

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE.

The meeting was called to order by Chairperson Jim Morrison at 1:32 p.m. on February 19, 2003, in Room 243-N of the Capitol.

All members were present except Representatives Landwehr, who was excused.

Committee staff present:

Bill Wolff, Legislative Research Department
Renae Jefferies, Revisor of Statutes' Office
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Representative Dean Newton
Katy Lamm, Deputy Director, Johnson County Area on Aging
Debbie Collins, Director of Government Relations, Johnson County Developmental Supports
Darrell Donahue, Congressional District Coordinator, AARP
Greg Reser, Director, Licensure and Certification, Bureau of Health Facilities, Kansas Department of Health and Environment
Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services
Kathleen Olsen, Kansas Banker's Association
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board
Anna Silva-Keith, Chair, BSRB
Ron McNish, Clinical Director, Johnson County Mental Health Center
John Randolph, Executive Director, Mental Health Center of East Central Kansas, Emporia
Ron Hein, Legislative Counsel, Mental Health Credentialing Coalition
Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration
Gary White, Vice President of Legislation, Kansas Trial Lawyers Association
Elizabeth Cauble, PhD, LMSW, Professor, Kansas State University Social Work
Dorothy Stucky Halley, LMSW, Halley Counseling Services, Parsons
Carl Myers, Assistant Professor of Social Work, Washburn University
Sharon Stuewe, LSCSW, President-Elect, Kansas Association of School Social Workers
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Bonnie Robles, LSCSW, Coordinator of Social Work Serices, Special Education Department, Topeka Public Schools

Others attending: See Guest List.

A motion was made, seconded, and passed to approve the minutes for February 17, 2003.

Representative Peggy Long chaired the meeting for the hearing on **HB 2254.**

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Representative Dean Newton reviewed the proposed legislation, which broadens the protection for dependent adults. (Attachment 1) He said that most abuse of dependent adults is financial; He gave anecdotal evidence of such abuse, such as family members or health-care workers obtaining power of attorney and siphoning off a vulnerable person's money. He outlined the two major provisions of the bill:

- It expands the list of mandatory reporters of adult abuse, including financial institution officers.
- It involves law enforcement personnel in addition to Social and Rehabilitative Services (SRS).

Representative Newton said those who report abuse are immune from lawsuits, observing that early detection of abuse reduces damage to the victims.

Kathleen Lamm, Deputy Director, Johnson County Area Agency on Aging, testified in support of the bill. (Attachment 2) She said national statistics indicate that only 1 in 14 incidents of elder abuse or neglect are reported to authorities, noting that in Johnson County reports of adult abuse have increased 338%. She stated that in-home care providers are one of the best sources to alert authorities to abuse.

Greg Reser, Director, Licensure and Certification, Bureau of Health Facilities, Kansas Department of Health and Environment (KDHE), explained that his bureau was responsible to investigate allegations of abuse, noting that the bill created some confusion about whether KDHE's responsibilities were abrogated by directing reports to go to SRS and law enforcement officers, especially since KDHE inspects adult-care facilities and reports abuse to the Attorney General, to a nurse-aide registry, and to law enforcement officers. (Attachment 3) Since the bill excludes institutions for the developmentally disabled, he said he was not clear if that exempted KDHE from any investigation of such an institution.

Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services, stated that SRS is responsible to investigate 18 and older adults regarding investigating reports of abuse, stating that SRS receives 17,000 reports of abuse each year. (Attachment 4) She noted a fiscal cost (also included in members' packets of testimony as Attachment 21) of an additional \$1.6 million to the State, saying that some changes could be effected in order to reduced costs. She also noted that the facilities at Topeka (KNI) and Parsons should be included in the bill.

Kathleen Olsen, Kansas Bankers Association, testified that by broadening the list of those required to report adult abuse to include officers or employees of financial institutions, the bill creates a dilemma for financial officers who want to respect the confidentiality of their customers and, if they report suspected abuse, may violate their bank's privacy policy. (Attachment 5) She said the KBA questions the need for this bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence, spoke in support of the main concepts of the proposed legislation, but expressed concern about the change in wording which describes vulnerable adults as all adults who are harmed by others. (Attachment 6) In so doing, she said, those who counsel victims of sexual or domestic violence would be required to report each event to SRS (17,208 domestic violence victims, 988 sexual assault victims), adding significantly to the SRS workload and reducing a victim's willingness to confide in a counselor. She suggested retaining the current statutory definition of *adult*.

Steve Howe, District Attorney's office, Johnson County, said his office often prosecutes adult abuse, noting a dramatic increase in abuse cases, many of which require law enforcement involvement, an additional intervention established by this bill.

Written testimony was submitted by Debbie Collins, Director of Government Relations, Johnson County Development Supports; Darrell Donahue, Congressional District Coordinator, AARP; Deanne Bacco, Executive Director, Kansas Advocates for Better Care; and Otto Handwerk, Overland Park. (Attachment 7)

The Chair closed the hearing on **HB 2254**.

