

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:36 p.m. on March 18, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative Brenda Landwehr- 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:

Adam Obley, Governor's Fellow, Office of Health Planning and Finance
Larry Buening, Executive Director, Board of Healing Arts
Paul Silovsky, Kansas Physical Therapy Association
Thomas Bell, Executive Vice President, Kansas Hospital Association
Margaret Farley, Kansas Trial Lawyers Association
Cristine Elliott, Pittsburg, personal story
Deanne Bacco, Executive Director, Kansas Advocates for Better Care
Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association
Larry Magill, Executive Vice President, Kansas Association of Insurance Agents
Kevin Fowler, Kansas Health Care Association
Michael Donnelly, Kansas Advocacy and Protective Services
Ernest Kutzley, AARP
Ami Hyten, Assistant Executive Director, Topeka Independent Living Resource Center

Others attending:

See Attached List.

The Committee approved the minutes for March 17, 2004.

The Chair opened the hearing on [HB 2939](#), which adds three persons to the Health Care Data Governing Board. Adam Obley, Governor's Fellow, Office of Health Planning and Finance, spoke in favor of the bill, saying that there is a plethora of health-care data, but inadequate analysis and formatting of the data, both of which hinder the understanding of issues related to insurance coverage, access to health care, and quality. He said the bill will broaden the scope of the information to better serve employers and policy makers. ([Attachment 1](#))

Answering a question, the Chair said the proposed legislation had no fiscal impact on the state, and he closed the hearing on [HB 2939](#).

A motion was made, seconded and passed to recommend [HB 2939](#) as favorable for passage.

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:36 p.m. on March 18, 2004, in Room 526-S of the Capitol.

The Chair opened the hearing on [SB 529](#), which adds two classes of persons authorized to approve the initiation of physical therapy treatment.

Larry Buening, Executive Director, Board of Healing Arts, testified as a proponent, noting that a Senate amendment satisfied a concern of the Kansas Medical Society. ([Attachment 2](#)) Answering questions, he said that both occupational therapists and respiratory therapists are able to initiate treatment based on a referral from a physicians assistant or an advanced registered nurse practitioner, but a physical therapist cannot do so; the bill levels the playing field for the equivalent professions.

Paul Silovsky, Kansas Physical Therapy Association, spoke in favor of the bill, saying the bill makes a technical change, noting that presently when a physicians assistant makes a referral to a physical therapist, the physical therapist must consult with a physician before beginning treatment. ([Attachment 3](#))

Thomas Bell, Executive Vice President, Kansas Hospital Association, speaking as a proponent, said that the ability of a physician assistant making a referral which the physical therapist cannot accept is an anomaly in health-care practice; the bill corrects this. ([Attachment 4](#))

The Chair closed the hearing on [SB 529](#).

By motion, second and favorable vote, the Committee recommended [SB 529](#) as favorable for passage.

The Chair opened the hearing on [SB 430](#), which prohibits the results of adult care home surveys from being admitted as evidence in a civil proceeding.

Margaret Farley, Kansas Trial Lawyers Association, spoke as a proponent. ([Attachment 5](#)) She said the bill as amended by the Senate allows judges the discretion necessary to determine on a case-by-case basis whether information in a nursing home survey report is relevant. She urged the Committee to resist any efforts to amend into the bill the provisions of [HB 2306](#), which, she said, severely limits the information allowed in a court case.

Cristine Elliott, Pittsburg, gave her personal experience in support of the bill. ([Attachment 6](#)) She said that after her brother died from abuse in an adult care home, if the family had not been allowed to go to the judge to find out the truth, the family would never have been able to bring about changes in the system, saying that as a result of their court case, significant changes were made.

