

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Representative Eber Phelps at 1:30 p.m. on February 17, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative Brenda Landwehr- excused
Representative Cindy Neighbor- excused
Representative Don Hill- excused
Representative Tom Holland- excused
Representative Joe 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 Bowman, staff, Kansas Coordinating Council on Early Childhood Developmental Services
Dr. Chet Johnson, Professor of Pediatrics, University of Kansas School of Medicine
Linda Kenney, Director, Bureau for Children, Youth and Families, Kansas Department of Health and Environment
Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association
Annice Davis White, CEO, The Caring Heart
Linda Berndt, Executive Vice-President, Kansas Health Care Association
Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging
Pamela Johnson-Betts, Secretary, Kansas Department on Aging
Guen Easley, Assistant Attorney General, Office of the State Fire Marshal
Greg Wright, Kansas Trial Lawyers Association

Others attending:

See Attached List.

Staff Bill Wolff gave a briefing on [HB 2350](#), screening for newborn infants. He said the bill creates statutory requirements for the Kansas Department of Health and Environment to monitor low-birth-weight-infant information and offer assistance to parents, noting that the bill makes it unlawful, with certain exceptions, for those who handle vital statistical data to disclose the information.

Representative Eber Phelps chaired the hearing for [HB 2350](#).

Doug Bowman, staff for the Kansas Coordinating Council on Early Childhood Developmental Services, spoke as a proponent, saying that correlation between low-birth-weight babies and developmental disabilities is clear, and that early intervention for these children can be a great benefit. ([Attachment 1](#)) He said after the babies are identified, a single letter is sent to parents informing them of the services

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available, noting that any response on the part of parents is voluntary. He stated that this bill will identify those who might be otherwise missed, since most of them would not have been in a neo-natal intensive care unit. Answering questions, Mr. Bowman said a full range of services is available statewide, provided free to parents under federal mandates. He noted that **SB 418** has similar provisions.

Dr. Chet Johnson, Professor of Pediatrics, University of Kansas School of Medicine, spoke in favor of the bill. ([Attachment 2](#)) He said that countless studies have shown that children at risk for developmental disabilities progress much more if there are early intervention procedures provided for them, noting that many older children he sees have never had a diagnosis for their problems, something that this bill would help obviate.

Linda Kenney, Director, Bureau for Children, Youth and Families, Kansas Department of Health and Environment, spoke in support of the bill. ([Attachment 3](#)) She said the agency will review the birth weight of all newborns and send a notice to parents whose children meet the low-birth-weight criteria, informing them of services available. Answering a question, Dr. Johnson said the response of parents is determined by the way the letter is crafted, noting that the simple letter indicated by the bill is not ideal for screening, but expresses respect for privacy.

Not appearing before the Committee, but providing written testimony:

- Ethel Peterson, former Representative, a proponent. ([Attachment 4](#))
- Katherine Kersenbrock-Ostmeyer, Director for Special Education, Northwest Kansas Educational Service Center, a proponent. ([Attachment 5](#))
- The Chair closed the hearing on **HB 2350**.

Chairman Morrison suggested that, if there were no objections, the Committee work the bill. A motion was made and seconded to pass the bill out of the Committee favorably. Representative Mast suggested holding the bill on General Orders below the line until the Committee had a chance to see the comparable Senate bill. The motion passed.

Bill Wolff commented on the features of **HB 2658**, a bill to establish an independent panel to resolve disputes by administrators of adult care homes when they disagreed with an inspection report. He said that the bill will become a part of the Adult Care Licensing Act. He noted the language: that an administrator *may request* a review panel; when the request is made, the Secretary of the Department of Aging *shall provide* an independent panel to resolve the dispute, noting that no panel member may be an employee of the Department.

Representative Doug Patterson opened the hearing on **HB 2658**.

Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association said that the

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proposed legislation will strengthen the credibility and fairness of the adult care home informal dispute resolution (IDR) process, noting that by employing an independent panel, the agency cannot be accused of bias. ([Attachment 6](#)) She observed that other state regulatory agencies use an independent review panel when inspection and compliance issues are disputed, and that sometimes federal laws require such a panel, quoting a Centers for Medicare and Medicaid Services (CMS) letter stating that third-party IDRs are permissible. She suggested that costs could be reduced by asking panel members to volunteer their time. Answering questions, she said that the present two-tier process first involves a regional manager, then, if the dispute is not resolved, the dispute is taken to the Kansas Department on Aging, where staff conduct the review. She said the present system is perceived to make administrators vulnerable to retaliation by survey inspectors.