As Chair, Representative Tom Holland opened the hearing on **HB 2170**.

Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board (BSRB), which has oversight over most of the state's mental health professionals and social-work professionals, said this proposed legislation creates a uniform confidential and privileged communication act for all of the BSRB licensees. (Attachment 8) She said the intent of the bill is to allow confidentiality for mental health professionals without being so broad that it stymies the search for truth and justice.

Anna Silva-Keith, Chair, BSRB, spoke in support of the bill. She said the bill widens the exceptions to privilege, but in mental-health areas there are needs for reporting that must limit confidentiality. (Attachment 9)

Dr. Betsy Cauble, Professor, University of Kansas Social Work Department spoke in opposition to the bill, listing two reasons:

- She said the bill blurs two privacy functions--privilege and confidentiality, privilege being a legal and more comprehensive protection, and confidentiality being a professional, ethical value.
- The bill creates many exceptions to privilege, making it unacceptable in its current form; however, she said would be willing to collaborate with the BSRB to work out differences. (Attachment 10)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Dorothy Stucky Halley, Assistant Professor, Pittsburg State University, who with her husband operates Halley Counseling Services, said the exceptions to privilege were the most problematic, requiring a conscientious counselor to explain to a client all the exceptions impinging on his/her privilege in counseling situations, a process which would be confusing to a client. (Attachment 11) She also noted that the bill creates confusion for college teachers, since there are three levels of social work, but the bill applies to only 2 levels of licensure.

Ron McNish, Clinical Director, Johnson County Mental Health Center, and a board member of BSRB, acknowledged the confusion, but noted that the present statutes are even more confusing. He said in nearly every situation, if a third person is privy to information between two people, the attorney-client privilege is breached. He said **HB 2170** eliminates contradictions between the statutes addressing privilege and those addressing confidentiality. (Attachment 12)

John Randolph, Clinical Psychologist and Executive Director of the Mental Health Center of East Central Kansas, said that staff in his facility were often called into court to testify regarding a client, stating that until 1986, statutory privilege varied widely by circumstances. (Attachment 13) In 1986, K.S.A. 65-5601 *et seq.* provided clear and unambiguous statements regarding privilege for patients in treatment facilities, with 14 well-articulated exceptions, statutory boundaries which he said have served citizens well. He said **HB 2170** was modeled after these statutes, providing a balanced privilege between clients and licensees.

Ron Hein, Legislative Counsel, Mental Health Credentialing Coalition, spoke in support of the bill. He noted that attorney-client privilege does not apply to mental health professionals, and he strongly urged the Committee to adjust the law. (Attachment 14)

Mark Gleeson, Family and Children Program coordinator, Office of Judicial Administration, said the bill needed added language to allow licensee to testify in court hearings; he supplied suggested language in Attachment 15.

Gary White, Vice President of Legislation, Kansas Trial Lawyers Association, addressed one fundamental issue that he said had yet to be resolved: the distinction between confidentiality and privilege. He said presently in statute the distinction is clear, but **HB 2170** blends the two. He said in most settings, at the entrance of a third party, communications may be confidential, but they are not privileged, whereas the bill extends privilege to a third party, in effect violating the statutory privilege in present law. He suggested a rewording of the bill in Attachment 16.

Carl Myers, Assistant Professor of Social Work, Washburn University, testified that he was concerned about the negative impact of the bill on the work of therapists. He said the present statutes are clear as to rights of therapists and rights of client, but the proposed legislation complicates that clarity with 16 exceptions which create ethical and professional vagueness and may place a client at risk. (Attachment 17)

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE on February 19, 2003, in Room 243-N of the Capitol.

Sharon Stuewe, LSCSW, President-Elect, Kansas Association of School Social Workers, said the bill would be devastating to social workers in public schools, observing that school social workers will find the requirements and exceptions of the bill very difficult to explain to students and families. (Attachment 18)

Stacy Mann, Kansas Coalition Against Sexual and Domestic Violence, said rape and domestic counselors would find it difficult to apply mandates of the bill in crisis situations. (Attachment 19)

Bonnie Robles, LCSW, Coordinator for Social Workers in USD 501 (Topeka) said the proposed bill would diminish the ability of social workers to protect students under their care, especially in group settings; she wondered whether present privileged information would be required to be released by school authorities. (Attachment 20)

Answering a question regarding applicable federal regulations, Ms. Halley said mental health workers are subject to HIPPA (Health Insurance Portability and Privacy Act). Mr. White said if a state law is more restrictive than the federal regulations, the state law takes precedence. He said the list of exceptions was partly to address federal requirements.

Additional written testimony is included as Attachment 22: Larry Hays, Board Member, BSRB; Gary Price, Department of Psychology and Research in Education, University of Kansas; Stephenie Roberts, LCSW; and JoAnn Briles-Klein, LSCSW.

The hearing on **HB 2170** was closed.

The Chair adjourned the meeting at 3:18 p.m. The next meeting is scheduled for Thursday, February 20, in Room 243-N of the Capitol.