

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 100

As Amended by House Committee of the Whole

Brief*

SB 100 would amend existing law, KSA 39-935, related to inspection reports of adult care homes and the establishment of risk management programs for nursing facilities that provide skilled nursing care, nursing facilities for mental health that provide skilled nursing care, or assisted living facilities. The facilities may establish a risk management program that would consist of:

- ! a system for investigation and analysis of the frequency and causes of reportable incidents within the facility;
- ! measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and
- ! a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer, or risk manager of the facility.

Any reports and records reviewed, obtained, or prepared by the Kansas Department on Aging in connection with any reportable incidences referred for investigation under such risk management program, including reports reflecting the results of a state or federal Medicare or Medicaid inspection or survey, would not be admissible in any civil action under the laws of the State of Kansas. These reports and records would not be admissible unless the court determines on the record, following a hearing outside the presence of the jury, that:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- ! the proffered evidence excerpted from any report, record, or inspection is relevant and is,
- ! substantially related to the plaintiff's allegations, and
- ! otherwise admissible under the rules of evidence (Article 4, Chapter 60).

The bill also would provide that nothing relating to the establishment and maintenance of a risk management program should be construed to limit or impair a person's or entity's discovery of or access to any such report, record, inspection, or survey under state or federal law; limit or impair the authority of the Kansas Department on Aging to investigate complaints or reportable incidents under state or federal law; or diminish or expand the Department's discovery of or access to Quality Assessment and Assurance Committee records under state or federal law.

The bill would become effective on publication in the *Kansas Register*.

Background

The bill, as introduced by the Senate Committee on Financial Institutions and Insurance, was requested by the Insurance Commissioner whose representative indicated that, in order to be in compliance with federal law, the Health Insurance Portability and Accountability Act (HIPAA), the state must change the sunset date annually as the date is changed at the federal level.

The House Committee on Insurance recommended striking the language of the bill as introduced by the Senate Committee on Financial Institutions and Insurance and inserting further amended provisions of HB 2241 (as amended by House Committee). The Committee amended the provisions of subsection (d) to insert language regarding the use and admissibility of survey and inspection reports. The references to "adult care homes" also were amended to read "nursing facility that provides skilled nursing care, nursing facility for mental health that provides skilled nursing care or assisted living facility."

The House Committee of the Whole amendments removed references to “nursing facility that provides skilled nursing care, nursing for mental health that provides skilled nursing care or assisted living facility” in section 1 (a-c) and replaced the references with “adult care home.” The amendments removed the provision that facilities “shall” and inserted “may” establish a risk management program. The provision for the establishment and maintenance of a risk management program also was amended to remove reference to KSA 65-4922a and amendments thereto and insert language detailing the components of the program. The House Committee of the Whole amendment also included provisions for the admissibility of reports and records under the risk management program and the access to report, record, inspection, or survey under state or federal law.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2241 indicates that passage of the bill would result in an estimated \$37,500 in expenditures for start-up costs in FY 2005 for the Department on Aging. The Department indicates that at minimum, the passage of the bill, would require expenditures totaling \$391,745 in FY 2006 and would require an additional 7.0 FTE positions to review the risk management plans of over 600 adult care home facilities. Of the estimated expenditures for FY 2006, the Department attributes \$56,749 to other operating expenditures, including office space, training, travel, and equipment. Finally, the fiscal note indicates that any effects resulting from passage of the bill would be in addition to the amounts included in the *FY 2006 Governor’s Budget Report*.