

Approved _____

Date

3/29/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at _____
Chairperson

9:00 a.m./~~p.m.~~ on MONDAY, MARCH 27, 1989 in room 529-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisors Office
Myrta Anderson, Legislative Research
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Representative Dorothy Flottman
James Byrnes, State Program Director, ACTION
Ron Todd, Assistant Commissioner of Insurance
John Grace, Kansas Association of Homes for the Aging
Frank Lawler, AARP
Esther Wolf, Secretary of Aging

Chairman Bond called the meeting to order at 9:14 a.m.

HB 2309 - Representative Dorothy Flottman appeared before the committee in support of this bill. She explained that this bill was introduced at the request of the Foster Grandparent Program at Winfield State Hospital and Training Center to hopefully resolve a problem they were having with insurance coverage. Rep. Flottman explained the functions of the two programs mentioned in the bill--the Foster Grandparent Program and the Senior Companion Program. She then introduced James Byrnes, State Program Director, ACTION, who provided the committee with some information regarding the insurance problems faced by the aforementioned groups. (attachment 1)

Mr. Byrnes explained to the committee that the purpose of these two programs is to provide opportunities for low-income persons aged 60 or over to give supportive person-to-person service to children and adults having exceptional or special needs. However, he said that the appropriate insurance coverage is not available, due to state statutory prohibitions, which technically places the State out of compliance with federal guidelines. Passage of HB 2309 would provide additional insurance to what is presently being provided and also bring the administration of these programs into compliance with grant regulations. (attachment 2)

A brief discussion followed. A committee member inquired if there was a fiscal note. Rep. Flottman answered that there was none. Mr. Byrnes told the committee that the insurance usually provided for these programs was workmen's compensation but, technically, it is not applicable.

Ron Todd, Assistant Commissioner of Insurance, appeared in support of HB 2309. He told the committee this bill would allow the purchase of insurance to be centralized.

Discussion followed. A committee member asked if there is a requirement on the part of state agencies to have to get bids and do the federal guidelines require competitive bids. Mr. Byrnes replied that they did not have to get competitive bids. Mr. Todd added that this type of insurance was not a "bidding proposition" but usually required negotiation.

Since there were no further conferees, Chairman Bond announced the Hearing on HB 2309 closed.

HB 2381 - Ron Todd, Assistant Commissioner of Insurance, explained that while this bill did not involve insurance, legislation enacted in 1986 made the Insurance Department the repository of the disclosure statements and annual audits required of providers of continuing care as defined in that legislation. Because of problems involved in continuing care, the Insurance Department, in cooperation with other Aging groups, attempted to work out some of the problems and this resulted in HB 2381. Mr. Todd explained that some of the basic changes made in the bill include: (1) the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S Statehouse, at 9:00 a.m./p.m. on MONDAY, MARCH 27, 1989.

change in the definition of the entrance fee, (2) deficiencies in the disclosure requirements of the current law, (3) requires a filing of the annual disclosure statement and continuing care agreement by December 31 of each year. (attachment 3)

Discussion followed. A committee member inquired why the Insurance Department was so interested. Staff answered that the Insurance Department received a lot of the complaints, that continuing care is a lot like insurance, and that the people at Clearview City brought their problem to the Insurance Department.

John Grace, Kansas Association of Homes for the Aging, appeared in support of HB 2381. He stated that the 120 members of his Association have a long tradition of quality care and fiscal responsibility and think that the provisions in this bill will prevent unscrupulous operators from entering the market and provide consumers with more than adequate protection. (attachment 4)

A brief discussion followed with a committee member inquiring of Mr. Grace if the compromise worked out in the filing of annual reports had been a burden. Mr. Grace replied that it had not. Another committee member inquired if HB 2381 would be a problem to his organization. Mr. Grace answered, "Not in my mind."

