

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:33 p.m. on February 23, 2004, in Room 526-S of the Capitol.

All members were present except Representative McLeland, who was excused.

Committee staff present:

Dr. William Wolff, Legislative Research Department
Renaë Jefferies, Office of Revisor of Statutes
Gary Deeter, Secretary

Conferees appearing before the committee:

Kevin Fowler, Kansas Health Care Association
Frank Allison, Kansas Trial Lawyers Association
Jerry Wells, Director of Governmental Affairs, Kansas Insurance Department

Others attending:

See Attached List.

The Chair opened the hearing on [HB 2820](#), an act concerning the Kansas Board of Healing Arts, and welcomed Lawrence Buening, Executive Director, Kansas Board of Healing Arts, who stated that the Board now regulates 13 professions, and the bill makes the statutory language consistent among the various professions. ([Attachment 1](#))

A fiscal note from the Division of the Budget was included. ([Attachment 2](#))

The Chair closed the hearing on [HB 2820](#). A motion was made and seconded to recommend the bill favorable for passage. The motion passed

Representative Kirk opened the hearing for [HB 2867](#), a bill establishing a medical review panel for adult care homes.

Kevin Fowler, Kansas Health Care Association, spoke as a proponent for the bill ([Attachment 3](#)) He said that the statutes do not include adult care homes under the definition of a health-care provider, which means that the medical malpractice review process is not applicable for care homes; therefore, the bill establishes a simple dispute resolution mechanism to precede any court action. He stated that a claimant may submit a request to the Kansas Department of Insurance, who will select a panel to review the claim and make specified determinations, thus in many cases obviating the need for a lawsuit. He noted that a claimant was free to pursue the claim in court, but the bill made it mandatory to first submit the claim to the medical review panel, stating that a mediation panel would help defuse the emotional components often present in adult care home claims of abuse or injury, a third-party recommendation being an appropriate way to bring about informal resolution.

Answering questions, Mr. Fowler said the proposed care home medical review panel is different from a

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medical malpractice review panel, in that the former panel is mandatory, the latter is optional. He said the process is similar in that both panels provide independent, third-party findings that assess economic and non-economic components and make non-binding recommendations. He compared the proposed panel to domestic dispute mediation, a process which is helpful in defusing the emotional content accompanying the dispute. He replied that there is no time element for the panel; he estimated a panel finding to take between 90 and 180 days, noting that the statute of limitations does not begin until after the panel completes its work, commenting that the findings of the panel are admissible in court except for any recommended settlement amount. He stated that the bill was requested by members of the long-term care industry to slow the trend of higher liability insurance premiums and minimize the likelihood of large judgments against care homes, admitting that to date there have been no large claims and punitive damages against Kansas care homes. A Committee member noted that Kansas has a \$250,000 cap on such judgments.

Frank Allison, Kansas Trial Lawyers Association, spoke as an opponent to the bill. ([Attachment 4](#)) He began by responding to questions directed to the previous conferee, saying that the medical malpractice review panel is unworkable, is seldom used, is disliked by physicians, and results in cursory conclusions. He then reviewed the constitutional objections to the bill: that it violates due process, violates equal protection under the law (protects one class, but dilutes the rights of another class), violates the right to trial by jury, and violates access to the courts. He questioned whether a panel made up of medical staff could determine damages accurately, and he said the panel's immunity from deposition or testimony in a later court case denies a plaintiff the right of cross-examination of a witness. He questioned the validity of an insurance liability crisis, noting that the bill diverts attention from the real cause of rising insurance costs—the mismanagement of the insurance industry.

Answering questions, Mr. Allison said that nationally, ½ of 1% of claims filed are for medical negligence, and only 10% of that .5% go to trial. He defended contingency fees, saying that without such an arrangement, poor clients would never be able to afford a lawyer.

Jerry Wells, Director of Governmental Affairs, Kansas Insurance Department, said the Department would work to fulfill the provisions of the bill if it passes. ([Attachment 5](#))

The Division of the Budget provided a fiscal note. ([Attachment 6](#))

Not appearing but submitting written testimony were:

- Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging, a proponent; ([Attachment 7](#))
- Monte Coffman, Executive Director, Windsor Place, a proponent; ([Attachment 8](#))
- Paul Wurth, Director, Gatewood Care Center, a proponent; ([Attachment 9](#)) and
- Deanne Bacco, Kansas Advocates for Better Care, an opponent; ([Attachment 10](#))
- Further documentation was later provided by conferee Frank Allison. ([Attachment 11](#))

The Chair closed the hearing on **HB 2867**.

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Chairman Morrison resumed discussion on the proposed amendment to **HB 2306** from a previous meeting.

Representative Patterson reminded the Committee that even without the stipulation of the amendment, the judge, through a *motion in limine*, already has the discretion to include or exclude relevant information from inspection reports. Another member commented that inspection surveys appear to be inconsistent, and the provisions of the bill might be helpful.

Representative Kirk explained her amendment, saying nothing shall prevent the judge from including relevant excerpts from any inspection report; it simply excludes the general and indiscriminate use of items in reports.

The question was called. The amendment passed.

The vote to recommend **HB 2306** passed with one dissenting vote.

The Chair informed members that the staff briefing on **HB 2735** and **HB 2760** would be placed in the Liberty Document Management System for their perusal in preparation for the next day's meeting.

The meeting was adjourned at 3:01 p.m.