the citizens of Colorado at those facilities.[5]

In the long run, adding CMHCs under the Kansas Tort Claims Act protection will reduce premiums, increase competition among insurance providers, and allow CMHCs to reallocate premium savings directly into enhanced patient care. One broker in Kansas indicated that an initial premium savings of 10% could be achieved. However, moving forward this action could result in increased competition by insurance carriers thus lowering the premiums even further. CMHC directors and boards are constantly looking for ways to reduce costs and ensure levels of care are not cut or reduced. This cost savings and liability protection could be a significant tool in helping to achieve this, and also guarantee continued access to care and treatment for Kansans with mental illness.

Senate Bill 305 can accomplish a number of goals for our members and for the Kansans who seek care and treatment at their Community Mental Health Center. We are requesting that K.S.A. 75-102(e)(3) be modified to add community mental health centers. This modification is necessary because, just like safety net clinics, the CMHCs are treating medically indigent Kansans--many times the exact same consumers. The only difference is that our members are providing mental health care services to the medically indigent.

My agency has had a specific experience with this issue. In Mai v. High Plains Mental Health, the District Court ruled that because Community Mental Health Centers were not specifically

named in the definition section of the tort claims law, that we were not exempt; though we fulfill the same role as safety net clinics under the law.

Please consider adoption of SB 305, with one amendment. In KSA 75-6102, section (4)(g), please consider the following amendment:

> "indigent health care clinic" means an outpatient ~~medical care~~ clinic operated on a not-for-profit basis which has a contractual agreement with the secretary of health and environment to provide health care services to medically indigent persons.

Inclusion of Community Mental Health Centers under the Kansas Tort Claims Act relating to charitable health care providers will guarantee continued access to care and treatment for Kansans with mental illness. Thank you for your time, I am happy to stand for questions.

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[1] *How Kansas Stacks Up: A Regional and National Comparison of Mental Health Care Services*; The Association of Community Mental Health Centers of Kansas, Inc.; 2007. See at http://www.acmhck.org/common/modules/documentcenter2/documentview.aspx?DID=244&DL=1

[2] TMHC Kansas, AIMS Data Summary Report, FY 2008 at http://www.tmhc-ks.org/NonSecureWebApps/AIMSSummaryDataReport

[3] TMHC Kansas, AIMS Data Summary Report, FY 2008 at http://www.tmhc-ks.org/NonSecureWebApps/AIMSSummaryDataReport

[4] *March Current Population Survey*, U.S. Census Bureau, released August 2008. Report of Kansas Health Institute at http://www.khi.org/resources/Other/1213-UninsuredKHI08-10.pdf .

[5] Colorado Revised Statutes 24-10-101, et. seq.; *The Colorado Governmental Immunity Act.*

KANSAS

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

Testimony on Senate Bill 305

Presented to
Senate Committee on Public Health and Welfare

By
Robert Stiles, Primary Care Director
Kansas Department of Health and Environment

March 18, 2009

Chairman Barnett and members of the committee, I am Robert Stiles, the Primary Care Director in the Kansas Department of Health and Environment. I am pleased to appear before you today with testimony on Senate Bill 305. This bill proposes to include "a mental health practitioner licensed by the behavioral sciences regulatory board" in the definition of "charitable health care provider" in KSA 75-6102. This addition would allow enrolled mental health practitioners to enter into an agreement with the Secretary of the Kansas Department of Health and Environment to receive coverage under the Kansas Tort Claims Act when providing care to "medically indigent" persons.

Medically indigent persons include uninsured individuals in a family unit earning under 200 percent of the federal poverty level and individuals enrolled in Medicaid or HealthWave. Currently, providers eligible to enter into agreements with the Secretary include all professions licensed by the Kansas Board of Healing Arts, nurses, dentists, dental hygienists, mental health technicians, optometrists, and pharmacists. The proposed amendment would add to those mental health practitioners licensed by the Behavioral Sciences Regulatory Board. At present, this includes social workers, professional counselors, masters-level psychologists, and marriage and family therapists.