Frank Lawler, AARP, appeared before the committee in support of this measure. Mr. Lawler informed the committee of the turmoil created at Clearview City when Triad Development Company took over and informed the 250 residents that they did not have lifetime contracts. Mr. Lawler stated that while HB 2381 is not everything that might be desired it is a compromise bill which provides a number of safeguards for individuals entering a facility of this type. (attachment 5)

Discussion followed. A committee member asked why Triad did not have to file a disclosure statement. Mr. Lawler announced that they claimed they did not have to file because they did not come under the state's provisions. Mr. Lawler continued by saying that changes need to be made to make sure these statements are filed in a timely way. A committee member inquired if passage of this bill would prevent other "Clearview Cities." Mr. Lawler replied that requiring more informative disclosure statements with a time limit would certainly help.

Esther Wolf, Secretary of Aging, appeared in support of HB 2381. Secretary Wolf told the committee that this bill will enable consumers of continuing care services to make better quality decisions about investing what is often a significant portion of their life savings. She also informed the committee that facilities that require a transfer of assets or an entrance fee that is less than \$5,000 are exempt from the provisions of this bill. Secretary Wolf also emphasized that the information required by this bill should be readily accessible by providers. (attachment 6)

There being no further conferees, the hearing on HB 2381 was closed by Chairman Bond.

Senator Karr made a motion that HB 2381 be passed out of committee favorably. Senator Salisbury seconded the motion and the motion carried. Senator Karr volunteered to carry the bill on the Senate floor.

A motion was made by Senator Parrish to pass HB 2309 out of committee with a favorable recommendation. The motion was seconded by Senator Kerr. The motion carried. Senator Parrish will carry the bill before the Committee of the Whole.

The minutes of Wednesday, March 22 and Thursday, March 23, were approved on a motion of Senator Kerr with Senator Yost seconding the motion. The motion carried.

Chairman Bond adjourned the meeting at 9:55 a.m.

DOROTHY H. FLOTTMAN
 REPRESENTATIVE, SEVENTY-EIGHTH DISTRICT
 815 EAST 9TH STREET
 WINFIELD, KANSAS 67156-2941



TOPEKA

HOUSE OF
 REPRESENTATIVES

March 27, 1989

COMMITTEE ASSIGNMENT

VICE-CHAIRMAN: LABOR AND INDUSTRY
 MEMBER: EDUCATION
 PENSIONS, INVESTMENTS AND BENEFITS
 PUBLIC HEALTH AND WELFARE
 ADVISORY COMMISSION ON
 JUVENILE OFFENDER PROGRAMS

Testimony on H.B. No. 2309
 before the
 Senate Financial Institutions and Insurance Committee

Thank you Chairman Bond and members of the Senate Financial Institutions and Insurance Committee for the opportunity to appear before you this morning on behalf of House Bill No. 2309.

I was asked by members of the Foster Grandparent Program at Winfield State Hospital and Training Center to introduce a bill which would resolve a problem they have with insurance coverage. House Bill No. 2309 is the result of that request.

Two programs are mentioned in this bill -- the Foster Grandparent Program and the Senior Companion Program, both sponsored by the Kansas Department of Social and Rehabilitation Services. Persons participating in these programs are providing a most valuable service. They work on a one-to-one basis five days a week, and do a considerable amount of traveling. The state institutions involved in this bill are Fort Hays State University, the Kansas Neurological Institute and the Winfield State Hospital and Training Center.

At K.N.I. and the W.S.H. & T.C. the foster grandparents work with the mentally and physically handicapped. Their duties include assisting their "children" in walking, perhaps showing them how to tie a shoe, and helping them with other skills within their capacity to perform. I call it "parenting" services. Oftentimes their most valuable service is providing LOVE -- perhaps by simply holding and rocking their "child."

In addition, the Senior Companions working through Fort Hays State University are providing similar services. Their contacts are with people throughout a six county area.

Mr. Chairman, with your permission, I would now like to introduce Mr. James Byrnes, State Program Director, ACTION, who will provide you with some facts regarding the insurance problem which the foster grandparents and the senior companions are experiencing and how passage of H.B. No. 2309 would solve the problem. Following his presentation, we will be happy to answer any questions.

