

Approved: 2-24-93  
Date

## MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 19, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Norman Furse, Revisor of Statutes  
William Wolff, Legislative Research Department  
Emalene Correll, Legislative Research Department  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Mary Ann Gabel, Executive Director, Behavioral Sciences Regulatory Board  
Yo Bestgen, Executive Director, Kansas Association of Rehabilitation Facilities  
Michael C. Strouse, Executive Director of Community Living Opportunities, Inc./Johnson & Douglas Co.  
Joseph Kroll, Director, Bureau of Adult and Child Care, Kansas Department of Health and Environment  
Sandra Strand, Legislative Coordinator, Kansans for Improvement of Nursing Homes, Inc.

Others attending: See attached list

The Chair opened the hearing on **SB 248** - Examination fees for marriage and family therapists and psychologists.

Mary Ann Gabel, BSRB, appeared before the Committee in support of **SB 248** which would address the Board's need for increases in the statutory limitation on fees for mandatory examinations for psychology and marriage and family therapy registration applicants. (Attachment 1) Committee discussion related to the national testing examination fees and administrative tasks. No opponents testified on **SB 248**.

Hearing on **SB 249** - Unlicensed employees of adult care homes providing services to mentally retarded exempted from certain requirements.

Yo Bestgen, KARF, appeared in support of **SB 249** and submitted written testimony stating the bill would exempt the private intermediate care facilities for the mentally retarded (ICF/MR) from the certified nurses aid (CNA) training requirement. This exemption does not remove the requirement of a training program, as the federal regulations require appropriate training, and the Kansas Department of Health and Environment will continue to survey program outcomes based upon the quality of that training. (Attachment 2) In answer to a member's question, it was noted CNA training is designed for nursing home delivery service and not appropriate for staff who work within an ICF/MR.

Michael C. Strouse, Community Living Opportunities, Inc., testified in support of **SB 249** and reviewed the curriculum for CNA training requirements. Many ICF/MR programs find it difficult to hire CNAs who already meet the training requirements to work with persons with developmental disabilities, since more CNAs due to their training prefer to care for medically fragile and geriatric persons. (Attachment 3) In answer to a member's question, Mr. Strouse stated the cost of CNA training outside of the agency is approximately \$90 (or higher) /person/semester at a Junior College. Support services consist of licensed practical nurses to work with clients and train staff, physician assistants and medical doctors.

Joe Kroll, Kansas Department of Health and Environment, submitted written testimony in support of **SB 249** (Attachment 4) Before the department determined their position on this bill, Mr. Kroll stated they had visited extensively with their surveyors and with the director of surveying programs for these facilities (ICF/MR), and all felt this bill was not compromising to the well being of the MR clients in any way, and that the training provided by the industry itself was quite sufficient and saw no need for the training to be state mandated. Most of the facilities are small, and the percentage or ratio of professional staff to the unlicensed non-professional staff is

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on February 19, 1993.

much higher than in a general nursing home. The individual facility is given some flexibility in developing their training program to meet the particular needs of their clients. The federal and state regulations require the facility develop a training program both initial prior to interaction with a client and ongoing that would meet the needs of the residents.

Sandra Strand, KINH, appeared in opposition to **SB 249** and stated the bill would eliminate any training requirements for direct care staff, and staff members that do not complete certification training would not be listed in the Kansas Nurse Aide Registry -- the Registry lists all Certified Nurse Aides and indicates any aides with confirmed findings of abuse or neglect. KINH would support the replacement of the current CNA training requirement with a training curriculum and certification that is more appropriate for providing care for residents with mental retardation and developmental disabilities. (Attachment 5) In the discussion regarding findings of abuse or neglect, it was pointed out the KBI would have access to criminal findings, and the federal set of standards does not regard MR facilities as adult care homes.

Final Action on **SB 199** - Preschool students required to receive inoculations.

The Chair noted that the Kansas Association of School Boards found a conflict with New Section 2 of the bill that may conflict with federal and state laws regarding access to student records. (Attachment 6) Robert Harder, Kansas Department of Health and Environment, appeared before the Committee with a proposed solution that would modify the bill, deleting new section 2 and renumber subsequent sections. After Committee discussion, Senator Walker made a motion to adopt the amendment, seconded by Senator Langworthy. The motion carried. Senator Walker made a motion **SB 199 as amended** be recommended favorably for passage, seconded by Senator Langworthy. The motion carried.

The meeting was adjourned at 11:00 A.M.

