

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:15 p.m. on February 25, 2003 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department
Mr. Norm Furse, Revisor of Statutes
Ms. Margaret Cianciarulo

Conferees appearing before the committee: Mr. Tuck Duncan, Legislative Council,
KS Occupational Therapy Association
Mr. Larry Buening, Executive Director,
KS State Board of Healing Arts
Ms. Chris Collins, Director of Government Affairs,
KS Medical Society
Mr. Norm Hess, Director of Program Services,
March of Dimes Greater Kansas Chapter
Mrs. Angie Schreiber, Consumer

Others attending: See attached guest list

Continued hearing on SB225 - an act relating to physical therapy; providing for licensure of physical therapists

Upon calling the meeting to order, Chairperson Wagle announced that today, the Committee would hear neutral testimony on SB225 and recognized Mr. Tuck Duncan, Legislative Council, Kansas Occupational Therapy Association (KOTA), who stated that they do not object to the licensing of physical therapists, however, for reasons set forth in his testimony, KOTA respectfully requests that the Committee adopt the proposed amendment. A copy of his testimony and the amendments are (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The second neutral proponent to testify was Mr. Larry Buening, Executive Director, Kansas State Board of Healing Arts, who provided a brief history of the Board and stated since respiratory therapists, occupational therapists, and occupational therapy assistant have all had their credentialing levels changed to licensure over the past several years, there no longer appears to be any justification for denying this level of credentialing to physical therapists. He also offered four technical amendments and one comment with regard to the current level of credentialing of physical therapy assistant, which is a certification and would remain a certification under this current bill. A copy of Mr. Buening's testimony and the Board's proposed technical amendments are (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair then asked the Committee if there were questions for Mr. Buening. Senator Brungardt asked if Mr. Buening would address for clarification, the paragraph on page 2, regarding protecting the terms of what the profession does. Ms. Correll asked, as a follow-up question, if Mr. Buening felt this was a title read protection bill. (Reference: Page 11, lines 23 through 26 and page 9 lines 42 and 43 create a scope of practice protection, per Mr. Furse).

As there were no further questions for Mr. Buening, the Chair recognized the last neutral conferee called upon was Ms. Chris Collins, Director of Government Affairs, Kansas Medical Society (KMS), who stated that this licensure bill does more than substitutes the term "licensure" for "registration" in the current physical therapy act, eliminating the old practice act's scope of practice definition and replacing it with an entirely new one that is comprised mostly of model language from the American Physical Therapy Association. She also offered an amendment to the bill. A copy of Ms. Collin's testimony and KMS' proposed amendment are (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

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Questions for Ms. Collins came from Senators Brungardt, Barnett, and Haley, and Ms. Correll ranging from clarifying the existing law, do occupational therapists or respiratory therapists diagnosis in their scope of practice or statutes, to be consistent how would a physical therapist's diagnosis be, the distinction of a diagnosis versus the direction of a plan of treatment, is there a distinction between diagnosis and evaluation, to current law using the term "evaluate."

As there were no further questions of Ms. Collins, the Chair made the Committee aware of written testimony from Ms. Pennie von Achen Consumer and Ms. Camilla M. Wilson, PT., PhD. Associate Professor and Chairperson of the Department of Physical Therapy. Copies of their testimonies are (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

The Chair then closed the hearing on the bill.

Action on bills previously heard

The first bill was **SB225**, an act relating to physical therapy; providing for licensure of physical therapists. Referring to Mr. Daryl Menke's proposed amendments offered during the Monday, February 24, 2003, hearing on the bill, Senator Barnett made a motion to accept the amendments as submitted by Daryl Menke (asking for fee changes, per Mr. Furse, on page 2 line 8 replacing "physiological" with "anatomical," the second was on page 6, line 16, recommending three months, and the third is at the bottom of page 7 top of page 8 listing fees). Senator Brungardt seconded the motion and the motion carried.

In regards to the next amendment (page 11, line 22), Senator Barnett stated this would deal with issues raised about massage therapists and requested Mr. Furse add an additional explanation on this. Mr. Furse stated that this was the language the massage therapist's conferee suggested from the Board of Healing Art's statute and would simply exempt some persons similar to those persons under the Board of Healing Arts exemption there who massage for the purpose of relaxation, muscle conditioning or figure improvement. He also stated they should technically pick up the barbers because they are authorised specifically for hair massages and also to be safe, pick up cosmetologists. As there was no further discussion, Senator Barnett made a motion to accept this amendment and Senator Jordan seconded the motion. The motion carried.

Regarding Mr. Buening's proposed amendment found in his testimony today on page 3 referring to some clean up (Found on the following pages: page 7, line 19, page 10, lines 33 & 34, page 11, line 13, and page 12, line 14). Senator Barnett made a motion to accept the proposed amendments from the Board of Healing Arts as presented by Mr. Buening. It was seconded by Senator Salmans and the motion carried.