Mr. Byrnes.

*Attachment 1
 Sen. FI + I
 3/27/89*

James Byrnes

Testimony in Support of HB-2309

ACTION, the Federal Volunteer Agency has awarded Foster Grandparent and Senior Companion program grants to the State of Kansas, by means of its institutional settings, since 1966. At present there are 108 FGPs and 90 SCP volunteers participating under the sponsorship of three State Institutions, the Kansas Neurological Institute, Winfield State Hospital and Training Center and Fort Hays State University. As the sponsor, the State of Kansas has agreed to manage these programs within the federal guidelines provided by P.L. 93-113, Domestic Volunteer Service Act of 1973, as amended (Public Law 93-113, 87 Stat. 394.42 U.S.C. 4951), ACTION Handbook 2650.2 and in Title 45, Chapter XII, Part 1208 of the Code of Federal Regulations.

The dual purpose of these programs is to provide opportunities for low-income persons aged 60 or over to give supportive person-to-person service to children and adults having exceptional or special needs.

A variety of personal and tangible benefits accrue to the volunteer participants of these programs. The major share of benefits, however, are tangible and direct: stipend, transportation, meals, insurance, an annual physical examination, recognition and uniforms.

The direct benefit of insurance for accident, personal liability, and when appropriate, excess automobile liability is grant funded available and required by federal guidelines. However, the appropriate insurance coverage is not provided at the present time, due to State statutory prohibitions, which technically places the State out of

*Attachment 2
Ser. 7 I + I
3/27/89*

compliance with federal guidelines. Paraphrasing the State Statute; because the state is a self insured entity no outside insurance can be purchased for its employees, therefore, the accident, personal liability and excess automobile liability insurance available through the ACTION Grants is not utilized. Two problems have resulted; first, coverage of these part-time employees through the State's workmans compensation laws is inadequate and technically illegal, and secondly what coverage is provided does not meet the specifics set down in the ACTION guidelines for volunteer insurance coverage.

By enacting HB-2309 the States' sponsorship of the FGP/SCPs would be brought into compliance with ACTION regulations, by allowing available federal dollars in the grant to be used to purchase the appropriate insurance coverage through CIMA. Such action would bring the programs in compliance with the guidelines without jeopardizing the volunteers direct benefits or requiring additional costs by the State. The present health and workmans compensation coverage provided by the State for the volunteers would not be adversely affected. This additional insurance would simply add to what is presently being provided and most importantly, bring the administration of these valuable programs into compliance with grant regulations.

TESTIMONY BY

RON TODD
ASSISTANT COMMISSIONER
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

HOUSE BILL NO. 2381

MARCH 22, 1989

*Attachment 3
Sen. FI + I
3/27/89*

House Bill No. 2381 is a proposal that was developed through a cooperative effort of the Kansas Department on Aging, the Department of Social and Rehabilitation Services, the Department of Health and Environment, the Kansas Association of Homes for the Aging, the American Association of Retired Persons, a representative of a private continuing care facility and the Insurance Department. While the bill does not involve insurance, the legislation enacted in 1986 made the Insurance Department the repository of the disclosure statements and annual audits required of providers of continuing care as defined in that legislation. As a result of some problems revealed by a change of ownership of a facility providing continuing care, the increase in the number of continuing care facilities and general concerns of organizations such as the AARP, the Insurance Department served as the facilitator of the meetings that resulted in the bill now before you.

As a result, I don't pretend to be knowledgeable about continuing care agreements or facilities. I can, however, explain the changes and/or the basic reason for the changes provided by House Bill No. 2381 and the 1986 legislation.

First, the definition of continuing-care contract has been expanded to include different forms of payment that are utilized by some of the homes the legislation is intended to reach as well as to recognize that some continuing care agreements are on a month-to-month or some other base of time of less than the one year minimum period defined by current law. In addition, the revised definition establishes a basis for voluntary adherence to the requirements of the law by homes that would otherwise not be subject to its provisions.