The next meeting is scheduled for February 22, 1993.

## GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 2-19-93

[illegible]

MA N GABEL, MPA, Executive Director  
BOA. BERS:  
Public members  
JOHN S. HOMLISH, Ph.D.  
RONALD D. REINERT  
JOSEPH N. ROBB, Chairman

Psychology Rep.  
DONALD J. FORT, Ph.D., Vice-Chairman  
GERALD K. GENTRY, Ph.D.

Social Work Rep.  
(Vacant)  
THELMA JOHNSON SIMMONS, MSW

STATE OF KANSAS



LICENSED PROF LS:  
Psychologists  
Social Workers

REGISTERED PROFESSIONALS:  
Masters Level Psychologists  
Professional Counselors  
Marriage and  
Family Therapists  
Alcohol and Other  
Drug Abuse  
Counselors

**BEHAVIORAL SCIENCES REGULATORY BOARD**

Landon State Office Bldg—900 SW Jackson, Rm 651-S  
Topeka, KS 66612-1263—913/296-3240 FAX 913/296-6729

**TESTIMONY BEFORE THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE**

**SB 248**

**FRIDAY, FEBRUARY 19, 1993**

**CHAIRPERSON PRAEGER, VICE-CHAIRPERSON LANGWORTHY AND COMMITTEE MEMBERS:**

I am Mary Ann Gabel, Executive Director of the Behavioral Sciences Regulatory Board. Thank you for providing me an opportunity to appear before you today on behalf of the board to request the committee's endorsement of and support for SB 248. This bill addresses the board's need for increases in the statutory limitation on fees for mandatory examinations for psychology and marriage and family therapy registration applicants.

During the first part of FY'94, the board will experience increases in the cost to purchase national examinations for licensure in psychology and registration in marriage and family therapy.

**PSYCHOLOGY LICENSURE EXAMINATION**

K.S.A. 74-5310(a) sets out an examination requirement of all applicants for psychology licensure in the State of Kansas. The examination that is used in Kansas, as well as in each of the states, is owned by the Association of State and Provincial Psychology Boards and is administered through Professional Examination Service (PES) twice a year in April and October. The current cost to the board to purchase the examination is \$135. Licensees are assessed \$175, 20% of which, or \$35, is deposited directly in the state general fund. The remaining \$5 is used by the board to cover administrative costs.

Effective with the October 1993 psychology examination, the board's cost to purchase the examination will be increased to \$250. The current statutory limitation of \$250 will not allow the board to collect from its psychology licensure applicants the mandatory 20% deposit to the state general fund or permit reimbursement of the board's administrative costs. The current limitation, in fact, will require the board fee fund to subsidize psychology applicants, which does not appear to the board to be appropriate in light of the fact that the fee fund balance is derived from fees assessed to each of the

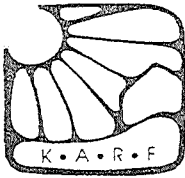
*Senate PHEW  
attachment #1  
2-19-93*

board's credentialed professional groups. This legislation increases the statutory fee limitation to \$350 for the psychology examination, which will enable the board to amend its rule and regulation on psychology fees to reflect the cost increase.

MARRIAGE AND FAMILY THERAPISTS' REGISTRATION EXAMINATION

K.S.A. 65-6404(a)(4) sets out an examination requirement of all applicants, other than grandfathering applicants, for marriage and family therapy registration in the State of Kansas. The examination that will be used in Kansas, as well as in those states that credential marriage and family therapists, is owned by the American Association for Marriage and Family Therapy and is also administered through PES. The cost to the board to purchase the examination, effective July 1, 1993, will be increased from \$155 to \$195. The current statutory limitation of \$150 does not cover the existing examination cost plus any administrative costs and the mandatory 20% direct deposit to the state general fund, let alone the impending increase. The current limitation will also require the board fee fund to subsidize marriage and family therapy registration applicants. This legislation increases the statutory fee limitation to \$275, which will enable the board to amend its rule and regulation on marriage and family therapy fees to reflect the cost increase.

Thank you for your time and consideration. I will be happy to answer any questions you may have.