Deanne Bacco, Executive Director, Kansas Advocates for Better Care, testified in support of the bill, saying the bill as amended is much better than [HB 2306](#). ([Attachment 7](#))

Phyllis Kelly, Executive Director, Kansas Adult Care Executives Association, said that KACE would support the bill only if [HB 2306](#) were to be amended into it. ([Attachment 8](#))

Larry Magill, Executive Vice President, Kansas Association of Insurance Agents, also said KAIA would support the bill only if [HB 2306](#) were amended into it, saying he is not opposed to the concept of [SB 430](#), but

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:36 p.m. on March 18, 2004, in Room 526-S of the Capitol.

that it does not address the problem that many adult care home reports are extremely negative and therefore prejudicial to a fair weighing of evidence in a court case. ([Attachment 9](#)) He said insurance underwriters consider survey reports when writing insurance coverage on care homes, the reports being a cause of the skyrocketing liability insurance for care homes.

Kevin Fowler, Kansas Health Care Association, likewise stated that KHCA supports the amending of [HB 2306](#) into [SB 430](#), saying that the former is more specific and that the latter has unintended consequences of sending a message to judges to apply a more expansive rule of evidence than in the past. ([Attachment 10](#)) He also noted that the bill does not affect the discovery process and therefore the story of Cristine Elliott has no application to the bill.

Michael Donnelly, Kansas Advocacy and Protective Services, spoke as an opponent. ([Attachment 11](#)) He said his earlier testimony against [HB 2306](#) applies as well to this bill: that the *St. Francis* decision would make this law unconstitutional and that it is poor public policy to decrease accountability of those entrusted with the care of loved ones.

Ernest Kutzley, AARP, testified as an opponent of the bill, saying that his legal advisors in Washington D.C., in commenting on the bill, stated that the bill allows a care home to hide essential and relevant information from juries. He observed that no other business is given such protection and that inspection reports can show a pattern of neglect that juries need to know. ([Attachment 12](#))

Ami Hyten, Assistant Executive Director, Topeka Independent Living Resource Center, spoke as an opponent and offered an amendment to the bill. ([Attachment 13](#)) ([Attachment 14](#)) She said that nursing homes are care-giving institutions; coming to the legislature to propose limits to their exposure for accountability is unconscionable when people we have entrusted to their care abuse that trust. She noted that to make a distinction between discoverable and admissible evidence is disingenuous.

The Committee posed questions to various conferees. Ms. Elliott said that the care home where her brother lived had done a background check on the abusive employee before his hiring, but none following his being employed. Mr. Magill said that there was no study showing the relationship between insurance underwriting costs and inspection reports, adding the comment that an inspection report indicates a level of risk to the underwriter. Ms. Farley said that [SB 430](#) codifies current law but does not reform it. Representative Kirk commented that inspection reports do not take into account changes in personnel or changes in administration in a care home. Ms. Farley replied to another question that inspection reports are important to identify patterns of care in a care home, that the factual items in the report are for a judge and jury to sort out. Mr. Magill said that care-home insurance rates have increased exponentially—that in the last four years rates have gone from \$35 per bed to \$1000 per bed in Kansas. He said that losses, not inspection reports, drive rates, but that the reports contribute to losses. Mr. Fowler said that with current law and under [SB 430](#), a judge may allow an inspection report into evidence even if it has little or nothing to do with a claim and punishes a facility even if it is not directly responsible for injury to a claimant. He said the primary information used in lawsuits is the medical record, not inspection reports. Mr. Magill said the 10-year loss-ratio of care home insurers in Kansas was 179%; in 1998, 615%. Representative Bethell commented that were care homes allowed to place the increased cost of insurance into a fund for home- and community-based care, the issue

CONTINUATION SHEET

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE at 1:36 p.m. on March 18, 2004, in Room 526-S of the Capitol.

of the bill would be irrelevant. Answering a question about typical judgments of courts, Ms. Farley said Kansas allows only economic damages and no punitive damages; economic damages are by statute capped at \$250,000, and wrongful death is likewise capped at \$250,000.

The Chair closed the hearing on [SB 430](#).

The meeting was adjourned at 3:05 p.m. The next meeting is scheduled for Monday, March 22, 2004.