The change in the definition of the entrance fee is necessary to be compatible with the expanded payment arrangements that are now recognized in the definition of continuing-care contract.

The definition of "home", "provider" and "resident" are unchanged from existing law.

The definition of "commissioner" has been added because the term appears more frequently in House Bill No. 2381 and, as will become evident, the Commissioner is delegated more responsibilities and authority under the proposed legislation. In this regard, we want to emphasize that the Commissioner is not seeking additional responsibilities or authority and we did not seek to become the repository of the information now required to be filed with the Department. Thus, if there is a more appropriate agency to perform the duties required, the Department will certainly not oppose an amendment.

Section 2 of the proposed bill is a key ingredient in House Bill No. 2381 in that it addresses some deficiencies in the disclosure requirements of the current law. First, rather than permit each home to devise its own disclosure statement, House Bill No. 2381 requires providers to use a disclosure statement prescribed by the Commissioner. Second, the proposed law makes it clear that current residents are entitled to a copy of the annual disclosure statement upon request. Third, the information required to be disclosed is expanded to include certain estimates and information that must be provided if the home has not commenced operations; a statement as to whether the manager or any director or official of the home has been convicted of certain crimes or had any licenses or permits revoked; a statement as to operational experience; and, a specification of the provider's fiscal year to avoid evasion of the annual filing and audit requirements by changes in the fiscal year.

Section 3 requires a filing of the annual disclosure statement and continuing care agreement by December 31 of each year. Under the existing law, there is no specified time for the filing of the disclosure statement so it is not known for twelve months whether the provider is due to file or not.

Section 4 is a significant new provision which requires continuing care agreements to be filed with the Commissioner and prescribes certain items the agreements must contain or have attached.

Section 5 is also new in that it requires providers covered by the law to register with the Commissioner. Under the current law there is no way to determine who is supposed to comply with the disclosure and audit requirements and nothing that can be done if a particular provider is supposed to but doesn't. The registration mechanism combined with the penalties authorized under section 6 should correct this deficiency. Also, as mentioned earlier, providers not required to comply with the law may do so voluntarily by applying for a certificate of registration and complying with the requirements.

Section 7 is, I believe, self-explanatory but I do want to note that a specific statutory provision specifying the obligation of new owners of a home covered by the law will correct a practical problem actually encountered under the current statute.

Section 8 is also new but is necessary in view of the enlarged responsibilities of the Commissioner that are required by the proposed bill.

Finally, Section 9 repeals the current law rather than amend and repeal it only because of convenience in drafting the legislative proposal. If this is inappropriate or presents some kind of problem for the revisor, the results anticipated by enactment of the bill will not be affected if the format of its presentation is changed.

I will be happy to respond to questions but there are other conferees that are better versed in the technicalities of continuing-care agreements and facilities than I. Thus, on technical questions I will defer to their knowledge and expertise.



KANSAS ASSOCIATION OF HOMES FOR THE AGING

March 22, 1989

Senator Richard Bond, Chairman
And Members of Financial Institutions and Insurance Committee

Re: House Bill No. 2381 - An act concerning continuing care contracts.

Our association represents 120 private not-for-profit retirement and adult care homes of Kansas. We have several members who utilize continuing care contracts.

Last summer, we worked with the Insurance Commissioners staff and representatives from American Association of Retired Persons, and other state agencies to arrive at HB 2381.

We believe that HB 2381 is reasonable for providers and fair for consumers.

Therefore, we support the passage of HB 2381.

Our members have a long tradition of quality care and operate in a fiscally responsible manner. Hopefully, the provisions of this bill will prevent unscrupulous operators from entering the market and provide consumers with more than adequate protection of their rights.

Thank you.