Annice Davis White, CEO, The Caring Heart, a professional geriatric care management practice in Overland Park, also spoke in support of the bill, saying that the agency usually upholds its own decisions and is considered less than fair, therefore the need for an independent review process. ([Attachment 7](#)) She said that an agency that has control over the care homes can levy fines or close the facility, further indicating the need for an outside panel. She noted that many administrators leave because of the system that makes them lose confidence in having a fair hearing. Answering questions, Ms. White said the panel would serve without pay and that the agency would pay only mileage and per diem expenses.

Linda Berndt, Executive Vice-President, Kansas Health Care Association spoke as a proponent, repeating the concern that the present process is perceived as unfair. ([Attachment 8](#)) Answering questions, she said administrators are afraid to challenge survey results because of a fear of retaliation at the next inspection. She said Iowa has a pilot project using a third-party review panel, a process that CMS approved, indicating that the federal government's regulations should not be a problem for the bill.

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, said she represented 160 not-for-profit care homes in the state and appeared as a proponent. She commented on the third-party decisions, agreeing that CMS allows such procedures as long as the agency signs off on the decision. ([Attachment 9](#)) Answering a question, she said that she had no solid evidence that the present system was unfair, but noted that 20% of IDRs result in a change in the reports. She declined to give any numbers to support the 20% figure. Answering another question, she reviewed the survey grid, which measured the scope and severity of deficiencies, stating that the grid assessed levels of harm on one side and the number of individuals affected on the other side, noting that the inspection reports are open to public scrutiny and are the basis for certain insurance rates.

Pamela Johnson-Betts, Secretary, Kansas Department on Aging, testified as an opponent to the bill. ([Attachment 10](#)) She reviewed the present informal dispute process, which she said was adequate for resolving disputes, noting that the agency also provides a formal appeals procedure, which follows federal guidelines. She listed three objections to the bill:

1. CMS regulations allow an outside entity to conduct an ADR, but the third-party group can serve only in an advisory capacity. **HB 2658** would clash with federal regulation.

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2. The estimated cost of \$245,000 to provide an external review process is beyond the scope of the current department budget without an infusion of additional funds.
3. The present system provides both an informal and a formal avenue to resolve disputes. Adding another level is unnecessary.

Answering questions, Ms. Johnson-Betts agreed that the CMS allows third-party reviews, but they cannot be binding on the agency. She said the goal of an IDR is a collaborative resolution. Greg Reser, KDOA staff, said an administrator is free to pursue either or both an IDR and the appeals process. Ms. Johnson-Betts said the agency has a contract with the University of Kansas to evaluate the survey process.

Guen Easley, Assistant Attorney General, Office of the State Fire Marshal, spoke in opposition to the bill, saying that the Fire Marshal contracts with the Department on Aging for a specific area of inspection of care homes. ([Attachment 11](#)) She said the inspectors must be certified by CMS, and that the panel the bill envisions would likely not be trained to properly evaluate an inspection report.

Greg Wright, an attorney from Overland Park, representing the Kansas Trial Lawyers Association, testified as an opponent. He said it is unclear how the proposed independent panel will fit into the existing process, noting that the nursing home industry often disputes the findings of the agency that regulates it and that it appears that the concern for fairness has little basis in logic. ([Attachment 12](#)) He also noted that in order to perform adequately, the panel would need to review an inspection report in depth, a complexity that would require much time and knowledge, not an easy or simple process. He said that if the Committee sees fit to advance the bill, he would suggest changes: besides having a physician on the panel, he would suggest adding a consumer representative and a registered nurse with a geriatric background, then provide extensive training for the panel. He also suggested adding safeguards in the bill to keep a facility from filing frivolous appeals.

Written testimony only was provided by Deanne Bacco, Executive Director, Kansas Advocates for Better Care, who opposed the bill. ([Attachment 13](#))

The Chair closed the hearing on **HB 2658**.

Chairman Morrison thanked the Committee for their work. The meeting was adjourned at 3:05 p.m. The next meeting is scheduled for Wednesday, February 18, 2004.