

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Representative Nancy Kirk at 1:30 p.m. on February 18, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative McLeland - excused

Committee staff present:

Dr. William Wolff, Legislative Research Department

Renae Jefferies, Office of Revisor of Statutes

Gary Deeter, Secretary

Conferees appearing before the committee:

Doug Smith, Kansas Academy of Physician Assistants

Mark Stafford, Board Attorney, Kansas Board of Healing Arts

Kevin Fowler, Kansas Health Care Association

Will Larson, Kansas Association of Insurance Agents

Larry Magill, Kansas Association of Insurance Agents

Tom Murry, ICI Insurance Center, El Dorado

Jerry Wells, Director of Government Affairs, Kansas Insurance Commission

Pedro Irigonegaray, Kansas Trial Lawyers Association

Kirk Lowry, Kansas Advocacy and Protective Services

Kevin Siek, disability rights advocate, Kansas ADAPT

Others attending:

See Attached List.

Representatives Bob Bethell and Nancy Kirk chaired the hearings on two bills. The Chair opened the hearing on [HB 2770](#) - an act relating to the supervision of physician assistants.

Doug Smith, Executive Director, Kansas Academy of Physician Assistants, said the bill corrects some terminology and removes the number of physician assistants that a physician may supervise, noting that presently a physician is allowed to supervise only two; the bill removes a specific number and places the supervision number under the regulation of the Board of Healing Arts. ([Attachment 1](#)) He said that physician assistants have moved from registered to licensed and are now allowed independent practice under the supervision of a physician, stating that the bill will allow flexibility for a physician and will improve a patient's access the medical care

Mark Stafford, Board Attorney, Kansas Board of Healing Arts, testified in support of the bill, saying the Board had reviewed and approved the bill ([Attachment 2](#))

The Chair closed the Hearing on [HB 2770](#).

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A motion and second were offered to amend the bill in the three places that require technical changes and pass out the bill favorably.

Representative DeCastro read a document from her local medical society indicating their concern that allowing a physician to supervise a larger number of physician assistants would not be in the best interest of patients under their care.

The motion was passed with one dissent.

Staff Bill Wolff briefed the Committee on [HB 2306](#), stating that adult care homes are inspected by the Department of Aging, by the State Fire Marshal, and by the local health departments. He said the bill prohibits these inspection reports from being used in judicial proceedings.

The Chair opened the hearing on [HB 2306](#)

Kevin Fowler, Kansas Health Care Association, speaking as a proponent for the bill, listed other professions where there are statutory prohibitions for using certain documents as evidence in judicial proceedings, noting that the bill gives adult care homes the same protection afforded to other groups. ([Attachment 3](#)) He said the inspection reports are not intended to generate evidence for clients, noting that medical records of care home residents are available for judicial proceedings, further noting that results of inspection reports are posted on the Internet and are therefore in the public domain, obviating any need to include the reports as available for evidence. Answering questions, Mr. Fowler said in some states exorbitant judgments against insurance companies have driven up rates significantly, stating that by eliminating the reports as available for evidence, insurance underwriters will automatically lower rates. He commented that the purpose of exclusions is to encourage candor in the inspection process. If the reports can be used in a lawsuit, an administrator may be less cooperative. Answering another question, he said Ohio has a similar statute, but that the concept of exclusions is a relatively recent occurrence. He replied that the bill will not reduce insurance premiums, but will minimize future increases.

Will Larson, Kansas Association of Insurance Agents, speaking as a proponent, said insurance companies hire his firm to defend themselves against lawsuits. ([Attachment 4](#)) He stated that a few years ago, the state had five companies that sold nursing home insurance; now, because of excessive claims, only one company does so, and all the others have withdrawn from the market. He said from a practical standpoint, the inspection surveys create a significant problem for attorneys defending nursing homes, since nearly every survey has some deficiencies. He said whenever he defends a nursing home, he always hires a consultant to go through the reports, even though they usually do not help the lawsuit.