Regarding Ms Collin's proposed amendment found in her testimony today, referring to page 2, lines 10 & 11 of the bill, striking the words "diagnosis for physical therapy." Having heard the compromised language, Mr. Furse was open to suggestions of the Committee (if they would prefer to use the latter.) The Chair stated that their other option would be what the physical therapists and the medical society agreed to today and that would be on line 10, keeping the word "diagnosis," insert "solely" for "physical therapy" and on line 29, after the word cauterization, add "making a medical diagnosis," which would further clarify what type of a diagnosis a physical therapist could make. The Chair asked Senator Barnett, since there were two options, did he care which was worked? Senator Barnett responded stating that if this was truly compromised language then he would go with the latter. Senator Steineger made the motion to accept the compromised language, Senator Harrington seconded, and the motion passed.

The Chair then asked for further action on the bill. Mr. Furse stated that there was one other exception, the EMS exception since the bill also talked about airway clearance techniques (page 2, lines 19 and 12). He suggested this be added as another exclusion where the Committee excluded the massage therapists. A conceptual motion to accept this amendment was made by Senator Barnett and seconded by Senator Steineger. The motion carried.

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The Chair then asked for the will of the Committee. Senator Barnett made a motion to advance **SB225** favorably as amended. Senator Jordan seconded and the motion carried.

The Chair then asked the Committee to turn to **SB199**, an act concerning the fitness and dispensing of hearing aids, stating there was no opposition to this bill. Senator Steineger made a motion to move out this bill favorably as written and not amended, seconded by Senator Harrington and the motion carried.

The next bill the Chair referred the Committee to was **SB151**, an act concerning county hospitals and asked Senator Barnett to explain the balloon offered through the testimony of the Emporia County Hospital conferees on February 20, 2003. He briefly went through the proposed amendments including: the addition of "district" hospitals to county hospitals (received testimony that a small number of district hospitals would be impacted by this legislation); joint enterprises (requirements would be for an exercise, a majority control, and that was to maintain IRS tax status); the balloon (on page 2 talks about joint enterprises - hospitals investing money for the provision of health care services) received from the attorney, Mr. Furse and the conferees on **SB151**. Ms. Correll asked, with the addition of hospital districts, does this raise the potential for hospital district or county, to actually enter into these enterprises to provide services outside of the district or county? Senator Barnett referred the question to Mr. Tom Bell, who stated that there is argument because of the way the governmental hospital laws are set up, those hospitals do not have the authority to operate the boundaries. (Ex. Shawnee County building a bridge in Johnson County) and his personal opinion in direct response to the question is, he does not think this will give them authority. Senator Brownlee asked, since we are adding amendatory language to new sections, why are these sections being amended and added to the bill? She also asked what is Section 4608? The Chair called on Mr. Furse who stated that this section is part of the county hospital statutes, that this definition section in the original bill refers to the next two sections and make similar changes in the district hospital statutes. A copy of the balloon is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

Senator Barnett made a motion to move to amend **SB151** as outlined on this balloon. Senator Harrington seconded the motion. The motion carried.

Senator Harrington made a motion to move the bill out favorably as amended. Senator Barnett seconded and the motion carried.

The final bill the Chair referred the Committee to was **SB204**, an act concerning lead poisoning prevention stating that KDHE requested this bill of our Committee. After discussion, the Chair asked if the Committee would consider a substitute bill that would lift the sunset to 2010 and work with her to try and get an interim committee on the rest of the issues on this bill. Senator Haley stated as a prime sponsor of the bill in the House when it first comes out, he would like to see this extended to 2010 and would like to make the motion to activate a substitute bill that would extend the sunset of the provisions of the original child lead act to July 1, 2010 and put the rest of these issues in an interim committee. The Chair then said there was a motion to make a substitute bill too only have in this extension of the sunset to the year 2010. This was seconded by Senator Barnett and the motion carried.

Senator Haley made the motion that the Committee moves the bill out as amended favorably. This was seconded by Senator Harrington. The motion carried.

Hearing on SB129 - an act establishing a statewide birth defects information system; providing for administration by the secretary of health and environment and for collection of data; authorizing the use of such data for certain purposes, providing for the appointment of a council to assist in the implementation and establishment of the system.

The Chair called upon Ms. Emalene Correll, Kansas Legislative Research Department to give an

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overview of the bill. Highlights included:

- this bill was requested by the representatives of the March of Dimes which would create a birth defects information system for Kansas in some circumstances;
- all new legislation, no amendatory terms involved;
- note the definition on lines 18 and 19 which refer to a “free standing birthing center” (hopefully we don’t have any of these in Kansas because it has a law that says that maternity centers are supposed to be licensed by the Secretary of Health and Environment) (ref.65-502 definition);
- line 27 - implementation depends on funding;
- printing error on line three, shows “expending” should be “expanding”;
- sub (d) line 5, lists the purposes for which information for this reporting system could be used, calling attention to two paragraphs within sub ©), lines 20 through 23;
- Section 3 relates to how the Secretary may use the information that comes into the system, specifically to notify parents, guardians, and custodians of children of the medical care and other services available, and to dispose information assembled by the system with written consent of the parent or legal guardian of the child who is the subject of the information. Absent these two purposes, then access to the information is limited to specific persons in government entities.
- There are confidentiality provisions in the bill that would require that persons who have access to the records as a governmental entity or person, and also, would be bound by the system’s confidentiality.
- an interesting provision, having not recalled in Kansas law, stating that if an entity or person is given access to this information system, certain information has to be put down regarding that person given access and this has to become a record, which in itself then becomes a public record;
- The only penalty apparently for violating an agreement (ex. Not to disclose any confidential information) would be denying further access to the system (usually when there is a breach of confidentiality involved, or there being some type of criminal penalty involved.)
- Section 4 addresses where a parent or legal guardian wants information removed from the system. (She questions that nowhere in the bill does it show where it is ever required that parents be notified that their names are going into the system.);
- Section 5 - establishes a council. Ms. Correll stated, in terms of the funding language, apparently whether or not there is funding, 30-days after this becomes effective (7-1-2003), the Secretary is to appoint a council that would include a minimum of persons whose affiliations are listed in the bill. Then not later than 30-days after these appointments are made, the Secretary is to convene the first meeting of the council.
- Section 6 - lists what the council is to do 180 days after the effective date of the establishment of the council and its adoption of the rules and regs. (Ms. Correll mentioned that this is an unrealistic time frame according to the rules and regs specialists she had visited with because it would take at least 120 days to get the rules and regs through the system.)
- Section 7 - requires that three years after the system is implemented, the Secretary is to prepare a report as directed by the council and annually after that.

Questions for Ms. Correll came from Senators Brownlee, Barnett, and Wagle ranging from concerns on page 3, beginning on line 36 (information could be accessed by various entities and describes info to be maintained) is there any place else where access is given to medical records; reference to line 20, page 3 (Ex. We know the number of aids cases we have, but do not know who, and abortion statistics); line 5, page 3, regarding an open public record; page 1, beginning with line 40, regarding who has access; the fiscal note subject to appropriations, setting up a council will cost money, to federal funds available.

As there were no more questions for Ms. Correll, the Chair called upon the first proponent conferee, Mr. Norm Hess, Director of Program Services, March of Dimes Greater Kansas Chapter who stated that to date, 35 states have entered into cooperative agreements with the Center for Disease Control (CDC) and have been awarded funding from the CDC to plan and implement birth defects information systems.

He also stated that in September 2003, another round of CDC funding will be awarded to states that are committed to enhancing their current birth defects’ information system or establishing new systems,

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including pilot projects. A copy of his testimony and a letter of support from the Kansas Chapter of the American Academy of Pediatrics are (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

The next proponent conferee called upon was Mrs. Angie Schrieber, Consumer, from Emporia, Kansas, who gave a brief history of her daughter's battle with VATER Association (VATER is an acronym for vertebrae, anus, trachea-esophageal and renal/radial and associated, the occurrence of these defects together is statistically significant) and the lack of information and support available to the public. She also stated that when working on the registry, there is some sort of option that parents could opt to do some kind of match or availability of information to be able to find others who share these birth defects. A copy of her testimony is (Attachment 7) attached hereto and incorporated into the Minutes as referenced. A copy of the VATER Connection Newsletter is filed in Chairperson Wagle's office.

The Chair announced that they had gone over time and she did not feel comfortable working the bill yet. Senator Brownlee recommended that the language in paragraph two, page 2, starting on line 33, covering the point where the Secretary may disclose information assembled by the system with the written consent of the parent or legal guardian of the child who is subject of the information. With this point she felt the Secretary could contact those parents who are listed in the system, then the Committee could amend out, starting at line 36, everything down to line 19 on page 3, and what seems outside seems to be typically acceptable with confidential medical records being removed, but still in the bill for statistical purposes, paragraph b (1) on page 3, states the Secretary may disclose info that does not have identifying pieces of information.

The Chair then asked Mr. Furse to come up with some language that the entire bill is subject to appropriations stating, she felt that the goal would be to allow KDHE to apply for a grant and if the grant does not come through, we would not do anything. Ms. Correll asked that information regarding "maternity centers" be reworked and two technical changes regarding reimbursing for expenses, and where we have this sort of information that is collected by a state agency where we do not have some sort of criminal penalty for breach of confidentiality (class B misdemeanors). Senator Barnett also recommended that in Section 6, removing the entire line 24 (Not later than 180 days after the effective date of this action). The Chair then asked Ms. Correll and Mr. Furse if they would be available to clean up the bill. Senator Haley also recommended the amendment offered by Mr. Keith Landis, Christian Science Committee on Publication for Kansas. A copy of Mr. Landis' amendment is (Attachment 8) attached hereto and incorporated into the Minutes as referenced.

Adjournment

As it was past time for the Senators to be in session, the meeting was adjourned. The time was 2:37 p.m.

The next meeting is scheduled for March 6, 2003.