CONTACT PERSONS: JOHN GRACE OR JEFF CHANAY

*Attachment 4
Sen. FI + J
3/27/89*



KANSAS STATE LEGISLATIVE COMMITTEE

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Mr. Frank H. Lawler
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T E S T I M O N Y

To Senate Committee on Financial Institutions & Insurance
REGARDING H.B. NO. 2381, CONTINUING CARE AGREEMENTS

March 27, 1989

Mr. Chairman and ladies and gentlemen of the Committee:

The State Legislative Committee (SLC) of the American Association of Retired persons appreciates this opportunity to indicate its support for House Bill No. 2381.

Last Wednesday copies of testimony were filed with the Committee which were copies of testimony presented to the House Committee on this bill in February. The intention was to expound upon that testimony by bringing members up to date on developments which it was felt were pertinent at this time. The hearing on the 22nd on HB 2381 was not held and we've been given this opportunity to present up-dated testimony at this time.

Yesterday I talked with Mrs. Margaret Rabus, President of AARP's chapter located at Clearview City, Kansas. Mrs. Rabus advised that Northern Hills Bank of Kansas City North had taken over Clearview City following the bankruptcy filing by President Saxton of Triad Development Co. of Irving, Texas. As indicated in our February 14th Testimony to the House Committee on Insurance, it was Triad that last year took over Clearview City and created such turmoil among its 250 residents by notifying residents they did not have lifetime contracts and had the option of paying 24% monthly rentals or purchasing their unit for \$30,000.

According to Mrs. Rabus some 30 residents panicked and vacated their units. Mrs. Rabus also assured me that had their been appropriate statutes to protect residents conditions would not have developed as they did at Clearview City. It was further indicated that the former president and the former financial officials of Triad made it so difficult for several of the former residents that they simply moved out.

*Attachment 5
Sen. FI + I
3/27/89*

House Bill No. 2381 is not everything that might be desired in needed legislation but it is a compromise bill which does embody a number of safeguards for individuals contemplating entering this type facility.

AARP's State Legislative Committee feels this is legislation whose time was brought to the legislatures attention in 1986 but was not adequately addressed by HB 2251 as amended and adopted.

The Legislature now has an opportunity to provide greatly improved conditions for persons entering life time contracts. Your favorable recommendations of HB 2381 will be appreciated and will assure investors in such contracts/agreements improved security. It should also be emphasized that reputable operators will find benefits as certified operations.

Frank Lawler, Chairman, SLC.



DEPARTMENT ON AGING
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Mike Hayden
 Governor

TESTIMONY FOR THE SENATE FINANCIAL INSTITUTIONS AND
 INSURANCE COMMITTEE
 ON HB 2381
 MARCH 22, 1989

Esther Valladolid Wolf
 Secretary of Aging

The Kansas Department on Aging (KDOA) supports HB 2381 which strengthens current law by requiring certain providers of continuing care services to register with the Insurance Department and disclose additional financial and related information to current and prospective residents of continuing care facilities. This bill is the consensus product of a task force convened by the Insurance Department which included both public and private sector representatives.

While it falls short of some of the provisions contained in the American Association of Homes for the Aging model bill, HB 2381 does represent a significant improvement over current law. Currently 29 states have enacted legislation in this area. The need for strong legislation is readily apparent. Serious problems have occurred in Kansas with the Clearview City facility. John Knox Village in Kansas City has also had financial problems. A national study of 109 Continuing Care Retirement Communities in 1988 found that 44 (40%) had a negative net income or a negative net worth profile. An additional 20 had both net income and net worth deficits.

H.B. 2381 will enable consumers of continuing care services to make better quality decisions about investing what is often a significant portion of their life savings. It may also help deter financially vulnerable facilities from entering the Kansas market.

This bill does not impose onerous reporting requirements. Facilities that require a transfer of assets or an entrance fee that is less than \$5,000 are exempt from the provisions of HB 2381. The information required to be provided by this bill should be readily accessible by providers. It is interesting to note that a task force member who represents a facility that would not fall under this bill has expressed an interest in voluntarily complying with the requirements of this bill; hence the provisions in lines 29-31 of this bill.

KDOA supports this bill as an improvement to our consumer protection laws and urges its favorable consideration by this committee.