# Kansas Association of Rehabilitation Facilities

Jayhawk Tower • 700 Jackson • Suite 212 • Topeka, Kansas 66603-3731

(913) 235-5103 • Fax (913) 235-0020

TO: SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
Senator Sandy Praeger, Chair

FROM: Kansas Association of Rehabilitation Facilities  
Yo Bestgen, Executive Director

RE: SB 249

DATE: Feb. 19, 1993

## BACKGROUND:

Programs licensed as intermediate care facilities for the mentally retarded (ICF/MR) are also classified as Adult Care Homes. Adult Care homes encompass long-term care hospitals, nursing homes and all ICF/MR programs other than state MR institutions. The majority of Adult Care homes serve medically fragile geriatric patients. Community ICF's/MR programs serve persons with mental retardation who are not geriatric patients.

Community ICF/MR programs must meet special federal and state standards for care that are substantially different from those of nursing homes and hospitals due to the difference in the persons they serve. Consequently, for ICF/MR programs to meet applicable federal and state standards of care, training curriculums are different from other categories of Adult Care homes.

## ISSUE:

Certified nurses aid (CNA) training is not appropriate for direct care staff working with persons with mental retardation. Further, it is difficult to hire CNAs who desire to work with persons with mental retardation, due to their training which is directed to the care of geriatric patients.

Effective training curriculums for ICF/MR programs must be tailored to the special needs of persons with mental retardation and to the standards of care outlined by federal and state regulations for ICF/MR programs. These requirements describe relevant training experiences for staff working in ICF's/MR.

Health and Environment surveyors require a standard for staff training programs for ICF's/MR. The standard states that:

- (1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.
- (2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

*Senate P.H.W.*  
*Attachment 2*  
*2-19-93*

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

The State Mental Retardation Institutions and private ICF's/MR are under the same federal and state regulations and are both surveyed by Health and Environment. The State institutions are not required to hire and train certified nurses aids (CNA's).

To require the CNA training for community ICF's/MR staff is costly and not responsive to the direct care needs of the person with mental retardation. Training is a critical part of a quality program serving persons with mental retardation. The training, however, should be appropriate to the needs of those served.

We request your support of SB 249 which would exempt the private ICF's/MR from the CNA training requirement. This exemption does not remove the requirement of ~~for~~ a training program. The federal regulations require appropriate training and Health and Environment will continue to survey program outcomes based upon the quality of the training. X

Thank you for supporting legislation that would allow for a more appropriate and cost effective delivery of service.



Mike Strouse  
Executive Director  
CEO  
6900 W 80, Overland Park, KS 66204  
913-341-9316

> OP

***Testimony submitted in support of Senate Bill No. 249 by  
Michael C. Strouse, Executive Director of Community Living  
Opportunities, Inc. an accredited community-based program  
serving persons with developmental disabilities in Johnson  
and Douglas Counties.***

Private, community-based programs licensed as ICFs/MR are also classified as Adult Care Homes. Adult Care homes encompass a broad spectrum of facilities including long-term care hospitals, nursing homes, and all ICF/MR licensed programs other than state-operated institutions. KSA 39-936 sets forth the training requirements for direct care staff of all Adult Care Homes. This statute and the accompanying regulations developed by the Kansas Department of Health and Environment, describes the training necessary for all direct care staff of Adult Care Homes, called Certified Nurses Aide (CNA) training. Unfortunately, CNA training requirements are not appropriate for staff who work within an ICF/MR.

- The majority of Adult Care Homes in Kansas are large, medically-oriented, long-term care hospitals and nursing homes for medically fragile geriatric patients. Community-based ICF/MR programs serving persons with developmental disabilities, bear little resemblance to such Adult Care Home facilities. As a result, the training needs of staff of ICF/MR programs differ substantially other Adult Care Home programs.
- The primary mission of ICF/MR programs is to teach persons with developmental disabilities necessary skills allowing them to live more independently. The training mandated for Adult Care Homes in KSA 39-936 (CNA training) is not appropriate for direct care staff working in ICF/MR programs serving persons with developmental disabilities. It emphasizes "doing for" or "custodial care" instead of "teaching" independent living skills. Further, the training curriculum mandated by KSA 39-936 teaches skills that are unnecessary to or incompatible with the mission of an ICF/MR (which is costly, nonproductive and often confusing to staff), and entirely omits training in many skills that are critical for quality care within an ICF/MR program serving persons with developmental disabilities. For example, it does not teach skills necessary to provide "active treatment" or a teaching-oriented environment. ICF/MR programs must provide an "active treatment" or a teaching-oriented environment to receive funding.
- Perhaps most importantly, there are already federal and state standards for staff training currently in effect that have been specifically developed for ICF/MR

Senate H&E  
Attachment #3  
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programs serving persons with developmental disabilities. These standards assure that training programs are in place in each ICF/MR that meet the individual needs of all persons served. Thus, for ICF/MR programs, there is no need for the existence of the additional training requirements of KSA 39-936, especially since these requirements were not designed specifically for ICF/MR programs serving persons with developmental disabilities and do not teach skills consistent with the mission of ICF/MR programs.