The addition of these providers to the definition of those eligible to enter into agreements could have potential benefits for medically indigent Kansans through facilitating the provision of mental health services to these individuals. The addition of these mental health practitioners to the list of providers eligible for agreements would not require any additional staffing or financial costs for KDHE. Thank you for the opportunity to appear before the committee today. I will now stand for questions.

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CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 300, TOPEKA, KS 66612-1368
Voice 785-296-1086 Fax 785-296-1562

Public Health and Welfare
Date: 03/18/09
Attachment: 5

KANSAS ASSOCIATION FOR JUSTICE

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Your rights. Our mission.

To: Senator Jim Barnett, Chairman
Members of the Public Health & Welfare Committee

From: Terry Humphrey and Callie Denton Hartle

Date: March 18, 2009

Re: SB 305 Tort Claims Act—OPPOSE Proposed Bill Amendments

The Kansas Association for Justice is a professional organization of attorneys representing consumers. KsAJ is neutral on SB 305 as introduced and respectfully requests that if the Committee advances the bill that it do so without amendment.

At the request of the Kansas Association for the Medically Underserved, KsAJ has been working collaboratively on the language of SB 305 for the past two years. We appreciate KAMU's invitation and their openness to our suggestions. KsAJ is neutral on SB 305 as introduced.

The Tort Claims Act is intended to provide a limited remedy to those that have been hurt by the negligent or wrongful act or omission of a state employee acting on behalf of the State. The Tort Claims Act is a limited remedy because damages are capped at $500,000, meaning that that is the maximum liability of the State relating to any single occurrence or accident, for both economic and non-economic damages. Also, there is no liability for interest prior to judgment or for punitive damages. The act also contains a number of exceptions, which are specific circumstances when there is no liability at all.

KsAJ has previously opposed expansions of the tort claims act and all other limitations on accountability or extensions of immunity to public and private entities. Justice requires that we all be accountable for our actions. If we cause harm, justice requires we make things right for those that are hurt. Immunity and limitations on liability erode accountability and are offensive to fairness.

Although we are disturbed at the trend toward expansion of the tort claims act, we distinguish KsAJ's neutral position on SB 305 with our serious opposition to any new, additional amendments. KsAJ believes that any expansion of the tort claims act must be thoroughly vetted and that the Legislature be presented with information from all stakeholders discussing the merits of the proposal. SB 305 has been privately vetted, and

is now going through the appropriate process for public review. Additional amendments offered today may raise different questions that must be answered before the amendments advance.

The following are general observations for the Committee's consideration in relation to any amendment extending protection of the tort claims act to private entities:

Kansas pays litigation costs of defending liability claims against entities that are protected by the tort claims act.

We question the long-term fiscal cost to the State of assuming the liability for acts of private entities under the tort claims act, since the State will be asked to defend claims of negligence arising against entities protected under the act. We believe the State's financial best interest must be considered in deciding whether to assume the liability and litigation costs of private entities, especially since the State of Kansas is not in direct control of private contractors, their employees, agents, and directors.

Expansion of the tort claims act is a slippery slope which will invite requests of other entities for similar tort claims act coverage.

As evidenced by 2009 SB 8, which also amends the tort claims act, and now SB 305, amendments to the act invite private entities to seek coverage in order to limit their liability. Historically, similar proposals have been contentious and the Legislature has rejected such requests (2001 SB 119 relating to community mental health centers.)

The tort claims act is intended to protect the State and not the private sector. KsAJ argues that limiting liability does not improve the performance of private contractors to the State. Instead, tort claims protection insulates private contractors from accountability and it also eliminates remedies for private citizens if they are hurt by the actions of a contractor, whether such actions are negligent or intentional.

Amendments to SB 305 cannot be adequately or appropriately dealt with in the remaining days of the 2009 Session, and they deserve full and public discussion.

KsAJ recommends that if SB 305 is passed by the Public Health & Welfare Committee that it be passed without amendment. KsAJ is happy to participate in legislative discussions and/or bill hearings during the 2010 Session on any new expansions of the tort claims act. We understand that the House Judiciary Committee Chair has agreed to hold hearings on bills next year if legislation is introduced.

Thank you for the opportunity to provide the Committee with the Kansas Association for Justice's testimony.