Because of the shortage of time, Larry Magill, Kansas Association of Insurance Agents, deferred to the following conferee, but submitted his supporting testimony for the bill. ([Attachment 5](#))

Tom Murry, ICI Insurance Center, El Dorado, testified in support of the bill. ([Attachment 6](#)) He said that he is not opposed to surveys, but he is opposed to using them as supporting documents in a lawsuit,

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stating that they contribute to an insurance crisis in Kansas. He related that a few years ago a 100-bed facility could purchase \$1 million of liability insurance for \$2500 per year with no deductible. The same facility now pays \$75,000 with a \$50,000 deductible and additionally often hires a risk-management consultant owned by the insurer to reduce long-term risk. He noted that in case of a lawsuit, the mere possibility of the survey being included in a lawsuit will motivate a care home to settle without a trial. He commented that even homes with exemplary surveys are faced with continually increasing insurance rates.

Jerry Wells, Director of Government Affairs, Kansas Insurance Commission, spoke as a proponent. ([Attachment 7](#)) He said there is a clear connection between the use of surveys for legal proceedings and the lack of available liability insurance for care homes, noting that there were many carriers a few years ago, and now there is only one local carrier. He stated that since 2000, the per-bed price for nursing homes has increased 95%, surmising that if surveys were excluded, liability insurance rates would come down and Kansas might be more attractive to other carriers.

Pedro Irigonegaray, Kansas Trial Lawyers Association, spoke in opposition to the bill, stating that it is not the survey that causes liability; the survey only reflects the quality of care given to residents and must be available to assure that residents are given the right to protection when harm is done. ([Attachment 8](#)) He said judicial review before a trial determines whether the survey is probative or prejudicial and whether it is relevant or not. He said to prohibit such surveys is to deny the rights of those who often cannot speak or act for themselves, noting that transparency is a virtue, but suppressing evidence is not. He commented that insurance premiums have risen in part because the insurance companies have recently lost money in the stock market and are making it up by boosting premiums. Answering a question, Mr. Irigonegaray said he did not know how many judges admit surveys as evidence.

Kirk Lowry, Kansas Advocacy and Protective Services, spoke in opposition to the bill. ([Attachment 9](#)) He said KAPS is the federally mandated protection and advocacy agency to protect people with disabilities, noting that the agency investigates claims of harm to residents in care homes, saying that surveys are indicators of whether or not a particular home is complying with applicable laws and regulations. He cited a 1998 Kansas Supreme Court decision ([Adams vs. St. Francis](#)) which held that a plaintiff has the right of access to all relevant facts in a lawsuit against a health-care provider, noting that the bill would deny care home residents the right to defend themselves in a court of law. He said better care would drive down insurance premiums. Answering questions, Mr. Lowry agreed that the court makes a distinction between factual information and conclusions and that a plaintiff had a constitutional right to factual information but not necessarily to conclusions.

Kevin Siek, disability rights advocate, Kansas ADAPT, testified in opposition to the bill. He said that this legislation seeks to eliminate one of the few tools citizens can use to protect themselves from abuse. ([Attachment 10](#)) A member commented that Mr. Siek's testimony sounded like an indictment of the industry in general. Mr. Siek replied that Kansas ranks 6<sup>th</sup> in the nation on the percentage of nursing home facilities with citations for substandard quality of care. He said the best way to deal with the problem of increasing insurance premiums is to close down sub-standard homes.

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Not attending, but providing written testimony where the following :

- Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, a proponent ([Attachment 11](#))
- Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association, a proponent ([Attachment 12](#))
- Garen Cox, Medicalodges, representing the Kansas Health Care Association, a proponent ([Attachment 13](#))
- Lee Eaton, Executive Director, Pioneer Ridge Retirement Community, Lawrence, a proponent ([Attachment 14](#))
- Ernest Kutzley, Advocacy Director, AARP, an opponent ([Attachment 15](#))
- Ami Hyten, Topeka Independent Living Resource Center, an opponent ([Attachment 16](#))
- Deanne Bacco, Kansas Advocates for Better Care, an opponent ([Attachment 17](#))

The Chair closed the hearing on [HB 2306](#)

Chairman Morrison adjourned the meeting at 3:00 p.m. The next meeting is scheduled for Thursday, February 19, 2004.