- Many ICF/MR programs find it difficult to hire CNAs who already meet the training requirements of KSA 39-936 to work with persons with developmental disabilities, since most CNAs, due to their training, prefer to care for medically fragile and geriatric persons. If persons working in an ICF/MR did not have to be trained as CNAs, ICF/MR programs would likely be able to recruit persons who are more interested in serving persons with developmental disabilities.
- Finally, state-operated institutions for persons with developmental disabilities, which are also licensed as ICFs/MR, are not required to utilize CNA training curriculums or hire CNAs as direct care staff. Unlike private ICF/MR programs, our state institutions are not additionally classified as Adult Care Homes. Otherwise, public and private ICF/MR programs are identically licensed and are subject to identical standards of care. There is no qualitative or programmatic reason why private ICF/MR and public ICF/MR programs be viewed differently with respect to the qualifications and training for direct care staff.

***We support Senate Bill No. 249 which exempts private community Intermediate Care Facilities serving persons with mental retardation (ICF/MR programs) from KSA 39-936 provisions which require direct care staff to be trained as Certified Nurses Aides.***



Department of Health and Environment

Robert C. Harder, Secretary

Reply to:

TESTIMONY PRESENTED TO  
THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
by  
THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Senate Bill 249

According to state law (KSA 39-923 et seq.) an Intermediate Care Facility for the Mentally Retarded (ICF/MR) is required to be licensed as an adult care home. All 46 ICF/MRs in Kansas are also medicaid certified. In accordance with the statute to be amended by this bill, all unlicensed personnel providing direct care services to residents of an adult care home must be trained and certified as a nurse aide. This bill eliminates the requirement that unlicensed personnel in ICF/MR be trained and certified as nurse aides. Medicaid does not classify these facilities as adult care homes, but does require the ICF/MR to document that staff is trained to perform their specific duties.

The Kansas Department Of Health and Environment (Department) is responsible for inspecting, licensing, and certifying adult care homes, and administering the nurse aide training and certification program. In most instances, the training needs of unlicensed personnel in a nursing home and unlicensed personnel in an ICF/MR are different. The medical model of the nurse aide curriculum does not meet the training needs of ICF/MRs staff. The Department supports the passage of this bill as written.

Presented by: Joseph Kroll, Director  
Bureau of Adult and Child Care  
February 19, 1993

*Senate PH&W  
Attachment # 4  
2-19-93*



**KINH Kansans for Improvement of Nursing Homes, Inc.**

913 Tennessee, suite 2 Lawrence, Kansas 66044 (913) 842-3088

**TESTIMONY PRESENTED TO  
THE SENATE COMMITTEE ON PUBLIC WELFARE  
CONCERNING SB 249**

February 19, 1993

Madam Chair and Members of the Committee:

KINH has some sympathy with the circumstances that gave rise to SB 249. We recognize that the needs of residents of intermediate care facilities for the mentally retarded (ICF/MR) are different than the needs of residents of medically oriented adult care homes. We agree that the training for direct care staff in ICF/MR facilities should be directed at meeting the specific needs of the residents with mental retardation.

Our principal objection to SB 249 is that it eliminates any training requirement for direct care staff. The federal standard for staff training required by Health and Environment surveyors is a broad statement of general goals, rather than a specific curriculum geared to the needs of ICF/MR residents. The lack of a minimum standard of staff competency and a clear description of necessary skills allow for inconsistent care between facilities. The lack of a standard training curriculum also places total responsibility and control on individual surveyors as they review each facility's individual training program.

Our secondary objection to the exemption is that staff who do not complete certification training cannot be listed in the Kansas Nurse Aide Registry, which lists all Certified Nurse Aides, and indicates any aides with confirmed findings of abuse or neglect. As indicated on the attached cover sheet for the Nurse Aide Registry, "An ICF/MR facility cannot hire any one who has been confirmed by a state administrative process." Without the benefit of the Nurse Aide Registry, how will ICF/MR facilities detect abusive employees, and what will prevent those aides from moving from facility to facility?

As state policy shifts away from its reliance on institutional care, it becomes increasingly important to have consistent standards of care in place to meet the needs of the people who will be moving in large numbers to community based care.

KINH would support the replacement of the current CNA training requirement with a training curriculum and certification that is more appropriate for providing care for residents with mental retardation and developmental disabilities.

We oppose the outright exemption of the training requirement for ICF/MR facilities.

Respectfully submitted,

*Sandra Strand*

Sandra Strand  
Legislative Coordinator

*Senate PHW  
Attachment #5  
2-19-93*



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## Department of Health and Environment

Azzie Young, Ph.D., Secretary

(913) 296-6877

Kansas Nurse Aide Registry    Reply to:  
 State Administrative Confirmations  
 Quarterly Abuse Report

Attached is the quarterly abuse report as it appears on the Kansas Nurse Aide Registry. No complaint against an aide which is under investigation, in the hearing process, or in the appeal process is recorded in the registry. Only final confirmations are recorded in the Kansas Nurse Aide Registry.

A nursing facility may not employ any CNA whose state administrative process began after April 1, 1992. It is at the discretion of the nursing facility whether or not to use or employ a certified nurse aide whose state administrative process began prior to April 1, 1992, this is indicated by an asterisk following the state administrative confirmation date.

Intermediate care facilities for the mentally retarded (ICF/MRs) are prohibited from hiring any one who is convicted of abuse or has an employment history of child or client abuse, neglect, or mistreatment since October 3, 1988. Therefore, an ICF/MR cannot hire any one who has been confirmed by a state administrative process.

Any aide who has been found guilty by a court of law for abuse, neglect, or mistreatment of individuals is not eligible for employment in the state of Kansas.

Below is a summary of the information contained on the registry and as it appears on the attached quarterly report:

AIDE ID #	This is the unique identifier which was assigned to the aide upon certification. This is the identification number on nurse aide certificates issued from 1986 to present.
CNA CROSS REFERENCE	This is the registration number on nurse aide certificates issued between 1979 and 1985.
AIDE'S NAME	This is the aide's full name (last, first, and middle initial). "Othername" indicates any maiden or surnames listed on the registry.
CERTIFICATES AIDE HOLDS	This is a listing of all certificate which the aide holds. CNA = Certified Nurse Aide LNA = Limited Nurse Aide HHA = Home Health Aide CMA = Certified Medication Aide
ACTION AGAINST	This is the certificate which the aide was functioning under when the abuse, neglect, or exploitation was confirmed.
CATEGORY	Type of state administrative hearing confirmation. A = Abuse        N = Neglect        E = Exploitation
WAIVE HEARING	"Y" indicates the aide waived the state administrative hearing. If the aide waived the hearing, the findings of the investigation become fact and abuse, neglect, or exploitation is automatically confirmed.  "N" indicates the aide did not waive the state administrative hearing. A hearing was conducted and a final order was issued confirming abuse, neglect, or exploitation.
CONFIRMATION DATE	The date administrative findings became final.
FINAL FINDINGS	Summary of the findings of the state administrative investigation.
AIDE'S DISPUTE	This is the aide's statement regarding the state administrative findings.

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KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

February 17, 1993

Senator Sandy Praeger  
Kansas Senate  
State House, Room 128-S  
Topeka, KS 66612

Re: S.B. 199

Dear Senator Praeger:

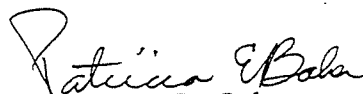
Following the committee hearings on Senate Bill 199 this past week, questions arose regarding the possibility that New Section 2 of the bill may conflict with federal and state laws regarding access to student records.

To the extent that the bill requires school officials to release student records without parental consent, it appears that the bill conflicts directly with the Federal Educational Rights and Privacy Act (FERPA or "The Buckley Amendment") and the State Privacy Act, K.S.A. 72-6214. Both laws allow districts to release information to individuals within a school system on a "need to know" basis. The federal law, and the Kansas immunization law, K.S.A. 71-5108 et seq., also require that parental permission be granted before sending student records to another district.

There does not appear to be any exception for the categories of persons identified in S.B. 199 to receive student records. An interpretation of the Federal Act has indicated that some state agencies may be allowed access if such access was granted by state law prior to 1977.

KASB supports more widespread immunization of children and we would be happy to work with you to accomplish that goal. I only wanted to alert you and the committee to potential conflicts with S.B. 199 and existing law.

Sincerely yours,



Patricia E. Baker  
Associate Executive Director/  
General Counsel

PEB/oge

*Senate PHEW*  
*Attachment #6*  
*2-19-93*